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4 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH
5 COUNTY, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE, ORDINANCE
6 03-067, AS AMENDED, AS FOLLOWS: **ARTICLE 1 – GENERAL PROVISIONS**; CHAPTER C,
7 RULES OF CONSTRUCTION AND MEASUREMENT; CHAPTER G, EMINENT DOMAIN;
8 CHAPTER I, DEFINITIONS AND ACRONYMS; **ARTICLE 2 – DEVELOPMENT REVIEW**
9 **PROCESS**; CHAPTER A, GENERAL; CHAPTER B, PUBLIC HEARING PROCEDURES;
10 CHAPTER C, FUTURE LAND USE PLAN AMENDMENTS; CHAPTER D, ADMINISTRATIVE
11 PROCESS; CHAPTER E, MONITORING; **ARTICLE 3 – OVERLAYS AND ZONING**
12 **DISTRICTS**; CHAPTER B, OVERLAYS; CHAPTER D, PROPERTY DEVELOPMENT
13 REGULATIONS; CHAPTER E, PLANNED DEVELOPMENT DISTRICTS (PDDS); CHAPTER F,
14 TRADITIONAL DEVELOPMENT DISTRICTS; **ARTICLE 4 – USE REGULATIONS**; CHAPTER
15 A, USE CLASSIFICATION; CHAPTER B, SUPPLEMENTARY USE STANDARDS; CHAPTER
16 C, COMMERCIAL COMMUNICATION TOWER; **ARTICLE 5, SUPPLEMENTARY**
17 **STANDARDS**; CHAPTER B, ACCESSORY AND TEMPORARY USES; CHAPTER C, DESIGN
18 STANDARDS; CHAPTER E, PERFORMANCE STANDARDS; CHAPTER F, LEGAL
19 DOCUMENTS; CHAPTER G, DENSITY BONUS PROGRAMS; **ARTICLE 6 – PARKING**;
20 CHAPTER A, PARKING; **ARTICLE 7 – LANDSCAPING**; CHAPTER A, GENERAL; CHAPTER
21 B, TYPES OF PLANS; CHAPTER C, MGTS TIER COMPLIANCE; CHAPTER E,
22 INSTALLATION, MAINTENANCE, PRUNING AND IRRIGATION; CHAPTER F, PERIMETER
23 BUFFER LANDSCAPE REQUIREMENTS; CHAPTER H, ENFORCEMENT; **ARTICLE 8 –**
24 **SIGNAGE**; CHAPTER E, PROCEDURES FOR SIGNAGE; CHAPTER F, GENERAL
25 PROVISIONS FOR SIGNAGE TYPES; CHAPTER G, STANDARDS FOR SPECIFIC SIGN
26 TYPES; **ARTICLE 12 – TRAFFIC PERFORMANCE STANDARDS**; CHAPTER B, STANDARD;
27 CHAPTER C, TRAFFIC IMPACT STUDIES; CHAPTER D, PROCEDURE; CHAPTER K,
28 TRANSPORTATION CONCURRENCY EXCEPTION AREAS; CHAPTER L,
29 TRANSPORTATION CONCURRENCY EXEMPTION FOR PROJECTS THAT PROMOTE
30 PUBLIC TRANSPORTATION; CHAPTER M, FIVE YEAR ROAD PROGRAM **ARTICLE 14 –**
31 **ENVIRONMENTAL STANDARDS**; CHAPTER A, SEA TURTLE PROTECTION AND SAND
32 PRESERVATION; CHAPTER C, VEGETATION PRESERVATION AND PROTECTION;
33 CHAPTER D, PROHIBITED INVASIVE NON-NATIVE VEGETATION REMOVAL ORDINANCE;
34 **ARTICLE 17 – DECISION MAKING BODIES**; CHAPTER A, BOARD OF COUNTY
35 COMMISSIONERS; CHAPTER B, GENERAL PROVISIONS; CHAPTER C, APPOINTED
36 BODIES; PROVIDING FOR: INTERPRETATION OF CAPTIONS; REPEAL OF LAWS IN
37 CONFLICT; SEVERABILITY; A SAVINGS CLAUSE; INCLUSION IN THE UNIFIED LAND
38 DEVELOPMENT CODE; AND AN EFFECTIVE DATE.

39
40 **WHEREAS**, Section 163.3202, Florida Statutes, mandates the County compile Land
41 Development Regulations consistent with its Comprehensive Plan into a single Land
42 Development Code; and

43 **WHEREAS**, pursuant to this statute the Palm Beach County Board of County
44 Commissioners (BCC) adopted the Unified Land Development Code (ULDC), Ordinance 2003-
45 067, as amended from time to time; and

46 **WHEREAS**, the Unified Land Development Code includes supplementary land use
47 standards regulating adult entertainment establishments based on evidence and testimony
48 documenting the secondary effects of such establishments; and

49 **WHEREAS**, since the BCC originally adopted the supplementary land use standards
50 regulating adult entertainment establishments, additional testimony and evidence has been
51 made available to the BCC; and

52 **WHEREAS**, based in part on this additional testimony and evidence, the BCC desires to
53 readopt and amend the supplementary land use standards regulating adult entertainment
54 establishments; and

1 **WHEREAS**, the evidence and testimony documenting secondary effects of adult
2 entertainment establishments provides justification for the continued prohibition of adult
3 entertainment establishments within the Palm Beach International Airport Overlay and the
4 Westgate Community Redevelopment Agency Overlay; and

5 **WHEREAS**, the BCC desires to further amend the ULDC, based upon public
6 participation and advice from the Palm Beach County Land Development Regulation Advisory
7 Board; and

8 **WHEREAS**, the BCC has determined that the proposed amendments further a
9 legitimate public purpose; and

10 **WHEREAS**, the Land Development Regulation Commission has found these
11 amendments to the ULDC to be consistent with the Palm Beach County Comprehensive Plan;
12 and

13 **WHEREAS**, the BCC hereby elects to conduct its public hearings on this Ordinance at
14 9:30 a.m.; and

15 **WHEREAS**, the BCC has conducted public hearings to consider these amendments to
16 the ULDC in a manner consistent with the requirements set forth in Section 125.66, Florida
17 Statutes.

18
19 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**
20 **PALM BEACH COUNTY, FLORIDA, as follows:**

21
22 **Section 1. Adoption**

23 The amendments set forth in Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O and P,
24 attached hereto and made a part hereof, are hereby adopted.

25 **Section 2. Interpretation of Captions**

26 All headings of articles, sections, paragraphs, and sub-paragraphs used in this
27 Ordinance are intended for the convenience of usage only and have no effect on interpretation.

28 **Section 3. Providing for Repeal of Laws in Conflict**

29 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
30 repealed to the extent of such conflict.

31 **Section 4. Severability**

32 If any section, paragraph, sentence, clause, phrase, word, map, diagram, or any other
33 item contained in this Ordinance is for any reason held by the Court to be unconstitutional,
34 inoperative, void, or otherwise invalid, such holding shall not affect the remainder of this
35 Ordinance.

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Section 5. Providing for a Savings Clause

All development orders, permits, enforcement orders, ongoing enforcement actions, and all other actions of the Board of County Commissioners, the Zoning Commission, the Development Review Officer, Enforcement Boards, all other County decision-making and advisory boards, Special Masters, Hearing Officers, and all other County officials, issued pursuant to the regulations and procedures established prior to the effective date of this Ordinance shall remain in full force and effect.

Section 6. Inclusion in the Unified Land Development Code

The provisions of this Ordinance shall be codified in the Unified Land Development Code and may be reorganized, renumbered or re-lettered to effectuate the codification of this Ordinance.


Section 7. Providing for an Effective Date

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach


County, Florida, on this the 22nd day of October, 2009.

SHARON R. BOCK, CLERK & PALM BEACH COUNTY, FLORIDA, BY
COMPTROLLER ITS BOARD OF COUNTY
COMMISSIONERS

By: 
Deputy Clerk

By: 
Jeff Koons, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: 
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 28th day of
October, 2009.

EXHIBIT A

ARTICLE 1 – GENERAL PROVISIONS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

1 Part 1. ULDC, Art. 1.C.5, Density and Intensity, (page 14 of 109), is hereby amended as
2 follows:

3
4 CHAPTER C RULES OF CONSTRUCTION AND MEASUREMENT

5 **Section 5** *Density, Intensity and Building Coverage*

6 *That portion of a property dedicated for public right-of-way without compensation may be*
7 *subsequently included with the subject property for the purpose of density, intensity or*
8 *building coverage calculations. [Relocated from Art. 1.G.1.B.8, Density and Intensity]*
9

10
11 Part 2. ULDC, Art. 1.G.1.B.8, Density and Intensity [Related to Eminent Domain] (page 25 of
12 109), is hereby amended as follows:

13
14 CHAPTER G EMINENT DOMAIN

15 Section 1 Properties Affected by Eminent Domain Proceedings

16 B. Development Standards

17 Properties and site improvements impacted by eminent domain action may continue to exist and
18 may expand as outlined below

19 ~~8. Density and Intensity~~

20 ~~Property conveyed without compensation may be utilized in calculating allowed density or~~
21 ~~intensity, consistent with the applicable density/intensity provisions in the Plan. [Ord. 2005-~~
22 ~~041] [Relocated to Art. 1.C, Rules of Construction and Measurement.]~~
23
24

25 Part 3. ULDC, Art. 1.I.2.A.40, Agriculture, Bona Fide (page 40 of 109), is hereby amended as
26 follows:

27
28 CHAPTER I DEFINITIONS & ACRONYMS

29 Section 2 Definitions

30 A. Terms defined herein or referenced in this Article shall have the following meanings:

31
32 **40. Agriculture, Bona Fide** – Any plot of land where the principal use consists of the growing,
33 cultivating and harvesting ~~raising~~ of crops; the raising of animals, inclusive of aviculture,
34 aquaculture, horses and livestock; the production of animal products such as eggs, honey or
35 dairy products; or the raising of plant material, ~~inclusive of a retail or wholesale nursery.~~ The
36 determination as to whether or not the use of land is considered bona fide agriculture shall be
37 made pursuant to FS 823.14, Florida Right to Farm Act.
38
39

40 Part 4. ULDC, Art. 1.I.2.A.102, Auction (page 36 of 109), is hereby amended as follows:

41
42 102. **Auction** - for the purposes of Art. 4, an establishment engaged in the ~~public~~ sale of ~~goods~~
43 ~~merchandise~~ to the highest bidder in an enclosed building or outdoor.

44 a. Auction, Enclosed – an auction with all of the activity, display and sale of merchandise
45 occurring within an enclosed building.

46 b. Auction, Outdoor – an auction with all or a portion of the activity, display and sale of
47 merchandise occurring outdoors.
48
49

50 Part 5. ULDC, Art. 1.I.2.C, Definitions, [Related to Commercial Communication Towers] (page
51 65 of 109), is hereby amended as follows:

52
53 CHAPTER I DEFINITIONS & ACRONYMS

54 Section 2 Definitions

55 C. Terms defined herein or referenced Article shall have the following meanings:

56
57 43. Communication Tower Users List – an official list of commercial communication tower
58 service providers, maintained by the Development Review Officer, to assist new users to
59 locate existing sites to encourage collocation, pursuant to Art. 4.C.6.D, Shared
60 Use/Collocation.

Notes:

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EXHIBIT A

ARTICLE 1 – GENERAL PROVISIONS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

[Renumber accordingly]

Part 6. ULDC, Art. 1.1.2.H.22, Definitions (page 59 of 109), is hereby amended as follows:

CHAPTER I DEFINITIONS & ACRONYMS

Section 2 DEFINITIONS

H. Terms defined herein or referenced Article shall have the following meanings:

22. **Home Occupation** - a business, profession, occupation, trade, artisan, or handcraft conducted in a dwelling unit for commercial gain by a resident of the unit. A home occupation shall not include those businesses which are required by State of Florida agencies to be open to the public, ~~such as gun dealers.~~

Part 7. ULDC, Art. 1.1.2.I.21, Definitions (page 60 of 109), is hereby amended as follows:

CHAPTER I DEFINITIONS & ACRONYMS

Section 2 DEFINITIONS

I. Terms defined herein or referenced Article shall have the following meanings:

21. **Integration** – For the purposes of Art. 3.B., ~~Overlays 15.E.1, Mixed Use~~ and determining consistency with FLUE Policy 2.4-b and the vertical integration provision of FLUE Policy 2.2.2-f of the Plan, functional or vertical integration shall mean the horizontal or vertical combination of residential and non-residential uses that forms a single project providing for pedestrian and built form connectivity between uses, parking areas and public spaces. [Ord. 2006-004] [Ord. 2006-036]

Part 8 ULDC, Art. 1.1.2. Definitions (page 68 and 97 of 109), is hereby amended as follows:

CHAPTER I DEFINITIONS & ACRONYMS

Section 2 DEFINITIONS

M. Terms defined herein or referenced Article shall have the following meanings:

21. **Master Plan or Site Plan** - For the purposes of Art. 2 and 3, a Master Plan or a Site Plan means a graphic and informational representation of a specific design solution for a development phase or entirety, meeting the requirements and conditions of this Code. The Master Plan or a Site Plan shows an overall development concept including present property uses as well as proposed land development uses, and layout of design and infrastructure components. Various stages of refinement and government approval qualify the Master Plan or the Site Plan to be certified as the proposed Master Plan or Site Plan. For the purposes of Art. 12, a Master Plan or Site Plan shows how parcels and uses in a mixed-use development will integrate with one another. The ~~Master or Site Plan plan~~ dictates access, ~~and~~ mitigation strategies, ~~and dictates~~ the build-out timeframe ~~and any associated conditions~~ and shall be the controlling document for a mixed-use development. ~~All development, access, density, and intensity in the project shall be consistent with the plan. All site plans, subdivisions and plats shall be consistent with the plan. In cases of conflict between plans, the most recent approved Master Plan or Site Plan shall control to the extent of the conflict.~~ Approval of a Master Plan or Site Plan shall be binding upon the landowners subject to the Development Order, their successors and assigns, and shall constitute development regulations for the land. Development of the land shall be limited to the uses, intensities, access, configuration, mitigation strategies, and all other elements and conditions set forth in the Master Plan or Site Plan. Requirements for the submittal of a preliminary master or site plan and a final master or site plan to the Zoning Division are indicated in Art. 2 pursuant to the type of zoning application being submitted. [Ord. 2006-036]

[Renumber accordingly.]

T. Terms defined herein or referenced Article shall have the following meanings:

Notes:

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EXHIBIT A

ARTICLE 1 – GENERAL PROVISIONS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

1 17. Technical Manual – a manual maintained by the Zoning Division that outlines the minimum
2 technical requirements for preparing applications for zoning review. The Manual shall be
3 posted on the Zoning web page.

4 [Renumber accordingly.]
5
6

7 Part 9. ULDC, Art. 1.I.2.V, Definitions (page 102 of 109), is hereby amended as follows:

8 CHAPTER I DEFINITIONS & ACRONYMS
9

10 Section 2 DEFINITIONS

11 V. Terms defined herein or referenced Article shall have the following meanings:

12 ...
13 11. Vehicle Rental Facility, Neighborhood - a rental facility that is limited to a maximum of six
14 vehicles stored on site.

15
16 [Renumber accordingly.]
17
18

19 Part 10. ULDC, Art. 1.I.3, Acronyms (page 106, 107, and 108 of 109), is hereby amended as
20 follows:

21 CHAPTER I DEFINITIONS & ACRONYMS
22

23 Section 3 Abbreviations and Acronyms

- 24
- 25 FMP Final Master Plan
- 26
- 27 FMSP Final Master Sign Plan
- 28 FRP Final Regulating Plan
- 29 FSBP Final Subdivision Plan
- 30 FSP Final Site Plan
- 31
- 32 LDM Land Development Design Standards Manual
- 33
- 34 MSP Master Sign ~~Program~~ Plan
- 35
- 36 PDP Preliminary Development Plan
- 37
- 38 PMP Preliminary Master Plan
- 39 PMSP Preliminary Master Sign Plan
- 40
- 41 PRP Preliminary Regulating Plan
- 42 PSBP Preliminary Subdivision Plan
- 43 PSP Preliminary Site Plan
- 44

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EXHIBIT B

ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS

(Updated 09/29/09)

1 Part 1. ULDC, Art. 2.A.1.G, Applications Requirements (page 8 of 53), is hereby amended as
2 follows:

3
4 CHAPTER A GENERAL

5 Section 1 Applicability

6 G. Application Procedures

7
8 2. Application Requirements

9 The application form and requirements for a development order, approved through the Public
10 Hearing or the administrative process, shall be submitted on forms as specified by the PBC
11 official responsible for reviewing the application. **[Ord. 2005-041]** Additional application
12 requirements specific to a zoning district, use, or process are referenced in the applicable
13 sections of the ULDC. The general requirements for all applications are outlined in the
14 Technical Manual, which is published and periodically updated by the Zoning Division.

15 3. Plan Requirements

16 All applications or applicants submitting for a Public Hearing or an administrative approval
17 process shall submit a plan to the DRO. The type of plan shall be based upon the type of
18 application request(s), and shall be prepared to include graphics and tabular data consistent
19 with the Technical Manual requirements and standards. The plan shall provide sufficient
20 information for County Agencies to review in order to render DRO comments on the project
21 for compliance with applicable standards of the Code pursuant to Art.2.B.1.B, Standards, Art.
22 2.B.2.B, Standards, or Art. 2.D.1.D, Standards. In addition, the plan shall be prepared in
23 compliance with the following:

- 24 1) The Land Development Design Standards Manual (LDM) published and maintained by
25 the Land Development Division;
- 26 2) All applicable objectives, standards and requirements in this Code; and,
- 27 3) Plan labeling standards as follows;
 - 28 a) Plans requiring DRO certification for Public Hearing shall be labeled “Preliminary”;
 - 29 b) Plans requiring DRO approval shall be labeled “Final”.

30 a. Master Plan

31 The master plan shall be the controlling document for a PDD listed below. All
32 development site elements including, but not limited to: ingress/egress, density, and
33 intensity in the PDD shall be consistent with the master plan. All subdivisions and plats
34 shall be consistent with the master plan. In cases of conflict between plans, the most
35 recently approved BCC plan or DRO final plan, where applicable, shall prevail.

36 1) Preliminary Master Plan (PMP) for Public Hearing Approval

37 The BCC shall approve a PMP for the following PDDs: PUD, RVPD, MHPD, PIPD,
38 and PDDs with a MLU or EDC future land use designation.

39 a) Preliminary Site Plan (PSP) or Subdivision Plan (PSBP) Options

40 For a PUD application with no proposed subdivision, the applicant may submit a
41 PSP prior to certification for public hearing process, which includes but not
42 limited to: layout of lots and buildings, ingress/egress, recreation areas,
43 exemplary design standards, if applicable, etc. for the purpose of a BCC review
44 at the hearing. For a PUD application proposing to subdivide, the applicant may
45 submit a PSBP pursuant to Preliminary Subdivision Plan.

46 2) Final Master Plan (FMP) for Public Hearing Approval

47 For applications with a PMP, the applicant shall submit a FMP for final review and
48 approval by the DRO. The FMP shall be prepared consistent with the BCC approved
49 PMP, and all modifications shall be approved by the BCC unless the proposed
50 changes are required to meet conditions of approval or are in accordance with the
51 ULDC, whichever is more restrictive.

52 b. Site Plan

53 The site plan shall be the controlling plan for conditional uses, requested uses or PDDs
54 listed below. All development site elements including, but not limited to: ingress/egress,
55 density, and intensity in the proposed project shall be consistent with the site plan. All
56 plats shall be consistent with the site plan. In cases of conflict between plans, the most
57 recently approved BCC plan or DRO final site plan, as applicable, shall prevail.

58 1) Preliminary Site Plan (PSP)

59 The BCC shall approve a PSP for the following applications: CA Conditional Use,
60 Requested Use, MXPDP, MUPD and equivalent previously approved planned
61 developments. The ZC shall approve a PSP for a CB Conditional Use request.

62 2) Final Site Plan (FSP) with Public Hearing Approval (Off-The-Board)

63 After a PSP is approved by the BCC or ZC, the applicant shall submit a FSP to the
64 DRO for final review and approval. The DRO shall review the FSP for consistency
65 with the PSP, applicable code requirements, BCC or ZC conditions of approval. All

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EXHIBIT B

ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS
(Updated 09/29/09)

1 modifications to the PSP that are shown on the FSP must be approved by the BCC
2 or ZC unless the proposed changes are required to meet conditions of approval or
3 are in accordance with the ULDC, whichever is more restrictive.

4 **3) Final Subdivision Plan (FSP) for Administrative Approval**

5 The DRO shall approve a Final Site Plan for:

- 6 a) Any requests for uses that have a “D” in Table 4.A.3.A-1, Use Matrix; or,
- 7 b) Any requests subject to Table 4.A.3.A – Thresholds for Project Requiring DRO
8 Approval.

9 **c. Subdivision Plan**

10 The subdivision plan shall be the controlling plan for conditional uses, requested uses or
11 PDDs that are subject to the subdivision process. All development site elements
12 including, but not limited to: ingress/egress, density, and intensity in the proposed project
13 shall be consistent with the subdivision plan. All plats shall be consistent with the
14 subdivision plan. In cases of conflict between plans, the most recently approved BCC
15 plan or DRO final subdivision plan, as applicable, shall prevail.

16 **1) Preliminary Subdivision Plan (PSBP) for Public Hearing Approval**

17 The DRO shall review and certify a PSBP for any applications that are subject to the
18 submittal requirement of a PMP pursuant to Art.2.A.1.G.3.a, Master Plan, and which
19 involves in the subdivision of land to be platted. The applicant may submit a PSBP
20 prior to certification for public hearing process, which includes but not limited to:
21 layout of lots, exemplary design standards, ingress/egress, density, etc. for the
22 purpose of a BCC review.

23 **2) Final Subdivision Plan (FSBP) for Public Hearing Approval**

24 After a PSBP is approved by the BCC or ZC, the applicant shall submit a FSBP for
25 parcels of land that are subject to subdivision to the DRO for final review and
26 approval. The FSBP shall be reviewed and approved prior to submission of an
27 application for a plat or other approval required by Article 11, SUBDIVISION,
28 PLATTING, AND REQUIRED IMPROVEMENTS.

29 **3) Final Site Plan (FSP) for Administrative Approval**

30 The DRO shall approve a Final Site Plan for:

- 31 a) Any requests for uses that have a “D” in Table 4.A.3.A-1, Use Matrix; or,
- 32 b) Any requests subject to Table 4.A.3.A – Thresholds for Project Requiring DRO
33 Approval; or
- 34 c) Any subdivision of individual single-family lots in a PUD or a combination of lots
35 that has been determined by the Zoning Director that does not require the Public
36 Hearing Approval Process.

37 **4) Exception**

38 A minor subdivision may be exempt from this Section subject to the approval of a Plat
39 Waiver pursuant to Article 11, SUBDIVISION, PLATTING, AND REQUIRED
40 IMPROVEMENTS.

41 **d. Regulating Plans**

42 The regulating plan shall reflect the necessary tabular and graphic information required in
43 the Technical Manual, which provides a comprehensive graphic and written description of
44 the project and shall include but not be limited to: lot layout for housing type, street cross
45 sections, design details of site elements, etc. Each element of the regulating plan shall be
46 drawn to scale or labeled with notes, specifications and dimensions.

47 **1) Preliminary Regulating Plan (PRP) for Public Hearing Approval**

48 The DRO shall review and certify a PRP for all requests that are subject to the Public
49 Hearing approval process. The BCC shall approve a PRP for: Conditional Uses,
50 Requested Uses, rezoning to a PDD, the affected area of modifications to previously
51 approved PDDs, and shall include, at a minimum, the following elements:

- 52 a) Focal points;
- 53 b) Exemplary features;
- 54 c) Public amenities; and,
- 55 d) Preliminary Master Sign Plan or Program.

56 **2) Final Regulating Plan (FRP) for Public Hearing Approval or Administrative**
57 **Approval**

58 a) After a PRP is approved by the BCC or ZC, the applicant shall submit a FRP to
59 the DRO for final review and approval. The FRP shall be consistent with the
60 BCC or ZC approved PRP. All modifications to the plan must be approved by the
61 BCC or ZC unless the proposed changes are required to meet conditions of
62 approval, are not in conflict with the BCC or ZC approval or are in accordance
63 with the ULDC.

64 b) The DRO shall review and approve a FRP for any requests for uses that have a
65 “D” in Table 4.A.3.A-1, Use Matrix; or any requests subject to Table 4.A.3.A –
66 Thresholds for Project Requiring DRO Approval.

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EXHIBIT B

ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS
(Updated 09/29/09)

- c) In addition to the requirements indicated in Art. 2.A.1.G.3.d.1, Preliminary Regulating Plan (PRP) for Public Hearing Approval, the following items shall be shown on the FRP, as applicable:
 - (1) Street cross sections, including sidewalks, bike lanes, street trees, on street parking and lighting;
 - (2) Typical lot layouts for each housing type, including building envelope, screen enclosure/pool setbacks, and driveway access;
 - (3) Landscape buffer details (plan view and cross section);
 - (4) Median landscape detail;
 - (5) Master Sign Plan;
 - (6) Elevations, if submitted pursuant to Art. 5.C, Design Standards;
 - (7) Pedestrian circulation plan in accordance with Art. 3.E, Planned Development Districts (PDDS);
 - (8) Phasing plan in accordance with Art. 2.D.1, Development Review Officer;
 - (9) Screening details;
 - (10) Neighborhood parks; and,
 - (11) Alternative Landscape Plan (ALP) or Alternative Sign Plan (ASP).

3) Design Standards (DS) Alternative

An applicant may submit Design Standards in lieu of a Regulating Plan, provided that approval is granted by the Zoning Director at DRO. The DS shall contain text, graphics and pictures to illustrate prevailing design theme and concept applicable to the project. Requirements for Design Standards review and approval process shall be in compliance with Art.2.A.1.G.3.d.1) and d.2), Preliminary and Final Regulating Plans. [Ord. 2004-040]

e. Other Types of Plans

1) Landscape Plans

Article 7 identifies three types of landscape plans: Planting, Landscape, and Alternative Landscape. Application requirements, labeling of Plans, and approval procedures for Landscape Plans or Alternative Landscape Plans shall be consistent with Art.2.A.1.G.3, Plan Requirements and Art.2.A.1.G.3.d.1) and d.2), Regulating Plan, and Art.7.

2) Sign Plans

Article 8 identifies three types of sign plans: Master Sign Program, Master Sign Plan, and Alternative Sign Plans. Application requirements, labeling of Plans, certification and approval procedures of Master Sign Programs, Master Sign Plans or Alternative Master Sign Plan shall be consistent with Art.2.A.1.G.3, Plan Requirements, Art.2.A.1.G.3.d.1) and d.2), Regulating Plan and Art.8.

[Renumber accordingly.]

Part 2. ULDC, Art. 2.A.1.H.1, Small Scale, TMD and MLU Amendments (page 9 of 53), is hereby amended as follows:

CHAPTER A GENERAL

Section 1 Applicability

H. Consolidated Application

1. Small Scale, ~~TMD and MLU~~ Amendments

If a land use amendment requires a rezoning, conditional use, requested use, development order amendment or abandonment application, the applications shall be reviewed and considered by the BCC concurrently. An application for a Type II variance may be submitted concurrently or separately. Applications that are contingent upon the approval of variances must be submitted separately. The applicant shall submit a master plan and/or site plan as part of the zoning application. The zoning application shall be submitted at a scheduled zoning application intake within ~~45~~ 90 days of receipt of the land use amendment application. If a complete zoning application is not submitted, the land use amendment shall be administratively withdrawn. [Ord. 2006-036]

Part 3. ULDC, Art. 2.A.1.Q.3, Implemented Development Order (page 14 of 53), is hereby amended as follows:

CHAPTER A GENERAL

Section 1 Applicability

Notes:

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EXHIBIT B

ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS

(Updated 09/29/09)

1 Q. Development Order Abandonment

2 3. Implemented Development Orders

3 Certain implemented development orders qualify for administrative abandonment. Other
4 implemented development orders require Public Hearing abandonment by the BCC Board
5 that approved the development order (BCC or ZC).

6
7 b. Public Hearing Abandonment

8 A development order, which was used, implemented or benefited from, may be
9 abandoned simultaneously with the issuance of a subsequent development order issued
10 by the BCC or ZC, as applicable. ~~or~~ The property owner also has the option may elect to
11 petition the BCC or the ZC to abandon the development order through expedited
12 application review process, pursuant to Article 2.B.2.G ~~F.2~~, Expedited Application
13 Consideration (EAC).

14

15
16
17 Part 4. ULDC, Art. 2.A.1.T, Outstanding Liens or Fines (page 15 of 53), is hereby amended as
18 follows:

19 CHAPTER A GENERAL

20 Section 1 Applicability

21 T. Outstanding Liens or Fines

22 1. General

23 Development order applications for properties that have outstanding liens or fines owed to
24 PBC shall be restricted as follows:

25 a. Rezoning, Conditional Use, Development Order Amendment and Variances

26 The approving body shall impose a condition of approval ~~or voluntary commitment~~
27 requiring the payment of any outstanding liens or fines by a date certain or prior to a
28 specific event;

29
30
31
32 Part 5. ULDC, Art. 2.B.1.B.9, Mobile Home Parks (page 16 of 56), is hereby amended as
33 follows:

34 CHAPTER B PUBLIC HEARING PROCEDURES PUBLIC HEARING PROCESS

35 Section 1 Official Zoning Map Amendment (Rezoning)

36 B. Standards

37 When considering a development order application for rezoning to a standard zoning district, the
38 BCC and ZC shall consider standards 1 – 8 indicated below. In addition the standards indicated
39 in section 2.B of this chapter shall also be considered for rezoning to a standard zoning district
40 with a conditional use, and rezoning to a PDD or TDD with or without a requested use or waiver.
41 An amendment which fails to meet any of these standards shall be deemed adverse to the public
42 interest and shall not be approved. [Ord. 2007-001]

43 ~~9. Mobile Home Parks~~

44 ~~Any rezoning of property having an existing mobile home park shall comply with the~~
45 ~~requirements of F.S. Chapter 723.083, Governmental Action Affecting Removal of Mobile~~
46 ~~Home Owners. [Ord. 2007-013] [Relocated to Art. 3.E.6, MHPD]~~

47
48
49
50 Part 6. ULDC, Art. 2.B.1.D, Development Order Amendment to a PDD, TDD or COZ (page 16 of
51 53), is hereby amended as follows:

52 CHAPTER B PUBLIC HEARING PROCEDURES PUBLIC HEARING PROCESS

53 Section 1 Official Zoning Map Amendment (Rezoning)

54 D. Development Order Amendment to a PDD, TDD or a Standard Zoning District with a COZ

55 A development order for a PDD, TDD or a standard zoning district with a COZ may be amended,
56 extended, varied or altered either pursuant to the conditions established with its original approval,
57 or as otherwise set forth in this Code. Prior to any PDD, TDD or COZ being amended, extended,
58 varied or altered, the applicant shall demonstrate and the ZC/BCC must find that a change of
59 circumstances or conditions has occurred which make it necessary or reasonable to amend,
60 extend, vary or alter the PDD, TDD or COZ. [Ord. 2005-041]

61 Notes:

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EXHIBIT B

ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS
(Updated 09/29/09)

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Part 7. ULDC, Art. 2.C.1, General [Related to FLU Plan Amendments] (page 20 of 53), is hereby amended as follows:

CHAPTER C FLU PLAN AMENDMENTS

Section 1 General

A. Purpose

The purpose of this section is to provide a means for changing the boundaries or designations of the FLU by means of site specific amendments to the Palm Beach County Comprehensive Plan. ~~It is not intended to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions. In determining whether to grant a requested amendment, the BCC shall consider, in addition to the factors set forth in this section, the consistency of the proposed amendment with the intent of the Plan, Treasure Coast Regional Policy Plan, State of Florida Comprehensive Growth Management Plan, F.S. Chapter 163, and Rules 9J-5 and 9J-11, F.A.C.~~

B. Authority

The BCC may amend the boundaries or designations of the FLU of the Plan upon compliance with the provisions of this Section.

C. Initiation

Site Specific A amendments may be proposed by the BCC, the Local Planning Agency (LPA), or the owner of the land to be affected by a proposed amendment.

D. Procedure

~~1. Pre-Application Conference~~

~~A potential applicant for a site specific amendment may request in writing an optional pre-application conference with the Planning Director. Prior to the optional pre-application conference, the applicant shall provide to the Planning Director a description of the character, location and magnitude of the proposed amendment and any other information the potential applicant deems relevant. The purpose of the pre-application conference is to acquaint the potential applicant with the requirements for a site specific amendment. The substance of the optional pre-application conference shall be recorded in a summary prepared by the Planning Director. The letter shall be mailed to the applicant by the Planning Director within seven working days after the optional pre-application conference. The letter shall set forth the subjects discussed at the pre-application conference and PBC's position in regard to the subject matters discussed as well as the review procedures and timelines that generally apply to the proposed development.~~

21. Timing

An application by a property owner for a site specific amendment shall be accepted for review and processing if determined sufficient, up to two times per year twice each year. That date shall be announced ~~four months~~ in advance by the Planning Director BCC. ~~There shall be two E~~ exceptions to this timing requirement are provided for in F.S. §163.3187. An amendment shall be considered at any time if it is directly related to a DRI, including a substantial deviation for a DRI. Small scale amendments may be processed up to four times per year as scheduled by the Planning Director will be processed on a quarterly basis with the closing deadlines in February, May, August, and October. Nothing in this Section shall be deemed to require favorable consideration of the amendment solely because it is related to a DRI or because it is a small scale development amendment.

32. Submission of Application

An application for a Site Specific amendment shall be submitted to the Planning Director along with a nonrefundable application fee that is established by the BCC.

a. Small Scale Amendments

If a small scale land use amendment requires a rezoning, conditional use, development order amendment or abandonment application(s), the two applications shall be reviewed and considered by the BCC concurrently. The applicant shall submit a site plan or conceptual site plan as part of the zoning application(s). The complete zoning application must be submitted at a scheduled zoning application intake within ~~45~~ 90 calendar days of receipt of the small scale land use amendment application. If a complete zoning application is not submitted, the small scale land use amendment shall be administratively withdrawn immediately.

43. Contents of Application

a. General

The application shall be submitted in a form established by the Planning Director. ~~The application must contain justification for the proposed amendment citing at least one of the standards contained in Article 2.C.1.D.10, Standards, and a demonstration of need.~~
The application must contain applicable data and analysis to substantiate any claims

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EXHIBIT B

ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS

(Updated 09/29/09)

made within the application. Failure of an applicant to disclose relevant information shall serve as grounds for postponement by the board holding the public hearing.

b. Amendments to the Application

Any information provided by an applicant following the distribution of the staff report to the LUAB LPA shall serve as grounds for postponement, as appropriate, of the public hearings by the board holding the public hearing.

54. Determination of Sufficiency

The Planning Director shall determine whether the application is sufficient and includes data necessary to evaluate the application. The determination of sufficiency shall apply to the submission and shall be based upon whether or not the application responds to all the requested information and meets minimum application criteria, as provided by the Planning Director in the application instructions echecklist.

a. If it is determined that the application is not sufficient, written notice shall be delivered to the applicant specifying the deficiencies within ten working days of the receipt of the application. The Planning Director shall take no further action on the application until the deficiencies are remedied. If the deficiencies are not remedied within ten working days of the notice of insufficiency, the application shall be considered withdrawn.

b. If or when the application is determined sufficient, the Planning Director will proceed to review the application pursuant to the procedures and standards of this Section.

65. Review, Report and Recommendation by Planning Director

When the application is determined sufficient, the Planning Director shall review the application, consult with other agencies, prepare a staff report (which incorporates the comments of the other agencies), and make a recommendation of approval, approval with conditions, or disapproval-denial based on applicable data and analysis and consistency with the Palm Beach County Comprehensive Plan, F.S. Chapter 163, and Rules 9J-5 and 9J-11, F.A.C. the standards in Article 2-C.1-D.10, Standards. The Planning Director shall send a copy of the staff report to the applicant by mail on the day the staff report is completed which shall be at least five working days prior to the LUAB LPA public hearing, along with written notification of the time and place the application will be considered by the LUAB LPA.

76. Notice

Notice of a proposed amendment for any public hearing shall be provided by publication of advertisement, mailed or electronically transmitted notice and posting as pursuant to the terms of this Section. The Planning Director shall notify the Intergovernmental Plan Amendment Review Clearinghouse (IPARC) of proposed land use amendments pursuant to the Plan Amendment Coordinated Review Interlocal Agreement.

a. Advertisement

The required advertisements shall meet the requirements of F.S. §163.3184(15)(e) and F.S. §.125.66(4)(b)2, as amended from time to time.

b. Courtesy Notice Mailing

A courtesy "notice" of a proposed plan amendment shall be mailed sent to all owners of real property located within 500 feet of the periphery of the land to be affected by the requested change, whose names and addresses are known by reference to the latest published ad valorem tax records of PBC Property Appraiser, except that when real property consists of a condominium, the courtesy notice shall be given to the condominium association and all real property owners living within 500 feet. If the area within 500 feet is owned by the applicant or partner in interest, the 500 foot notification boundary shall be extended from these parcels. Such property notice shall be given approximately 15 to 30 calendar days prior to the date set for the first public hearing by depositing such notice in the mail by certified or first class mail, properly addressed and postage prepaid, to each owner as the ownership appears on the last approved tax roll. A copy of such notice shall be kept available for public inspection during regular business hours at the office of PZB. If the property is undergoing a simultaneous land use change and rezoning, the notice for the rezoning may be included in the notice required for the land use change. All POA's and cooperatives within the area as well as all counties and municipalities within one mile of the area shall be notified. Areas that a municipality has identified as a future annexation area shall also give notice to the municipality. Such notice shall also be sent approximately 15 to 30 calendar days prior to the date set for the first public hearing. The All notices shall state the substance of the proposal and shall set a date, time and place for the public hearing. The notice shall contain a location map clearly indicating the area covered by the proposal including major streets, and a statement that interested parties may appear at the public hearing and be heard regarding transmittal or adoption of the amendment. ~~Such notice shall be given approximately 15 to 30 calendar days prior to the date set for the first public hearing by depositing such notice in the mail by certified or first class mail, properly addressed and postage prepaid, to each owner as the ownership appears on the last approved tax roll. A copy of such notice shall be kept available for public inspection during regular business hours at the office of PZB. If the property is undergoing a simultaneous land use change~~

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ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS
(Updated 09/29/09)

~~and rezoning, the notice for the rezoning may be included in the notice required for the land use change.~~

....
d. Other Courtesy Notice

A courtesy notice of all public hearings may be mailed sent upon request to all organizations, associations, and other interested persons or groups known to the Planning Director. An annual fee may be assessed to defray the cost ~~of such mailings.~~

e. Exceptions to Mailing and Posting

The mailing and posting notice requirements shall not apply to actions by the BCC initiating any of the following:

- 1) ~~A site specific land use change subsequent to a land use action resulting from Art. 5.G.1, Workforce Housing Program (WHP) or Art. 5.G.2, Transfer of Development Rights-Special Density Program; [Ord. 2005—002]~~

[Renumber accordingly.]

87. Action by the LUAB Planning Commission ~~s~~ Sitting as the Local Planning Agency (LPA)

The LPA public hearing shall be advertised in a newspaper of general circulation in accordance with requirements set forth in F.S. §163.3184(18), as amended from time to time. The LPA shall conduct a public hearing on the application pursuant to the procedures in Article 2.C.1.D.11, Conduct of Hearing, and make recommendations regarding the proposed amendments to the BCC. At the public hearing, the LPA shall review the application, the staff report, the relevant support materials, and public testimony given at the hearings. At the close of the public hearing, the LPA shall vote on its recommendations (approval, approval with conditions or denial) ~~and findings based on the standards Article 2.C.1.D.10, Standards.~~

98. Action by BCC

a. Transmittal Public Hearing

The transmittal public hearing shall be held on a weekday at least seven calendar days after notice is published pursuant to F.S. §163.3184(15)(b) 1, as amended from time to time. Prior to transmittal to DCA, the BCC shall conduct one transmittal public hearing on the application pursuant to the procedures in Article 2.C.1.D.11, Conduct of Hearing. At the public hearing, the BCC shall consider the application, the staff report, the relevant support materials, the recommendations of the LPA, and the public testimony given at the public hearing, ~~and based on the standards in Article 2.C.1.D.10, Standards,~~ and by an affirmative vote of a majority of the members of the BCC present at the hearing, vote to approve, approve with conditions, or deny ~~for the~~ transmittal of the application. Failure of the BCC to approve the transmittal of an application for a site-specific amendment shall be deemed a denial of the proposed site-specific amendment.

b. Adoption Public Hearing

The adoption public hearing shall be on a weekday at least five calendar days after the day the notice for the public hearing is published pursuant to F.S. §163.3184(15)(b)(2), as amended. Pursuant to the time frames in F.S. §163.3184(15)(b)(2) the BCC shall conduct at least one adoption public hearing on the application pursuant to the procedures in Article 2.C.1.D.11, Conduct of Hearing. At the public hearing, the BCC shall consider the application, the staff report, the relevant support materials, the DCA comments, and the public testimony given at the public hearing, ~~and based on the standards in Article 2.C.1.D.10, Standards,~~ vote to adopt, adopt with conditions, or not to adopt an ordinance making a site specific amendment. A decision to adopt an ordinance making a site specific amendment shall require a majority vote of the members of the BCC present at the hearing.

....
10. Standards

~~The adoption of an Ordinance to make a site specific amendment shall be based on one or more of the following factors, and a demonstrated need to amend the FLUA, as long as the Plan maintains its internal consistency. A demonstration of need may be based upon market conditions indicating that there is a demand for the proposed land use designation or a demonstration that the current land use designation is no longer appropriate. Appropriate data and analysis to demonstrate a need for the amendment must be provided within the application. Additionally, all amendments shall be reviewed at the maximum intensity or density permitted under the requested future land use designation. Data and analysis must be provided within the application to substantiate at least one of the following:~~

- a. ~~Changed projections (e.g., regarding public service needs) in the Plan, including but not limited to amendments that would ensure provision of public facilities;~~
- b. ~~Changed assumptions (e.g., regarding demographic trends or land availability) in the Plan, including but not limited to the fact that growth in the area, in terms of the development of vacant land, new development, and the availability of public services has altered the character such that the proposed amendment is now reasonable and consistent with the land use characteristics;~~

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ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS

(Updated 09/29/09)

- ~~e. Data errors, including errors in mapping, vegetative types and natural features in the Plan;~~
- ~~d. New issues that have risen since adoption of the Plan;~~
- ~~e. Recognition of a need for additional detail or comprehensiveness in the Plan; or~~
- ~~f. Data updates.~~

119. Conduct of Hearing

b. Due Order of Proceedings

The order of the proceedings shall be as follows:

- 1) The Planning Director shall present a ~~narrative and graphic~~ description of the application, a ~~written and oral~~ recommendation, and the staff report. ~~The recommendation shall address each factor required to be considered by this Code prior to approval of the application for a site-specific Plan amendment. The recommendation of the Planning Director shall be made available to the applicant at least five working days prior to the public hearing, unless extended by mutual agreement;~~

....

- 5) ~~The applicant may respond to any testimony or evidence presented by PBC staff or the public. The LPA may ask questions to PBC staff, the applicant, or members of the public.~~

c. Continuance or Postponement of Public Hearing for Small Scale Amendments

1) Entitlement Continuances

An applicant shall have the right to request and be granted one entitlement continuance, of no more than 60 days, of the LPA public hearing without an additional fee; provided that the request is made in writing at least 20 working days prior to the hearing. Additionally, an applicant shall have the right to request and be granted one entitlement continuance, of no more than 60 days, of the BCC Adoption public hearing; provided that the request is made in writing at least 20 working days prior to the hearing ~~and is submitted along with an additional set of the required 500 foot public notice envelopes Art. 2.C.1.D.7.b, Courtesy Mailing.~~ The Planning Division will honor entitlement continuances administratively.

2) Non-Entitlement Continuances

The body conducting the public hearing may ~~by~~ on its own motion, or at the request of any applicant or the Planning Director, continue the public hearing or meeting to a fixed date, time and place. All non-entitlement continuances shall be granted at the discretion of the body conducting the hearing only upon good cause shown. The applicant shall be subject to a fee as established by the BCC upon the second non-entitlement continuance. ~~The applicant shall be required to provide an additional set of the required 500 foot public notice envelopes.~~

3) Concurrent Rezoning Petitions

Delays in zoning applications being certified by the DRO shall result in an administrative postponement of the BCC public hearing until such time that the item is certified.

d. Continuance or Postponement of Large Scale Amendments

1) Entitlement Continuances

An applicant shall have the right to request and be granted one entitlement continuance, to subsequent amendment round and will be subject to a fee as established by the BCC; provided that the request is made in writing at least 20 working days prior to the LPA public hearing. In order to provide most current data, the applicant of an amendment postponed to the next round shall be required to submit an updated revised application including a ~~with~~ new traffic ~~and market~~ analysis upon the next window closing date.

2) Non-entitlement Continuances

Only one non-entitlement continuance into the next amendment round shall be permitted and will be subject to a fee as established by the BCC. The body conducting the public hearing may on its own motion, or at the request of any applicant or the Planning Director, postpone the amendment to the next round. All non-entitlement continuances shall be granted at the discretion of the body conducting the hearing only upon good cause shown. In order to provide the most current data, the applicant of an amendment postponed to the next round shall be required to submit a revised application with new traffic and market analysis upon the window closing date.

3) Administrative Withdrawal

Any application not heard by the BCC in the following amendment round will be administratively withdrawn by the Planning Director, unless otherwise determined by the BCC.

e. Withdrawal of Applications

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EXHIBIT B

ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS

(Updated 09/29/09)

An applicant shall have the right to withdraw an application for a site specific amendment at any time prior to the advertised adoption public hearing by the BCC. Applicants shall not be entitled to the return of application fees. Additionally, applicants shall not be entitled to the return of application materials.

Part 8. ULDC, Art. 2.D.1. Development Review Officer, (page 25 of 53), is hereby amended as follows:

CHAPTER D ADMINISTRATIVE PROCESS

Section 1 Development Review Officer

A. Purpose

The purpose of this Section is to establish a review process for all developments requiring certification or approval by the DRO. Certification, approval, approval with conditions or denial of an application shall be based upon comments and recommendations from appropriate PBC departments, PBC divisions, and other local government agencies to the DRO. This Section also ~~to~~ establish standards for review; standards for certification, approval or denial for Public Hearing or administrative processes; ~~to~~ set limits on the administrative authority of the DRO to modify BCC or ZC approvals; and ~~an~~ the appeal process. The DRO shall perform the following functions:

1. Public Hearing Process

Review and determine certification of applications for BCC or ZC public hearing process. After the BCC or ZC hearing and approval of the application, the DRO shall review the approved development order for consistency with the BCC or ZC approved plan and conditions of approval, as applicable, under the Final DRO approval process; and,

2. Administrative Process

Review and approval of applications for uses that have a "D" in Table 4.A.3.A-1, Use Matrix or Table 4.A.3.A, Thresholds for projects requiring DRO Approvals.

B. Application Types

1. The following types of development shall require approval of a master plan, site plan, ~~or~~ subdivision, regulating plan and other types of plans listed in Art. 2.A.1.G.3, Plan Requirements by the DRO prior to the issuance of a building permit, commencement of any related land development activity, utilization of any use or approval granted by the BCC or ZC, or utilization of any use requiring approval by the DRO;

....

e. All new construction that creates, meets or exceeds the thresholds in Table 4.A.3.A-2, Threshold for Project Requiring DRO Approval;

....

C. Review Procedures

1. Staff Review

At least five days prior to the DRO review date, each applicant shall be provided a list of issues, if any, which must be addressed prior to approval of the application. [Ord. 2007-001] [Ord. 2008-003]

....

~~D.2.~~ Application Requirements

~~Refer applications requirements to Art. 2.A.1.G.3, Plan Requirements. All applications to the DRO shall contain a plan of development, which graphically and in tabular form provides sufficient information for a decision to be rendered in accordance with the standards in Section.~~

1. Plan Requirements

~~At a minimum, all site plans and subdivision plans submitted to the DRO shall:~~

- ~~a. Comply with the Technical Manual Requirements published by the Zoning Division;~~
- ~~b. Comply with the Land Design Manual published by the Land Development Division; and~~
- ~~c. Comply with all applicable requirements in this Code.~~

2. Subdivision Plan

~~All subdivision of land shall receive approval of a subdivision plan by the DRO prior to submission of a plat or other approval required by Article 11, SUBDIVISION, PLATTING, AND REQUIRED IMPROVEMENTS.~~

a. Exception

~~A minor subdivision may be exempt from this Section subject to the approval of a Plat Waiver pursuant to Article 11, SUBDIVISION, PLATTING, AND REQUIRED IMPROVEMENTS.~~

23. Action by the DRO

On the review date established by the DRO, the DRO shall inform each applicant of the revisions necessary for the application to receive certification, approval, approval with conditions or denial. Each applicant shall be provided a maximum of three working days to

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SUMMARY OF AMENDMENTS
(Updated 09/29/09)

1 revise minor outstanding issues. Within seven working days after the review date, the DRO
2 shall certify, approve, approve with conditions, ~~not approve~~, deny, withdraw or postpone each
3 application on the agenda after reviewing the recommendations and comments provided by
4 the agency officers. The DRO shall not certify or approve a plan of development until the plan
5 meets all applicable Code requirements, standards, policies, and if applicable, conditions of
6 approval. [Ord. 2008-003]

7 [Renumber accordingly.]

8 **3D. Effect of an Administrative Development Order Approved Approval by the DRO**

9 A development order approved by the DRO shall have the following effect and authority:

- 10 a. Any permitted uses may occur in conjunction with or in place of the approval use;
- 11 b. A development order for a site plan or a subdivision plan shall apply to only the land
- 12 legally described in the application submitted to, and found sufficient by, the DRO and
- 13 shall run with the land for the life of the development order;
- 14 c. A development order for a site plan or subdivision plan shall authorize only the particular
- 15 site configuration, layout, design, level of impacts, and intensity/density which were
- 16 approved by the DRO pursuant to the standards of this Code; and
- 17 d. A development order for a site plan or subdivision may only be amended pursuant to the
- 18 procedures and standards in this Section.

19 **E. Standards for Administrative Approval**

20 Prior to approval by the DRO, a site plan or subdivision plan shall comply with the following
21 standards:

22

23 **2. Consistency with Neighborhood Plans**

24 The plan of development ~~shall~~ may be consistent with applicable neighborhood plans.

25

26 **F. Conditions**

27 **1. DRO Authority**

28 The DRO shall have the authority to recommend conditions of approval for Public Hearing
29 development orders requiring BCC or ZC approval and impose conditions of approval for~~on~~
30 a administrative development orders. ~~which:~~ Conditions of approval may be recommended
31 or imposed to:

- 32 a. **Code Compliance**
- 33 Ensure compliance with Code requirements;
- 34 b. **Minimize Impacts**
- 35 Ensure compatibility of the proposed development or use with surrounding land uses,
- 36 address the location of uses on the site to minimize potential adverse off-site impacts,
- 37 and ensure on-site safety;
- 38 c. **Legal Documents**
- 39 Require the execution of a unity of title, unity of control, shared parking and other legal
- 40 documentation necessary to satisfy requirements of this Code;
- 41 d. **Traffic Performance Standards**
- 42 Require road construction necessary ~~for the project to meet TPS to mitigate project~~
43 impacts including but not limited to drainage, turn lanes, sidewalks, and signalization;
- 44 e. **Agricultural Uses in the Urban Services Area (USA)**
- 45 Reduce negative impacts from agricultural uses in the urban services area on
- 46 surrounding properties including but not limited to: controlling objectionable odors,
- 47 fencing, sound limitations, inspections, reporting or monitoring preservation areas,
- 48 mitigation, and / or limits of operation; and
- 49 f. **Waiver**
- 50 Allows specific requirements of the Code to be waived, provided the proposed
- 51 development meets the specific requirements criteria for granting the waiver.

52

53 **G. Administrative Review**

54 The DRO may approve minor amendments to site plans, alternative landscape plans and
55 subdivision plans, and approve new site plans, in accordance with the following procedures.

56 [Ord. 2007-001] [Ord. 2008-003]

57 **1. Amendments to BCC/ZC Approvals**

58 The DRO shall have the authority to approve minor modifications to a development order
59 approved by the BCC or ZC. An application for an amendment shall be submitted in
60 accordance with Article 2.A.1, Applicability, and reviewed in accordance with the standards in
61 Article 2.D.1.C, Review Procedures. Applications must be submitted on deadlines
62 established on an Annual Zoning Calendar. The authority of the DRO to modify a BCC or ZC
63 approved plan shall be limited to the following: [Ord. 2008-003]

- 64 a. The relocation of no more than 25 percent of the total approved square footage or other
- 65 area indicated as being covered by buildings or structures to portions of the site not
- 66 previously covered.

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EXHIBIT B

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SUMMARY OF AMENDMENTS
(Updated 09/29/09)

- 1) Relocated square footage shall not be used to create additional freestanding buildings or structures;~~and~~
- b. An increase of no more than five percent in the total floor area of any building or structure, or outdoor area considered as square footage, provided that the increase does not exceed ~~1,000~~ 5,000 square feet whichever is less; [Ord. 2008-003]
- ~~2)c.~~ Additions to or relocations of B buildings and structures shall not be ~~relocated~~ constructed closer to perimeter property lines than shown on the plan approved by the BCC or ZC, unless the FLU designation, zoning district, or existing use of the adjacent parcel is compatible, pursuant to Art 1.1.2.C.55.
- ~~ed.~~ An overall increase of not more than ten percent of the height of any structure;
- ~~de.~~ Relocation of access points; and addition or deletion of internal access points; [Ord. 2008-003]
- ~~ef.~~ Relocation of open space or recreation areas, provided that the request does not result in a substantial change in the amount, configuration, or character of open space or recreation approved by the BCC or ZC; [Ord. 2008-003]
- ~~fg.~~ The redesignation of phasing provided the request meets the intent of the development order; [Ord. 2008-003]
- ~~gh.~~ The modification shall not substantially change or increase the impacts reviewed in the original development order; The applicant shall demonstrate compliance with Article 2.F, Concurrency (Adequate Public Facilities) for any increase in density or intensity beyond the original development order; [Ord. 2008-003]
- ~~hi.~~ The modification shall not result in any substantial increase in traffic or access, as determined by PBC The applicant shall demonstrate compliance with Article 12, Traffic Performance Standards without additional conditions of approval to ensure compliance, as determined by the County Engineer for any increase in traffic impact beyond what was reviewed and approved in the original development order; and [Ord. 2008-003]
- ~~ij.~~ Requested uses shall remain in the location approved by the BCC, unless a condition of approval allows relocation. [Ord. 2008-003]

Part 9. ULDC, Art. 2.D.2.C, Procedure (page 30 of 53), is hereby amended as follows:

CHAPTER D ADMINISTRATIVE PROCESS

Section 2 Special Permit

C. Procedure-Application Requirements

1. Contents of Application

The application shall be submitted in a form established by the Zoning Director ~~and made available to the public.~~ The applicant shall provide proof of a A business tax receipt ~~must be obtained~~ and all permits must be posted on the site prior to commencement of operation. If a survey is required, the applicant shall comply with any requirements pursuant to the survey shall indicate: the Technical Manual for application requirements. [Ord. 2007-013]

- ~~a. Location of existing and proposed signage;~~
- ~~b. Square footage of the designated area;~~
- ~~c. Location, setback, and footprint of tent, if applicable;~~
- ~~d. Required setbacks for products (trees, etc); and~~
- ~~e. Location where permit will be posted.~~

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EXHIBIT B

**ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS
(Updated 09/29/09)**

1
2 **Part 10. ULDC, Table. 2.E.3.B, Time Limitation of Development Order for Each Phase (page 42**
3 **of 53), is hereby amended as follows:**
4

Table 2.E.3.B - Time Limitation of Development Order for Each Phase

TYPE OF DEVELOPMENT ORDER	MAXIMUM NUMBER OF PHASES	NEXT REQUIRED ACTION OR DEVELOPMENT ORDER	MAXIMUM TIME TO RECEIVE DEVELOPMENT PERMIT OR COMMENCE DEVELOPMENT	MAXIMUM LENGTH OF ADMINISTRATIVE TIME EXTENSION ⁴	ACTION UPON FAILURE TO COMPLY WITH TIME REQUIREMENT WITHOUT AN APPROVED TIME EXTENSION	
....						
REZONING TO <u>TO</u> NONRESIDENTIAL- <u>STANDARD ZONING DISTRICT</u> Non-PDD or TDD (Including any associated variance(s))	2	Commence development ¹	Three years ^{2,7}	Twenty-four months	BCC review pursuant to subsections Article 2.E.2.A, Suspension of Development Orders and Article 2.E.2.D, Failure to Comply with Conditions herein	
CONDITIONAL USES <u>CLASS A AND CLASS B</u> , REQUESTED USES <u>INCLUDING THOSE IN PDDs, and TDDs</u> (Including any associated variance(s))	2 ⁵	Commence development or utilize Conditional Use or Requested Use if no construction is required ¹	Three years ^{2,7}	Twenty-four months	Pursuant to subsections Article 2.E.2.A, Suspension of Development Orders and Article 2.E.2.D, Failure to Comply with Conditions herein: Class A - BCC review; Class B - Zoning Commission review	
<u>NONRESIDENTIAL PDD: NON-PLANNED UNIT DEV. (PUD)</u>	4	Commence development ¹	Three years ^{2,7}	Twenty-four months	BCC review pursuant to subsections Article 2.E.2.A, Suspension of Development Orders and Art.2.E.2.D herein	
PDD: PUD; TDD: <u>TRADITIONAL NEIGHBORHOOD DEV.</u> (TND) (Including any associated variance(s))	no maximum	Record plat ^{6,8}	Three years ^{2,7}	Twelve Months ⁹	BCC review pursuant to subsections Article 2.E.2.A, Suspension of Development Orders and Article 2.E.2.D, Failure to Comply with Conditions herein	
TDD (Including any associated variance(s))	TMD IN THE AGR TIER	<u>1</u> 2 ¹⁰	Commence development ¹	Twenty-four months	BCC review pursuant to subsections Article 2.E.2.A, Suspension of Development Orders and Article 2.E.2.D, Failure to Comply with Conditions herein	
	TMD IN THE U/S TIER	4	Commence development ¹			Three years ^{2,7} Or, for a TTD, as may be recommended by DRI or local government conditions of approval
	TMD IN ALL OTHER TIERS AND TDD	No maximum	Commence development ¹			Three years ^{2,7} Or, for a TTD, as may be recommended by DRI or local government conditions of approval

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EXHIBIT B

**ARTICLE 2 – DEVELOPMENT REVIEW PROCESS
SUMMARY OF AMENDMENTS
(Updated 09/29/09)**

1

Table 2.E.3.B - Time Limitation of Development Order for Each Phase Con't

TYPE OF DEVELOPMENT ORDER		MAXIMUM NUMBER OF PHASES	NEXT REQUIRED ACTION OR DEVELOPMENT ORDER	MAXIMUM TIME TO RECEIVE DEVELOPMENT PERMIT OR COMMENCE DEVELOPMENT	MAXIMUM LENGTH OF ADMINISTRATIVE TIME EXTENSION ⁴	<u>ACTION UPON FAILURE TO COMPLY WITH</u> TIME REQUIREMENT WITHOUT AN APPROVED TIME EXTENSION
DEVELOPMENT ORDERS WHICH AT THE TIME OF <u>CERTIFICATION DRO REVIEW AND APPROVAL</u> ARE NOT ASSOCIATED WITH ANY OTHER DEVELOPMENT ORDER <u>THAT</u> WHICH IS SUBJECT TO THE REQUIREMENTS OF Art. 2.E (THOSE LISTED ABOVE):	SITE PLAN	2	Commence development ¹	Four years ^{3,7}	No extensions permitted	Plan null and void for the undeveloped phases of a site plan, and unplatted phases of a subdivision plan.
	FINAL SUB-DIVISION PLAN: NON-RESIDENTIAL	2	Commence development ¹	Four years ^{3,7}		
	FINAL SUB-DIVISION PLAN: RESIDENTIAL	no maximum	Record plat	three years ^{3,7}	Twelve months ⁹	
	NON CON-CURRENT VARIANCES	N/A	Commence Development	One Year	24 months	Variance becomes null & void if applicable
Ord. 2005 – 002] [Ord. 2006-004] [Ord. 2007-01] [Ord. 2008-003] [Ord. 2008-037]						
Notes:						
....						
<u>10. All Certificates of Occupancy for the second phase shall be issued no later than five years from the date of issuance of the first CO for the first phase.</u>						

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1
2 Part 1. ULDC, Figure. 3.B.15.F.4, WCRAO Sub-area Building Configurations and Lot
3 Placement (page 44 of 155), is hereby amended as follows:
4

Figure 3.B.15.F.4 - WCRAO Sub-area Building Configurations and Lot Placements

Sub-area	Maximum Height, Number of Floors, and Uses by Floor	PDRs - Setbacks, Building Area, and Maximum Building Coverage
UG		
UH		
UI		

KEY for allowable usage by floor:*

R= Residential O= Office
C= Commercial I= Industrial
Cv= Civic Rc= Recreational
All= R, O, C, I, Cv, Rc

Key for setbacks:

f= front setback ss= side setback
s= side setback r= Rear Setback
ZD= Regulations of Applicable Zoning District

Building coverage
 Buildable Area

* Use allowed by floor only where permitted by existing zoning district, and the mixed use provisions of Table 3.B.15.E-5, WCRAO Mixed Use.

