



CITY COMMISSION POLICY

POLICY TITLE: City Commission Policy for Special Master Proceedings Under the 1995 Florida Land Use and Environmental Dispute Resolution Act.	CITY COMMISSION POLICY NUMBER: 414CP
	DATE ADOPTED:
	DATE OF LAST REVISION:

AUTHORITY:

Florida Land Use and Environmental Dispute Resolution Act, Chapter 95-181, Section 2, Laws of Florida, to be codified as Section 70.51, Florida Statutes (Dispute Resolution Act).

PURPOSE:

To establish procedures for conducting the Special Master Proceedings required by the Dispute Resolution Act in a manner consistent with that Act and establishing certain standards of conduct for the Special Master and participants.

SCOPE AND APPLICABILITY:

The procedures set forth in this policy shall apply to any requests for relief filed pursuant to the Dispute Resolution Act.

POLICY STATEMENT:

This policy establishes procedures for the initiation, conduct, and conclusion of Special Master Proceedings under the Dispute Resolution Act involving a development order or enforcement action by the City of Tallahassee (City). The proceeding is voluntary for the landowner. This policy is intended to serve as a single source reference for the conduct of the Special Master Proceedings, and includes statutory procedural requirements in a logical grouping and sequence as well as additional procedures regarding issues not specifically addressed by the Act.

DEPARTMENT City Attorney's Office	DEPARTMENT HEAD SIGNATURE James R. English, City Attorney
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This is a non-adjudicatory settlement and expedited hearing procedure. A special Master may not impose a decision, but primarily explores opportunities for compromise and assists the parties in negotiation. Settlement through the special master process is intended to save time and money for everyone.

If a settlement is not reached, the special master will conduct an independent and impartial assessment of the dispute and prepare a non-binding recommendation.

The Special Master Proceeding is intended to be a speedy, inexpensive, simple, and solution-oriented method for settlement of land use and environmental disputes. As much as possible, a landowner and regulator meet face to face and discuss issues directly without the need for advocacy by a lawyer. It is anticipated that the City will not be represented by an attorney in most Special Master Proceedings. However, if any other party is represented in a Special Master Proceeding by an attorney, the City may also have an attorney present. The special master and parties should adapt the procedures outlined in this policy to the needs of each case, consistent with the requirements of law.

A. DEFINITIONS:

1. "Development" means any proposed change in the use or character of the land, including but not limited to, land clearing or the placement of any structure or site improvement on the land except for silviculture activities employing best management practices. Development includes the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into two or more parcels, and all work customarily associated with such activities.
2. "Development order" means any order, which is or will have the effect of granting, denying, or granting with conditions an application for a development permit. It includes the rezoning of a specific parcel of land. It does not include actions on an amendment to the local comprehensive plan.
3. "Development permit" means:
 - a. Any building permit, zoning permit, subdivision approval, certification, special exception, variance, or any other similar action of the the City, or



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- b. Any other permit by the City authorized to be issued under state law which has the effect of authorizing the development of land including, but not limited to, programs implementing Chapters 125, 161, 163, 166, 187, 258, 372, 373, 378, and 403, Florida Statutes.
 4. "Enforcement action" means the final administrative order of an enforcement board which commands whatever steps are necessary to bring a violation of local ordinances into compliance.
 5. "Governmental entity" includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies.
 6. "Land" or "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest.
 7. "Owner" means a person with a legal or equitable interest in land who filed an application for a development permit for the land with the City and who received a development order, or who has an interest in land that is the subject of an enforcement action by the City.
- B. TIME REQUIREMENTS AND FURNISHING COPIES:**
1. Unless the parties agree in writing to extend the time for performing any act under these guidelines, including the overall 165-day time period, a special master proceeding may not continue longer than 165 days from the date the owner files the request for relief.
 2. Any copy which must be furnished to the special master, a party or a participant may be sent by regular mail, postage prepaid, or by hand delivery to the recipient's last known address. The burden of proving a copy has been furnished is on the person responsible for furnishing it.



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3. Except for an owner's request for relief, any document which must be submitted, or any copy which must be furnished, may be submitted or furnished by facsimile transmission. Facsimile documents will be deemed submitted or furnished on the date transmitted as shown on the recipient's copy, if the copy is complete.
4. Filing means that the signed original must be received by the office that is to receive the document by the date specified. Any document received after 5:00 p.m. shall be filed as of 8:00 a.m. the next regular business day.

C. ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW

1. A petition by the owner for judicial review of the development order or enforcement action shall waive all rights to a special master proceeding.
2. A request for relief through a special master proceeding shall toll the time for filing a petition for judicial review of the development order or enforcement action as provided herein in Paragraph W.
3. Invoking the procedures for a special master proceeding is not a precondition for judicial review of the development order or enforcement action.
4. Prior to initiating a special master proceeding, the owner must request review through a request for formal proceedings or must file appeals as authorized by the City Code but the review or appeal may take no longer than four months. The filing of a valid request for formal proceedings or appeal will toll the time for filing a request for relief.
5. The owner may initiate a special master proceeding within 30 days after conclusion of the formal proceedings or appeal or, if the formal proceedings or appeal have not concluded, within 30 days after four months from its commencement.



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D. PRE-INITIATION MEETING

1. Prior to filing a request for relief, an owner may request in writing submitted to the City Attorney an informal meeting with the appropriate City official to ascertain whether the issues relating to a development order or enforcement action would be appropriate for a special master proceeding or other form of alternative dispute resolution. The City Attorney shall promptly transmit the request to the appropriate Assistant City Manager, who shall convene such a meeting promptly and include staff necessary to address the owner's concerns.
2. The City may agree with the owner in writing to extend the time for filing a request for relief or judicial proceeding to create an opportunity for mediation or other form of alternative dispute resolution.
3. A special master proceeding is intended to be an additional remedy for the owner. It does not supplant other lawfully available methods agreed to by the parties, such as arbitration, mediation or other forms of dispute resolution.

E. REQUEST FOR RELIEF

1. Each development order or enforcement action shall inform the owner that he may request a special master proceeding by filing a request for relief. The notification shall state the time period within which a request must be filed and where the owner may obtain a copy of this policy.
2. Any owner who believes a development order or enforcement action, by itself or in conjunction with the actions of other governmental entities, is unreasonable or unfairly burdens the use of the owner's land may file a request for relief.
3. A request for relief must be filed within 30 days after:
 - a. Receipt of the development order or enforcement action; or,



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- b. If a request for formal proceedings or appeal is available, the earlier of its conclusion or the expiration of four months after its initiation.
4. A signed original of the request for relief must be filed with the Mayor at 300 South Adams Street, Tallahassee, Florida 32301, simultaneously with a copy to the City Attorney's Office at the same address. No fee will be charged for filing a request for relief.
5. The request for relief must contain:
 - a. A brief statement of the owner's proposed use of the property.
 - b. A summary of the development order or description of the enforcement action. A copy of the development order or documentation of the enforcement action must be attached.
 - c. A brief statement of the impact of the development order or enforcement action on the ability of the owner to achieve the proposed use of the property, including an explanation why the development order or enforcement action is unreasonable or an unfair burden.
 - d. The signature of the owner or, if the owner is a corporation, partnership or other organization, the signature of a responsible official, and the mailing address and telephone number at which the owner may be reached.
 - e. A statement regarding whether formal proceedings or an appeal are available and, if so, whether and when it was commenced by the owner and, if completed, the date of completion.
 - f. A certification by the signer of the request identifying the persons, if any, who have been furnished with copies of the request for relief.
6. Upon receipt of a request for relief, the Mayor shall forward the copy of the request to the City Attorney, who shall:



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- a. Notify the department head of the department responsible for the development order or enforcement action and the Code Board Coordinator that the request was filed and direct preparation of a response; and
- b. Notify the Code Board Coordinator to provide a list of potential special masters to the owner.
- c. Notify the department head to confer with the owner or owner's representative and any other governmental entity identified as a party in the request for relief to agree on a special master no later than 10 days from the date the request for relief was received.
- d. Direct the Code Board Coordinator to furnish a copy of the request for relief to:
 - i. Persons holding title to land contiguous to the owner's property, at the address on the latest County tax roll.
 - ii. Any substantially affected party who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity support for or objections to the development order or enforcement action. A copy must be furnished to such a person only if that person requested in writing or at a public hearing a desire to be placed on a mailing list to receive notice of any subsequent proceeding on the development order or enforcement action at issue.

A copy provided for purposes of notice may omit attachments or supporting documentation so long as it informs the recipient where such materials may be inspected and copied.

7. The City Commission shall be informed by the City Attorney that a request for relief has been filed, the name of the owner, a description of the development order or enforcement action at issue, and the timetable for consideration of the matter.



