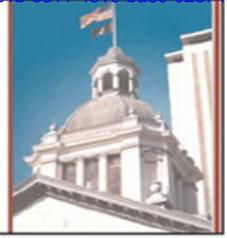


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Capitol Report

Government Affairs and Lobbying



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*Follow-Up on
2008 House Bill 697*

Climate Change Legislation Begins to Impact Florida Growth Management



An August Capitol Report summarized new legislation and requirements for local comprehensive plans. This Capitol Report provides an update on how that climate change legislation is now impacting growth management in the state.

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On August 20, 2008, we summarized new climate change legislation that directs each local government to add specific elements to comprehensive plans. (See *Capitol Report, Growth Management, August 20, 2008* at www.carltonfields.com under "Newsletters".)

Since that time the Florida Department of Community Affairs (DCA) has been active in preparations to administer the provisions of the legislation in the following areas:

- Rule-making;
- Implementation of House Bill 697; and
- Resolution of remaining issues.

DCA Rule-Making Efforts

On January 12, 2009, the DCA held its first rule-making workshop on the implementation of the new law. However, the Department did not present a draft rule or provide guidelines for interpreting or responding to the climate change requirements in HB 697. Instead, the DCA solicited ideas from planning professionals relating to what requirements should be addressed in the rule, in-

cluding the definition of terms and the level of analysis that should be required.

Though the rule-making workshop did not provide new insights into the Department staffs' thoughts, at a recent speaking engagement before the Florida American Planning Association Public Policy Workshop, DCA Secretary Tom Pelham disclosed his insights on the legislation and its implementation:

1. The new legislation simply confirms what have been the basic requirements of Florida's growth management laws. The legislation requires the discouragement of urban sprawl and encourages compact development patterns and other modes of transportation.
2. The legislation emanates from the Governor's Climate Action Plan, which seeks to reduce greenhouse gas emissions. 40 percent of the emissions come from the transportation sector, with 80 percent of those emissions coming from automobiles. Thus, in order to have significant reductions in greenhouse gas emissions, the state must reduce the use of automobiles.
3. An accepted measure for reducing automobile usage is "Vehicles Miles Traveled" (VMT). This measure can be reduced by using the following strategies:
 - a. Getting people out of their cars by using other modes of transportation
 - b. Having new development located next to existing development and employment centers
 - c. Encouraging development adjacent to transit to increase ridership.
 - d. Develop mixed use communities that allow for shorter automobile trips and

encourage biking, walking and public transit.

The DCA's reports on climate change and planning are now located on its website (see www.dca.state.fl.us, "Secretary's Message"). The information contained in the reports promotes mixed use development, higher density, the encouragement of "walkable" communities, and the use of public transit and other modes of transportation.

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DCA Implementation of HB 697

Since the legislation became effective July 1, 2008, the DCA has raised climate change objections for local government comprehensive plans. The objections are typically for Evaluation and Appraisal Reports (EAR) or Future Land-Use Map (FLUM) amendments.

The EAR is a statutory requirement for local governments to periodically evaluate their comprehensive plans against the latest growth management requirements, which would include HB 697.

The DCA has raised objections to EARs that do not address the climate change requirements of the bill. Typical objections include a lack of strategies or supporting data and analysis to:

- Discourage urban sprawl,
- Achieve energy-efficient land-use patterns,
- Promote compact development,
- Encourage use of alternative transportation modes to reduce greenhouse gas

- emissions and reduce vehicle miles of travel (VMT),
- Assess opportunities for alternative energy sources and their conservation, and
 - Promote energy efficiency in construction of new homes and the use of renewable energy resources.

For Future Land-Use Map amendments, the DCA has raised climate change objections, but only where it believes urban sprawl or lack of need for the land-use change are also present.

There is much left to be decided on climate change and growth management in relation to the 2008 legislation.

In our research, we did not identify an instance where the DCA has raised a climate change objection without one of these objections present. Thus, the DCA seems to deem climate change as a secondary factor once a primary issue, such as need or urban sprawl, has been identified.

A common theme of the Department's objections is the lack of data and analysis demonstrating that the amendment is consistent with the requirements of HB 697. Several DCA recommendations suggest a reduction in the VMT would resolve the concern, which is consistent with the Secretary's comments.

The VMT is a measurement planners use to determine the impact of a land-use change on the transportation system. Automobile emissions are a major source of greenhouse gas emissions.

The VMT can be reduced by utilizing the following strategies (generally in combination) mentioned by Secretary Pelham:

- Mixed use development,
- Increased density,
- Reduce use of automobile trips by linking jobs to housing,
- Ensure a high level of connectivity (limit culs-de-sac),
- Designing "walkable" communities (sidewalks, bike facilities) and
- Providing for transit.

Remaining Issues

There is much left to be decided on climate change and growth management in relation to the 2008 legislation. With only general guidance provided to date by the DCA, the prevailing conventional wisdom is that well planned, multi-use developments with potential for other modes of transportation will fare better under the Department's scrutiny.

Other projects that are more suburban and/or single use will have more difficulty in the review process.

While these issues are not necessarily new, the new climate change requirements bring a new level of review and response than previously required. In addition, the impact of a land-use change on the VMT statistic is increasingly being raised by the Department. Today, it is preferable to demonstrate a reduction or minimal increase to the VMT statistic.

We continue to have the same concerns identified in our previous *Capitol Report* about the implementation of HB 697. Those concerns are:

- What baseline will be applied to demonstrate reductions in greenhouse gases?
- Are reductions in emissions to be measured at a community or project level or both?
- If measured at a project level, do you compare the proposed level of development against the maximum development potential?

- Will any mitigation be acceptable and if so, what kind?

We hope to see these questions answered during the rule-making process. In the interim, here is what these changes may mean for clients:

1. Any project requiring a comprehensive plan amendment needs to consider whether the project includes use of anti-urban sprawl strategies such as mixed-use, compact development patterns as well as how to encourage other modes of transportation.
2. For a controversial comprehensive plan amendment, clients may be faced with a challenge based upon climate change issues and whether your project actually reduces emissions.
3. This may require clients to add someone to their project team that can address climate change issues to support the client's amendment.
4. If working with a smaller local government or one with a limited planning staff, clients may have to draft the comprehensive plan requirements on their behalf, especially if the client is proposing a large map amendment for the area.

i MORE INFORMATION

Carlton Fields will continue to follow all of these growth management issues, and we are available to provide assistance with your questions about this legislation and its potential impact on your operations.

Further background on this issue can be found *at* www.carltonfields.com.

Under "Newsletters," please see the August 20, 2008, and the June 25, 2008, *Carlton Fields Capitol Reports*, which outline all of the energy and climate change issues passed by the 2008 Florida Legislature. ■

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Darrin has extensive experience in community-based planning and working with citizens to identify solutions to planning issues; and he has been deemed an expert witness in the areas of comprehensive planning and land-use planning.

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Richard Winters has more than 35 years experience in land-use matters relating to DRIs, comprehensive plan issues, local zoning and land-use due diligence. Previously, he was with Barr, Dunlop & Associates, Inc. for over 27 years where he prepared comprehensive plans, worked on large Urban Area Transportation Studies, and performed transportation impact analysis.



Richard received his MA in 1967 from the University of Florida. His experience in transportation planning and biology provide excellent background for dealing with many types of development issues.

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