[Ord. 2006-004]

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EXHIBIT C

**ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)**

1
2 Part 2. ULDC, Table 3.B.15.G, WCRAO Supplementary Standards by Sub-area (page 45 of
3 155), is hereby amended as follows:
4

Table 3.B.15.G – WCRAO Supplementary Standards by Sub-Area

Sub-areas	NR	NRM	NG	NC	UG	UH	UI
Minimum Enclosed Living Area							
Single Family Dwelling Unit	1,000 s.f.	1,000 s.f.	-	-	-	-	-
Accessory Dwelling	300 s.f.	300 s.f.	300 s.f.	-	-	-	-
Fences and Walls:							
Prohibited Materials	Chain link, wire mesh, barbed wire, wood basket weave, or corrugated metal panels						
Architectural Features:							
Arcades and Galleries ¹	-	-	-	Required – Westgate Avenue	-	-	-
Minimum Building Depth	-	20'	20'	20'	30'	-	30'
Minimum 1 st Floor Height	-	-	-	12'	-	-	-
Minimum Number of Floors	-	-	-	2 ²	-	-	-
Windows and Doors:							
Minimum Glazing of Frontage ³	-	³	³	³	-	-	-
Porches, Balconies and Entryways							
Front Setback Maximum Encroachment	8'	6'	6'	-	-	-	-
Min/Max Porch Depth ⁴	6'/10'			-	-	-	-
Min/Max Porch Length ⁴	8'/50% of building façade			-	-	-	-
Min/Max Balcony Depth	3'/3'			-	-	-	-
Min/Max Balcony Length	6'/50% total of building façade			-	-	-	-
Parking:							
Location of Surface Parking	-	Rear	Rear	Rear	-	-	-
Driveways ⁵	-	Rear	Rear	Rear	-	-	-
Location of Accessory Dwellings and Garages:							
Detached	Location	Back of rear façade of primary structures.		-	-	-	-
	Setbacks	5' side or rear ⁶		-	-	-	-
Attached	Location	Setback a min. of 20' from front façade		-	-	-	-
Landscaping:							
See Article 7, Landscaping for provisions allowing for reduction in Perimeter and foundation planting requirements.							
Min. Pervious Surface Area	-	20%	20%	20%	-	-	-
Key							
-	Subject to the supplementary standards of the lot's zoning district						
[Ord. 2006-004]							
Notes:							
1. See Art. 3.B.15.G.3.d, Arcades and Galleries, Figure 3.B.15.G-4, WCRAO Arcade and Gallery Standards.							
2. Required second floor shall meet minimum frontage and depth requirements.							
3. See Art. 3.B.15.G.3.c, Fenestration Details – Windows and Doors.							
4. Excludes stoops.							
5. Access from the front or side may be permitted for lots with no rear street frontage.							
6. Minimum 20 foot setback shall be required for garages fronting on a street or alley.							
7. <u>Chain link fences may be installed for the following:</u>							
a. <u>Single-family residential use provided a continuous native hedge is planted along the exterior side of the fence and adequate room for maintenance is provided along the property lines adjacent to public R-O-W. The hedge shall be maintained at the same height as the chain link fence. Black or green vinyl coated chain link fence may be installed along remaining perimeter property lines not adjacent to a public R-O-W.</u>							
b. <u>Nonresidential uses within the UI sub-area if the chain link fence is black or green vinyl coated.</u>							

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1 Part 3. ULDC, Art. 3.B.15.G.1.a, Accessory Structures (page 45 of 155), is hereby amended as
2 follows:
3

4 CHAPTER B OVERLAYS

5 Section 15 WCRAO, Westgate Community Redevelopment Area Overlay

- 6 G. Supplementary Standards
- 7 1. Accessory and Prohibited Uses
- 8 a. Accessory Structures

9 Accessory structures shall be architecturally compatible with the principal building, with
10 exception to accessory structures such as small sheds associated with single-family
11 residences (excluding garages), when less than 150 square feet in size and ten feet in
12 height, and completely screened from all public right-of-ways.
13

14
15 Part 4. ULDC, Art. 3.D.2.C, ZLL Design Standards, (page 66 of 155), is hereby amended as
16 follows:
17

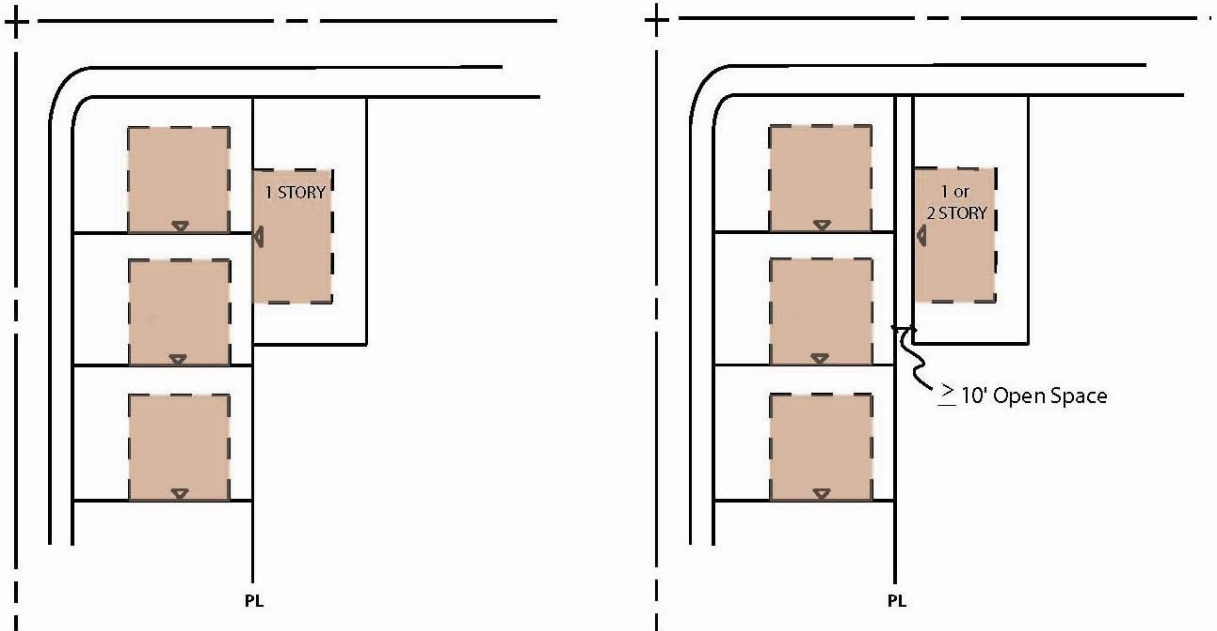
18 CHAPTER D PROPERTY DEVELOPMENT REGULATIONS (PDRS)

19 Section 2 PDRs for Specific Housing Types

20 C. ZLL Design Standards

- 21
- 22 **3. Height Limitation**
- 23 Buildings or structures shall not exceed 35 feet in height. Lots with a ZLL side that abuts or is
24 separated from the rear property line of an adjacent lot by less than 10 feet shall be limited to
25 one story in height.
26 [Renumber accordingly.]
27

28 **Figure 3.D.2.C-8, ZLL Height Limitations Based on Separation**



29
30
31
32 Part 5. ULDC, Art. 3.D.3.A.2.a, Hours of Operation, (page 69 of 155), is hereby amended as
33 follows:
34

35 CHAPTER D PROPERTY DEVELOPMENT REGULATIONS (PDRS)

36 Section 3 District Specific Regulations

- 37 A. District Specific Regulations
- 38 Additional PDRs shall apply in certain districts as follows:
- 39 2. All ~~Standard Commercial, Public and Civic Uses Districts, PDDs and TDDs~~
- 40 a. Hours of Operation

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

Commercial, Public and Civic uses located within 250 feet of adjacent to a residential district shall not commence business activities, including deliveries and stocking, prior to 6:00 AM nor continue business activities later than 11:00 PM daily. Measurement shall be taken by drawing a straight line from the closest point on the perimeter of the residential district to the closest point on the perimeter of the exterior wall, structure, or bay, housing the non-residential use.

1) **Existing Uses**

Uses existing prior to this amendment may comply with the requirements existing at the time the use was established, unless modified by a subsequent development order.

2) **Exemptions**

Uses owned or operated by a governmental entity that provide essential services for the public, as determined by the Zoning Director, shall be exempt from these standards.

Part 6. ULDC, Art. 3.E.1.A, General [Related to PDD’s] (pages 70-72 of 155), is hereby amended as follows:

CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDS)

Section 1 General

A. General

1. Purpose and Intent

The purpose of (PDDs) is to provide opportunities for development patterns which exceed the expectations of the standard zoning districts, and allow for the creative use of land, ~~and which result in quality development~~. The types of development addressed in this Chapter include those encouraged by the Managed Growth Tier System (MGTS) in the Plan. The intent of this Chapter is to encourage ingenuity, and imagination on the part of, architects, landscape architects, engineers, planners, developers, and builders to create development that promotes sustainable living, addresses traffic impacts, encourages alternative modes of transportation, creates logical street and transportation networks, preserves the natural environment, enhances the built environment, provides housing choices, provides services to the community, encourages economic growth, encourages infill development and redevelopment, and minimizes impacts on surrounding areas through the use of flexible and innovative land development techniques.

2. Applicability

In addition to the other Articles in this Code, the requirements of this Chapter shall apply to all PDDs, modifications to previously approved PDDs, and modifications to previously approved special exceptions for planned developments, unless otherwise stated.

a. **Previous Approvals**

Previously approved planned developments with a valid development order that does not conform to provisions in this Code shall be considered conforming in accordance with Art. 1.E. Prior Approvals. Nonconforming uses shall comply with 1.F. Nonconformities, and any other applicable requirements, unless stated otherwise herein. [Relocated from below, previously Nonconforming Standards.]

1. **Development Order Amendment**

Any DOA to a prior approval, including but not limited to additional requested uses, changes exceeding the thresholds for DRO amendments, rezoning, or any other Zoning process requiring BCC approval, shall be required to rezone to a PDD. An exception shall be permitted where the affected area of the request does not include all property owners and consent cannot be obtained.

2. **Additional Requested Uses**

Previously approved “Additional Requested Uses” shall remain conforming uses, and may be modified or expanded, subject to a DOA Approval. [Ord. 2005 – 002] [Relocated from below, previously Nonconforming Standards]

b. **Government Facilities**

A parcel of land in any FLU category that supports government facilities shall be exempt from the PDD threshold provisions. [Ord. 2007-013] [Relocated from below, previously Thresholds/Government Facilities.]

3. Conflicts

If a conflict exists between this Chapter and other Articles in this Code, the provisions of this Chapter shall apply to the extent of the conflict.

4. **Nonconforming Standards**

~~Previously approved planned developments with a valid development order that does not conform to provisions in this Code shall be considered conforming. Nonconforming uses~~

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

~~shall comply with Article 1.E, PRIOR APPROVALS, and any other applicable requirements.~~
[Relocated above to Previous Approvals.]

a. Additional Requested Uses

~~Previously approved “Additional Requested Uses” shall remain conforming uses, and may be modified or expanded, subject to a DOA Approval. [Ord. 2005 – 002]~~
[Relocated above to Previous Approvals]

5. Thresholds

~~PDDs approved after the effective date of this Code shall meet or exceed the minimum threshold requirements of the applicable PDD. The minimum thresholds shall not apply to previously approved planned developments.~~

a. Government Facilities

~~A parcel of land in any FLU category that supports government facilities shall be exempt from the PDD threshold provisions. [Ord. 2007-013]~~ [Relocated above to Applicability.]

6. Development Order

~~Issuance of a development order for a PDD shall be deemed to authorize an amendment to the Official Zoning Map.~~

a. Zoning Map Amendment

~~Before any land is designated as a PDD on the Official Zoning Map, it shall receive approval pursuant to the standards and procedures in Article 2.B.1, Official Zoning Map Amendment (Rezoning).~~

1) Exception

~~Previously approved special exceptions for planned developments are hereby zoned to the corresponding PDD. The Official Zoning Map shall be administratively amended to reflect the corresponding PDD designation on land with previously approved special exceptions for planned developments. In cases of uncertainty, the Zoning Director shall decide which PDD designation to apply.~~

b. Conditions

~~The BCC may impose conditions of approval in a development order for a PDD to protect the public health, welfare, and safety; to ensure compliance with the Plan and the requirements of this Code; to ensure off-site road improvements are provided to address the traffic impacts associated with the project; to ensure compatibility between land uses; to prevent or minimize any potential for adverse impacts on the public, adjacent properties, and surrounding communities; and to ensure quality development. The property owner shall be responsible for compliance with conditions of approval imposed by the BCC.~~

c. Successive Owners

~~Conditions imposed by the BCC shall run with the land and shall be binding on all successors with interest in the DRO approval property.~~

d. Development Permits

~~A development permit shall not be issued for any land development in a PDD, nor shall any land development activity commence within a PDD, prior to approval of a site plan or subdivision by the DRO for the affected area.~~

e. Property Development Regulations (PDRs)

~~Land development shall be governed by the PDRs in this Code, the development order, and the regulations indicated on the most recent approved master plan, site plan, or subdivision plan.~~

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

Part 7. ULDC, Art. 3.E.1.B, Future Land Uses and Density (page 72 of 155), is hereby amended as follows:

B. ~~Future Land Uses and~~ FLU Consistency, FAR, Density, and Use Standards

1. Future Land Use (FLU) Designation

The FLU designation which correspond to each PDD are indicated in Table 3.E.1.B-21, FLU Designation and PDD Corresponding Planned Development Districts Land Use.

Table 3.E.1.B – FLU Designation and PDD Corresponding ~~Land Use~~ Planned Development Districts

	AGR ²	RR	LR1	LR2	LR3	MR5	HR8	HR12	HR18	MLU	EDC
PUD	x	x	x	x	x	x	x	x	x	x	
MHPD		x	x	x	x	x	x	x	x		

	AGR ¹	RR	CL	CH	CLO	CHO	IND	INST	CRE	MLU	EDC
MUPD			x	x	x	x	x	x	x	x	x
MXPD			x	x	x	x				x	x
PIPD							x			x	x
RVPD		x							x		

Notes:[Ord. 2008-037]
1. Check (x) indicates the PDD corresponds to the FLU designations. Any application for a rezoning to a PDD shall be to a PDD that corresponds to a FLU designation. [Ord. 2008-037]
2. PDDs in the AGR Tier are limited to the 80/20 PUD OR 60/40 PUD. [Ord. 2006-004]

2. PDDs Split by FLU Designations

a. ~~Residential~~

Uses allowed, PDRs, ~~and~~ density and intensity shall be determined by the land use designation on the affected area. In the U/S Tier, density Density may be transferred from one portion of the project to another based on the gross acreage of the project.

b. ~~Nonresidential~~

~~Uses allowed, PDRs, and intensity for the entire PDD shall be governed by the less intense land use designation.~~

3. Density

a. Computation

Density shall be based on the gross acreage of the planned development. Fractions shall be rounded down to the nearest whole number. [Relocated from below.]

b. Minimum Density

The minimum density which may be imposed by the BCC in a PUD is indicated in Table 3.E.1.B-23, PUD Density. An applicant may voluntarily agree to a lesser density. The Planning Director may waive the minimum density requirement in the HR FLU designations by up to 25 percent, per the FLUE minimum density exemption Section of the Plan. [Relocated from below.]

c. Maximum Density

The maximum density shall only be awarded to a PUD meeting the goals, policies and objectives in the Plan. The maximum density allowed in a PUD is indicated in Table 3.E.1.B-23, PUD Density. The actual density granted by the BCC to a planned development may be less than the maximum density allowed. [Relocated from below.]

1) Density Bonus Programs

A PDD may qualify for additional units over the maximum density pursuant to Art. 5.G.1, Workforce Housing Program (WHP), Art. 5.G.2, Transfer of Development Rights, or other density bonus program allowed by the Plan. [Ord. 2005 – 002] [Relocated from below.]

Table 3.E.1.B-23 - PUD Density

	AGR	RR	LR1	LR2	LR3	MR5	HR8	HR12	HR18
MIN	0.5 du/ac	(1)	0.5 du/ac	1 du/ac	2 du/ac	3 du/ac	5 du/ac	5 du/ac	5 du/ac
MAX	1 du/ac	(2)	1 du/ac	2 du/ac	3 du/ac	5 du/ac	8 du/ac	12 du/ac	18 du/ac

[Ord. 2006-004]
Notes:
1. The minimum density in the RR FLU designation for a PUD are as follows: RR20 – 0.5 unit/20 acres; RR10 0.5 unit/10 acres; RR5 – 0.5 unit/5 acres; RR2.5 – 0.5 unit/2.5acres.
2. The maximum density in the RR FLU designations for a PUD are as follows: RR20 – 1 unit/20 acres; RR10 – 1 unit/10 acres; RR5 – 1 unit/5 acres; RR2.5 - 1 unit/2.5acres.

[Relocated from below.]

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EXHIBIT C

**ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)**

d. MXPDP/PIPD

Density in a MXPDP or PIPD shall be determined by the underlying residential FLU designation and correspond to Table 3.E.1.B-23, PUD Density. Land with a commercial or industrial land use designation without an underlying residential land use designation shall be assigned a compatible residential density by the Planning Director in accordance with the Plan. [Relocated from below.]

e. MLU

Density in a MLU land use designation shall be determined by the underlying residential FLU designation(s) and correspond to Table 3.E.1.B-23, PUD Density. Land without an underlying residential land use designation(s) shall be assigned a compatible residential density by the Planning Director in accordance with FLUE Policy 4.4.2-b of the Plan. [Relocated from below.]

43. Uses Allowed

....

54. Use Regulations

....

5. Density

a. Computation

~~Density shall be based on the gross acreage of the planned development, unless otherwise indicated. Fractions shall be rounded down to the nearest whole number. [Relocated above]~~

b. Minimum Density

~~The minimum density which may be imposed by the BCC in a PUD is indicated in Table 3.E.1.B-23, PUD Density. An applicant may voluntarily agree to a lesser density. The Planning Director may waive the minimum density requirement in the HR FLU designations by up to 25 percent. [Relocated above]~~

Table 3.E.1.B-23 – PUD Density

	AGR	RR	LR1	LR2	LR3	MR5	HR8	HR12	HR18
MIN	0.5 du/ac	(1)	0.5 du/ac	1 du/ac	2 du/ac	3 du/ac	5 du/ac	5 du/ac	5 du/ac
MAX	1 du/ac	(2)	1 du/ac	2 du/ac	3 du/ac	5 du/ac	8 du/ac	12 du/ac	18 du/ac

[Ord. 2006-004]

Notes:

1. The minimum density in the RR FLU designation for a PUD are as follows: RR20 – 0.5 unit/20 acres; RR10 0.5 unit/10 acres; RR5 – 0.5 unit/5 acres; RR2.5 – 0.5 unit/2.5 acres.

2. The maximum density in the RR FLU designations for a PUD are as follows: RR20 – 1 unit/20 acres; RR10 – 1 unit/10 acres; RR5 – 1 unit/5 acres; RR2.5 – 1 unit/2.5 acres.

[Relocated above]

c. Maximum Density

~~The maximum density shall only be awarded to a PUD meeting the goals, policies and objectives in the Plan. The maximum density allowed in a PUD is indicated in Table 3.E.1.B-23, PUD Density. The actual density granted by the BCC to a planned development may be less than the maximum density allowed. [Relocated above]~~

1) Density Bonus Programs

~~A PDD may qualify for additional units over the maximum density pursuant to Art. 5.G.1, Workforce Housing Program (WHP), Art. 5.G.2, Transfer of Development Rights, or other density bonus program allowed by the Plan. [Ord. 2005 – 002]~~

[Relocated above]

d. MXPDP/PIPD

~~Density in a MXPDP or PIPD shall be determined by the underlying FLU designation and correspond to Table 3.E.1.B-23, PUD Density. Land with a commercial or industrial land use designation without an underlying residential land use designation shall be assigned a compatible residential density by the Planning Director in accordance with the Plan. [Relocated above]~~

e. MLU

~~Density in a MLU land use designation shall be determined by the underlying FLU designations and correspond to Table 3.E.1.B-23, PUD Density. Land without an underlying residential land use designations shall be assigned a compatible residential density by the Planning Director in accordance with the Plan. [Relocated above]~~

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EXHIBIT C

**ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)**

1 Part 8. ULDC, Table 3.E.1.B, PDD Use Matrix (pages 73 – 79 of 155), is hereby amended as
2 follows:
3

Table 3.E.1.B - PDD Use Matrix

Use Type	PUD					MUPD							MXPD				PIPD			M	R	N
	Pods					Land Use Designations							Land Use Designations				Use Zone					
	R	C	R	C	A	C	C	C	C	C	I	I	C	C	C	C	I	C	I			
E	O	E	I	G	L	H	L	H	R	N	N	L	H	L	H	N	O	N	P	P	O	
S	M	C	V	R			O	O		D	S	O	O	O	O	D	M	D	D	D	T	
				P												L	G		D	D	E	
Residential Uses																						
Single Family	P																				122	
Zero Lot Line Home	P											P	P	P	P						142	
Townhouse	P											P	P	P	P						132	
Multi-Family	P											P	P	P	P						87	
Mobile Home Dwelling				S															P		85	
Accessory Dwelling	S			S																	1	
Congregate Living Facility, Type 1	P																				34	
Congregate Living Facility, Type 2	R		S									S	S				S				34	
Congregate Living Facility, Type 3	R	R		R		R	R	R	R		R	R	R	R	R						34	
Estate Kitchen	P																				48	
Farm Residence																					50	
Farm Worker Quarters				P																	51	
Garage Sale	P			P						P		P	P	P	P				P		60	
Guest Cottage	P																				66	
Home Occupation	P			P								P	P	P	P				P		70	
Kennel Type I (Private)	P																				73	
Nursing Or Convalescent Facility		R		R		R	R				D	R	R								90	
Security Or Caretaker Quarters		S		S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	119	
[Ord. 2005-002] [Ord. 2006-036] [Ord. 2007-001] [Ord. 2008-037]																						
Notes:																						
P Permitted by right																						
D Permitted subject to approval by the DRO																						
S Permitted in the district only if approved by Special Permit																						
R Permitted in the district only if approved by the Board of County Commissioners (BCC) as a requested use.																						

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1

Table 3.E.1.B - PDD Use Matrix cont'd

Use Type	PUD					MUPD							MXPD				PIPD								
	Pods					Land Use Designations							Land Use Designations				Use Zone								
	R E S	C O M	R E C	C I V /	A G R /	C L	C H	C L	C H	C O	C O	I R	I N	I N	C L	C H	C L	C O	I N	C O	I N	M H D	R V P D	N O T E	
Commercial Uses																									
Adult Entertainment																					S	S			2
Auction, Enclosed		R					P				P	<u>R</u>										P			16
Auction, Outdoor							R				R	R										P	P	P	16
Auto Paint Or Body Shop		R					R				R											P	P	P	17
Auto Service Station		R				R	R				R			<u>R</u>	R							P	P	P	18
Bed And Breakfast	D	D				S	S	S	S	S				<u>S</u>	S	<u>S</u>	S					S			20
Broadcast Studio		R				R	P	R	P	P	P			<u>R</u>	R	<u>R</u>	R					P	P		21
Building Supplies		R					R								R							P			22
Butcher Shop, Wholesale							R					P			R							P	P	P	23
Car Wash		R					R					P			R							P	P	P	25
Catering Service																									26
Contractor Storage Yard												P										P	P		35
Convenience Store		P				P	P							<u>P</u>	P	<u>P</u>	P					P		P	36
Convenience Store With Gas Sales							R					R			R							R	P		37
Day Labor Employment Service		R					R					R											P		41
Dispatching Office							R								R							P	P	P	42
Dog Day Care							R								R							P	R		43
Financial Institution		R				R	P	R	P					<u>R</u>	P	<u>R</u>	P					P			55
Flea Market, Enclosed		P					R								R								P		57
Flea Market, Open							R																R		58
Funeral Home or Crematory		P				R	R					R			R								P		59
Green Market																									64
Hotel, Motel, SRO, Rooming And Boarding							R			R	R				R		R						P		72
Kennel, Type II (Commercial)		R					R								R										74-1
Kennel, Type III (Commercial - Enclosed)		R				R	R							<u>R</u>	R										74-2
Kiosk						P	P	P	P	P				<u>P</u>	P	<u>P</u>	P					P	P	P	75
Landscape Service		R					R					P			R							P	P	P	77
Laundry Services		R				P	P	P	P					<u>P</u>	P	<u>P</u>	P					P	P		78
[Ord. 2005-002] [Ord. 2004-051] [Ord. 2006-036] [Ord. 2007-001] [Ord. 2008-037]																									
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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

Table 3.E.1.B - PDD Use Matrix cont'd

Use Type	PUD					MUPD							MXPD				PIPD			M	R	N
	Pods					Land Use Designations							Land Use Designations				Use Zone					
	R	C	R	C	A	C	C	C	C	C	I	I	C	C	C	C	I	C	I			
E	O	E	I	G	L	H	L	H	R	N	N	L	H	L	H	N	O	N	D	P	D	
S	M	C	V	R			O	O		D	S			O	O	L		G				
				P							T											
Commercial Uses																						
Lounge, Cocktail		R				R	P		P	P			<u>R</u>	P		R		P				79
Medical Or Dental Office		P				P	P	P	P				P	P	<u>P</u>	P		P				83
Monument Sales, Retail						P	P						<u>P</u>	P				P				86
Office, Business Or Professional		P				P	P	P	P				<u>P</u>	P	<u>P</u>	P		P				91
Parking Garage, Commercial		P					R		R	R								P				95
Parking Lot, Commercial		R					R		R	P												96
Pawnshop							R															97
Personal Services		P				P	P	P	P				<u>P</u>	P	<u>P</u>	P		P		P		98
Printing And Copying Services		P				P	P	P	P				<u>P</u>	P	<u>P</u>	P		P				100
Repair And Maintenance, General		R					R				P						P	P	P			107
Repair Services, Limited		P				P	P	P	P		P		<u>P</u>	P	<u>P</u>	P		P				108
Restaurant, Type I		R				<u>R</u>	R		R					R		R		R				109
Restaurant, Type II		R				R	D	R	R	R			<u>R</u>	D	<u>R</u>	R		R				111
Retail Sales, Auto		P				P	P						<u>P</u>	P	<u>P</u>	P		P				113
Retail Sales, General		P				P	P						<u>P</u>	P	<u>P</u>	P		P				114
Retail Sales, Mobile Or Temporary		S											<u>S</u>	S				S				115
Self-Service Storage						R	R				P						P	R	P			120
Theater, Drive-In							R			R								R				128
Theater, Indoor		R					R			P				R								129
Towing Service And Storage											P						P					130
Vehicle Sales And Rental		R				R	R						<u>R</u>	R				R				135
Veterinary Clinic		R				R	P	R	P				<u>R</u>	R	<u>R</u>	R		P				136
Vocational School		R				R	P		P		P	D	<u>R</u>	R		R		P				137
Work/Live Space		P				P	P	P	P				<u>P</u>	P	<u>P</u>	P		P				141
[Ord. 2005-002] [Ord. 2006-004] [Ord. 2007-001] [Ord. 2007-013]																						
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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

Table 3.E.1.B – PDD Use Matrix cont'd

Use Type	PUD					MUPD							MXPD				PIPD			M	R	N
	Pods					Land Use Designations							Land Use Designations				Use Zone					
	R	C	R	C	A	C	C	C	C	C	I	I	C	C	C	C	I	C	I			
E	O	E	I	G	L	H	L	H	R	N	N	L	H	L	H	N	O	N	P	P	P	
S	M	C	V	R			O	O		D	S			O	O	D	M	D	D	D	D	
				P						T						L		G				
Public and Civic Uses																						
Airport, Helipad & Landing Strip									R	R						R		R			10	
Assembly, Nonprofit Institutional		R		R		R	R			R		R	<u>R</u>	R	<u>R</u>	R		R			14	
Assembly, Nonprofit Membership				R		R	R	R	R	R		R	<u>R</u>	R	<u>R</u>	R		R			15	
Cemetery				R																	27	
Place Of Worship		R		R		R	R	R	R	R		R	R	R	R				R		29	
College Or University				R		R	R	R	R	R	R	<u>R</u>	R				R				30	
Day Camp			P	P			R			P	P		R								39	
Day Care, General		R		R		R	R	R	R	R		R	<u>R</u>	R	<u>R</u>	R	R	R	R	R	40	
Day Care, Limited		P		P		P	P	P	P	P	P	<u>P</u>	P	<u>P</u>	P	P	P	P	P	P	40	
Government Services		P		P		P	P	P	P	P	P	<u>P</u>	P	<u>P</u>	P	P	P	P	P	P	63	
Hospital Or Medical Center		R				R	R		R			R	<u>R</u>	R		R		R			71	
Kennel, Type IV (Animal Shelter)						R	R					R	<u>R</u>	R							74-3	
School, Elementary Or Secondary				R		R	R	R	R		D	<u>R</u>	R		R		R				118	
Public and Civic Uses																						
Arena, Auditorium Or Stadium		R					R			R			R								12	
Campground										P										P	24	
Entertainment, Indoor		R				R	R			P			<u>R</u>	R				P			45	
Entertainment, Outdoor		R				R	R			P	D		<u>R</u>	R				P			46	
Fitness Center		R	P	R		R	R		R	P			<u>R</u>	P		P		P			56	
Golf Course			R			R	R	R	R	R	R		<u>R</u>	R	<u>R</u>	R	P		P	R	62	
Gun Club, Enclosed							R			R	R						P	R	P		67	
Gun Club, Open										R											67	
Gun Range, Private																	P	R	P		68	
Marine Facility		R	R				R		R	R			R		R		P				82	
Park, Passive	P	P	P	P	R	P	P	P	P	P	P	<u>P</u>	P	<u>P</u>	P	P	P	P	P	P	93	
Park, Public			P	P		R	P			P	P	P	<u>R</u>	P	<u>R</u>	P		P		R	94	
Special Event		S	S	S		S	S			S	S	S	<u>S</u>	S				S	S		124	
Zoo							R			R											143	
[Ord. 2005-002] [Ord. 2006-004] [Ord. 2006-013] [Ord. 2008-037]																						
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EXHIBIT C

**ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)**

Table 3.E.1.B - PDD Use Matrix cont'd

Use Type	PUD					MUPD							MXPD				PIPD			M	R	N
	Pods					Land Use Designations							Land Use Designations				Use Zone					
	R	C	R	C	A	C	C	C	C	C	I	I	C	C	C	C	I	C	I			
E	O	E	I	G	L	H	L	H	R	N	N	L	H	L	H	N	O	N	H	V	O	
S	M	C	V	R			O	O		D	S			O	O	D	M	D	D	P	T	
				P												L		G	D	D	E	
Agricultural Uses																						
Agriculture, Bona Fide				P																	3	
Agriculture, Light Manufacturing																					4	
Agriculture, Packing Plant																					5	
Agriculture, Research/Development					P	P	P	P	P	P	P					P		P			3.1	
Agriculture, Sales And Service						P											P				6	
Agriculture, Storage																					7	
Agriculture, Transshipment										P						P		P			8	
Aviculture, Hobby Breeder				P																	19	
Community Vegetable Garden																					32	
Equestrian Arena, Commercial				R						P											47	
Farmers Market						P			P			P				P	P	P			52	
Farrier																					53	
Groom's Quarters	P			P																	65	
Nursery, Retail		P		P	P							P					P				88	
Nursery, Wholesale				P												P		P			89	
Potting Soil Manufacturing																					99	
Produce Stand																					101	
Shadehouse				P																	121	
Stable, Commercial				P					P												125	
Stable, Private	P			P																	126	
Sugar Mill Or Refinery																		P			127	
[Ord. 2005-002] [Ord. 2006-036] [Ord. 2008-037]																						
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EXHIBIT C

**ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)**

Table 3.E.1.B - PDD Use Matrix cont'd

Use Type	PUD					MUPD						MXPD				PIPD			M	R	N
	Pods					Land Use Designations						Land Use Designations				Use Zone					
	R	C	R	C	A	C	C	C	C	C	I	I	C	C	C	C	I	C			
E	O	E	I	G	L	H	L	H	R	N	N	L	H	L	H	N	O	N	D	P	O
S	M	C	V	R			O	O		D	S			O	O	D	M	D	P	P	T
				/												/	/		D	D	E
				P																	
Industrial Uses																					
Asphalt Or Concrete Plant											R							P			13
Data Information Processing					P	P		P		P		P	P		P	P	P	P			38
Film Production Studio						P		P	R	P						P	P	P			54
Gas And Fuel, Wholesale										R								P			61
Heavy Industry										R						R		P			69
Laboratory, Research					R	R	R	R	R	P	R	R	R			P	R	P			76
Machine Or Welding Shop										P						P		P			80
Manufacturing And Processing					R	R	R	R	R	P						P		P			81
Medical Or Dental Laboratory		P			P	P	P	P								P					84
Salvage Or Junk Yard										R								R			116
Transportation Facility																P		P			133
Truck Stop										R						R		R			131
Warehouse						R				P						P		P			138
Wholesaling, General										P						P		P			140
[Ord. 2005-002] [Ord. 2004-040]																					
Notes:																					
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Part 9. ULDC, Art. 3.E.1.C.2.h, Parking (page 82 of 155), is hereby amended as follows:

CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDs)

Section 1 General

C. Objectives and Standards

2. Performance Standards

Planned developments shall comply with the following standards:

h. Parking

1) Residential Uses

Parking for residential uses located within a PDD shall comply with Article 6, PARKING. The DRO may require a covenant to be recorded limiting the affected area to a specific use or uses.

2) Nonresidential Uses

Nonresidential uses located within a PDD may apply the parking standards indicated in Table 6.A.1.B, Minimum Off-Street Parking and Loading Requirements or the minimum/maximum parking standards below. The site plan shall clearly indicate which parking standards are being utilized for the entire site. Parking for nonresidential uses shall comply with the following requirements:

a) Minimum/Maximum Parking Standards

- (1) Minimum: one space per 250 square feet of GFA (4/1000)
- (2) Maximum: one space per 166.66 square feet of GFA (6/1000)

b) Exceptions

~~(1) Requested Uses~~

~~Parking for requested uses may comply with Table 6.A.1.B-1, Minimum Off-Street Parking and Loading Requirements. The DRO may require a covenant to be recorded limiting the affected parking area to a specific use or uses.~~

~~(2) MLU/EDC~~

~~Parking for large scale and regional facilities in excess of 500,000 gross square feet may be reduced to one space per 333.33 square feet of GFA (3/1000)~~

~~(3) Shared Parking~~

~~The minimum number of parking spaces required may be reduced in accordance with Article 6.A.1.D.10, Shared Parking.~~

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1 Part 10. ULDC, Art. 3.E.1.D, Application Requirements [Related to PDDs] (page 83 of 155), is
2 hereby amended as follows:
3

4 CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDs)

5 Section 1 General

6 D. Application Requirements

7 ~~For a rezoning to a PDD, the applicant shall comply with In addition to~~ the requirements in Article
8 2.B.1, Official Zoning Map Amendment (Rezoning), Art.2.A.1.G.1, Application Procedure, General
9 and Art.2.A.1.G.2, Plan Requirements ~~the following information~~ for certification and final approval
10 by the DRO.:

11 1. Master Plan Site Plan, or Subdivision Plan

12 ~~See Art.2.A.1.G.2, Plan Requirements for preparation of plan(s) and plan labeling~~
13 ~~requirements. The BCC shall approve a master plan for the following PDDs: PUD, RVPD,~~
14 ~~MHPD, PIPD, and any planned development or combination of PDDs, in a MLU or EDC. The~~
15 ~~master plan shall be designed in accordance with the objectives and standards in this Section~~
16 ~~and the requirements for each PDD.~~

17 a. **General**

18 ~~The master plan shall be the controlling document for the PDD. All development, access,~~
19 ~~density, and intensity in the PDD shall be consistent with the master plan. All site plans,~~
20 ~~subdivisions and plats shall be consistent with the master plan. In cases of conflict~~
21 ~~between plans, the most recent approved master plan by the DRO shall control to the~~
22 ~~extent of the conflict. Preliminary development plans approved in accordance with Ord.~~
23 ~~92-7 shall be considered master plans.~~

24 ba. **Effect of BCC Approval on Plans**

25 Approval of a preliminary master plan, site plan or subdivision plan, as applicable, by the
26 BCC shall be binding upon the landowners subject to the development order, their
27 successors and assignees, and shall constitute the development regulations for the land.
28 Development of the land shall be limited to the uses, density, intensity, access,
29 configuration, and all other elements and conditions set forth on the master plan(s) and in
30 the Development Order. Administrative modifications to a master or site plan may only be
31 allowed in accordance with Article 2.D.1, Development Review Officer and Art.2.A.1.G.2,
32 Plan Requirements. In granting an approval, the BCC relies on the oral and written
33 representations of the petitioner both on the record and as part of the application
34 process. Deviations from or violation of these representations shall cause the approval to
35 be reviewed by the BCC as a DOA.

36 cb. **Pods**

37 All land within the boundaries of a ~~M~~ master P plan shall be designated one of the use
38 types indicated in Table 3.E.1.B-22, PDD Use Matrix.

39 1) **Exceptions**

40 Perimeter landscape buffers, water management tracts not located in pods, canals,
41 primary streets, open space, and similar areas allowed by the DRO.

42 dc. **Tabular Data**

43 Each pod shall clearly indicate the acreage and proposed density/intensity. Tabular data
44 for the entire project shall be provided in a form acceptable to the DRO.

45 e. **Site Plan/Subdivision Approval Required**

46 ~~All land shown on a master plan shall receive approval of a site plan and/or subdivision~~
47 ~~plan by the DRO, in accordance with Article 2.D.1, Development Review Officer.~~

48 1) ~~The applicant may, submit a conceptual site plan with the application for a PUD. The~~
49 ~~conceptual site plan may be preliminary in nature and reflect the general layout and~~
50 ~~design of the PUD. A conceptual site plan is not required to meet the technical~~
51 ~~requirements of the DRO and is intended as a graphic representation of the project~~
52 ~~only for presentation purposes.~~

53 fd. **Density**

54 The number of units shown on a site plan or subdivision plan shall correspond to the
55 master plan.

56 ge. **Intensity**

57 The intensity (e.g. square feet, beds, seats, no. of children/occupants/rooms, etc.) shown
58 on a site plan or subdivision plan shall correspond to the master plan.

59 2. **Site Plan**

60 ~~The BCC shall approve a site plan for the following PDDs: MXPd, MUPD, equivalent~~
61 ~~previously approved planned developments, Optional Residential pods in a PUD, and~~
62 ~~requested uses. The site plan shall be designed in accordance with the objectives and~~
63 ~~standards in this Chapter, the requirements for each planned development, the standards~~
64 ~~adopted by the DRO, and this Code.~~

65 a. **General**

Notes:

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

~~The site plan shall be the controlling document for the PDD. All development, access, density, and intensity in the PDD shall be consistent with the site plan. All subdivisions and plats shall be consistent with the site plan.~~

3. Regulating Plan

~~The BCC shall approve a regulating plan for all new PDD's and the affected area of modifications to previously approved PDD's. Regulating plans shall be consistent with the PBC Zoning Division Technical Manual, consisting of a comprehensive graphic and written description of the project. At a minimum, the regulating plan shall consist of the following information, drawn to scale or labeled with dimensions: ~~[Ord. 2005-002] [Ord. 2004-040]~~~~

a. Contents

~~At a minimum, the regulating plan shall consist of the following information, drawn to scale or labeled with dimensions: ~~[Ord. 2004-040]~~~~

- ~~1) street cross sections, including sidewalks, bike lanes, street trees, on street parking and lighting;~~
- ~~2) typical lot layouts for each housing type, including building envelope, screen enclosure/pool setbacks, and driveway access;~~
- ~~3) focal point details;~~
- ~~4) landscape buffer details (plan view and cross section);~~
- ~~5) median landscape detail, if applicable;~~
- ~~6) bus shelter detail, if applicable;~~
- ~~7) master sign program/plan;~~
- ~~8) elevations, if submitted pursuant to Art. 5.C, Design Standards;~~
- ~~9) pedestrian circulation plan in accordance with Art. 3.E, Planned Development Districts (PDDS);~~
- ~~10) phasing plan in accordance with Art. 2.D.1, Development Review Officer;~~
- ~~11) screening details;~~
- ~~12) exemplary features;~~
- ~~13) public amenities;~~
- ~~14) details of entry features; and~~
- ~~15) neighborhood parks.~~

b. Design Standards Alternative

~~Items a.1), a.4), a.5), and a.7) above shall be required to be shown on a Regulating Plan at time of submittal of the application for DRO review (Public Hearing). Items a.2), a.3), a.6), and a.8) through a.15), as may be applicable, shall be indicated in the Design Standards subject to approval by the BCC. ~~[Ord. 2004-040]~~~~

E. Modifications

Modifications to a planned development with a valid development order shall comply with Art. 2.A.1.G.3, Plan Requirements and Article 2.D.1, Development Review Officer.

1. Modifications by the DRO to a Master Plan, Site Plan, Subdivision Plan or Regulating Plan

In addition to Article 2.D.1, Development Review Officer, the DRO shall have the authority to approve modifications to a master plan, subdivision plan, site plan or regulating plan approved by the BCC or ZC, subject to the following limitations. In ~~the~~ case of a conflict with Art.2.A.1.G.2, Plan Requirements and Art. 2, Development Review Procedures, the following standards shall apply. Modifications, which do not comply with these procedures and requirements Art. 2, Review Procedures, or this Section shall require approval by the BCC.

a. Consistency

Modifications shall be consistent with the representations regarding the original approval, the conditions of approval, and the development order. Modifications which change the original goals or intent of the project, such as reduce internal trip capture, reduce non-vehicular circulation or cross access, reduce the amount of affordable housing without a corresponding decrease in density, or reduce the amount of land allocated to the preservation of agriculture, farmland, or wetlands, shall require approval by the BCC.

b. Pods

The re-designation of a pod from one type to another shall require approval by the BCC. The reconfiguration of pods may be approved by the DRO only if determined to be an improvement to the project and no adverse impact on adjacent properties.

....

Part 11. ULDC, Art. 3.E.2.A.2. Applicability [Related to PUD] (page 89 of 155), is hereby amended as follows:

CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDS)

Section 2 Planned Unit Development (PUD)

Notes:

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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1
2 Part 13. ULDC, Art. 3.E.5.A.2. Applicability [Related to PIPD] (page 109 of 155), is hereby
3 amended as follows:
4

5 CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDs)

6 Section 5 Planned Industrial Park Development (PIPD)

7 A. General

8 2. Applicability

9 The requirements of this Section shall apply to all PIPDs, modifications to previously
10 approved PIPDs, and modifications to previously approved special exceptions for PIPDs,
11 unless otherwise stated. Refer to Art. 3.E.1.A.2.a, Previous Approvals for additional
12 requirements.
13
14

15 Part 14. ULDC, Art. 3.E.6.A.2. Applicability [Related to MHPD] (page 112 of 155), is hereby
16 amended as follows:
17

18 CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDs)

19 Section 6 Mobile Home Planned Development District (MHPD)

20 A. General

21 2. Applicability

22 The requirements of this Section shall apply to all MHPDs, modifications to previously
23 approved MHPDs, and modifications to previously approved special exceptions for MHPDs,
24 unless otherwise stated. Refer to Art. 3.E.1.A.2.a, Previous Approvals for additional
25 requirements.
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EXHIBIT C

ARTICLE 3 – OVERLAYS & ZONING DISTRICTS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1 Part 15. ULDC, Art. 3.F.2.A.6, Signage [Related to TDDs] (page 133 of 155), is hereby amended
2 as follows:
3

4 CHAPTER F TRADITIONAL DEVELOPMENT DISTRICTS

5 Section 2 General Standards

6 **2) Applicability**

7 The following standards shall apply to all TDD's:
8

9 **6. Signage**

10 All signs shall be located on site in a manner that ensures consistency within the
11 development; with site, architectural, and landscape plans; site layout; ultimate maturity of
12 vegetation; and, final architectural elevation. When preparing a sign plan the applicant shall
13 consider and give attention to the placement of the sign to provide clear visibility for the
14 tenants. In addition to the regulations in Art. 8, Signage, the following ~~sign regulations shall~~
15 apply:

16 **2) Building-Mounted Signs**

17 Building-mounted signs, including wall signs, awning and canopy signs, and projecting
18 signs ~~are allowed shall be permitted~~, subject to the ~~standards of Art. 8, Signage, and the~~
19 following additional requirements:

20 **1) Maximum Size**

21 0.75 square foot of signage, for every linear foot of tenant frontage ~~is shall be~~
22 permitted, up to a maximum of 64 square feet.

23 **2) Maximum Height Sign Placement**

24 ~~15 feet high. Signs fronting on an arterial or collector street are not subject to this~~
25 ~~height limit.~~

26 a) Signs shall be located between the first and second story of the building. If the
27 second story is non-residential, the signage shall comply with the minimum
28 vertical separation requirements in Table 8.G.1.A-4- Wall Sign Standards.

29 b) All significant decorative elements on the building shall be considered when
30 locating wall signs to ensure they are in harmony with each other. In addition,
31 the architecture features, elements, or building lines shall not be modified to
32 accommodate the location of the signs.

33 **3) Maximum Projection**

34 Sign projection shall not exceed a maximum of 30 inches from any building face.

35 **b. Freestanding Signs**

36 Unless otherwise provided herein, all freestanding signs shall be prohibited.

37 **2) AGR-TMD Exceptions**

38 Freestanding signs shall be permitted in an AGR-TMD pursuant to the following
39 requirements:

40 **2) Maximum Size and Height**

41 Signs shall not exceed 150 square feet of sign face area, and shall be limited to
42 15 feet in height.

43 **b) Maximum Number Allowed**

44 One freestanding sign shall be permitted per right-of-way frontage.

45 **2) A-frame Signs**

46 Temporary freestanding A ~~_~~ frame ~~-type~~ signs ~~are shall be allowed in arcades and~~
47 ~~covered walkways in front of arcades and covered walkways for commercial or~~
48 ~~mixed-use buildings, provided they do not conflict with pedestrian walkways.~~
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EXHIBIT D

**ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)**

1 Part 1. ULDC, Table 4.A.3.A-1 – Use Matrix (page 16 of 155), is hereby amended as follows:
2

Table 4.A.3.A-1 - Use Matrix Continued

Use Type	Zoning District/Overlay																NOTE		
	Agriculture/Conservation			Residential				Commercial					Industry/ Public						
	P C	A G R	A P	AR R U S A	U S A	R E	R T	R S	R M	C N	C L O	C C	C H O	C G	C R E	I L		I G	P O
Agricultural Uses																			
....																			
<u>Aviculture, Hobby Breeder</u>		P	P	P	<u>PA</u>														19
....																			
[Ord. 2006-036] [Ord, 2008-037]																			
Key:																			
P Permitted by right																			
D Permitted subject to approval by the DRO																			
S Permitted in the district only if approved by Special Permit																			
B Permitted in the district only if approved by the Zoning Commission (ZC)																			
A Permitted in the district only if approved by the Board of County Commissioners (BCC)																			

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EXHIBIT D

ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1 Part 2. ULDC, Table 4.B.1.A.3, Agriculture, Bona Fide (pages 25–28 of 155), is hereby
2 amended as follows:
3

4 CHAPTER B SUPPLEMENTARY USE STANDARDS

5 Section 1 Uses

6 A. Definitions and Supplementary Standards for Specific Uses

7 3. Agriculture, Bona Fide

8 Any plot of land where the principal use consists of the growing, cultivating and harvesting
9 ~~raising~~ of crops; the raising of animals, inclusive of aviculture, aquaculture, horses and
10 livestock; the production of animal products such as eggs, honey or dairy products; or the
11 raising of plant material, ~~inclusive of a retail or wholesale nursery~~. The determination as to
12 whether or not the use of land is considered bona fide agriculture shall be made pursuant to
13 FS 823.14, Florida Right to Farm Act.
14
15

16
17 Part 3. ULDC, Art. 4.B.1.A.16, Auction (page 33 of 155), is hereby amended as follows:
18

19 CHAPTER B SUPPLEMENTARY USE STANDARDS

20 Section 1 Uses

21 A. Definitions and Supplementary Standards for Specific Uses

22 16. Auction

23 An establishment engaged in the ~~public~~ sale of ~~goods merchandise~~ to the highest bidder in
24 an enclosed building or outdoor.

25 a. Temporary

26 A temporary auction shall comply with the Special Event supplementary use standards,
27 Article 2.D.2, Special Permit.

28 b. Enclosed

29 All activities, display and sale of merchandise shall occur within an enclosed building.

30 MUPD

31 An enclosed auction in a MUPD with IND FLU designation shall be subject to a
32 Requested Use approval process.

33 ~~bc.~~ Outdoors

34 An auction with all or a portion of the activity, ~~and~~ display and sale of merchandise
35 occurring ~~outside of an enclosed building outdoor on site~~ shall require approval of a Class
36 A conditional use ~~provided the site meets the non-residential use location criteria of the~~
37 ~~Plan.~~ [Ord. 2007-001]

38 ~~ed.~~ TMD District

39 Auctions are permitted only within enclosed buildings in the U/S tier. [Ord. 2005 – 002]
40
41

42 Part 4. ULDC, Art. 4.B.1.A.19, Aviculture (page 34 of 155), is hereby amended as follows:
43

44 CHAPTER B SUPPLEMENTARY USE STANDARDS

45 Section 1 Uses

46 A. Definitions and Supplementary Standards for Specific Uses

47 19. Aviculture, Hobby Breeder

48 The raising and care of birds in captivity.

49 1) AR/USA General

50 The raising of birds as a hobby in the AR / USA shall be permitted ~~allowed as a use~~
51 ~~by right in the AR district~~ subject to the following:
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EXHIBIT D

ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1
2 Part 5. ULDC, Art. 4.B.1.A.34.d, Lot Size [Related to Congregate Living Facility] (page 40 of
3 155), is hereby amended as follows:
4

5 CHAPTER B SUPPLEMENTARY USE STANDARDS

6 Section 1 Uses

7 A. Definitions and Supplementary Standards for Specific Uses

8 34. Congregate Living Facility

9 d. Minimum Lot Size Dimensions

10 The minimum lot dimensions requirements of the district in which a Type II or Type III
11 CLF is located shall apply. ~~, except that in no case shall the lot size be less than~~ The
12 minimum lot size for a Type II CLF shall be 8,000 square feet ~~for a Type 2 CLF, or one~~
13 ~~acre for a Type 3 CLF.~~
14
15

16 Part 6. ULDC, Art. 4.B.1.A.46.a.4), CRE District [Related to outdoor entertainment] (page 47 of
17 155), is hereby amended as follows:
18

19 CHAPTER B SUPPLEMENTARY USE STANDARDS

20 Section 1 Uses

21 A. Definitions and Supplementary Standards for Specific Uses

22 46. Entertainment, Outdoor

23

24 a. CRE District

25

26 4) Frontage shall be required on a roadway ~~designed on~~ designated as a Florida
27 Intrastate Highway System (FIHS) or Strategic Intermodal System (SIS) facility.
28 [Ord. 2005 – 002]
29
30

31
32 Part 7. ULDC Art. 4.B.1.A.55, Financial Institution (page 49 of 155), is hereby amended, as
33 follows:
34

35 55. Financial Institution

36

37 a. **Development Thresholds and Approval Process**

38 A financial institution shall comply with the Development Thresholds and required
39 approval processes of Table 4.B.1.A-5, Financial Institution Development Thresholds and
40 Approval Processes. [Ord. 2007-013]
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EXHIBIT D

**ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)**

1

Table 4.B.1.A-5 – Financial Institution Development Threshold and Approval Process

Zoning District	Development Thresholds			Approval Process
	GFA		Drive-thru ⁽¹⁾	
CN and CLO	5,000 s.f. max	and	Not permitted	DRO
CC; <u>and CHO, and CG; CL, CH, and CLO and CHO</u> PDDs; COM Pod of PUD; PIPD COM Use Zone; and TDDs	5,000 s.f. max	and	No drive thru lanes	Permitted by Right
CC; and, CL and CLO PDDs, <u>and COM Pod of PUD</u>	5,000 s.f. max	and	≤ 3 drive thru lanes	DRO
CG; CH and CHO PDDs; <u>PIPD COM Use Zone Pod of PIPD</u> ; and, TDDs	5,000 s.f. max	and	≤ 3 drive thru lanes	Permitted by Right
CC, CHO and CG; <u>CL, CH, CLO</u> and CHO PDDs; <u>COM Pod of PUD; PIPD COM Use Zone</u> ; and, TDDs	> 5,000 s.f.	or	> 3 drive thru lanes	Class A or Requested Use
Ord. 2007-013				
Notes:				
1. An ATM lane shall not be considered a drive through lane for purposes of development thresholds.				

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Part 8. ULDC Art. 4.B.1.A.70, Home Occupation (page 53 of 155), is hereby amended, as follows:

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

70. Home Occupation

A business, profession, occupation, trade, artisan, or handcraft conducted in a dwelling unit for commercial gain by a resident of the unit. A home occupation shall not include those businesses which are required by State of Florida agencies to be open to the public, ~~such as gun dealers.~~

....

Part 9. ULDC, Art. 4.B.1.A.72, Hotel, Motel, SRO, and Rooming and Boarding House (page 55 of 155), is hereby amended as follows:

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

72. Hotel, Motel, SRO, and Rooming and Boarding House

An establishment requiring a license by the State of Florida used, maintained or advertised as a place where furnished sleeping accommodations are supplied for short term rent to guests or tenants. Typical uses include hotels, motels, single room occupancy (SROs) and rooming and boarding houses. [Ord. 2006-004]

....

d. PO District
An existing hotel located in the PO district shall be considered a conforming use.
[Renumber accordingly.]

Part 10. ULDC, Art. 4.B.1.A.74-1.b, Accessory Residential Use [Related to Type II Commercial Kennel] (page 56 of 155), is hereby amended as follows:

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

Notes:

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EXHIBIT D

ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

A. Definitions and Supplementary Standards for Specific Uses

74.-1. Kennel, Type II (Commercial)

b. Accessory Residential Use

A Type II commercial kennel may be operated in the AGR district in conjunction with a residence ~~on properties with a residential or underlying residential FLU designation.~~
[Ord. 2006-036]

Part 11. ULDC, Art. 4.B.1.A.74-3.b [Related to Type IV Kennel/Animal Shelter] (page 57-58 of 155), is hereby amended as follows:

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

74-3.Type IV Kennel (Animal Shelter)

b. Collocated Uses

Any commercial or other use providing services to the general public, inclusive of ~~veterinary~~, training or boarding services, among others, shall only be permitted in accordance with the PDD, TDD or Standard District Use Matrices, stated approval process, and supplemental standards, unless stated otherwise herein. Veterinary clinics operated by a licensed veterinarian for the care of the animals kept in the shelter facility may also offer veterinary services to the public. [Ord. 2008-037]

Part 12. ULDC, Art. 4.B.1.A.88, Nursery, Retail (page 62-63 of 155), is hereby amended as follows:

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

88. Nursery, Retail

The ~~cultivation and~~ retail sale of horticultural specialties such as flowers, shrubs, sod, ~~and~~ trees, mulch and accessory hardscape materials such as decorative stones intended for ornamental or landscaping purposes.

e. Setbacks

All structures and outdoor storage areas shall be setback a *minimum of 50 feet from the property line. Shade houses shall be subject to the requirements pursuant to Art. 4.B-121, Shade Houses.* [relocated from below]

~~a) All Structures (except shade houses) and Outdoor Storage Areas~~

~~A minimum of 50 feet.~~

~~2) Container Plants~~

~~A minimum of 15 feet.~~

Part 13. ULDC, Art. 4.B.1.A.89, Nursery, Wholesale (page 63-64 of 155), is hereby amended as follows:

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

89. Nursery, Wholesale

The ~~cultivation and~~ wholesale of horticultural specialties such as flowers, shrubs, sod, ~~and~~ trees, mulch and accessory hardscape materials such as decorative stones intended for ornamental or landscaping purposes.

h. U/S Tier

2) Setbacks

All structures and outdoor storage areas shall be setback a *minimum of 50 feet from the property line. Shade houses shall be subject to the requirements pursuant to Art. 4.B-121, Shade Houses.* [Relocated from below]

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EXHIBIT D

ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

- ~~a) All Structures (except shade houses) and Outdoor Storage Areas~~
~~-A minimum of 50 feet.~~
- ~~b) Container Plants~~
~~A minimum of 15 feet.~~

Part 14. ULDC, Art. 4.B.1.A.109, Type I Restaurant (page 74-75 of 155), is hereby amended as follows:

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

109. Restaurant, Type I

....

a. Location Criteria

....

2) Separation Criteria

A Type I restaurant shall be separated from any other Type I restaurant subject to these standards, in accordance with Art. 5.E.2.C.2. [Ord. 2006-004]

....

~~eb.~~ Approval Process Exceptions [Ord. 2006-004]

....

~~bc.~~ Major Intersection Criteria for CL FLU U/S Tier

A Type I restaurant with a CL FLU designation shall comply with Article 5.E.1, Major Intersection Criteria, unless the restaurant meets the requirements of one or more of the following: Art. 4.B.1.A.109.c.1), DRO Approval, Art. 4.B.1.A.109.c.2), Permitted by Right, is located within a TMD, or complies with the design requirements outlined under Art. 4.B.1.A.109.a.3), Exception. [Ord. 2006-004]

d. TMD District

A Type I Restaurant shall not: [Ord. 2005 – 002] [Ord. 2006-004]

- 1) Exceed 3,000 square feet of GFA. An additional 1,500 square feet shall be permitted for outdoor dining areas, for a maximum of 4,500 square feet of GFA. An exception shall be permitted where food is served cafeteria or buffet style, to allow up to 5,000 square feet of indoor dining area, for a maximum of 6,500 square feet of GFA; [Ord. 2005-002] [Ord. 2006-004] [Ord. 2007-001]

....

f. Exurban and Rural Tiers

A Type I Restaurant shall comply with the following:

- 1) Shall not be the sole use on the property;
- 2) Shall be located in a MUPD or TDD;
- 3) Shall not have direct ingress/egress to an adjacent arterial or collector R-O-W. Ingress/egress shall be from the interior of the overall vehicular circulation system for the development or interior streets, whichever is applicable; and,
- 4) Shall comply with the design requirements outlined under Art. 4.B.1.A.109.a.3), Exception.

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EXHIBIT D

ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1 Part 15. ULDC, Art. 4.B.1.A.135, Vehicle Sales and Rental (page 93 of 155), is hereby amended
2 as follows:
3

4 CHAPTER B SUPPLEMENTARY USE STANDARDS

5 Section 1 Uses

6 A. Definitions and Supplementary Standards for Specific Uses

7 135.Vehicle Sales and Rental

8 An establishment engaged in the sale, rental, or lease of new or used motorized vehicles,
9 equipment, or mobile homes as defined by the Department of Motor Vehicles. Typical uses
10 include auto and truck rental, lease and sales; boat rental and sales; mobile home and
11 recreational vehicle sales; construction equipment rental yards; moving trailer rental, and
12 large implement sales or rental.

13

14 e. Neighborhood Vehicle Rental Facility

15 A rental facility that is limited to a maximum of six vehicles stored on site. For the
16 purpose of this section vehicles shall be limited to cars, sports utility vehicles, standard
17 pick up trucks, and minivans.

18
19 1) Development Standards

20 a) Minimum Lot Size

21 The lot size shall comply with the minimum required for the applicable zoning
22 district. Legal non-conforming lots of record shall be able to develop a
23 neighborhood vehicle rental facility provided all other minimum site development
24 regulations can be met.

25 b) Zoning Districts

26 Facilities shall be permitted in the CN, CC, and CG zoning districts; PDDs with a
27 CH or CL FLU designation; and the Neighborhood Center (NC) of a TDD.

28 c) Approval Process

29 This use shall be subject to DRO approval.

30 d) Parking

31 The rental vehicles shall be parked in specifically designated spaces or located in
32 bull pen storage. Vehicles shall not be parked in required or handicap spaces,
33 driveways, queuing areas, fire lanes, or other vehicular circulation areas.

34 e) Outdoor Activities

35 Maintenance, repair, detailing, washing, cleaning or related activities shall not be
36 conducted on site.

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EXHIBIT D

ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

1
2 Part 16. ULDC, Art. 4.C.6.D, Review Procedures, [Related to list of communication tower users]
3 (page 125 of 155), is hereby amended as follows:
4

5 CHAPTER C COMMUNICATION TOWER, COMMERCIAL

6 Section 6 Shared Use/Collocation

7 D. Review Procedures

8 Prior to submittal of an application for approval of a proposed tower for Conditional use,
9 development order amendment, original DRO, or building permit review, all applicants for
10 communication towers shall comply with the procedures indicated below. An application for the
11 appropriate review process must be submitted within one year of the notice mailing date.

12 2. List of Tower Users

13 The ~~Zoning Division DRO~~ shall ~~secure-maintain~~ a current Communication Tower Users List,
14 which shall be made available upon request, and shall also be published on the Zoning Web
15 site. Of known communication tower users annually by advertisement in a newspaper of
16 general circulation. The Zoning Division may add known communication tower users to this
17 list. This list shall remain valid for one calendar year.

18 2. Notification

19 All communication tower applicants shall provide notice by certified mail to all users on the
20 Communication Tower Users List. The following information shall be included in the notice:
21 description of the proposed tower; general location; longitude and latitude; general rate
22 structure for leasing space, which shall be based on reasonable local charges; proposed
23 height; a phone number to locate the applicant or agent for the communication tower; and a
24 shared use application form. A copy of the notice shall be mailed to the Communications
25 Division and the Zoning Division. The notices shall invite potential communication tower
26 users to apply for space on the proposed tower.

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EXHIBIT D

ARTICLE 4 – USE REGULATIONS
SUMMARY OF AMENDMENTS
(Updated 10/22/09)

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EXHIBIT E

ARTICLE 5 – SUPPLEMENTARY STANDARDS
SUMMARY OF AMENDMENTS
(Updated 09/29/09)

1 Part 7. ULDC, Art. 5.G.2.K.6, Contract for Sale and Purchase of Development Rights. [Related
2 to TDR: Receiving Area Procedure] (page 68, 68.a and 69 of 75), is hereby amended as
3 follows:
4

5 CHAPTER G DENSITY BONUS PROGRAMS

6 Section 2 Transfer of Development Rights Program (TDR) – Special Density Program

7 K. TDR: Receiving Area Procedure

8

9 6. Contract for Sale and Purchase of Development Rights

10 ~~A contract for sale and purchase of development rights, an escrow agreement, and a deed of~~
11 ~~TDR shall be required as part of the approval of a TDR transfer. The contract shall be~~
12 ~~recorded prior to certification of the site plan for a TDR receiving area. Prior to issuance of~~
13 ~~the first building permit, the funds from the escrow agreement shall be released to PBC or~~
14 ~~evidence of payment to a private party shall be provided, the deed shall be recorded and a~~
15 ~~copy of the recorded deed shall be provided to PZB. Building permits for sales models or~~
16 ~~temporary real estate sales and management offices permitted pursuant to this Code shall be~~
17 ~~exempted from this requirement regarding the release of escrow funds. A contract for sale~~
18 ~~and purchase of development rights, and an escrow agreement or performance or surety~~
19 ~~bond in a manner consistent with Art. 11.B.4.A.6.c, Performance or Surety Bond are required.~~
20 A deed of TDR shall also be required as part of the approval of a TDR transfer. The contract
21 shall be executed prior to DRO approval of a TDR receiving area. The funds from the
22 escrow, or performance or surety bond if used, must be received by PBC, or evidence of
23 payment to a private party, before PBC releases the deed. The deed must be recorded
24 before issuance of the first building permit for a project or a pod designated as a receiving
25 area. This paragraph shall not apply to building permits for sales models or temporary real
26 estate sales and management offices permitted pursuant to this code.
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EXHIBIT F

**ARTICLE 7 – LANDSCAPING
SUMMARY OF AMENDMENTS
(Updated 07/31/09)**

1
2 **Part 1. ULDC, Art. 7.A.1.B, Landscape Design Principles [Related to Landscape Permit] (page**
3 **6 of 47), is hereby amended as follows:**
4

5 **CHAPTER A GENERAL**

6 **Section 1 Landscape and Buffering**

7 **B. Landscape Design Principles**

8 ~~The This Section establishes standards established in this Article are to be considered the~~
9 ~~minimum requirements~~ for landscape design. It is the intent of this Article to encourage creativity
10 in landscape design while providing general direction and criteria for the evaluation of a specific
11 type of plan: planting, landscape or ALP in order to issue a landscape permit ~~landscape plans,~~
12 ~~planting plans and alternative landscape plans.~~ The following design principles are general
13 standards to be used by County staff and DRO in evaluating whether landscape plans conform to
14 the requirements of this Article:
15

17 **Part 2. ULDC, Art. 7.B, Types of Plans [Related to Landscape Permits] (page 11 of 47), is**
18 **hereby amended as follows:**
19

20 **CHAPTER B TYPES OF PLANS**

22 ~~All A~~ development that requires the issuance review and approval of a building ~~permit~~ or paving permit
23 may also require the review and approval of a Zoning Division Landscape Permit. When landscape
24 review and approval is required, the applicant shall submit ~~submittal and approval of one of the, as~~
25 ~~applicable~~ the appropriate application to the Zoning Division. Plans and applications must ~~shall~~ be
26 submitted in a manner and form established by the Zoning Division, and shall be reviewed for compliance
27 with all applicable provisions of this Code. If approved, a Landscape Permit shall be issued.
28

30 **Part 3. ULDC, Table 7.C.3.1 – Minimum Tier Requirements [Related to Layers of Shrubs**
31 **Requirements] (page 14 of 47), is hereby amended as follows:**
32

Table 7.C.3-1 – Minimum Tier Requirements

Code Requirements	U/S Tier	AGR and Glades Tiers	Exurban and Rural Tiers
Landscape Buffers ⁶⁻⁷			
....			
Fences/Walls	Optional ²	Optional ²	Optional ^{2,3}
Layers of Shrubs and Ground Cover ⁴	3	4	3
Interior Landscaping ⁶⁻⁷			
....			
Minimum Medium Shrub Quantities – Residential Lot ⁵	3 per 1,250 sq. ft. (max. 45)	3 per 1,000 sq. ft. (max. 90)	3 per 800 sq. ft. (max. 90)
Minimum Medium Shrub Quantities – Non-Residential Lot ⁵	3 per 2,000 sq. ft.	3 per 1,500 sq. ft.	3 per 1,200 sq. ft.
....			
Plant Standards ⁶⁻⁷			
....			
Foundation Planting ⁶⁻⁷			
....			
[Ord. 2005-002] [Ord. 2006-004]			
Notes			
1. May be allowed with an approved ALP.			
2. <u>Unless required by Art.7.F.9, Incompatibility Buffer. Landscape requirements (including walls and fences) for Incompatibility buffers, refer to Table 7.F.9.A- Incompatibility Buffer Standards.</u>			
3. Walls and fences shall be built from natural materials, such as, including but not limited to: wood, stone, etc.			
4. <u>Refer to Shrub Hierarchy requirements in Table 7.F.B-6, R-O-W Buffer Shrub Type. This requirement is only for Perimeter R.O.W. Buffers. Applicants shall also reference Table 7.F.7.B-6, R-O-W Buffer Shrub Planting Type Requirements for installation size, quantity, spacing and maturity height for perimeter and interior shrub planting.</u>			
5. <u>Minimum Interior quantities for shrub planting required in addition to perimeter buffer landscape requirements. Shall shall</u> be calculated based on gross lot area, excluding preservation areas and lake tracts.			
6. TDDs are exempt from foundation planting requirements for primary and secondary building frontages, buildings along an alleyway or accessway to a parking area, or where buildings front on a plaza or square. [Ord. 2005-002] [Ord. 2006-004]			
7. Deviations shall be permitted for PBC owned and operated public parks in accordance with Art. 5.D.2.H, County Park Landscape Standards. [Ord. 2006-004]			

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EXHIBIT F

**ARTICLE 7 – LANDSCAPING
SUMMARY OF AMENDMENTS
(Updated 07/31/09)**

1 **Part 4. ULDC, Table 7.C.3, Minimum Tier Requirements (page 14 of 47), is hereby amended as**
2 **follows:**

3
4 **CHAPTER C MGTS TIER COMPLIANCE**

5 **Section 3 Exurban and Rural Tiers**

6 *The Exurban and Rural Tiers primarily consist of larger residential lots and require the use of more*
7 *informal design patterns that incorporate reduced impervious areas; preservation of native vegetation,*
8 *lakes and other similar open space areas; and, more naturalistic landscaped areas. Non-residential uses*
9 *shall also provide for the increased use of landscape materials in perimeter buffers, parking areas and*
10 *building foundation plantings; dispersed parking with additional screening from adjacent roadways and*
11 *residential uses; and, compliance with rural architectural design guidelines where applicable.*

12
13 ~~The Exurban and Rural Tiers consist of larger residential lots, development incorporating rustic~~
14 ~~architecture and building materials, and should emphasize preservation of native vegetation, dispersed~~
15 ~~parking and more naturalistic landscaped areas and informal design patterns. [Portions relocated~~
16 ~~above.]~~

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18
19 **Part 5. ULDC, Table 7.C.3, Minimum Tier Requirements (page 14 of 47), is hereby amended as**
20 **follows:**

Table 7.C.3-1 – Minimum Tier Requirements

Code Requirements	U/S Tier	AGR and Glades Tiers	Exurban and Rural Tiers
....			
Interior Landscaping ^{6Z}			
....			
<i>Pervious Surface Area (Overall Lot)</i>	<i>30 percent</i>	<i>40 percent</i>	<i>50 percent</i>
....			
....			
[Ord. 2005-002] [Ord. 2006-004]			
Notes			
....			