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8. The owner may voluntarily dismiss the proceeding at any time by submitting a written request for dismissal to the special master or, if one has not been selected, to the City Attorney. A voluntary dismissal shall be effective upon filing with the special master or, if one has not been selected, the City Attorney.

F. SELECTION OF SPECIAL MASTER

1. In order to serve as a special master in a proceeding under these guidelines, a person must:
 - a. Be a resident of the State of Florida;
 - b. Possess experience and expertise in mediation; and
 - c. Possess experience and expertise in at least one of the following disciplines and a working familiarity with the others:
 - i. Land use and environmental permitting;
 - ii. Land planning;
 - iii. Land economics;
 - iv. Local and state government organization and powers, and the law governing the same.

A special master need not be a lawyer or a mediator certified by the Florida Supreme Court.
2. The City Attorney shall forward the request for relief to the special master upon selection.
3. Any member of the Florida Bar selected as a special master in a particular matter shall not, for that reason, be disqualified from serving as counsel in any other matter before the City.



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4. If the owner, any other governmental entity identified as a party in the request for relief, and the City Attorney do not agree on a special master, they shall jointly agree on an impartial third party to select the special master according to agreed criteria, which must include the criteria listed above.

G. SPECIAL MASTER AGREEMENT; FEES AND EXPENSES

1. The special master and the parties shall memorialize the selection of the special master in an agreement which shall provide for the payment of all fees and expenses associated with the proceeding. In addition, a special master agreement may:
 - a. Vary the time for performance of any act.
 - b. Establish groundrules for the conduct of the proceeding, including standards of conduct for the special master, parties and participants, and the enforceability of subpoenas in circuit court.
 - c. Identify factual issues to be addressed in the proceeding or specify procedures for resolving factual issues, including stipulation.
 - d. Provide for the exchange of information by the parties prior to the mediation or hearing.
 - e. Identify participants known to the parties who should be notified of the proceeding.
 - f. Address such other issues as the parties may decide will assist in settlement of the dispute.
2. The department head for the department responsible for the development order or enforcement action may execute the Special Master Agreement for the City so long as all estimated costs to the City associated with the Special Master Proceeding do not exceed \$10,000. Each Special Master Agreement shall include a provision that terminates the agreement when the City's costs reach \$10,000 unless the City Manager approves in writing expenditures of more than \$10,000. The City Manager may approve up to \$50,000 for the



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City's costs. If costs for Special Master Proceedings exceed, or are anticipated to exceed \$50,000, the matter must be presented to the City Commission which shall approve or disapprove expenditures in excess of \$50,000.

3. Payment of fees and expenses for the special master, and costs of providing notice and effecting service, shall be borne equally by the parties. Other costs shall be paid as agreed by the parties.
4. A special master shall be compensated as agreed in writing in the Special Master Agreement or as thereafter modified in writing. Parties may place funds on deposit to assure payment at the conclusion of the proceeding, or provide a retainer against which fees and expenses will be charged.
5. The parties may authorize the special master to retain an independent expert, or to obtain any materials, to assist in evaluating any issue. Fees and costs will be paid as agreed in writing by the parties and the special master.
6. The City may provide staffing services through the Code Board Coordinator for Special Master Proceedings, if requested. A provision addressing how the City will be compensated for use of City staff for this purpose shall be included in the Special Master Agreement.

H. STANDARDS OF CONDUCT:

1. Standards of Conduct for Special Masters
 - a. A special master holds a unique position of trust with the parties, participants, and their representatives. A special master should adhere to the highest standards of integrity, impartiality and professional competence in rendering his or her professional service. A special master should be honest and unbiased, act in good faith, be diligent and not seek to advance his or her own interest.
 - b. A special master should disclose any facts or circumstances that may give rise to doubts of his or her impartiality or independence. A special master should refrain from entering or continuing in any dispute if there



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is a belief or perception that the special master would not be fair and impartial.

- c. A special master should be reasonably available as requested and be certain that the parties, participants, and their representatives are informed of the special master process.
- d. A special master has the responsibility to maintain and improve his or her professional skills. A special master should keep informed of all statutes, rules, regulations, or other sources affecting his or her professional competence. If a special master finds that an assigned case is beyond his or her competence, the special master should request technical assistance or withdraw from the proceedings.
- e. A special master shall exert every reasonable effort to expedite the process. A special master must not be the cause of excessive delays and should only accept cases that can be completed in a timely manner.
- f. A special master shall charge only those fees and costs agreed to in the special master contract. A special master shall not charge in excess of the actual time spent or allocated or costs incurred. A detailed invoice shall be provided by the special master to all parties in each proceeding.
- g. Failure to abide by these standards of conduct by a special master may result in his or her disqualification from participation in the process or removal from the list of available special masters.

2. Standards of Conduct for Parties, Participants, and Representatives (PPRs)

- a. All PPRs shall actively participate in the proceedings and make a good faith effort to explore alternatives to the development order or enforcement action at issue to meet the goals of the dispute resolution process.
- b. All PPRs shall exercise due diligence in the filing and presentation of any document to insure that the document is filed and presented in good faith and not for the purpose of delay.



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- c. All PPRs shall not engage in conduct during the proceedings involving dishonesty, fraud, deceit, or misrepresentation or engage in conduct that subverts the goals of dispute resolution pursuant to the Act.
 - d. All PPRs shall not engage in any action or use any tactic which serves to harass or maliciously injure another or which are primarily dilatory, disorderly, or contemptuous in nature.
 - e. All PPRs shall not knowingly use perjured testimony or false evidence or make a false statement of law or fact.
 - f. All PPRs shall agree to abide by decisions of special masters relating to procedures in the conduct of hearings, facilitation and negotiation sessions, and the like.
 - g. A failure to abide by these standards may result in a dismissal of the proceedings by the special master as to the offending party.
3. The parties and the Special Master may establish additional standards of conduct in a Special Master Agreement as authorized by Paragraph G herein. In addition, the City Commission may establish from time to time additional standards of conduct for the Special Master and PPRs.

I. RESPONSE TO REQUEST FOR RELIEF

1. No more than 15 days after the filing of a request for relief, the department head of the department responsible for the development order or enforcement action shall file a response to the request for relief with the special master on behalf of the City. A copy shall be furnished to the owner and to the Code Board Coordinator to distribute to any person who has requested to participate in the proceeding.
2. The response shall set forth in reasonable detail the position of the City regarding the matters raised by the owner. The response must include a brief statement explaining the public purpose of the regulations on which the development order or enforcement action is based.



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3. The response may include a request that the special master dismiss the owner's request for relief for any failure to observe this policy. If the request is dismissed, the owner shall be permitted to file an amended request within a reasonable time fixed by the special master. Failure to file an adequate amended request within the time specified by the special master shall result in final dismissal of the matter without the right to submit another request. Final dismissal may not be appealed to the City Commission.
4. Any party may request, in its response or otherwise, a request to be dropped from the proceeding. The request must set forth facts and circumstances to aid the special master in deciding on the request. All such requests must be disposed of prior to a hearing on the substance of the owner's request for relief. If the special master denies a request to be dropped, that party shall participate in the proceeding.

J. ADDITIONAL PARTIES TO THE PROCEEDING

1. The special master may add additional governmental entities as parties to the proceeding when:
 - a. The owner or the City asks the special master to add that governmental entity to the proceeding as a party; and
 - b. The development order or enforcement action is the culmination of a process involving a governmental entity in addition to the City; or
 - c. A complete resolution of all relevant issues would require active participation of that additional governmental entity.
2. A governmental entity added as a party shall actively participate in the proceeding as set forth in these Guidelines and as required by the special master.
3. A governmental entity added as a party shall be a party to the Special Master Agreement, and shall bear its share of the costs and expenses of the Special Master Proceedings.



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K. OTHER PERSONS WHO MAY PARTICIPATE

1. Other persons who may participate in the proceeding are:
 - a. Any person with a legal or equitable interest in land contiguous to the owner's property; or
 - b. Any substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity support for or objections to the development order or enforcement action in a prior proceeding.
2. Within 21 days after receiving a copy of the request for relief, a person seeking to participate must submit a written request to participate. The request must state:
 - a. The person has a legal or equitable interest in land contiguous to the owner's property and, if so, identify the land in relation to the owner's property; or
 - b. How the person is substantially affected by the development order or enforcement action at issue.

The request must be submitted to the Code Board Coordinator who will forward a copy to the special master.
3. The special master may decide any issue necessary to determine whether a person qualifies as a participant. If the special master accepts a request to participate, the person or any witnesses and representatives shall address only those issues raised regarding alternatives, variances, and other types of adjustment to the development order or enforcement action which may impact the participant's substantial interests, unless the parties and the special master agree to allow a participant to address additional issues. Denial of a request to participate may not be appealed to the City Commission.



