GROWTH MANAGEMENT and EPD SB 832 ANALYSIS: MAJOR ISSUES

On February 11, 2015 SB 832 was filed. The bill would make several significant changes to the section of The Community Planning Act, Ch. 163, Part II Fla. Stat., authorizing adoption of "Sector Plans" for areas of 15,000 acres or more into local government comprehensive plans. Staff and the County Attorney's office have analyzed this bill and its impact on the sector plan application, review and approval process. Several major concerns have been identified, including the following:

- **General intent:** New language in s.163.3245(1) emphasizes that the purpose is to "promote and encourage development of a long term vision and long-range plans"; this would replace current language promoting "long range plan*ning* ". This shift in language corresponds to the overall thrust of the bill, which is to reduce procedural and substantive planning requirements for sector plans, treating them as visionary, although they would have the legal status of Comprehensive Plans (including various special entitlements provided to sector plans under the current statute) for decision-making on development approvals.

- **Elimination of other requirements of the Community Planning Act**: The current law says that the requirements for "Long Term Master Plans" (which are what's adopted into Comprehensive Plans for Sector Plans) are "In addition to the requirements of" the Community Planning Act, Ch. 163, Part II, Florida Statutes. New language in s.163.3245 (3) (a) would limit or replace these requirements by adding language "except for those that are *inconsistent with or superseded by* the planning standards of this paragraph". This language is vague, and could be construed to replace all of the other requirements for comprehensive plans relating to substantive planning issues such as suitability of proposed uses, protection of natural resources, water supply, and public facility and infrastructure needs and funding, as well as procedural requirements for Comprehensive Planning amendments and development approvals.

-New language relating to identification relating to water supplies needed is vague. The bill states that "A general identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, if any,..." The way this is written it is unclear what "if any" modifies making the requirement relating to water supply identification as part of the long-term master plan unclear.

- **Limits on procedures and policies to facilitate intergovernmental coordination:** The current sector plan statute (s.163.3245 (a) 7., F.S.) includes in its list of requirements, "identification of general procedures and policies to facilitate intergovernmental coordination to address extrajurisdictional impacts from future land uses"; the bill would limit this requirement by adding "if not addressed in other plan elements." This could preclude requirements to identify procedures and policies for intergovernmental coordination relating to extrajurisdictional impacts of sector plans, since comprehensive plans are already required to have intergovernmental coordination elements. Sector plans are large-scale developments with regional impacts and are therefore likely to call for more specific procedures and policies to address their unique extrajurisdictional impacts. Intergovernmental Elements of comprehensive Plans have very

general policies that would be inadequate to address the level of intergovernmental coordination needed for a sector plan.

-**Elimination for requirement to address costs, locations, phasing or staging, or means of financing transportation or other public facilities needed:** The bill would add language to *eliminate the requirement* for a long term master plan "to project of costs, locations, phasing or staging, or means of financing transportation or other public facilities needed to support the future land uses within the planning area". Planning for public facilities including transportation facilities is an essential component of comprehensive and long-range planning. The land uses and policies governing future approval of development orders for the sector plan would have to be adopted without knowing the impact of those land uses and policies on public facility needs and establishing a plan for how those needs are to be addressed. Without knowing the public facilities impacts including location and costs, the approving body is left granting the landowner extensive development rights without knowing how this would impact County resources, especially including potential costs and environmental impacts. These policy level issues should be addressed at a planning level and not deferred completely to development order decisions on parts of sector plans development at the "detailed specific area plan" stage of the sector plan process as this bill proposes.

-**Limits on the ability to prescribe application or review procedures for a detailed specific area plan that would differ from the local government's generally applicable requirements for local development orders.** The bill would add to language in the sector plan statute that "a long-term master plan... *is not required to... prescribe application or review procedures for a detailed specific area plan that would differ from a local government's generally applicable requirements for local government development orders except as required by this section.*" This provision coupled with the elimination of the requirement to address things such as public facilities planning, timing and location, environmental impacts and other issues at the long-term master plan/comprehensive plan level would significantly impair the ability to address the unique issues associated with a sector plan at any stage of the sector plan process.

-**Elimination of requirements for consistency of detailed specific area plans (DSAPS) with other parts of the Community Planning Act and the comprehensive plan/long term master plan:** The current law (s.163.3245(3)(b), F.S.) says "in addition to the other requirements of this chapter, the detailed specific area plans shall be consistent with the long term master plan...."; the bill would limit this by inserting "except for those that are *inconsistent with or superseded* by the planning standards of this paragraph". This language is vague, raising various questions about the relationship between the "detailed specific area plans", which are the development orders for areas of 1,000 acres or more in sector plans for which local governments have decision making responsibility, and the comprehensive plan; this vague language also raises questions about DSAPS and other substantive requirements relating to development orders in the Community Planning Act and procedural requirements; this could preclude other affected parties including adjacent landowners from filing a challenge to the development order approving a DSAP.