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23
24 **Part 6. ULDC Art. 4.B.1.A.121.b, Commercial Greenhouse (page 85-86 of 155), is hereby**
25 **amended as follows:**

26
27 **CHAPTER B SUPPLEMENTARY USE STANDARDS**

28 **Section 1 Uses**

29 **A. Definitions and Supplementary Standards for Specific Uses**

30 **121. Shade House**

31 ~~....~~
32 **b. Commercial Greenhouse**

33 Commercial greenhouses having roofs and walls made of rolled plastic or other similar
34 materials, used for the indoor cultivation of plants, including hydroponic farming using
35 water containing dissolved inorganic nutrients, may be permitted in the AGR districts,
36 subject to the following: [Ord. 2006-004]

37 ~~....~~
38 **9) Pervious Surface Area**

39 ~~An exception to the requirements of Table 7.C.2-1, Minimum Tier Requirements may~~
40 ~~be made for Commercial Greenhouses to allow for an increase in impervious surface~~
41 ~~area up to 80 percent, provided all applicable agencies responsible for reviewing for~~
42 ~~adequate drainage, review and approve the application for compliance prior to DRO~~
43 ~~certification or issuance of a building permit. [Ord. 2006-004]~~

44
45
46 **Part 7. ULDC, Art. 7.E, Installation, Maintenance, Pruning and Irrigation [Related to Landscape**
47 **Permit Requirements] (page 26 of 47), is hereby amended as follows:**

48 **CHAPTER E REVIEW, INSTALLATION, AND MAINTENANCE, PRUNING AND IRRIGATION**

49 **Notes:**

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EXHIBIT F

**ARTICLE 7 – LANDSCAPING
SUMMARY OF AMENDMENTS
(Updated 07/31/09)**

~~The following standards are the minimum for required installation, maintenance, irrigation, and replacement of trees and landscape material. This Chapter establishes standards for the landscape review, installation and maintenance of trees and landscape material.~~

....

Section 2 Landscape Permit

~~To ensure compliance with the various requirements associated with a new development permit for installation and maintenance of landscape on site, the applicant shall:~~

- ~~A. Submit an application for a Landscape Review on forms prepared by the Zoning Division;~~
- ~~B. Comply with Code requirements and any conditions of approval;~~
- ~~C. Schedule and receive approval of all required landscape inspections; and,~~
- ~~D. Adhere to long-term landscape maintenance obligations and all material associated with the application.~~

[Renumber accordingly]

Part 8. ULDC, Art. 7.F, Perimeter Buffer Landscape Requirements (page 32 of 47), is hereby amended as follows:

CHAPTER F PERIMETER BUFFER LANDSCAPE REQUIREMENTS

Landscape buffers shall be installed and maintained in accordance with the following standards.

Section 2 Trees, Shrubs, and Hedges

Trees, shrubs, and hedges shall be provided in all perimeter buffers in accordance with the following standards:

B. Shrubs

Shrubs shall be installed according to Table 7.F.7.B-~~6~~, Shrub Planting Requirements R-O-W Buffer Types.

Part 9. ULDC Table 7.F.7.B-6 – R-O-W Buffer Shrub Types (page 35 of 47), is hereby amended as follows:

Table 7.F.7.B - ~~6~~ - R-O-W Buffer Shrub Types Planting Requirements

Shrub Type	<u>Minimum Height at Installation (Size)</u>	<u>Minimum Percentage Number of Shrubs Per Linear Foot³ of Buffer Length</u>	<u>Minimum Maximum Spacing at Installation</u>	<u>Minimum Maximum¹ Maintained Height at Maturity</u>
Ground Cover	<i>6 inches</i>	100 percent 2 per 1 <u>linear foot</u>	<i>6 inches</i>	n/a
Small Shrubs	<i>18 inches</i>	50 percent 1 per 2 <u>linear feet</u>	<i>24 inches</i>	24-36 <u>inches</u>
Medium Shrubs	<i>24 inches</i>	25 percent 1 per 4 <u>linear feet</u>	30-48 <u>inches</u>	36-48 <u>inches</u>
Large Shrubs	<i>36 inches</i>	25 percent 1 per 4 <u>linear feet</u>	<i>48 inches</i>	48 inches <u>n/a</u>
Notes				
1. May be reduced by six inches for use of native plant material.				
21. Refers to area planted, not including spread of the shrubs. Maximum maintained height is established to maintain the hierarchical visual effect for Perimeter R.O.W. buffer.				

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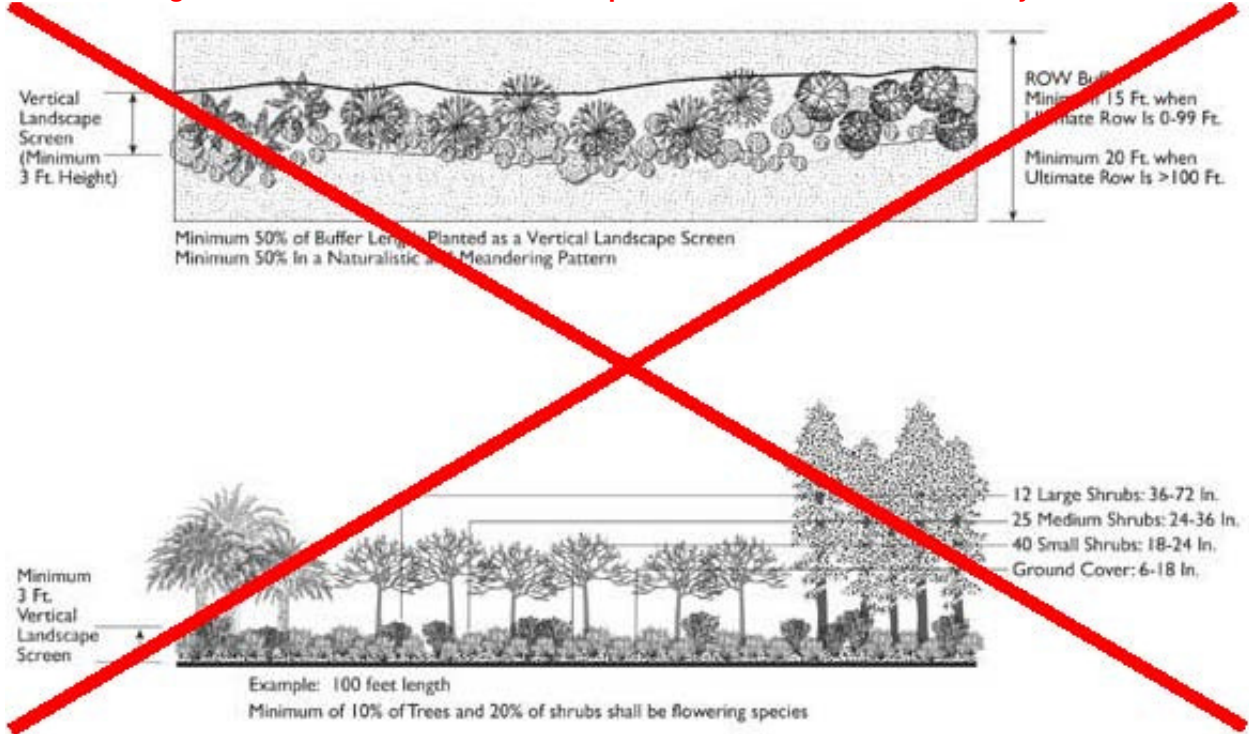
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EXHIBIT F

ARTICLE 7 – LANDSCAPING
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

1
2 Part 10. ULDC, Figure 7.F.7.B-13 – R-O-W Buffer Required Width and Shrub Hierarchy (page 35
3 of 47), is hereby amended as follows:
4 ~~Figure 7.F.7.B-13 – R-O-W Buffer Required Width and Shrub Hierarchy~~



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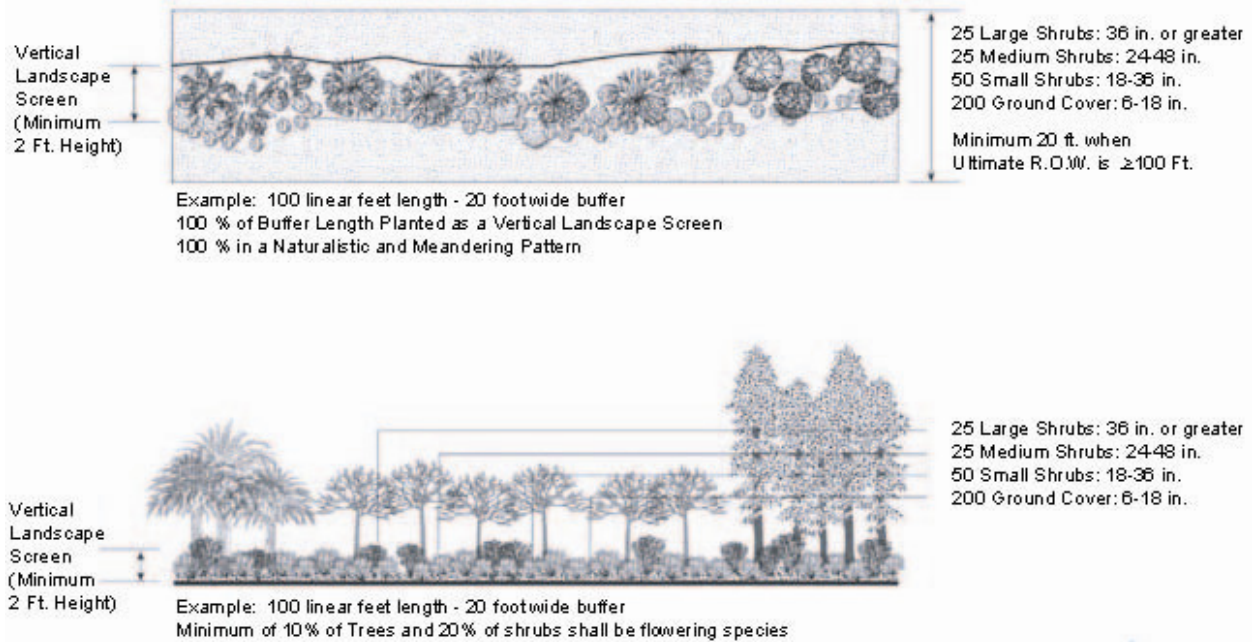
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EXHIBIT F

ARTICLE 7 – LANDSCAPING
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

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Figure 7.F.7.B - Buffer Width, Trees and Shrub Layers
An Example of Planting Requirements for a Perimeter R-O-W Buffer



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Part 11. ULDC, Art. 7.F.7.C Planting Pattern (page 35 of 47), is hereby amended as follows:

CHAPTER F PERIMETER BUFFER LANDSCAPE REQUIREMENTS

Section 7 R-O-W Buffer

C. Planting Pattern for a Perimeter R-O-W Buffer

~~A minimum of 50~~ One hundred percent of the buffer ~~width length~~ shall be composed of a continuous opaque vertical landscape screen at least ~~three-two~~ feet in height, planted in a meandering pattern as illustrated in Figure 7.F.7.B-~~13~~, R-O-W Buffer Required Width, Trees and Shrub Hierarchy Layers, and composed of the shrub types listed in Table 7.F.7.B-~~6~~, R-O-W Buffer Shrub Planting Types Requirements. The area of the ~~R-O-W~~ buffer not planted with trees and shrubs shall be landscaped with ground ~~cover~~ treatment.

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Part 12. ULDC, Art. 7.F.9, Incompatibility Buffer (page 36 of 47), is hereby amended as follows:

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CHAPTER F PERIMETER BUFFER LANDSCAPE REQUIREMENTS

Landscape buffers shall be installed and maintained in accordance with the following standards.

Section 9 Incompatibility Buffer

An incompatibility buffer shall be required between all incompatible use types or incompatible pods in a Planned Development, in accordance with the requirements of Table 7.F.9.A-7, Incompatibility Buffer Standards, ~~shall provide a minimum six foot high continuous solid opaque visual screen composed of hedges or shrubs, either alone or in combination with a wall, fence, or berm.~~

A. Type

Incompatibility buffers shall be one of the types listed in, Table 7.F.9.B-8 Required Incompatibility Buffer Types.

1. Landscape Requirements

An Incompatibility buffer shall consist of a continuous, opaque landscape barrier. The landscape barrier shall either be a hedge, fence or a wall. Shrubs and trees shall be required in addition to the barrier pursuant to the Table below.

2. Required Shrub Mix

- a. Groundcover is not allowed to substitute for shrubs.
- b. Type 1 shall have a mix of small and medium shrubs to complete the required rows of shrubs.
- c. Types 2 and 3 shall have a mix of small, medium and large shrubs to complete the required rows of shrubs.
- d. Refer to Table 7.F.7.B, Shrub Planting Requirements.

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EXHIBIT F

ARTICLE 7 – LANDSCAPING
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

1

Table 7.F.9.A - Incompatibility Buffer Standards

Buffer Type	Width (in feet)	Minimum Screen Landscape Barrier Height (in feet)	Walls Required	Minimum row of Shrubs	Maximum Tree Spacing (in feet, on center)
Type 1	10	6	No	2	20
Type 2	15	6	No	2	20
Type 3	20	6	Yes	3	20
[Ord. 2008-003]					
Note:					
1. The wall requirement shall be waived where a Type 3 Incompatibility Buffer is required in an AGR PUD in accordance with Art.3.E.2.F.4.d, Landscape Buffer. [Ord. 2008-003]					

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Part 13. ULDC, Art. 7.H.2, Administration (page 44 of 47), is hereby amended as follows:

6

CHAPTER H ENFORCEMENT

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8

Section 2 Administration

9

A. Landscape Permit

Landscape Plan applications for review shall be submitted in compliance with the provisions of this Chapter. When all requirements are satisfied, the appropriate staff shall issue a Landscape Permit that shall reference the approved Landscape Plan associated with the permit in addition to any necessary inspections, conditions and maintenance obligations. The Permit shall be maintained on site until the final landscape inspection is signed off by the PBC Inspector. A copy of the landscape permit shall be maintained in the associated official Building Permit record, as well as the Zoning Division file.

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AB. Field Inspections

Unless otherwise provided in this Article, all development subject to this Article may be inspected by PZB prior to and after installation of required landscaping. Required landscaping shall be approved by PZB prior to the issuance of a paving permit, CO, or Certificate of Completion, whichever occurs first.

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Types of Landscape Inspection

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1. Preliminary Inspection - required to verify existing grades, vegetation and necessary site preparation has been completed prior to any plant material being installed on the site to comply with the Landscape Permit;
2. Final Inspection - required as part of the typical building permit process to ensure landscape material, irrigation and conditions of approval on a development order are in compliance prior to final sign off that the landscape is completed and installed in accordance to the Landscape Permit.
3. Annual Inspection – scheduled on the one year anniversary date from the date of the Final Inspection noted on the Landscape Permit. Inspection shall be performed to ensure all landscape and irrigation continually complies with the Landscape Permit. If material or irrigation is missing, dead or damaged the property owner shall be provided with a Notice to Correct, pursuant to Article 10, Code Enforcement.
4. Monitoring Inspection - performed to respond to complaint of missing or damaged plant material or changes to the landscape not approved in accordance with the Landscape Permit.

BC. Certification of Compliance

In addition to ~~initial field~~ Final Inspection and certification by PZB, the land owner shall submit a Certificate of Compliance, in a form approved by the Zoning Director, to the County Landscape Section as a condition of issuance of a CO or Certificate of Completion. This certificate shall be prepared and signed by a landscape architect licensed by the State of Florida and demonstrate that all of the provisions of this Article have been met. The certification statement, included in Art. 7, as Appendix 3.C, Certification of Compliance, shall ~~appear on the~~ be made part of the documentation in the official building permit file certification report.

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EXHIBIT G

ARTICLE 8 – SIGNAGE
SUMMARY OF AMENDMENTS
(Updated 06/26/09)

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Part 1. ULDC, Art. 8.E.3. Master Sign Program Plan [Related to Standards for Master Sign Plans], (page 17 and 18 of 40), is hereby amended as follows:

CHAPTER E PROCEDURES FOR SIGNAGE

Section 3 Master Sign Program Plan

....
B. Submittals

1. Preliminary Master Sign Plan (PMSP)

A PMSP shall be submitted to the Zoning Division at the time of initial application, and shall be subject to the same review and approval process as the development itself. The initial PMSP shall include the total number of all proposed signs or sign types, the location of sign types on a site plan and general building elevations, drawings, sketches of generic sign types, a computation of the total allowable sign area for each sign and sign type (the sign budget), the height of each sign, and the proposed location of each sign on a site plan or general building elevations. A PMSP shall also describe proposed public artwork that would be exempt from sign area calculations. Subsequent development orders for Zoning approval or building permits, submitted following the initial approval of a development without a Final Master Sign Plan, shall only be required to submit signage information related to the affected area.

2. Final Master Sign Plan (FMSP)

A FMSP shall be reviewed and approved, approved with conditions, or denied at Final DRO. Concurrent with architectural review submittal and approval, in accordance with Article 5.C, DESIGN STANDARDS, a master sign plan. The specific requirements for the FMSP shall be prepared pursuant to the requirements in the Technical Manual consist of the following, shall be submitted:

- a. Drawings or sketches indicating the exterior surface details such as font, type, size, dimensions, and base planting details for all signs and types;
- b. A written program of standards for all sign types to be distributed to future tenants, including color, size, illumination, construction details, placement and the necessity for PBC review; and
- c. A visual representation of unified color, unified graphics, materials and illumination standards for all sign types.

In addition, the DRO shall make the following determinations:

- a. The proposed signs are compatible in style and character with any building to which the sign is to be attached, any surrounding structures, and any adjoining signage on the site;
- b. Future tenants will be provided adequate opportunities to construct, erect or maintain a sign for identification; and
- c. Directional signage and building addressing is adequate for pedestrian and vehicular circulation and emergency vehicle access. [Relocated from 8.E.3.C below.]

C. Approval Process

A MSP shall be subject to, and part of, the same review and approval process as the development itself. In approving a MSP, the DRO, ZC, or BCC, shall find that:

- 1. The proposed signs are compatible in style and character with any building to which the sign is to be attached, any surrounding structures, and any adjoining signage on the site;
- 2. Future tenants will be provided adequate opportunities to construct, erect or maintain a sign for identification; and
- 3. Directional signage and building addressing is adequate for pedestrian and vehicular circulation and emergency vehicle access.

Part 2. ULDC, Art. 8.F.3. Building Frontage [Related to Standards for Specific Sign Types], (page 22 of 40), is hereby amended as follows:

CHAPTER F GENERAL PROVISIONS FOR SIGN TYPES

Section 3 Building Frontage

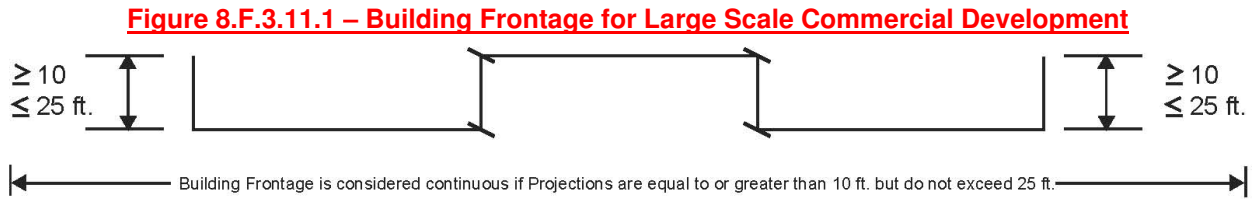
For the purpose of this Section, a building's frontage is considered continuous if projections or recesses in a building wall do not exceed ten feet in any direction. For the purpose of Article 5.C.1.I., Large Scale Commercial Development, a building's frontage is considered continuous if projections or recesses in a building or wall are a minimum of ten feet in any direction but do not exceed 25 feet.

Notes:

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EXHIBIT G

**ARTICLE 8 – SIGNAGE
SUMMARY OF AMENDMENTS
(Updated 06/26/09)**



Part 3. ULDC, Art. 8.G.1.A, Wall signs [Related to Standards for Specific Sign Types], (page 24 of 40), is hereby amended as follows:

CHAPTER G STANDARDS FOR SPECIFIC SIGN TYPES

Section 1 Building Mounted Signs

A. Wall Signs

Wall signs, including signs mounted on a mansard roof or parapet, are subject to the standards in Table 8.G.1.A-4, Wall Sign Standards. No wall sign may cover wholly or partially any required wall opening.

Table 8.G.1.A-4-Wall Sign Standards

	U/S Tier	AG-R Tier	Exurban, Rural, and Glades Tiers
Maximum Sign Area (per linear ft. of the wall to which the sign is attached)	1.0 sq. ft. along building frontage, a minimum of 24 square feet ¹	0.75 sq. ft. along building frontage, a minimum of 24 square feet ¹	0.5 sq. ft. along building frontage, a minimum of 24 square feet ¹
	0.5 sq. ft. along the side and rear walls		
	0.25 sq. ft. for walls facing a residential zoning district.		
Allowable Facades	Front, Side, and Rear if facing a street	Front and Side	Front facing a R-O-W only
Minimum Horizontal and Vertical Separation Between Signs	3 ft.	3 ft.	3 ft.
Maximum Projection from Surface of Building ²	24 in.	24 in.	24 in.
Minimum Vertical Separation Between Sign and Roof Line	6 in.	6 in.	6 in.
Minimum Horizontal Separation Between Sign and Wall Edge	6 in.	6 in.	6 in.
....			

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EXHIBIT H

ARTICLE 14 – ENVIRONMENTAL STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

1
2 Part 1. ULDC, Art. 14.A, Sea Turtle Protection and Sand Preservation, (page 6 of 50), is hereby
3 amended as follows:
4

5 CHAPTER A SEA TURTLE PROTECTION AND SAND PRESERVATION

6 Section 1 Purpose and Intent

7 The purpose of this Chapter is to reduce impacts of coastal lighting and beach obstructions on sea turtles-
8 and prohibit the removal of sand from ~~This Chapter is also intended to maintain the volume and quality of~~
9 ~~sand presently existing within~~ the beach/dune system. ~~The unique characteristics of sediments contained~~
10 ~~in the existing beaches and dunes of PBC require the preservation of these materials within the~~
11 ~~beach/dune system.~~
12

13 Section 6 Jurisdiction

14
15 D. Within the limits of jurisdiction of the STPZ as defined in this Chapter, no person, firm,
16 corporation, municipality, special district or public agency shall perform new building construction
17 or install any new artificial lighting on any property that, in whole or in part, is seaward of a line
18 600 feet landward of the mean high water line without first having obtained an approved Sea
19 Turtle Protection Lighting Plan (STLP) from ERM as provided for in this Chapter. Existing
20 beachfront lighting ~~located within or~~ causing direct or indirect illumination within the STPZ as
21 defined herein shall comply with Article 14.A.11, Standards for Existing Beachfront Lighting.
22

23 F. Beach obstructions are exempt from the requirements of this Section Article. However, this
24 exemption shall not be in effect during sea turtle nesting season (March 1 – October 31) unless
25 the structures are removed daily from the beach from sunset until two hours following sunrise or
26 after completion of a dedicated independent sea turtle nesting survey by a Marine Turtle Permit
27 Holder prior to 9:30 p.m., and are not moved onto, or placed on the beach before completion of
28 monitoring conducted by personnel with prior experience and training in nest survey procedures
29 and possessing a valid Fish and Wildlife Conservation Commission Marine Turtle Permit (daily
30 sea turtle monitoring), or unless the beach furniture is being actively used or attended during the
31 period of time from 9:30 p.m. until the next days monitoring. Beach obstructions shall be
32 removed from the beach or placed in a single row as close to the toe of the dune as possible in
33 an area that does not impact native vegetation or significantly affect sea turtles. Exemptions
34 under this provision are not intended to authorize any violation of F.S. § 370.12 379.2431 or any
35 of the provisions of the Endangered Species Act of 1973, as may be amended. (Ord. No. 05-27, §
36 3.QQ) [**Ord. 2006-036**]
37

38 Section 7 De Minimis

39 Those projects for which ERM provides a written determination that there will be no significant adverse
40 environmental impacts. Approvals may include but are not limited to: removal of a light source whether
41 approved or not approved; reduction in light intensity of a light source; installation of a light source within
42 the STPZ which is not directly or indirectly visible from the beach.
43

44 Section 8 Sea Turtle Protection Lighting Plan

45
46 A. A STLP approval is required for all new building construction and new artificial lighting proposed
47 within the limits described in Section 6.D STPZ. A STLP shall be approved by ERM prior to the
48 issuance of a building permit by the PZB or the local building department.
49

50 F. STLP approval shall not be issued or processed until the application fee and any and all
51 information necessary to fully understand the extent, nature, and potential impacts of a proposed
52 lighting plan are received by ERM. Such information may include, but is not limited to:

53
54 5. Electrical, building and landscape plans shall be submitted illustrating all exterior lights and
55 ~~W~~indows within jurisdictional boundaries line of sight of the beach. Light and window tinting
56 information shall include:

57
58 b. Protective/mitigative measures to minimize lighting impacts on sea turtles, including
59 measures to prevent direct and indirect illumination that is visible from the beach of areas
60 seaward of the crest of the dune.
61

Notes:

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EXHIBIT H

ARTICLE 14 – ENVIRONMENTAL STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

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Section 9 Criteria for STLP Approval

- A. A STLP approval may be issued pursuant to this Chapter provided that the applicant provides to ERM reasonable assurance that there shall be no adverse impacts to sea turtles, sea turtle nesting, and sea turtle habitat, and that the following criteria will be met:
 - 1. Any and all light fixtures shall be designed to be the minimum level necessary for safety and will be positioned such that they do not cause direct or indirect illumination that is visible from the beach. ~~(direct or indirect) of areas seaward of the existing seawall or crest of dune and the source of light is not directly visible from the beach;~~
 - a. All outdoor lighting and exterior lighting shall be directed downwards. No lights shall be directed upwards.
 - b. Filters shall be prohibited.
 - c. All exterior fixtures on the seaward and the shore perpendicular sides of the building (and the landward side of the building if they are visible from the beach) shall be well shielded and full cut-off.
 - d. Long wave length lights that produce light that measures greater than 570 nanometers, shall be used for all coastal construction visible from and adjacent to the beach. Bright white light, such as metal halide, halogen, fluorescent, mercury vapor and incandescent lamps will not be approved. Shorter wavelength lights will only be approved in areas where direct or indirect illumination is not visible from the beach.
 - 2. Use of Window Treatments at Multifamily Residential Properties:**
In common areas of a multi-family residential property, window treatments that are sufficient to prevent direct or indirect illumination visible from the beach shall be required on all windows visible from the beach within jurisdictional boundaries.
 - ~~23.~~ ERM determines that coastal lighting alternatives and modifications to lessen impacts are infeasible; and
 - ~~34.~~ ERM determines that the cumulative impacts of the subject lighting project and other similar lighting projects will also meet the criteria of this Chapter Article.
- B. Measures that may be implemented to protect sea turtles include: elimination, modification or alteration of all proposed and/or existing exterior lights that cause ~~direct or indirect illumination which is directly or indirectly of areas seaward of the existing crest of dune or which are~~ visible from the beach.
- C. All lighting installed after September 2, 1987 in unincorporated PBC and in municipalities that do not have a STPO in effect shall comply with the following standards:
 - 1. ~~no~~ Aartificial public or private light source shall not cause illumination which is directly or indirectly ~~illuminate areas seaward of the crest of the dune or be~~ visible from the beach where it may deter adult female sea turtles from nesting or disorient hatchlings;
 - 2. ~~¶~~The installation of coastal lighting shall reflect the standards and mitigative measures published in the current state-of-the-art manual pertaining to coastal lighting and sea turtle conservation available at ERM (Witherington, Blair E. & Eric R. Martin, Understanding, Assessing and Resolving Light-pollution Problems on Sea Turtle Nesting Beaches, Florida Marine Research Institute Technical Report, Florida Department of Environmental Protection, ~~1996~~2000).
 - 3. ~~a~~Any and all light fixtures shall be designed and/or positioned such that they do not cause ~~direct or indirect illumination which is directly or indirectly of areas seaward of the crest of the dune and the source of light is not directly~~ visible from the beach.
 - 4. aAll lights on balconies shall be eliminated or shielded from the beach. Proposed balcony lights which do not meet standard Art. 14.A.9.C.1, above shall not be authorized, ~~and~~ **[Ord. 2005 – 002]**
 - 5. aArtificial lighting for decorative or accent purposes ~~and uplights~~ shall not be authorized within the zone of jurisdiction unless it is will not be directly or indirectly visible from the beach.
 - 6. Lighting used in parking lots ~~within the STPZ~~ shall be:
 - a. Set on a base which raises the source of light no higher than 48 inches off the ground unless the lighting ~~is not~~ does not cause illumination or is not directly or indirectly visible from the beach.
 - b. Positioned and/or shielded such that the source of light is not visible from the beach and does not cause illumination directly or indirectly visible from the beach.
 - ~~8.~~ Permanent firepits shall be positioned and/or shielded to ensure that the source of illumination is not directly or indirectly visible from the beach. Maximum flame height shall be determined at final inspection.
 - ~~89.~~ Open fires on the beach shall be prohibited during Sea Turtle Nesting season. **[Ord. 2005 – 002]**
 - ~~D10.~~ Tinted glass or any window film applied to window glass which meets the defined criteria for tinted glass, shall be installed on all windows and doors within line of sight of the beach.

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EXHIBIT H

ARTICLE 14 – ENVIRONMENTAL STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

11. Pool deck lights and underwater pool lights shall be turned off while the pool is closed at sunset during sea turtle nesting season, March 1st – October 31st. The use of an automatic timer shall be acceptable only for pool lighting.

Section 10 Inspection Required

- A. Prior to the issuance of a Certificate of Occupancy (CO) by the PZB or local building department, each facility shall be inspected for compliance as follows:
 - 1. Upon completion of the construction activities, a State of Florida registered architect, landscape architect, environmental professional or professional engineer shall conduct a site inspection which includes a night survey with all the beachfront lighting turned on to the highest illumination levels.
 -
 - 3. The inspector shall sign and seal the inspection report which includes a certification that:
 - c. the beachfront lighting does not cause directly or indirectly illumination that is visible from the beach illuminate areas seaward of the crest of the dune at the time of the night inspection; and
 -

Section 11 Standards for Existing Beachfront Lighting

- A. **Adjustment to Essential Lighting**
~~In some cases~~Changing coastal conditions (including but not limited to erosion, renourishment, vegetation impacts, etc.); it may be desirable necessitate to retrofitting light fixtures. Installation of a new fixture shall require an approved Sea Turtle Lighting Plan (STLP) that must comply with Article 14.A. 9, Criteria for STLP Approval. Retrofits to existing fixtures shall be designed and/or positioned to ensure that they do not cause illumination that is directly or indirectly visible from the beach, and install and shield low pressure sodium vapor lights producing wavelengths between 589 and 590 nanometers. [Ord. 2006-036]
- B. **Reduction of Indirect Lighting on the Beach**
The installation and maintenance of ground level barriers including dense native vegetation is strongly encouraged and may be required to reduce the amount of lighting striking the beach/dune system.
- C. **Lighting for Pedestrian Traffic**
Lights illuminating beach access points, dune crossovers, beach walkways, piers or any other structure ~~seaward of the crest of the dune~~ designed for pedestrian traffic shall be the minimum level necessary to maintain safety and shall be located and shielded such that lights and their illumination are not directly or indirectly visible from the beach.
-
- E. **Special Lighting Restrictions during the Nesting Season**
Effective May 1, 1988, and continuously throughout each nesting season (March 1 through October 31), external light sources that are directly or indirectly visible from the beach ~~or illuminate directly or indirectly areas seaward of the crest of the dune~~ shall be disconnected or otherwise modified to comply with this Chapter.
-
- G. **Enforcement and Implementation of Corrective Measures**
In areas where compliance with the lighting conditions of this article are not evidenced, non-compliant property owners shall be required to implement appropriate corrective measures, developed in consultation with ERM to correct negative impacts to sea turtles. Corrective measures shall be implemented in addition to applicable penalties and fines. Any corrective program implemented as a result of noncompliance with lighting conditions of this article shall remain in effect until such time that acceptable beachfront lighting is achieved. ~~Relocation of nests where authorized by the FFWCC shall be considered only as a last resort and as a temporary measure while other solutions are being developed and implemented.~~
-

Section 13 Standards for SPZ

- A. There shall be no net loss of sand from the SPZ. Sand temporarily excavated from the SPZ shall be returned ed to the SPZ. Sand shall be returned to the SPZ prior to the issuance of a building department CO where a CO is required, or within six months of the excavation for projects which do not require a CO. In addition, the sand may not be degraded by mixing with any sediment, soil, or material, such that it will not meet the definition for beach compatible sand as defined.
-

Section 15 Fees

Notes:

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EXHIBIT H

ARTICLE 14 – ENVIRONMENTAL STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

A. Fees shall be required as established by the approved fee schedule.

....

Section 16 Violations

C. Installation of beachfront light fixtures in the limits described in Section 6.D, STPZ without ERM approval.

Part 2. ULDC, Art. 14.C.7.B, Approval of Development for Schools, New Construction of Utilities, Road Right-of-Way Projects, Projects Requiring DRO Review and Agriculture of 10 Acres in Size or Greater (page 32 of 50), is hereby amended as follows:

CHAPTER C VEGETATION PRESERVATION AND PROTECTION

Section 7 Application, Process, and General Standards

B. Approval of Development for Commercial Projects, Government Projects, Schools, New Construction of Utilities, Road Right-of-Way Projects, Projects Requiring DRO Review and Agriculture of 10 Acres in Size or Greater

1. Requirements and Process

a. Projects involving the development of ~~a~~ commercial projects, government projects, schools, new construction of a utility, road right of way projects, projects requiring DRO review, and agricultural parcels of 10 acres or greater shall apply to ERM for approval of said project on forms provided by ERM. Projects that are exempt from the DRO process must make application for approval to remove native vegetation to ERM within 30 days of making application for an initial building permit for the project. [Ord. 2008-040]

Part 3. ULDC, Art. 14.C.7.B.2, Approval of Development for Schools, New Construction of Utilities, Road Right-of-Way Projects, Projects Requiring DRO Review and Agriculture of 10 Acres in Size or Greater (page 33 of 50), is hereby amended as follows:

CHAPTER C VEGETATION PRESERVATION AND PROTECTION

Section 7 Application, Process, and General Standards

B. Approval of Development for Commercial Projects, Government Projects, Schools, New Construction of Utilities, Road Right-of-Way Projects, Projects Requiring DRO Review and Agriculture of 10 Acres in Size or Greater

2. Standards of Approval

No approval shall be issued unless the application demonstrates that the project: [Ord. 2008-040]

e. Incorporates into the design alternatives and modifications to avoid or minimize impacts to native vegetation. Existing native vegetation shall be incorporated into the site plan and protected during construction. Parcel improvement features shall be configured to minimize removal of existing native vegetation and maximize the use of areas dominated by prohibited and invasive non-native vegetation. Existing native vegetation that cannot be preserved in place shall be relocated to appropriate buffer and open space areas on the parcel. Relocatable native vegetation that cannot be incorporated into the parcel may be considered surplus. There is no requirement to provide vegetation for surplus. Non-relocatable native vegetation that cannot be maintained on the parcel shall be mitigated ~~for~~ in accordance with Table 7.E.2.D-4, Tree Credit and Replacement or through planting equivalent native vegetation, accepted by ERM prior to the receipt of Technical Compliance the Certificate of Occupancy for single unit projects or 75% completion of construction of multi-unit projects, based on either total square footage or number of units to be constructed. A planting plan that clearly delineates proposed mitigation plantings from any required landscape plantings must be approved by ERM prior to the issuance of the first building permit for the project. [Ord. 2008-037] [Ord. 2008-040]

3. Establishing Native Upland Preserves

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EXHIBIT H

ARTICLE 14 – ENVIRONMENTAL STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

d. All vegetation listed in Appendix 6, Prohibited Invasive Non-Native Vegetation, and Appendix 7, Invasive Non-Native Vegetation, shall be removed from the parcel and proper documentation submitted to ERM prior to issuance of ~~Technical Compliance the Certificate of Occupancy for single unit projects~~ or 75% completion of construction of multi-unit projects, based on either total square footage or number of buildings to be constructed, unless a phasing plan has been approved in writing by ERM. In addition to the removal requirement above, the vegetation identified in Appendix 9, Invasive Non-Native Vegetation within Preserves, shall be removed from the preserve area. The parcel owner shall thereafter maintain the parcel free of this vegetation. [Ord. 2008-040]

....
5. Mitigation or Restoration

a. When native trees are removed or damaged without ~~a permit prior ERM~~ approval or when trees that were to be preserved in place or relocated are damaged or destroyed during activities conducted with ERM approval, they shall be replaced at double the rate shown in the Table 7.D.2.D-4 Tree Credit and Replacement. For replacement vegetation which dies other than by damage or destruction, the replacement value shall be that in Table 7.D.2.D-4, Tree Credit and Replacement. Should replacement values not be found in the Table, the vegetation shall be replaced like size for like size. ERM may approve the planting of native vegetation equivalents other than the replacement values specified in Table 7.D.2.D-4, Tree Credit and Replacement. [Ord. 2008-040]

....
c. All vegetation planted to meet mitigation requirements shall be installed using best industry standards and provided with mulch, irrigation and required maintenance to insure survival in perpetuity.

ed. All mitigation shall occur and proper documentation ,in the form of a final planting plan, shall be submitted to ERM prior to ~~Technical Compliance the Certificate of Occupancy for single unit projects~~ or 75% completion of construction of multi-unit projects, based on either total square footage or number of units to be constructed. [Ord. 2008-040]

e. Any mitigation plantings found to have died within 360 days of plantings shall be replaced.

f. A letter of certification of planting completion, that supports compliance with 14.7.B.c and 14.7.B.2.h, submitted to ERM by the registered Landscape Architect for the project prior to the issuance of the Certificate of Occupancy shall substitute for any required final inspection.

edg. Any clearing activity after 1986 which cannot provide evidence of approval, will be required to restore nine trees per 1500 square feet of cleared area. [Ord. 2008-040]

Part 4. ULDC, Art. 14.C.8.M, Survey or Other Test Required (page 37 of 50), is hereby amended as follows:

CHAPTER C VEGETATION PRESERVATION AND PROTECTION

Section 8 Exemptions

The following activities do not require an approval under this Chapter: [Ord. 2008-040]

M. Survey or Other Test Required

The necessary removal of vegetation by, or at the direction of, a State of Florida licensed professional surveyor and mapper, professional geologist, or professional engineer to conduct a survey or other required test, provided that no tree three inches or greater DBH is removed, the path cleared does not exceed five feet in width, and native vegetation is removed solely by hand. If necessary, soil sampling with a vehicle equipped with a boring apparatus may clear a path not to exceed the minimum width required to gain ingress and egress into the test sampling area.

Part 5. ULDC, Art. Art. 14.C.12.A.1, Violations [Related to alteration or removal of vegetation without approval] (page 38 of 50), is hereby amended as follows:

CHAPTER C VEGETATION PRESERVATION AND PROTECTION

Section 12 Violations

A. Violations

A violation shall be:

1. The alteration or removal of up to 1,500 square feet of native vegetation without an approval from ERM, unless expressly exempt under this Chapter. Alteration or removal of each

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EXHIBIT H

ARTICLE 14 – ENVIRONMENTAL STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

additional 1,500 square feet of native vegetation or portion thereof in violation of this Chapter shall constitute a separate and additional violation. [Ord. 2008-040]

....

Part 6. ULDC, Art. 14.D.6.D, Removal of Prohibited Invasive Non-Native Vegetation, [Related to maintenance of prohibited vegetation on improved parcels] (page 41 of 50), is hereby amended as follows:

CHAPTER D PROHIBITED INVASIVE NON-NATIVE VEGETATION REMOVAL ORDINANCE

Section 6 Removal of Prohibited Invasive Non-Native Vegetation

D. In accordance with Article 14.C.9, improved parcels located in unincorporated Palm Beach County, approved or constructed on or after April 28, 1986, shall be maintained free of prohibited vegetation listed in Appendix 6 & ~~11~~, Prohibited Invasive Non-Native Vegetation. The applicable year as described in Article 14.D.6.A and provided in Appendix 11, does not apply to these parcels, instead parcel owners of these improved parcels shall immediately and perpetually maintain them free of all Prohibited Invasive Non-native Vegetation. [Ord. 2008-040]

....

Part 7. ULDC, Art. Art. 14.D.8.A.1, Enforcement [Related to failure of a parcel owner to remove prohibited Invasive Non-Native Vegetation] (page 41 of 50), is hereby amended as follows:

CHAPTER D PROHIBITED INVASIVE NON-NATIVE VEGETATION REMOVAL ORDINANCE

Section 8 Enforcement

A. Violations of this Chapter shall be:
1. Failure of a parcel owner to remove or eradicate Vegetation in accordance with ~~Art. 14.D.6. Art. 14.D.6.A and D~~, Removal of Prohibited Invasive Non-Native Vegetation. [Ord. 2008-040]

....

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EXHIBIT I

ARTICLE 17 – DECISION MAKING BODIES
SUMMARY OF AMENDMENTS
(Updated 09/16/09)

1
2 Part 1. ULDC, Art. 17.A.1, Powers and Duties [Related to the BCC] (page 6 of 26), is hereby
3 amended as follows:
4

5 CHAPTER A BOARD OF COUNTY COMMISSIONERS

6 Section 1 Powers and Duties

7 In addition to any authority granted to the Board of County Commissioners (BCC) by general or special
8 law, the BCC shall have the following powers and duties under the provisions of this Code:
9

- 10 D. to initiate, hear, consider and approve, ~~approve with conditions,~~ or deny ~~applications for~~
11 ~~development permits requests~~ to amend the text of this Code;
12
- 13 M. to take such other action not delegated to the decision-making bodies set forth in this Article or
14 other officials of PBC Departments, as the BCC may deem desirable and necessary to implement
15 the provisions of the Plan and this Code; ~~and~~
16
- 17 O. to review, hear, consider, and approve, approve with conditions, or deny requests for deviations
18 from: Article 4.B.1.A.70-1,a.1) Homeless Resource Center, Location and Separation
19 Requirements, and Articles 5, 6, and 7 for development supporting government facilities within
20 the PO Zoning District; ~~and~~ [Ord. 2007-013]
- 21 P. to hear, consider and approve, approve with conditions, or deny application for Unique
22 Structures.
23

24
25 Part 2. ULDC, Art. 17.B.5.E, Annual Report (page 8 of 26), is hereby amended as follows:
26

27 CHAPTER B General Provisions

28 Section 5 Rules of Procedure

- 29 ~~E. Annual Report~~
30 ~~Each board shall submit an annual report to the BCC. The form, substance and submittal date~~
31 ~~for the Annual Report shall be established by County Administrator in a Policy and Procedure~~
32 ~~Memorandum.~~
33

34
35 Part 3. ULDC, Art.17.C.1.C. & Art.17.C.1.E, Board Membership & Meetings [Related toLDRAB]
36 (page 9 of 26), is hereby amended as follows:
37

38 CHAPTER C APPOINTED BODIES

39 Section 1 Land Development Regulation Advisory Board

- 40 ~~3. Initial Terms~~
41 ~~a. Two Year Term~~
42 ~~Even numbered organizations in Table 17.C.1.C-1, LDRAB Expertise, and even~~
43 ~~numbered in BCC districts and two at-large alternate members.~~
44 ~~b. Three Year Term~~
45 ~~Odd numbered organizations in Table 17.C.1.C-1, LDRAB Expertise, and odd~~
46 ~~numbered BCC districts.~~
47 ~~c. Subcommittees~~
48 ~~The LDRAB shall determine by majority vote to create subcommittees with the~~
49 ~~expertise necessary to make recommendations on specific Code amendments.~~
50 ~~Subcommittee appointments shall be made at a public meeting.~~
51 ~~34. Terms of Office~~
52 ~~Members of the LDRAB shall hold office until the first Tuesday after the first Monday in~~
53 ~~February of the year their term expires.~~
54 E. Meetings
55 1. General
56 General meetings of the LDRAB shall be held as needed to dispense of matters properly
57 before the LDRAB. Special meetings may be called by the Chair or in writing by a
58 majority of the members of the LDRAB. Staff shall provide 24-hour written notice to each
59 LDRAB member before a special meeting is convened.
60 ~~c. Subcommittees~~

Notes:

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EXHIBIT I

ARTICLE 17 – DECISION MAKING BODIES
SUMMARY OF AMENDMENTS
(Updated 09/16/09)

The LDRAB shall consider recommendations from the Zoning Director and determine by majority vote to create subcommittees with the expertise necessary to make recommendations on specific Code amendments. Subcommittee appointments shall be made at a regular LDRAB public meeting. [Relocated from C.1.C.3.c above]

Part 4. ULDC, Art. 17.C.10., Impact Fee Review Committee [Related to Annual Reports] (page 17 of 26), is hereby amended as follows:

CHAPTER C APPOINTED BODIES

Section 10 Impact Fee Review Committee

....

F. Annual Report

The IFRC shall submit an annual report to the BCC. The form, substance and submittal date for the report shall be established by the County Administrator in a Policy and Procedure Memorandum.

Part 5. ULDC, Art. 17.C.13.B, Powers and Duties [Related to the Zoning Commission] (pages 19-20 of 26), is hereby amended as follows:

CHAPTER C APPOINTED BODIES

Section 13 Zoning Commission

B. Powers and Duties

The ZC shall have the following powers and duties under the provisions of this Code:

- 1. to initiate, review, hear, consider, and make recommendations to the BCC to approve, approve with conditions, or deny applications to amend the text of this Code;
1.2. to initiate, review, hear, consider, and make recommendations to the BCC to approve, approve with conditions, or deny applications for development orders to amend the Official Zoning Map;
2.3. to review, hear, consider, and make recommendations to the BCC to approve, approve with conditions, or deny applications for development orders pursuant to Art. 2.A.1.D.b. Zoning Commission for planned developments and traditional developments;
3.4. to review, hear, consider, and approve, approve with conditions, or deny applications for development permits for Class B conditional uses and Type II variance applications. [Ord. 2006-036]
5. to review, hear, consider, and approve, approve with conditions, or deny applications for development permits for Class B conditional uses;
4.6. to make its special knowledge and expertise available upon request of the BCC to any official, department, board, commission or agency of PBC, the State of Florida or Federal government;
5.7. to make studies of the resources, possibilities and needs of PBC and to report its findings and recommendations, with reference thereto, from time to time, to the BCC;
6.8. to recommend to the BCC additional or amended rules of procedure not inconsistent with this Section to govern the ZC's proceedings; [Ord. 2006-036]
7.9. to hear appeals of interpretations or determinations of Art. 5, Supplementary Standards, and waive certain requirements made by the Zoning Director [Ord. 2006-036] to consider and render a final decision on appeals of denials of green architecture application.

C. Commission Membership

1. BCC Appointed Members

The ZC shall be composed of nine seven members, to be appointed by the BCC. Each member of the BCC PBC Commissioner shall appoint one member to the ZC. The remaining two members shall be appointed by a majority vote of the BCC. The BCC shall also appoint two alternate members, a first alternate and a second alternate. The alternate members shall be appointed at large by a majority vote of the BCC. The alternate members shall vote only in the absence of regular members. The first alternate member shall have priority to vote in the absence of the first regular member's absence.

a. Qualifications

Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or education in planning, law, architecture, natural resource management, real estate, and related fields.

Notes:

Underlined language indicates proposed new language.

Language crossed-out indicates language proposed to be deleted.

.... (ellipses) indicates language not amended which has been omitted to save space.

Relocated language is shown as italicized with reference in parenthesis.

EXHIBIT I

ARTICLE 17 – DECISION MAKING BODIES
SUMMARY OF AMENDMENTS
(Updated 09/16/09)

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1) ~~Consideration shall be given to applicants who have experience or education in planning, law, architecture, landscape architecture, interior design, land planning, natural resource management, real estate, and related fields.~~

2) The two members appointed by a majority vote of the BCC shall be architects registered in the State of Florida and shall be nominated by the PBC Chapter of the American Institute of Architects.

b. Terms of Office

1) Members of the ZC shall hold office until the first Tuesday after the first Monday in February of the year their term expires.

~~2) Whenever a vacancy occurs on the ZC, the full time member's position shall be served by an alternate member until a permanent member can be appointed by the BCC.~~

Part 6. ULDC, Art. 17.C.14.B, Jurisdiction, Authority and Duties [Related to the Zoning Director] (page 25 of 26), is hereby amended as follows:

CHAPTER C APPOINTED BODIES

Section 14 Zoning Director

B. Jurisdiction, Authority and Duties

In addition to the jurisdiction, authority and duties which may be conferred upon the Zoning Director by other provisions of PBC Code, the Zoning Director shall have the following jurisdictions, authority and duties under this Code:

....

11. to review and approve or deny requests for administrative waivers pursuant to the applicable section(s) of the ULDC.

Notes:
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EXHIBIT J

ADULT ENTERTAINMENT
SUMMARY OF AMENDMENTS
(Updated 06/30/09)

1
2 Part 1 ULDC, Art. 1.1.2.A.25, Adult Entertainment (page 27-29 of 109), is hereby amended as
3 follows:

4 CHAPTER I Definitions & Acronyms

5 Section 2 Definitions

- 6 A. Terms defined herein or referenced in this Article shall have the following meanings:
- 7 25. **Adult Entertainment Definitions** – for the purposes of Art. 4.B.~~1~~.A.2.
 - 8 a. **Adult Arcade** - any place or establishment operated for commercial gain, which invites
9 or permits the public to view adult material. For purposes of this Code, "adult arcade" is
10 included within the definition of "adult theater."
 - 11 b. **Adult Bookstore/Adult Video Store** - An establishment which sells, offers for sale, or
12 rents adult material for commercial gain and which meets either of the following two
13 criteria: **[Ord. 2005-051]**
 - 14 1) More than 30 percent of the gross public floor area is devoted to adult material; or
15 **[Ord. 2005-051]**
 - 16 2) More than 30 percent of the stock in trade consists of adult material. **[Ord. 2005-051]**
 - 17 c. **Adult Booth** - a small enclosed or partitioned area inside an adult entertainment
18 establishment which is: (1) designed or used for the viewing of adult material by one or
19 more persons and (2) is accessible to any person, regardless of whether a fee is charged
20 for access. The term "adult booth" includes, but is not limited to, a "peep show" booth, or
21 other booth used to view adult material. The term "adult booth" does not include a foyer
22 through which any person can enter or exit the establishment, or a restroom.
 - 23 d. **Adult Dancing Establishment** - an establishment selling, serving or allowing
24 consumption of alcoholic beverages, where employees display or expose specified
25 anatomical areas to others regardless of whether the employees actually engage in
26 dancing.
 - 27 e. **Adult Entertainment** -
 - 28 1) Any adult arcade, adult theater, adult bookstore/adult video store, adult motel, or
29 adult dancing establishment; or any establishment or business operated for
30 commercial gain where any employee, operator or owner exposes his/her specified
31 anatomical area for viewing by patrons, including but not limited to: massage
32 establishments whether or not licensed pursuant to F.S. Chapter 480, tanning salon,
33 modeling studio, or lingerie studio.
 - 34 2) Excluded from this definition are any educational institutions where the exposure of
35 the specified anatomical area is associated with a curriculum or program.
 - 36 3) An establishment that possesses an adult entertainment license is presumed to be
37 an adult entertainment establishment.
 - 38 f. **Adult Entertainment Establishment** - any adult arcade, adult theater, adult
39 bookstore/adult video store, adult motel, or adult dancing establishment; or any
40 establishment or business operated for commercial gain where any employee, operator
41 or owner exposes his/her specified anatomical area for viewing by patrons, including but
42 not limited to: massage establishments whether or not licensed pursuant to F.S. §480,
43 tanning salon, modeling studio, or lingerie studio.
 - 44 g. **Adult Material** - any one or more of the following, regardless of whether it is new or
45 used:
 - 46 1) Books, magazines, periodicals or other printed matter; photographs, films, motion
47 pictures, video cassettes, slides, or other visual representations; recordings, other
48 audio matter; and novelties or devices; which have as their primary or dominant
49 theme subject matter depicting, exhibiting, illustrating, describing or relating to
50 specified sexual activities or specified anatomical areas; or;
 - 51 2) Instruments, novelties, devices, or paraphernalia which are designed for use in
52 connection with specified sexual activities.
 - 53 h. **Adult Motel** - a hotel, motel or similar commercial establishment which offers
54 accommodations to the public for any form of consideration; provides patrons with
55 closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or
56 other photographic reproductions which are characterized by the depiction or description
57 of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from
58 the public streets which advertises the availability of this adult type of photographic
59 reproductions.
 - 60 i. **Adult Theater** - an establishment operated for commercial gain which consists of an
61 enclosed building, or a portion or part thereof or an open-air area used for viewing of
62 adult material. "Adult motels," "adult arcade," "adult booth" and "adult motion picture
63 theater" are included within the definition of "adult theater". An establishment which has
64 "adult booths" is considered to be an "adult theater".

Notes:

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EXHIBIT J

ADULT ENTERTAINMENT
SUMMARY OF AMENDMENTS
(Updated 06/30/09)

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- j. **Commercial Gain** - operated for pecuniary gain, which shall be presumed for any establishment which has received a business tax receipt. For the purpose of this Code, commercial or pecuniary gain shall not depend on actual profit or loss. [Ord. 2007-013]
- k. **Educational Institution** - premises or site within a municipality or within the unincorporated area of PBC upon which there is a governmentally licensed child care facility for six or more children or elementary or secondary (K-12) school, attended in whole or in part by persons under 18 years of age.
- l. **Employee** - Any person who works, performs, or exposes his/her specified anatomical areas in an establishment, irrespective of whether said person is paid a salary or wages by the owner or manager of the business, establishment, or premises. "Employee" shall include any person who pays any form of consideration to an owner or manager of an establishment, for the privilege to work performing or exposing his/her specified anatomical areas within the establishment.
- m. **Person** - includes an individual(s), firm(s), association(s), joint ventures(s), partnership(s), estate(s), trust(s), business trust(s), syndicate(s), fiduciary(ies), corporation(s), and all other or any other similar entity.
- n. **Religious Activities** - any daily, weekly, or periodic activity associated with or that occurs at a religious institution.
- o. **Religious Institution** - a premises or site which is used primarily or exclusively for religious worship and related religious ecclesiastical or denominational organization or established place of worship, retreat, site, camp or similar facilities owned or operated by a bona fide religious group for religious activities shall be considered a religious institution.
- p. **Residential Zoning District** - Includes the following zoning districts which have not been designated in the comprehensive plan as commercial or industrial:
 - 1) RE-Residential Estate.
 - 2) RT-Residential Transitional.
 - 3) RT-Residential Transitional.
 - 4) RS-Single Family Residential.
 - 5) RM-Multiple-Family Residential (Medium Density).
 - 6) TND-Traditional Neighborhood Development.
 - 7) PUD-Planned Unit Development.
- q. **Specified Anatomical Areas** - less than completely and opaquely covered:
 - 1) Human genitals and pubic region; or
 - 2) the opening between the human buttocks, i.e., the anal cleft;
 - 3) that portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola (the colored ring around the nipple); this definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not so exposed; or
 - 4) human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- r. **Specified Sexual Activities** -
 - 1) Human genitals in a state of sexual stimulations, arousal, or tumescence;
 - 2) acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sexual intercourse, or sodomy;
 - 3) fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breast; or
 - 4) excretory functions as part of or in connection with any of the activities set forth in subsections of Art. 4.B.1.A.2.b.17)-18), Specified Anatomical Areas and Specified Sexual Activities.

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EXHIBIT J

ADULT ENTERTAINMENT
SUMMARY OF AMENDMENTS

(Updated 06/30/09)

1 Part 2. ULDC, Art. 3.B.2.B.2.a.3, Prohibited Uses (page 15 of 155), is hereby amended as
2 follows:

3 CHAPTER B Overlays

4 Section 2 AZO, Airport Zoning Overlay

5 B. Applicability

6 2. Uses on Airport Properties

7

8 a. Use Regulations

9 3) Prohibited Uses

10 Prohibited uses include adult entertainment and billboards. [Ord. 2006-036]

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13
14 Part 3 ULDC, Art. 3.B.10.D.2, Prohibited Uses (page 27 of 155), is hereby amended as follows:

15 CHAPTER B Overlays

16 Section 10 PBIAO, Palm Beach International Airport Overlay

17 D. Uses

18

19 2. Prohibited Uses

20 Adult entertainment establishments, bulk storage of gas and oil, and outdoor retail sales
21 (other than greenhouses, shadehouses or nurseries) shall be prohibited in the PBIAO district.
22 [Ord. 2004-051]

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26 Part 4. ULDC, Art. 3.B.15.A, Purpose and Intent (page 35 of 155), is hereby amended as
27 follows:

28 CHAPTER B Overlays

29 Section 15 WCRAO, Westgate Community Redevelopment Area Overlay

30 A. Purpose and Intent

31 The Westgate/Belvedere Homes Community Redevelopment Agency (WCRA) was created
32 pursuant to F. S. §163 Part III, Community Redevelopment, to remove blighted conditions,
33 enhance the PBC's tax base, improve living conditions, and preserve areas of low and moderate
34 cost housing in the Westgate/Belvedere Homes area of unincorporated PBC.

35 The use of community redevelopment powers enables the BCC and the WCRA to make public
36 improvements that encourage and enhance investment while providing neighborhood stability,
37 prevent continuation of inefficient and incompatible land use patterns, and assist revitalization
38 and rehabilitation of older commercial and residential areas in the Westgate/Belvedere Homes
39 area. The WCRAO is established with the purpose and intent of encouraging development and
40 redevelopment of the Westgate/Belvedere Homes area through regulatory incentives; arresting
41 deterioration of property values; preserving and protecting existing, viable affordable housing;
42 providing opportunity for the future development of affordable housing; implementing the 2004
43 Westgate/Belvedere Homes Community Redevelopment Plan (WCRA Plan); providing for mixed
44 use development; and providing for increased residential densities and commercial intensities,
45 without amendment to the Plan.