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L. CONSOLIDATION

1. If there are separate matters which involve similar issues or identical parties, they may be consolidated if the parties agree and it appears that consolidation would promote the speedy, efficient, and inexpensive resolution of the matters.
2. If the separate matters are pending before different special masters, the parties may decide which special master will conduct the consolidated proceeding. If they cannot agree on one or multiple special masters to conduct the proceeding, the proceedings shall not be consolidated.

M. REPRESENTATIVES

1. A party or participant may be represented by an attorney or other person at any phase of the proceeding, but such representation is not required. Any party or participant represented by an attorney shall be responsible for his/her own attorneys' fees.
2. At the mediation, each party shall be represented by a person with authority to bind that party to a settlement, or to recommend a settlement directly to the persons with authority to bind the party. The special master may ask a representative to provide assurances of such authority.

N. ORDER OF THE PROCEEDING

1. In keeping with the overriding intent of the Legislature that the special master proceeding be a flexible, problem-solving procedure which results in a voluntary settlement, the special master may conduct the phases of the proceeding in any sequence and on separate days.
2. The proceeding shall be open to the public and be held in a location accessible to the public, including the physically handicapped.
3. The proceeding shall be conducted under the direction and supervision of the special master. The special master shall determine the order of presentation of issues and information unless otherwise set forth in the special master



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agreement. The special master shall decide questions of procedure in a manner which provides reasonable due process.

4. Prior to any other portion of the proceeding, the special master shall conduct a hearing on any request to dismiss the request for relief.
5. At any time after commencement of the information-gathering hearing, the special master may recess the hearing to re-commence mediation and facilitation.
6. After the hearing, the special master may re-convene the parties to present a written recommendation, in draft or final form, and seek to re-commence negotiations.

O. MEDIATION PHASE

1. The special master's first responsibility is to facilitate a resolution of the dispute and arrive at a settlement acceptable to the parties. It may involve a modification of the owner's proposed use of the property or adjustment in the development order or enforcement action or regulatory efforts by one or more of the governmental parties.
2. The special master shall, among other things, suggest alternatives, analyze issues, question perceptions, use logic, stimulate and facilitate negotiations between the parties, and keep order. The special master at all times will promote conciliation, cooperation, compromise and settlement of the dispute within the bounds established by law.
3. As alternatives, variances, and other types of adjustments to the development order or enforcement action are presented, the special master shall afford participants an opportunity to address the impacts of such adjustments on their substantial interests.

P. INFORMATION GATHERING HEARING

1. Within 5 days after the special master receives the request for relief, the special master shall provide written notice of the place, date, and time of the hearing to all parties, and to all persons who have requested such notice.



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The hearing must be held within 45 days of the special master's receipt of the request for relief. The parties may agree to extend the date for the hearing. Notices to the City as a party shall be sent to the Code Board Coordinator, Code Board and Special Projects Division, City Hall, 300 South Adams Street, Tallahassee, Florida 32301. Notices to owners shall be sent to the address provided in the request for relief. Notice to participants shall be sent to the address provided in the request to participate.

2. The hearing must be held in the City of Tallahassee. The special master's decision on the specific place of the mediation and hearing shall be final.
3. The special master shall hear from anyone with information necessary to understand the matter. The special master may question anyone presenting information at the hearing but shall give all parties an opportunity for follow-up questions.
4. The special master shall weigh all information offered at the hearing. Information shall not be subject to the rules of evidence, but the criteria for determining and the determination of verification and authentication are within the special master's discretion.
5. At any time, the special master may require any party to provide additional information in the interest of gaining a complete understanding of the request for relief.
6. Each party may record the hearing at its own expense. The special master may record the hearing to assist in preparing a recommendation as required by Paragraph U. If the special master makes such a recording, it shall be forwarded to the City with the recommendation but shall be subject to the restrictions on information contained in Paragraph S.
7. Any documents or tangible materials presented to the special master at hearing shall be submitted to the City Commission with the special master's recommendation. Any notes or drafts produced by the special master and not intended to record information in a permanent form shall remain the property of the special master.



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8. If a party fails to appear at the hearing after notice, the special master may proceed without that party or may adjourn the hearing to another day, giving notice to the absent party.
9. Information may be given and parties, participants or their representatives may participate by telephone, videotape or other communications medium unless otherwise agreed in a special master agreement.

Q. WITNESSES AND MATERIALS

1. Each party must assure attendance at the hearing by those persons qualified by training or experience to address issues raised by the request for relief, the response, or the special master, or to address alternatives, variances, and other types of modifications to the development order or enforcement action.
2. The special master may issue a subpoena for any nonparty witness in the state who will aid in the disposition of the matter. A subpoena issued by a special master may require the witness to bring a specified document or thing.
3. The special master may require and receive documents and other tangible materials from any party or participant. All parties and participants shall have the opportunity to examine and respond to such submissions.
4. The special master may weigh the credibility of witnesses.
5. Although an attorney is not required, any person compelled to appear or furnish documents or tangible materials, or who appears voluntarily, may be represented and advised by legal counsel at his or her own expense.

R. ACCESS TO THE PROPERTY

1. A request for relief constitutes a consent by the owner for the special master and parties or representatives to have reasonable access to the owner's land.
2. The owner may grant access to the land to participants, parties, or their representatives.



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S. OFFER TO COMPROMISE

1. As provided by law:
 - a. All actions or statements of the special master, the parties and all participants are evidence of an offer to compromise and are inadmissible in any judicial or administrative proceeding.
 - b. The proceeding may not be made known by a party or participant to any judicial or administrative tribunal, or be construed for any purpose as an admission against interest.
2. A party or participant is not bound by anything said or done during the proceeding unless a written settlement is reached, in which case only the terms of the written settlement shall be binding.
3. The special master may not be called to appear before the City Commission with respect to any aspect of the proceeding, nor may the special master be compelled to furnish notes or drafts.

T. SETTLEMENT

1. The owner and the City may enter into a settlement agreement or other agreement as to the permissible use of the owner's land prior to the special master filing a recommendation under Paragraph U.
2. A settlement agreement or other agreement as to the permissible use of the owner's land may be executed subject to approval by the City Commission. Any such agreement shall not bind any party until duly approved and executed by all parties to the agreement.

U. SPECIAL MASTER'S RECOMMENDATION

1. The special master shall file a recommendation with the City Commission within 14 days after the conclusion of the hearing. The special master shall furnish a copy to all parties and participants.



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2. If a settlement agreement or other agreement as to the permissible use of the owner's land is executed prior to the special master's recommendation, the recommendation shall only:
 - a. Set forth the date and location of the hearing;
 - b. Identify the parties and other participants in attendance at the hearing;
 - c. Record, without comment, the fact that a settlement agreement or other agreement as to the permissible use of the owner's land has been executed; and
 - d. Include as an attachment an executed copy of the settlement agreement or other agreement as to the permissible use of the owner's property.
3. If a settlement agreement or other agreement as to the permissible use of the owner's land is not executed prior to the filing of the special master's recommendation, the special master shall consider the facts and circumstances set forth in the request for relief, any responses, and any other information produced at the hearing to determine whether the development order or enforcement action, by itself or in conjunction with an action of the City or another governmental entity, is unreasonable or unfairly burdens the owner's land.
4. In making a determination, the special master may consider, among other things:
 - a. The history of the land, including when it was purchased, how much was purchased, where it is located, the nature of the title, the composition of the property, and how it was previously used.
 - b. The history of development and use of the land, including what was developed and by whom, if it was subdivided and how and to whom it was sold, whether plats were filed or recorded, and whether infrastructure and other public services or improvements may have been dedicated to the public.



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- c. The history of relevant environmental protection and land use controls and other regulations, including how and whether the land was classified, any uses that may have been proscribed, and what changes in classifications have occurred.
 - d. The present nature and extent of the land, including natural and altered characteristics.
 - e. The reasonable expectations of the owner at the time of acquisition, or immediately prior to the implementation of the regulation at issue, whichever is later, under the regulations then in effect and under common law.
 - f. The public purpose sought to be achieved by the development order or enforcement action, including the nature and magnitude of the problem addressed by the underlying regulations on which the development order or enforcement action is based; whether the development order or enforcement action is necessary to the achievement of the public purpose; and whether there are alternative development order or enforcement action conditions that would achieve the public purpose and allow for reduced restrictions on the use of the owner's land.
 - g. Uses authorized for and restrictions placed on similar property, including adjacent lands.
 - h. Any other information determined to be relevant by the special master or agreed by the parties to be addressed by the special master.
5. The special master shall utilize his or her expertise in formulating a recommendation and, in applying this expertise, shall rely upon the sort of information that a reasonable, prudent person would rely upon in the conduct of his or her affairs.
 6. If the special master determines the development order or enforcement action, by itself or in conjunction with another action the City or another governmental entity, is not unreasonable and does not unfairly burden the



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owner's land, the special master shall recommend that the development order or enforcement action remain undisturbed.