-Deferral of adoption of a 5-year capital improvements schedule to includes the costs, locations, phasing or staging and means of financing such facilities to the detailed specific area plan(DSAP). These policy level issues should be addressed at a planning level and not deferred completely to development order decisions on parts of sector plan development at the DSAP stage. DSAPs must be consistent with the comprehensive plan and the long-term master plan. There would be no basis in the adopted sector plan long-term master plan language to determine consistency of DSAP with the comprehensive plan. Limiting consideration of public facilities to the DSAP stage (areas of 1,000 acres out of the 15,000 acres or more in the sector plan) is a piecemeal approach to capital facilities planning lacking a comprehensive capital facilities planning framework for the sector plan and surrounding areas to ensure coordinated and efficient provision of needed public facilities. In addition, Sector Plans can be 50 year time frames, a five-year capital improvements schedule is not adequate to address the impacts of such a long-range plan.

-Transfer of discretion for the determination of conservation easements from County to State. New language in this bill added to Section 163.3245 (3)(b) 7. F.S., allows for an applicant to record the conservation easement at the latter of either the effective date of the DSAP or the environmental permits necessary to develop the DSAP. This language could delay the recording of the easement to a State/Water Management District process out of the timeframes or control of the county. What is recorded in an easement would be what is needed for mitigation for wetland impacts per State rules. This new language would erode home rule as it relates to wetlands and wetland impacts and the general requirement for avoidance and minimization of wetland impacts prior to needing mitigation. It is also inconsistent with current County code (Sec. 406.103(a)4 ULDC) that requires the county to issue development approval subject to the recording of the approved easement. Sector Plans in the state have been proposed to greatly increase development rights in environmentally sensitive rural areas with the presumption that this long-term planning will allow localities to protect the important environmental lands while allowing development in the most appropriate area. This proposed change to when conservation easements are recorded, changing local to state control, erodes the ideals of using a sector plan to promote good planning by preserving land that needs to be preserved for the health of the state and its citizens.

-A truncated pre-application process is authorized that would limit the scope of issues that could be considered in DSAP review. The bill adds a new Section 163.3245(3)(e), F.S. for an optional pre-application meeting with the County at the applicant's discretion. Upon request of County or applicant, state and regional agencies may participate. Before the conference, the applicant shall provide preliminary information regarding the proposed detailed specific area plan. Agencies are required to identify the level of information required for purposes of review of the proposed development at the pre-app meeting. The new language does not provide a time frame for when the applicant must submit this information. Therefore, the applicant could submit it that morning, which would give no time for agencies to review and provide an appropriate response. The bill provides that "No more than 14 days after the conference, the local government shall document the findings and agreements made by the participants including a summary of all assumptions and methodologies agreed upon at the conference." The participants then have 14 days to review the summary and comment, agree or disagree. "The

local government and reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the project or information obtained during the review invalidate those assumptions and methodologies." These timeframes are unreasonably short, and the County cannot reasonably determine what assumption and methodologies would be required in the pre-application phase prior to submittal of an actual application. These DSAP provisions also introduce the ability of state agencies to review and comment on a DSAP's consistency with the Comprehensive Plan and long-term master plan. It is unclear what the significance would be if the findings of other reviewing agencies differ from the County Commission findings.

-Impact mitigation requirements with the State or Water Management District and removal of the general requirement to avoid impacts to regulated resources (i.e. wetlands). New language in Section 163.3245(4)(c), F.S. provides that "all natural resources within the planning area identified in the long-term master plan as *regionally significant natural resources* must be considered regionally significant natural resources for purposes of permitting by the state (pursuant to Chapter 373)". This new language could impact mitigation requirements with the State or Water Management District. This may also remove the general requirement to avoid impacts to regulated resources (i.e. wetlands) where the development is proposed because the applicant is providing protection of regionally significant natural resources (see Sec. 10.2.1.2, Environmental Resource Permit Applicant's Handbook Volume 1 for a more thorough explanation).

-Requirement that Water Management District used population projections, intensities and densities in an approved master development order as a basis for water management district permits. New language in Section 163.3245(13), F.S. says "The water management *shall apply* the permitting criteria specified in s. 373.223 *based on the projected population and approved densities and intensities of use and their distribution in the master development order*." Staff does have concerns that this language appears to require the Water Management District to use the projections submitted by the applicant which are likely to be speculative.

-General statement superseding generally applicable provisions of the Community Planning Act that would otherwise apply. New Section 163.3245(15) states "The more specific provisions of this section shall supersede the generally applicable provisions of this chapter which otherwise would apply." This vague statement raises major concerns about the relationship of the sector plan process to normally applicable substantive and procedural requirements for development review and approvals.