46 The WCRA Plan proposes to use smart growth and form based code principles that incorporates
47 urban design and mixed use development to achieve infill, residential and commercial
48 redevelopment. Mixed use development is required to implement the goals of the WCRA Plan to
49 allow for a pedestrian friendly environment, the vertical integration of uses, and higher intensity
50 and density. The BCC finds that the secondary effects of adult entertainment establishments, as
51 set out in the various studies, affidavits, and other materials cited in ULDC Article 4, Chapter B,
52 Section 1.A.2.f, "Findings of Fact", are incompatible with the stated purpose and intent of the
53 WCRAO. Therefore, the BCC determines that adult entertainment establishments shall be
54 prohibited within the WCRAO. [Ord. 2006-004]

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(This space intentionally left blank)

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EXHIBIT J

ADULT ENTERTAINMENT
SUMMARY OF AMENDMENTS
(Updated 06/30/09)

1 Part 7. ULDC, Art. 4.B.1.A.2, Adult Entertainment (page 20-25 of 155), is hereby amended as
2 follows:

3 CHAPTER B Supplementary Use Standards

4 Section 1 Uses

5 A. Definitions and Supplementary Standards for Specific Uses

6 2. Adult Entertainment

7 a. Establishment

8 Any adult arcade, adult theater, adult bookstore/adult video store, adult motel, or adult
9 dancing establishment; or any establishment or business operated for commercial gain
10 where any employee, operator or owner exposes his/her specified anatomical area for
11 viewing by patrons, including but not limited to: massage establishments whether or not
12 licensed pursuant to F.S. §480, tanning salon, modeling studio, or lingerie studio. [Ord.
13 2004-051]

14 b. Definitions, Adult Entertainment Establishment

15 The following definitions apply for the purposes of the Adult Entertainment Establishment
16 provisions of this Code. [Ord. 2004-051]

17 1) Adult Arcade

18 Any place or establishment operated for commercial gain, which invites or permits
19 the public to view adult material. For purposes of this Code, "adult arcade" is included
20 within the definition of "adult theater." [Ord. 2004-051]

21 2) Adult Bookstore/Adult Video Store

22 An establishment which sells, offers for sale, or rents adult material for commercial
23 gain and which meets either of the following two criteria:

24 (a) More than 30 percent of the gross public floor area is devoted to adult material;
25 or

26 (b) More than 30 percent of the stock in trade consists of adult material. [Ord. 2004
27 - 051]

28 3) Adult Booth

29 A small enclosed or partitioned area inside an adult entertainment establishment
30 which is: (1) designed or used for the viewing of adult material by one or more
31 persons and (2) is accessible to any person, regardless of whether a fee is charged
32 for access. The term "adult booth" includes, but is not limited to, a "peep show"
33 booth, or other booth used to view adult material. The term "adult booth" does not
34 include a foyer through which any person can enter or exit the establishment, or a
35 restroom. [Ord. 2004-051]

36 4) Adult Dancing Establishment

37 An establishment selling, serving or allowing consumption of alcoholic beverages,
38 where employees display or expose specified anatomical areas to others regardless
39 of whether the employees actually engage in dancing. [Ord. 2004-051]

40 5) Adult Entertainment

41 a) Any adult arcade, adult theater, adult bookstore/adult video store, adult motel, or
42 adult dancing establishment; or any establishment or business operated for
43 commercial gain where any employee, operator or owner exposes his/her
44 specified anatomical area for viewing by patrons, including but not limited to:
45 massage establishments whether or not licensed pursuant to F.S. Chapter 480,
46 tanning salon, modeling studio, or lingerie studio. [Ord. 2004-051]

47 b) Excluded from this definition are any educational institutions where the exposure
48 of the specified anatomical area is associated with a curriculum or program.
49 [Ord. 2004-051]

50 c) An establishment that possesses an adult entertainment license is presumed to
51 be an adult entertainment establishment. [Ord. 2004-051]

52 6) Adult Material

53 Any one or more of the following, regardless of whether it is new or used: [Ord. 2004
54 - 051]

55 a) Books, magazines, periodicals or other printed matter; photographs, films, motion
56 pictures, video cassettes, slides, or other visual representations; recordings,
57 other audio matter; and novelties or devices; which have as their primary or
58 dominant theme subject matter depicting, exhibiting, illustrating, describing or
59 relating to specified sexual activities or specified anatomical areas; [Ord. 2004 -
60 051] or;

61 b) instruments, novelties, devices, or paraphernalia which are designed for use in
62 connection with specified sexual activities. [Ord. 2004 - 051]

63 7) Adult Motel

64 A hotel, motel or similar commercial establishment which offers accommodations to
65 the public for any form of consideration; provides patrons with closed-circuit television

Notes:

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EXHIBIT J

ADULT ENTERTAINMENT
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(Updated 06/30/09)

1 transmissions, films, motion pictures, video cassettes, slides, or other photographic
2 reproductions which are characterized by the depiction or description of "specified
3 sexual activities" or "specified anatomical areas;" and has a sign visible from the
4 public streets which advertises the availability of this adult type of photographic
5 reproductions. [Ord. 2004-051]

6 **8) Adult Theater**

7 An establishment operated for commercial gain which consists of an enclosed
8 building, or a portion or part thereof or an open-air area used for viewing of adult
9 material. "Adult motels," "adult arcade," "adult booth" and "adult motion picture
10 theater" are included within the definition of "adult theater". An establishment which
11 has "adult booths" is considered to be an "adult theater". [Ord. 2004-051]

12 **9) Adult Video Store**

13 See Adult Bookstore. [Ord. 2004-051]

14 **10) Commercial Gain**

15 Operated for pecuniary gain, which shall be presumed for any establishment which
16 has received a business tax receipt. For the purpose of this Code, commercial or
17 pecuniary gain shall not depend on actual profit or loss. [Ord. 2004-051] [Ord. 2007-
18 013]

19 **11) Educational Institution**

20 Premises or site within a municipality or within the unincorporated area of PBC upon
21 which there is a governmentally licensed child care facility for six or more children or
22 elementary or secondary (K-12) school, attended in whole or in part by persons
23 under 18 years of age. [Ord. 2004-051]

24 **12) Employee**

25 Any person who works, performs, or exposes his/her specified anatomical areas in
26 an establishment, irrespective of whether said person is paid a salary or wages by
27 the owner or manager of the business, establishment, or premises. "Employee" shall
28 include any person who pays any form of consideration to an owner or manager of an
29 establishment, for the privilege to work performing or exposing his/her specified
30 anatomical areas within the establishment. [Ord. 2004-051]

31 **13) Person**

32 Includes an individual(s), firm(s), association(s), joint ventures(s), partnership(s),
33 estate(s), trust(s), business trust(s), syndicate(s), fiduciary(ies), corporation(s), and
34 all other or any other similar entity. [Ord. 2004-051]

35 **14) Religious Activities**

36 Any daily, weekly, or periodic activity associated with or that occurs at a religious
37 institution. [Ord. 2004-051]

38 **15) Religious Institution**

39 A premises or site which is used primarily or exclusively for religious worship and
40 related religious ecclesiastical or denominational organization or established place of
41 worship, retreat, site, camp or similar facilities owned or operated by a bona fide
42 religious group for religious activities shall be considered a religious institution. [Ord.
43 2004-051]

44 **16) Residential Zoning District**

45 Includes the following zoning districts which have not been designated in the
46 comprehensive plan as commercial or industrial: [Ord. 2004-051]

- 47 a) AR-Agricultural Residential. [Ord. 2004-051]
- 48 b) RE-Residential Estate. [Ord. 2004-051]
- 49 c) RT-Residential Transitional. [Ord. 2004-051]
- 50 d) RS-Single Family Residential. [Ord. 2004-051]
- 51 e) RM-Multiple-Family Residential (Medium Density). [Ord. 2004-051]
- 52 f) TND-Traditional Neighborhood Development. [Ord. 2004-051]
- 53 g) PUD-Planned Unit Development. [Ord. 2004-051]

54 **17) Specified Anatomical Areas**

55 Less than completely and opaquely covered:

- 56 a) Human genitals and pubic region; [Ord. 2004-051] or
- 57 b) the opening between the human buttocks, i.e., the anal cleft; [Ord. 2004-051] or
- 58 c) that portion of the human female breast encompassed within an area falling
59 below the horizontal line one would have to draw to intersect a point immediately
60 above the top of the areola (the colored ring around the nipple); this definition
61 shall include the entire lower portion of the female breast, but shall not include
62 any portion of the cleavage of the human female breast exhibited by a dress,
63 blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola
64 is not so exposed; [Ord. 2004-051] or
- 65 d) human male genitals in a discernibly turgid state, even if completely and
66 opaquely covered. [Ord. 2004-051]

67 **18) Specified Sexual Activities**

Notes:

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EXHIBIT J

ADULT ENTERTAINMENT
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(Updated 06/30/09)

- 1 a) Human genitals in a state of sexual stimulations, arousal, or tumescence; **[Ord.**
2 **2004-051]**
- 3 b) acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy,
4 coprophilia, fellation, flagellation, masochism, masturbation, necrophilia,
5 pederasty, pedophilia, sadism, sadomasochism, sexual intercourse, or sodomy;
6 **[Ord. 2004-051]** or
- 7 c) fondling or other erotic touching of human genitals, pubic region, buttock, anus,
8 or female breast; **[Ord. 2004-051]** or
- 9 d) excretory functions as part of or in connection with any of the activities set forth in
10 subsections of Art. 4.B.1.A.2.b.17)-18), Specified Anatomical Areas and
11 Specified Sexual Activities. **[Ord. 2004-051]**
- 12 **c. Exclusions**
- 13 Excluded from this definition are any educational institutions where the exposure of the
14 specified anatomical area is associated with a curriculum or program. **[Ord. 2004-051]**
- 15 **d. License**
- 16 An establishment that possesses an adult entertainment license is presumed to be an
17 adult entertainment establishment. An adult entertainment use shall comply with the
18 following supplementary use standards: A Special Permit for an adult entertainment
19 establishment shall be issued or denied within 21 days of a determination of application
20 sufficiency pursuant to the standards and procedures in Art. 2.D.2, Special Permit, and
21 the requirements of the Code. The standards set forth in Art. 2.D.2.D.1 and 2.D.2.D.4
22 shall not be applied to special permits for adult entertainment uses. An aggrieved party
23 has the right to immediately appeal a denial of application sufficiency for a Special
24 Permit, denial of a Special Permit, or revocation or suspension of a permit to the Circuit
25 Court in the Fifteenth Judicial Circuit of the State of Florida in accordance with the
26 procedure and within the time provided by the Florida Rules of Appellate Procedure.
27 **[Ord. 2004 – 051]**
- 28 **e. Purpose and Intent**
- 29 This Section is intended to provide for the proper location of adult entertainment uses in
30 order to protect the integrity of adjacent neighborhoods, educational uses, religious uses,
31 parks, and other commercial uses. Proper separation of adult entertainment uses
32 prevents the creation of "skid-row" areas in unincorporated PBC that results from the
33 concentration of these uses and their patrons. It is the intent of this Section to limit the
34 secondary effects of adult entertainment uses. The standards in this Section are intended
35 to ensure that residential districts, religious uses, educational uses, parks and other
36 commercial uses are located in areas free from the secondary effects of adult
37 entertainment uses. The location of residential districts, religious uses, educational uses,
38 parks and other commercial uses within viable, unlighted and desirable areas supports
39 the preservation of property values and promotes the health, safety and welfare of the
40 public. **[Ord. 2004-051]**
- 41 **f. Findings of Fact**
- 42 Based on the evidence and testimony presented at the October 5, 2004 preliminary
43 reading and the October 19, 2004 and November 16, 2004 Public Hearings before the
44 BCC, and the August 27, 2009 preliminary reading and the September 24, 2009 and
45 October 22, 2009 Public Hearings before the BCC, and on the findings incorporated in:
46 the "Final Report to the City of Garden Grove: The Relationship Between Crime and
47 Adult Business Operations on Garden Grove Boulevard", October 1991; "Adult
48 Entertainment Businesses in Indianapolis: An Analysis" conducted by the Department of
49 Metropolitan Development, Division of Planning, February, 1984; the "Study of the Effects
50 of Concentration of Adult Entertainment Establishments in the City of Los Angeles"
51 conducted by the Los Angeles City Planning Department for the Los Angeles City
52 Council, June 1977; the study conducted by the City of Austin Texas; the "Presentation to
53 the Orange County Commission" by the Metropolitan Bureau of Investigation (MBI) for
54 the Ninth Judicial Circuit (Orlando area); the expert affidavit prepared for Palm Beach
55 County by Eric Damian Kelly, PhD., FAICP, dated September 24, 2004; letter from Dale
56 N. Tarvis, M.D.; "Analysis of Availability of Sites for Adult Entertainment in Palm Beach
57 County" prepared for Palm Beach County by Duncan Associates, November 2003; the
58 "Crime-Related Secondary Effects of Sexually-Oriented Businesses – Report to the
59 County Attorney, Palm Beach County, Florida" prepared by Valerie Jenness, Ph.D.,
60 Richard McCleary, Ph.D., James W. Meeker, JD, Ph.D, August 15, 2007; the "Survey of
61 Florida Appraisers – Effects of Land Uses on Surrounding Property Values" prepared for
62 Palm Beach County by Duncan Associates, December 2007 (Report 2008); and
63 information from Tampa, Florida detailing the effects of adult entertainment
64 establishments in the Tampa area; the BCC hereby finds the following: **[Ord. 2004 –**
65 **051]**
- 66 1) Commercial uses exist or may exist within unincorporated PBC where books,
67 magazines, motion pictures, prints, photographs, periodicals, records, novelties

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EXHIBIT J

ADULT ENTERTAINMENT
SUMMARY OF AMENDMENTS

(Updated 06/30/09)

- 1 and/or other devices that depict, illustrate, describe or relate to specified sexual
- 2 activities are possessed, displayed, exhibited, distributed and/or sold. **[Ord. 2004-**
- 3 **051]**
- 4 2) Commercial uses exist or may exist within unincorporated PBC:
- 5 a) Where the superficial tissues of one person are manipulated, rubbed, stroked,
- 6 kneaded, and/or tapped by a second person, accompanied by the display or
- 7 exposure of specified anatomical areas; **[Ord. 2004-041]**
- 8 b) Where dancers, entertainers, performers, or other individuals, who, for any form
- 9 of commercial gain, perform or are presented while displaying or exposing any
- 10 specified anatomical area; **[Ord. 2004-051]** or
- 11 c) Where lap dancing occurs. **[Ord. 2004-051]**
- 12 3) This competitive commercial exploitation of such nudity and semi-nudity is adverse to
- 13 the public's interest and the quality of life, tone of commerce, and the community
- 14 environment in PBC. **[Ord. 2004-051]**
- 15 a) When the activities described in Art. 4.B.1.A.2.b.17)-18), Specified Anatomical
- 16 Areas and Specified Sexual Activities, are presented in commercial uses, other
- 17 activities that are illegal, immoral, or unhealthful tend to accompany them,
- 18 concentrate around them, and be aggravated by them. Such other activities
- 19 include, but are not limited to, prostitution, solicitation for prostitution, lewd and
- 20 lascivious behavior, possession, distribution, and transportation of obscene
- 21 materials, sale or possession of controlled substances, and violent crimes
- 22 against persons and land. **[Ord. 2004-051]**
- 23 b) When the activities described in Art. 4.B.1.A.2.b.17)-18), Specified Anatomical
- 24 Areas and Specified Sexual Activities, are present in commercial uses within
- 25 PBC, they tend to blight neighborhoods, adversely affect neighboring
- 26 businesses, lower property values, promote crime, and ultimately lead residents
- 27 and businesses to move to other locations. **[Ord. 2004-051]**
- 28 c) There is a direct relationship between the display and depiction of specified
- 29 anatomical areas as described in Art. 4.B.1.A.2.b.17)-18), Specified Anatomical
- 30 Areas and Specified Sexual Activities, and an increase in criminal activities,
- 31 moral degradation and disturbances of the peace and good order of the
- 32 community, and the occurrence of these activities are hazardous to the health
- 33 and safety of those persons in attendance and tend to depreciate the value of
- 34 adjoining land and harm the economic welfare of the community as a whole.
- 35 These secondary effects are adverse to the public's interest and quality of life,
- 36 the tone of commerce and the community environment in PBC. **[Ord. 2004-051]**
- 37 4) Based upon these findings, the BCC finds that there are a sufficient number of
- 38 available locations for new adult entertainment uses within unincorporated Palm
- 39 Beach County. **[Ord. 2004 – 051]**
- 40 5) Based upon these findings, it is in the interest of the health, safety, morals, and
- 41 general welfare of the citizens of PBC that adult entertainment uses are regulated
- 42 pursuant to the following standards.
- 43 **g. Location**
- 44 **1) General**
- 45 An adult entertainment use shall be located in the following minimum distances from
- 46 the following uses. There shall be no variance to the locational standards in this
- 47 Section. **[Ord. 2004-051]**
- 48 **a) Other Adult Entertainment Use**
- 49 2,000 feet. **[Ord. 2004-051]**
- 50 **b) A Church or Place of Worship**
- 51 1,000 feet. **[Ord. 2004-051]**
- 52 **c) An Educational Institution**
- 53 1,000 feet. **[Ord. 2004-051]**
- 54 **d) A Public Park**
- 55 500 feet. **[Ord. 2004-051]**
- 56 **e) A Residential Zoning District**
- 57 (Which is Designated as Residential by any Local Comprehensive Plan)
- 58 500 feet. **[Ord. 2004-051]**
- 59 **f) A Cocktail Lounge**
- 60 750 feet. **[Ord. 2004-051]**
- 61 **2) Measurement of Distance**
- 62 The distance set forth in this Section shall be measured by drawing a straight line
- 63 between the nearest point on the perimeter of the exterior wall or bay housing the
- 64 proposed adult entertainment use to the nearest point on the property line of the
- 65 relevant church or place of worship, educational institution, public park, residential
- 66 zoning district. For the purpose of measuring the distance, also see Article 1.C,
- 67 RULES OF CONSTRUCTION AND MEASUREMENT, between adult entertainment

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SUMMARY OF AMENDMENTS

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uses, the distance shall be measured by drawing a straight line between the nearest point on the perimeter of the exterior wall or bay of the proposed or existing adult entertainment establishment and the nearest point on the exterior wall or bay of another adult entertainment establishment. Measurement shall be made in a straight line, without regard to intervening structures or objects. [Ord. 2004-051]

3) WCRA Overlay

Adult entertainment is prohibited within the boundaries of the WCRAO, as per Table 3.B.15.E-7, WCRAO Sub-area Use Regulations. [Ord. 2006-004]

h. Subsequent Development within Locational Standards

The subsequent approval of a development order for a church or place of worship, elementary or secondary school, public park or residential district within the distances outlined in this Section shall not change the status of the adult entertainment use to that of a nonconforming use. [Ord. 2004-051]

i. Landscaping

A Type 2 incompatibility buffer, pursuant to Article 7.F, PERIMETER BUFFER LANDSCAPE REQUIREMENTS with canopy trees spaced a minimum of 20 feet on center and a wall a minimum of six feet in height shall be installed along any property line that abuts a residential district. [Ord. 2004-051]

j. Lighting

Outdoor low-intensity lighting shall be provided that illuminates the entire parking and vehicular use area. The lighting shall be installed on structures that do not exceed 16 feet in height from finished grade. [Ord. 2004-051]

k. Nonconformity

1) Establishment of Nonconformity

Any adult entertainment use shall be deemed a nonconforming use and the standards of this Section shall not apply if the adult entertainment use on November 28, 1988: [Ord. 2004-051]

a) Location

Was in operation as an adult entertainment use, generally known and held out in the neighborhood and community as an adult entertainment establishment, and was open to the public as an adult entertainment establishment use; [Ord. 2004-051] and

b) Business Tax Receipt

Possessed a valid and current business tax receipt authorizing the general type of use, which would correspond to the adult entertainment use being claimed as nonconforming on November 28, 1988;and [Ord. 2004-051] [Ord. 2007-013]

c) Adult Entertainment License

Applied for an adult entertainment use under the terms of this Code, shall submit an application for an adult entertainment license pursuant to the PBC Adult Entertainment Code, Chapter 17, Article V of the PBC Code, as may be amended, with appropriate filing fees by August 15, 1992. [Ord. 2004-051]

2) Standards for Nonconformance

A nonconforming adult entertainment use as determined in Article 4.B.1.A.2.k, Nonconformity, above shall be subject to the following supplementary standards, in addition to Article 1.F, NONCONFORMITIES Article 1.F, NONCONFORMITIES. [Ord. 2004-051]

a) Location

Was in operation as an adult entertainment use, was generally known and held out in the neighborhood and community as an adult entertainment establishment, and was open to the public as an adult entertainment establishment use; [Ord. 2004-051] and

b) Landscape Buffer

The adult entertainment use shall construct and install a Type 2 incompatibility buffer, as defined in Article 7.F, PERIMETER BUFFER LANDSCAPE REQUIREMENTS, with canopy trees spaced a maximum of 20 feet on center along any property line that abuts a residential district, within 90 days of the date of issuance of the adult entertainment license by the occupational licensing department. [Ord. 2004-051]

c) Building Permit

If a building permit for exterior structural renovation or remodeling or a paving or parking permit is issued for the adult entertainment use, the requirements of Article 7, LANDSCAPING, shall apply to the entire site of the adult entertainment use. [Ord. 2004-051]

(This space intentionally left blank.)

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**ADULT ENTERTAINMENT
SUMMARY OF AMENDMENTS
(Updated 06/30/09)**

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Part 8. ULDC Table 6.A.1.B – Minimum Off-Street Parking and Loading Requirements (page 5 of 37), is hereby amended as follows:

Table 6.A.1.B - Minimum Off-Street Parking and Loading Requirements – Cont'd

Use Type: Commercial	Parking ¹	Loading ²
Adult entertainment	1 space per 200 sq. ft.	N/A
....		
[Ord. 2005-002]		
Loading Key:		
Standard "A" - One space for the first 5,000 square feet of GFA, plus one for each additional 30,000 square feet of GFA.		
Standard "B" - One space for the first 10,000 square feet of GFA, plus one for each additional 15,000 square feet of GFA.		
Standard "C" - One space for the first 10,000 square feet of GFA, plus one for each additional 100,000 square feet of GFA.		
Standard "D" - One space for each 50 beds for all facilities containing 20 or more beds.		
Standard "E" - One space for the first 10,000 square feet of GFA, plus one for each additional 20,000 square feet of GFA. The space shall be a minimum of 12 feet in width and 18.5 feet in length for uses that require limited loading.		

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REPORT AND
ANALYSIS

SURVEY OF FLORIDA APPRAISERS

EFFECTS OF LAND USES ON SURROUNDING PROPERTY VALUES

PREPARED
FOR

PALM BEACH COUNTY, FLORIDA

SUBMITTED BY

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Connie B. Cooper, FAICP

December 2007 (Report May 2008)

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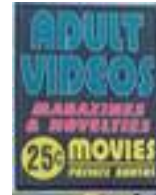
INTRODUCTION

OVERVIEW

Palm Beach County, Florida, hired the consultant team described below to conduct a survey of real estate appraisers to determine their opinions of the effects of sexually oriented businesses on the market value of residential and other commercial properties. The survey included all MAI and SRA full members of the Appraisal Institute in the state of Florida.

CONSULTANT TEAM

Palm Beach County retained Duncan Associates, in association with Cooper Consulting Company, Inc., and to undertake a study of certain secondary effects of sexually oriented businesses. Project manager for the study is Eric Damian Kelly, Ph.D., FAICP, vice president with Duncan Associates. Working with Duncan Associates on this project are Shawn Wilson, MAI, of Compass Real Estate Consulting, Inc., Lakeland, Florida, and Connie B. Cooper, FAICP, of Cooper Consulting, Inc., in Dallas, Texas. Assisting the team in survey design and data analysis was David C. Keuhl, Ph.D., now a faculty member at the University of Wisconsin, River Falls.



Cooper and Kelly are co-authors of the American Planning Association's Planning Advisory Service Report *Everything You Always Wanted to Know About Regulating Sex Businesses*. They are frequent collaborators in working with communities on the regulation of the of sexually oriented businesses to minimize their secondary effects. The work was performed under the supervision of the Office of the County Attorney.

REGULATING SEXUALLY ORIENTED BUSINESSES

Regulation of sexually oriented businesses has become one of the more challenging tasks facing communities today. Regulations must balance legitimate community concerns about the businesses with the First Amendment rights of the business owners and customers.

Courts increasingly demand that local governments base their zoning regulations of sexually oriented businesses on documented land-use effects of those businesses. Recent court decisions indicate that a local government representing a jurisdiction of significant size is in a better position legally if it conducts its own study of those impacts, rather than relying on published studies or studies conducted in other communities.

Most regulations of sexually oriented businesses are directed at nude or topless bars, XXX video stores and other establishments devoted almost entirely to sexually oriented activities. However, many well-regarded merchants include in their stock a measurable proportion of arguably sexually oriented material; such businesses include the video rental stores with "adults only" backrooms, news dealers with isolated racks of adult magazines and a variety of specialty stores that may include certain sexually oriented items.



Although those who take the most negative view of sexually oriented activities and materials would lump all such businesses together, this creates an impossible situation, legally and politically. First, any broad limitation on any business with any

“sexually oriented” materials or activities would ultimately apply to every bookstore, every movie rental store, every news dealer and, arguably, a variety of other merchants, such as Victoria’s Secret, which trades on the fringes of this market in some of the nation’s most upscale malls. Although those who would like to see such materials and activities eliminated completely from a community, the fact remains that there are technically x-rated scenes in major works of literature, brief nudity and sexual activity in Academy award-winning motion pictures.

Regulation of sex businesses is one of the most litigated areas of land-use law today. Communities that have tried to bar most or all sex businesses have generally lost court challenges to their regulatory schemes. In that context, a community must make reasonable provision for the existence of some sexually oriented businesses; on the other hand, it is also clear that a community need not necessarily allow every such establishment to offer the full range of sexually oriented products or activities that its proprietors might like to offer. Courts have also recognized that a sexually oriented business (such as a book store) is different from other businesses offering similar products that are not sexually oriented. Detroit can adopt and implement different zoning regulations for such businesses, provided that the effect is not a complete ban on all such businesses.

Regulations that attempt to censor specific messages or that otherwise target the message itself are subject to “strict scrutiny” in the courts, a standard which places a heavy burden on a government to show a “compelling state interest” that justifies the regulations. See, for example, *Boos v. Barry*, 85 U.S. 312, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988). But where the regulations are aimed at the secondary effects of sexually oriented businesses, they will be treated as “content neutral” and subject only to “intermediate scrutiny,” a far less burdensome standard for local governments to meet. See *City of Los Angeles v. Alameda Books, Inc.*, 152 L. Ed. 2d 670, 122 S. Ct. 1728 (U.S. 2002).

Palm Beach County has long been the home to a number of sexually oriented businesses, both in its municipalities and in the unincorporated areas of the County. Duncan Associates has assisted the County in assessing the adequacy of available sites in the County to meet Constitutional requirements for “alternative avenues.” This study was originally requested in the context of litigation, in which a particular sexually oriented business challenged the County’s regulations, challenging in part the County’s finding that there are secondary effects of such businesses. That litigation was settled, but the County requested that the consultants complete the study to supplement the County’s record and to provide part of a legislative predicate for future updates to the regulations.

SCOPE AND DESIGN OF STUDY

This study consisted of a survey of MAI and SRA real estate appraisers in Florida. Other researchers have conducted of real estate appraisers and professionals regarding this subject, including those incorporated in studies for Indianapolis, Indiana, Austin, Texas, Garden Grove, California, and Rochester, New York.¹ Experts for the industry have challenged the

¹ Austin, Texas: “Report on Adult Oriented Businesses in Austin,” prepared by Office of Land Development Services, May 19, 1986.

methodology used in those surveys on two primary grounds – first, that the form of the surveys and the cover letters suggested to respondents what result the researchers wanted; and second, that the questions on the surveys did not distinguish among types of sexually oriented businesses. Kelly and Cooper, the lead consultants on this project, carefully considered those criticisms in conducting a survey of appraisers in the Fort Worth-Dallas Metroplex in 2004.² In that survey, we included three different types of sexually oriented business: adult arcade/peep booths; adult novelty/media store (retail only); and gentleman’s club/cabaret. Those uses were included in an alphabetical list that included both such neutral land uses as bookstores and religious institutions but also included other uses that are often considered LULUs (“Locally Unwanted Land Uses”); other potential LULUs on the list included homeless shelter, bar/lounge, pawn shop, and convenience store with beer and wine. More than 95 percent of appraisers responding to that survey said that all three types of sexually oriented business would have a negative effect on the value of a single-family residence; only homeless shelters were viewed as negatively by the appraisers as sex businesses, although 87.5 percent believed said that a bar/lounge and pawn shop would also have a negative effect and some 80 percent said that a convenience store with beer and wine would have a negative effect. Asked about the effect of the same land uses on the value of a community shopping center, 92.5 percent said that an adult store with peep show would have a negative effect and 89.2 percent (not a statistically significant difference) said a gentleman’s club or cabaret would have such an effect; here, the retail-only sex businesses were identified as a negative influence by 82.1 percent, ranking them with homeless shelters. The next closest use on the list of negative effects on the value of a community shopping center was a pawn shop, identified by 53.8 percent as having a negative effect.

The Fort Worth survey provided the model on which this survey was based. It was further refined in consultation with a Florida appraiser, Shawn Wilson of Lakeland, with additional assistance from David Keuhl, Ph.D., who has served as the survey consultant on this project. In the Fort Worth survey, Cooper and Kelly included as comparators uses that planners typically find to be of concern to neighbors and that thus may have a negative effect on market values. For this survey, Wilson suggested the addition of some uses that appraisers often find to be of concern in determining market values – most notably high tension power lines and landfills. In this survey, we also added one additional sexually oriented business – a lingerie and adult novelties store. We also split the bar/lounge category into two parts, asking separately about the effects of a lounge with live entertainment and of a bar without live entertainment.

Garden Grove, California: “Final Report to the City of Garden Grove: the Relationship between Crime and Adult Business Operations on Garden Grove Boulevard,” Richard W. McCleary, Ph.D., James W. Meecker, J.D., Ph.D., October 23, 1991.

Indianapolis: “Adult Entertainment Businesses in Indianapolis, An Analysis,” 1984.

Rochester, New York: “Survey of Appraisers in Monroe County, New York,” Summer 2000, results published in Kelly and Cooper, *Everything You Always Wanted to Know about Regulating Sex Businesses*, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.

² The formal report is “Survey of Appraisers, Fort Worth and Dallas: Effects of Land Uses on Surrounding Property Values,” prepared for the City of Fort Worth; Duncan Associates, September 2004.

The most commonly cited secondary effects of sexually oriented businesses on communities relate to incidence of crime and effects on surrounding property values. The incidence of crime was well documented in the Garden Grove study,³ a study that would be difficult and expensive to replicate. Efforts to model the effects of particular uses on property values have proven to be very difficult to carry out effectively. The typical method, followed in sections of both the Indianapolis and Austin reports, is to compare trends in property values in an area with a sexually oriented business to trends in property values over the same period of time in a similar area without a sexually oriented business. There are multiple levels of comparison in such a study. One major challenge is trying to find “similar” areas. There will always be differences between the paired areas other than the sexually oriented business, and, without a large enough sample size to allow testing for other variables, it is difficult to determine how those other variables may be increasing or offsetting the apparent secondary effects of sexually oriented businesses. One area may have a park, while the other does not. One may have three small religious institutions while another has only two such institutions, but one of them turns out to be very large, with activities seven days a week. The area with the sexually oriented business may also have a pawn shop or a salvage yard or another use that may also have a negative effect on property values.

Even if researchers are able to identify truly comparable areas for the study, there is a further problem in tracking trends in property values. A study may use values assessed for tax purposes, a methodology that is itself fraught with problems and that often includes a number of factors other than market value. Tracking the values of properties that actually sell may make sense, but there is no guarantee that similar properties will sell in the two similar areas over any reasonable study period. The sale of one deteriorated home in one area or of a couple of upscale homes in another can distort the results of studies based on the values of properties that are actually sold. Understanding those problems is not particularly difficult. Solving them in the context of a specific study in a specific community is very difficult indeed.

In contrast to the complexities of paired area studies, we believe that the opinions of appraisers provide an excellent and reliable measure of the effects of any kind of use or activity on property values. First, certified appraisers are experts in their fields, people who follow professional standards in making judgments about property values. Second, appraisers familiar with a local market look at the values of many properties every year and thus have a substantial data set not only in their files but also in their heads. Third, and perhaps most important, the opinions of appraisers are essentially self-fulfilling prophecies. Most real estate transactions that take place in this country involve mortgage loans. The amount available for a mortgage loan on a particular property depends on the market value of the property, as determined by an appraiser. Thus, to take an overly simple example, if most appraisers in a community believe that pink and green houses are worth, in general, 10 percent less than similar houses painted beige, the practical effect of that opinion will be to reduce the market value of pink and green houses.

³ McCleary and Meeker, op. cit.

As we did in the Fort Worth/Dallas Metroplex, we elected to survey only appraisers who have met the professional standards of the Appraisal Institute⁴ as Members (holding the MAI designation) or as Senior Residential Appraisers (SRA designation). The Institute is considered by many to be the leading organization setting the standards for appraisers in the United States.

E-mail addresses for appraisers are available on the MAI website. Using that information, we sent links to an electronic survey form to all Florida appraisers who are full members of the Institute; we then sent follow-up e-mails as reminders. The results were compiled electronically and then provided to us for analysis. A discussion of the response rates follows at the end of this report.

In our report below, we include summaries of responses to the questions in which we were most interested. The survey instrument and responses to all questions are included at the end of the report. Although we have grouped sexually oriented businesses together in reporting the responses, the survey instrument mixed various land uses in the questions.

⁴ <http://www.appraisalinstitute.org>

RESULTS

EFFECTS ON MARKET VALUE OF SINGLE-FAMILY RESIDENCE

Effects of Various Land Uses

Question: If located within 500 feet, how would the listed land use potentially affect the market value of a Single-Family Home?

All responses should be based on your best professional opinion as an appraiser working in normalized or balanced market atmosphere

	Negative	Positive	No Impact
Homeless Shelter	94.3	0	0.9
Gentleman's Club/Strip Club	93.0	0	2.3
Landfill	92.9	0	2.8
Video Peep Booth Business	92.5	0.9	1.9
Adult Media & Video Store (retail sales only)	90.1	.05	5.2
Lounge (with live entertainment)	90.1	0.9	4.7
Lingerie & Adult Novelties Store	87.7	0	6.6
Bar (no live entertainment)	79.7	0.5	15.1
Pawn Shop	77.4	0.9	16
Package Liquor Store	74.2	1.4	19.1
High Voltage Power Lines	73.7	0	22.5
Convenience Store (beer/wine)	43.9	10.8	41
Grocery Store	25.8	40.4	30.5
Elementary School	18.0	52.6	24.6
Coffee Shop	12.2	25.8	56.3
Religious Institution	11.4	25.1	56.9
Neighborhood Playground	5.7	68.9	21.7

Notes: Responses here are reported based on the percentage of respondents giving each response.

Uses here are ranked by the percentage of respondents indicating that a particular use would have a negative effect on property values; in the original survey, the uses were alphabetized.

The survey had a response rate of 26.4 percent, giving the responses a margin of error of 5.78 percent. Using round numbers and applying the worst-case margin of error, 87 percent of appraisers in Florida believe that a gentleman's club or strip club has a negative effect on the market value of a single-family home; 86 percent believe that a video or peep business has a similar effect; 84 percent believe that an adult media store with retail sales only has a negative effect; and 82 percent believe that a lingerie and adult novelties store also has negative effects on property value.

Considering the margin of error, it is possible to group uses in categories, based on their potential negative effects on market values:

Most likely to have a negative impact (90 percent or more of responses; applying margin of error, responses range from 84 to 100 percent):

- Homeless Shelter
- Gentleman's Club/Strip Club

- Landfill
- Video Peep Booth Business
- Adult Media & Video Store (retail sales only)
- Lounge (with live entertainment)

Very likely to have a negative impact (80 percent or more of responses; applying margin of error, responses range from 81 to 93 percent):

- Lingerie & Adult Novelties Store

Also likely to have a negative impact (70 percent or more of responses; applying margin of error, responses range from 66 to 85 percent)

- Bar (no live entertainment)
- Pawn Shop
- Package Liquor Store
- High Voltage Power Lines

These responses are entirely consistent with the responses of appraisers in the Fort Worth study, with the addition of landfills and lingerie and adult novelty stores to the categories of uses that 80 percent or more of appraisers believe will have a negative effect on the market value of a single-family home.

Distances at Which Effects on Market Value are Not Measurable

Question: At what distance would there be No Measurable Impact on the Single-Family Home's market value?

	500 ft to ¼ mile	¼ mile to ½ mile	More than ½ mile	No Opinion
Adult Media & Video Store (retail sales only)	5.8	23.1	60.1	11.1
Bar (no live entertainment)	7.9	35.6	44.6	11.9
Coffee Shop	32.6	23.0	15.5	28.9
Convenience Store (beer/wine)	20.9	39.8	25.5	13.8
Elementary School	22.4	25.0	27.6	25.0
Gentleman's Club/Strip Club	2.4	19.9	67.0	10.7
Grocery Store	15.5	36.8	27.5	20.2
High Voltage Power Lines	27	23.0	35.0	15.0
Homeless Shelter	2.4	22.7	62.8	12.1
Landfill	2.0	8.9	77.3	11.8
Lingerie & Adult Novelties Store	3.5	20.3	66.3	9.9
Lounge (with live entertainment)	3.0	30.5	55.7	10.8
Neighborhood Playground	32.1	27.7	16.8	23.4
Pawn Shop	5.5	31.5	49.5	13.5
Package Liquor Store	7.5	35.0	42.0	15.5
Religious Institution	26.5	23.2	20.5	29.7
Video Peep Booth Business	2.5	17.7	69.0	10.8

Notes: Responses here are reported based on the percentage of respondents giving each response.

The most significant finding from the responses to this question is that some 80 to 85 percent of appraisers believe that the negative effect of sexually oriented businesses on the market values of single-family homes disappears only after a quarter-mile or more, and more than 60 percent believe that it disappears only after a half-mile or more. At 1,320 and 2,640 feet, respectively, these are significantly greater distances than the separation requirements of 500 or 750 feet often required under local ordinances.

The responses for the distance effects of homeless shelters on market values are essentially similar to those for sexually oriented businesses, as they were on the previous question. Not surprisingly, an even larger number of appraisers believe that the negative effects of landfills on market value diminish only after a half mile or more. Although a larger percentage of appraisers believe that the market effects of the sexually oriented businesses extends a half-mile or more than the percentage who believe that the secondary effects of a bar, a lounge with live entertainment, a pawn shop, or a liquor store, extends that far, when the number who believe that the negative effects extend a quarter mile are added to those who believe that it extends a half mile, the totals for those uses are of the same order of magnitude as the totals for sexually oriented businesses.

EFFECTS ON MARKET VALUE OF COMMUNITY SHOPPING CENTER

Effects of Various Land Uses

If located within 500 feet, how would the listed land use potentially affect the market value of a Community Shopping Center?

All responses should be based on your best professional opinion as an appraiser working in normalized or balanced market atmosphere

	Negative	Positive	No Impact
Homeless Shelter	76.2	0	18.8
Landfill	75.1	1	17.98
Video Peep Booth Business	67.8	0	28.2
Gentleman's Club/Strip Club	61.2	0	34.3
Adult Media & Video Store (retail sales only)	58.4	0	38.1
Lingerie & Adult Novelties Store	50.7	0.5	44.3
Package Liquor Store	26.5	2.5	66
High Voltage Power Lines	25.9	0.5	68.2
Lounge (with live entertainment)	23.9	4.0	66.2
Bar (no live entertainment)	15.5	3.0	78
Pawn Shop	11.5	7.5	77
Elementary School	8.0	12.9	74.6
Neighborhood Playground	3.0	10.9	81.1
Religious Institution	5.2	7.8	87

Results reported here in percentage of respondents giving each answer.

Uses here are ranked by the percentage of respondents indicating that a particular use would have a negative effect on property values; in the original survey, the uses were alphabetized.

Clearly some appraisers who believe that a variety of adult-oriented and other high-impact retail uses have a negative effect on the value of a single-family home do not believe that such

uses have a negative impact on the market value of a community shopping center. It is important to note, however, that, even after allowing for the margin of error, a significant majority of appraisers believe that all types of sexually oriented businesses identified in the survey have a negative effect on the market value of a community shopping center.

Distances at Which Effects on Market Value are Not Measurable

At what distance would there be No Measurable Impact on the Community Shopping Center’s market value?

	500 ft to ¼ mile	¼ mile to ½ mile	More than ½ mile	No Opinion
Adult Media & Video Store (retail sales only)	18.4	25.1	35.8	20.7
Bar (no live entertainment)	30.4	14.9	18.6	36.0
Elementary School	32.1	12.7	17.6	37.6
Gentleman’s Club/Strip Club	17.1	24	40.6	18.3
High Voltage Power Lines	28.3	18.7	21.1	31.9
Homeless Shelter	11	24.7	49.5	14.8
Landfill	7.1	17.4	59.8	15.8
Lingerie & Adult Novelties Store	18.4	23	36.8	21.8
Lounge (with live entertainment)	23.5	19.9	25.9	30.7
Neighborhood Playground	32.9	13	13	41.0
Package Liquor Store	25.2	23.9	19.6	31.3
Pawn Shop	31.9	15	17.5	35.6
Religious Institution	34.8	14.9	10.6	39.8
Video Peep Booth Business	11.2	25.7	44.1	19.0

Results reported here in percentage of respondents giving each answer.

Response rates to this question were lower than to others, and the significant number of respondents who expressed “no opinion” indicates that clear findings are more difficult to make on this issue. The percentages of respondents who believe that the negative effects extend a half mile or more are far lower than the comparable percentages when questions were posed about the distance at which the negative effects on market values of single family homes.

CONCENTRATION OF USES

Effects on a Market Value of a Single-Family Home

Would a concentration (2 or more uses within a couple of blocks) have additional impact on the Single-Family Home's market value?

		Yes Added Impact	No, Added Impact	No Opinion
Gentleman's Club/Strip Club	203	83.7	8.9	7.4
Adult Media & Video Store (retail sales only)	203	82.8	8.4	8.9
Video Peep Booth Business	201	81.1	10	9
Landfill	203	80.3	12.8	6.9
Homeless Shelter	205	79.0	11.2	9.8
Lingerie & Adult Novelties Store	198	76.8	14.1	9.1
Lounge (with live entertainment)	200	75.5	17.5	7
Bar (no live entertainment)	203	72.8	19.3	7.9
Pawn Shop	197	66.5	24.9	8.6
High Voltage Power Lines	199	65.8	21.1	13.1
Package Liquor Store	195	62.1	28.2	9.7
Convenience Store (beer/wine)	195	44.1	45.6	10.3
Grocery Store	194	35.1	53.1	11.9
Neighborhood Playground	194	28.4	58.2	13.4
Elementary School	192	28.1	56.8	15.1
Religious Institution	191	24.1	59.7	16.2
Coffee Shop	195	17.9	69.2	12.8

Results reported here in percentage of respondents giving each answer.

Uses here are ranked by the percentage of respondents indicating that a concentration of a particular use would have a increase the effects on market values; in the original survey, the uses were alphabetized.

Discussion of these responses follows the next question and set of responses.

Effects on Market Value of a Community Shopping Center

Would a concentration (2 or more uses within a couple of blocks) have additional impact on the Community Shopping Center's market value?

	N	Yes Added Impact	No, Added Impact	No Opinion
Homeless Shelter	186	69.9	21.5	8.6
Gentleman's Club/Strip Club	186	69.4	23.7	7
Landfill	186	67.7	22.6	9.7
Adult Media & Video Store (retail sales only)	191	64.4	27.7	7.9
Video Peep Booth Business	187	63.6	28.9	7.5
Lingerie & Adult Novelties Store	184	60.3	31.5	8.2
High Voltage Power Lines	178	36.5	48.9	14.6
Package Liquor Store	179	35.8	53.1	11.2
Lounge (with live entertainment)	179	33.5	55.3	11.2
Bar (no live entertainment)	178	27.5	62.4	10.1
Pawn Shop	176	23.9	64.8	11.4
Elementary School	172	18.6	69.8	11.6
Neighborhood Playground	177	14.7	71.8	13.6
Religious Institution	175	12.6	72.6	14.9

Results reported here in percentage of respondents giving each answer.

Uses here are ranked by the percentage of respondents indicating that a concentration of a particular use would have a increase the effects on market values; in the original survey, the uses were alphabetized.

This was an imperfect question. It is highly unlikely that there would be a concentration of landfills or elementary schools. We know that and knew it when we posed the question. To maintain the integrity of the study, however, we did not want to appear to focus on particular uses out of our alphabetized use by dropping some of them out for purposes of some questions. Other studies suggest that the concentration of adult uses increases disproportionately the effects on crime rates in the surrounding area.

Few studies have attempted to analyze the extent to which a concentration increases the negative effects on property values. In the opinions of Florida appraisers, a concentration of sexually oriented businesses and similar adult-oriented uses (bars and lounges) clearly increases the negative effects on the market values of single-family homes. A concentration of sexually oriented businesses (and/or of homeless shelters) stands out as having the most potential negative effect on the market value of a community shopping center; a concentration of bars or lounges is considered by significantly less than a majority of appraisers to have a potentially negative effect on the market value of such a center.

OTHER QUESTIONS

Effect of Operating Hours

Would a retail business open AFTER 11 PM have a negative impact on the market value of Single-Family Homes located within a 5-minute walk (1500 feet)?

Always	Sometimes	Never	No Opinion
21	165	17	8
10	78.2	8.1	3.8

Results reported here in percentage of respondents giving each answer.

We asked this question because a number of communities have included limitations on the operating hours of sexually oriented businesses as part of their local regulatory schemes. These responses clearly support limitations of operating hours of businesses within 1500 feet of single-family homes. The difficulty in using this information is that convenience stores are often located within 1500 feet of single-family homes, and most convenience stores operate 24 hours per day. Note that a smaller number of appraisers believe that convenience stores have a negative effect on property values than the number who believe that sexually oriented businesses have such an effect. There is nothing in the response to this particular question, however, that makes any differentiation. Thus, these responses should not be interpreted as supporting a limitation on operating hours of all businesses located within 1500 feet of residential neighborhoods, but not on **only** sexually oriented businesses that fall within such a distance. A local government may, of course, have other data that suggests that sexually oriented businesses might legitimately be limited in ways that other businesses are not.

Effect of Garish Lighting or Signs

If you indicated certain land uses had negative impacts on the market value of a Single-Family Home, would increase the negative impact? 207 responses

Always	Sometimes	Never	No Opinion
79	119	1	8
38.2	57.5	0.5	3.9

Results reported here in percentage of respondents giving each answer.

These findings are also statistically significant and also hard to use. Although we had great confidence in using the adjective “garish” and believing that appraisers would know what we mean, attempting to limit “garish” lighting and graphics is far more difficult. “Garish” is simply not a regulatory term. Any attempt to regulate specific content of signs or graphics – beyond prohibiting obscene messages and nude images on signs – raises significant First Amendment issues. We have studied sex businesses in many communities, and we have never seen a sign on such a business that came close to our definition of “obscene,” and we have rarely seen one that would violate a ban on public displays of nudity. Some communities have tried to limit lighting and signage at sexually oriented businesses, and the responses to this question would support such limitations at sex businesses and other high-impact uses (including pawn shops, which often have signs that we would consider garish). Specifying what is and is not allowed remains a challenge that so far has been beyond our abilities to address.

WHO RESPONDED

What are your general areas of practice? (you may choose up to two)

	Count	%
Broward County	32	9.3%
Miami-Dade County	26	7.5%
Palm Beach County	27	7.8%
Treasure Coast (Indian River, Martin & St. Lucie Counties)	19	5.5%
NE Florida (Duval, Nassau, St. Johns, Baker & Clay Counties)	23	6.7%
Central Florida (Seminole, Osceola, Lake & Orange Counties)	42	12.2%
Sarasota-Bradenton – Manatee & Sarasota Counties	24	7.0%
Other Location	9	2.6%
NW Florida (Escambia, Santa Rosa, Okaloosa, Walton, Bay, Leon & Gadsden Counties)	24	7.0%
Lakeland-Winter Haven (Polk County)	15	4.3%
SW Florida (Charlotte, Lee & Collier Counties)	24	7.0%
N. Central Florida (Alachua, Marion & Gilchrist Counties)	12	3.5%
E. Central Florida (Volusia & Brevard Counties)	20	5.8%
Tampa-St. Petersburg – Hillsborough, Pasco, Hernando & Pinellas Counties	48	13.9%

Do you believe that your personal, moral or ethical beliefs have affected your responses to any of the questions in this survey? 213 responses

Yes	No
60	153
28.2	71.8

Results reported here in percentage of respondents giving each answer.

How many years of real estate appraisal experience do you have? 214 responses

1 – 9 years	10 – 19 years	20 – 29 years	30+ years
3	22	103	86
1.4	10.3	48.1	40.2

Results reported here in percentage of respondents giving each answer.

RESPONSE RATE AND MARGIN OF ERROR

We sent links to the electronic survey to 842 to appraisers holding the SRA or MAI designation in Florida. Thirty-seven of the addresses that we had bounced, and those persons were eliminated from the base calculations. Of those whom we contacted, 213 completed the survey. That gave us a response rate of 26.46 percent which yields a margin of error of 5.78 percent. In some surveys – such as those of voters for President of the United States, where margins are typically narrow – that margin of error would substantially impair if not eliminate any validity of the survey.

In this case, however, the major findings regarding the effects of sex businesses on the market value of single-family homes were supported by 79 to 95 percent of the respondents. Even if the entire margin of error were applied negatively and the resulting responses were thus directly reduced (which is a worst-case example of possible error, not a statistically valid technique), the results would drop to a range of 73 to 89 percent of the respective respondents, still a very strong and firm finding on all of the major issues regarding single-family homes. The percentage of appraisers reporting that they believed that there would be a negative effect on the market value of a community shopping center was somewhat smaller, but, here, also, even applying the margin of error as an entirely negative factor would leave well over half the respondents reporting that sex businesses will have a negative effect on the market value of a community shopping center.

It is also useful to compare the response rate in this study to response rates in other surveys of appraisers. A search of the literature on appraiser’s response rates to surveys revealed a range as follows:

Author	Year	Response Rate
Chan ⁵	2000	21.0%
Claurette, Bible, et al. ⁶	1989	23.9%
Diskin, Lahev, et al. ⁷	1988	30.0%
Dotterweich and Myers ⁸	1995	41.5%
Fisher, Lentz, et al. ⁹	1993	33.0%

⁵ Chan, N. (2000). "How Australian appraisers assess contaminated land." *The Appraisal Journal* 68(4): 432-439.

⁶ Claurette, T. M., D. S. Bible, et al. (1989). "Appraisal Regulation And Certification: Appraisers' Views." *The Appraisal Journal* 57(3): 317-326.

⁷ Diskin, B. A., V. M. Lahey, et al. (1988). "Appraisers' Utilization Of Computer Technology." *The Appraisal Journal* 56(2): 179-189.

⁸ Dotterweich, D. and G. Myers (1995). "Appraiser Attitudes toward Industry Changes." *The Appraisal Journal* 63(3): 291-297.

⁹ Fisher, J. D., G. H. Lentz, et al. (1993). "Effects of Asbestos on Commercial Real Estate: A Survey of MAI Appraisers." *The Appraisal Journal* 61(4): 587-599.

Kinnard and Worzala ¹⁰	1999	43.0%
Lahey, Ott, et al. ¹¹	1993	40.4%
Smolen and Hambleton ¹²	1997	36.5%
Waller ¹³	2000	50.0%
Wolverton and Epley ¹⁴	2000	25.7%
Wolverton and Gallimore ¹⁵	1999	31.7%
Wolverton and Gallimore ¹⁶	1999a	31.8%

Although at the low end of response rates among surveys of appraisers on a variety of subjects, the results in this survey were of the same order of magnitude. Further, most of the other surveys asked appraisers questions about their profession or practices, not hypothetical questions about property values. As experts and consultants, we certainly understand the reluctance of experts to respond to hypothetical questions in their area of expertise for a non-client, without compensation and with no firm understanding of how the material will be used. When all of those factors are considered, we believe that the response rate is understandable. Further, as noted above, the findings are so clear that the relatively high margin of error resulting from the lower response rate has no effect on the substantive findings of the study.

FINDINGS AND CONCLUSIONS

FINDINGS RELATED TO SEXUALLY ORIENTED BUSINESSES

The following findings and conclusions can clearly be drawn from this survey:

- Between 80 and 95 percent of Florida appraisers believe that gentleman’s clubs/strip clubs, adult video stores (retail only) and video peep both businesses have a negative

¹⁰ Kinnard, W. N. and E. M. Worzala (1999). "How North American Appraisers Value Contaminated Property and Associated Stigma." *The Appraisal Journal* 67(3): 269-279.

¹¹ Lahey, K. E., D. M. Ott, et al. (1993). "Survey of the effects of state certification on appraisers." *The Appraisal Journal* 61(3): 405-413.

¹² Smolen, G. E. and D. C. Hambleton (1997). "Is the Real Estate Appraiser's Role Too Much To Expect?" *The Appraisal Journal* 65(1): 9-17.

¹³ Waller, B. D. (2000). "A Survey of the Technology Astuteness of the Appraisal Industry." *The Appraisal Journal* 68(4): 469-473.

¹⁴ Wolverton, M. L. and D. Epley (2000). "National Survey of Residential Appraisers Shows SRAs Have More Earning Power." *The Appraisal Journal* 68(4): 395-405.

¹⁵ Wolverton, M. L. and P. Gallimore (1999). "Client feedback and the role of the appraiser." *The Journal of Real Estate Research* 18(3): 415-431.

¹⁶ Wolverton, M. L. and P. Gallimore (1999). "A cross-cultural comparison of the appraisal profession." *The Appraisal Journal* 67(1): 47-56.

effect on the market value of single-family residences located within 500 feet of such a use;

- A slightly smaller percentage (between 81 and 93 percent) believe that a lingerie and adult novelty store has a negative effect on the market value of a single-family residence located within 500 feet of such a use [with a margin of error of about 6 percent, the difference is probably not statistically significant, although it is identifiably so];
- More than 80 percent believe that the negative effect on market value extends at least a quarter of a mile (1,320 feet) and more than 60 percent believe that it extends more than half a mile (2,620 feet);
- More than 75 percent believe that the concentration of two or more such uses increases the negative effect on market values of a single-family home (adjusting for margin of error, range is 73 percent to 85 percent);
- Again, a slightly smaller percentage believe that the concentration of lingerie and adult novelty stores will have such an effect, but the difference in this case is clearly not significant;
- A majority of Florida appraisers believe that a video peep show business, a gentleman's club/strip club or adult media and video store (retail only) will have a negative effect on the market value of a community shopping center located within 500 feet (allowing for margin of error, range is from about 61 percent to 75 percent for the video peep business and from 52 percent to 67 percent for the other two);
- About half of Florida appraisers believe that a lingerie or adult novelty store will have a negative effect on the market value of a community shopping center located within 500 feet (allowing for the margin of error, range is 45 to 57 percent);
- About 80 percent believe that the negative effect on market value of a video peep show business extends at least a quarter of a mile (1,320 feet) and more than 40 percent believe that it extends a half mile or more (2,620 feet);
- About 60 percent believe that the negative effect on market value of a gentleman's club/strip club, adult media and video store (retail only) and a lingerie and adult novelty store extends at least a quarter of a mile, and about 25 percent believe that it extends a half mile or more;
- Nearly 70 percent believe that the concentration of two or more gentleman's club/strip clubs increases the negative effect on market values of a community shopping center (range is 63 to 75 percent);
- About 60 percent believe that the concentration of two or more video peep show business, adult media and video store (retail only), and/or lingerie and adult novelty store increases the negative effect on market value of a community shopping center;
- About 95 percent of Florida appraisers believe that "bright, animated, or garish lighting or graphics" may or will increase the negative impact of a business that has negative effects on the market value of a single-family home – some 38 percent responded "always" and another 57 percent responded "sometimes";

- More than 80 percent of Florida appraisers believe that having a retail business that is open after 11 p.m. may have a negative effect on the market value of a single-family home located within 500 feet – only 10 percent said “always” in response to this question; 78 percent said “sometimes”;
- The findings related to lighting, signage and operating hours are not limited to sexually oriented businesses.

THE FINDINGS AND OTHER HIGH IMPACT USES

Overview

Several other high-impact uses – which might also be called “NIMBY”s (Not In My Back Yard) or “LULU”s (Locally Unwanted Land Uses) – were considered by respondents to have negative effects on property values of the same order of magnitude as the negative effects of sexually oriented businesses.

The underlying purpose of this study was to determine whether sexually oriented businesses have measurable negative secondary effects that justify increased regulation for such businesses. Clearly the results of this study show substantial, measurable secondary effects which, in our opinion, justify special zoning regulation of such uses, including but not limited to separation distances from single-family residences. These findings would appear similarly to support special regulation of the other high-impact uses, including homeless shelters, lounges with live entertainment, bars, high voltage power lines and pawn shops. Although somewhat beyond the scope of the report that we were retained to perform, we believe that it is both appropriate and necessary to offer some specific comments on that topic.

High Voltage Power Lines

Utilities in Florida are regulated by the Public Service Commission. The state exercises a comprehensive set of regulations that largely preempts local regulation of the design and location of utility facilities. To the extent that such power lines already exist, presumably those who purchase real estate factor the effect of the lines into determining what price they are willing to pay for property. The issue of mitigating the impact of high voltage power lines on the value of single-family homes, shopping center and other uses that pre-exist proposed power lines is largely beyond the control of Palm Beach County. There is thus no reason to give further consideration here to the issue of local land-use regulation and the effects of high voltage power lines on property values.

Landfills

The location and operation of landfills is subject to a complex federal-state regulatory scheme for which the basic policies are established in the federal Resource Conservation and Recovery Act. See Chapter 403 of the Florida Statutes. Local control of the location of landfills is limited. To the extent that a landfill already exists, presumably those who purchase nearby real estate factor the effect of the lines into determining what price they are willing to pay for property. The establishment of future waste disposal sites is controlled in part through Chapter

403 of the Florida Statutes and further limited under the Palm Beach County Solid Waste Act¹⁷, which includes this provision:

- (1) It is unlawful to violate this act [article] or the rules duly adopted pursuant to it. After the effective date of this act [article], no person shall:
 - (a) Place or deposit any solid waste in or on the lands or waters located within the county except in a manner consistent with the countywide solid waste program.
 - (b) Burn solid waste except in a manner consistent with the countywide solid waste program.¹⁸

Through local and state permitting processes, officials of Palm Beach County have the opportunity to address the negative secondary effects of a proposed landfill on a case-by-case basis; such case-by-case review is Constitutionally proscribed for adult uses. Thus, the treatment of landfills is clearly distinguishable from that of sexually oriented businesses for land-use purposes.

Bars and Lounges

Palm Beach County has recognized the potential negative secondary impacts of bars and lounges, both of which fall under the definition of “Cocktail Lounge” in the Palm Beach County Unified Land Development Code, which imposes these restrictions:

a. Separation

A cocktail lounge shall not be located within 250 feet of a residential district and shall be separated a minimum of 750 feet from another cocktail lounge. The Zoning Director may ask for assigned/sealed survey certifying that another lounge does not exist within 750 feet off the subject lounge, a residential district is more than 250 feet from the subject lounge, or the subject lounge is more than 500 feet from a school as required by the State of Florida.

b. CN District

Shall not exceed 1,500 square feet of GFA.

c. CHO District

Shall be contained in an office, hotel or motel structure and shall be limited to a total floor area that does not exceed ten percent of the GFA of the entire structure, unless approved as a requested or Class A conditional use.

d. CG District and PDDs

Shall meet the separation criteria above, unless approved as a requested or Class A conditional use.

e. Outdoor Areas

¹⁷ Palm Beach County Code, Chapter 26, Article II.

¹⁸ Palm Beach County Code §26-42.

Outdoor seating and open lounge areas shall be setback a minimum of 100 feet from adjacent residential districts or uses.¹⁹

Homeless Shelters

There appear to be no specific provisions allowing homeless shelters in Palm Beach County. Thus, any effort to establish a homeless shelter would require a public review process through which issues related to negative secondary effects could be addressed.

Pawn Shops

Palm Beach County has recognized the potential negative secondary impacts of pawnshops. The Palm Beach County Unified Land Development Code includes these specific restrictions on pawnshops:

a. Separation

Shall be located a minimum of 2,000 feet from another pawnshop.

b. Setbacks

Shall be setback a minimum of 150 feet from any property line abutting a residential use or an area designated as residential by a Local Plan.

c. Hours of Operation

Shall not be open to the public prior to 7:00 a.m. or later than 10:00 p.m. daily.²⁰

Discussion

The responses from appraisers show clearly that a significant majority of them believe that all types of sexually oriented business included in this survey have a negative impact on the values of nearby single-family homes and community shopping centers. The same group of appraisers also identified several other land uses that can have a significant negative effect on market values. This section of the report was included to answer this question – “Does Palm Beach County impose additional controls on all identified land uses that may have similar negative secondary effects, or has it singled out sexually oriented businesses?” The answer is clearly that it does, to the extent that it can do so under state law, impose additional regulations on all of the uses identified by a majority of appraisers as having a negative secondary effect on the market values of properties. It has no control over high voltage power lines; it has limited control over landfills but has clearly exercised what control it has. Bars, lounges, and pawn shops are subject to the same types of additional regulations as sexually oriented businesses. The only problematic use that is not subject to specific additional regulations in Palm Beach County is a homeless shelter. Because such a use is not listed as a permitted or accessory use under the Unified Land Development Code, such a use could be approved only through a rezoning, variance or other discretionary review process, through which the County could

¹⁹ Palm Beach County ULDC Article 4, Part B, Section 1, paragraph 67.

²⁰ Palm Beach County ULDC Article 4, Part B, Section 1, paragraph 97.

consider both the potential benefits and the potential negative secondary effects of such a shelter.

The controls imposed on pawn shops and bars and lounges are similar but not identical to those imposed on sexually oriented businesses. There is no Constitutional imperative that they be treated similarly – only that the County show that it is serious about addressing secondary effects and is not just using that as an excuse to discriminate against sexually oriented businesses. There are good reasons why the regulations imposed on other high-impact uses should be different and not identical to those imposed on sexually oriented businesses. Although the impacts of all of these uses on the market values of single-family residences and commercial properties appear to be similar, these uses differ in other characteristics and, undoubtedly, in other impacts on the community. There are well-documented negative effects of sexually oriented businesses on crime rates, in part because such businesses attract “soft targets” and criminals who prey on them. There is no reason to believe that pawn shops similarly attract soft targets. Although patrons of bars and lounges may also be soft targets, they differ in other ways from sexually oriented businesses. One of the types of crime associates with sexually oriented businesses is prostitution and other sex crimes. There is little reason to believe that a typical bar, or a lounge with a live country and western band, would similarly attract people who are interested in commercial sex transactions.

We do not have the research to identify all the potential similarities and differences between sexually oriented businesses as a group and these other categories of uses – homeless shelters, pawn shops, lounges with live entertainment and bars. We do, however, have enough experience in dealing with problematic land uses to know that there are differences and that it is entirely reasonable for elected officials to conclude that they thus should be treated differently. The plurality of the Supreme Court in a 2002 decision indicated that it is important to allow local governments a “reasonable opportunity to experiment with solutions’ to address the secondary effects of protected speech.”²¹ The courts are far more deferential to local governments on land-use controls that do not potentially affect First Amendment rights than they are on regulations of signs, religious uses, and sexually oriented businesses. It is thus entirely reasonable to extrapolate from its position regarding sex businesses that it would defer to the judgment of Palm Beach County elected officials that bars, lounges and pawn shops should be subject to a different type of additional regulation than are sex businesses.

²¹ City of Los Angeles v. Alameda Books, 535 U.S. 425, 122 S. Ct. 1728, 1736, 152 L. Ed. 2d 670, 683-84 (U.S. 2002), remanded for further proceedings at 295 F.3d 1024 (9th Cir. 2002).

APPENDIX – ADDITIONAL COMMENTS RECEIVED

COMMENTS FROM APPRAISERS PRACTICING OUTSIDE PALM BEACH COUNTY

There are other uses that could have potential negative impacts, including cellular towers, industrial/residential uses in close proximity, etc.

Obviously, many other conditions contribute to the positive or negative influences. Buffers, light shields, noise abatements, fencing, size of signs and lights, etc. In today's world with all of the predators, any sex related uses are negative for residential, and possibly commercial depending on its trade area demographics. Fundamentals of real estate, location is everything, and consistency, compatibility, and common sense create underlying value. Value is established by the market (people) in a very uncomplicated way.

I NOTE THAT THESE ISSUES REFLECT HUMAN NATURE AND CULTURE WHICH VARIES SOMEWHAT BY NEIGHBORHOOD. ALSO, SUCH INFLUENCES VARY WITH MARKET CONDITIONS, WITH THE DEGREE OF NEGATIVE IMPACT AFFECTED BY MARKET CONDITIONS. IN A HOT MARKET FOR INSTANCE NEGATIVELY IMPACTED PROPERTIES DURING MORE NORMAL MARKET CONDITIONS MAY REACH PARITY WITH NON AFFECTED PROPERTIES.

It's more important that commercial uses be out of sight", rather than the distance. You would think rational, informed purchasers would care about a landfill being located close. Lee County seems to show that common sense no longer exists. 3 successful developments within 1 mile of a landfill?? I answered based on what I would expect to occur. The facts don't always bear out what seems reasonable or rational."

Adverse influences = noise, privacy, security + ability to sell to all potential users including those who may have religious beliefs that would preclude a location adjacent to or near several of the businesses described. If segments of the population remove themselves from the potential marketplace, demand and then prices suffer. Moreover, among those who recognize the adverse influences but do not object on ethical or religious grounds, security and privacy concerns, will still be there and can only be overcome by price discounts.

Gas Stations probably due to environmental issues. As an appraiser doing an appraisal nearby or on a property affected by its near by location to some of these places as mentioned in this survey, my personal moral issues should not come into play. If you asked me if I felt the same way about my personal preference regarding my home being located near or closed to these places, my answers might be different. Different one day and different the other considering my relation with my mentor on that particular day.

Many of the negative impacts are more related to traffic and congestion than the type of use from a "moral" perspective. While some individual buyers may make choices along those lines, many others are simply looking at properties based on market comparison and alternative choices that may be available. I did a multi-year study based on sales and resales and

discovered no negative impact on residential properties that were adjacent to the rear of a strip club. No impact on adjacent commercial was found.

With my market area the cheaper homes tend to be located near the adverse external factors such as industrial areas or adult entertainment areas. Most often I adjust for external ob. when it's either visible or audible from the subject. In upscale areas, negative externals tend to be mitigated by buffer zones and are also mitigated by more appealing shops. The most common external factor for residential is a busy street.

Gated community compared to ungated community - studies we have found gated communities have a price advantage over ungated communities - although an offset is the cost incurred in ungated communities - this would be a good study to consider in the foregoing questionnaire.

Have conducted paired sales analysis for residential uses (impact analysis) by convenience stores with accessory fuel pumps open 24 hours a day.

Proximity Studies of Existing Landfills for proposed Class 1 Sanitary Landfills, and solid waste transfer stations.

Impact of lighted tennis courts in Country Club to abutting sf dwellings.

Office uses/parking lots abutting sf.

Strip commercial fronting major road with sf behind.

Have not found a measurable negative impact in any of the above situations.

The form does not allow to express the real damage of landfills. Type of landfill matters a great deal. Having owned a chain of convenience stores. Never try to go in good class neighborhoods or near churches. Use main streets with good traffic preferably on the going home side of the road. Hope this helps.

Depending on the neighborhood and type of improvements the external elements could have potential for positive AND/OR negative impact. Location of affecting element was not defined in survey, e.g. main street. Location of affected property was not defined, e.g. main or side street. Price levels of affecting and affected properties and other comparative statistics were not defined. Use and dissemination of survey could be misleading and construed as having valid scientific basis. Lawrence Jay, MAI, CCIM

Residential - mobile home parks

Sometimes the impact may not just be value related, but in the marketability of the property due to the surrounding land use's influences. In the current single family market, that can be even more magnified and important.

As the general area values go down, so does the affect on value. Since the tolerance level or expectation level declines with social-economic class. In other words, in high value areas the

affect would be higher."

I think distance is the key with single-family. This is why virtually all new projects are either gated, walled, or buffered with a formal entrance and the homes set back in.

Impact should remain consistent within residential market (positive, negative or none). However, extent of impact would vary depending on type of residential development, reputation of area, economic stage of life, price.

Personal beliefs could impact extent of impact, not presence."

500 to 1/4 Mile feet seemed not enough to remove some negative, maybe more or geographic (major road and that distance or waterway, etc).

Linkages (i.e., road patterns and buffers) will have a significant impact on the extent to which the external influences impact value. Linkages will be as important as simple distances.

Some of the questions were a little difficult to answer. For example, having a concentration of Elementary Schools near a Single Family home would have an additional impact (positive impacts). I was not sure if you were referring to positive and negative additional impacts.

Convenience to shopping is often a plus to single-family development locations, however, usually only retail trade that is non-offensive to family lifestyles would be acceptable in close proximity.

I believe that each case involving negative influences is very site and market specific.

In some of our markets, the historical acceptability of long term negative" factors reduces the degree of impact. Also, issues beyond just proximity might be considered, relative to geographical boundaries as well as topography, which might limit visibility more so to the negative impactors, might reduce degree of impact.

In a perfect world, there should be a buffer zone of multiple family dwellings (duplexes, condo's, etc.) between commercial businesses and single family homes. My personal philosophy is adult entertainment venues should be in specially zoned districts away from single family neighborhoods and preferably on the out skirts of town and subject to use changes. The local landfill area would be an appropriate location for adult entertainment establishments.

Generally neighborhoods are insular except residential homes on high traffic arteries. The impact of negative influences on home values cannot be measured if demand exceeds supply. My experience is that homes adjacent to commercial command similar prices as those in PUDs. There is an indistinguishable value difference when all factors are weighed. Demand fueled by low mortgage rates obliterated external negatives, and will do so until the market is in balance. Proximity or within 500' of negatives may impact value, but the impact to greater distances is impossible to measure without total subjectivity.

Location is important to all of the above questions. While some may negatively affect value in

some cases, in others it may not have any affect. Obviously, keeping uses homogeneous is best, however, as commercial uses creep closer to residential areas the more wholesome the uses the less negative effect there would be to the residential uses. This would also be true of commercial properties. Uses that are open after 11:00 PM could have a negative influence on retail uses that close before 11:00 PM.

Opinions vs. Reality based on market data - Interesting comparison. I have always been wary of opinion polls since they are not market supported with data. i.e., value contribution of remodeling which is done annually - based solely on opinions. Anyway, good luck.