7. If the special master determines the development order or enforcement action, by itself or in conjunction with another action of the City or another governmental entity, is unreasonable or unfairly burdens the owner's property, and the owner has consented, the special master shall recommend one or more alternative actions that protect the public interest served by the regulations at issue but allow for reduced restraints on the use of the owner's real property. The alternatives may include:
 - a. An adjustment of land development or permit standards or conditions controlling the development or use of the owner's land.
 - b. Increases or modifications in the density, intensity, or use of areas of development.
 - c. The transfer of development rights.
 - d. Land swaps or exchanges.
 - e. Mitigation, including payments in lieu of on-site mitigation.
 - f. Location of the development or use at issue on the least sensitive portion of the property.
 - g. Conditioning the amount of development or use permitted on the owner's land.
 - h. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
 - i. Issuance of the development order, a variance, special exception, or other extraordinary relief, including withdrawal of the enforcement action.
 - j. Purchase of the owner's land, or an interest in it, by the City or another governmental entity.



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If an apportionment of responsibility among governmental entities is necessary, the special master shall make such apportionment.

8. The special master shall furnish a copy of the written recommendation to the parties and to Florida Department of Legal Affairs.
9. The special master's recommendation shall be a public record. A copy shall be available for public inspection and copying at the office of the Treasurer-Clerk of the City.

V. EFFECT OF SPECIAL MASTER'S RECOMMENDATION

1. The special master's recommendation shall be advisory only and not binding on the owner or the City Commission.
2. A special master's recommendation constitutes data which shall be considered with respect to any pertinent amendment to the comprehensive plan.
3. A special master's determination that the development order or enforcement action, by itself or in conjunction with actions of the City or another governmental entity, is unreasonable or unfairly burdens the owner's land shall constitute a determination of hardship which will support a modification, variance, or special exception as otherwise authorized by applicable rules and regulations.

W. DISPOSITION OF SPECIAL MASTER'S RECOMMENDATION

1. Within 45 days of receipt of the special master's recommendation, the City Commission shall:
 - a. Accept the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations.
 - b. Modify the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations.



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- c. Reject the recommendation as submitted. Failure to act within 45 days of receipt of the recommendation shall be deemed a rejection, unless the owner and the City agree to an extension of time.
2. If the City Commission adopts a recommendation to grant a modification, variance, or special exception to the application of ordinances or regulations as they otherwise would apply to the land, the owner shall not be required to duplicate processes in which the owner previously has participated in order to effectuate the modification, variance or special exception.
3. If the special master recommends relief or other action in conjunction with another governmental entity, the City Attorney and appropriate staff from the City shall confer with appropriate staff from the other entities to review the recommendation and determine whether a joint staff recommendation can be made to the heads of the respective governmental entities.
4. Within 15 days after final action by the City Commission on the special master's recommendation, the Treasurer-Clerk shall send a copy of the order or other document memorializing final action to the Florida Department of Legal Affairs.
5. Within 10 days of final action on the recommendation, the owner shall notify the City Attorney in writing whether the owner accepts the decision on the recommendation.
6. If the City Commission accepts the recommendation or modifies it and the owner rejects the acceptance or modification, or if the City Commission rejects the recommendation, the City Commission shall issue a written decision that describes as specifically as possible the use or uses available on the owner's land. The decision shall be issued within 30 days of final action on the recommendation.
7. After the City Commission has acted on the recommendation and a written decision has been issued describing the use or uses available on the owner's land, or if the City Commission has not acted within 45 days, the owner may seek a formal adjudication on the development order or enforcement action as otherwise authorized by law.



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X. SAMPLE FORMS

1. These attached sample forms are nonexclusive and their use is permissive:
 - a. Owner's Request for Relief/Development Order
 - b. Owner's Request for Relief/Enforcement Action
 - c. Notice of Request for Relief
 - d. Request to Participate in Special Master Proceedings

ADMINISTRATION:

The City Attorney's Office and Code Board Coordinator are responsible for the administration of the proceedings under the Dispute Resolution Act.

SUNSET REVIEW:

This policy is governed by Florida Statutes, and shall be reviewed pursuant to Florida Statutes.

EFFECTIVE DATE:

February 14, 1996

95-181

ENROLLED

1995 Legislature

CS/HB 863, 1st Engrossed

1 An act relating to real property; creating the
 2 "Bart J. Harris, Jr., Private Property Rights
 3 Protection Act"; providing legislative intent;
 4 providing remedies for real property owners
 5 whose property has been inordinately burdened
 6 by governmental action; providing definitions;
 7 providing requirements for a property owner who
 8 seeks compensation; requiring the governmental
 9 entity to provide notice of the claim;
 10 authorizing certain settlement offers;
 11 requiring that the governmental entity and
 12 property owner file a court action if a
 13 settlement agreement contravenes the
 14 application of state law; providing for
 15 judicial review, notwithstanding the
 16 availability of administrative remedies;
 17 authorizing the property owner to file a claim
 18 of compensation upon rejection of a settlement
 19 offer; requiring the court to determine the
 20 percentage of responsibility for an inordinate
 21 burden imposed by multiple governmental
 22 entities; providing for a jury to determine the
 23 amount of compensation to the property owner;
 24 providing for costs and attorney fees;
 25 providing that the right for which compensation
 26 is paid is a transferable development right;
 27 providing exceptions; providing application of
 28 the act; creating the Florida Land Use and
 29 Environmental Dispute Resolution Act; providing
 30 definitions) providing procedures that *
 31

Sec. 15

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ENROLLED

1995 Legislature

CS/HB 863, 1st Engrossed

1 Property owner may take when the property owner
 2 believes that a development order has
 3 inordinately burdened use of the property;
 4 providing for a special master to conduct a
 5 hearing on the request for relief; specifying
 6 parties that may participate in the proceeding;
 7 authorizing the special master to subpoena
 8 witnesses; providing notice requirements;
 9 providing for the conduct of the hearing;
 10 requiring the special master to file a
 11 recommendation; providing for a governmental
 12 entity to accept, modify, or reject the
 13 recommendation; requiring governmental entities
 14 to adopt rules; providing for construction of
 15 the act; providing application; amending s.
 16 163.3181, F.S.; providing for mediation or
 17 other dispute resolution upon denial by a local
 18 government of an owner's request for an
 19 amendment to a comprehensive plan; amending s.
 20 163.3184, F.S.; providing for mediation or
 21 other dispute resolution upon issuance of a
 22 notice by the state land planning agency that a
 23 comprehensive plan or plan amendment is not in
 24 compliance with the Local Government
 25 Comprehensive Planning and Land Development
 26 Regulation Act; providing an effective date.
 27
 28 Be It Enacted by the Legislature of the State of Florida:
 29
 30 Section 1. (1) This act may be cited as the "Bart J.
 31 Harris, Jr., Private Property Rights Protection Act." The

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1 Legislature recognizes that some laws, regulations, and
 2 ordinances of the state and political entities in the state,
 3 as applied, may inordinately burden, restrict, or limit
 4 private property rights without amounting to a taking under
 5 the State Constitution or the United States Constitution. The
 6 Legislature determines that there is an important state
 7 interest in protecting the interests of private property
 8 owners from such inordinate burdens. Therefore, it is the
 9 intent of the Legislature that, as a separate and distinct
 10 course of action from the law of takings, the Legislature
 11 herein provides for relief, or payment of compensation, when a
 12 new law, rule, regulation, or ordinance of the state or a
 13 political entity in the state, as applied, unfairly affects
 14 real property.

15 (2) When a specific action of a governmental entity
 16 has inordinately burdened an existing use of real property or
 17 a vested right to a specific use of real property, the
 18 property owner of that real property is entitled to relief,
 19 which may include compensation for the actual, long to the fair
 20 market value of the real property caused by the action of
 21 government, as provided in this section.

22 (3) For purposes of this section:

23 (a) The existence of a "vested right" is to be
 24 determined by applying the principles of equitable estoppel or
 25 substantive due process under the common law or by applying
 26 the statutory law of this state.

27 (b) The term "existing use" means an actual, present
 28 use or activity on the real property, including periods of
 29 inactivity which are normally associated with, or are
 30 incidental to, the nature or type of use or activity ~~or~~ such
 31 reasonably foreseeable, non-speculative land uses which are

1 suitable for the subject real property and compatible with
 2 adjacent land uses and which have created an existing fair
 3 market value in the property greater than the fair market
 4 value of the actual, present use or activity on the real
 5 property.

6 (c) The term "governmental entity" includes an agency
 7 of the state, a regional or a local government created by the
 8 State Constitution or by general or special act, any county or
 9 municipality, or any other entity that independently exercises
 10 governmental authority. The term does not include the United
 11 States or any of its agencies, or an agency of the state, a
 12 regional or a local government created by the State
 13 Constitution or by general or special act, any county or
 14 municipality, or any other entity that independently exercises
 15 governmental authority, when exercising the powers of the
 16 United States or any of its agencies through a formal
 17 delegation of federal authority.

18 (d) The term "action of a governmental entity" means a
 19 specific action of a governmental entity which affects real
 20 property, including action on an application or permit.

21 (e) The terms "inordinate burden" or "inordinately
 22 burdened" mean that an action of one or more governmental
 23 entities has directly restricted or limited the use of real
 24 property such that the property owner is permanently unable to
 25 attain the reasonable, investment-backed expectation for the
 26 existing use of the real property or a vested right to a
 27 specific use of the real property with respect to the real
 28 property as a whole, or that the property owner is left with
 29 existing or vested uses that are unreasonable such that the
 30 property owner bears permanently a disproportionate share of a
 31 burden imposed for the good of the public, which in fairness

1 should be borne by the public at large. The term "inordinate
 2 burden" or "inordinately burdened" do not include temporary
 3 impacts to real property; impacts to real property occasioned
 4 by governmental abatement, prohibition, prevention, or
 5 remediation of a public nuisance at common law or a nuisance
 6 use of private property; or impacts to real property caused by
 7 an action of a governmental entity taken to grant relief to a
 8 property owner under this section.

9 (f) The term "property owner" means the person who
 10 holds legal title to the real property at issue. The term
 11 does not include a governmental entity.

12 (g) The term "real property" means land and includes
 13 any appurtenances and improvements to the land, including any
 14 other relevant real property in which the property owner had a
 15 relevant interest.

16 (4)(e) Not less than 180 days prior to filing an
 17 action under this section against a governmental entity, a
 18 property owner who seeks compensation under this section must
 19 present the claim in writing to the head of the governmental
 20 entity. The property owner must submit, along with the claim,
 21 a bona fide, valid appraisal that supports the claim and
 22 demonstrates the loss in fair market value to the real
 23 property. If the action of government is the culmination of a
 24 process that involves more than one governmental entity, or if
 25 a complete resolution of all relevant issues, in the view of
 26 the property owner or in the view of a governmental entity to
 27 whom a claim is presented, requires the active participation
 28 of more than one governmental entity, the property owner shall
 29 present the claim as provided in this section to each of the
 30 governmental entities.
 31

1 (h) The governmental entity shall provide written
 2 notice of the claim to all parties to any administrative
 3 action that gave rise to the claim, and to owners of real
 4 property contiguous to the owner's property at the addresses
 5 listed on the most recent county tax rolls. Within 15 days
 6 after the claim being presented, the governmental entity shall
 7 report the claim in writing to the Department of Legal
 8 Affairs, and shall provide the department with the name,
 9 address, and telephone number of the employee of the
 10 governmental entity from whom additional information may be
 11 obtained about the claim during the pendency of the claim and
 12 any subsequent judicial action.

13 (c) During the 180-day-notice period, unless extended
 14 by agreement of the parties, the governmental entity shall
 15 make a written settlement offer to effectuate:

- 16 1. An adjustment of land development or permit
- 17 standards or other provisions controlling the development or
- 18 use of land.
- 19 2. Increases or modifications in the density,
- 20 intensity, or use of areas of development.
- 21 3. The transfer of developmental rights.
- 22 4. Land swaps or exchanges.
- 23 5. Mitigation, including payments in lieu of onsite
- 24 mitigation.
- 25 6. Location on the least sensitive portion of the
- 26 property.
- 27 7. Conditioning the amount of development or use
- 28 permitted.
- 29 8. A requirement that issues be addressed on a more
- 30 comprehensive basis than a single proposed use ... development.
- 31

1 9. Issuance of the development order, a variance,
2 special exception, or other extraordinary relief.
3 10. Purchase of the real property, or an interest
4 therein, by an appropriate governmental entity.
5 11. No changes to the action of the governmental
6 entity.
7
8 If the property owner accepts the settlement offer, the
9 governmental entity may implement the settlement offer by
10 appropriate development agreement; by issuing a variance,
11 special exception, or other extraordinary relief; or by other
12 appropriate method, subject to paragraph (d).
13 (d)1. Whenever a governmental entity enters into a
14 settlement agreement under this section which would have the
15 effect of a modification, variance, or a special exception to
16 the application of a rule, regulation, or ordinance as it
17 would otherwise apply to the subject real property, the relief
18 granted shall protect the public interest served by the
19 regulations at issue and be the appropriate relief necessary
20 to prevent the governmental regulatory effort from
21 inordinately burdening the real property.
22 2. Whenever a governmental entity enters into a
23 settlement agreement under this section which would have the
24 effect of contravening the application of a statute, as it
25 would otherwise apply to the subject real property, the
26 governmental entity and the property owner shall jointly file
27 an action in the circuit court where the real property is
28 located for approval of the settlement agreement by the court
29 to ensure that the relief granted protects the public interest
30 served by the statute at issue and is the appropriate relief
31

1 necessary to prevent the governmental regulatory effort from
2 inordinately burdening the real property.
3 (5)(a) During the 180-day notice period, unless a
4 settlement offer is accepted by the property owner, each of
5 the governmental entities provided notice pursuant to
6 paragraph (4)(a) shall issue a written ripeness decision
7 identifying the allowable uses to which the subject property
8 may be put. The failure of the governmental entity to issue a
9 written ripeness decision during the 180-day notice period
10 shall be deemed to ripen the prior action of the governmental
11 entity, and shall operate as a ripeness decision that has been
12 rejected by the property owner. The ripeness decision, as a
13 matter of law, constitutes the last prerequisite to judicial
14 review, and the matter shall be deemed ripe or final for the
15 purposes of the judicial proceeding created by this section,
16 notwithstanding the availability of other administrative
17 remedies.
18 (b) If the property owner rejects the settlement offer
19 and the ripeness decision of the governmental entity or
20 entities, the property owner may file a claim for compensation
21 in the circuit court, a copy of which shall be served
22 contemporaneously on the head of each of the governmental
23 entities that made a settlement offer and a ripeness decision
24 that was rejected by the property owner. Actions under this
25 section shall be brought only in the county where the real
26 property is located.
27 (6)(a) The circuit court shall determine whether an
28 existing use of the real property or a vested right to a
29 specific use of the real property existed and, if so, whether,
30 considering the settlement offer and ripeness decision, the
31 governmental entity or entities have inordinately burdened the

1 real property. If the actions of more than one governmental
 2 entity, considering any settlement offers and ripeness
 3 decisions, are responsible for the action that imposed the
 4 inordinate burden on the real property of the property owner,
 5 the court shall determine the percentage of responsibility
 6 each such governmental entity bears with respect to the
 7 inordinate burden. A governmental entity may take an
 8 interlocutory appeal of the court's determination that the
 9 action of the governmental entity has resulted in an
 10 inordinate burden. An interlocutory appeal does not
 11 automatically stay the proceedings; however, the court may
 12 stay the proceedings during the pendency of the interlocutory
 13 appeal. If the governmental entity does not prevail in the
 14 interlocutory appeal, the court shall award to the prevailing
 15 property owner the costs and a reasonable attorney fee
 16 incurred by the property owner in the interlocutory appeal.

17 (b) Following its determination of the percentage of
 18 responsibility of each governmental entity, and following the
 19 resolution of any interlocutory appeal, the court shall
 20 impanel a jury to determine the total amount of compensation
 21 to the property owner for the loss in value due to the
 22 inordinate burden to the real property. The award of
 23 compensation shall be determined by calculating the difference
 24 in the fair market value of the real property, as it existed
 25 at the time of the governmental action at issue, as though the
 26 owner had the ability to attain the reasonable investment-
 27 backed expectation or was not left with uses that are
 28 unreasonable, whichever the case may be, and the fair market
 29 value of the real property, as it existed at the time of the
 30 governmental action at issue, as inordinately burdened,
 31 considering the settlement offer together with the ripeness

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3 decision, of the governmental entity or entities. In
 4 determining the award of compensation, consideration may not
 5 be given to business damages relative to any development,
 6 activity, or use that the action of the governmental entity or
 7 entities, considering the settlement offer together with the
 8 ripeness decision has restricted, limited, or prohibited. The
 9 award of compensation shall include a reasonable award of
 10 prejudgment interest from the date the claim was presented to
 11 the governmental entity or entities as provided in subsection
 12 (6).