Much depends on the character of many of the uses that could potentially have a negative impact. A nice restaurant/bar or Irish Pub in the right neighborhood and properly designed is a positive in some locations (young, affluent areas), while perhaps a detractant in others. No one size fits all for the items noted above. A landfill is never good!

In my past studies, the proximity only mattered on foot traffic (homeless shelter). Other neg. impact only showed up if you drove by the negative use coming and going to the home. (except lighting) Landfills will usually be lower priced homes

It would be my opinion that any over concentration of a non-conforming" use in a residential area would be a negative affect. It is also my opinion that such effect is less on homes below the medium price range for the area."

Answers would vary depending on the traffic flow, general outdoor exposure, etc. A homeless shelter that had loitering outside day and night would be more obtrusive than one where individuals were contained internally.

In general, I believe most commercial uses in proximity to single family will have a negative impact to single family value while I do not believe the inverse to be true. In my opinion any use with the potential to draw patrons of questionable moral character will have a negative impact on a community commercial use mainly due to the public's perception on compromised safety and security. Other commercial or institutional uses which may draw potential patrons would have a generally positive influence on a community commercial use.

The uses that appear negative are considered positive if they generate more traffic to the locale than they inhibit. I changed the answer to Q3, adult media store several times, finally deciding it would do a bit more harm than good.

I don't appraise single family homes or community shopping centers. However, I appraise multi-family rental properties located throughout the state. With this said, the impact on the various land uses will depend upon the individual neighborhood (inter city, downtown, upscale, lower-income, suburban, rural, etc.). A nearby grocery store and school may be a blessing in a lower income area, but a headache/negative for an upscale suburban area.

less reliance upon the auto; inclusionary housing/zoning; mixed use developments; smart growth and new urbanism" initiatives; compatible and homogeneous land uses in neighborhoods;

I look forward in receiving survey results, send results to mcannon@irr.com; best regards."

The degree of impact of adverse externalities will not be uniform across all types and stratas of single family dwellings. The impact will be greater (in absolute and relative terms) for higher-end homes than in more basic housing. In other words, the adverse influence of an adjacent pawn shop may have negligible impact on a 1,000 SF, 1950's vintage SFR, but a significant adverse impact on a 5,000 SF, 2000 vintage SFR.

Less and less as time passes and government becomes more and more involved in what people can and cannot believe or do.

Answer to Q6 could be maybe."

Too broad to be effective. Neighborhoods are economically stratified and higher priced homes have owners not willing to accept most of the above external influences, while lower priced home owners offer less or no resistance.

I believe that a view of and direct access to the noxious use is equally as important as simple distance. I know of some high end residential neighborhoods within 500 feet of some of the listed uses which are effectively screened" by gated access, landscape or wall buffer, etc.

Good Luck!"

I have done a number of studies over the years regarding impacts of overhead power lines, gas pipelines, proximity to roadways, proximity to crematoriums, etc. The location of the particular encumbrance (property line versus going down the middle) has a significant impact on the percentage, if any, reduction in property value. In this particular line of questions, it is my opinion that the value of the single family residences could have an impact on the damages, if any. It has been my experience that more expensive or higher priced homes would be negatively affected by these types of influences versus more modest dwellings that may not be affected at all.

My answers are influenced by what type" of coffee shop(Starbucks franchise or neighborhood Mom & Pop) and what type of Grocery store (organic or big chain)

While one could conclude that an appraisers personal, moral and ethical beliefs affect appraisal reports, there is clearly a different maintenance level of housing close to adult video, pawn shops, etc. than housing close to a playground or elementary school."

Distance may not be as much of an issue as walking distance or direct access. If I have a house this is accessed thru a subdivision that is within 500' of an Adult club or other use I may feel has a negative impact but there is no direct access from this negative use to my house I would not see it as much as an issue as a use that I have to drive by" to get to my house."

In many instances the case it what attracts which use. The negative influences are generally in lower quality areas. Does the lower quality areas attract the negative influences or does the presence of negative influences create the lower quality areas?

Buffers are reasonably effective in separating single-family homes from negative commercial influences. Landscaping, walls, as long as they are maintained well. Noise, sex shops probably the worst if not buffered. Community shopping centers can buffer practically anything with enough landscaping (low so signage can be seen) lighting, and appearance of safety."

Above can't be answered as an appraiser - only from the view of a house or retail store buyer (which we have been). Appraiser requires market data to support conclusions, not just individual opinions. Conclusions re: homeless shelter assumes on-site feeding of the homeless that do not live on that site.

In my experience, it's not so much the type of business but how much commercial use is within too close proximity. A house near a large commercial corridor will be negative in most buyers' eyes especially with small children. A playground nearby might be good with a family with children, but also a constant noise and traffic issue if located too close. It's not so black & white. Good survey though!

The impact of the adult establishments/bars is much like that of the high voltage line in that the impact is likely to be based more in the perception of the market participant than in reality. People think there will be problems (noise, undesirable patrons, crime) - whether these businesses actually promote noise, crime, etc... is beside the point - people think they do.

While I do not believe that moral or ethical considerations impact the opinions above, the fact that my primary office is in one of the more rural locations of Florida (Bradford County) might impact my answers, particularly in relation to what our environment is here, regarding fewer diverse such impacts.

The negative impact only applies in a nice neighborhood. An already blighted neighborhood would not experience additional negative consequence from the introduction of additional influences as listed above (or at least not to the same degree)

Buffers could help mitigate the negative influence.

Impacts will vary based on the demographics of the neighborhood and price of housing. For example, a pawn shop may have a significant negative effect if it opened in a neighborhood of higher priced housing, but may be welcomed in a lower priced, near-poverty level neighborhood. An adult entertainment store may have a significant negative effect if opened in a neighborhood known for its many religious institutions and playgrounds, but less effect if it opened near an existing liquor store or pawn shop.

I once did an extensive search of diminution in value on home prices due to high voltage power lines, and to my surprise found no loss, and in fact homes sold faster along the easement because homeowners effectively had additional land.

The impact of a homeless shelter was shown in downtown Sarasota where homeless were found sleeping in restrooms, causing littering, etc. Landfills are rarely found in areas containing shopping centers today. This is due to problems with methane gas, venting requirements, sinking, etc.

Mixed uses are good for positive long term viability, however the past institutional preference has been against this mixed use village" concept. I have worked in 13-states including 4-non-disclosure states."

When I was doing the survey, I made a couple of selections, and then decided that I would rather not comment, or it did not appear to me that a comment was needed. I could NOT de-select. So I endeavored to select the most minimal response. I am not sure how much, if at all it will affect the survey (maybe 2, or 3 responses for me, so you can figure the stats on that).

Land uses that may have a potential impact on single family housing do not have to be those that reflect the "seedy" or unpopular aspects of life, but can be those that are well regarded, but draw a lot of traffic, or have affairs or activities that draw crowds, traffic or noise daily or several times a week. "

Many of these answers depend on the particular neighborhood.

Senior citizens in our county are trying to close all the doors and gates. They want NO growth and NO change. This is the biggest detriment we face.

Flagler County is not listed. I have no experience in commercial appraisals and therefore I am not qualified to answer that part of the survey. "

I think the influences of lounge, pawn shop, package store, and adult clubs would be given greater weight in starter subdivisions with young couples and kids, as well as upper end subdivisions.

sservic2@tampabay.rr.com

Carwashes that are bright and loud have also been a concern of residents. "

COMMENTS FROM APPRAISERS PRACTICING IN PALM BEACH COUNTY

The degree to which certain negative factors impact value depends in large part upon the area. For example, in certain areas with very strict zoning regulations a strip club, if it were allowed to exist, or even a Hustler" type store would be a huge problem. In these cases rather than making a shopping center 10% or 20% less it could just rule it out as a potential purchase by a REIT. In other areas all centers are affected by land uses such as liquor stores and pawn shops, so there is no discernable difference, as long as the comparables used are taken from that same area. "

Many times it is not reflected in sales price but rather in marketing time. We did a study years ago on the impact of cell towers on sfr. The results were surprising in that there was no discernable drop in value as you got closer to the tower; the marketing time was just much longer."

Without well thought out, uniform and consistently implemented master land use plan(s), prices/values will, in all likelihood, will 'mirror' non-compatible land uses.

They may impact value in the form of stigma due to contamination, noise, odor, high voltage lines or other obnoxious impacts to the property/environment.

This survey instrument was nicely put together but probably of no use in your practice and no value in a litigation matter. You should be using GIS and sales analysis for this.

Land use impacts can vary tremendously from neighborhood to neighborhood. Many influences might have a general impact either positive or negative on many if not all properties in a market. Example of variance: a bar with or without live entertainment or a store or cafe could command a premium in some markets to some buyers (i.e. second home) in others it may not have an impact or be negative. Walking distance to facilities may appeal to some and be distasteful to others.

The benefits of surveys like this are highly questionable, as each appraisal is unique. Also negatives can carry less impact in a dynamic (read sellers) market."

This area of South Florida is probably typical of the rest of the nation in that negative influences on single family homes within 500 feet would be felt in the case of adult oriented enterprises within 500 feet of single family homes with this effect somewhat diminished as regards to over 55 years of age restricted communities. Family oriented subdivisions would definitely be positively affected by nearby playgrounds, elementary schools, parks and shopping centers. Hospitals would more positively affect senior residents.

Many of the uses that are listed for affecting a community shopping center are contained within neighborhood centers.

If a community shopping center contains a potentially offensive use (bar, lounge, etc.), the location within the center is significant. An end unit facing the street will repel shoppers; a location in the "elbow" will have a much less significant impact."

You left off major road ways, in Miami they have little effect on residential values, but add to shopping center values. In Broward they have a major negative effect on residential values while having positive effect on commercial values.

Much of the impact is commensurate with the price class of the surrounding residential home. The lower the price class less the impact, and vice versa.

I don't think community shopping centers are too sensitive to these different land uses unless they are so prevalent that they tend to stigmatize an area or location.

As for SFR values - If homes are located in relatively close proximity to retail uses, I wouldn't think that a different retailer would have any significant effect on value. After all, the proximity of the retail is already accounted for in the nearby subdivision values. However, when you start to concentrate potentially objectionable uses or highlight them with bright, animated, or garish lighting or graphics, there is naturally the possibility of some associated stigma. You want

your SFR to be sufficiently buffered from undesirable noise or traffic and this could be determined largely by the orientation juxtaposition of the entrance to the neighborhood as opposed to the distance.

Sounds like you're using the survey method to support your damages position and I hope this helps. I would very much appreciate a copy of the results if you don't mind.
woolslair@aol.com"

Positive impact of underground utilities (powerlines) in residential neighborhoods is based on aesthetic considerations. However, effect on values in future, if any, may also be influenced by windstorm safety considerations if underground electrical proves to provide better protection from extended power outages.

I believe that my answers are objective. However, I also believe that my answers are affected by my personal beliefs. I can reconcile the two as I believe that my reactions to the topics above are most typical to buyers in the market and that my reactions personally, are representative. I would also add the caveat that my reactions to some of the influences would be different if I knew the specific age market" or "price range market" for the SFR neighborhood. Obviously walking distance to a supermarket is more advantageous to a 55+ community. Walking distance to an elementary school is more advantageous to a young couple startup home neighborhood. I did not respond to commercial properties as I do not appraise these properties."

The results of this survey are likely to be skewed. if a single family residence is located within 500 feet of an adult store, the nature of the neighborhood is also in decline to have this type of use; differentiation of the impacts, then is difficult. Also the types of uses (lounges, adult, etc) are on busy roads so the residence is likely also on a busy road and impacted by this, as well.

**CRIME-RELATED SECONDARY EFFECTS OF
SEXUALLY-ORIENTED BUSINESSES**

**REPORT TO THE COUNTY ATTORNEY
PALM BEACH COUNTY, FLORIDA**

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August 15, 2007

* Alphabetical authorship. Figures and tables in this report are color-coded and must be reproduced in color.

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INTRODUCTION

The Palm Beach County Attorney has retained us to collect and analyze data relating to the crime-related secondary effects of sexually-oriented businesses (hereafter, “SOBs”) in Palm Beach County; and to formulate and express opinions on secondary effects issues raised in *Palm Beach County v. Casablanca East*.¹ Our expertise as statisticians and criminologists, coupled with our prior research on crime-related secondary effects of SOBs and our analyses of Palm Beach County crime data, lead to three general opinions:

Opinion 1: The criminological theory of ambient crime risk known as the “routine activity theory” predicts that SOBs will have large, significant crime-related secondary effects. This effect is predicted because SOBs draw patrons from wide catchment areas. Because they are disproportionately male, open to vice overtures, and reluctant to report victimization to the police, SOB patrons are perceived as “soft” targets. High densities of “soft” targets attract predatory criminals to SOB sites, including vice purveyors who dabble in crime and criminals who pose as vice purveyors in order to lure or lull potential victims.

Opinion 2: Over the last thirty years, crime-related secondary effect studies have used a range of quasi-experimental designs to demonstrate that SOBs have large, significant crime-related secondary effects.

Opinion 3: Given that well-established criminological theory predicts that SOBs will have crime-related secondary effects, and given that the theoretical prediction has been consistently confirmed by the empirical literature, it is a *scientific fact* that SOBs pose ambient crime risks.

In addition to these three general opinions, we have several opinions that are specific to Palm Beach County and this lawsuit.

An expert report submitted by Dr. Randy D. Fisher expresses opinions that contradict our three general opinions.² Dr. Fisher argues, first, that criminological theory does *not* predict that SOBs will have crime-related secondary effects. Even if this were the case, however, in Dr. Fisher’s opinion, the consistent empirical finding of the literature is a spurious methodological artifact; more rigorous studies conducted by Dr. Fisher and his colleagues find no secondary effects whatsoever. Therefore, we disagree with each of Dr. Fisher’s contradictory opinions.

Opinion 4: Dr. Fisher’s critique of the secondary effects literature relies on an

¹ Case no. CA-02-03813 AF, Circuit Court, 15th Judicial Circuit, Palm Beach County.

² Randy D. Fisher, Ph.D. *Do adult businesses have adverse effects on the communities that surround them? An empirical and historical analysis of the the concept of “Adverse Secondary Effects.”* Hereafter, we refer to this undated report as “the Fisher Report.”

idiosyncratic methodological canon that has been rejected by the social science community and the courts. Judged by conventional methodological criteria, the secondary effect studies relied on by Palm Beach County are a sufficient factual predicate for its SOB ordinances. The crime-related secondary effect studies conducted by Dr. Fisher and his colleagues, moreover, are *not* more rigorous than the studies relied on by Palm Beach County. Nor do the results of Dr. Fisher's studies support his general opinions on the secondary effects of SOBs. Like the studies relied on by Palm Beach County, Dr. Fisher's studies find that SOBs have large, statistically significant secondary effects.

A second expert report submitted by Dr. Terry A. Danner appears to support Dr. Fisher's general opinions.³ Based on his analysis of 911 calls-for-service to the Palm Beach County Sheriff's Office, Dr. Danner concludes that the crime-related secondary effects of local SOBs are no larger than the analogous effects of local bars and taverns. We disagree with Dr. Danner's premise and conclusion.

Opinion 5: The weak correlation between 911 calls and ambient crime makes it (statistically) difficult to detect crime-related secondary effects. For this reason, criminologists do not generally use 911 calls to measure ambient crime risk.

Opinion 6: Nevertheless, Dr. Danner's analysis of 911 calls fails to address the threshold question of whether SOBs and non-SOB bars in Palm Beach County have equivalent crime-related secondary effects.

To address this threshold question, we collected *crime incident reports* from the Palm Beach County Sheriff's Office for the five years between 2001 and 2005. Our analyses of these data lead to a different answer and conclusion.

Opinion 7: In both absolute and relative terms, Palm Beach County SOBs have large, statistically significant crime-related secondary effects. As one moves toward an SOB site, victimization risk rises precipitously. The risk diminishes as one moves away from the site. The effect is realized in all categories of crime. Although an analogous effect is found for non-SOB bars and taverns, it is significantly smaller than the effect for SOBs.

Our analyses of crime incident data corroborate the criminological theory of secondary effects, described in our first opinion, and contribute to the consistent body of empirical evidence.

³ Terry A. Danner, Ph.D. *The Crime-related Secondary Effects of Adult Cabarets in Palm Beach County*. Hereafter, we refer to this April 28th, 2005 report as "the Danner Report."

This report begins with a discussion of the secondary effects doctrine. We then describe the criminological theory of secondary effects (Section 2) and the corroborating empirical evidence (Section 3) that makes the SOB-crime relationship a *scientific fact*. In Section 4, we report the results of our analyses of Palm Beach County. Readers who are familiar with the legal and criminological foundations may skip to Section 4. Other readers will benefit from our introductions to law, criminology, and the secondary effects literature.

1. THE SECONDARY EFFECTS DOCTRINE⁴

In this present suit, SOB plaintiffs challenge the Constitutionality of Palm Beach County Ordinance 2004-051 (hereafter, “Ordinance”). Like many recent challenges, this one relies on a two-pronged argument:

- *Insufficient factual predicate*: In its consideration of the Ordinance, the Palm Beach County Commission relied on methodologically flawed secondary effects studies.
- *Contrary local evidence*: Nevertheless, whether or not SOBs in other jurisdictions have secondary effects, local evidence demonstrates that Palm Beach County SOBs do not.

The Fisher and Danner Reports advance these two arguments. The substance of those reports are discussed in Sections 3 and 4 below. For present purposes, this section describes the legal basis of the typical two-pronged argument used to challenge the Constitutionality of the Palm Beach County Ordinance.

1.1 YOUNG V. AMERICAN MINI-THEATRES⁵

In the late 1960s, Boston’s city planners proposed to concentrate all of the city’s SOBs in a single small district, the “combat zone.” This proposal was designed to keep vice activity out of the city’s other districts while allowing police to focus resources on a small area, thereby reducing the risk of crimes associated with vice. By 1970, however, the failure of the “combat zone” experiment was obvious.⁶

⁴ See, e.g., C.J. Andrew. The secondary effects doctrine: the historical development, current application, and potential mischaracterization of an elusive judicial precedent. *Rutgers Law Review*, 2002, 54:1175.

⁵ *Young v. American Mini-Theatres, Inc.*, 427 U.S.50 (1976).

⁶ See, e.g., Garnett, N.S. Relocating disorder. *Virginia Law Review*, 2005, 91:1076-1134; also, Skogan, W.G. *Disorder and Decline: Crime and the Spiral of Decay in American*

At about the same time, in the 1970s, Detroit relied on affidavits by social scientists and real estate experts to argue that concentrations of SOBs would destroy the neighborhoods in which they are concentrated. This argument was used to justify the enactment of an ordinance that set minimum distances between SOBs.⁷ When existing SOBs were forced to relocate, the Constitutionality of the Detroit ordinance was challenged. In treating SOBs and non-SOBs differently, the challenge argued, the Detroit ordinance violated basic Constitutional protections. Borrowing from the vocabulary of antitrust cases, the U.S. Supreme Court ruled in *Young v. American Mini-Theatres* that governments could enact adult business ordinances as long as the ordinances were aimed at mitigating adverse secondary effects. By this test, the Court upheld the Detroit ordinance.

1.2 CITY OF RENTON V. PLAYTIME THEATRES, INC.⁸

Although the decision in *Young* required that regulations be based on empirical evidence of secondary effects, it said nothing about the quantity or quality of the evidence. These questions were addressed ten years later in the *City of Renton v. Playtime Theatres, Inc.* In the early 1980s, Renton, Washington enacted a zoning ordinance that in many respects resembled the ordinance challenged in *Young*. Because Renton did not have SOBs, it could not base its ordinance on local studies. A year later, however, two theaters located in a prohibited district began to show x-rated films. In the ensuing challenge, the Supreme Court ruled that the ordinance complied with the *Young* standard because its sole purpose was to mitigate secondary effects. On the evidentiary issue raised in the challenge, Justice Rehnquist wrote:

The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.⁹

Renton legitimized the practice of basing a local ordinance on the findings from studies of secondary effects in other communities rather than requiring original empirical research on the community at issue. *Renton* also set a reliability threshold, albeit a low one, for the government's secondary effects evidence. The evidence must be "reasonably believed to be relevant."

Neighborhoods. University of California Press, 1992.

⁷ *American Mini-Theatres, Inc. v. Gribbs* 518 F.2d 1014 (1975) at 1018.

⁸ *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986).

⁹ *Id.* at 51.

1.3 CITY OF LOS ANGELES V. ALAMEDA BOOKS, INC.¹⁰

The Supreme Court revisited this issue sixteen years later in *City of Los Angeles v. Alameda Books*. This case originated in 1977 when Los Angeles conducted a comprehensive secondary effects study.¹¹ The study found, among other things, that concentrations of SOBs generated high ambient crime rates. Based on this finding, Los Angeles enacted an ordinance requiring SOBs to be separated by a minimum distance. The ordinance was amended in 1983 to prevent businesses from evading the minimum distance rule by merging into a single entity. Instead of requiring minimum distances between SOBs, the amended ordinance required minimum distances between distinct adult activities. Recognizing that some SOBs combine an adult bookstore with an adult video arcade,¹² multiple-activity businesses were forced to segregate their “on-site” and “off-site” activities. Justice Souter in his dissent characterized this model as “commercially natural, if not universal.”¹³

In 1995, two multiple-activity businesses challenged the amended ordinance. Because the 1977 study did not address the secondary effects of combining multiple activities under one roof, it was argued, Los Angeles had no evidence that multiple-activity businesses generated secondary effects. The District Court agreed and the 9th Circuit Court affirmed, but the U.S. Supreme Court took a different view.

As often happens in First Amendment cases, the Supreme Court’s decision in *City of Los Angeles v. Alameda Books, Inc.* did not produce a clear majority holding. While acknowledging the limitations of the 1977 study, Justice O’Connor writing for the plurality argued that Los Angeles could infer from its study that concentrations of adult *activities* would also generate secondary effects, thus Los Angeles had complied with the evidentiary requirement of *Renton*. Concurring, Justice Kennedy wrote:

[W]e have consistently held that a city must have latitude to experiment, at least at the outset, and that very little evidence is required ... As a general matter, courts should not be in the business of second-guessing fact-bound empirical assessments of city planners ... The Los Angeles City Council

¹⁰ *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002).

¹¹ Los Angeles Dept of City Planning, *Study of the Effects of the Concentration of Adult Entertainments in the City of Los Angeles* (City Plan Case No. 26475, City Council File No. 74-4521-S.3, June 1977) as cited in *Alameda Books id* 429.

¹² *Id.* 425.

¹³ *Id.* 465.

knows the streets of Los Angeles better than we do ... It is entitled to rely on that knowledge; and if its inferences appear reasonable, we should not say there is no basis for its conclusion.¹⁴

Justice Kennedy found that the City's position was supported by both its 1977 study and "common experience" and that the 1983 ordinance was reasonably likely to reduce secondary effects substantially and reduce the number of adult entertainment businesses very little.¹⁵

In a dissenting opinion, Justice Souter argued that imposing stricter evidentiary standards on governments would guard against potential abuses. As he explained:

If combating secondary effects of property devaluation and crime is truly the reason for the regulation, it is possible to show by empirical evidence that the effects exist, that they are caused by the expressive activity subject to the zoning, and that the zoning can be expected either to ameliorate them or to enhance the capacity of the government to combat them (say, by concentrating them in one area), without suppressing the expressive activity itself.¹⁶

In Justice Souter's view, collecting this empirical evidence did not impose a burden on government. On the contrary:

Increased crime, like prostitution and muggings, and declining property values in areas around adult businesses, are all readily observable, often to the untrained eye and certainly to the police officer and urban planner. These harms can be shown by police reports, crime statistics, and studies of market value, all of which are within a municipality's capacity or available from the distilled experiences of comparable communities.¹⁷

Applying this standard, Justice Souter argued that Los Angeles had offered neither a rationale nor evidence to support the proposition that an adult bookstore combined with video booths would

¹⁴ *Id.* at 451-52.

¹⁵ *Id.* at 452-53.

¹⁶ *Id.* at 457.

¹⁷ *Id.* at 458.

produce the claimed secondary effects.¹⁸ The plurality clearly rejected Justice Souter's argument that the city must empirically demonstrate that the ordinance reduces crime.¹⁹

Although *Alameda Books* reaffirmed *Renton* in crucial respects, thereby supporting governments, the plurality opinion described how an SOB could challenge government regulations:

This is not to say that a municipality can get away with shoddy data or reasoning. The municipality's evidence must fairly support the municipality's rationale for its ordinance. If plaintiffs fail to cast direct doubt on this rationale, either by demonstrating that the municipality's evidence does not support its rationale or by furnishing evidence that disputes the municipality's factual findings, the municipality meets the standard set forth in *Renton*. If plaintiffs succeed in casting doubt on a municipality's rationale in either manner, the burden shifts back to the municipality to supplement the record with evidence renewing support for a theory that justifies its ordinance.²⁰

Following *Alameda Books*, plaintiffs have challenged the Constitutionality of SOB ordinances using the formula delineated by the plurality opinion. This involves, first, challenging the factual predicate of the ordinance and, second, introducing local secondary effects evidence to argue that local SOBs have no secondary effects.

1.4 THE POST-ALAMEDA BOOKS CASE LAW

Two post-*Alameda Books* decisions by the 11th Circuit Court are especially relevant to this present suit. In *Peek-A-Boo Lounge v. Manatee County*,²¹ the County had relied on reports of secondary effects in nearby jurisdictions. The plaintiff countered this evidence with reports by Drs. Fisher and Danner.²² The opinions of Drs. Fisher and Danner in *Peek-A-Boo* were virtually identical to their opinions in this present suit. When the County failed to counter the opinions of Drs. Fisher and Danner, the court concluded:

¹⁸ *Id.* at 461-64.

¹⁹ *Id.* at 439.

²⁰ *Id.* at 438-39.

²¹ *Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County*, 337 F.3d 1251 (11th Circuit, 2003).

²² *Id.*, 54-56.

...[A]s the record now stands, we have before us an ordinance adopted only on the basis of speculative finding and outdated, foreign studies whose relevance to local conditions appears questionable in light of current data. Appellants have placed in the record evidence suggesting that plaintiffs' businesses, which have operated continuously in Manatee County for over fifteen years, do not cause secondary effects.²³

In reversing and remanding, the 11th Circuit panel found that the County had initially met its burden of proof; however, the plaintiff had successfully challenged the evidence, thereby shifting the burden back to the County.

The *Peek-A-Boo* decision was followed by a controversial trial court decision in *Daytona Grand 1*.²⁴ The Daytona Beach SOB ordinance relied on the testimony of experts and other interested parties, on laboratory studies, and on police reports. The plaintiff introduced reports by Drs. Daniel Linz²⁵ and Fisher. In addition to the argument that the City's secondary effects evidence was insufficient, Drs. Linz and Fisher analyzed 911 calls-for-service near Daytona Beach SOB and non-SOB controls. They asserted that their analyses found no significant differences between SOB and non-SOB neighborhoods.

Daytona Beach relied on cross-examination at trial to undermine the credibility of Drs. Linz and Fisher and their study. The trial court was impressed, however, by the experts' reliance on "basic methods of scientific reasoning"²⁶ and by the fact that Dr. Linz's studies had been subjected to peer review.²⁷ The trial court ruled that *Alameda Books* and *Peek-A-Boo* had raised

²³ *Id.*, 60.

²⁴ *Daytona Grand Inc. v. City of Daytona Beach, Florida* 410 F. Supp. 2d 1173 (2006).

²⁵ Professor of Communication at the University of California, Santa Barbara, Dr. Linz is a prolific expert witness for SOB plaintiffs.

²⁶ *Supra* note 4 at 41.

²⁷ *Id.* at 43. Dr. Linz argues that, to be scientifically valid, secondary effects evidence must meet the admissibility criteria suggested in *Daubert v. Merrell Dow Pharmaceuticals* 509 US 579 (1993); see Paul B., Linz, D. & Shafer, B.J. (2001). Government regulation of adult businesses through zoning and anti-nudity ordinances: Debunking the legal myth of negative secondary effects. *Communication Law and Policy*, 6.2, 355-391. This argument has been rejected by courts in at least four federal circuits see footnote 31.

the City's evidentiary bar;²⁸ that the plaintiff's experts had cast doubt on the City's secondary effects evidence, shifting the burden of proof back to the City; and that City had not carried its burden of proof. Though upholding the City's zoning ordinances, the trial court found the SOB nudity ordinance unconstitutional.

In *Dayton Grand 2*,²⁹ an 11th Circuit panel upheld the trial court's ruling on Daytona Beach's zoning ordinances but found that the City had carried its evidentiary burden at trial. The claim that *Alameda Books* and *Peek-A-Boo* had raised the evidentiary bar was specifically rejected:

We do not agree, however, with Lollipop's claim that either *Alameda Books* or *Peek-A-Boo Lounge* raises the evidentiary bar or requires a city to justify its ordinances with empirical evidence or scientific studies.³⁰

The 11th Circuit panel also rejected the methodological argument put forth by Drs. Linz and Fisher, that the scientific validity of secondary effects evidence had to be judged by the admissibility criteria suggested in *Daubert*.³¹

The *Daytona Grand 2* decision reaffirmed *Renton* with respect to the quality of secondary effects evidence. If the government's rationale is reasonable, it need not demonstrate that its rationale is the *only* reasonable one; nor must it rule out competing theories that contradict the rationale.³² The mere ability of plaintiffs to draw alternative conclusions from the evidence does

²⁸ It is apparently this analysis by the trial court that leads Dr. Fisher to conclude that the evidentiary bar for the County in this case has been raised (see the Fisher Report, p. 5).

²⁹ *Daytona Grand, Inc. v. City of Daytona Beach, Florida* No. 06-12022 (11th Cir. 2007)

³⁰ *Id.*, p. 40.

³¹ The 7th Circuit was the first to reject this argument: "A requirement of *Daubert*-quality evidence would impose an unreasonable burden on the legislative process, and further would be logical only if *Alameda Books* required a regulating body to prove that its regulation would – undeniably – reduce adverse secondary effects. *Alameda Books* clearly did not impose such a requirement." *G.M. Enters. Inc. v. Town of St. Joseph, Wis.*, 350 F.3d 631, 640 (7th Cir. 2003). This was followed by the 8th, 9th and 11th circuits, see *SOB, Inc.* 317 F.3d 856 (8th Cir. 2003), *Gammoh v. City of La Habra*, 395 F.3d 114 (9th Cir. 2005), and *Daytona Grand, Inc. v. City of Daytona Beach, Florida* No. 06-12022 (11th Cir. 2007).

³² *Id.*, at 43.

not bar the government from “reaching other reasonable and different conclusions.”³³ In sum, the plaintiff had “failed to cast direct doubt on the aggregation of evidence”³⁴ reasonably relied upon by the City when it enacted its ordinances.

Finally, the 11th Circuit panel criticized Drs. Linz and Fisher for using 911 calls-for service to measure ambient crime risk, calling this use of these data “problematic.”³⁵ We will return to this particularly relevant point after we describe the criminological theory of secondary effects.

2. THE CRIMINOLOGICAL THEORY OF SECONDARY EFFECTS

Drawing on elements of deterrence and rational choice theories, routine activities theory posits that the rate of criminal victimization is increased when there is a “convergence in space and time of the three minimal elements of direct contact predatory violations.”³⁶ In its original formulation, the three elements of routine activities theory are: motivated offenders, suitable targets of criminal victimization, and the absence of capable guardians of persons or property.

³³ *Id.*, at 42.

³⁴ *Id.*, 44.

³⁵ *Supra* note 9 at 45.

³⁶ P. 589, “Social Change and Crime Rate Trends: A Routine Activity Approach,” by L.E. Cohen and M. Felson. 1979. *American Sociological Review* 44:588-608. For elaborations, empirical tests, and applications of routine activities theory, see Ronald V. Clarke and Marcus Felson’s *Routine Activity and Rational Choice: Advances in Criminological Theory* (New Brunswick: Transaction Publishers, 1993); M. Felson’s *Crime and Everyday Life, Second Edition* (Thousand Oaks, California: Pine Forge Press, 1998); and Terrance D. Miethe and Robert F. Meier’s *Crime and its Social Context: Toward an Integrated Theory of Offenders, Victims, and Situations* (Albany, NY: State University of New York Press, 1994). Routine activities theory is one of the most widely tested and accepted theories in modern social science. In 2005 alone, according to the *Social Science Citation Index*, the 1979 Cohen-Felson article was cited 621 times. In the last 30 years, the routine activity theory of crime risk has been tested thousands of times using diverse data drawn from equally diverse historical eras and research sites. It continues to marshal considerable support in the process. Indeed, Ronald Akers, a major figure in theoretical criminology who is very committed to assessing the empirical viability of criminological theories, concluded that decades of empirical “research on routine activities has reported numerous findings that are consistent with the assumptions in routine activities theory” (Akers 2000, p. 36). For example, see Cohen et al. (1981), Sherman et al. (1989), Kennedy and Forde (1990), and Mustaine and Tewksbury (1998).

According to Cohen and Felson (1979), a change in any one of these elements will change the crime rates for a geographic area, but the presence of all three will produce a multiplier effect on crime rates.

Adapted to secondary effects phenomena, the routine activity theory of crime holds that ambient crime risk is the product of four factors:

$$\text{Ambient Crime Risk} = \frac{\text{Targets} \times \text{Expected Value}}{\text{Police Presence}} \times \text{Offenders}$$

SOB sites have relatively high ambient crime risks because they attract a comparatively large number of *targets* to their sites and because, in the eyes of the rational offender, the targets have high *expected values* – or in the language Cohen and Felson (1979), they are “suitable targets.” The product of these two risk factors attracts predatory *offenders* with predictable consequences. Finally, because these offenders are rational, they avoid sites with visible *police presence*, thus effectively avoiding – in the language of Cohen and Felson (1979) again – “capable guardians” that might deter crime.

The rational offenders in this theory move freely from site to site, stopping at sites with high expected values³⁷ and low police presence. They are “professional” criminals in the sense that they lack legitimate means of livelihood and devote substantial time to illegitimate activities. Some are vice purveyors who dabble in crime; others are criminals who use the promise of vice to lure and lull victims. In either case, they view SOB patrons as exceptionally valuable targets.

The characteristics that give adult business patrons their high expected values are inherent to the commercial activities that attracted them to the site. They are disproportionately male and open to vice overtures; they carry cash; and most importantly, when victimized, they are reluctant to involve the police. From the offender’s perspective, they make “perfect” victims.

The connection between crime and vice has been depicted in popular literature for at least 250 years. John Gay’s *Beggar’s Opera* (ca. 1765), concerns a predatory criminal MacHeath and the vice ring composed of Lucy, Jenny, and Peachum. This observation is reinforced by the empirical literature on criminal lifestyles and thought processes. In the earliest and best-known empirical study, Clifford R. Shaw describes the daily life of “Stanley,” a delinquent who lives

³⁷ If a site has N targets with values v_1, \dots, v_N , the site’s *expected value* is $E(v) = (v_1 + \dots + v_N)/N$. This is the “average” that an offender would expect to take from a randomly selected victim at the site.

with a prostitute and preys on her clients.³⁸

Criminological thinking on this point has changed very little in the more than 75 years since the publication of Shaw's *The Jack-Roller*. More recently, Richard Wright and Scott Decker interviewed 86 active armed robbers to document the rational choices of predatory criminals.³⁹ When asked to describe a perfect victim, all of the active armed robbers mentioned a victim who is involved in vice, either as a seller or a buyer. Indeed, three of the armed robbers interviewed by Wright and Decker worked as prostitutes. As Wright and Decker explained, "From their perspective, the ideal robbery target was a married man in search of an illicit sexual adventure; he would be disinclined to make a police report for fear of exposing his own deviance" (p. 69). The rational calculus described by these three prostitute-robbers echoes the descriptions of other professional predators. A synthesis of the extensive literature leads to the conclusion that, from the perspective of the predatory criminal, SOB patrons are high-value targets situated in an environment with comparatively few capable guardians.

Given a choice of crime sites with roughly equal expected values, rational offenders prefer the site with the lowest level of capable guardianship, most often revealed through police presence. Thinking of police presence in strictly physical terms, an increase or decrease in the number of police physically on or near a site reduces ambient risk. However, police presence can also be virtual through remote camera surveillance and similar processes.

Whether physical or virtual, the *effectiveness* of police presence can be affected – for better or worse – by broadly defined environmental factors. For example, due to the reduced effectiveness of conventional patrolling after dark, crime risk rises at night, peaking around the time that taverns close. Darkness has a lesser effect on other policing strategies, which raises the general principle of *optimizing* the effectiveness of police presence. One theoretical reason why SOB subclasses might have qualitatively different ambient risks is that they have different optimal policing strategies.

The concept of "capable guardians" is not only a reference to law enforcement. In addition, it refers to non-state agents who are present and can play a role in detecting, reporting, and processing crime. Because potential guardians might avoid high-risk areas, of course, the concept becomes problematic in this application. The presence of potential witnesses to crimes also plays a role. However, as described earlier, the reluctance of those who frequent SOBs to

³⁸ Shaw, C.R. *The Jack-Roller: A Delinquent Boy's Own Story*. University of Chicago Press, 1966 [1930]). See also, Snodgrass, J. *The Jack-Roller at Seventy*. Lexington, MA: Lexington Books, 1982.

³⁹ Wright, R.T. and S.H. Decker. *Armed Robbers in Action: Stickups and Street Culture*. Northeastern University Press, 1997.

report crime at or near an SOB ensures that they generally do not serve as capable guardians. That is, they do not serve as agents of informal social control precisely because they are not inclined to work collaboratively with formal state agents (i.e., law enforcement agents) to detect, report, and process crime at or near SOBs.

2.1 THE THEORETICAL ROLE OF SUBCLASSES⁴⁰

Because all SOB subclasses draw valuable targets to their sites, criminological theory holds that all will have crime-related secondary effects. Nevertheless, if the defining property of a subclass affects any of the risk factors (i.e., the number and/or value of the targets at the site, the number of offenders who have pursued targets to the site, or the effectiveness of police presence at the site), criminological theory allows for qualitative differences in ambient crime risk among the subclasses.

In some instances, subclass-specific risks arise because the defining property of the subclass implies (or creates) idiosyncratic opportunities (or risks) for particular types of crime. Compared to the complementary subclass, for example, SOBs that serve alcohol present idiosyncratic opportunities for non-instrumental crimes, especially simple assault, disorderly conduct, etc. Likewise, SOBs that provide on-premise entertainment present idiosyncratic opportunities for vice crime, customer-employee assault, etc. Criminologists call this etiological crime category “opportunistic.” There are many obvious examples and SOB regulations often treat subclasses differently because their ambient opportunity structures are different.

In addition to subclass-specific opportunity structures, the defining property of an SOB subclass may compromise the effectiveness of common policing strategies. To illustrate, policing SOBs that provide on-site entertainment (adult cabarets, peep shows, etc.) may require that police officers inspect the interior premises. Because this places officers at risk of injury, policing on-site SOBs requires specially trained and equipped officers, prior intelligence, specialized backup manpower, and other resources. Because potential offenders can wait inside the premises without arousing suspicion, moreover, routine drive-by patrols to “show the flag” are less effective.

The optimal policing strategies for two subclasses are sometimes incompatible or even mutually exclusive. To illustrate, for the subclass of off-site SOBs, which includes adult video and book stores, the optimal policing strategy often involves neighborhood patrols by uniformed officers in marked cars. Visibility is a key element of this strategy. For the subclass of on-site SOBs, on the other hand, including adult cabarets, the optimal policing strategy often involves boots-on-the-ground deployments of plainclothes officers and unmarked cars. Invisibility is a key element of this strategy. Obviously, neighborhood patrols by plainclothes officers driving

⁴⁰ The SOB subclass involved in *Palm Beach County v. Casablanca East* offers live adult entertainment and alcohol. We will refer to an SOB in this subclass an “adult cabaret.”

unmarked cars would defeat a major purpose of drive-by patrols; likewise, sending uniformed officers into an adult cabaret would be an inefficient method of control and might pose a physical danger to the officers, patrons, and employees. As a general rule, distinct SOB subclasses may require distinct policing strategies to mitigate ambient crime risks.

To some extent, differences among the optimal policing strategies for SOB subclasses amount to differences in cost. In many (but certainly not all) instances, the least expensive policing strategy involves drive-by patrols by uniformed officers in marked cars. Beyond the deterrent value of visible drive-by patrols, patrol officers can keep watch for known offenders and suspicious activity. When potential problems are spotted, the patrol officers can forward the information to a specialized unit or, if necessary, handle it on the spot, requesting backup resources only as needed.⁴¹ It is obvious that adult cabarets, the SOB subclass involved in *Palm Beach County v. Casablanca East*, require more expensive policing strategies.

2.2 THE THEORETICAL ROLE OF ALCOHOL

Proximity to alcohol is a key component of the criminological theory of secondary effects. Alcohol aggravates an SOB's already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the SOB's patrons. In effect, alcohol makes the soft targets found at the SOB site considerably softer. The available data corroborate this theoretical expectation in all respects. Predatory criminals prefer inebriated victims,⁴² e.g., and SOBs that serve alcohol (e.g., adult cabarets) or that are near liquor-serving businesses pose accordingly larger and qualitatively different ambient public safety hazards.⁴³ Governments rely on this consistent finding of crime-related secondary effect studies as a rationale for limiting nudity in liquor-serving businesses.

⁴¹ See, e.g., National Research Council. *Fairness and Effectiveness in Policing: The Evidence*. National Academies Press, 2004.

⁴² See, e.g., Wright and Decker (1997): “[E]ach of (the armed robbers) expressed a preference for intoxicated victims, who were viewed as good targets because they were in no condition to fight back.” (p. 70); “Several [armed robbers] said that they usually chose victims who appeared to be intoxicated because, as one put it, ‘Drunks never know what hit them.’” (p. 87).

⁴³ A 1991 study of Garden Grove, California by McCleary and Meeker found a large, significant increase on ambient crime risk when an alcohol-serving establishment opened within 500 feet (*ca.* one city block) of an SOB. Secondary effect studies in Greensboro (2003) and Daytona Beach (2004) found that alcohol-serving SOBs had larger secondary effects than retail alcohol outlets. These studies will be discussed in Section 3.

2.3 THE THEORY OF MITIGATION STRATEGIES

The routine activity theory of crime points to strategies for mitigating the crime-related secondary effects of SOBs. In principle, the effects of a mitigation strategy can be *direct* or *indirect*. *Direct* effects are typically realized through *direct* manipulation of the risk factors, including:

- *Reducing target density.* Residential victimization risk can be reduced by mandating long distances between SOB sites and residences. Codes that disperse SOB sites mitigate crime risk by reducing target density.
- *Hardening targets.*⁴⁴ Codes that mandate on-site security (lighting, uniformed guards, etc.); or that facilitate intensive police patrolling; or that limit alcoholic beverages mitigate crime risk by this mechanism.
- *Reducing offender density.* Codes that disperse targets across sites make sites less attractive to offenders. Codes that mandate on-site security also “work” through this mechanism, of course.

The effects of these example mitigation strategies are *direct* because each is realized *directly* through one of the routine activity theory’s risk factors.

In practice, of course, mitigation strategies often have complex effects, working *directly* through one of routine activity theory’s risk factors, or, more often, working *indirectly* through some distal mechanism. The mitigation strategies with *indirect* effects can be divided into two categories:

- *Optimization/reallocation strategies.* Minor modifications of a code can sometimes reduce the costs of compliance (to the SOB) or the cost of enforcement (to the government) or both. Resources saved by the modification can then be reallocated to other strategies.
- *“Broken windows” enforcement.* By focusing police resources and attention on SOB sites, codes can reduce risk through a complex set of pathways.⁴⁵ Codes that regulate the internal environment of the SOB site

⁴⁴ The classic statement on target-hardening is Oscar Newman’s *Defensible Space: Crime Prevention Through Urban Design*. (New York: MacMillan, 1973).

⁴⁵ The best known statement of this effect is “Broken windows: The police and neighborhood safety.” by J.Q. Wilson and G.L. Kelling, *Atlantic Monthly*, 1982, 249:29-38. Wilson and Kelling argue persuasively that police visibility in a neighborhood can have a greater impact on

are an example of this mechanism. Regular inspections and routine, visible police presence in the neighborhood have the effect of reducing ambient crime risk.

The effects of optimization/reallocation and “broken windows” strategies are *indirect* in the sense that neither aims to *directly* alter one of the theory’s risk factors. Rather, both types of strategy aim at extra-theoretical factors.

The theoretical distinction between *direct* and *indirect* effects is not useful in all instances. Nor is it always feasible to distinguish the unique contributions of several factors to a mitigation strategy’s *direct* and *indirect* effects.

The effects of optimization/reallocation and “broken windows” strategies are *indirect* in the sense that neither aims *directly* at one of the theory’s risk factors. Rather, both types of strategy aim at extra-theoretical factors. The distinction between *direct* and *indirect* effects is not useful in all instances. Nor is it always feasible to distinguish the unique contributions of several factors to a mitigation strategy’s *direct* and *indirect* effects. Still it is important to acknowledge the role of direct and indirect effects.

2.4 DIURNAL RISK CYCLES

One the most common (and most effective) mitigation strategies involves limiting the hours in which SOBs may operate. This is also one of the more contentious mitigation strategies. In *Fantasyland Videos v. County of San Diego*,⁴⁶ the plaintiff’s expert, Dr. Daniel Linz, argued that, because there are fewer crimes committed during night-time hours, San Diego County had no legitimate grounds for limiting an SOB’s hours of operation. The trial court was not convinced by Dr. Linz’s argument and upheld the San Diego County ordinance.

Dr. Linz’s argument ignores the per-target crime risk. When businesses close for the night and people go home, the crime incidence rate drops. Although the crime incidence rate drops, per-target crime risk nonetheless rises. If a business stays open around-the-clock, its ambient crime risk rises steadily after sundown, peaking in the early morning hours. From this general rule, we infer that, when an SOB is open 24-hours, its ambient crime risk is highest during the hours of darkness.

Routine activity theory predicts the diurnal victimization risk cycle. Darkness softens a

victimization risk than police activities that target crime per se. Modern police methods are based on this theory.

⁴⁶ *Fantasyland Video v. County of San Diego*, 373 F. Supp. 2nd 1094 (2005).

target, making it more appealing to predators. Although several mechanisms operate here, the most salient is the effect of darkness on routine policing strategies. Virtually all policing tactics become more difficult and less effective in darkness. Police resources are stretched thinner yet when bars and taverns close, making soft targets even softer at closing time. Governments have historically attempted to mitigate the heightened risk by ordering high-risk public places (parks, beaches, playgrounds, etc.) closed from dawn to dusk; by imposing curfews on high-risk persons (teen-agers, e.g.); and by closing high-risk businesses (bars, SOBs, etc.) during times of acute risk.

A few years before the *Fantasyland* suit, a consortium of 24-hour SOBs challenged a similar City of San Diego closing-time ordinance.⁴⁷ The challenge was settled and the plaintiffs were allowed to continue operating around the clock. In the following years, one of the SOBs experienced several crime-precipitated deaths in the over-night shift. As a consequence, in 2007, the SOB voluntarily limited its hours of operation.⁴⁸ Several other City of San Diego SOBs have adopted the same voluntary mitigation strategy.

2.5 CONCLUDING REMARKS ON CRIMINOLOGICAL THEORY

Strong criminological theory predicts that, *without exception*, SOBs will generate ambient public safety hazards. The ambient public safety hazard arises because SOBs attract customers from wide catchment areas. The customers attracted to SOB sites are disproportionately male, open to vice overtures, and carry cash; more importantly, when victimized, they are reluctant to involve the police. From the point of view of rational criminals, these characteristics make SOB customers “perfect” victims. The density of high-value targets at SOB sites attracts offenders with predictable consequences.

The legal debate over crime-related secondary effects ignores the role of criminological theory. Any criminologist who was unaware of the large body of crime-related secondary effects studies would nevertheless, relying on routine activity theory, *expect* SOBs to pose ambient public safety hazards. Indeed, this theoretical expectation is so strong that criminologists would suspect the findings of any study that failed to find a secondary effect.

As it turns out, the data – including Palm Beach County data – corroborate criminological theory. Before reporting the results of our Palm Beach County analyses, we review the broader secondary effects literature.

⁴⁷ *Mercury Books v. City of San Diego* (U.S. District Court, Southern District of California, 00-CV2461).

⁴⁸ See, e.g., D.F. Baker and J. Hughes, “Two officers kill robber's alleged getaway driver.” *San Diego Union-Tribune*, April 19th, 2007.

3. SECONDARY EFFECT STUDIES CORROBORATE THEORY

Criminological theory leads us to *expect* crime-related secondary effects and, in fact, *that is exactly what we find*. Table 3 lists 18 secondary effect studies conducted over a 30-year period in rural, urban, and suburban settings.⁴⁹ These 18 studies span all regions of the U.S. and every conceivable SOB subclass. Despite this diversity, the studies converge around the consensus finding that SOBs have large, significant crime-related secondary effects.

Los Angeles, CA	1977	Manhattan, NY	1994
Whittier, CA	1978	Times Square, NY	1994
St. Paul, MN	1978	Newport News, VA	1996
Phoenix, AZ	1979	Dallas, TX	1997
Minneapolis, MN	1980	San Diego, CA	2002
Indianapolis, IN	1984	Greensboro, NC	2003
El Paso, TX	1986	Centralia, WA	2003
Austin, TX	1986	Daytona Beach, FL	2004
Garden Grove, CA	1991	Sioux City, IA	2006

The 18 studies listed in Table 3 are also *methodologically* diverse. Some of the studies use a before/after difference to estimate a secondary effect. Others use SOB-control differences for that purpose.⁵⁰ Some of these SOB-control studies select control areas by “matching.” Others use statistical models (e.g., regression) to adjust irrelevant differences between the SOB and control areas. Methodological attacks on the literature typically focus on idiosyncratic design features of each study. Despite their methodological idiosyncracies, the studies all report remarkably similar findings. *This consensus renders any methodological challenge implausible.*

Ideally, one could read each of the 18 studies listed in Table 3 and draw inferences from

⁴⁹ The bibliographic citations of these and other studies are listed in Section 5.

⁵⁰ Our authority on quasi-experimental design is *Experimental and Quasi-Experimental Designs for Research* by D.T. Campbell and J.C. Stanley (Rand-McNally, 1966). Campbell and Stanley call before/after designs “pretest-posttest” designs; they call SOB-control designs “static group comparison” designs. In general, before/after comparisons are prone to fewer threats to internal valid and, hence, are “stronger” than SOB-control designs. The strongest of all “pretest-posttest” designs is the “time-series” design.

their similarities and differences. Given the broad consensus finding, however, there is little to learn from the minor details of specific studies. Therefore, the following subsections review the findings of several important studies. The studies reviewed were not selected randomly; rather they were selected to illustrate the diversity of this literature. Our review begins with studies that illustrate the methodological diversity of the secondary effects literature. We then review findings for the major SOB subclasses. Finally, in Section 3.6, we return to the issue of scientific methodology to discuss the methodological arguments of Dr. Fisher.

3.1 SOB-CONTROL CONTRASTS: PHOENIX, 1979

With respect to internal validity, true experiments are the strongest designs.⁵¹ Because true experiments are not feasible, secondary effect studies rely on *quasi-experimental designs*. Except for random assignment, quasi-experimental and true experimental designs use similar structures to control threats to validity. The strongest quasi-experimental design compares ambient crime risk at a site before and after the opening of an SOB. Before-after contrasts are not always possible, unfortunately.

A somewhat weaker quasi-experimental design compares ambient crime risk at an SOB site to ambient crime risk at a control site. Though weaker in principle, SOB-control contrasts are often more practical. The validity of an SOB-control contrast is a function of similarity of the SOB and control sites. Barring out-and-out dishonesty, the differences will be small and roughly random, thereby cancelling each other.

	<i>Adult Business Areas</i>	<i>Control Areas</i>	<i>Secondary Effect</i>
<i>Property Crime Rate</i>	122.86	87.90	139.8 %
<i>Personal Crime Rate</i>	5.81	5.11	113.7 %
<i>Sexual Crime Rate</i>	9.40	1.62	580.2 %

Source: ADULT BUSINESS STUDY, City of Phoenix Planning Department, May 25, 1979; Table V

⁵¹ An experimental design controls common threats to validity by random assignment. To estimate the crime-related secondary effects of SOBs experimentally, we would compile a list of the business sites in a jurisdiction and open SOBs in a random sample of sites. Random assignment (and hence, experimenting) is not possible.

In 1979, the City of Phoenix conducted a study of crime-related secondary effects.⁵² To estimate the crime-related secondary effects of SOBs, crime rates in SOB areas were compared to crime rates in “matched” control areas (i.e., areas that were similar but that had no SOBs). The comparisons are summarized in Table 3.1. Compared to crime rates in the control areas, the UCR property crime rate was 39.8 percent higher in SOB areas; the UCR personal crime rate was 13.7 percent higher; and the UCR sex crime rate was 480.2 percent higher in the SOB areas. By any reasonable standard, these are *large, significant* crime-related secondary effects.

In the 30 years following this study, legislatures around the U.S. have accepted and relied upon its findings. Experts retained by SOBs and SOB plaintiffs, such as Dr. Fisher in this case, have argued, on the other hand, that the 1979 Phoenix study is “fatally flawed” and that its findings are wholly implausible. This contrary view is incorrect, in our opinion. Although the design of this study leaves much to be desired – especially by today’s standards – many of the study’s methodological shortcomings obscure the effect, making it seem smaller than actually is. In our opinion, a stronger design would have produced a *larger, more significant* effect estimate. This is a general rule. Weak designs favor the null hypothesis – that SOBs have no crime-related secondary effects – while strong designs tend to reject the null hypothesis. We will have more to say about this general rule in Section 3.6 below.

3.2 BEFORE-AFTER CONTRASTS: GARDEN GROVE, 1991

Prior to 1990, virtually all crime-related secondary effect studies compared crime rates in police districts with SOBs to crime rates in districts without SOBs.⁵³ By contemporary standards, the design of these studies was weak. Existing police districts comprised areas of several square miles, e.g., and sometimes had several SOBs. Researchers handled these problems as best they could through matching and, rarely, through statistical adjustment. The wide use of weak “static group comparison” designs was dictated by economics. Prior to 1990, relatively few police departments had sophisticated management information systems.

Citing these methodological flaws, experts working for the SOB industry characterized these studies as exemplars of *Alameda Books*’ “shoddy research.” Ironically, the methodological flaws in these early studies favor a null finding (i.e., no secondary effects) and stronger designs would most likely have yielded larger, more significant effect estimates. Ignoring this point, the “static group comparison” design assumes that SOB and control neighborhoods are equivalent on relevant crime risk factors. If this assumption is unwarranted, observed secondary effects cannot

⁵² Although the study was conducted by City employees, Dr. McCleary and other Arizona State University faculty served as advisors and consultants.

⁵³ Studies in Los Angeles (1977), Amarillo (1977), Whittier (1978), St. Paul (1978), Phoenix (1979), Indianapolis (1984), El Paso (1986), and Austin (1986) used this design.

be attributed to the SOBs. The surest, simplest way to control this threat to validity is to use a before-after design.

In the early 1990s, Drs. McCleary and Meeker conducted a secondary effect study in Garden Grove, California that is considered to be the most scientifically rigorous, valid study of crime-related secondary effects in the literature.⁵⁴ The design of the 1991 Garden Grove study differed from what had been done previously in many respects. Because the data in this study consisted of address-located crime incidents, crime rates could be estimated within 500 feet of an SOB. Also, because the data spanned ten years, relatively stronger before/after contrasts were feasible. Finally, and most importantly, Drs. McCleary and Meeker were able to take advantage of several nearly ideal control businesses for the before/after contrasts.

Observing ambient crime before and after an SOB opened in a neighborhood, Drs. McCleary and Meeker found that crime risk rose whenever an SOB *opened* its doors for business. Of course, the validity of a before/after inference requires that other plausible explanations be ruled out. To control the common “threats to internal validity,” Drs. McCleary and Meeker replicated each before/after analysis for other SOBs in Garden Grove. If the before/after differences were due to a coincidental artifact, for example a general rise in crime or an increase in police surveillance, it would be observed at other Garden Grove SOBs. If the same effect were not found at the control sites, on the other hand, the effect could be attributed confidently to the newly opened SOB.

**Table 3.2 - Secondary Effects in Garden Grove, CA: Business Openings
Total “Serious” Crime, One Year Before/After**

	<i>Test Sites</i>			<i>Control Sites</i>		
	<i>Before</i>	<i>After</i>		<i>Before</i>	<i>After</i>	
March, 1982	71	106	1.49	76	78	1.03
March, 1986	31	68	2.19	80	92	1.15
August, 1988	32	50	1.56	41	40	0.98
Total	134	224	1.67	197	210	1.06

Source: *Final Report to the City of Garden Grove*, pp. 26-28.

⁵⁴ *Final Report to the City of Garden Grove: The Relationship between Crime and Adult Business Operations on Garden Grove Boulevard*. October 23, 1991. Richard McCleary, Ph.D. and James W. Meeker, J.D., Ph.D.

Secondary effects for three business openings are reported in Table 3.2. When a new SOB opened, total “serious” crimes in a 500-foot radius around the site rose, on average, 67 percent. To control for the confounding effects of citywide crime trends, changes in police activity, and other common threats to internal validity, these before-after differences were compared to the analogous differences for the addresses of existing SOBs. Total “serious” crimes in a 500-foot radius around these “control” sites rose, on average, only 6 percent. The secondary effect observed when new SOBs open is, thus, substantively large and statistically significant.

Social scientists (and their government clients) learned two things from the 1991 Garden Grove study. First and foremost, when relatively stronger before-after quasi-experimental designs are possible, the same ambient public safety hazards are found. The Garden Grove findings corroborate the findings in the Los Angeles (1977), Phoenix (1979), Indianapolis (1984) studies. Second, however, and more important, the 1991 Garden Grove study taught us how expensive a crime-related secondary effect study can be.

3.3 ADULT CABARETS

Recent lawsuits have questioned whether the subclasses have similar effects. To address these questions, researchers have begun to report subclass-specific effects. The SOB subclass in *Palm Beach County v. Casablanca East*, so-called “adult cabarets” are the oldest and, in some respects, the most interesting subclass. Dr. Danner and others have argued that an adult cabaret is essentially a business that sells alcohol by the drink (a “bar” or “tavern” as we will call them), but where employees are nude. Eliminating the nudity transforms the adult cabaret into a bar or tavern and vice versa. Like all arguments-by-analogy, this one is imperfect. Nevertheless, accepting the analogy, the crime-related secondary effects of an adult cabaret can be estimated by comparing ambient crime for adult cabarets and taverns. Several studies have used bars and taverns as controls for adult cabarets and *all have found that adult cabarets have higher ambient crime rates*.

3.3.1 GREENSBORO, NC (2003)

In 2002, Dr. Daniel Linz conducted a crime-related secondary effect study in Greensboro, NC.⁵⁵ Analyzing 911 calls-for-service, Dr. Linz concluded that:

⁵⁵ *Evaluating Potential Secondary Effects of Adult Cabarets and Video/Bookstores in Greensboro: A Study of Calls for Service to the Police*, by Daniel Linz, Ph.D. and Mike Yao, November 30th, 2003. Dr. Linz is a prolific secondary effects expert for SOB plaintiffs, often in collaboration with Dr. Fisher. Their best known collaboration is the 2004 study of Daytona Beach adult cabarets which we review below.

The presence of adult cabarets and adult video/bookstores in “neighborhoods” was unrelated to sex crimes in the area. We found that several adult video/bookstore were located in high person and property crime incident “neighborhoods.” We examined the “neighborhoods” and local areas surrounding the adult video/bookstores (1000 foot radius) further and we found that the adult video/bookstores were not the primary source of crime incidents in these locations ... (T)here is no support for the City of Greensboro’s theory that adult businesses produce adverse secondary effects. The results of our study show that adult businesses are not associated with crime events.⁵⁶

Due to the technical nature of Dr. Linz’s statistical analyses, the City of Greensboro retained McCleary to “translate” Dr. Linz’s numerical results into plain words.⁵⁷ Dr. Linz’s report was a difficult read, even for statisticians. The numbers on which his conclusion was based were scattered across 18 pages of computer output in an appendix. Few report readers consult appendices under any circumstances. In this instance, however, a critical reading of the report’s appendices required technical skills (that most of the report’s readers lack) and great tolerance for numerical detail. When the actual numbers were finally examined, it became clear that Dr. Linz had overstated the basis of his strongly-worded conclusion. Put simply, Dr. Linz’s numbers contradicted his words.

The results of Dr. Linz’s analyses are plotted in Figure 3.3.1. The green bars in Figure 3.3.1 report the ambient crime levels⁵⁸ for Greensboro’s “control” neighborhoods; these neighborhoods have no taverns and no SOBs. The blue and red bars report the ambient crime levels for neighborhoods with taverns and neighborhoods with adult cabarets, respectively. To facilitate interpretation, the ambient crime levels in control neighborhoods are fixed at 100 percent; the effects in tavern neighborhoods (blue bars) and adult cabaret neighborhoods (red bars) are easily interpreted, thus, as multiples of the control neighborhood effects (green bars). Because the social, demographic, and economic variables that are presumed to “cause” crime vary across neighborhoods, unadjusted crime levels may be deceiving. To control for these confounding effects, Dr. Linz adjusted his raw numbers with a statistical model. We will not discuss the technical details of Dr. Linz’s statistical model here.

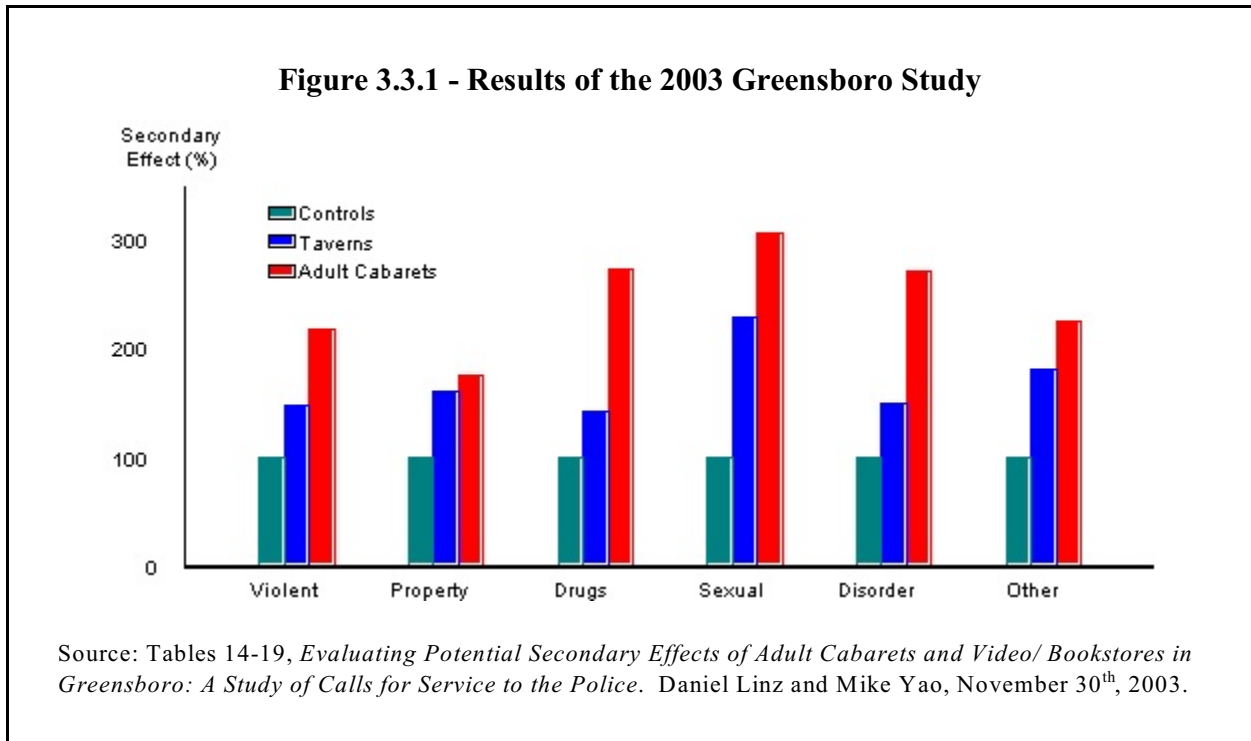
As the adjusted effects plotted in Figure 3.3.1 show, Dr. Linz found that ambient crime in

⁵⁶ Linz-Yao Greensboro study, p. 3 (counting the title sheet as p. 1).

⁵⁷ Richard McCleary. *A Methodical Critique of the Linz-Yao Report: Report to the Greensboro City Attorney*. December 15, 2003.

⁵⁸ We use the term crime “levels” because, strictly speaking, crime “rates” are difficult to tease out of 911 calls-for-service. We will return to this issue later.

tavern neighborhoods (blue bars) range from 148 percent (violent crimes) to 229 percent (sexual crimes) of the ambient crime in control neighborhoods. Because tavern neighborhoods are the criminological “gold standard” of ambient crime, that result was expected.⁵⁹ What Dr. Linz did not expect to find, however, was that adult cabaret neighborhoods (red bars) would have more crime than the tavern neighborhoods (blue bars).