13 (c)1. In any action filed pursuant to this section,
 14 the ~~property owner~~ is entitled to recover reasonable costs and
 15 attorney fees incurred by the property owner, from the
 16 governmental entity or entities, according to their
 17 proportionate share as determined by the court, from the date
 18 of the filing of the circuit court action, if the property
 19 owner prevails in the action ~~and~~ the court determines that the
 20 settlement offer, including the ripeness decision, of the
 21 governmental entity or entities did not constitute a bona fide
 22 offer to the property owner which reasonably would have
 23 resolved the claim, based upon the knowledge available to the
 24 governmental entity or entities and the property owner during
 25 the 180-day-notice period.

26 2. In any action filed pursuant to this section, the
 27 governmental entity or entities are entitled to recover
 28 reasonable costs and attorney fees incurred by the
 29 governmental entity or entities from the date of the filing of
 30 the circuit court action, if the governmental entity or
 31 entities prevail in the action and the court determines that
 32 the property owner did not accept a bona fide settlement
 33 offer, including the ripeness decision, which reasonably would

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1 is an award of compensation, the court shall determine the
2 form and the recipient of the right, title, and interest, as
3 well as the terms of their acquisition.
4 (8) This section does not supplant methods agreed to
5 by the parties and lawfully available for arbitration,
6 mediation, or other forms of alternative dispute resolution,
7 and governmental entities are encouraged to utilize such
8 methods to augment or facilitate the processes and actions
9 contemplated by this section.

10 (9) This section provides a cause of action for
11 governmental actions that may not rise to the level of a
12 taking under the State Constitution or the United States
13 Constitution. This section may not necessarily be construed
14 under the case law regarding takings if the governmental
15 action does not rise to the level of a taking. The provisions
16 of this section are cumulative, and do not abrogate any other
17 remedy lawfully available, including any remedy lawfully
18 available for governmental actions that rise to the level of a
19 taking. However, a governmental entity shall not be liable
20 for compensation for an action of a governmental entity
21 applicable to, or for the loss in value to, a subject real
22 property more than once.

23 (10) This section does not apply to any actions taken
24 by a governmental entity which relate to the operation,
25 maintenance, or expansion of transportation facilities, and
26 this section does not affect existing law regarding eminent
27 domain relating to transportation.

28 (11) A cause of action may not be commenced under this
29 section if the claim is presented more than 1 year after a law
30 or regulation is first applied by the governmental entity to
31 the property at issue. If an owner seeks relief from the

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1 have resolved the claim fairly to the property owner if the
2 settlement offer had been accepted by the property owner,
3 based upon the knowledge available to the governmental entity
4 or entities and the property owner during the 180-day-notice
5 period.

6 3. The determination of total reasonable costs and
7 attorney fees pursuant to this paragraph shall be made by the
8 court and not by the jury. Any proposed settlement offer or
9 any proposed ripeness decision, except for the final written
10 settlement offer or the final written ripeness decision, and
11 any negotiations or rejections in regard to the formulation
12 either of the settlement offer or the ripeness decision, are
13 inadmissible in the subsequent proceeding established by this
14 section except for the purposes of the determination pursuant
15 to this paragraph.

16 (d) Within 15 days after the execution of any
17 settlement pursuant to this section, or the issuance of any
18 judgment pursuant to this section, the governmental entity
19 shall provide a copy of the settlement or judgment to the
20 Department of Legal Affairs.

21 (7)(a) The circuit court may enter any orders
22 necessary to effectuate the purposes of this section and to
23 make final determinations to effectuate relief available under
24 this section.

25 (b) An award or payment of compensation pursuant to
26 this section shall operate to grant to and vest in any
27 governmental entity by whom compensation is paid the right,
28 title, and interest in rights of use for which the
29 compensation has been paid, which rights may become
30 transferrable development rights to be held, sold, or
31 otherwise disposed of by the governmental entity. When there

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1 governmental action through lawfully available administrative
 2 or judicial proceedings, the time for bringing an action under
 3 this section is tolled until the conclusion of such
 4 proceedings.
 5 (12) No cause of action exists under this section as
 6 to the application of any law enacted on or before the date of
 7 adjournment sine die of the 1995 Regular Session of the
 8 Legislature, or as to the application of any rule, regulation,
 9 or ordinance adopted, or formally noticed for adoption, on or
 10 before that date. A subsequent amendment to any such law,
 11 rule, regulation, or ordinance gives rise to a cause of action
 12 under this section only to the extent that the application of
 13 the amendatory language imposes an inordinate burden apart
 14 from the law, rule, regulation, or ordinance being amended.
 15 (13) This section does not affect the sovereign
 16 immunity of government.
 17 Section 2. (1) This section may be cited as the
 18 "Florida Land Use and Environmental Dispute Resolution Act."
 19 (2) As used in this section, the term
 20 (a) "Development order" means any order, or notice of
 21 proposed state or regional governmental agency action, which
 22 is or will have the effect of granting, denying, or granting
 23 with conditions an application for a development permit, and
 24 includes the rezoning of a specific parcel. Actions by the
 25 state or a local government on comprehensive plan amendments
 26 are not development orders.
 27 (b) "Development permit" means any building permit,
 28 zoning permit, subdivision approval, certification, special
 29 exception, variance, or any other similar action of local
 30 government, as well as any permit authorized to be issued
 31 under state law by state, regional, or local government which

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1 has the effect of authorizing the development of real property
 2 including, but not limited to, programs implementing chapters
 3 125, 161, 163, 166, 187, 258, 372, 373, 376, 380, and 403,
 4 Florida Statutes.
 5 (c) "Special master" means a person selected by the
 6 parties to perform the duties prescribed in this section. The
 7 special master must be a resident of the state and possess
 8 experience and expertise in mediation and at least one of the
 9 following disciplines and a working familiarity with the
 10 others: land use and environmental permitting, land planning,
 11 land economics, local and state government organization and
 12 powers, and the law governing the same.
 13 (d) "Owner" means a person with a legal or equitable
 14 interest in real property who filed an application for a
 15 development permit for the property at the state, regional, or
 16 local level and who received a development order, or who holds
 17 legal title to real property that is subject to an enforcement
 18 action of a governmental entity.
 19 (e) "Proposed use of the property" means the proposal
 20 filed by the owner to develop his real property.
 21 (f) "Governmental entity" includes an agency of the
 22 state, a regional or a local government created by the State
 23 Constitution or by general or special act, any county or
 24 municipality, or any other entity that independently exercises
 25 governmental authority. The term does not include the United
 26 States or any of its agencies.
 27 (g) "Land" or "real property" means land and includes
 28 any appurtenances and improvements to the land, including any
 29 other relevant real property in which the owner had a relevant
 30 interest.
 31

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1 (3) Any owner who believes that a development order,
2 either separately or in conjunction with other development
3 orders, ~~is an enforcement action of a governmental entity~~, is
4 unreasonable or unfairly burdens the use of his real property,
5 may apply within 30 days after receipt of the order or notice
6 of the governmental action for relief under this section.
7 (4) To initiate a proceeding under this section, an
8 owner must file a request for relief with the elected or
9 appointed head of the governmental entity that issued the
10 development order or orders, or that initiated the enforcement
11 action. The head of the governmental entity may not charge
12 the owner for the request for relief and must forward the
13 request for relief to the special master who is mutually
14 agreed upon by the owner and the governmental entity within 10
15 days after receipt of the request.

16 (5) The governmental entity with whom a request has
17 been filed shall also serve a copy of the request for relief
18 by United States mail or by hand delivery to:

- 19 (a) Owners of real property contiguous to the owner's
20 property at the address on the latest county tax roll.
21 (b) Any substantially affected party who submitted
22 oral or written testimony, sworn or unsworn, of a substantive
23 nature which stated with particularity objections to or
24 support for any development order at issue or enforcement
25 action at issue. Notice under this paragraph is required only
26 if that party indicated a desire to receive notice of any
27 subsequent special master proceedings occurring on the
28 development order or enforcement action. Each governmental
29 entity must maintain in its files relating to particular
30 development orders a mailing list of persons who have
31

1 presented oral or written testimony and who have requested
2 notice.