Crime-related secondary effects in Greensboro’s adult cabaret neighborhoods ranged from 175 percent (for property crime) to 307 percent (for sexual crime) of the ambient crime levels in control neighborhoods. These effect estimates are large in every sense and, of course, they are not surprising. The surprise was that the estimates in Figure 3.3.1 were reported in a study commissioned by a consortium of SOB plaintiffs.

3.3.2 DAYTONA BEACH, FL (2004)

In 2004, Dr. Linz collaborated with Dr. Fisher on a study of secondary effects in Daytona

⁵⁹ Most of the research on the relationship between taverns and ambient crime risk is due to the work of Denn Roncek. See D.W. Roncek and M.A. Pravatiner. “Additional Evidence that Taverns Enhance Nearby Crime.” *Social Science Research*, 1989, 73:185-188.

Beach.⁶⁰ With minor exceptions, the design of the Daytona Beach study was identical to the Greensboro design.⁶¹ Analyzing 911 calls-for-service once again, Drs. Linz and Fisher concluded that adult cabarets, had no significant crime-related secondary effects:

We are able to account for crime events in Daytona Beach with a moderately high level of accuracy using variables found by other researchers to be related to crime. The social disorganization variables and especially the presence of an (*sic*) alcohol beverage retail sale establishments in the blocks (that did not feature adult entertainment) accounts largely for this explanatory power. The presence of an adult cabaret in the census block explained only to (*sic*) a trivial amount of variability in crime incidents when these other variables were considered ... From these analyses we are able to reliably conclude that once we control for variables known to be related to crime there is not a meaningful relationship between the presence of an adult cabaret in the neighborhood and crime events.⁶²

This conclusion is worded more cautiously than the conclusion in Greensboro. Indeed, the authors go so far in the Daytona Beach report as to admit that, as in Greensboro, the Daytona Beach results amount to statistically significant crime-related secondary effects:

There are analyses reported below where there are small but statistically significant relationships due to the exceptionally large N (sample size) employed in the analyses (at times over 1,100 census blocks)...[But] we favor “strength” over a technical “significance.”⁶³

This is a highly technical statistical issue. In our opinion, Drs. Linz and Fisher misunderstand the assumptions of their model as well as the statistical problem of an “exceptionally large N” that, in their opinion, obviates the statistical model.

Their opinion is incorrect. Notwithstanding the large *statistical* size of their effect estimates, the effect estimates reported by Drs. Linz and Fisher in Daytona Beach are *substantively* large. Figure 3.3.2 plots the results of the Daytona Beach analyses using the same

⁶⁰ *Evaluating Potential Secondary Effects of Adult Cabarets in Daytona Beach, Florida: A Study of Calls for Service to the Police in Reference to Ordinance 02-496* by Daniel Linz, Ph.D., Randy D. Fisher, Ph.D. and Mike Yao, April 7th, 2004.

⁶¹ Because the Daytona Beach SOBs were adult cabarets, Linz, Fisher, and Yao excluded bookstores and video arcades from the study.

⁶² Linz-Fisher-Yao Daytona Beach study, p. 36 (counting the title sheet as p. 1).

⁶³ Linz-Fisher-Yao Daytona Beach study, p. 23 (counting the title sheet as p. 1).

conventions used in Figure 3.3.1. Ambient crime levels in control neighborhoods (green) are fixed at 100 percent again so that the levels in tavern neighborhoods (blue) and adult cabaret neighborhoods (red) can be interpreted as multiples of the controls. With two exceptions, adult cabaret neighborhoods have higher ambient crime levels than tavern neighborhoods. Given the well-known relationship between taverns and ambient crime, the Daytona Beach analyses corroborate the consensus finding of the literature. Like the broader SOB class, adult cabarets, pose large, statistically significant ambient public safety hazards.

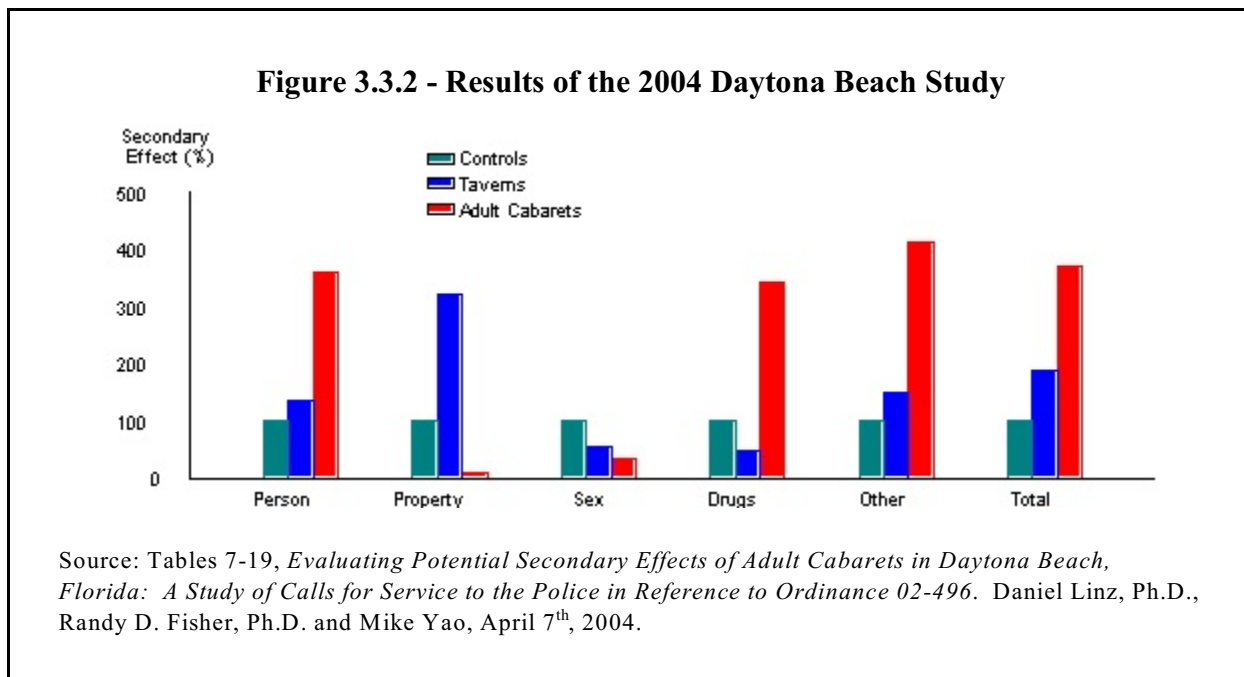


Figure 3.3.2 speaks for itself. Tavern neighborhoods (blue) have 90 percent more total crime than control neighborhoods (green). Adult cabaret neighborhoods (red) have 270 percent more total crime than control neighborhoods (green). In substantive terms, taverns have *large* secondary effects and adult cabarets have even *larger* secondary effects. The fact that these effect estimates are also *statistically* large adds little to our understanding of Figure 3.3.2.

The fact that the estimates *are* statistically large and statistically *significant* poses a dilemma for Drs. Linz and Fisher. If the estimates were statistically small, Drs. Linz and Fisher could argue that the estimates were due to chance (regardless of their substantive size). Denied this solution to the dilemma, Drs. Linz and Fisher argue that statistical significance of the estimates is an artifact of an “exceptionally large N.”

This is a specious argument on two grounds. First, samples of 1,100 are not large enough to obviate the statistical model used by Drs. Linz and Fisher. Second, if samples of 1,100 *were* large enough to obviate the statistical model, as claimed, then *all* of effect estimates would be statistically significant. In fact, however, of the 84 parameter estimates reported by Drs. Linz and

Fisher, 42 are statistically significant and 42 are not.

In *Daytona Grand 1* the District Court found that Drs. Linz and Fisher had, through the use of “scientific” studies, cast doubt on the City’s “purely anecdotal evidence or opinions based on highly unreliable data.”⁶⁴ The 11th Circuit was not convinced. In *Daytona Grand 2*,⁶⁵ the 11th Circuit rejected the *Daubert*-based methodological criteria that Drs. Linz and Fisher used to cast doubt on the City’s evidence. The panel also questioned the use of 911 calls by Drs. Linz and Fisher to measure crime risk and, more important, noted that several of the reported secondary effect estimates were statistically significant.

The experts are no doubt correct that factors other than the presence of adult theaters affect crime rates in Daytona Beach: crime is plainly caused by many factors. But that does little to undermine the City’s conclusion that adult theaters *also* affect crime rates, especially when the experts’ own analysis shows a statistically significant correlation between adult theaters and increased crime in half of the areas in the study.⁶⁶

This observation by the 11th Circuit panel is consistent with our Figure 3.3.2.

3.4 PEEP SHOWS

The term “peep show” refers to an SOB where patrons can view (or preview) DVDs. In his *Alameda Books* opinion, Justice Souter characterized this SOB subclass as the “commercially natural, if not universal” business model.⁶⁷ Justice Souter’s characterization refers to the practice of “previewing” DVDs prior to purchase. Although some patrons may use the booths to inform their purchasing decisions, arguably, this has become a relatively minor function of the booths. Booths pose a special problem for routine policing. The industry changes rapidly. New business models arrive and prove their commercial viability while older business models become less viable and evolve or go out of business. The internet now plays a major role in this process. It is unclear whether the peep show business model will survive.

⁶⁴ *Supra* note 23 at 41-42.

⁶⁵ *Supra* note 28.

⁶⁶ *Id.*, at 47-48

⁶⁷ *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 2002.

3.4.1 CENTRALIA, WA (2003)

Centralia, Washington is a small city (ca. 14,000 population) on Interstate 5 between Olympia and Portland. In December, 2003, an adult bookstore opened in a building that had been a residential dwelling. In addition to selling videos for off-premise viewing, the SOB had coin-operated viewing booths. Shortly after opening its doors for business, the City moved to enforce zoning ordinances prohibiting SOBs in residential neighborhoods. When the SOB filed a lawsuit,⁶⁸ the City defended itself with the crime incident statistics summarized in Table 3.4.1.

	Before	After	Change	Odds Ratio
SOB Area	9	17	1.889	–
All Other Centralia	3358	3358	0.966	1.956
Control Areas	23	19	0.826	2.058

Source: Richard McCleary, *Crime Risk in the Vicinity of a Sexually Oriented Business: Final Report to the City Attorney’s Office*. February 28th, 2004.

In the impact area, defined by a 250-foot radius around the SOB site, serious crime rose by nearly 90 percent after the SOB opening. In the rest of Centralia, during the same period, serious crime dropped by nearly four percent. The statistical significance of these before-after contrasts can be tested by comparing the value of the odds ratio reported in Table 3.4.1 to its standard error. By chance alone, odds ratios larger than this one occur less than eight times in one thousand trials or samples.

Although it is highly unlikely that the effect reported in Table 3.4.1 is due to chance, it is always possible that the observed effect is due to some uncontrolled threat to internal validity. If that were the case, we would expect crime to rise when any other type of business, say, for example, a bread store, moves into a vacant residential structure. In fact, three businesses *did* open in Centralia during this time frame. But as reported in Table 3.4.1, ambient crime in a 250-foot radius around the sites dropped when these non-SOBs opened.

3.4.2 SAN DIEGO, CA (2002)

In terms of validity, the Centralia findings are credible because they are based on a before-after design. Because Centralia is a relatively small town, on the other hand, and because

⁶⁸ *Washington Retailtainment, Inc. et al. v. City of Centralia, Washington*. U.S. District Court for the Western District of Washington at Tacoma, Case No. C03-5137FDB

the findings are based on only one SOB, common sense might argue that the Centralia findings do not generalize to all peep shows or to large cities. Common sense turns out to be wrong.

In the preceding year, Dr. Daniel Linz conducted a study of 19 peep shows in San Diego.⁶⁹ Comparing 911 calls-for-service in the peep show and control areas, Dr. Linz found no statistically significant differences. In statistical terms, i.e., the 19 peep show area had approximately the same number of 911 calls as the control areas. When Drs. McCleary and Meeker were retained by the City to re-analyze the data, they discovered that Dr. Linz had glossed over several important points.⁷⁰

First, the difference between peep show and control areas was 15.7 percent; in other words, compared to control areas, the peep show areas had 15.7 percent more 911 calls. Although a 15.7 percent difference in 911 calls is large by any *substantive* standard, in *statistical* terms, the difference was small (or insignificant). How can an effect be *substantively* large but *statistically* small? McCleary and Meeker attributed this discrepancy to two aspects of Dr. Linz's design:

- *Ambient impact:* Dr. Linz defined the impact areas to extend 1,050 feet from the site (vs. 250 feet in Centralia).
- *Crime measurement:* Dr. Linz used police 911 calls-for-service to measure crime (vs. UCR crime incidents in Centralia).

Both of these design features affect the *statistical power* of a design. Regardless of how large or small the effect might be in substantive terms, both of these design features minimize the statistical size of the effect.

Table 3.4.2 demonstrates the implications of the design used by Dr. Linz. Using publicly available data, Drs. McCleary and Meeker calculated the reliability of San Diego 911 calls and adjusted the statistical size of the reported effect.⁷¹ Although the adjustment left the substantive size of the reported effect unchanged, it quadrupled the statistical size of the effect. As shown in

⁶⁹ *A Secondary Effects Study Relating to Hours of Operation of Peep Show Establishments in San Diego, California*. September 1, 2002. Daniel Linz and Bryant Paul. Submitted in *Mercury Books v. City of San Diego* U.S. District Court, Southern District of California (00-CV2461).

⁷⁰ R. McCleary and J.W. Meeker, *A Methodical Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office*. March 12, 2003.

⁷¹ For details, see Richard McCleary and James W. Meeker. "Do Peep Shows "Cause" Crime? *Journal of Sex Research*, 2006, 43:194-196.

Table 3.4.2, had Dr. Linz used UCR crime incidents (vs. 911 calls-for-service), the statistical confidence level of his finding would have exceeded 99 percent!

	<i>Linz-Paul</i>	<i>McCleary-Meeker</i>
Peep show areas	1552.6	1552.6
Control areas	1342.2	1342.2
Substantive Effect Size	210.4	210.4
Statistical Effect Size	0.629	2.521
Statistical Confidence	44.7 %	99.2 %

Source: McCleary, R. and J.W. Meeker. Do peep shows “cause” crime? *Journal of Sex Research*, 2006, 43:194-196.

3.5 OFF-SITE SOBs

Although off-site SOBs (i.e., SOBs that sell merchandise exclusively for off-site use) have been around since the advent of home VCRs, recent lawsuits have raised questions about the regulation of this SOB subclass. In *Encore Videos*,⁷² a 5th Circuit panel questioned whether criminological theory applied to this SOB subclass. To the extent that off-site SOBs attract similar “soft-target” patrons, the criminological theory outlined in Section 2 predicts that the subclass will have similar secondary effects. As it turned out, however, the 5th Circuit decision in *Encore Videos* had nothing to do with the applicability of criminological theory. In a 2007 decision, the 5th Circuit upheld a Kennedale, Texas ordinance aimed at off-site SOBs.⁷³ The panel found in *H and A Land Corp.* that the Kennedale ordinance had relied upon at least one study of off-site SOBs, thus it was Constitutional.

The Court also took the opportunity to clarify the short note in *Encore Videos* that had been misinterpreted as questioning the applicability of criminological theory. As it stands now, a government can regulate off-site adult book and video stores as long as it relies upon a study of this subclass. For that purpose, we review a study that corroborates the theoretical expectation with respect to the off-site subclass.

⁷² *Encore Videos, Inc. v. City of San Antonio* (310 F 3d 812, 2002)

⁷³ *H and A Land Corp. v. City of Kennedale, TX.*, 480 F.3d 336 No. 05-11474 (5th Cir. Feb. 22nd, 2007). Several days after the 5th Circuit decision, a customer was shot by a robber outside one of the off-site SOB plaintiffs in this suit. See, e.g., Boureois (2007).

Sioux City, Iowa is located about 100 miles north of Omaha on Interstate 29. SOBs are nothing new to Sioux City. Two SOBs had operated without incident in the city's older downtown area for decades. Although both businesses sold sexually explicit DVDs for off-site use, most of their revenue came from coin-operated viewing booths. Nevertheless, strictly speaking, both belonged to the adult business subclass that Justice Souter characterized as the "commercially natural, if not universal" model.⁷⁴ In terms of "look and feel," the two businesses were indistinguishable from SOBs in larger cities.

In March, 2004, a third adult business opened in Sioux City. Unlike the two existing businesses, this one had no viewing booths. It was located in a newer area of the city and lacked the garish appearance associated with SOBs generally and, in particular, with Sioux City's two existing SOBs. During subsequent litigation, the trial judge commented on this fact:

[T]he first impression of the store is a far cry from the first image that most people would likely have of an "adult book store" or "sex shop." There is nothing seedy about the neighborhood, store building, or store front. In fact, from a quick drive-by, one would likely assume that the business was a rather upscale retail store for women's clothing and accessories. There are no "adult" signs or banners proclaiming "peep shows," "live entertainment booths," "XXX movies," "live models," "adult massage," or any of the other tasteless come-ons all too familiar from adult entertainment stores that exist in virtually every American city of any size and which one may find scattered along interstates and highways even in rural America.⁷⁵

The trial judge's drive-by impression may overstate the point. Few passers-by would mistake the SOB for anything other than what it was.

Regardless of its look and feel, the SOB was located in a prohibited zone. When Sioux City attempted to enforce its zoning code, the SOB sued, arguing that off-site SOBs lacked the typical crime-related secondary effects associated with SOBs. To counter this argument, Sioux City produced police reports for all crime incidents that occurred within 500 feet of the SOB during the four years between January 1, 2002 and December 31, 2005.

Table 3.5 breaks down these incidents by broad categories for the 793 days before and 668 days after the SOB opened. To control plausible threats to internal and statistical conclusion validity, the City collected analogous police incident reports for an adjacent control area, a 500

⁷⁴ *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002).

⁷⁵ *Doctor John's, Inc. v. City of Sioux City, IA.*, 389 F.Supp.2d 1096, 1103 (N.D. Iowa 2005), quoting from court's ruling on plaintiff's motion for preliminary injunction.

circle centered on a non-SOB. Because the two circles are tangent to each other and to the same thoroughfare, they have similar traffic flows. And because they have similar mixes of businesses and similar incident rates, their underlying ambient crime risks are similar.

	<i>SOB</i>		<i>Control</i>	
	<i>Before</i>	<i>After</i>	<i>Before</i>	<i>After</i>
<i>Property</i>	10	20	21	26
<i>Personal</i>	1	3	0	1
<i>Other</i>	6	18	11	9
<i>Total</i>	17	41	32	36

Odds Ratio = 2.33; t = 2.22

Source: R. McCleary and A.C. Weinstein, "Do 'off-site' adult businesses have secondary effects? Legal doctrine, social theory, and empirical evidence." ASC, Atlanta, November 14, 2007.

The odds ratio reported in Table 3.5 expresses the ambient crime risk in the SOB circle as a multiple of the risk in the control circle. The value of 2.33 is interpreted to mean that ambient crime risk more than doubled following the opening of the SOB. The t-statistic associated with this estimate, t=2.22, has a confidence level greater than 0.95, so by the conventional criteria, the effect estimate is statistically significant.

3.6 CONCLUDING REMARKS: THE FISHER REPORT

The SOB-crime relationship is a *scientific fact* because, first, it is predicted by strong criminological theory; and second, because the theoretical predictions have been tested and validated in a broad range of times, places, and situations. The 18 studies listed in Table 3 illustrate this range. The theory has been tested in every geographical region and in rural, urban, and suburban settings; tests of the theory have been based on several quasi-experimental designs and have measured ambient crime risk in several ways. Notwithstanding this diversity, all of the empirical tests find that SOBs pose large, significant ambient public safety hazards.

Nevertheless, Dr. Fisher expresses the contrary opinion that the consensus finding of the secondary effects literature is a methodological artifact. Each of the studies that legislatures routinely rely upon is flawed, in Dr. Fisher’s opinion. If these flaws were corrected, according to Dr. Fisher, the studies would arrive at very different conclusions; and indeed, more methodologically rigorous studies conducted by Dr. Fisher and his colleagues find no significant secondary effects.

We disagree on both points. First, studies conducted by Dr. Fisher and his colleagues are neither more nor less rigorous than the studies listed in Table 3. Second, despite claims to the contrary, the studies conducted by Dr. Fisher and his colleagues have consistently revealed large, significant secondary effects. See Figures 3.3.1 and 3.3.2 above. Beyond this disagreement, however, Dr. Fisher's methodological arguments against the secondary effects literature appear to be irrelevant to this suit.

Dr. Fisher's methodological critiques assume an idiosyncratic interpretation of *Alameda Books* and *Peek-A-Boo Lounge*, namely that these decisions have somehow raised the evidentiary bar that the County must reach to demonstrate that its ordinances are aimed at reducing secondary effects.⁷⁶ Dr. Fisher's idiosyncratic interpretation of *Alameda Books* and *Peek-A-Boo* has been flatly rejected by the courts:

We do not agree, however, with Lollipop's claim that either *Alameda Books* or *Peek-A-Boo Lounge* raises the evidentiary bar or requires a city to justify its ordinances with empirical evidence or scientific studies."⁷⁷

Dr. Fisher's idiosyncratic interpretation of case law is compounded when he adopts the Paul-Linz-Shafer⁷⁸ argument that a legislature cannot rely on secondary effects evidence that would be inadmissible under the *Daubert* criteria.⁷⁹ But the courts have rejected this argument too.⁸⁰

Although the Paul-Linz-Shafer article is well known to SOB plaintiffs, it has had virtually no impact on any scientific or scholarly literature. Excluding self-citations, as of May, 15, 2007, the Linz-Paul-Shafer article was cited only twice in peer-reviewed journals. The methodological rules endorsed by Linz-Paul-Shafer are not derived from primary authorities on design, statistical

⁷⁶ Fisher Report, p. 5.

⁷⁷ *Daytona Grand, Inc., v. City of Daytona Beach, Florida* No. 06-12022 (11 th Cir. 2007) p. 40.

⁷⁸ Paul, B., Linz, D. & Shafer, B.J. (2001). Government Regulation of Adult businesses Through Zoning and Anti-Nudity Ordinances: Debunking the Legal Myth of Negative Secondary Effects. *Communication Law and Policy*, 6. 2, 355-391.

⁷⁹ *Daubert v. Merrell Dow Pharmaceuticals* 509 US 579 (1993).

⁸⁰ The Paul-Linz-Shafer argument has been rejected by four Circuits. See *G.M. Enters. Inc. v. Town of St. Joseph, Wis.*, 350 F.3d 631, 640 (7 th Cir. 2003); *SOB, Inc.* 317 F.3d 856 (8th Cir. 2003), *Gammoh v. City of La Habra*, 395 F.3d 114 (9th Cir. 2005); *Daytona Grand, Inc. v. City of Daytona Beach, Florida* No. 06-12022 (11 th Cir. 2007).

hypothesis testing, or criminology. Indeed, we are aware of no methodological experts who would endorse the Linz-Paul-Shafer view of scientific method.

To criticize the validity of a secondary effect study, Dr. Fisher *identifies* some weakness in the study's design and, then, *characterizes* the weakness as a "fatal flaw." Because *all* secondary effect studies are quasi-experiments, *all* have uncontrolled threats to internal validity – or "flaws." Most of these "flaws" have benign consequences, however; and because they have no effect on the study's conclusions, they are *methodologically irrelevant*.

A methodologically relevant "flaw" must have the potential to *change* the outcome of a study. Most methodological "flaws" lack this potential. The potential effects of some "flaws" are *trivially small*, e.g., and can often be ignored. Even when the potential effect of a "flaw" is non-trivial, however, it may lack the potential to change a study's outcome. If the "flaw" makes a large secondary effect larger or a small effect smaller, e.g., the broad inference drawn from the study will be unchanged. Even if the "flaw" had the potential to change a study's findings, the "flaw" must have the potential to generate a spurious secondary effect where none exists to be methodologically relevant in the secondary effects context.

If a "flaw" *obscures* the presence of a secondary effect, on the other hand, it favors the plaintiff at the expense of the defendant. Dr. Fisher's methodological critiques assume that the "flaws" he identifies have the potential to generate spurious secondary effects. In fact, most of the "flaws" that he identifies have the opposite effect. This is certainly true of Dr. Fisher's first and third "minimal requirements for quasi-experimental designs."⁸¹

- Dr. Fisher faults the designs of many secondary effects studies because the "study and control areas are not well matched." Barring scientific fraud, study-control matching errors invariably *obscure* a secondary effect, making it appear *smaller* than it truly is.⁸²
- Dr. Fisher faults the designs of many secondary effects studies because crime was not measured "for a sufficient period of time for the statistical differences to validly reflect the impact of adult businesses." But barring scientific fraud again, insufficiently large samples invariably *obscure* a secondary effect, making it appear *smaller* than it truly is.⁸³

⁸¹ Fisher Report, pp. 8-9.

⁸² We give a short mathematical proof of this claim in Appendix 3.

⁸³ This is a consequence of the Central Limit Theorem. For a proof, see Stuart, A. and J.K. Ord, *Kendall's Advanced Theory of Statistics, Volume I.*, Chapter 7.35.

This same argument applies to the second of Dr. Fisher’s three “minimal requirements for quasi-experimental designs,” but with one qualification. Dr. Fisher notes that:

...some of the “foreign” studies concede that the adult businesses were subjected to heightened scrutiny or “proactive policing” during the period from which data was [sic] derived. This obviously invalidates these data for comparisons with control areas where ordinary levels of police scrutiny were maintained.⁸⁴

Most criminologists would agree that proactive policing can (and ordinarily *will*) generate higher numbers of “victimless” vice crimes, drugs, prostitution, etc. Most criminologists would also agree that proactive policing will *reduce* robbery, loitering, assault, vandalism, theft, and all of the other non-“victimless” crimes that weigh heavily in any secondary effect.

In sum, Dr. Fisher’s methodological critique of the secondary effects studies routinely relied upon by legislatures consists largely of *identifying* some “flaw” in a study. Because these studies are all quasi-experiments, and because *every* quasi-experiment has at least one “flaw,” this is a red herring. After identifying a methodological “flaw,” however, Dr. Fisher presents no evidence to suggest that the “flaw” has the potential to generate a spurious adverse secondary effect. In fact, virtually all of the methodological “flaws” identified by Dr. Fisher lack this potential.

4. THE PALM BEACH COUNTY DATA

We are now ready to consider the crime-related secondary effects of Palm Beach County SOBs. To demonstrate that Palm Beach County SOBs do *not* have crime-related secondary effects, the Danner Report compared crime statistics at SOBs that offer live entertainment and serve alcohol (“adult cabarets”) to the analogous statistics at non-SOB (“cabarets”). Because the salient difference between the two business categories is adult entertainment, differences in their crime statistics can be interpreted as secondary effects estimates. As Dr. Danner notes:

[I]t was an assumption of the research design that these two samples are reasonable comparable in that they both contain area businesses that serve alcohol to patrons and attempt to encourage an atmosphere of relaxed inhibitions and socialization.⁸⁵

Although there may be problems with this assumption, especially at the extreme, our analyses rest on the same assumption.

⁸⁴ Fisher Report, p. 9.

⁸⁵ The Danner Report, p. 4 (counting the title page as p. 1).

Table 4 lists nine SOB adult cabarets (in red) and six non-SOB cabarets (in blue) whose crime statistics were used in our analyses. This sample includes one SOB (“*Cupid’s*”) that was not included in Dr. Danner’s sample and substitutes one non-SOB control (“*Club 109*”) for a non-SOB control (“*Club 901*”) that appears to be misidentified in the Danner Report. The differences between our two samples are relatively minor and do not affect the substantive conclusions drawn from our analyses.

Although our analyses use the same SOB-control contrast, our design differs from Dr. Danner’s in two crucial respects. First, whereas Dr. Danner analyzes 911 calls-for-service, we analyze crime incident reports from 2001-2005 filed by the Palm Beach County Sheriff’s Office. Second, whereas Dr. Danner limits his analysis to 911 calls to the SOB and control addresses, our analyses include crime incident reports to all addresses within 1,100 feet of the SOB and control addresses. In our opinion, Dr. Danner’s analyses of address-specific 911 calls fail to capture the essence of *ambient crime risk*, the kernel of a crime-related secondary effect. We will elaborate on this point after we report the substantive results of our analyses.

Table 4 - SOB and Control Sites	
<i>SOBs</i>	<i>Controls</i>
<i>T’s Lounge, 312 S. Congress</i>	<i>Club 109, 109 S. Olive^b</i>
<i>Landing Strip, 383 N. Military</i>	<i>Club 35 Sunset, 609 8th</i>
<i>Mermaid Bar, 1211 S. Congress</i>	<i>Coco Bongo, 2677 Forest Hill</i>
<i>Flash Dance, 4458 Purdy</i>	<i>Monkey Club, 219 Clematis</i>
<i>Sugar Daddy’s, 704 S. Military</i>	<i>OHM Lounge, 124 N. Dixie</i>
<i>Club Diamonds, 1000 N. Congress</i>	<i>Spanky’s, 500 Clematis</i>
<i>Cheetah, 3342 Shawnee</i>	<i>Gatsby’s, 901 Village^c</i>
<i>Club Peek-A-Boo, 3174 Lake Worth</i>	
<i>Cupid’s, 4430 Forest Hill^a</i>	

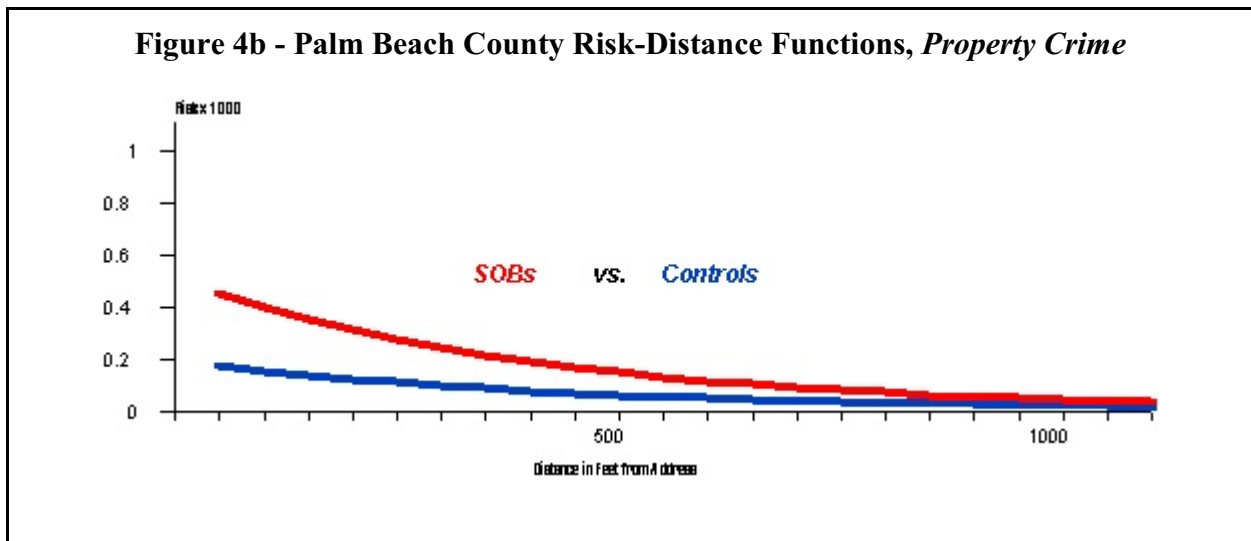
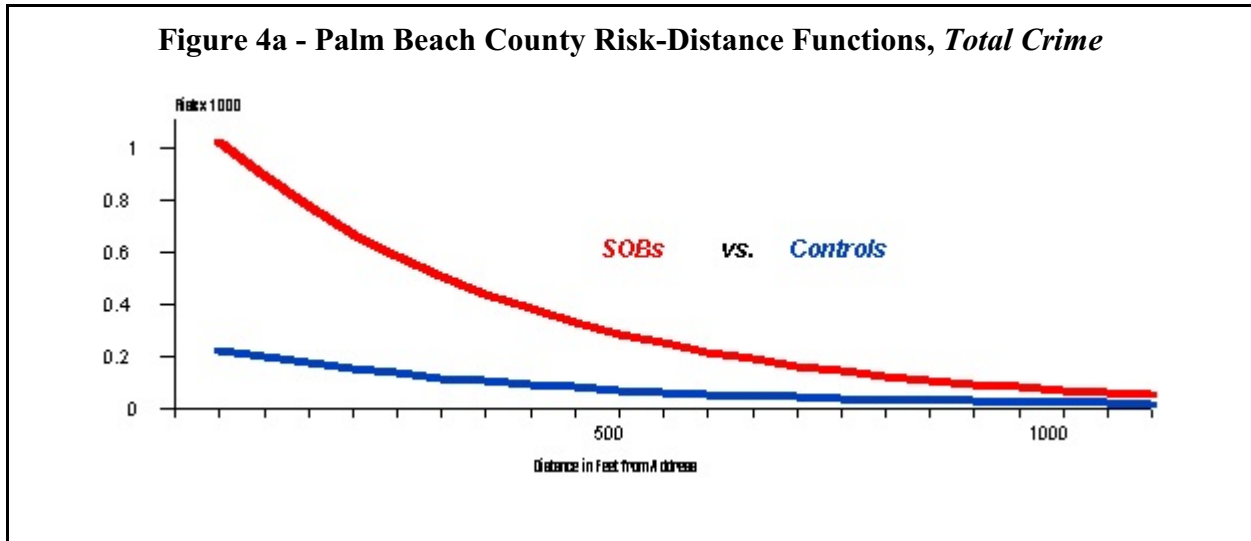
^a “*Cupid’s*” was excluded from the Danner Report’s sample.
^b “*Club 109*” was misidentified in the Danner the Report as “*Club 901*”.
^c “*Gatsby’s*” was misidentified in the Danner Report as “*Beach*”.

Figure 4a plots the total crime risk-distance relationship for SOBs (in red) and controls (in blue). Risk-distance plots are often used to document the ambient crime risks at “nuisance” sites, especially SOBs.⁸⁶ Technical details of this plot, including the calculation and

⁸⁶ See, e.g., McPherson, M. and G. Silloway. *An Analysis of the Relationship between Adult Entertainment Establishments, Crime, and Housing Values*. Minnesota Crime Prevention Center, Inc. October, 1980.

interpretation of the numbers (i.e., “risk x 1000”), are described in the subsequent sections. For the present, ignoring these technical details, two conclusions jump out of the risk-distance functions.

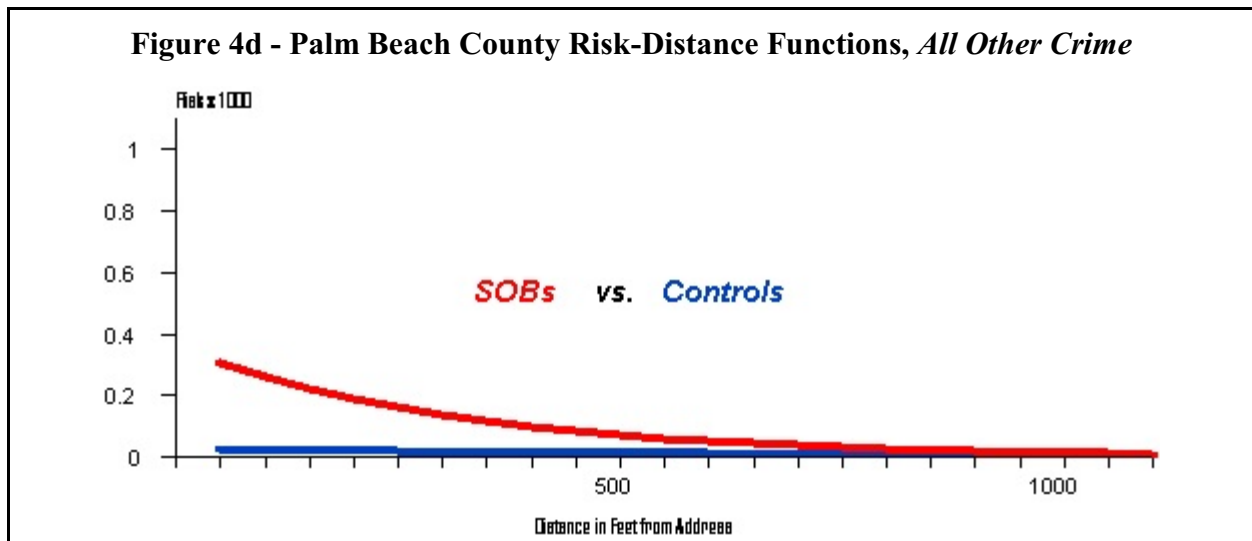
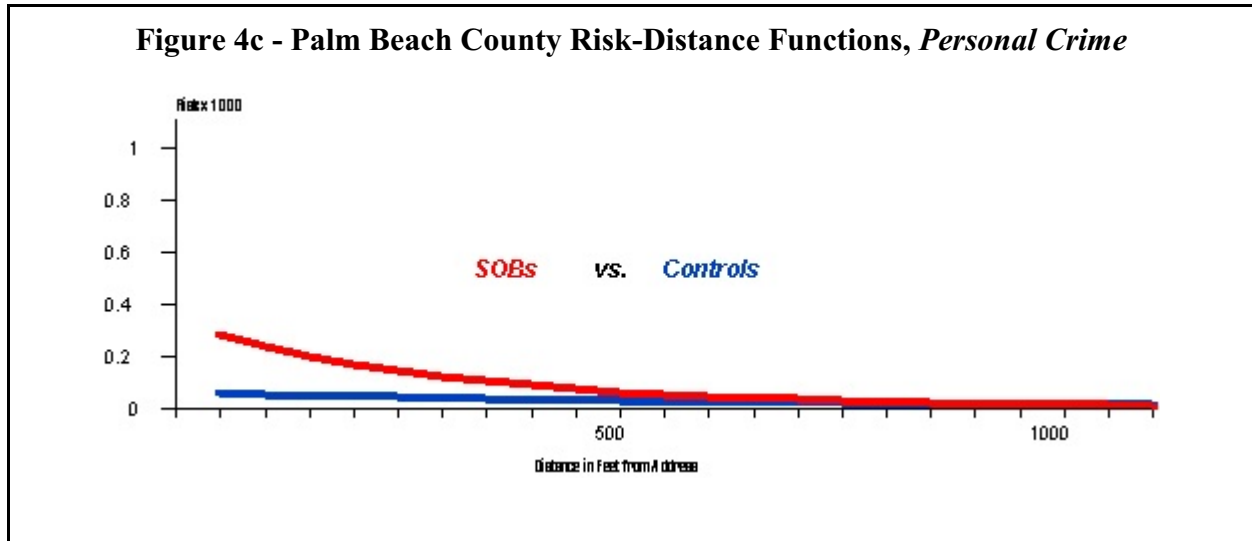
- In terms of total crime, the SOBs (red) and non-SOB controls (blue) are risky places. As one moves closer to an SOB or non-SOB address, the risk (defined loosely, as the probability of becoming a crime victim) rises. As one moves away, the risk diminishes.



- Nevertheless, SOB sites are much riskier than non-SOB control sites. At a distance of 500 feet, approximately a long city block, victimization risk at an SOB site is more than four times the risk at a control site. At 1,000

feet, the risk is substantially lower for both sites. But even at that distance, SOB sites are 3.5 times riskier than control sites.

Although the risk-distance functions plotted in Figure 4a are visually striking secondary effects evidence, graphic images can be manipulated to exaggerate the magnitude of an effect. Tests of statistical significance are used to guard against manipulations of this sort. In fact, the SOB-control difference plotted in Figure 4a is statistically significant by the conventional criterion of 95 percent confidence.



Figures 4b-d plot the analogous risk-distance functions for three complementary crime categories. Total crime can be broken down into property crime (burglary, theft, vandalism, etc.), personal crime (robbery, assault, etc.), and a residual category of all other crime (including most

notably, vice crimes).⁸⁷ The categories in Figures 4b-c are presented to demonstrate that the SOB-control difference extend across a broad range of crime categories, reflecting the diversity of offenders who are attracted to SOB sites. This is not the only possible taxonomy, of course; it is a reasonable taxonomy, however, and it is easily explained. It appears that our general finding holds regardless of the taxonomy.

Sections 4.1-4.5 describe technical details, including the statistical assumptions of the risk-distance functions plotted in Figures 4a-d, the crime incident data, the estimation algorithms, and the interpretation of statistical results. These technical details are important to readers who intend to replicate or criticize our findings. Most readers will not appreciate these technical details, however. Those readers are advised to skim Sections 4.1-4.5 and go to Section 4.6 where we comment further on the Danner Report.

4.1 THE STATISTICAL MODEL

The statistical results plotted in Figures 4a-d are derived from statistical analyses based on the Poisson family of models. Our development of the analytic models and results begins with a discussion of *crime risk*. To the individual, the notion of crime risk is associated with vague feelings about the probability of becoming a victim. From vicarious experience then, the individual knows to avoid exceptionally risky times (late night) and places (dark alleys). To translate vague feelings into precise numbers, we can equate *crime risk* with the annual *crime rates* reported in the news media.

	<i>Robberies</i>	<i>Population</i>	<i>Rate</i>	<i>Area</i>	<i>Rate</i>
Palm Beach County	2,369	1,131,184	0.0021	1,974	1.2
Dade County	9,138	2,253,362	0.0041	1,946	4.7

Table 4.1 reports robbery rates in 2000 for Palm Beach and Dade Counties. The *per capita* robbery rates (in red) were 0.0021 and 0.0041. For purely aesthetic reasons, the news media report these rates as whole numbers per 1,000 residents. So the Palm Beach and Dade County rates could be expressed identically as 2.1 and 4.1 robberies per 1,000 residents per year. Because *per capita* rates have practical advantages, however, that metric is preferred.

In either the *per capita* or per 1,000 metric, compared to Palm Beach County, Dade County is nearly twice as *risky*. The risk ratio statistic makes this point:

⁸⁷ The crime code definitions are reported in Appendix 2.

$$\text{Risk Ratio} = 0.0041 / 0.0021 \approx 1.95$$

To interpret this ratio, imagine a hypothetical tourist who spends a week in both counties. This tourist is twice as likely to be robbed in Dade County. The risk is exceedingly low in either county, of course. This point is made clear by the waiting time statistic. In Palm Beach County, a hypothetical average tourist will spend more than 476 years waiting to be robbed:

$$\text{Waiting Time} = 1 / 0.0021 \approx 476.2 \text{ years}$$

In Dade County, on the other hand, the wait is “only” 244 years:

$$\text{Waiting Time} = 1 / 0.0041 \approx 243.9 \text{ years}$$

The waiting time statistic illustrates a practical advantage of *per capita* rates; mean (or average) waiting time is the inverse of the *per capita* rate.

This relationship depends on the two simple Poisson assumptions of *homogeneity* and *independence*. The homogeneity assumption requires that the individual’s victimization risk be constant from time to time. However, in fact, risk varies by time of day, day of the week, and so forth. Because the hypothetical tourist cannot be in two counties at the same time, comparing risk across counties requires imagination.

Spatial heterogeneity is a more problematic assumption. The right-hand columns of Table 4.1 (in blue) report *ambient* crime risks for Palm Beach and Dade Counties. These ambient crime rates are calculated as the ratio of robberies per year to land area. At the scale of the two counties – slightly less than 2,000 square miles – ambient crime risk is meaningless. Indeed, “bad” parts of low-risk counties are more dangerous to the hypothetical tourist than “good” parts of high-risk counties.

Fortunately, at the smaller geographical scales that are relevant to this secondary effect phenomenon, the consequences of heterogeneity vanish. Given a reasonably small area – say, a few city blocks – a simple ambient crime rate captures all of the essential features of crime risk. We will elaborate on this point shortly.

4.2 THE POISSON DENSITY FUNCTION

In the early 19th Century, French mathematician, S.D. Poisson developed an interest in the

scattered distribution of crimes across Paris neighborhoods.⁸⁸ Poisson proposed the probability density function that bears his name to describe the spatial scatter of crime incidents. Briefly, if x is the number of crimes that occur in a neighborhood (or any other fixed area) during a year (or any other fixed period of time), the probability that exactly k crimes will occur in the neighborhood during the next year is given by the Poisson density function,

$$\text{Prob}(x = k) = \lambda^k e^{-\lambda} / k! \quad \text{where } \lambda \text{ is the crime rate}^{89}$$

To illustrate how this density function works, in 2000, the robbery rate in Dade County was

$$\lambda = .0041 \text{ per capita robberies}$$

Plugging this mean into the Poisson density function, the probability that a randomly selected Dade County resident will *not* be robbed in the next year is

$$\text{Prob}(x = 0) = (0.0041)^0 e^{-0.0041} / 0! \approx 0.99591$$

Or in other words, 99.59 percent of the resident population will *not* experience a robbery next year. The proportion who will experience $k=1$ robbery is,

$$\text{Prob}(x = 1) = (0.0041)^1 e^{-0.0041} / 1! \approx 0.00408$$

which, not surprisingly, is the *per capita* robbery rate. A very small (and unfortunate) proportion of these cases will experience a second robbery. For $k=2$ robberies,

$$\text{Prob}(x = 2) = (0.0041)^2 e^{-0.0041} / 2! \approx 0.00000584$$

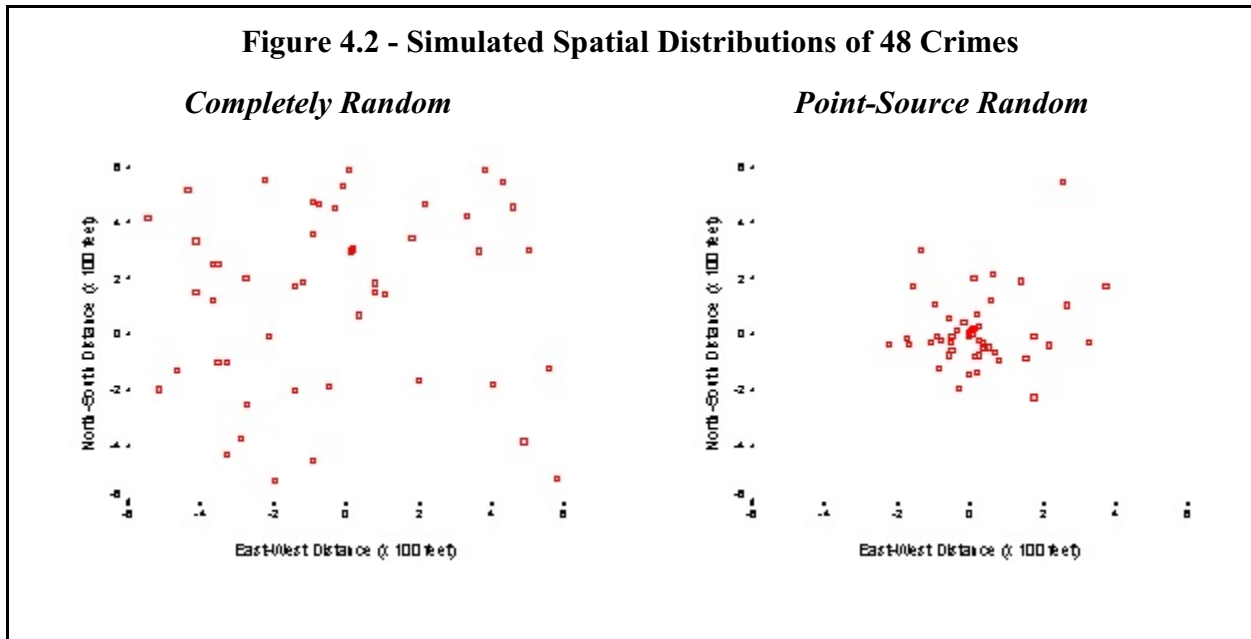
and so forth. Using the same Poisson density function, one can calculate the proportion of individuals who experience $k = 3, 4, \dots$ robberies. The proportions approach zero rapidly.

These probabilities apply to a randomly selected individual who spends a year wandering the streets of Dade County. This way of thinking about crime rates is inherently temporal or longitudinal. The same Poisson density function can be used to calculate the probabilities of

⁸⁸ Published in 1837 as *Recherches sur la probabilité des jugements en matière criminelle et matière civile*. Although one probably exists, no English translation is found on Amazon.com. In any event, the history and technical details are given in F. Haight, *Handbook of the Poisson Distribution* (John Wiley and Sons, New York 1967).

⁸⁹ The Poisson mean, λ (lambda), is estimated in the ordinary way. If there are $\sum x$ crime incidents scattered over N city blocks in a given year, then $\lambda = \sum x / N$ incidents per city block per year. To evaluate the Poisson density function for $k=0$ crimes, remember that $\lambda^0=0!=1$.

inherently spatial phenomena, however. To illustrate, the simulated Poisson processes in Figure 4.2 have distributed or scattered 48 crime incidents across virtually identical 1,210,000 square-foot neighborhoods.⁹⁰ Although both Poisson distributions were generated with the same crime rate ($\lambda=48$ crimes/area/year), in terms of their visual appearance, the two distributions are as different as night and day.



The left-hand distribution in Figure 4.2 is *completely random*.⁹¹ Crime risk is distributed evenly across the blocks of this neighborhood. The right-hand distribution has the same crime rate but risk emanates from a point-source, hence the name *point-source random*.⁹² As one moves away from the point-source, risk diminishes exponentially. Spatial distributions of this type rarely arise by chance alone: rather, they are typically generated by point-sources such as

⁹⁰ In this instance, since there are 48 crime incidents scattered over an area of 1,210,000 square feet, $\lambda = 48/1,210,000 \approx 0.00004$ incidents per square foot.

⁹¹ P.J. Diggle (*Statistical Analysis of Spatial Point Patterns, 2nd Ed.*, Arnold, 2002) uses “complete spatial randomness” as a synonym for “Poisson.” The Cartesian (X_i, Y_i) co-ordinates of the i^{th} *completely random* crime were drawn from a uniform distribution of the segment (-6,6).

⁹² The polar (θ_i, δ_i) co-ordinates of the i^{th} *point-source random* crime were drawn from a uniform distribution of the segment $(0,2\pi)$ for θ_i) and an exponential distribution of the segment $(0,6)$ for δ_i). The polar co-ordinates (θ_i, δ_i) translate into the Cartesian plane as $X_i = \delta_i \cos(\theta_i)$ and $Y_i = \delta_i \sin(\theta_i)$.

SOBs.

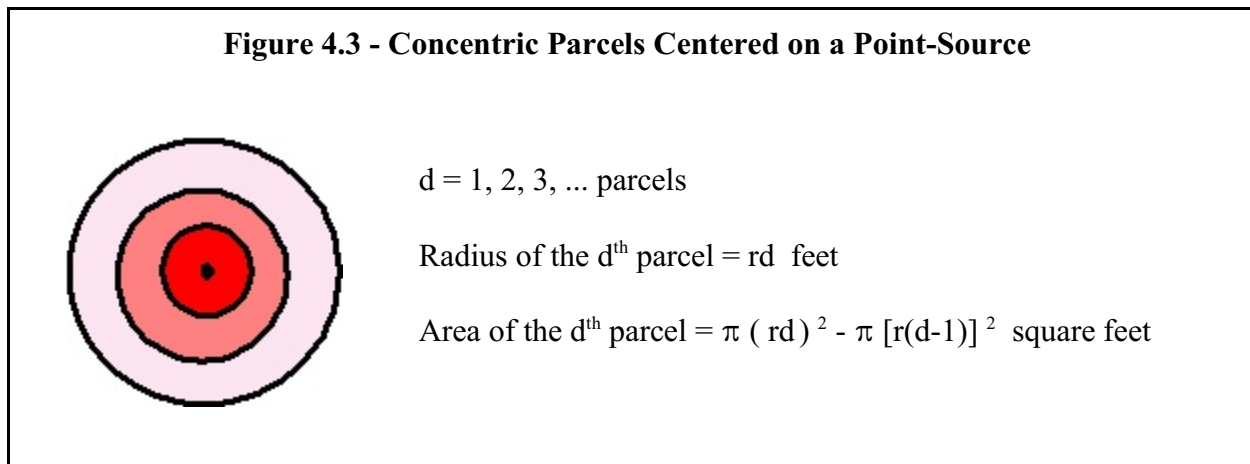
4.3 RISK VS. DISTANCE FROM THE POINT-SOURCE

Under simple Poisson assumptions, an area can be divided into a sample of parcels (i.e., “parcelated”) in any useful manner. If the sample is large, the division algorithm can be arbitrary or haphazard. The parcels can be a mix of trapezoids, squares, circles, or any irregular shape and no two parcels need have the same shape or area. The only requirement is that each parcel’s area be *calculable*. Given the sample of parcels, the ambient rates are calculated in the ordinary way. Wait a fixed period of time – say, one year. Count the number of crimes that occurred in each of the parcels and divide each parcel’s count by its area.

Formally, if $CRIME_d$ denotes the number of crimes that occurred in the d^{th} parcel, then the ambient crime rate for the d^{th} parcel is

$$RATE_d = CRIME_d / AREA_d$$

where $AREA_d$ is the surface area of the d^{th} parcel. $RATE_d$ is a property of the d^{th} parcel. Unlike the *per capita* crime rates that we read about in newspapers, this ambient rate has no inevitable consequences for individuals. If $RATE_d$ is particularly high, individuals can avoid the risk by avoiding the d^{th} parcel (and other “bad” neighborhoods).



When ambient risk emanates from a point-source, a sensible division algorithm results in a set of concentric circular parcels as shown in Figure 4.3. Noise is a good model of ambient crime risk in many respects. Noise emanates from its point-source in all directions, for instance, and decays rapidly with distance. So does ambient crime risk when it emanates from a source such as, in this instance, an SOB. Like noise, ambient crime risk emanates in all directions and diminishes with distance from the point-source. In the real world, of course, an orderly emanation process will be distorted by buildings, walls, and other obstacles. If we have a

reasonably large sample of point-sources, however, the effects of these obstacles will “average out,” revealing the expected ambient risk pattern.

To construct the risk-distance functions that were plotted in Figures 4a-d, we first constructed concentric parcels around each of the nine SOB and seven non-SOB control sites. Each of the d=22 concentric parcels were separated by radii of r=50 feet. We then counted the number of crime incidents recorded in each the concentric parcels and, from these counts, estimated crude Poisson rates for the parcels. The final step consisted of regressing the rates on a set of explanatory variables. The regression results allow us to test the “best” risk-distance estimates for statistical significance

4.4 THE POISSON REGRESSION MODEL

Our model is an application of a statistical model developed by Stiger and McCleary for a similar problem on an isolated site.⁹³ To adapt the Stiger-McCleary model to the required multi-site case, we incorporated appropriate error terms for each of the sites. The resulting family of models are known, variously, as Poisson hierarchical,⁹⁴ multi-level,⁹⁵ or random co-efficient models.⁹⁶

In its simplest form, the model equates the number of crime incidents in the i^{th} concentric parcel with the *area* of the parcel and the *distance* of the parcel from the SOB. That is, for any of our sites,

$$\lambda_i = \text{function}(\text{Area}_i, \text{Distance}_i) \quad i = 1, \dots, 22 \text{ concentric parcels}$$

To take advantage of maximum likelihood theory,⁹⁷ we specify a conventional log-linear (“link”) function between λ_i and Distance_i . Thus,

$$\text{Log}(\lambda_i | \text{Area}_i) = \beta_0 + \beta_1 \text{Distance}_i + \tau_i \quad \text{where } \tau_i \sim N(\mu, \phi)$$

⁹³ In “Confirmatory spatial analysis by regressions of a Poisson variable,” (*Journal of Quantitative Anthropology*, 1989, 2:13-38) Mark Stiger and Richard McCleary model the spatial distribution of bones at an archaeological site.

⁹⁴ Bryk, A.S. and S.W. Raudenbush. *Hierarchical Linear Models: Applications and Data Analysis Methods*. Sage, 2002.

⁹⁵ Goldstein, H. *Multilevel Statistical Models, 2nd Ed.* Halsted Press, 1995.

⁹⁶ Longford, N.T. *Random Coefficient Models*. Oxford University Press, 1993.

⁹⁷ McCullagh, P. and J.A. Nelder. *Generalized Linear Models, 2nd Edition*. Chapman and Hall, 1989.

The stochastic term τ_i accounts for the effects of the many small measurement errors that accrue from various sources. Because there are 16 distinct sites, nine SOBs and seven non-SOB, we add another subscript to the simple model. Thus,

$$\text{Log}(\lambda_{ij} \mid \text{Area}_i) = \beta_0 + \beta_1 \text{Distance}_i + \tau_{ij} \quad j = 1, \dots, 16 \text{ SOB sites}$$

Adding a second subscript allows for ($i \times j = 22 \times 16 =$) 352 distinct Poisson means. Hypothetically, the distinct Poisson means (λ_{ij}) covary with the type of site (SOB vs. control), distance from the site, and possibly by the interaction of site-type and distance. Incorporating these two variables into the model,

$$\text{Log}(\lambda_{ij} \mid \text{Area}_{ij}) = \beta_0 + \beta_1 \text{Distance}_{ij} + \beta_2 \text{SOB}_{ij} + \beta_3 (\text{SOB}_{ij} \times \text{Distance}_{ij}) + \tau_{ij}$$

Coding SOB_{ij} as a dichotomous (0,1) indicator allows parameters β_2 and β_3 to be interpreted as an SOB-specific intercept and slope, respectively. If Palm Beach County SOBs have no crime-related secondary effects, then the null hypothesis corresponds to,

$$H_0: \beta_2 = \beta_3 = 0$$

To test H_0 we compare β_2 and β_3 to the value of τ_{ij} . Finally, independent of all other considerations, to account for site-specific variance, each of the 16 SOB non-SOB sites is allowed its own stochastic term. Conceptually, this can be written as

$$\text{Log}(\lambda_{ij} \mid \text{Area}_{ij}) = \zeta_j + \beta_1 \text{Distance}_{ij} + \beta_2 \text{SOB}_{ij} + \beta_3 (\text{SOB}_{ij} \times \text{Distance}_{ij}) + \tau_{ij}$$

where $\zeta_j \sim \Gamma(\beta_0, \psi)$.

4.5 ANALYTIC RESULTS

Parameter estimates from XTPOISSON in Stata Version 9.2 are reported in Tables 4.5a-d for total, property, personal, and all other crime respectively.⁹⁸ The columns of these tables are defined as follows:

- The numbers in the column labeled “ β ” are the actual regression parameter estimates. Because these numbers are reported in the natural logarithm metric, their substantive interpretation is difficult.
- The numbers in the column labeled “ $s(\beta)$ ” are the associated standard errors derived from maximum likelihood. The ratio of a β to the corresponding $s(\beta)$ is used to test the statistical significance of an effect.

⁹⁸ The Stata 9.2 output for these models is found in Appendix 1.

- The numbers in the column labeled “t(β)” are the ratios of the corresponding β and s(β). Under the null hypothesis, absolute values of t(β) larger than 2.0 are statistically significant at the conventional 95 percent confidence level.
- The column of numbers labeled “exp(β)” are exponentiated parameter estimates. Whereas a β is difficult to interpret, exp(β) is interpreted as the multiplicative effect of the variable.
- The value of “X²” reported in the last row of each table tests the null hypothesis that the parameters associated with SOBs, β₂ and β₃, are not different than zero. If β₂ = β₃ = 0, there is no difference between the risk-distance functions of SOBs and non-SOBs.

Because all four of the X² values reported in Tables 4a-d occur by chance with probabilities smaller than 0.05, the null hypothesis,

$$H_0: \beta_2 = \beta_3 = 0$$

is rejected at the conventional 95 percent confidence level for all four crime categories. It is highly improbable that the ambient crime risk differences between SOBs and non-SOBs are due to chance. Instead, the evidence leads to the strong conclusion that there are large and statistically significant secondary effects associated with SOBs in Palm Beach County.

	β	s(β)	t(β)	exp(β)
Constant (β₀)	-8.2889	0.2894	-28.64	.00025
Distance (β₁)	-0.0026	0.0001	-24.63	.99743
SOB (β₂)	1.5461	0.3825	4.04	4.69293
SOB • Distance (β₃)	-0.0003	0.0001	-2.32	.99974
H₀: β₂ = β₃ = 0; X² = 14.24 w/df=2, p < 0.05				

The magnitudes of the secondary effects are difficult to express as a single number. In each of Tables 4a-d, the value of exp(β₂), corresponding to the dichotomous variable SOB, is interpreted as the multiplicative secondary effect at the site itself (i.e., when Distance equals zero feet). For total crime then, the value of exp(β₂) = 4.69293 is interpreted to mean that the average SOB has approximately 4.7 time greater victimization risk than the average non-SOB control; or in other words, that the crime rate at the average SOB is 4.7 time higher than the crime rate at the average non-SOB control.

Table 4.5b - Poisson Regression Parameter Estimates: Property Crime

	β	$s(\beta)$	$t(\beta)$	$\exp(\beta)$
Constant (β_0)	-8.5563	0.3462	-24.72	.00019
Distance (β_1)	-0.0023	0.0001	-21.07	.99773
SOB (β_2)	0.9774	0.4591	2.12	2.65766
SOB • Distance (β_3)	-0.0002	0.0001	-1.67	.99979

H₀: $\beta_2 = \beta_3 = 0$; $X^2 = 6.19$ w/df=2, $p < 0.05$

Table 4.5c - Poisson Regression Parameter Estimates: Personal Crime

	β	$s(\beta)$	$t(\beta)$	$\exp(\beta)$
Constant (β_0)	-9.7092	0.3941	-24.63	.00006
Distance (β_1)	-0.0017	0.0002	-10.45	.99834
SOB (β_2)	1.6912	0.5196	3.25	5.42586
SOB • Distance (β_3)	-0.0016	0.0002	-8.77	.99835

H₀: $\beta_2 = \beta_3 = 0$; $X^2 = 79.81$ w/df=2, $p < 0.05$

Table 4.5d - Poisson Regression Parameter Estimates: All Other Crime

	β	$s(\beta)$	$t(\beta)$	$\exp(\beta)$
Constant (β_0)	-10.5222	0.3187	-33.02	.00003
Distance (β_1)	-0.0014	0.0002	-6.43	.99855
SOB (β_2)	2.5986	0.4044	6.43	13.44444
SOB • Distance (β_3)	-0.0018	0.0002	-7.20	.99824

H₀: $\beta_2 = \beta_3 = 0$; $X^2 = 62.25$ w/df=2, $p < 0.05$

Moving away from the site, the magnitude of the secondary effect decays exponentially at the rate of $\exp(\beta_3)$. Specifically, at a distance of Z feet from the SOB site, the magnitude of the secondary effect is,

$$\exp(\beta_2) \times \exp(\beta_3)^Z$$

Thus, for total crime again, the value of $\exp(\beta_3) = .99743$ implies that, at 500 feet from the SOB site, the secondary effect has decayed to

$$4.69293 \times (.99743)^{500} \approx 1.30$$

At a distance of 500 feet then, the average SOB has approximately a 1.3 times greater crime risk than the average non-SOB control.

4.6 CONCLUDING REMARKS: THE DANNER REPORT

Analyzing official crime data from the Palm Beach County Sheriff's Department, we find that Palm Beach County SOBs have large, significant crime-related secondary effects. Analyzing another set of crime data, however, Dr. Danner finds that the crime-related secondary effects of SOBs are no larger than the analogous effects of non-SOB controls. The difference between our finding and Dr. Danner's finding can be attributed to differences in the measures of crime and ambient risk.

Whereas we have used crime incident reports to measure crime, Dr. Danner uses 911 calls-for-service. And whereas we measure ambient risk in a relatively large area around the SOB and non-SOB sites, Dr. Danner measures address-specific risk. To analyze his data, Dr. Danner rank-orders the sample of SOB and non-SOB control addresses on two types of 911 calls recorded at the address. For crime-related calls, Dr. Danner finds that SOB addresses have a monthly average of 2.5 calls, compared to 2.9 for non-SOB control addresses. For public order calls, SOB addresses have 3.1 calls per month, compared to 2.0 for non-SOB control addresses. Dr. Danner concludes that his analysis:

... does not provide compelling evidence that the addition of various levels of nude dancing to the 'nightclub type environment' produces a pattern of crime and public disorder that appears to be uniquely attributable to the adult cabaret category of business and that the generalization contained in the 'Finding of Fact' section of the Palm Beach County Adult Entertainment ordinance must be called into question by the findings of this research.⁹⁹

There are three fundamental problems with this conclusion. First, by failing to subject these differences to tests of statistical significance, Dr. Danner has violated a crucial methodological rule endorsed by Dr. Fisher.¹⁰⁰ Ignoring this problem, Dr. Danner's analyses assume that a secondary effect is restricted to the address of the site. If the effect "seeps out" across the

⁹⁹ Danner Report, p. 8.

¹⁰⁰ Dr. Fisher faults the 1986 Austin, TX report on similar grounds: "This problem is made worse by the failure of the authors to perform any tests of statistical significance to determine whether these differences reflect anything more than chance or random variation" (Fisher Report, p. 11).

neighborhood, on the other hand, his secondary effect estimates are biased in an unknown way. The risk-distance functions plotted in Figures 4a-d raise this point. But even ignoring that problem, Dr. Danner's analyses assume that 911 calls-for-service are an acceptable measure of crime risk and that assumption is unwarranted.

All large police agencies, including the Palm Beach County Sheriff's Office, record 911 calls for planning and budgeting purposes.¹⁰¹ In a pinch, 911 databases can generate "quick and dirty" snapshots of crime problems. In the long run, however, police agencies use crime incident reports to measure crime risk. Criminologists have the same views. The low reliability and biases of 911 calls are so well known and so widely accepted that criminological journals no longer publish research that uses 911 calls to measure crime risk.¹⁰²

Nevertheless, 911 calls-for-service seem to be the preferred secondary effect measure for SOB plaintiffs. There are at least three reasons why an SOB plaintiff might prefer 911 calls to a more compelling and defensible measure of ambient crime risk:

- Because relatively few "victimless" crimes (drugs, prostitution, etc.) come in through 911 channels, 911 calls understate the incidence of these crimes by a large factor.
- Due to their lower reliability, 911 calls make *substantively large* secondary effect estimates *statistically small*.¹⁰³

¹⁰¹ These common uses of 911 calls are discussed in most undergraduate policing texts. See, e.g., Roberg, R.R., J. Crank and J. Kuykendall, *Police and Society*. Wadsworth, 1999.

¹⁰² See, e.g., McCleary, R. and J.W. Meeker. *Journal of Sex Research*, 2006, 43:194-6. They explain: "Modern criminologists do not use calls-for-service to measure crime or crime risk. In 2000-2004, the official journals of the two national criminology professional associations, *Criminology and Justice Quarterly*, published 245 articles. Of the 100 that analyzed a crime-related statistic, 98 analyzed Uniform Crime Reports and/or surveys; two analyzed calls-for-service, but even in these two cases, calls-for-service were not used to measure crime or crime risk" (p. 196.)

¹⁰³ McCleary and J.W. Meeker (*Journal of Sex Research*, 2006, 43:194-6) demonstrate this property of 911 calls in a San Diego secondary effects study. In that study, Dr. Daniel Linz and his colleagues find that, compared to control areas, SOB areas have 15.7 percent more calls-for-service; but since the difference is not statistically significant, Dr. Linz *et al.* conclude that the "true difference" is zero. Correcting for the reliability of calls-for-service, McCleary and Meeker show that the secondary effect is highly significant.

- Finally, in many cases, the address recorded on a 911 call-record is not the location of the precipitating incident. This geo-coding convention can be used to mask an address-specific public safety hazard.

This last problem merits special comment. If a business is familiar with the coding conventions, 911 records can be manipulated to make the business look more or less in need of police service. To build a case for more police service, the proprietor can complain to the police about problems that might otherwise be handled informally. Or alternatively, to mask a public safety hazard, the proprietor can handle problems informally, thereby creating fewer 911 records and making the business seem safer than it actually is.

Manipulations of this sort are legal, strictly speaking. At the extreme, manipulating the 911 record-keeping system crosses the line. In a recent Manatee County case, for example, an SOB bribed at least two deputies to illegally circumvent and/or to falsify 911 records.

Another Manatee deputy, Daniel E. Martin, 35, told sheriff's investigators that one of the Cleopatra's door girls had his cell phone and would call him personally to quell customer disturbances ... Former Manatee deputy Joshua R. Fleischer, 25, who resigned this month, told a detective that whenever he was dispatched to Cleopatra's for a disturbance he listed the address as the "3900" block of U.S. 41 – deliberately misidentifying the actual address in the 3800 block. Fleischer, according to the detective, did not want his reports associated with the club.¹⁰⁴

The investigation into this scandal has spread to surrounding counties. The relevant point, for our purposes, is that business proprietors who are familiar the geo-coding conventions can (and in Manatee County, at least, *do*) attempt to manipulate the system.

We could continue to list the problems posed by using 911 calls to measure ambient crime risk. Recent case law obviates the need to do so, however. At least four Circuits have rejected attempts by plaintiffs to use local studies based on 911 calls-for-service (also called Computer Assisted Dispatch CAD) data to cast direct doubt on an ordinance that the local government supported with evidence of the sort relied upon by the County.¹⁰⁵ In short, analyses

¹⁰⁴ *StripClub News*, September 22nd, 2006, "Investigation tied to strip club leads to resignations and charges."

¹⁰⁵ The 11th Circuit in *Daytona Grand 2* pointed out the limitations of 911 calls *Supra* note 29 at 44-46. In footnote 33 of that case the court noted three other circuits that have rejected attempts by plaintiffs to use studies based on 911 calls to cast direct doubt on an ordinance: *Gammoh v. City of La Habra*, 395 F.3d 1114, 1126-27 (9th Cir. 2005), *G.M. Enter., Inc.*, 350 F.3d 631, 639 (7th Cir. 2003), and *SOB, Inc.*, 317 F.3d 856, 863 & n.2 (8th Cir. 2003).

of these data are not sufficient to meet the standards required under *Alameda Books* to cast doubt on the evidence proffered by the County to support the ordinance.

5. DATA, REFERENCES, AND AUTHORITIES

5.1 SITE VISITS

On June 1st and 2nd, 2006, Drs. Jenness and Meeker visited Palm Beach County. On the evening of June 1st, 2006, they inspected SOB sites, accompanied by a representative of the County Planner's Office. Drs. Jenness and Meeker observed the interiors of each SOB as well as the surrounding neighborhoods. On June 2nd, 2006, they met with County officials, including employees of the County Planner's Office, the Sheriff's Office, and senior members of the vice-squad charged with policing vice in the County. The purpose of these meetings was to secure maps of the County and machine-readable crime incident reports. On June 2nd, 2006, they also toured the County, accompanied by a representative of the City Planner's Office, to observe both the SOB and control sites used in the analysis reported in Section 4.

5.2 CRIME DATA

To determine whether Palm Beach County SOBs have crime-related secondary effects, we collected official crime data from the Palm Beach County Sheriff's Office. Specifically, we collected and thereafter geo-coded all crime incident reports from 2001-2005 that occurred in the Sheriff's jurisdiction (i.e., in the county rather than in a city municipality). The Palm Beach County Sheriff officially reported 300,925 crimes in the county during this five year period. We successfully geo-coded 220,356 of those incidents. The resulting 73.2% hit rate on the addresses is considered acceptable. For purposes of analyses, the crime incident reports were coded as property, personal, and all other crime. The definitions of these categories are given in an appendix. Proximity to SOB and/or control sites were calculated from the Pythagorean theorem using a common arbitrary origin point.

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Daytona Grand, Inc. V. City of Daytona Beach Florida, No. 06-12022 (11th Cir. 2007)

APPENDICES

1. *Stata 9.2 Output for Tables 4.5a-d*

Total Crime

```

Random-effects Poisson regression      Number of obs      =      348
Group variable (i): site                Number of groups   =      16

Random effects u_i ~ Gamma              Obs per group: min =      21
                                           avg =                21.8
                                           max =                22

Log likelihood = -6304.0544              Wald chi2(3)       =    4488.22
                                           Prob > chi2        =      0.0000
    
```

crimes	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]
sob	1.546058	.3825473	4.04	0.000	.7962796 2.295837
dist	-.0025734	.0001045	-24.63	0.000	-.0027782 -.0023686
interact	-.000265	.000114	-2.32	0.020	-.0004885 -.0000416
_cons	-8.288907	.2894281	-28.64	0.000	-8.856175 -7.721638
area	(exposure)				
/lnalpha	-.5866526	.3298389			-1.233125 .0598198
alpha	.556186	.1834518			.2913806 1.061645

Likelihood-ratio test of alpha=0: chibar2(01) = 2812.80 Prob>=chibar2 = 0.000

Property Crime

```

Random-effects Poisson regression      Number of obs      =      352
Group variable (i): site                Number of groups   =      16

Random effects u_i ~ Gamma              Obs per group: min =      22
                                           avg =                22.0
                                           max =                22

Log likelihood = -4427.7257              Wald chi2(3)       =    2039.92
                                           Prob > chi2        =      0.0000
    
```

crimes	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]
sob	.9774455	.4591383	2.13	0.033	.0775509 1.87734
dist	-.0022691	.0001077	-21.07	0.000	-.0024802 -.0020581
interact	-.0002073	.0001243	-1.67	0.095	-.0004509 .0000363
_cons	-8.556291	.3461978	-24.72	0.000	-9.234827 -7.877756
area	(exposure)				
/lnalpha	-.2174515	.324275			-.8530188 .4181158
alpha	.8045666	.2609008			.4261266 1.519097

Likelihood-ratio test of alpha=0: chibar2(01) = 1778.11 Prob>=chibar2 = 0.000

Personal Crime

```

Random-effects Poisson regression      Number of obs      =      352
Group variable (i): site                Number of groups   =      16

Random effects u_i ~ Gamma              Obs per group: min =      22
                                           avg =                22.0
    
```

CRIME-RELATED SECONDARY EFFECTS - PAGE 61

```

max = 22
Wald chi2(3) = 1214.87
Prob > chi2 = 0.0000
Log likelihood = -2807.62
-----+-----
crimes |      Coef.   Std. Err.      z    P>|z|     [95% Conf. Interval]
-----+-----
      sob |    1.691177   .5195708     3.25   0.001    .6728372    2.709517
      dist |   -.0016659   .0001594    -10.45  0.000   -.0019783   -.0013534
  interact |   -.0016496   .0001881     -8.77  0.000   -.0020183   -.0012808
      _cons |  -9.709226   .3941313    -24.63  0.000   -10.48171   -8.936742
      area | (exposure)
-----+-----
  /lnalpha |    .0017326   .3459128                -.676244    .6797092
-----+-----
      alpha |    1.001734   .3465126                .5085234    1.973304
-----+-----
Likelihood-ratio test of alpha=0: chibar2(01) = 845.76 Prob>=chibar2 = 0.000

```

Residual Crimes

```

Random-effects Poisson regression      Number of obs = 348
Group variable (i): site              Number of groups = 16

Random effects u_i ~ Gamma            Obs per group: min = 21
                                       avg = 21.8
                                       max = 22

Wald chi2(3) = 1276.79
Prob > chi2 = 0.0000
Log likelihood = -1904.925
-----+-----
crimes |      Coef.   Std. Err.      z    P>|z|     [95% Conf. Interval]
-----+-----
      sob |    2.598566   .404376     6.43   0.000    1.806004    3.391129
      dist |   -.0014519   .0002259    -6.43  0.000   -.0018947   -.0010091
  interact |   -.0017578   .000244     -7.20  0.000   -.0022361   -.0012796
      _cons | -10.52217    .318686    -33.02  0.000   -11.14678   -9.897552
      area | (exposure)
-----+-----
  /lnalpha |   -.631959   .3385212                -1.295448    .0315305
-----+-----
      alpha |    .5315495   .1799408                .2737751    1.032033
-----+-----
Likelihood-ratio test of alpha=0: chibar2(01) = 836.07 Prob>=chibar2 = 0.000

```

2. Crime Category Definitions

Property Crimes

2ND HND DLR REC
 ALT LICNSE PLAT
 ALT VEH NUMBRS
 ARSON
 B&E TO CONVEYAN
 BREAK INJ FENCE
 BURGLARY STRUCT
 BURGLARY/ARMD
 BURGLARY/BATTERY
 BURGLARY/CONVEY
 BURGLARY/UNARMED
 CNTRFEIT PRESCP
 CRIMINAL MISCHI
 CRIMNL MISCHFEF
 CRM MISCH >\$1K
 DAMAGE VEND MAC
 DEFRAUD INNKEPR
 EXPIRED CR/CD
 FAL RETRN AUTO
 FALSE NAME D/L
 FALSE STMT CRDT
 FLSEINFO2NDHAND
 FLSEVER PAWNBRO
 FORGE PRESCRPTI
 FORGED
 FORGERY
 FRAUD CR CARD
 FRAUD CR/CARD
 FRD PERS. PROP
 FRGD INST WRITG
 FRGD NOTE POSSE
 G THEFT FIREARM
 G THFT > 300
 G THFT 300-5000
 G THFT/CONSTRUC
 G/T/10000-20000
 G/T/5000-10000
 GAS DRIVE OFF
 GRAND THEFT
 GRAND THFT AUTO
 GRND THEFT AUTO
 GRNDTHFT>100000
 GRNDTHFT>20000
 HIT/RUN PROP
 PETTY THEFT
 PETTY/GRND THFT
 POSS ALT PROPTY

Personal Crimes

ABUSE AGD ADULT
 ABUSE ELDERLY
 ABUSE/CAGE CHIL
 ABUSE/CHILD
 AFFRAY/RIOT
 AGG ASSAULT
 AGG BATT CHILD
 AGG BATT PREGNA
 AGG BATTERY
 AGG STALKING
 ARMED CARJACKIN
 ARMED TRESPASS
 ASLT/BAT > 64YR
 ASSAULT
 ASSAULT OFFICER
 ASSLT MED PROVI
 ASSMNT INVO TRE
 ATTP FELONY MUR
 BATTERY
 CAR JACKING
 CHILD ABUSE
 CHLD UND16 SEX
 CNCEALED WEAPON
 CONCLD FIREARM
 DISCH FIREARM
 DISCHG DEST DEV
 DISORDERLY COND
 DISORDRLY INTOX
 DOM VIOL INVEST
 EXTORTN/THREATS
 FALSE IMPRISONM
 FELONY BATTERY
 FLEE POLCE OFIC
 HARASNG PHONE
 HIT/RUN W/INJUR
 HOME INV ROBRY
 HOMICIDE VEHICL
 HOMICIDE/MURDER
 IMPRSNTE LAWOFF
 INDECNT EXPSR
 LASCIVIOUS ACT
 LEWD CHILD PRES
 LEWD PRSC CHILD
 LEWD/LASC ELDER
 OBSCENE PHONE
 OTHR/LIQR/WEPN
 POS DESTRUC DEV

Other Crimes

20GM CNBS WO RX
 AID EXCAPE INMA
 ANIMAL CRUELTY
 ATEND FGHT ANIM
 BIGAMY
 BVRAGE LAW MINR
 CC PRELIM HEARI
 CNSRVATION REGS
 CNTPT CHLD SUPT
 CNTRACTR CERTFI
 COMMUNITY VOP
 CONTEMPT COURT
 CONTRABAND JAIL
 CONTROLLED SUB
 DL REVK/HABITUA
 DLVR CTRL SUBST
 DRAG RACING
 DRIV UNDER SUSP
 DRIVING W/O LIG
 DRUG ACQ FRAUD
 DRUG EQUIP POSS
 DRUG POSS/SELL
 DRUG PRESCRPTIO
 DRUG TRAFFIC
 DUI
 DWI ALCH/DRGS
 DWI BODILY INJR
 DWI DMG PRS/PRP
 ESCAPE
 EXP DL > 4 MO.
 EXP TAG/<4 MTHS
 EXPIRED TAG
 FAIL ANS SUMMON
 FAIL RETURN PRO
 FAIURE TO REGIS
 FALSE 911 CALLS
 FALSE AFF DR/LI
 FALSE BOMB RPT
 FLASE VERIFICAT
 FLS ACADEMIC DG
 FLSE RPT BMB/EX
 FTA CNTMPT CRT
 FTA ON BAIL
 FTR AS SEX PRED
 HAB.TRAF.OFFEND
 ILL LICENSE PLA
 IMPROPER EQUIPM

POSS CNTF INSTR
 POSS STLN PROP
 POSSESS CONTRAB
 RECOVERED PROPE
 SCHEME/DEFRAUD
 SEL FRUHLNT DRG
 SHOPLIFT/FARM
 SHOPLIFTING
 STOLEN PROP
 THEFT CR/CD
 THEFT CREDUT CD
 TRESPASS
 UNAUTH CABLE TV
 UNAUTH USE D/L
 UNDRG UTIL DAMG
 USE OF ID W/O A
 UTER FRGD BILL
 UTR FRGD INSTRU
 VEND W/CNTRFT
 VIOLATE PAWNBRO
 WORTHLES CHECK
 WRTHLS CK PROP

POS FIREARM FEL
 RESIST OFFICER
 RESIST W/VIOLEN
 ROB W/O FIREARM
 ROBBERY ARMED
 ROBBERY BY SNAT
 ROBBERY UNARMED
 SEXUAL BATTERY
 STALKING
 THRET DESTR DEV
 THRW MISSLE BLD
 VEH HOMICIDE
 VIOLATE CONWEPN
 WRTN THRTS KILL

LITTERING
 LOITERING/PROWL
 MISSING-PERSON
 MOLEST VEND MAC
 NEGCHILD W/OHAR
 NEGLECT CHILD
 NO CURRENT INS
 NO MC ENDORSEME
 NO MTR VEH RGST
 NO REGISTRATION
 NO/VALID DL
 OBS RDWS W/O PT
 OBST DISG PERSN
 OBST FLOW TRAFF
 OBT PROP/IMPRSO
 OFFER PROSTITUT
 PAROLE VIOLATIO
 PIMPING
 POS DRUG W/O RX
 PRJY OFFC PROCE
 PRMT UNAUTH DRV
 PROB.CAUS/CHILD
 PROHIB/PUR/MINO
 PROSTITUTION
 RECKLKES DRIVING
 REF SIGN CITATI
 REVOKE LICENSE
 ROAD RIGHT/WAY
 RVK LICENSE
 SELL/TOB UND 18
 SOLICIT PROSTIT
 SPEED ON CTY RD
 TMPER WITNS W/H
 TR/OFF SUSP LIC
 VEH W/NON R/LIC
 VIO ESTAB EMERG
 VIO GIVI FAL ID
 VIO INJ DOMESTC
 VIO PROB. YOUTH
 VIO RESTRNG ORD
 VIOL INJUNCTION
 WARRANT ARREST

3. “Matching” errors always favor the plaintiff

The SOB-Control Model. Suppose that ambient crime risk is determined by only two factors: (1) the presence (or absence) of an SOB and (2) the effect of a crime risk variable, Z . To estimate the crime-related secondary effect of SOBs, we draw a random sample of N areas centered on an SOB. For each SOB area, we find a Control area that has an identical (or “matching”) value of the crime risk variable, Z . For any “matched” SOB-Control pair,

$$\text{Crime}_{\text{SOB}} = \alpha + Z_{\text{SOB}} + \xi_{\text{SOB}} \quad (1)$$

$$\text{Crime}_{\text{Control}} = Z_{\text{Control}} + \xi_{\text{Control}} \quad (2)$$

The salient difference between (1) and (2) is the unknown – and indeed, *unknowable* – secondary effect, α . Following the psychometric convention, we call α the *true* secondary effect. The value of α is obscured by two small random disturbance terms, or following the psychometric convention again, *errors*, represented by ξ_{SOB} and ξ_{Control} . These errors are drawn independently from the same Normal distribution. Formally,

$$\xi_{\text{SOB}}, \xi_{\text{Control}} \sim \text{Normal}(0, \sigma^2); \text{COV}(\xi_{\text{SOB}}, \xi_{\text{Control}}) = 0 \quad (3)$$

These errors are generated, presumably, by the many forces that do not *per se* “cause” ambient crime risk but that, nevertheless, interfere with our attempt to measure the value of α .¹⁰⁶

Although we cannot observe α directly, we can observe an *estimate* of α . One popular estimate is derived by subtracting (2) from (1).

$$\begin{aligned} \nabla_{\text{Crime}} &= \text{Crime}_{\text{SOB}} - \text{Crime}_{\text{Control}} \\ &= \alpha + (Z_{\text{SOB}} - Z_{\text{Control}}) + (\xi_{\text{SOB}} - \xi_{\text{Control}}) \end{aligned} \quad (4)$$

To simplify this expression for ∇_{Crime} , we define

$$\begin{aligned} \nabla_Z &= Z_{\text{SOB}} - Z_{\text{Control}} \\ \zeta &= \xi_{\text{SOB}} - \xi_{\text{Control}} \end{aligned}$$

Then by substitution,

¹⁰⁶ In the psychometric tradition, ξ_{SOB} and ξ_{Control} are called “measurement errors.” In the econometric tradition, they are called “errors in variables.”

$$\nabla_{\text{Crime}} = \alpha + \nabla_Z + \zeta \tag{4'}$$

But of course, at this point, we assume that the SOB and Control are *perfectly* “matched” on Z. As a consequence, $\nabla_Z = 0$, and

$$\nabla_{\text{Crime}} = \alpha + \zeta \tag{4''}$$

We are now ready to draw inferences about α from the value of ∇_{Crime} .

The null hypothesis, H_0 . In most instances, we want to know whether α is zero – or in other words, whether the SOB has a crime-related secondary effect. The conventional null hypothesis for this inference holds that the *true* value of α is zero.

$$H_0: \alpha = 0$$

If we infer that H_0 is true, we may want to entertain the alternative hypothesis, H_A .

$$H_A: \alpha \neq 0$$

But the alternative inference must wait until we decide that H_0 is true.

To test whether H_0 is true, we return to the sample of N *perfectly* matched SOB-Control pairs. Under assumption (3), ζ is a Normal random error.

$$\zeta \sim \text{Normal} (0, 2\sigma^2) \tag{3'}$$

By the Central Limit Theorem, the mean secondary effect estimate from N *perfectly* “matched” SOB-control pairs is distributed as

$$\text{Mean} (\nabla_{\text{Crime}}) \sim \text{Normal} [0, (2\sigma/N)^{1/2}] \tag{3''}$$

With 95 percent confidence then, we can reject H_0 – conclude that H_0 is false – whenever

$$\text{Mean} (\nabla_{\text{Crime}})/(2\sigma/N)^{1/2} > 1.96 \tag{3'''}$$

This test works because the ratio of Mean (∇_{Crime}) to its standard error of the mean is distributed as Student’s t with one degree of freedom.

When the “match” is less than perfect. The Student’s t-test assumes that the SOB

and Control areas are perfectly “matched” on Z. When the “match” is *less than perfect*, $\nabla_Z \neq 0$ and (3'') is invalid. If we can assume that “matching” errors are random, the precision of the “match” is proportional to the variance of ∇_Z . Squaring both sides of (4') and taking expected values,

$$\begin{aligned} \text{Var}(\nabla_{\text{Crime}}) &= \text{Var}(\nabla_Z) + \text{Var}(\zeta) \\ &= \text{Var}(\nabla_Z) + 2\sigma^2 \end{aligned} \quad (5)$$

The expectation algebra in (5) decomposes the variance in ∇_{Crime} into two components. The first component, $\text{Var}(\nabla_Z)$, arises from “matching” errors. The second arises from errors in sampling and/or measurement. This second error component is the stochastic benchmark for the null hypothesis test. It is obvious that

$$\begin{aligned} \text{Var}(\nabla_Z) + 2\sigma^2 &> 2\sigma^2 \\ \text{Var}(\nabla_Z) &> 0 \end{aligned} \quad (6)$$

whenever the SOB and Control areas are not perfectly “matched” on Z. In that event, of course, the Student’s t-test will be biased toward zero. That is, random mismatch errors will invariably obscure a secondary effect, making it look smaller than it truly is.

EXHIBIT K

ARCHITECTURAL GUIDELINES
SUMMARY OF AMENDMENTS
(Updated 7/08/09)

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Part 1. ULDC, Art. 1.1.2, Definitions [Related to Architect] (page 34 of 109), is hereby amended as follows:

CHAPTER I Definitions & Acronyms

Section 2 Definitions

A. Terms defined herein or referenced in this Article shall have the following meanings:

- 83. Architectural Terms - for the purposes of Art. 5.C.
83.a. Architect - a person licensed to engage in the practice of architecture under F.S. Chapter 481, Part I, and includes the term "registered architect."
b. Architectural Compatibility - similar architectural composition that is agreeable, consistent, complimentary, and provides a degree of architectural integration with the structures in the surrounding area. Particular attention should be given to scale, proportion, unity, harmony, and context.
84c. Architectural Composition - for the purposes of Art. 5, the scale, height, mass, proportion, color, form, style, detail, treatment, texture, construction material, and roof design of a project or building.
d. Architectural Style Sheets - examples of various architectural elements and components that define a particular character, style, or classification of architecture.
e. Balance - the pleasing or harmonious arrangement or proportion of parts or elements in a design or composition.
f. Green Architecture - a building designed to limit its environmental impact through environmentally conscious methods of design and construction. The focus shall pertain to the exterior of the building i.e. facade, roofline, exterior treatment, fenestration.
g. Harmony - the orderly or congruent arrangement of elements or parts of a whole.
h. Order - the condition of logical, harmonious, or comprehensible arrangement in which each element of a group is properly disposed with reference to other elements and to its purpose.
i. Proportion - the comparative, proper, or harmonious relation of one part to another or to the whole with respect to magnitude, quantity, or degree.
j. Rhythm - movement characterized by a patterned repetition or alternative of formal elements or not if it is in the same or a modified form.
k. Scale - certain proportion to size, extent, or degree usually judged in relation to some standard or point of reference.
l. Style - key elements associated with the style of a building.
m. Unique Structure - a structure that is unusual, unequal, rare, or has distinct characteristics in relation to the architectural compatibility of a defined area. Scale, proportion, unity, and harmony shall be considered for unique structure classification.
n. Unity - the state or quality of being combined into one that promotes a singleness effect.
8584. Architectural Features - for the purposes of Art. 9, architectural features include the architectural style, scale, massing sitting, general design and general arrangement of the exterior of the building or structure, including the type, style and color of roofs, type and texture of building material, public access open courtyards, windows, doors, and appurtenances. These features will include interior spaces where the interior has been given historic designation under the procedures listed in Art. 9.B.3.A, Application for Historic Site or District Designation.

[Renumber accordingly]

D. Terms defined herein or referenced in this Article shall have the following meanings:

- 35. Development Permit - any amendment to the text of this code or Official Zoning Map (rezone), conditional use, special use, planned development, site plan/final subdivision plan, subdivision, building permit, variance, special exception, certificate of conformity, unique structure, or any other official action of PBC having the effect of permitting the development of land or the specific use of land.

Part 2. ULDC, Art. 2.B.2, Conditional Uses and Development Order Amendments (page 16-17 of 53), is hereby amended as follows:

CHAPTER B PUBLIC HEARING PROCEDURES

Section 2 Conditional Uses, Requested Uses, and Development Order Amendments, and Unique Structures

Notes:
Underlined language indicates proposed new language.
Language crossed-out indicates language proposed to be deleted.
.... (ellipses) or [Renumber Accordingly] indicates unchanged code text/figures omitted to save space.
Relocated language is shown as italicized with reference in parenthesis.

EXHIBIT K

ARCHITECTURAL GUIDELINES
SUMMARY OF AMENDMENTS
(Updated 7/08/09)

B. Standards for Conditional Uses, Requested Uses and Development Order Amendments

C. Standards for Unique Structure

In order to be considered a Unique Structure, the BCC and ZC shall consider and find that all five standards listed below have been satisfied by the applicant prior to making a motion or decision for approval of a Unique Structure. A request for a unique structure which fails to meet any of these standards shall be deemed adverse to the public interest and shall not be approved.

1a. Consistency with the Plan

The proposed architectural composition is consistent with the purposes, goals, objectives, and policies of the Plan, including standards for building and structural intensities and densities. [Relocated from Art. 5.C.1.E.2. Unique Structure]

2b. Complies with Other Standards of Code

The proposed architectural composition complies with all standards imposed on it by all other applicable provisions of this Code for use, layout, function, and general development characteristics. [Relocated from Art. 5.C.1.E.2. Unique Structure]

3e. Architectural Compatibility

The proposed architectural composition is ~~compatible~~ consistent with the Architectural Style, (see Technical Manual for examples) ~~as defined in this Code~~ and generally consistent with the: uses, scale, proportion, unity, harmony and context character of the land architecture in the surrounding ~~and in the vicinity of the land proposed for development area.~~ [Relocated from Art. 5.C.1.E.2, Unique Structure]

4d. Design Minimizes Environmental Impact

The proposed architectural composition minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment. [Relocated from Art. 5.C.1.E.2. Unique Structure]

5e. Circumstances

Whether and to what extent it can be demonstrated that there are any circumstances that ~~warrant a deviation~~ support the designation. [Relocated from Art. 5.C.1.E.2. Unique Structure]

[Renumber accordingly.]

Part 3. ULDC, Art. 2.B.3.A, Type II Variance[Related to Type II Variance] (page 18 of 53), is hereby amended as follows:

CHAPTER B PUBLIC HEARING PROCEDURES

Section 3 Type II Variance

A. Purpose

To allow a deviation from certain standards of this Code when special circumstances or conditions peculiar to the property exist and the literal enforcement of this Code would result in undue and unnecessary hardship. A Type II variance is required when deviations are requested for:

- 1. any project that is subject to BCC or ZC approval;
- 2. any project requesting ~~5~~ five or more variances;
- 3. variances from 5.C. Architecture, with the exception of Design Elements Subject to ZC or BCC Approval, Rural Design Elements or Large Scale Commercial Development;
- 4. any variance request greater than 15 percent of a required standard; and
- 5. any airport zoning variance as described in Art. 2.B.3.D.2, Airport Variance. [Ord. 2006-036]

Part 4. ULDC, Art. 3.E.1.C.1, Design Objectives (page 80 of 155), is hereby amended as follows:

CHAPTER E PLANNED DEVELOPMENT DISTRICTS (PDDs)

Section 1 General

C. Objectives and Standards

1. Design Objectives

h. *For PDD only, a minimum of one pedestrian amenity for each 100,000 square feet of GFA or fraction thereof shall be incorporated into the overall development to create a pedestrian friendly atmosphere. Suggested amenities include, but are not limited to: [Relocated from Art. 5.C.1.H.1.g, Pedestrian Amenities]*

1) *public art;* [Relocated from Art. 5.C.1.H.1.g, Pedestrian Amenities]

2) *clock tower;* [Relocated from Art. 5.C.1.H.1.g, Pedestrian Amenities]

Notes:

Underlined language indicates proposed new language.

Language ~~crossed-out~~ indicates language proposed to be deleted.

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EXHIBIT K

ARCHITECTURAL GUIDELINES
SUMMARY OF AMENDMENTS

(Updated 7/08/09)

- 3) *water feature/fountain*; [Relocated from Art. 5.C.1.H.1.g, Pedestrian Amenities]
- 4) *outdoor patio, courtyard or plaza*; and [Relocated from Art. 5.C.1.H.1.g, Pedestrian Amenities]
- 5) *tables with umbrellas for open air eating in common areas and not associated with tenant use (i.e. restaurant) or outdoor furniture*. [Relocated from Art. 5.C.1.H.1.g, Pedestrian Amenities]

Part 5. ULDC, Art.5.C.1, Architectural Guidelines [Related to Threshold and Exemptions] (page 28 of 75), is hereby amended as follows:

CHAPTER C DESIGN STANDARDS

Section 1 Architectural Guidelines

....
B. Threshold

This Chapter shall apply to the following projects, buildings and related signs:

1. General

....

- c. Multi-family buildings ~~with more than 16 units for Workforce Housing (WFH); Transfer Development Rights (TDR'S); and, Congregate Living Facilities (CLF's);~~ [Ord. 2006-036]

....

C. Exemptions

....

- 3. Recreational buildings and accessory structures within a PUD or a standard zoning district.

....

E. Review Process

PZB shall review all applicable buildings for compliance with this Chapter during the building permit or zoning review process, and provide a written determination of compliance with the requirements of this Chapter. An application submitted for any type of review process listed below may apply for Unique Structure designation or Type II Variance, pursuant to Art. 2.B.2, Conditional Uses, Requested Uses, Development Order Amendments and Unique Structures:

1. **Methods Types of Review**

An applicant or PBC may request review for compliance with this Chapter in accordance with any one of the following methods: [Ord. 2005 – 002]

- a. **Method Type I - Projects Requiring BCC Approval**
-
- b. **Method Type II - Projects Requiring ZC Approval**
-
- c. **Method Type III - Projects Requiring DRO or Site Plan Approval**
-
- d. **Method Type IV - Projects Requiring Building Permit Approval**
-

2. Unique Structure

~~Deviation from any requirement in this Chapter may be approved by the ZC or BCC. Deviations for projects or buildings only requiring DRO approval or a building permit may be granted by the ZC. The ZC and BCC shall consider the following standards when considering the architectural composition of a unique project or building. Failure to comply with any of the following standards shall be deemed adverse to the public interest:~~

a. Purpose and Intent

To recognize structures that comply with the definition in Art. 1, Unique Structure, that by the nature of their: scale, massing, proportion, rhythm, style, harmony, order, balance, etc, warrant a special designation. PBC has diverse architectural styles in the various Tiers that are reflective of the historical evolution of the community. The architecture guidelines were established to preserve and enhance those communities through common building design elements. The allowance for unique structures will continue to foster preservation of key design elements while recognizing new and creative design and materials. An applicant may apply for Unique Structure designation pursuant to Art. 2.B.2, for any of the types of review outlined in Art. 5.C.1.E. A Unique Structure designation will require the applicant to clearly demonstrate that by complying with the standard architectural guidelines in Section 5.C.1.H, Guidelines, the overall design would be compromised. A structure classified as unique does not have to apply for variances, but shall comply with the standards in Art. 2.B.2.C. The Unique Structure process should not be requested if the applicant can seek variances for minor code deviations as provided for in Art. 2.B.2.

b. Applicability

Notes:

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Relocated language is shown as *italicized* with reference in parenthesis.

EXHIBIT K

ARCHITECTURAL GUIDELINES
SUMMARY OF AMENDMENTS
(Updated 7/08/09)

1 An applicant seeking a Unique Structure designation shall submit the request on forms
2 specified by the PBC official responsible for reviewing the application, pursuant to Art.
3 5.C.1.F, Application Requirements.

4 **c. Review Process**

5 The Unique Structure shall be reviewed pursuant to Section 5.C.1.E, Review Process
6 and Art. 2.B.2.C, Standards for Unique Structure. Staff shall review the request and
7 prepare a Staff Report for approval, approval with conditions or denial to the Zoning
8 Commission. The Zoning Commission will make a finding and recommendation to the
9 BCC that the request is consistent with the required standards of Art. 2.B.2.C. The BCC
10 shall make the final decision to approve, approve with conditions or deny the designation
11 of Unique Structure.

12 **a. Consistency with the Plan**

13 ~~The proposed architectural composition is consistent with the purposes, goals,~~
14 ~~objectives, and policies of the Plan, including standards for building and structural~~
15 ~~intensities and densities. [Relocated to Art. 2.B.2.C. Standards for Unique Structure]~~

16 **b. Complies with Other Standards of Code**

17 ~~The proposed architectural composition complies with all standards imposed on it by all~~
18 ~~other applicable provisions of this Code for use, layout, function, and general~~
19 ~~development characteristics. [Relocated to Art. 2.B.2.C, Standards for Unique~~
20 ~~Structure]~~

21 **c. Compatibility**

22 ~~The proposed architectural composition is compatible as defined in this Code and~~
23 ~~generally consistent with the uses and character of the land surrounding and in the~~
24 ~~vicinity of the land proposed for development. [Relocated to Art. 2.B.2.C, Standards~~
25 ~~for Unique Structure]~~

26 **d. Design Minimizes Environmental Impact**

27 ~~The proposed architectural composition minimizes environmental impacts, including but~~
28 ~~not limited to water, air, stormwater management, wildlife, vegetation, wetlands, and the~~
29 ~~natural functioning of the environment. [Relocated to Art. 2.B.2.C, Standards for~~
30 ~~Unique Structure]~~

31 **e. Circumstances**

32 ~~Whether and to what extent it can be demonstrated that there are any circumstances that~~
33 ~~warrant a deviation. [Relocated to Art. 2.B.2.C. Standards for Unique Structure]~~

34 **3. Peer Review Green Architecture**

35 ~~The applicant may select an architect licensed in the State of Florida to certify to PZB that the~~
36 ~~proposed project or building is in compliance with this Chapter. PZB shall provide a Peer~~
37 ~~Review Certification Form (PRCF) for this purpose. Certification shall substitute for a staff~~
38 ~~determination of consistency with this Chapter.~~

39 **a. Purpose and Intent**

40 To encourage and promote the design and construction of green architecture. This
41 Section provides for waivers from the architecture design guidelines, provided the
42 applicant can achieve the minimum points necessary to be classified as Green
43 Architecture. In order to design sustainable architecture, certain allowances for waivers
44 in Section 5.C.1.H, Guidelines, need to be recognized and allowed if minimum standards
45 are met. The provisions in Table 5.C.1.E-1, Green Architecture Designation Rating
46 Program, provide alternative design solutions to achieve green architecture while still
47 complying with the general intent of the architecture guidelines.

48 **b. Applicability**

49 An applicant proposing to utilize the Green Building Architecture waiver provisions for the
50 construction of new or structurally renovated buildings shall be required to comply with
51 the following:

- 52 1) Submit an application as required in Section 5.C.1.F, Application Requirements
- 53 2) Comply with the review process outlined below in Section 5.C.1.E.3.c,
- 54 3) Comply with the requirements outlined in Table 5.C.1.E-1, Green Architecture
55 Designation Rating Program.

56 **c. Review Process**

57 The Green Architecture designation application shall be reviewed and approved,
58 approved with conditions, or denied in conjunction with one of the review processes
59 outlined in Art. 5.C.1.E, Review Process. If the application is denied the applicant can
60 appeal the decision to the Zoning Commission with within 30 days of the decision date on
61 a form prepared by the Zoning Director. The registered architect shall complete the
62 required Zoning application, which will require compliance with the Green Architecture
63 Designation Rating Program, Table 5.C.1.E.

64 **1) Calculating Points**

65 The registered architect shall be responsible for calculating the total points obtained
66 for requirements listed in Table 5.C.1.E-1. Any requirement that does not have
67 specific qualitative and or quantitative measurements the registered architect shall

Notes:

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EXHIBIT K

ARCHITECTURAL GUIDELINES
SUMMARY OF AMENDMENTS
(Updated 7/08/09)

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refer to the USGBC Green Building Council rating system to determine acceptable national measurements. In order for the Zoning Director to grant the Green Architecture designation, the applicant shall obtain a minimum of 30 out of a total of 50 points from Table 5.C.1.E-1. The applicant may choose one or any combination of these categories to achieve the minimum 30 point requirement. If a minimum of 30 points cannot be achieved, then the architecture shall comply with Art. 5.C.1.H. The registered architect of the building shall be required to monitor the building construction until final Certificate of Occupancy to ensure compliance with the Green Architecture approval.

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EXHIBIT K

ARCHITECTURAL GUIDELINES
SUMMARY OF AMENDMENTS
(Updated 7/08/09)

1
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Table 5.C.1.E-1 – Green Architecture Designation Rating Program

Requirements	Allocated Points	Total Points
Roof Configuration		<u>12</u>
<ul style="list-style-type: none"> Flat planted green roof for cooling and storm water management on a minimum of 50% of the roof area 30% of the gross area of the roof surface is planted with vegetative plants Roof that incorporates clear story glazing, solar tubes and or light wells Roof that incorporates energy strategies (photovoltaic solar panels, solar thermal panels for hot water) and specific slopes related to the suns solar path thru the sky Roof that incorporates thermal chimneys as passive cooling devices Roof that is designed to harvest rain water for non potable uses Roof materials that are highly reflective (light colored standing seam metal; white single membrane for flat roofs and green planted roofs) Roof materials that have a Solar Reflectance Index of 78 for low-sloped roof and 29 for steep-sloped roof for a minimum of 75% of the roof surface (refer to the USGBC for roof type, slope and reflectance/emittance information) 	<p><u>2</u></p> <p><u>2</u></p> <p><u>1</u></p> <p><u>1</u></p> <p><u>1</u></p> <p><u>1</u></p> <p><u>2</u></p> <p><u>2</u></p>	
Facade, Exterior Treatment, Fenestration Details, Entries and Color		<u>33</u>
<p>Facade</p> <ul style="list-style-type: none"> The building exterior design treatments vary based on the orientation related to the sun (south facade might have an expanse of glazing and shading devices and light shelves; east and west facade have a limited surface area with a small amount of glazing area; north facade opens to allow the cool north daylight to enter the facility) Building form takes on natural shapes that relate to the solar system 	<p><u>5</u></p> <p><u>5</u></p>	
<p>Exterior Treatment</p> <ul style="list-style-type: none"> The building shape, form and orientation take advantage of the suns path across the sky (innovative building forms inspired by nature, building forms are shaped to harvest daylight, building forms are shaped to harvest solar energy from photovoltaic panels for the generation of electric and heat energy for solar water systems) The following typical architectural features or details such as: windows, awnings, covered arcades, sills, shutters, relief's trims, columns, pilasters, quoins, reveals, cornices, horizontal banding, arches, decorative vents, and/or accent tile, shall be integrated into the facade to avoid blank walls. 	<p><u>5</u></p> <p>N/A</p>	
<p>Fenestration Details</p> <ul style="list-style-type: none"> Achieve a minimum glazing factor of 2% in a minimum of 75% of all regularly occupied areas The building has an expanse of glazing and permanent shading devices and light shelves to harvest daylight The use of high performance glazing and/or automatic photocell-based controls 	<p><u>4</u></p> <p><u>4</u></p> <p><u>4</u></p>	
<p>Entries</p> <ul style="list-style-type: none"> All public entries are easily identifiable and integrated into the building architecture Each freestanding principal structure does have a minimum of one clearly defined primary public entrance feature and does incorporate a minimum of one primary entry feature design element such as: canopies, porte-cochere, or porticos; wall recess or projection a minimum of 12 inches in depth; covered arcades, a minimum of eight feet clear in width; peaked roof forms; arches, columns or pilasters A minimum of one secondary decorative treatment has been provided such as: overhangs, cornices, and eaves; decorative moldings or trims around windows and doors; covered public outdoor patio or plaza incorporated with entry area which are not part of a tenant space; special pavers, bricks, decorative concrete, or other similar pavement treatment; architectural details, such as tile work or moldings. 	<p>N/A</p> <p>N/A</p> <p>N/A</p>	
<p>Color</p> <ul style="list-style-type: none"> Specialty coatings such as: radiation control and anti-corrosive paint The use of light colored reflective paint 	<p><u>3</u></p> <p><u>3</u></p>	
Recycled Materials		<u>5</u>
<ul style="list-style-type: none"> Minimum of 50% of non-hazardous building construction materials, components and demolition debris is reused, recycled or salvaged Minimum of 5% of the sum, based on cost of the total value of building materials with recycled content are used and permanently installed. Mechanical, electrical and plumbing components and specialty items such as elevators and equipment shall not be included 	<p><u>2.5</u></p> <p><u>2.5</u></p>	
<p>Key: N/A No points are allocated for these requirements. If the registered architect can demonstrate these Code requirements, if applied would conflict with Green Architecture, waivers may be granted.</p>		

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EXHIBIT K

ARCHITECTURAL GUIDELINES
SUMMARY OF AMENDMENTS
(Updated 7/08/09)

4. **Administrative ~~Changes~~ Amendments by DRO**

Minor ~~changes~~ amendments to BCC or ZC approved architectural elevations pursuant to Review Types I and II may be approved by the Zoning Director provided the changes do not reduce compatibility with surrounding properties. Changes shall be limited to the following:

....

Part 6. **ULDC, Art.5.C.1.F, Application Contents [Related to Architectural Guidelines] (page 30)**

CHAPTER C DESIGN STANDARDS

Section 1 Architectural Guidelines

F. **Application ~~Contents~~ Requirements**

The application form and requirements for Architecture Review, including Unique Structure and Green Architecture shall be submitted on forms specified by the PBC official responsible for reviewing the application. All application documents shall be consistent with the Technical Manual. Applicable PZB applications shall be supplemented with the following requirements:

- ~~1. color elevations, including all architectural features and building height;~~
- ~~2. screening for mechanical, air conditioning, electrical, and satellite dish equipment;~~
- ~~3. architectural finishes (e.g. manufacturer or material specifications for roof, color chips or paint samples, etc.);~~
- ~~4. types of building materials;~~
- ~~5. roof types, pitch, and material;~~
- ~~6. details of all public entries;~~
- ~~7. screening of loading bays, garage doors, overhead doors, outdoor storage, dumpster, garbage disposal, and recycling areas;~~
- ~~8. detail and orientation of all facade-mounted and site lighting fixtures;~~
- ~~9. structural/architectural focal point details (e.g. fountains, gazebos, porte-cochere, etc.); and~~
- ~~10. details of all sign types, including color elevations, architectural finishes, building material, illumination tint, letter size, letter height, logos, amplification, address, and sign area calculations~~

Part 7. **ULDC, Art. 5.C.1.H.1, Nonresidential Design Elements [Related to architectural composition and treatment] (page 33 of 75), is hereby amended as follows:**

CHAPTER C DESIGN STANDARDS

Section 1 Architectural Guidelines

H. **Guidelines**

1. **Nonresidential Design Elements**

....

a. **General**

....

- 1) Similar architectural composition and treatment shall be provided on all sides of each building contiguous to or visible from a public street or residential zoning district.

....

~~dc.~~ **Facade**

[Renumber accordingly.]

~~fe.~~ **Color**

Color shall be ~~used~~ considered to achieve architectural compatibility with architecture in the surrounding area and to complement ~~the project structures within a development.~~

~~g.~~ **Pedestrian Amenities**

~~For PDD only, a minimum of one pedestrian amenity for each 100,000 square feet of GFA or fraction thereof shall be incorporated into the overall development to create a pedestrian friendly atmosphere. Suggested amenities include, but are not limited to:~~

- ~~1) public art;~~
- ~~2) clock tower;~~
- ~~3) water feature/fountain;~~
- ~~4) outdoor patio, courtyard or plaza; and~~
- ~~5) tables with umbrellas for open air eating in common areas and not associated with tenant use (i.e. restaurant) or outdoor furniture. [Relocated to Art. 3.E.1.C.1.Design Objectives]~~

~~h.~~ **Walkways**

Notes:

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EXHIBIT K

ARCHITECTURAL GUIDELINES SUMMARY OF AMENDMENTS

(Updated 7/08/09)

1 ~~A continuous internal pedestrian walkway shall be provided from each adjacent perimeter~~
2 ~~public sidewalk to all customer entrances. The design of the walkway shall include~~
3 ~~all of the following: [Relocated to Art. 6.A.1.D.14.b.2 Pedestrian Circulation]~~
4 ~~1) one native canopy tree for each 25 linear feet with a maximum spacing of 50 feet~~
5 ~~between trees; [Relocated to Art. 6.A.1.D.14.b.2 Pedestrian Circulation]~~
6 ~~2) one bench every 200 feet between the public sidewalk and building; and [Relocated~~
7 ~~to Art. 6.A.1.D.14.b.2 Pedestrian Circulation]~~
8 ~~3) walkways traversing vehicular use areas shall be accented with special pavers,~~
9 ~~bricks, decorative concrete, stamped concrete, or similar decorative pavement~~
10 ~~treatment. [Relocated to Art. 6.A.1.D.14.b.2 Pedestrian Circulation]~~
11 [Renumber accordingly.]
12
13

14 **Part 8. ULDC, Art. 5.C.1.H.2, Multi-Family Design Elements (page 36 of 75), is hereby amended**
15 **as follows:**

16
17 **2. Multi-Family Design Elements**
18 In addition to the guidelines for non-residential projects, multi-family ~~projects~~ buildings for
19 Workforce Housing (WFH); Transfer Development Rights (TDR's); and Congregate Living
20 Facilities (CLF's) shall adhere to the following guidelines:
21
22
23

24 **Part 9. ULDC, Art. 6.A.1.D.14.b.2) Pedestrian Circulation [Related to design and construction**
25 **standards for pedestrian circulation] (page 23 of 37), is hereby amended as follows:**

26 **CHAPTER A PARKING**

27 **Section 1 General**

28 **D. Off-Street Parking**
29 **14. Design and Construction Standards**
30 **b. Construction**
31 **2) Pedestrian Circulation**

32
33 d) A continuous internal pedestrian walkway shall be provided from each adjacent
34 perimeter public sidewalk to all customer entrances. The design of the walkway
35 shall include all of the following: [Relocated from Art. 5.C.1.H.1.h, Walkways]
36 (1) one native canopy tree for each 25 linear feet with a maximum spacing of 50
37 feet between trees; [Relocated from Art. 5.C.1.H.1.h, Walkways]
38 (2) one bench every 200 feet between the public sidewalk and building; and
39 [Relocated from Art. 5.C.1.H.1.h, Walkways]
40 (3) walkways traversing vehicular use areas shall be accented with special
41 pavers, bricks, decorative concrete, stamped concrete, or similar decorative
42 pavement treatment. [Relocated from Art. 5.C.1.H.1.h, Walkways]
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EXHIBIT L

HOMELESS RESOURCE CENTERS
SUMMARY OF AMENDMENTS
(Updated 07/08/09)

1
2 Part 1. ULDC, Art. 1.I.2.A.24, Homeless Resource Center (page 59 of 109), is hereby amended
3 as follows:

4 CHAPTER I DEFINITIONS AND ACRONYMS

5 Section 2 Definitions

6 H. Terms defined herein or referenced Article shall have the following meanings:

7
8 24. Homeless Resource Center - A facility that provides multiple services for the homeless
9 population. Typical services include: counseling, kitchen and dining facilities, medical
10 and dental outpatient facilities, temporary housing, intake, social services, employment
11 services, and administrative offices.

12
13
14 Part 2. ULDC, Table 2.A.1.D.1.a, Board of County Commissioners [Related to Processes,
15 Authority and Applicability] (page 76 of 155), is hereby amended as follows:

16 CHAPTER A GENERAL

17 Section 1 Applicability

18 D. Authority

19 1. Processes

20 For the purposes of this Article, the authority of the BCC, ZC, DRO and Zoning Director shall
21 be limited to the development order applications specified below. [Ord. 2006-036]

22 a. Board of County Commissioners (BCC)

23 The BCC, in accordance with the procedures, standards and limitations of this Article
24 shall consider the following types of development order applications:

25

26
27
28 8) Waivers; ~~and~~ [Ord. 2008-003]

29 9) Unique Structures; ~~and~~ [Ord. 2008-003]

30 10) Deviations from separation requirements for Homeless Resource Centers in the PO
31 Zoning District, pursuant to Art.4.B.1.A70-1.

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EXHIBIT L

**HOMELESS RESOURCE CENTERS
SUMMARY OF AMENDMENTS
(Updated 07/08/09)**

1 **Part 3. ULDC, Table 3.E.1.B – PDD Use Matrix (page 76 of 155), is hereby amended as follows:**
2

Table 3.E.1.B – PDD Use Matrix cont'd

Use Type	PUD					MUPD						MXPD				PIPD			M	R	N	
	Pods					Land Use Designations						Land Use Designations				Use Zone						
	R	C	R	C	A	C	C	C	C	C	I	I	G	C	G	C	I	C				I
	E	O	E	I	G	L	H	L	H	R	N	N	L	H	L	H	N	O	N	H	V	O
	S	M	C	V	R			O	O		D	S			Ø	O	D	M	D	P	P	T
				/	P												L		G	D	D	E
Public and Civic Uses																						
....																						
<u>Homeless Resource Center</u>							<u>R</u>		<u>R</u>		<u>R</u>						<u>R</u>	<u>R</u>			<u>70-1</u>	
....																						
[Ord. 2005-002] [Ord. 2006-004] [Ord. 2006-013] [Ord. 2008-037]																						
Notes:																						
P Permitted by right																						
D Permitted subject to approval by the DRO																						
S Permitted in the district only if approved by Special Permit																						
R Permitted in the district only if approved by the Board of County Commissioners (BCC) as a requested use.																						

3
4
5 **Part 4. ULDC, Table 3.F.1.F – TDD Use Matrix (page 118 of 155), is hereby amended as follows:**
6

Table 3.F.1.F – Traditional Development Permitted Use Schedule

District Tier	TND						TMD				N O T E S
	Urban/Suburban (U/S)			Exurban/Rural			U/S	Ex/ Rural	AGR		
Pods	Res	Neighborhood Center (NC)	Open Space/ Rec	Res	NC	Open Space/ Rec					Dev.
Public and Civic Uses											
....											
<u>Homeless Resource Center</u>											<u>70-1</u>
....											
[Ord. 2005 – 002] [Ord. 2005-041] [Ord. 2006-004] [Ord. 2006-013] [Ord. 2008-037]											
Notes:											
P Permitted by right.											
D Permitted subject to approval by the DRO.											
S Permitted in the district only if approved by Special Permit.											
R Requested Use.											
[Ord. 2005-002]											

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EXHIBIT L

**HOMELESS RESOURCE CENTERS
SUMMARY OF AMENDMENTS
(Updated 07/08/09)**

1 Part 5. ULDC, Table 4.A.3.A-1 – Use Matrix (page 15 of 155), is hereby amended as follows:
2

Table 4.A.3.A-1 – Use Matrix Continued

Use Type	Zoning District/Overlay																NOTE									
	Agriculture/Conservation			Residential				Commercial					Industry/ Public													
	P	A	A	AR		R	R	R	R	C	C	C	C	C	C	I		I	P	I						
	C	G	R	R	U	S	S	A	A	E	T	S	M	N	L	C	H	O	G	R	E	L	G	O	P	F
Public and Civic Uses																										
....																										
Homeless Resource Center																										
....																										
[Ord. 2005 – 002] [Ord. 2006-013][Ord. 2008-037]																										
Key:																										
P Permitted by right																										
D Permitted subject to approval by the DRO																										
S Permitted in the district only if approved by Special Permit																										
B Permitted in the district only if approved by the Zoning Commission (ZC)																										
A Permitted in the district only if approved by the Board of County Commissioners (BCC)																										

3
4
5 Part 6. ULDC, Art.4.B.1.A.63, Government Services is hereby amended as follows:
6
7

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

63. Government Services

Buildings or facilities owned or operated by a government entity and providing services for the public, excluding utility and recreational services. Typical uses include administrative offices for government agencies, public libraries, police, and fire stations, and homeless resource centers.

....

d. Homeless Resource Centers

These facilities shall comply with the supplementary standards indicated in Note 70-1 of this Chapter, Homeless Resource Center.

21 Part 7. ULDC, Art.4.B.1.A, Supplementary Use Standards is hereby amended as follows:
22

CHAPTER B SUPPLEMENTARY USE STANDARDS

Section 1 Uses

A. Definitions and Supplementary Standards for Specific Uses

70-1. Homeless Resource Center

A facility that provides multiple services for the homeless population. Typical services include: counseling, kitchen and dining facilities, medical and dental outpatient facilities, temporary housing, intake, social services, employment services, and administrative offices.

a. Location and Separation Requirements

For the purpose of required separations, measurements shall be made from facade to facade, except where the separation required is between a structure and a district boundary.

1) A minimum 250 foot separation shall be required from the property line of residentially zoned parcels. Type II variance relief may be requested if this standard cannot be met. Facilities located in the PO zoning district may request a deviation from this requirement pursuant to the standards in Article 5.A.3, Deviations for the PO Zoning District.

2) A Homeless Resource Center (HRC) shall not be located within a 1,200 foot radius of another HRC.

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EXHIBIT L

**HOMELESS RESOURCE CENTERS
SUMMARY OF AMENDMENTS
(Updated 07/08/09)**

1 3) The applicant shall obtain certification from Palm Beach County Fire Rescue that
 2 a fire rescue facility is available to serve the proposed facility. Certification shall
 3 be provided prior to issuance of the development permit.

4 **b. Facility Use**

5 A minimum of 25% of the GFA shall be reserved for accessory service delivery other
 6 than temporary housing.

7 **c. Subsequent Development with Locational Standards**

8 The subsequent approval of a development order for a residential district shall not
 9 change the status of the HRC to a nonconforming use.

10
 11
 12 **Part 8. ULDC, Table 6.A.1.B - Minimum Off-Street Parking and Loading Requirements (page 7**
 13 **of 37), is hereby amended as follows:**
 14

Table 6.A.1.B - Minimum Off-Street Parking and Loading Requirements – Cont'd

Use Type: Public/Civic	Parking ¹	Loading ²
....		
<u>Homeless Resource Centers</u>	<u>1 space per 200 sq. ft. of accessory service delivery areas</u>	<u>E</u>
....		
[Ord. 2005-002] [Ord. 2006-004] [Ord. 2006-013]		
Loading Key:		
Standard "A" - One space for the first 5,000 square feet of GFA, plus one for each additional 30,000 square feet of GFA.		
Standard "B" - One space for the first 10,000 square feet of GFA, plus one for each additional 15,000 square feet of GFA.		
Standard "C" - One space for the first 10,000 square feet of GFA, plus one for each additional 100,000 square feet of GFA.		
Standard "D" - One space for each 50 beds for all facilities containing 20 or more beds.		
Standard "E" - One space for the first 10,000 square feet of GFA, plus one for each additional 20,000 square feet of GFA. The space shall be a minimum of 12 feet in width and 18.5 feet in length for uses that require limited loading.		

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EXHIBIT M

MANATEE PROTECTION PLAN
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

1
2 Part 1. ULDC, Art. 4.B.1.A.82, Marine Facility (page 60 of 155), is hereby amended as follows:

3
4 CHAPTER B SUPPLEMENTARY USE STANDARDS

5 Section 1 Uses

6 A. Definitions and Supplementary Standards for Specific Uses

7 82. Marine Facility

8 A commercial facility related to boating. Typical uses include boat docks, marinas, boatyards,
9 yacht clubs, charter boat operations, and boatels. Any marine facility with five or more slips
10 shall comply with the Boat Facility Siting Plan of the Palm Beach County Manatee Protection
11 Plan.
12

13
14 Part 2. ULDC, Art. 5.B.1.A.5.a, Docks (page 12 of 75), is hereby amended as follows:

15
16 CHAPTER B ACCESSORY AND TEMPORARY USES

17 Section 1 Supplementary Regulations

18 A. Accessory Uses and Structures

19 5. Docks

20 a. Accessory Docks

21 Applicants shall comply with the Boat Facility Siting Plan of the Palm Beach County
22 Manatee Protection Plan. This requirement does not apply to single family docks and
23 only applies to expansion of existing marine facilities or development of new marine
24 facilities with five or more slips. Accessory docks located on the same lot as a residence
25 shall meet a five foot setback from the side property lines. Accessory docks not located
26 on the same lot as a residence shall comply with the following setbacks:
27
28

29
30 Part 3. ULDC, Art.1.I.2.M.18, Marine Facility (page 68 of 109), is hereby amended as follows:

31
32 CHAPTER I DEFINITIONS AND ACRONYMS

33 Section 2 Definitions

34 M. Terms defined herein or referenced Article shall have the following meanings

35 18. Marine Facility

36 A commercial facility related to boating. Typical uses include boat docks, marinas, boatyards,
37 yacht clubs, charter boat operations, and boatels. Any marine facility with five or more slips
38 shall comply with the Boat Facility Siting Plan of the Palm Beach County Manatee Protection
39 Plan.
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Notes:

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**EXHIBIT N
RENEWABLE ENERGY
SUMMARY OF AMENDMENTS
(Updated 07/08/09)**

1
2 **Part 1. ULDC, Art. 1.1.2, Definitions [Related to Electric Power Facilities and Renewable**
3 **Energy] (pages 51 & 82 of 109), is hereby amended as follows:**
4

5 **CHAPTER I DEFINITIONS AND ACRONYMS**

6 **Section 2 Definitions**

7 E. Terms defined herein or referenced Article shall have the following meanings:

8
9 **12. Electric Power Facilities** – ~~The principal use of power for electric generation.~~ Any
10 electric generating facility that uses any process or fuel and includes any associated facility
11 that directly supports the operation of the electrical power facility.
12

13 R. Terms defined herein or referenced Article shall have the following meanings:

14
15 **22. Renewable Energy Facility, Solar**– A facility that uses photovoltaic, thermal or other
16 systems with a principal use of producing electrical or thermal power from the sun.
17

18
19 **Part 2. ULDC, Table 3.E.1.B-21, PDD Use Matrix [Related to Renewable Energy] (pages 17 of**
20 **155), is hereby amended as follows:**
21

Table 3.E.1.B-21 - PDD Use Matrix cont'd

Use Type	PUD					MUPD							MXPD				PIPD			M	R	N										
	Pods					Land Use Designations							Land Use Designations				Use Zone															
	R	C	R	C	A	C	C	C	C	C	I	I	G	C	G	C	I	C	I				L	H	L	H	N	O	N	D	P	D
	E	O	E	I	G	L	H	L	H	R	N	N	L	H	L	H	D	M	D	L	H	L	H	D	M	D	D	P	D	D	P	E
Utilities and Excavation Uses																																
....																																
<u>Renewable Energy Facility, Solar</u>		<u>D</u>	<u>D</u>	<u>D</u>		<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>		<u>D</u>		<u>D</u>	<u>D</u>	<u>D</u>	<u>D</u>					<u>B</u>	<u>B</u>					<u>106-1</u>		
....																																
[Ord. 2005-002] [Ord. 2006-004] [Ord. 2007-001]																																
Notes:																																
P Permitted by right																																
D Permitted subject to approval by the DRO																																
S Permitted in the district only if approved by Special Permit																																
R Permitted in the district only if approved by the Board of County Commissioners (BCC) as a requested use.																																

(This space intentionally left blank.)

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**EXHIBIT N
RENEWABLE ENERGY
SUMMARY OF AMENDMENTS
(Updated 07/08/09)**

1
2 **Part 3. ULDC, Table. 3.F.1.F-45, TDD Use Matrix [Related to Renewable Energy] (pages 118 of**
3 **155), is hereby amended as follows:**
4

Table 3.F.1.F-45 – Traditional Development Permitted Use Schedule (Continued)

District Tier Land Use Zone	TND						TMD				NOTES
	Urban/Suburban (U/S)			Exurban/Rural			U/S	Ex/ Rural	AGR		
	Res	Neighborhood Center (NC)	Open Space/ Rec	Res	N/C	Open Space/ Rec			Dev	Preserve	
Utilities and Excavation											
.... Renewable Energy Facility, Solar											106-1
[Ord. 2005 – 002] [Ord. 2005-041] [Ord. 2006-036] [Ord. 2007-001] [Ord. 2008-037]											
Notes:											
P Permitted by right. D Permitted subject to approval by the DRO. S Permitted in the district only if approved by Special Permit. R Requested Use.											

5
6
7 **Part 4. ULDC, Art. 4.A.3.A-1, Use Matrix [Related to Renewable Energy] (pages 78 of 155), is**
8 **hereby amended as follows:**
9

Table 4.A.3.A-1 - Use Matrix Continued

Use Type	Zoning District/Overlay																NOTE				
	Agriculture/ Conservation			Residential					Commercial					Industry/ Public							
	P C	A G R	A P	AR		R E	R T	R S	R M	C N	C L	C C	C H	C G	C R	C E		I L	I G	P O	I P
				R U S A	R U S A																
Utilities & Excavation																					
.... Renewable Energy Facility, Solar				D	D	D	D	D	B	B	D	D	D	D	D	D	D	D	D	106-1	
[Ord. 2006-004] [Ord. 2007-001]																					
Key:																					
P Permitted by right D Permitted subject to approval by the DRO S Permitted in the district only if approved by Special Permit B Permitted in the district only if approved by the Zoning Commission (ZC) A Permitted in the district only if approved by the Board of County Commissioners (BCC)																					

10
11
12 **Part 5. ULDC, Art. 4.B.1.A, Definitions and Supplementary Standards for Specific Uses**
13 **[Related to Electric Power Facilities and Renewable Energy] (page 73 of 155), is hereby**
14 **amended as follows:**

15
16 **CHAPTER B SUPPLEMENTARY USE STANDARDS**

17 **Section 1 Uses**

18 **A. Definitions and Supplementary Standards for Specific Uses**

19
20 **44-1. Electric Power Facility**
21 ~~The principal use of power for electric generation.~~ Any electric generating facility that
22 uses any process or fuel and includes any associated facility that directly supports the
23 operation of the electrical power facility.
24
25

Notes:
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**EXHIBIT N
RENEWABLE ENERGY
SUMMARY OF AMENDMENTS
(Updated 07/08/09)**

106-1. Renewable Energy Facility, Solar

A facility that uses photovoltaic, thermal or other systems with a principal use of producing electric or thermal power from the sun.

a. Minimum Lot Size

Lots shall comply with the minimum lot dimension requirements pursuant to Table 3.D.1.A-17- Property Development Regulations, or the applicable PDD requirements.

b. Minimum Setback Requirements

Accessory electric poles, distribution and transmission lines shall be exempt from the minimum setback requirements indicated below.

1) **Lots 50 acres or greater**

Facilities located on lots 50 acres or greater in size shall be setback a minimum of 25 feet from the side and rear property lines. The facility shall comply with the minimum front and side corner setbacks of the applicable zoning district.

2) **Lots less than 50 acres**

Facilities located on lots less than 50 acres in size shall be setback a minimum of 15 feet from the side and rear property lines. The facility shall comply with the minimum front and side corner setbacks of the applicable zoning district.

3) **Lots adjacent to existing residential uses**

Facilities located on lots adjacent to existing residential uses shall be setback a minimum of 35 feet along the affected property line.

4) **Additional setback**

One additional foot of setback shall be required in addition to the minimum setback indicated above for each one foot of height, or fraction thereof, over 20 feet.

c. Perimeter Buffers and Interior Tree Requirements

1) A 6 foot high hedge shall be incorporated into the buffer required pursuant to Art. 7.F., Perimeter Buffer Landscape Requirements. Palms may be substituted for 50% of the required canopy trees. This buffer may be modified pursuant to Art. 7.B.3., Alternative Landscape Plan.