3 (6) The request for relief must contain:

- 4 (a) A brief statement of the owner's proposed use of
5 the property.
6 (b) A summary of the development order or description
7 of the enforcement action. A copy of the development order or
8 the documentation of an enforcement action at issue must be
9 attached to the request.
10 (c) A brief statement of the impact of the development
11 order or enforcement action on the ability of the owner to
12 achieve the proposed use of the property.
13 (d) A certificate of service showing the parties,
14 including the governmental entity, served.
15 (7) The special master may require other information
16 in the interest of gaining a complete understanding of the
17 request for relief.
18 (8) The special master may conduct a hearing on
19 whether the request for relief should be dismissed for failing
20 to include the information required in subsection (6). If the
21 special master dismisses the case, the special master shall
22 allow the owner to amend the request and refile. Failure to
23 file an adequate amended request within the time specified
24 shall result in a dismissal with prejudice as to this
25 proceeding.
26 (9) By requesting relief under this section, the owner
27 consents to grant the special master and the parties
28 reasonable access to the real property with advance notice at
29 a time and in a manner acceptable to the owner of the real
30 property.
31

1 (10)(a) Before initiating a special master proceeding
 2 to review a local development order or local enforcement
 3 action, the ~~OWNER~~ must exhaust all nonjudicial local
 4 government administrative appeals if the appeals take no
 5 longer than 4 months. Once nonjudicial local administrative
 6 appeals are exhausted and the development order or enforcement
 7 action is final, or within 4 months after issuance of the
 8 development order or notice of the enforcement action if the
 9 owner has pursued local administrative appeals even if the
 10 appeals have not been concluded, the OWNER may initiate a
 11 proceeding under this section. Initiation of a proceeding
 12 tolls the time for seeking judicial review of a local
 13 government development order or enforcement action until the
 14 special master's recommendation is acted upon by the local
 15 government. Election by the owner to file for judicial review
 16 of a local government development order or enforcement action
 17 prior to initiating a proceeding under this section waives
 18 right to a special master proceeding.
 19 (b) If an owner requests special master relief from a
 20 development order or enforcement action issued by a state or
 21 regional agency, the time for challenging agency action under
 22 section 120.57, Florida Statutes, is tolled. If an owner
 23 chooses to bring a proceeding under section 120.57, Florida
 24 Statutes, before initiating a special master proceeding, then
 25 the owner waives any right to a special master proceeding
 26 unless all parties consent to proceeding to mediation.
 27 (11) The initial party to the proceeding is the
 28 governmental entity that issues the development order to the
 29 owner or that is taking the enforcement action. In those
 30 instances when the development order or enforcement action is
 31 the culmination of a process involving more than one

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1 governmental entity or when a complete resolution of all
 2 relevant issues would require the active participation of more
 3 than one governmental entity, the special master may, upon
 4 application of a party, join those governmental entities as
 5 parties to the proceeding if it will assist in effecting the
 6 purposes of this section, and those governmental entities so
 7 joined shall actively participate in the procedure.
 8 (12) Within 21 days after receipt of the request for
 9 relief, any owner of land contiguous to the owner's property
 10 and any substantially affected person who submitted oral or
 11 written testimony, sworn or unsworn, of a substantive nature
 12 which stated with particularity objections to or support for
 13 the development order or enforcement action at issue may
 14 request to participate in the proceeding. Those persons may
 15 be permitted to participate in the hearing but shall not be
 16 granted party or intervenor status. The participation of such
 17 persons is limited to addressing issues raised regarding
 18 alternatives, variances, and other types of adjustment to the
 19 development order or enforcement action which may impact their
 20 substantial interests, including denial of the development
 21 order or application of an enforcement action.
 22 (13) Each party must make efforts to assure that those
 23 persons qualified by training or experience necessary to
 24 address issues raised by the request or by the special master
 25 and further qualified to address alternatives, variances, and
 26 other types of modifications to the development order or
 27 enforcement action are present at the hearing.
 28 (14) The special master may subpoena any nonparty
 29 witnesses in the state whom the special master believes will
 30 aid in the disposition of the matter.
 31

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1 (15)(a) The special master shall hold a hearing within
2 45 days after his receipt of the request for relief unless a
3 different date is agreed to by all the parties. The hearing
4 must be held in the county in which the property is located.
5 (b) The special master must provide notice of the
6 place, date, and time of the hearing to all parties and any
7 other persons who have requested such notice at least 40 days
8 prior to the hearing.
9 (16)(a) Fifteen days following the filing of a request
10 for relief, the governmental entity that issued the
11 development order or that is taking the enforcement action
12 shall file a response to the request for relief with the
13 special master together with a copy to the owner. The
14 response must set forth in reasonable detail the position of
15 the governmental entity regarding the matters alleged by the
16 owner. The response must include a brief statement explaining
17 the public purpose of the regulations on which the development
18 order or enforcement action is based.
19 (b) Any governmental entity that is added by the
20 special master as a party must file a response to the request
21 for relief prior to the hearing but not later than 15 days
22 following its admission.
23 (c) Any party may incorporate in the response to the
24 request for relief a request to be dropped from the
25 proceeding. The request to be dropped must set forth facts
26 and circumstances relevant to aid the special master in ruling
27 on the request. All requests to be dropped must be disposed
28 of prior to conducting any hearings on the merits of the
29 request for relief.
30 (17) In all respects, the hearing must be informal and
31 open to the public and does not require the use of an

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1 attorney. The hearing must operate at the direction and under
2 the supervision of the special master. The object of the
3 hearing is to focus attention on the impact of the
4 governmental action giving rise to the request for relief and
5 to explore alternatives to the development order or
6 enforcement action and other regulatory efforts by the
7 governmental entities in order to recommend relief, when
8 appropriate, to the owner.
9 (a) The first responsibility of the special master is
10 to facilitate a resolution of the conflict between the owner
11 and governmental entities to the end that some modification of
12 the owner's proposed use of the property or adjustment in the
13 development order or enforcement action or regulatory efforts
14 by one or more of the governmental parties may be reached.
15 Accordingly, the special master shall act as a facilitator or
16 mediator between the parties in an effort to effect a mutually
17 acceptable solution. The parties shall be represented at the
18 mediation by persons with authority to bind their respective
19 parties to a solution, or by persons with authority to
20 recommend a solution directly to the persons with authority to
21 bind their respective parties to a solution.
22 (b) If an acceptable solution is not reached by the
23 parties after the special master's attempt at mediation, the
24 special master shall consider the facts and circumstances set
25 forth in the request for relief and any responses and any
26 other information produced at the hearing in order to
27 determine whether the action by the governmental entity or
28 entities is unreasonable or unfairly burdens the real
29 property.
30 (c) In conducting the hearing, the special master may
31 hear from all parties and witnesses that are necessary to an

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1 understanding of the matter. The special master shall weigh
 2 all information offered at the hearing.
 3 (18) The circumstances to be examined in determining
 4 whether the development order or enforcement action, or the
 5 development order or enforcement action in conjunction with
 6 regulatory efforts of other governmental parties, is
 7 unreasonable or unfairly burdens use of the property may
 8 include, but are not limited to:
 9 (a) The history of the real property, including when
 10 it was purchased, how much was purchased, where it is located,
 11 the nature of the title, the composition of the property, and
 12 how it was initially used.
 13 (b) The history or development and use of the real
 14 property, including what was developed on the property and by
 15 whom, if it was subdivided and how and to whom it was sold,
 16 whether plats were filed or recorded, and whether
 17 infrastructure and other public services or improvements may
 18 have been dedicated to the public.
 19 (c) The history of environmental protection and land
 20 use controls and other regulations, including how and when the
 21 land was classified, how use was prescribed, and what changes
 22 in classifications occurred.
 23 (d) The present nature and extent of the real
 24 property, including its natural and altered characteristics.
 25 (e) The reasonable expectations of the owner at the
 26 time of acquisition, or immediately prior to the
 27 implementation of the regulation at issue, whichever is later,
 28 under the regulations then in effect and under common law.
 29 (f) The public purpose sought to be achieved by the
 30 development order or enforcement action, including the nature
 31 and magnitude of the problem addressed by the underlying

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1 regulations on which the development order or enforcement
 2 action is based; whether the development order or enforcement
 3 action is necessary to the achievement of the public purpose;
 4 and whether there are alternative development orders or
 5 enforcement action conditions that would achieve the public
 6 purpose and allow for reduced restrictions on the use of the
 7 property.
 8 (g) Uses authorized for and restrictions placed on
 9 similar property.
 10 (h) Any other information determined relevant by the
 11 special master.
 12 (19) Within 14 days after the conclusion of the
 13 hearing, the special master shall prepare and file with all
 14 parties a written recommendation.
 15 (a) If the special master finds that the development
 16 order at issue, or the development order or enforcement action
 17 in combination with the actions or regulations of other
 18 governmental entities, is not unreasonable or does not
 19 unfairly burden the use of the owner's property, the special
 20 master must recommend that the development order or
 21 enforcement action remain undisturbed and the proceeding shall
 22 end, subject to the owner's retention of all other available
 23 remedies.
 24 (b) If the special master finds that the development
 25 order or enforcement action, or the development order or
 26 enforcement action in combination with the actions or
 27 regulations of other governmental entities, is unreasonable or
 28 unfairly burdens use of the owner's property, the special
 29 master, with the owner's consent to proceed, may recommend one
 30 or more alternatives that protect the public interest served
 31 by the development order or enforcement action and regulations