2) These facilities shall be exempt from interior landscape requirements for the developable area pursuant to Table 7.C.3-1, Minimum Tier Requirements.

d. Substation

Substations associated with the facility shall be subject to the requirements of Art. 4.1.A.134., Utility Minor.

e. Collocation with Existing Electric Power Facilities

Solar facilities located on a site with an existing electric power facility shall be approved pursuant to the approval process indicated in the appropriate use matrix, and shall not be subject to a legislative development order amendment pursuant to Article 2.B.2.F, Development Order Amendment.

Part 6. ULDC, Table. 6.A.1.B, Minimum Off-Street Parking and Loading Requirements [Related to Electric Power Facilities and Renewable Energy] (page 73 of 155), is hereby amended as follows:

Table 6.A.1.B - Minimum Off-Street Parking and Loading Requirements – Cont'd

Use Type: Utilities and Excavation	Parking ¹	Loading ²
....		
<u>Renewable Energy Facility, Solar</u>	<u>1 space per site: and 1 space per 200 sq. ft. of office space</u>	N/A
....		
[Ord. 2005-002]		
Loading Key:		
Standard "A" - One space for the first 5,000 square feet of GFA, plus one for each additional 30,000 square feet of GFA.		
Standard "B" - One space for the first 10,000 square feet of GFA, plus one for each additional 15,000 square feet of GFA.		
Standard "C" - One space for the first 10,000 square feet of GFA, plus one for each additional 100,000 square feet of GFA.		
Standard "D" - One space for each 50 beds for all facilities containing 20 or more beds.		
Standard "E" - One space for the first 10,000 square feet of GFA, plus one for each additional 20,000 square feet of GFA. The space shall be a minimum of 12 feet in width and 18.5 feet in length for uses that require limited loading.		

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EXHIBIT O

TRAFFIC PERFORMANCE STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

1
2 Part 1. ULDC, Art. 5.E.1.C, Traffic Volume, (page 42 of 75), is hereby amended as follows:

3
4 CHAPTER E PERFORMANCE STANDARDS

5 Section 1 Major Intersection Criteria

6 As specified in this Code, certain specific uses shall be located at major intersections or internal to a PDD
7 that is located at a major intersection. For the purpose of this Chapter, to be considered a major
8 intersection each roadway at the intersection, shall meet at least one of the following standards:

9 C. Traffic Volume

10 The current average traffic volume on the roadway is greater than ten thousand trips per day as
11 shown on the ~~Metropolitan Planning Organization (MPO) Peak Season~~ Traffic Volume ~~Map~~
12 Table published by the Palm Beach County Traffic Division;
13

14
15 Part 2. ULDC, Art. 12.B.1, General (page 12 of 62), is hereby amended as follows:

16 CHAPTER B Standard

17 Section 1 General

18
19 There is hereby established a TPS for all Major Thoroughfares within PBC. Except as specifically
20 provided in this Article, no Site Specific Development Order shall be issued for a proposed Project which
21 would violate this standard. This standard consists of two tests. The first test relates to the Buildout
22 Period of the Project and requires that the Project not add Traffic in the Radius of Development
23 Influence which would have Total Traffic exceeding the Adopted LOS at the end of the Buildout Period.
24 The second test relates to the evaluation of traffic five years in the future and requires that the Project not
25 add Traffic in the Radius of Development Influence which would have Total Traffic exceeding the Adopted
26 LOS at the end of the Five-Year Analysis Period. Total Traffic for Test 2 is based in part upon
27 Background Traffic information from the TPS Database. Where a CRALLS service volume has been
28 adopted, those volumes shall apply. Where a CRALLS service volume has been adopted for one or more
29 of the LINKs only that constitute the legs of the intersection, the allowable service volume for the
30 ~~intersections at both ends of the CRALLS links~~ shall be calculated as follows: Allowable CRALLS
31 intersection volume = [sum of CRALLS Link volume(s) /or LINK LOS D volumes (for those LINKS without
32 CRALLS), whichever is applicable, for all legs of intersection/(sum of x 1400. Where CRALLS service
33 ~~volumes have been adopted for contiguous links that meet at a common intersection, the allowable~~
34 ~~service volume for the intersection shall be calculated as follows: Allowable CRALLS intersection volume~~
35 ~~= the average of the two CRALLS Link volumes/Link LOS D volume(s) for all legs of intersection)]~~ x 1400.
36 For Test 2 purposes, LOS E volumes and a 1500 critical sum shall be used in the preceding formulas for
37 determination of the allowable CRALLS intersection volumes. [Ord. 2006-043] [Ord. 2007-013]
38

39
40 Part 3. ULDC, Art. 12.B.2.A.1, Part One Intersections (page 13 of 62), is hereby amended as
41 follows:

42 CHAPTER B Standard

43 Section 2 Project Buildout/Five-Year Standard

44
45 A. Buildout Test - Test 1- Part One and Two

46 No Project shall be approved for Site Specific Development Order unless it can be shown to
47 satisfy the requirement of Parts One and Two of Test ~~1 One~~ as outlined below.

48 1. Part One – Intersections

49 This Part requires analysis of Major Intersections, within or beyond the Radius of
50 Development Influence, where a Project's traffic is significant on a Link within the Radius of
51 Development of Influence. For purposes of this Part One, Major Intersections also includes
52 intersections of a Major Thoroughfare and a non-thoroughfare road or other point of access
53 where: 1) the intersection is signalized or where projected traffic volumes warrant a signal;
54 and 2) the non-thoroughfare approach is projected to carry at least 200 two-way, peak hour
55 trips and, 3) the non-thoroughfare approach represents 20 percent or more of the intersection
56 critical sum volume. [Ord. 2005-002]

57

58 b. For signalized intersections that are not part of the SIS, SIS Connectors, FIHS, or TRIP
59 funded facilities, analyze the Major Intersections using the Highway Capacity Manual
60 (HCM) 1985 Planning Methodology (CMA). ~~The intersections shall operate below the~~
61 ~~threshold of 1,400 vehicles per hour as a Critical Volume using CMA, or the Project shall~~

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EXHIBIT O

TRAFFIC PERFORMANCE STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

~~fail Test 1.~~ In the event that one or more intersections exceed the ~~1,400~~ Critical Volume threshold identified in Table 12.B.2.C-2 or the intersections are part of the SIS, SIS Connectors, FIHS, or TRIP funded facilities, the applicant shall conduct the intersection analysis of those intersections using the HCM Operational Analysis using the most recent version of the HCM. **[Ord. 2007-013]**

~~e. 1)~~ The HCM CMA and Operational Analysis shall comply with the default input values published by the County Engineer no more frequently than twice per year. Revisions to the input values may be made subject to approval by the County Engineer to reflect actual or projected field conditions where substantial differences from the published values can be demonstrated.

2) If the intersection average total delay or the Critical Volume is at or below the thresholds identified in Table 12.B.2.C-2 1B, the Project passes Part One of Test 1 and continues with the Part Two – Link Analysis. If the intersection average total delay or the Critical Volume exceeds the thresholds identified in Table 12.B.2.C-2 1B, the Project fails Part One of Test 1. **[Ord. 2007-013]**

c. For unsignalized Major Intersections, the intersections shall be analyzed using the most recent version of the HCM Unsignalized Intersection Analysis and all minor movements of Rank 2 or higher shall operate at LOS E or better. In addition, a signal warrant analysis with Total Traffic for the intersection may be required by the County Engineer.

1) If a minor movement is not projected to operate at LOS E or better, then the applicant may make intersection improvements in accordance with applicable Palm Beach County or FDOT Design Standards to satisfy the LOS standard. If these improvements require signalization of the intersection and if signalization is expected to be warranted at any time up to 24 months after the Project's final certificate of occupancy, then the Project may also be required to fund signalization. If, with these improvements, all minor movements of Rank 2 or higher will operate at LOS E or better, the Project passes Part One of Test One.

2) If no geometric intersection improvements are determined to be feasible by the County Engineer, then the applicant shall agree to fund signalization of the intersection if warranted at any time up to 24 months after the Project's final certificate of occupancy. If the applicant is not willing to agree to fund signalization of the intersection if warranted, the Project fails Part One of Test One.

Part 4. ULDC, Art. 12.B.2.A.1.a.2, Part One - Intersections [Related to analysis of traffic at major intersections] (page 13 of 62), is hereby amended as follows:

CHAPTER B STANDARD

Section 2 Project Buildout/Five-Year Standard

A. Buildout Test - Test 1- Part One and Two

No Project shall be approved for Site Specific Development Order unless it can be shown to satisfy the requirement of Parts One and Two of Test ~~1One~~ as outlined below.

1. Part One – Intersections

....
a. The following major intersections shall be analyzed: **[Ord. 2007-013]**

....
2) For a Project on Southern Boulevard, The Single Point Urban Interchange(s) on Southern Blvd. where it is the nearest Major Intersection to the point at which the Project's Traffic enters the Project Accessed Link and where the Project Traffic entering and exiting the intersection is significant. For purposes of determining significance of the traffic entering and exiting the intersection, the traffic entering and exiting the ramps shall be considered against the combined LOS D capacity of the ramps, which shall be 4,200 vehicles per hour. **[Ord. 2007-013]**

Part 5. ULDC, Art. 12.C.1.C.4.c, TPS Database (page 24 of 62), is hereby amended as follows:

CHAPTER C TRAFFIC IMPACT STUDIES

Section 1 Traffic Impact Study

Notes:

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EXHIBIT O

TRAFFIC PERFORMANCE STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

C. Traffic Volume Components

The traffic impact study shall address the Total Traffic volumes at the Project Buildout Year and the Five- Year Analysis Period as outlined for Test 1 and Test 2. [Ord. 2006-043] [Ord. 2007-013]

4. Background Traffic

c. TPS Database [Ord. 2006-043]

Using the TPS Database, all traffic from the unbuilt portion of Projects which have received a concurrency reservation prior to the County Engineer's approval of the proposed Project's traffic study which will add significant trips to any Link within the proposed Project's Radius of Development Influence during the Buildout Period of proposed Project shall be specifically accounted for in projecting Traffic for Test 1. For major intersections, the TPS Database shall specifically account for all Project Traffic volumes if at least one approach to the intersection has a Project Traffic volume greater than or equal to 1% of the adopted LOS D. No double counting of trips shall occur. For Test 2, only the traffic generated from the unbuilt portions of the Projects as set forth above which are projected to be built during the Five-Year Analysis Period shall be considered. [Ord. 2005-002] [Ord. 2006-043]

Part 6. ULDC, Art. 12.D.3, Approval of Traffic Impact Study (page 26 of 62), is hereby amended as follows:

CHAPTER D PROCEDURE

Section 3 Approval of Traffic Impact Study

When the County Engineer has found the proposed Traffic Impact Study to comply with the requirements of this Article, the County Engineer shall issue an approval letter to the applicant with copies to the appropriate local governing bodies. This approval letter shall contain, at a minimum, a summary of the project, its impacts on the surrounding roadway network, and any conditions of approval necessary to ensure compliance with this Article. The approval letter shall be valid no longer than one year from date of issuance, unless an application for a Site Specific Development Order has been approved, an application for a Site Specific Development order has been submitted, or the approval letter has been superseded by another approval letter for the same property. [Ord. 2007-013]

Part 7. ULDC, Art. 12.K.3.C, Criteria [Related to supporting documentation to demonstrate impacts on proposed developments, (page 37 of 62), is hereby amended as follows:

CHAPTER K Transportation Concurrency Exception Areas (TCEA)

Section 3 Criteria

....
C. The guidelines and policies and programs to implement the TCEA must demonstrate by supporting data and analysis, including short and long-range traffic analysis, that consideration has been given to the impacts of the proposed development within the TCEA on the FIHS and SIS.

Part 8. ULDC, Art. 12.L.5, Required Traffic Study (page 38 of 62), is hereby amended as follows:

CHAPTER L TRANSPORTATION CONCURRENCY EXEMPTION FOR PROJECTS THAT PROMOTE PUBLIC TRANSPORTATION

Section 5 Required Traffic Study

Projects utilizing this exemption will submit a traffic study that is consistent with all of the provisions of this Article. They shall also provide a transportation analysis that illustrates their impact on the FIHS and SIS to ensure that those impacts are considered in the approval process.

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EXHIBIT O

TRAFFIC PERFORMANCE STANDARDS
SUMMARY OF AMENDMENTS
(Updated 07/31/09)

1 Part 9. ULDC, Art. 12.M.3.B.5, Reports (page 40 of 62), is hereby amended as follows:
2

3 CHAPTER M Five-Year Road Program

4 Section 3 Monitoring of County's Adherence to and Implementation of the Adopted Five-Year
5 Road Program

6 B. Independent Five-Year Road Program Oversight and Advisory Council
7

8 5. Reports

9 b. The Oversight and Advisory Council shall meet at least quarterly ~~and shall submit an~~
10 ~~annual report by January 31 of each year to the BCC detailing its findings on PBCs~~
11 ~~implementation of the adopted Five-Year Road Program, the general effectiveness of PBCs~~
12 ~~road building efforts, and to conduct~~ the ~~other~~ tasks contained in Article 12.M.3.B.3, Activities.
13 The Oversight and Advisory Council may submit ~~other~~ reports to the BCC regarding actual as
14 opposed to planned performance and shall respond to other requests from the BCC.
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Notes:

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EXHIBIT P

AFFORDABLE HOUSING PROGRAM
SUMMARY OF AMENDMENTS

(Updated 09/29/09)

1 Part 1. ULDC, Art. 1.1.2.A, Definitions (page 29 of 109), is hereby amended as follows:

2 CHAPTER I Definitions & Acronyms

3 Section 2 DEFINITIONS

4 A. Terms defined herein or referenced Article shall have the following meanings:

5
6 33. Affordable Housing Program – a voluntary program used by an applicant seeking
7 additional density for an affordable housing development.
8

10 Part 2. ULDC, Art. 1.1.3, Abbreviations and Acronyms (page 105 of 109), is hereby amended as follows:

13 CHAPTER I Definitions & Acronyms

14 Section 3 Abbreviations and Acronyms

15
16 AHP Affordable Housing Program
17

20 Part 3. ULDC, Art. 5.G, Density Bonus Program [Related to Affordable Housing Program] (page 60 of 75), is hereby amended as follows:

22 CHAPTER G DENSITY BONUS PROGRAMS

23 The WHP or the TDR Program are the required methods for increasing density above the maximum
24 density permitted by a property’s FLUA designation within unincorporated PBC, unless an applicant can
25 both justify and demonstrate a need for a Site Specific FLUA Amendment and demonstrate that the
26 current FLUA designation is inappropriate, as outlined in Art. 2.C, FLU Amendments. [Ord. 2008-003]

27 Section 2 Affordable Housing Program (AHP)

28 A. Purpose and Intent

29 The AHP implements HE Policies 1.1-o and 1.5-g of the Plan, among others, by establishing an
30 AHP. The AHP is a voluntary program used by an applicant seeking additional density for an
31 affordable housing development. An AHP applicant elects to provide at a minimum 65% of the
32 total number of dwelling units targeted to households at incomes of 60% of Area Median Income
33 (AMI) and below. In any proposal a maximum of 20% of all units will target incomes of 30% and
34 below AMI. The program ensures a minimum affordability period, and provides for a density
35 bonus and other incentives. The program is intended to increase the supply of housing
36 opportunities for persons employed in PBC in jobs that residents rely upon to make the
37 community viable.

38 B. Applicability

39 In cases of conflict between this Chapter and other Articles of this Code, the provisions of this
40 Chapter shall apply. The AHP shall apply to developments with a residential component of 10 or
41 more dwelling units with all units being built on site. This shall include the expansion of existing
42 projects that add 10 or more dwelling units, where the program shall apply to those units being
43 added. Requirements and limitations are further defined in Table 5.G.2.B-17, Affordable Housing
44 Program.

45 1. Exemptions

46 All eCongregate living facilities (CLFs); and, nursing or convalescent facilities.

47 2. Limitation on Restrictions

48 AHP units shall not be subject to restrictions beyond income qualifications except those
49 restrictions imposed by a governmental agency providing affordable housing financing.

50 3. When WHP and AHP Units are Proposed (WHP and AHP Units Proposed by the
51 Applicant)

52 Consideration may be given to developments requesting both WHP and AHP units within
53 their proposal with the final determination to be made by by the Planning Director or designee
54 based on the programmatic requirements imposed by a governmental agency providing
55 affordable housing funding or another entity with programmatic requirements (e.g., Habitat for
56 Humanity or a Community Land Trust).

57

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EXHIBIT P

**AFFORDABLE HOUSING PROGRAM
SUMMARY OF AMENDMENTS**

(Updated 09/29/09)

1

Table 5.G.2.B-17 - Affordable Housing Program

Applicability		
Location:	Threshold	Required > or= to 10 residential dwelling units
	Tier or Overlay	U/S
	FLU (1)	LR-1, LR-2, LR-3, MR-5, HR-8, HR-12, HR-18
Density Bonus Incentive		
	LR-1 thru LR-3	0 – 30% ³
	MR-5 thru HR-18 (2)	0 – 100% ³
Notes:		
1. <u>Shall also apply to mixed use projects with applicable underlying FLU designations for Commercial and Industrial Mixed Use Development.</u>		
2. <u>A density bonus of >30% shall be permitted subject to meeting the additional standards of Art. 5.G.2.E, Additional Requirements for >30% Density Bonus.</u>		
3. <u>Percentages shall be rounded up to the nearest whole number.</u>		
Affordability: A minimum of 65% of all units at 60% of AMI or below and a 20% maximum of all units at 30% and below AMI.		

2

3

C. Design Requirements

AHP units shall be designed to be compatible with the overall project, as follows:

4

1. All AHP units shall be constructed on site;

5

2. All units shall be designed to a compatible exterior standard as other units within the development or pod; and

6

3. AHP units may be clustered or dispersed throughout the project.

7

D. AHP Incentives

All projects with 10 or more residential units shall be eligible for AHP Incentives.

8

1. Density Bonus

9

Table 5.G.2.B-17 - Affordable Housing Program, delineates the ranges of density bonus allowed for the AHP by land use category. For the purposes of this Section, permitted density shall be the number of units allowed by the standard density allowed by the Plan; or, the maximum density allowed by the Plan, where developed as a PDD, TDD or other density provision of the Plan. TDR units or any other density bonus shall not be included as part of the permitted density for purposes of calculating the AHP density bonus. To ensure compliance with the compatibility requirement of HE Objective 1.5 of the Plan, projects requesting a density bonus shall be subject to the requirements of Table 5.G.2.D-18, Review Process, and Art. 5.G.2.E. Additional Requirements for Density Bonus.

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Table 5.G.2.D-18 - Review Process

Density Bonus	DRO Approval	Class A Conditional Use	Requested Use
<u>Standard District >30% - 50%</u>	X		
<u>Standard District >50% - 100%</u>		X	
<u>PDD or TDD >30% 100%</u>			X

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2. Traffic Performance Standards Mitigation

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a. AHP Special Methodologies

TPS mitigation shall be permitted for AHP projects in accordance with Art. 12.H.6, Affordable Housing.

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b. AHP Traffic Concurrency Hall Pass

TPS mitigation shall also include the option of applying for an AHP Traffic Concurrency Hall Pass separate from a development order application. The AHP Traffic Concurrency Hall Pass serves as a provisional traffic concurrency approval for a period of not more than 90 days, during which it must be merged into an application submitted for a Concurrency Reservation approval. The AHP Traffic Concurrency Hall Pass is described further in Art. 2.F.

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3. Expedited Review

The following expedited review processes may apply to a proposed AHP development:

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a. Design Review

Review of multifamily or townhouse structures by the Building Division and Fire Rescue shall be allowed concurrent with final DRO review, prior to permit application.

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b. Platting

- 1) If only a boundary plat is required for an existing single lot, building permits may be issued after submittal of the final plat for recordation.
- 2) If a subdivision plat is required, permits will be concurrently reviewed, but only issued at recording of the plat.
- 3) Pursuant to Article 3.E.1.G.1.a, Permits, Building permits for sales offices, sales models, gate houses, entry features, and utilities may be issued prior to the recording of a final plat.

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4. Density Bonus Development Options

a. Purpose and Intent

Notes:

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To provide flexibility from property development and other related regulations in order to provide greater opportunity for cost effective development of AHP units. These provisions are not intended to supersede deviations that are normally addressed through the variance process. These options shall only be granted at the time of approval for the entire project, and shall not be granted on a lot-by-lot basis.

b. Applicability

Projects with ten or more units that utilize a density bonus incentive and are subject to the requirements of the AHP may utilize the Development Options listed herein.

c. Justification Report

Use of Density Bonus Development Options shall not be granted by right, and shall require submittal of a justification report that demonstrates that deviations are the minimum needed to allow for the use of density bonus incentives. The report shall include the following:

- 1) The regulations that are proposed to be modified.
- 2) The amounts and specifics of the requested deviation(s).
- 3) The areas within the development that the deviation(s) will be applied to.
- 4) Graphic representations such as, but not limited to, site plans, elevations, perspectives, and typical examples, showing how the deviations will meet the intent of the district and AHP with emphasis on open space, privacy, maintenance, and public health, safety and welfare.

d. Site Plan Approval

All projects requesting Density Bonus Development Options shall submit an application and site plan to the DRO for certification where applicable, and for final site plan approval for all others. The site plan shall indicate in the tabular data all Development Options requested and where feasible, a regulating plan shall be included to provide typical examples. Approval shall be granted only for the minimum deviations needed to allow for the use of density bonus incentives and where the requirements of all applicable reviewing agencies have been met.

e. Drainage

Any reduction in lot size or open space area, or increase in building coverage shall be subject to approval of a drainage study demonstrating that reduced pervious surface area will not create adverse drainage issues.

f. Option 1 - AR, and RT Districts

The zoning for parcels electing to use this option must be in compliance with Table 3.C.1.A, Future Land Use (FLU) Designation and Corresponding Standard Zoning Districts.

1) AR FAR Calculations

New SFD lots in the AR district shall be permitted to calculate FAR based on the acreage of the FLU designation.

2) RT PDR Deviations

Deviations from the minimum PDRs for the RT district with a LR-2 or LR-3 FLU designation may be in accordance with Table 5.G.1.D, RT Deviations for WHP, only for those projects that qualify for maximum density in accordance with Table 2.1-1, Residential Categories and Allowed Densities, of the FLU Element of the Plan, and utilize a minimum density bonus of 20 percent.

Table 5.G.2.D - RT Deviations for AHP ⁽¹⁾

Zoning District	Applicability	FLU	Lot Dimensions				Setbacks	
			Size	Width and Frontage	Building Coverage	Depth	Side	Rear
RT	Infill, TDR	LR-1	14,000 sf	ND	ND	ND	ND	ND
RT	Infill, TDR, WHP AHP	LR 2	12,000 sf	85'	35%	100'	ND	ND
RT	Infill, TDR, WHP AHP	LR 3	9,000 sf	65'	40%	80'	1 st Floor 10'	1 st floor – 15'

Notes:
 ND No deviation.
 1. Eligible projects must qualify for maximum density in accordance with Table 2.-1, Residential Categories and Allowed Densities, of the FLU Element of the Plan, and use.

g. Option 2 - TND Regulations

Projects eligible for this option shall be permitted to utilize the PDRs of Table 3.F.3.E-52, TND Residential Lot Size and Setback Regulations, subject to meeting the requirements of Art. 3.F.3.E.5, Residential Uses and the following limitations:

- 1) U/S Tier Only;
- 2) Project does not qualify to be a TND or use Option 1 or 3;
- 3) If the subject site has a LR-1, LR-2, LR-3 or MR-5 FLU designation, the project shall meet all requirements for and be approved as a PDD;

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h. Option 3 - Flexible Regulations

Projects with MR-5, HR-8, HR-12, HR-18 FLU designations, or if approved as a PDD or TDD, may deviate from the residential requirements of Table 3.D.1.A.-17, Property Development Regulations, or Table 3.D.2.B-19, ZLL Property Development Regulations, as follows:

- 1) SFD units may be permitted up to a maximum ten percent deviation for the following PDRs: lot size; width and frontage; building coverage; and, side, and rear setbacks.
- 2) SFD units limited to one floor with no loft or other similar feature, may be permitted up to a maximum 20 percent deviation for the following PDR's: building coverage; and front and side street setbacks.
- 3) ZLL lots may be permitted up to a maximum lot width reduction of five feet, and ten percent deviation from the minimum lot size, building coverage, and front setback for units with front loading garages.

i. Option 4 - PDD Open Space Reduction

Projects which elect to utilize a density bonus of not less than 15 percent, may reduce the 40 percent open space requirement of Table 3.E.2.C-27, PUD Land Use Mix, to not less than 30 percent open space, provided the project incorporates common usable open space areas as defined in Article 1, Usable Open Space for AHP.

j. Option 5 – Internal Incompatibility Buffers

Required incompatibility buffers between SFD and MF units within an AHP development shall not be required.

k. Option 6 – Relocation of Units to Civic Tracts

Residential units may be permitted in a civic pod subject to PREM approval. This may include collocating residential units with civic uses. The DRO shall have the following authority where PREM approval is obtained after BCC approval of the overall project:

- 1) In the case of a civic site cash out, the deletion of the civic pod and increase in residential pod area; or,
- 2) The relocation of residential units to a civic pod, or the relocation of residential units where the civic pod is deleted.

E. Additional Requirements for Density Bonus

Projects requesting a density bonus shall comply with the following:

1. Sector Analysis

AHP projects shall be equitably distributed so that there is no undue concentration of very-low and low income housing throughout the County. Table 5.G.1.F, AHP Density Bonus Guide indicates the Step 1 density bonus permitted. The concentration of very-low and low income housing within a sector will be taken into consideration when determining the Step 1 density bonus permitted. Additional density may be added in accordance with Table 5.G.2.F, AHP Density Bonus Multipliers (Step 2). This Step 2 analysis considers the proposed development and its location to neighborhood amenities; a public transit option; employment and shopping opportunities; grocery store (excluding convenience store); public school; medical facilities; social services; and, public recreation facilities. Prior to submittal of an AHP pre-application, the applicant shall meet with the Planning Director or designee to establish the sector within which the distribution analysis shall be conducted. The boundaries of the sector shall be approved by the Planning Director or designee. The maximum AHP density bonus, total Step 1 plus Step 2, not to exceed a 100% bonus as recommended by the Planning Director or designee.

Table 5.G.2.F - AHP Density Bonus Guide (Step 1)

<u>% of Very Low & Low Income Housing (60% of AMI & below) in Sector</u>	<u>≥ 40%</u>	<u>40-30%</u>	<u>30-20%</u>	<u>20-0%</u>
<u>Step 1 Density Bonus</u>	<u>up to 30%</u>	<u>up to 50%</u>	<u>up to 80%</u>	<u>up to 100%</u>

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Table 5.G.2.F - AHP Density Bonus Multipliers (Step 2)

<u>Proximity to Proposed Development</u>	<u>Public Transit Option</u>	<u>Employment & Shopping Opportunities</u> <u>150,000 sf. guide</u> <u>(Office, Industrial, Business, Govt., Community/Regional Commercial, Retail Center)</u>	<u>Grocery Store</u> <u>(excluding Convenience Store)</u>	<u>Public School</u> <u>(Elementary, Middle, High School or Community College)</u>	<u>Medical Facilities</u> <u>(Hospital, Health Care, Urgent Care, Medical Offices)</u>	<u>Social Services</u> <u>(Daycare, Full-Service Community Centers, Public Library)</u>	<u>Public Recreation Facilities Off-Site</u> <u>(Public Parks, Ballfields, etc.)</u>	<u>Maximum AHP Density Bonus</u>
<u>> 0 up to ¼ Mile *</u>	20%	20%	20%	20%	20%	10%	10%	100%
<u>> ¼ up to ½ Mile *</u>	15%	15%	15%	15%	15%	5%	5%	
<u>> ½ up to 1 Mile *</u>	0	10%	10%	10%	10%	2.5%	2.5%	
<u>> 1 up to 2 Miles *</u>	0	5%	5%	5%	5%	0%	0%	
Notes:								
* For each multiplier column, only one of the four options (the closest amenity) may apply.								

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- a. The sector shall be proportional to the size and character of the proposed development. At a minimum, the sector shall consist of one or more neighborhoods that include features such as schools, shopping areas, an integrated network of residential and collector streets bounded by arterial roads, civic uses, localized shopping, and employment opportunities. For data and analysis purposes, the sector shall be adjusted to accommodate census tracts or census block groups but shall not extend beyond important physical boundaries that may include a major arterial roadway or a wildlife refuge.
- b. Housing characteristics, (such as household family incomes and affordable housing stock data) for the sector shall be derived from the most current available census data. The analysis of housing and demographic data within the sector shall be in a manner and form approved by the Planning Director.

2. Pre-Application

An application for density bonus shall require the submittal of a pre-application prior to submittal of a Zoning or Building permit application for purposes of establishing a density bonus determination.

a. Contents

The pre-application shall be in a form established by the Planning Director, and made available to the public.

b. Sufficiency Review

The pre-application shall be subject to the provisions of Art. 2.A.1.G.3, Sufficiency Review.

c. Compliance

The density bonus shall not be granted until the project is found in compliance with Policy HE 1.5.h. in the Plan.

d. Density Determination

The Planning Director or designee shall provide a written density determination letter within ten working days of determining the pre-application is sufficient. The determination shall be based on the sector analysis, size, location and development characteristics of the project with consideration given towards affordability, accessibility, proximity to mass transit or employment centers, compatibility, quality of design, pedestrian and vehicular circulation, open space, and resource protection. The Planning Director shall prepare a report for the applicant, DRO, ZC, or BCC, whichever is appropriate, making a determination of compliance with this chapter, consistency with the Plan and recommend approval, approval with conditions, or denial of the request.

F. Affordability Requirements

1. Sales and Rental Prices of AHP Units

All AHP units shall be offered for sale or rent at an attainable housing cost for the targeted AHP income range (60% of AMI or below). The sale and rent prices will be based on the (AMI), and the household income limits for PBC (West Palm Beach/Boca Raton metropolitan statistical area) as published annually by HUD and based on the annual Florida Housing Finance Corporation Multi-Family Rental Figures.

2. Master Covenant

Prior to final DRO approval, the applicant shall record in the public records of Palm Beach County a Covenant binding the entire project, in a form provided for by the County, which

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identifies each AHP unit. An extension of up to 6 additional months to record the Covenant may be requested only in order to secure government funding for the proposed development.

a. For Sale Units

The Covenant shall include but not be limited to restrictions requiring: that all identified AHP units shall be sold, resold or rented only to low, moderate 1, moderate 2, or middle-income qualified households at an attainable housing cost for each of the targeted income ranges; that these restrictions remain in effect for 15 years recurring from the date of the certificate of occupancy for each unit; and that in the event a unit is resold before the 15 year period concludes, a new 15 year period shall take effect on the date of resale. The Covenant shall further provide monitoring and compliance requirements including but not limited those set forth below to ensure compliance with the AHP. Every deed for each AHP for sale housing unit shall incorporate by reference the controlling Covenant.

b. Rental Units

The Covenant shall include but not be limited to restrictions requiring: that all identified AHP units shall be rented only to low, moderate 1, moderate 2, or middle-income qualified households at an attainable housing cost for each of the targeted income ranges; that these restrictions remain in effect for a period of 30 years (non-recurring) from the date of occupancy of the first AHP unit; and that in the event a rental complex is resold before the 30 year period concludes, the new owner assumes the requirement for the number of remaining years; and the number of years remaining shall be determined by the Planning Director or his designee; and shall take effect on the date of resale. The Covenant shall further provide monitoring and compliance requirements including but not limited to those set forth below to ensure compliance with the AHP. Every deed for a rental development with AHP housing units and every rental agreement for each AHP unit shall incorporate by reference the controlling Covenant.

3. Monitoring and Compliance

At the time of sale, resale, or rent of any AHP unit established pursuant to this program, the seller shall provide the County Administrator, or designee, documentation sufficient to demonstrate compliance with the AHP. Such documentation shall include but not be limited to information regarding the identity and income of all occupants of the AHP unit. The owner or lessee of the AHP unit shall submit to the County Administrator, or designee, on a form provided by the County, an annual report containing information and documentation to demonstrate continued compliance with the AHP and a copy of any monitoring information provided to and received from the appropriate funding agency/source. The County may conduct site visits at reasonable times, or perform other independent investigation to verify continued compliance with the AHP.

4. Enforcement

The County may enforce the requirements of the AHP through any cause of action available at law or equity, including but not limited to seeking specific performance, injunctive relief, rescission of any unauthorized sale or lease, and tolling of the 15-year term (for-sale units) or the 30-year term (rental units) of the AHP, or the term required by the funding agency/source if more restrictive.

6. Compatibility

The resulting development shall be compatible with surrounding residential land uses, as described herein.

H. Annual Report

The Executive Director of PZB shall submit an annual report to the BCC indicating the status of the AHP.

Section 23 Transfer of Development of Rights (TDRs) – Special Density Program

A. Purpose and Intent

The purpose of this Chapter is to provide for a TDR Program, including the establishment of a TDR Bank, to facilitate both the protection of environmentally sensitive lands, the preservation of agriculture on lands designated as AGR on the FLUA, and to promote orderly growth in PBC. This is accomplished by allowing development rights to be severed from environmentally sensitive lands and lands designated as AGR and transferred to sites where additional development can be accommodated. The TDR program is designed to redistribute population densities, or development potential, to encourage the most appropriate and efficient use of resources, services and facilities.

Further, it is the purpose and intent of this Chapter to provide an alternative to the development of environmentally sensitive lands and lands designated as AGR on the FLUA by establishing a mechanism to seek economic relief from the limitation of development imposed on these lands. TDR can mitigate inequities in the valuation of land by providing a means of compensating landowners whose property is restricted, by permitting the sale of development rights, and

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1 making landowners in more intensively developed areas pay for the right to develop beyond the
2 existing density, by purchasing development rights.

3 The TDR Program allows a property owner to achieve a density bonus by purchasing the
4 increase in density from the PBC TDR Bank, or from a property owner with land in a designated
5 sending area, without going through the land use amendment process. In order to increase
6 density, the site must meet the requirements to become a designated receiving area and follow
7 the procedures as described in this Chapter. After development rights have been transferred from
8 the sending area to the receiving area, an appropriate conservation easement or an agricultural
9 conservation easement shall be attached to the sending area and recorded in the public records
10 of PBC, restricting future development potential. [Ord. 2005 – 002] [Ord. 2008-003]

11 **B. Authority**

12 The BCC has the authority to adopt this pursuant to Article VIII, Sec. 1, Fla. Const., the PBC
13 Charter, F.S. §125.01, et seq. and F.S. §163.3161, et seq.

14 **C. Applicability**

15 This Chapter shall apply to property in unincorporated PBC which is located within designated
16 sending areas, as defined in Article 5.G.2.F, Sending Areas. Development rights may be
17 transferred from sending areas pursuant to the procedures contained in this Chapter, to property
18 which meets the qualifications to receive such density according to Article 5.G, Density Bonus
19 Programs, and the standards contained herein.

20 The use of TDR shall be allowed in all residential zoning districts within the U/S Tier and shall be
21 approved pursuant to this Chapter. TDR units may be utilized for all housing types. Additionally,
22 TDR units may be converted to CLF beds subject to the provisions of Article 4.B.1.A.34,
23 Congregate Living Facility, whereby the total approved density, including TDR units, is utilized
24 when calculating permissible CLF occupants per Table 4.B.1.A-4, Maximum Permissible
25 Occupancy in Type 3 Congregate Living Facilities.

26 **D. Previous Approvals**

27 All previously approved transfers of development rights, as long as they remain in force, shall
28 remain valid and shall not be affected nor changed by subsequent revisions to the TDR Program.

29 **E. Administration**

30 **1. General**

31 Except as otherwise specified, the TDR Program shall be administered by the Executive
32 Director of PZB.

33 **2. Responsibilities**

34 The Executive Director of PZB shall be responsible for:

- 35 a. Establishing, administering and promoting PBCs TDR Program;
- 36 b. Establishing and administering the TDR Bank;
- 37 c. Ensuring the orderly and expeditious processing of TDR applications under this Chapter;
- 38 d. Ensuring the contracts for sale and purchase of development rights are executed and all
39 deeds and conservation easements are filed in the public records of PBC;
- 40 e. Ensuring that the Property Appraisers Office is notified of all TDRs;
- 41 f. Ensuring that the densities approved through the TDR Program are placed on the FLUA
42 as notations following approval of the TDR receiving area; and, [Ord. 2008-003]
- 43 g. Ensuring that the FLUA is amended by a staff initiated Site Specific Plan amendment to
44 reflect an appropriate land use designation for land acquired by PBC whose units are
45 placed in the TDR bank. [Ord. 2008-003]

46 **F. Sending Areas**

47 **1. General**

48 Sending areas represent those areas of PBC that are designated by the BCC to warrant
49 protection. The owner of property in a designated sending area may transfer the development
50 rights to a parcel of land in a designated receiving area, subject to the provisions of this
51 Chapter.

52 **2. Eligible Sending Areas**

- 53 a. Lands designated RR-20 on the FLUA;
- 54 b. Lands designated as priority acquisition sites by the Environmentally Sensitive Lands
55 Acquisition Selection Committee (ESLASC) or the Conservation Land Acquisition
56 Selection Committee (CLASC) that meet the criteria listed below:
 - 57 1) Rarity in PBC of native ecosystems present on the environmentally sensitive lands
58 site;
 - 59 2) Diversity of the native ecosystems present on the environmentally sensitive lands
60 site; or
 - 61 3) Presence of species listed as endangered, threatened, rare or of special concern by
62 the U.S. Fish and Wildlife Service, the Florida Fish and Wildlife Conservation
63 Commission, the Florida Committee on Rare and Endangered Plants and Animals, or
64 the Florida Department of Agriculture.
- 65 c. Lands designated AGR on the FLUA;
- 66 d. Privately owned lands designated CON on the FLUA; and
- 67 e. Other sites determined by the BCC to be worthy of protection, provided that the sites:

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- 1) Further the purpose of the TDR Program in keeping with the criteria listed above; or
- 2) Further other PBC Goals, Objectives, and Policies. At such a time that the BCC determines that a parcel of land is environmentally sensitive, or preservation of the site is in the public interest, the parcel is eligible to become a sending area. The site shall be designated by resolution of the BCC.

3. Overlap in Sending Areas

In such cases where a parcel of land is both a priority acquisition site and designated RR-20 or AGR on the FLUA, all provisions in this Chapter pertaining to the priority acquisition sites shall prevail.

4. Transfer Rate

The owner of land which is designated as a sending area may elect to transfer development rights as provided in this Chapter. Development rights may be transferred from sending areas according to the following schedule. For the purposes of this Subsection, acres means gross acreage.

- a. Development rights may be transferred from property designated RR-20 on the FLUA at the rate of one development right per five acres. The minimum land area eligible for the TDR as a sending area shall be ten acres.
- b. Development rights may be transferred from property designated AGR on the FLUA at the rate of one development right per one acre. The minimum land area eligible for the transfer of development rights as a sending area shall be 20 acres unless the sending area parcel is located adjacent to other preserved properties, in which case the minimum land area shall be five acres.
- c. Development rights may be transferred from priority acquisitions sites (both residential and non-residential) located outside of the U/S Tier at a transfer rate of one development right per five acres. The minimum land area eligible for the TDR as a sending area shall be five acres.
- d. Development rights may be transferred from privately owned lands designated CON on the FLUA at a rate of one development right per ten acres. The minimum land area eligible for the transfer of development rights as a sending area shall be ten acres.
- e. Development rights may be transferred from all environmentally sensitive sites described in Article 5.G.2.F.2, Eligible Sending Areas, at a rate which equals the maximum density permitted by the future land use designation for the property. The minimum land area eligible for the transfer of development rights as a sending area shall be determined by the BCC, upon a recommendation from PZB and ERM.

5. Computation of Development Rights

The number of development rights assigned to a sending area parcel of land shall be determined by the Executive Director of PZB pursuant to Article 5.G.2.F.2, Eligible Sending Areas, and Article 5.G.2.I, TDR: Sending Area Procedure, as calculated below:

- a. All development rights shall be in whole numbers, no fractions shall be permitted. Any fractional residential unit that may occur during calculations shall be converted upward, if one-half or more of a whole unit, or downward, if less than one-half of a whole unit, to the nearest whole unit.
- b. The amount of development rights assigned to a sending area parcel shall be reduced by one dwelling unit for every conforming residential structure situated on the property at the time of approval.

6. Restriction on Future Use

Upon BCC or DRO approval of the TDR transfer, a conservation easement or agricultural conservation easement shall be recorded in the public records of PBC. The BCC or DRO shall determine which easement is appropriate for the sending area as part of the approval of the TDR transfer. Prior to recordation of the easement, a legally enforceable maintenance plan providing for perpetual maintenance of the sending area shall be established by the property owner and approved by ERM. No further development permit or development order for the designated receiving area shall be issued by PBC until the applicable easement is recorded in the public records of PBC. The easement shall restrict the use of the sending area in perpetuity. In particular, a conservation easement shall require that the sending area be maintained in its natural state while an agricultural conservation easement shall restrict the use of the sending area to bona fide agriculture, fallow land, or uses permitted in the Conservation Water Resources Area (WRA) future land use category; all other development rights of the subject property shall be considered transferred in perpetuity.

7. Existing Uses

Conforming residential dwelling units which existed prior to making application to transfer development rights shall be permitted to remain as legal conforming uses. All other existing uses on the sending area shall cease.

8. Remaining Land Area

If all of the development rights assigned to a sending area are not transferred off the site, the remaining land, if proposed for development, shall be developed in accordance with this Code and in a manner which is compatible with the surrounding area. This provision shall not

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1 apply to sending areas designated AGR on the FLUA; these parcels are required to transfer
2 all development rights off the site.

3 If the owner of land in a sending area only transfers a portion of the development rights
4 available for the property, PBC, upon a recommendation from PZB and ERM, reserves the
5 right to determine which portion of the land is subject to the applicable conservation
6 easement. The intent is to link environmentally sensitive land, to link agricultural land, and to
7 link open space areas, when feasible, and allow compatible development to occur on the
8 remainder of such sites.

9 **G. Transfer of Development Rights (TDRs) Bank**

10 **1. General**

11 The purpose of this Chapter is to authorize the establishment of a TDR Bank. The TDR Bank
12 is hereby created in order to, among other things, facilitate the purchase and transfer of
13 development rights as hereinafter provided and maintain an inventory of those development
14 rights purchased by PBC.

15 **2. Establishment of Development Rights for the Bank**

16 Development rights for the TDR Bank shall be generated from environmentally sensitive
17 lands purchased by PBC, including the priority acquisition sites meeting the criteria in Article
18 5.G.2.F.2, Eligible Sending Areas, through August 30, 1999. Priority acquisition sites in the
19 unincorporated area of PBC which are not purchased as part of the acquisition program shall
20 maintain the opportunity to transfer development rights on the private market. The TDR Bank
21 shall be maintained by the Executive Director of PZB and shall be reviewed in accordance
22 with the FLUE of the Plan to determine the need for additional units.

23 Development rights in the TDR Bank generated under the TDR Program shall remain in the
24 TDR Bank until sold by PBC, the TDR Bank is dissolved, or the units are otherwise disposed
25 of.

26 **3. Transfer Rate From the Purchase of Environmentally Sensitive Lands**

27 **a. Land Purchased Inside the U/S Tier**

28 The number of development rights within the bank shall equal the maximum density
29 allowed by the FLU designation as established by the applicable PBC or municipal
30 Comprehensive Plan.

31 **b. Land Purchased Outside the US Tier**

32 The number of development rights severed, or generated for the bank, shall equal the
33 TDR transfer rate established in Article 5.G.2.F, Sending Areas.

34 **4. The Application, Sale, and Value of Development Rights**

35 PBC may sell development rights to property owners who meet the receiving area criteria
36 pursuant to this Chapter.

37 a. A property owner seeking an increase in density must apply to become a receiving area
38 and submit a draft Contract for Sale and Purchase of Development Rights as part of the
39 application described in Article 5.G.2.J, TDR: Receiving Area Procedure.

40 b. The value and price of a development right shall be set by the BCC. The BCC may utilize
41 the following to set the price:

- 42 1) The current market value; or
- 43 2) A recommendation from the LUAB and the Planning Division. The BCC may
44 discount the price of development right as provided in the Plan; or
- 45 3) TDR applications not subject to approval by the BCC requesting TDR units from
46 PBC's TDR Bank shall utilize the price set by the BCC.

47 ~~5. Annual Report~~

48 ~~The Executive Director of PZB shall present an annual report to the BCC which outlines the~~
49 ~~number of development rights currently in the bank; the number of rights available for sale;~~
50 ~~the number of rights sold during the year; the purchase price per development right;~~
51 ~~recommendations for improving the TDR Program; and any other information deemed~~
52 ~~relevant.~~

53 **56. Revenue from the Sale of TDRs**

54 The revenue generated from the sale of development rights from the TDR Bank shall be
55 allocated to the Natural Areas Fund administered by ERM for acquisition and management of
56 environmentally sensitive lands and wetlands.

57 **H. TDR Receiving Areas**

58 Development rights shall only be transferred to those parcels which meet the qualifications for
59 designation as receiving areas.

60 **1. Eligible Receiving Areas**

61 a. PDDs and TDDs. The total density of the project, including the TDR units, shall be
62 utilized for calculating the minimum PDD or TDD acreage threshold; and

63 b. Residential Subdivisions which are not within a PDD or TDD.

64 **2. Qualify as a Receiving Area**

65 a. Be located within the U/S Tier; **[Ord. 2004-040] [Ord. 2008-003]**

66 b. Be compatible with surrounding land uses and consistent with the Plan;

67 c. Meet all concurrency requirements;

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(Updated 09/29/09)

- 1 d. Meet all requirements as outlined in this Code; and
- 2 e. Be compatible with adjacent Environmentally Sensitive Lands.
- 3 **3. Compatibility with Adjacent Environmentally Sensitive Lands**
- 4 A receiving area shall not degrade adjacent environmentally sensitive lands. Receiving areas,
- 5 therefore, shall reduce the intensity/density of that portion of the development which is
- 6 contiguous to any regionally significant natural resource as defined by the Treasure Coast
- 7 Regional Planning Council, environmentally sensitive land as defined by the ESLASC or
- 8 CLASC, or sites designated as preserve areas according to Article 14.C, Vegetation
- 9 Preservation and Protection, so that the development is compatible with, and does not
- 10 negatively impact the environmentally sensitive area, by providing a buffer zone of native
- 11 vegetation according to the following table.

12
13
14
15 (This space intentionally left blank)

16

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Table 5.G.2.H-21 - Required Buffer Zone

Density of Adjacent Pod/ Development Area	Required Buffer Zone of Native Vegetation
Net density less than or equal to three units per acre	50 foot buffer
Net density greater than three and less than or equal to five units per acre	100 foot buffer
Net density greater than five units per acre	200 foot buffer

4. Applicability TDR Increased Buffer and Setbacks for LR-1, LR-2 and LR-3PDD

The perimeter buffer and building setbacks for a TDR receiving area in a PDD with a LR-1, LR-2 or LR-3 FLU designation shall be upgraded where ZLL, TH, MFD or SFD using RS PDRs are located within 125 feet of any SFD with a lot size of 14,000 feet or greater, or any vacant parcels with a LR-1, LR-2 or LR-3 FLU designation. [Ord. 2008-037]

a. Increased Buffer Widths

Where applicable, the perimeter buffer shall be increased by 15 feet for projects having ZLL or SFD units, and 20 feet for TH and MFD units. [Ord. 2008-037]

b. Upgraded Landscaping

Where an increased buffer width is required, an additional native palm or tree shall be provided for each 30 linear feet, with a maximum spacing of 90 feet between clusters. [Ord. 2005 – 002] [Ord. 2008-037]

c. Increased Setbacks

Where applicable, when a development has a more intense housing classification, an additional ten-foot rear setback shall be required. For the purposes of this Section, housing classification shall be ordered from least intense to most intense, as indicated in Table 5.G.2.H-23, Housing Classification. [Ord. 2005 – 002] [Ord. 2008-037]

Table 5.G.2.H-23 – Housing Classification

Intensity by Group	Housing Type
1 - Low	Single-family residential (RT PDRs); or Zero lot line homes.
2 - Medium	Single family residential (RS PDRs): Mobile homes; Townhouses; or Multi-family.
3 - High	Type II or III Congregate Living Facilities.

[Ord. 2005 – 002] [Ord. 2008-037]

5. Prohibitions

Under no circumstances shall a receiving area contain a sending area as defined in Article 5.G.2.F.2, Eligible Sending Areas. This shall not apply if the project is providing all of the units at prices attainable by persons making between 30%-120% of AMI. The County shall establish the actual prices for each unit and each unit shall be deed restricted consistent with Art. 5.G.1.G, Affordability Requirements. [Ord. 2008-003]

I. TDR Density Bonus Limitations

1. WHP 50 Percent Requirement

In accordance with FLUE Policy 2.6-a.5 of the Plan, 50 percent of all TDR density bonus units shall be provided as WHP units. These units shall be constructed on site; comply with the affordability range requirements of Table 5.G.1.B, Workforce Housing Program and Art. 5.G.1.G, Affordability Requirements; and, Art. 5.G.1.C, Design Requirements. The project shall only be eligible to apply for the following WHP incentives: Art. 5.G.1.D.2, TPS Mitigation; Art. 5.G.1.D.3, Expedited Review; and, Art. 5.G.1.D.4, Density Bonus Development Options. [Ord. 2008-003]

2. AHP 100 Percent Requirement

When using the voluntary AHP, all TDR density bonus units shall be provided as AHP units. These AHP units shall be constructed on site; comply with the affordability range requirements of Table 5.G.2.B, Affordable Housing Program and Art. 5.G.2.F, Affordability Requirements; and, Art. 5.G.2.C, Design Requirements. The project shall only be eligible to apply for the following AHP incentives: Art. 5.G.2.D.2, TPS Mitigation; Art. 5.G.2.D.3, Expedited Review; and, Art. 5.G.2.D.4, Density Bonus Development Options.

3. WHP and AHP Units

Consideration may be given to developments requesting both WHP and AHP units within the proposal. In this instance, the Planning Director or designee will determine which program's (WHP or AHP) density bonus criteria will be utilized based on the programmatic requirements imposed by a governmental agency providing affordable housing funding or another entity with programmatic requirements (e.g., Habitat for Humanity or a Community Land Trust).

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24. Permitted Density Ranges

The maximum number of development rights which may be transferred to the receiving parcel shall be determined in accordance with Article 5.G.2.H, Receiving Areas, Article 5.G.2.J, TDR: Receiving Area Procedure, and the following: [Ord. 2008-003]

a. Standard Density Bonus

Approved receiving areas may receive a bonus density as follows: [Ord. 2008-003]

- 1) Receiving areas in the U/S Tier west of Florida’s Turnpike: up to two du/acre; or, [Ord. 2008-003]
- 2) Receiving areas in the U/S Tier east of the Florida Turnpike, but not in a ~~Countywide Community Revitalization Team (CCRT) r~~Revitalization and ~~r~~Redevelopment and Infill Overlay area: up to three du/acre; or, [Ord. 2008-003]
- 3) Receiving areas in ~~the a~~ Revitalization ~~and~~ Redevelopment and Infill Overlay: up to four du/acre. [Ord. 2008-003]
- 4) The bonus density may be less than the total bonus density indicated in 1, 2 and 3 above when an additional WHP or AHP density bonus has also been utilized. (See item d. below)

b. Additional Density Bonus

Receiving areas meeting one or both of the following criteria shall be eligible for an additional one du/acre density bonus above the aforementioned density bonus ranges. [Ord. 2008-003]

- 1) Receiving areas within ¼ mile radius of a public park excluding golf courses, community commercial facility or mass transit facility within the U/S Tier; and [Ord. 2008-003]
- 2) Receiving areas within ¼ mile radius of a regional commercial facility or a major industrial facility within the U/S Tier. [Ord. 2008-003]

In order to be eligible for the additional one du/acre density bonus, at least 25 percent of the receiving area must be located within the required radius. The density bonus shall apply to the entire receiving area. [Ord. 2008-003]

c. LR-1, 2 and 3 FLU Density Limitation

To mitigate any potential adverse impacts in low-density residential neighborhoods (as determined by residential FLU designation), the maximum TDR density bonus in the LR-1, LR-2 and LR-3 FLU designations shall not exceed 100 percent of the standard or maximum density, exclusive of any other density bonus allowed on the subject site. Exceptions shall be permitted for any project that is located in the URA or entirely surrounded by one or more of the following: [Ord. 2008-037]

- 1) Parcels with an MR-5 or higher FLU designation; or [Ord. 2008-037]
- 2) Parcels with a non-residential FLU designation or use; or [Ord. 2008-037]
- 3) Open space 100 feet in width or greater; or [Ord. 2008-037]
- 4) A major street. [Ord. 2008-037]

d. A development’s WHP or AHP density bonus increase will be given consideration when assigning the number of TDR units recommended to the development. Other factors to be considered include: the location of the proposed development and it’s relationship to the study area; the housing type(s) proposed; if the development site is located within ¼ mile radius of a public park (neighborhood or regional park, not a golf course); civic uses (schools/libraries); a mass transit facility; child care facilities; medical facilities; a super market; a community commercial facility; employment opportunities; and within ½ mile radius of social services; a regional commercial facility; an industrial facility; additional civic uses and employment opportunities.

J. TDR: Sending Area Procedure

1. Sending Parcel Application

The property owner of lands which are designated sending areas as defined under Article 5.G.2.F.2, Eligible Sending Areas, must make application to PZB for an administrative determination in order to be formally designated as a sending area. The purpose of this administrative determination is to ascertain the exact number of development rights the property owner is entitled to. The application shall include, at a minimum:

- a. Proof of ownership;
- b. A legal description of the property; and,
- c. Contract, or option, for the purchase and sale of development rights (unless requesting a TDR Certificate, as outlined in Article 5.G.2.I.6, Development Rights Certificates. The application shall be submitted to the Executive Director of PZB. Applications for a sending area designation may be accepted for review and processing at any time.

2. Review Process

a. Environmentally Sensitive Lands and Lands Designated RR-20 or CON on the FLUA

Prior to the first scheduled DRO meeting to consider the TDR application, the Executive Director of PZB shall review the sending area application and make a determination regarding the number of units associated with the parcel. As part of review of the

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1 application, the Executive Director of PZB shall notify ERM of the application and request
2 that a site check be conducted.

3 ERM shall complete a site check to ensure that the site has not been altered and the site
4 meets the criteria provided in Article 5.G.2.F.2, Eligible Sending Areas, ERM shall
5 complete a written recommendation to the Executive Director of PZB regarding the site.

6 **b. Land Designated AGR on the FLUA**

7 Prior to the first scheduled DRO meeting to consider the TDR application, the Executive
8 Director of PZB shall review the sending area application and make a determination
9 regarding the number of units associated with the parcel. As part of review of the
10 application, the Executive Director of PZB shall complete a site check to ensure that the
11 site is suitable for bona fide agricultural or other open space purposes consistent with the
12 AGR provisions in the Plan.

13 Sending area applications which are not submitted in conjunction with a receiving area
14 application shall be reviewed and acted upon within 25 days.

15 **3. Written Determination**

16 The property owner shall receive a written determination from the Executive Director of PZB
17 indicating how many development rights can be transferred from the property. The number of
18 development rights for the site shall be documented and be kept on file in the PZB
19 Department.

20 The written document shall be valid for a period of 12 months. If any modifications or
21 alterations are made to the property during the 12 month period, the property owner shall not
22 be permitted to participate in the TDR Program.

23 **4. Easement Agreement/Restriction**

24 Prior to site plan certification, the applicable conservation easement, in a form and content
25 acceptable to the County Attorney shall be recorded in the public records of PBC. The
26 easement shall restrict future use of the land consistent with the requirements in Article
27 5.G.2.F.6, Restriction on Future Use. Prior to recordation of the easement, a legally
28 enforceable Maintenance Plan providing for perpetual maintenance of the sending area shall
29 be established by the property owner and approved by ERM.

30 **5. Re-Submittal of Application**

31 The owner of a sending parcel may re-apply until all development rights have been severed
32 from the property.

33 **6. Development Rights Certificates**

34 Environmentally sensitive lands and lands designated as CON or RR-20 on the FLUA must
35 be deeded to, and accepted by PBC, subject to the discretion of the BCC, before the
36 Certificate can be issued. Environmentally sensitive lands and lands designated as CON or
37 RR-20 on the FLUA deeded to, and accepted by PBC, shall be managed by PBC or its
38 designee. AGR lands shall be managed by the property owner in perpetuity as provided in
39 the Maintenance Plan.

40 **a. Eligibility**

41 Development Rights Certificates shall only be issued to property owners of ESL or RR-20
42 land that deed without compensation environmentally sensitive land to PBC or property
43 owners of AGR land that record an agricultural conservation easement, and follow the
44 procedures in this Chapter. The development rights certificate shall require that
45 restrictions be placed on the sending area prior to the sale of those development rights. A
46 minimum transfer of five acres is required.

47 **b. Issuance of the Certificate**

48 Upon completion of the application process, and recordation of the deed transferring
49 ownership of the property to PBC, or recordation of the agricultural conservation
50 easement and approval by ERM of a legally enforceable maintenance plan providing for
51 perpetual maintenance of the sending area, the property owner shall be issued a
52 Development Rights Certificate. The Certificate shall indicate the exact number of
53 development rights which can be sold, transferred, or traded, by the holder of such
54 Certificate. The Certificate shall remain in effect until applied to a TDR receiving area in
55 accordance with provisions of this Chapter.

56 **c. Unused Certificates**

57 A property owner of AGR land, with an agricultural conservation easement recorded, may
58 reassociate development rights to the original sending parcel provided that no
59 development rights have been sold. A written request to reassociate the development
60 rights shall be submitted to the Executive Director of PZB along with proof of ownership
61 and a legal description of the property. Prior to approval of a request to the reassociate
62 development rights, the applicant must petition and receive BCC approval to release the
63 easement recorded against the sending area parcel.

64 **7. Limitations**

65 The amount of development rights assigned to a sending area parcel, or indicated on a
66 certificate, shall be reduced by one for every conforming residential structure situated on the
67 property at the time of application.

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1 K. TDR: Receiving Area Procedure

2 1. General

3 Receiving areas shall be approved concurrent with issuance of a Development Order for a
4 PDD, TDD or a residential subdivision, except for the SCO PIPD, which shall be approved by
5 the DRO. The following procedures shall be followed in order to become a receiving area to
6 obtain the density bonus. [Ord. 2005 – 002]

7 2. Preapplication Conference

8 Prior to submittal of an application requesting a receiving area density bonus, the applicant
9 must attend a preapplication conference with the appropriate PZB staff, pursuant to Article
10 2.A, General, to review the proposed development, and the requirements and procedures of
11 the TDR Program.

12 3. Review Process

13 The review process for TDR applications is based upon the density and type of residential
14 development proposed.

- 15 a. The transfer of two units per acre or less to a residential subdivision is reviewed by the
16 DRO and shall be subject to the provisions of Article 2.D.1.C, Review Procedures, except
17 as provided below. Parcels which meet the minimum acreage thresholds for a PDDs or
18 TDD shall not utilize this Chapter option;
- 19 b. The transfer of more than two units per acre to a residential subdivision is reviewed as a
20 Class A conditional use and shall be subject to the provisions of Article 2.B, Public
21 Hearing Procedures, except as provided below. Parcels which meet the minimum
22 acreage thresholds for a PDDs or TDD are allowed to utilize the option contained in this
23 paragraph, provided the parcel meets the PDDs PDRs contained in Article 3.E, Planned
24 Development Districts (PDDS), or contained in Article 3.F, Traditional Development
25 Districts (TDDS);
- 26 c. The transfer of any density to a planned development is reviewed as a requested use
27 and shall be subject to the provisions of Art. 3.E, Planned Development Districts (PDDs),
28 except for SCO PIPD, which shall be approved by the DRO. A general application by a
29 property owner for receiving area status and a density bonus shall be accepted for review
30 and processing pursuant to Art. 2, Development Review Process. [Ord. 2005 – 002]
- 31 d. BCC approval is required for any project that is requesting a combined density
32 increase/transfer through the WHP and TDR programs that exceeds two units per acre.
33 [Ord. 2005-041]

34 4. Contents of Application

35 In conjunction with the general application for a residential subdivision, a rezoning to a PDD
36 or TDD, or an amendment to a previously approved PDD, TDD or residential subdivision
37 submitted to the Zoning Division pursuant to Article 2, Development Review Process, or
38 Article 2.D.1, Development Review Officer, as applicable, an applicant for receiving area
39 status and a density bonus must submit a supplemental TDR Application.

40 The application shall be submitted in a form established by the Executive Director of PZB and
41 made available to the public. A site plan which shows the location of roadways, parking
42 areas, buffer areas, recreation and open space areas, and building areas shall be a part of
43 the application. Additionally, the applicant shall include typical building footprints and
44 elevations as a part of the application.

45 5. Standards

46 In addition to fulfilling the requirements of Article 5.G.2.H, Receiving Areas, to qualify as a
47 receiving area and be eligible for an increase in density, all applications requesting receiving
48 area designation shall comply with these standards:

- 49 a. The transfer of development rights is by deed, and the deed shall be recorded before
50 final site plan approval;
- 51 b. The transfer is to a parcel of land which meets all the requirements of this Code and
52 within which the transferred densities have been included and amended;
- 53 c. The proposed development meets all concurrency requirements at the level of impact
54 calculated to include the TDR density;
- 55 d. If the transfer is between two private parties, at the time the transfer is approved, the
56 sending area from which the transfer will occur shall be subject to a conservation
57 easement and shall be identified on the Zoning Map. Pending recording of the
58 conservation easement, no development approvals or development permits will be issued
59 for the sending area or receiving area;
- 60 e. If the transfer of rights is from the PBC TDR Bank, all rights have been accounted for and
61 there are enough development rights in the bank to cover the project;
- 62 f. The proposed development and density are compatible with the surrounding area and
63 land use; and
- 64 g. The proposed development and density do not negatively impact adjacent
65 environmentally sensitive lands.

66 6. Contract for Sale and Purchase of Development Rights

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A contract for sale and purchase of development rights, an escrow agreement and a deed of TDR shall be required as part of the approval of a TDR transfer. The contract shall be recorded prior to certification of the site plan for a TDR receiving area. Prior to issuance of the first building permit, the funds from the escrow agreement shall be released to PBC or evidence of payment to a private party shall be provided, the deed shall be recorded and a copy of the recorded deed shall be provided to PZB. Building permits for sales models and/or temporary real estate sales and management offices permitted pursuant to this Code shall be exempted from this requirement regarding the release of escrow funds.

L. Notification to Property Appraisers Office

Upon recordation of the deed of transfer, the Executive Director of PZB shall notify, within 20 days, the Property Appraiser's Office in writing that development rights have been transferred from the sending area or TDR Bank to the receiving area in perpetuity.

M. County Initiated Land Use Amendment

Following recording of the deed, the Planning Division, upon direction from the BCC, shall initiate a Site Specific Plan Amendment to designate the property with a CON designation or place a notation which reflects the use of the property as an Agricultural Reserve Preservation Area (AGR/P). Densities obtained through the TDR Program shall be placed on the FLUA as notations following approval of the TDR receiving area.

N. Overall Accounting System for TDR Density

PZB shall maintain an overall accounting system for monitoring density availability and density transfers in the TDR Program. The accounting system shall include both private development rights and development rights in PBC's TDR Bank.

Density needed for the TDR Program may be derived from different sources including, but not limited to:

1. Density Reduction

Approved Site Specific Plan Amendments since 1990 which resulted in a density reduction; and,

2. PUD Unused Density

At such a time that the TDR Program, any subsequent density bonus programs, or amendments to the Plan requesting an increase in density, deplete the number of units available from previous amendments, PZB shall begin to monitor the PUD units which have been approved through the zoning process, but which have remained unused. The later units may at that time be considered as a source for density for the TDR Program.

Section 34 Property Development Regulations (PDRs) for Density Bonus Program Development

A. Purpose and Intent

The purpose and intent of this Chapter is to provide flexibility from traditional PDRs in order to provide greater opportunity for cost effective development for housing approved in conjunction with a density bonus program. The regulations represent the minimum regulations acceptable without compromising minimum health and safety standards.

B. Applicability

The provisions of this Chapter may be applied to all residential development which receives a density bonus for workforce housing, as defined in the Plan.

C. Threshold

100 percent of the units subject to the density bonus, or a minimum of 50 percent of the total number of units in the project, whichever is greater, shall be set aside for workforce housing in accordance with the applicable density bonus program in the Plan.

1. Lot Dimensions

The lot dimensions in all residential districts for all housing types may be reduced by 20 percent.

2. Building Intensity

The maximum building coverage and floor area ratio for all residential districts for all housing types may be increased by 20 percent.

3. Setbacks

The minimum building setbacks/separations for all residential districts for all housing types may be reduced by 20 percent, except for the front setback in the RS and RM districts, which may be reduced by 40 percent.

[Renumber accordingly]

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