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1 at issue but allow for reduced restraints on the use of the
 2 owner's real property, including, but not limited to:
 3 1. An adjustment of land development or permit
 4 standards or other provisions controlling the development or
 5 use of land.
 6 2. Increases or modifications in the density,
 7 intensity, or use of areas of development.
 8 3. The transfer of development rights.
 9 4. Land swaps or exchanges.
 10 5. Mitigation, including payments in lieu of onsite
 11 mitigation.
 12 6. Location on the least sensitive portion of the
 13 property.
 14 7. Conditioning the amount of development or use
 15 permitted.
 16 8. A requirement that issues be addressed on a more
 17 comprehensive basis than a single proposed use or development.
 18 9. Issuance of the development order, a variance,
 19 special exception, or other extraordinary relief, including
 20 withdrawal of the enforcement action.
 21 10. Purchase of the real property, or an interest
 22 therein, by an appropriate governmental entity.
 23 (c) This subsection does not prohibit the owner and
 24 governmental entity from entering into an agreement as to the
 25 permissible use of the property prior to the special master
 26 entering a recommendation. An agreement for a permissible use
 27 must be incorporated in the special master's recommendation.
 28 (20) The special master's recommendation is a public
 29 record under chapter 119, Florida Statutes. However, actions
 30 or statements of all participants to the special master
 31

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1 proceedings are evidence of an offer to compromise and
 2 inadmissible in any proceeding, judicial or administrative.
 3 (21) Within 45 days after receipt of the special
 4 master's recommendation, the governmental entity responsible
 5 for the development order or enforcement action and other
 6 governmental entities participating in the proceeding must
 7 commit among themselves and each governmental entity must:
 8 (a) Accept the recommendation of the special master as
 9 submitted and proceed to implement it by development
 10 agreement, when appropriate, or by other method, in the
 11 ordinary course and consistent with the rules and procedures
 12 of that governmental entity. However, the decision of the
 13 governmental entity to accept the recommendation of the
 14 special master with respect to granting a modification,
 15 variance, or special exception to the application of statutes,
 16 rules, regulations, or ordinances as they would otherwise
 17 apply to the subject property does not require an owner to
 18 duplicate previous processes in which the owner has
 19 participated in order to effectuate the granting of the
 20 modification, variance, or special exception;
 21 (b) Modify the recommendation as submitted by the
 22 special master and proceed to implement it by development
 23 agreement, when appropriate, or by other method, in the
 24 ordinary course and consistent with the rules and procedures
 25 of that governmental entity; or
 26 (c) Reject the recommendation as submitted by the
 27 special master. Failure to act within 45 days is a rejection
 28 unless the period is extended by agreement of the owner and
 29 issuer of the development order or enforcement action.
 30 (22) If a governmental entity accepts the special
 31 master's recommendation or modifies it and the owner rejects

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1 | the acceptance or modification, or if a governmental entity
 2 | rejects the special master's recommendation, the governmental
 3 | entity must issue a written decision within 30 days that
 4 | describes as specifically as possible the use or uses
 5 | available to the subject real property.

6 | (23) The procedure established by this section may not
 7 | continue longer than 165 days, unless the period is extended
 8 | by agreement of the parties. A decision describing available
 9 | uses constitutes the last prerequisite to judicial action and
 10 | the matter is ripe or final for subsequent judicial
 11 | proceedings unless the owner initiates a proceeding under
 12 | section 128.57, Florida Statutes. If the owner brings a
 13 | proceeding under section 120.57, Florida Statutes, the matter
 14 | is ripe when the proceeding culminates in a final order
 15 | whether further appeal is available or not.

16 | (24) The procedure created by this section is not
 17 | itself, nor does it create, a judicial cause of action. Once
 18 | the governmental entity acts on the special master's
 19 | recommendation, the owner may elect to file suit in a court of
 20 | competent jurisdiction. Inevitably the procedures of this
 21 | section is not a condition precedent to filing a civil action.

22 | (25) Regardless of the action the governmental entity
 23 | takes on the special master's recommendation, a recommendation
 24 | that the development order or enforcement action, or the
 25 | development order or enforcement action in combination with
 26 | other governmental regulatory actions, is unreasonable or
 27 | unfairly burdens use of the owner's real property may serve as
 28 | an indication of sufficient hardship to support modification,
 29 | variances, or special exceptions to the application of
 30 | statutes, rules, regulations, or ordinances to the subject
 31 | property.

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1 | (26) A special master's recommendation under this
 2 | section constitutes data in support of, and a support document
 3 | for, a comprehensive plan or comprehensive plan amendment, but
 4 | is not, in and of itself, dispositive of a determination of
 5 | compliance with chapter 163, Florida Statutes. Any
 6 | comprehensive plan amendment necessary to carry out the
 7 | approved recommendation of a special master under this section
 8 | is exempt from the twice-a-year limit on plan amendments and
 9 | may be adopted by the local government amendments in section
 10 | 163.3184(16)(d), Florida Statutes.

11 | (27) The special master shall send a copy of the
 12 | recommendation in each case to the Department of Legal
 13 | Affairs. Each governmental entity, within 15 days after its
 14 | action on the special master's recommendation, shall notify
 15 | the Department of Legal Affairs in writing as to what action
 16 | the governmental entity took on the special master's
 17 | recommendation.

18 | (28) Each governmental entity may establish procedural
 19 | guidelines to govern the conduct of proceedings authorized by
 20 | this section, which must include, but are not limited to,
 21 | payment of special master fees and expenses, including the
 22 | costs of providing notice and effecting service of the request
 23 | for relief under this section, which shall be borne equally by
 24 | the governmental entities and the owner.

25 | (29) This section shall be liberally construed to
 26 | effect fully its obvious purposes and intent, and governmental
 27 | entities shall direct all available resources and authorities
 28 | to effect fully the obvious purposes and intent of this
 29 | section in resolving disputes. Governmental entities are
 30 | encouraged to expedite notice and time-related provisions to
 31 | implement resolution of disputes under this section. The

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1 procedure established by this section may be used to resolve
2 disputes in pending judicial proceedings, with the agreement
3 of the parties to the judicial proceedings, and subject to the
4 approval of the court in which the judicial proceedings are
5 pending. The provisions of this section are cumulative, and
6 do not supplant other methods agreed to by the parties and
7 lawfully available for arbitration, mediation, or other forms
8 of alternative dispute resolution.

9 (30) This section applies only to development orders
10 issued, modified, or amended, or to enforcement actions
11 issued, on or after October 1, 1995.

12 Section 5. It is the express declaration of the
13 Legislature that section 1 and section 2 of this act have
14 separate and distinct bases, objectives, applications, and
15 processes. It is therefore the intent of the Legislature that
16 section 1 and section 2 of this act are not to be construed in
17 pari materia.

18 Section 4. Subsection (4) is added to section
19 163.3181, Florida Statutes, to read:

20 163.3181 Public participation in the comprehensive
21 planning process; intent.--

22 (4) If a local government desires an owner's request
23 for an amendment to the comprehensive plan which is applicable
24 to the property of the owner, the local government must afford
25 an opportunity to the owner for informal mediation or other
26 alternative dispute resolution. The costs of the mediation or
27 other alternative dispute resolution shall be borne equally by
28 the local government and the owner. If the owner requests
29 mediation, the time for bringing a judicial action is tolled
30 until the completion of the mediation or 120 days, whichever
31 is earlier.

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1 Section 5. Paragraph (c) is added to subsection (10)
2 of section 163.3184, Florida Statutes, 1994 Supplement, to
3 read:

4 163.3184 Process for adoption of comprehensive plan or
5 plan amendment.--

6 (10) PROCESS IF LOCAL PLAN OR AMENDMENT IS NOT IN
7 COMPLIANCE.--

8 (a) Prior to the hearing, the state land planning
9 agency shall afford an opportunity to mediate or otherwise
10 resolve the dispute. If a party to the proceeding requests
11 mediation or other alternative dispute resolution, the hearing
12 may not be held until the state land planning agency advises
13 the hearing officer in writing of the results of the mediation
14 or other alternative dispute resolution. However, the hearing
15 may not be delayed for longer than 90 days for mediation or
16 other alternative dispute resolution unless a longer delay is
17 agreed to by the parties to the proceeding. The costs of the
18 mediation or other alternative dispute resolution shall be
19 borne equally by all of the parties to the proceeding.

20 Section 6. This act shall take effect October 1, 1995.

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