

WATER MANAGEMENT – DEP ISSUES FOR SECTOR PLAN

1. The DEP and SFWMD Have Statutory Authority to Review and Comment on the Proposed Sugar Hill Sector Plan.

The Florida Statutes make water management districts and DEP responsible for providing written comments to the Dept. of Economic Opportunity on proposed comprehensive plan amendments (which included Sector Plan amendments).

The Florida Statutes makes the Department of Economic Opportunity (DEO) responsible for coordinating agency comments and providing them to the local government. Fla. Stat. § 163.3184(4)(a). DEO is also responsible for determining “whether the plan or plan amendment is in compliance [with Florida Statutes] and whether the plan or plan amendment will adversely impact important state resources and facilities” and providing comments or objections on those subject matters. Fla. Stat. § 163.3184(4)(d). Additionally, The Department of Environmental Protection (DEP) is responsible for comments on “the subjects of air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interests in lands, including state parks, greenways and trails, and conservation easements; solid waste; water and wastewater treatment; and the Everglades ecosystem restoration.” Fla. Stat. § 163.3184(3)(b)3.a. The South Florida Water Management District (SFWMD) is responsible for commenting on “flood protection and floodplain management, wetlands and other surface waters, and regional water supply.” Fla. Stat. § 163.3184(3)(b)3.a.

The Everglades provides the water supply for nearly one in three Floridians and is an economic engine for the state. Billions of dollars have been spent on restoring and protecting this national treasure. The DEP and SFWMD should inform the DEO of these facts, among others, and that that the Everglades ecosystem, and Everglades restoration projects and opportunities, constitute important state resources and facilities triggering DEO’s duty to review the Sugar Hills Sector Plan.

DEP and SFWMD possess facts and knowledge that must be gathered and communicated quickly. Florida law limits the amount of time for these agencies to file their comments with the County and submit them to DEO to thirty (30) days after receipt of the Sector Plan. We ask that the agencies identify the date on which the Sector Plan was received and announce the date on which they intend to submit their written comments and objections.

2. Substantive Issues Regarding the Proposed Sector Plan.

Independent of the potential impact of the Sector Plan on land acquisition for water storage and management options (discussed below), SFWMD should provide comment and data and analysis on issues involving its expertise and responsibilities that relate directly to the suitability of the subject land for the range of types and intensities/densities of land uses and development that would be authorized by the proposed Sector Plan:

A. Water Supply

First, the law could require SFWMD to modify its water supply plan to accommodate the substantial development contemplated by the Sector Plan and to approve long-term Consumptive Use Permits for that development. *See* Fla. Stat. § 163.3245 (4)(b). This could have adverse impacts on water supply demands. Approval of the Sector Plan could require the SFWMD to find and provide water to serve the proposed development in the face of current and projected water deficiencies in the ecosystem and for existing users.

Second, it is not clear where the water supply will come from. This is an important reason for SFWMD to comment or object. The County Staff Report for the Sector Plan says that an analysis and commitment for water and sewer demands will be required when individual development approvals are sought. [8/19/14 Planning & Zoning Staff Memo re SEP 14-0001 Sugar Hill Sector Plan, at p. 5]. The analysis provided so far says that a potable water demand of 9.83 MGD is projected. [Submittal package at 341/363 (Lamb & Assoc. Water Resources Analysis at 7)]. The water use analysis states that “When appropriate and necessary, development within the Sector Plan will apply for a public water supply consumptive use permit for an allocation from the Floridan Aquifer. Rural Estates potable water demands will be met by utilizing properly constructed wells or package water treatment plants (Policy 7.B.1.2). Irrigation usage will be met by properly constructed wells or surface water.” [Submittal package at 341&344/363 (Lamb & Assoc. Water Resources Analysis at 7, 10)]. “An impact analysis of the proposed groundwater withdrawals will be conducted during the consumptive use permitting process.” [Submittal package at 345 (Lamb & Assoc. Water Resources Analysis at 11)]

At the Aug 28, 2013 FDEP pre-application meeting, consultant Steve Lamb said “SFWMD hasn’t been that excited about allowing utilities to convert the agricultural water source to the utility water source.” [Submittal Package at p. 38]. The notes of that meeting reflect that Mr. Lamb and a DEP staffer agreed the Floridan would be best option for a water source, but will require RO/membrane treatment and brine disposal” and also reflect a statement that reuse may be a problem given the nutrient problem in the EAA. [Submittal Package at p. 38]. The notes of the pre-application meeting with the SFWMD [Aug 27 2013 meeting] reflect that, Len Lindalh of SFWMD, asked “where is water supply coming from?” [Submittal Package at p. 39]. The notes of the Oct 8 2013 SFWMD pre-application meeting indicate a notation that that “there is a lot of water used on the property today for ag; the overall result of the future development will probably be less water use.” [Sector Plan Submittal Package at p. 39]

As to this final point, it is for SFWMD to provide a full and frank analysis of the existing water supply and the impact of this proposed Sector Plan on that water supply. Further, SFWMD should explain to the DEO that any water no longer used by an existing operation does not automatically get transferred to a different use – such as development – and that the cessation of one use may cause that water allocation to be re-assessed in terms of what is currently a reasonable-beneficial use. SFWMD’s comments should elaborate on the issues that staffers raised in the pre-application meetings. If SFWMD no longer considers the issues to be of concern, it should provide the factual basis and reasoning for that conclusion.

B. Flood protection and floodplain management

The Sector Plan documents do not demonstrate that the lands are suitable for the type of development allowed in the Sector Plan relative to flood protection and drainage. The Sector Plan Staff Report states that the subject lands are located in FEMA Flood Zones A and Z and that storm water management and mitigation requirements would be applied at the development approval stage. [8/19/14 Planning & Zoning Staff Memo re SEP 14-0001 Sugar Hill Sector Plan, at p. 5]. The flood zone map is at page 116/363 of the Submittal Package. Also, the Environmental Analysis submitted along with the Sector Plan identifies many different soil types within the subject lands, with virtually all identified as poorly or very poorly drained. [Aug. 26 Submittal Package at 208-219/363 (Environmental Analysis p. E-1 to E-12)].

There appears to be no meaningful analysis of the suitability of the subject area for the allowed development from a standpoint of flooding, drainage, storm water management and related issues. SFWMD should comment or object by providing complete information on the suitability of the existing water management system in this area to accommodate the full amount of development contemplated by the Sector Plan and on the potential implications of providing future drainage/flood protection for that contemplated development as the potential impact on the Everglades, the estuaries, Lake Okeechobee, and other ecologically important areas within SFWMD's boundaries.

C. Ecosystem Restoration

DEP, in coordination with SFWMD, should object/comment based upon ecosystem restoration by explaining that:

- SFWMD has an existing contractual right (with an Oct. 2015 deadline) to purchase land within the EAA that is ideally situated to send water south and further existing restoration efforts.
- There are 2 non-exclusive options that remain. The "Initial Non-Exclusive Option" (i.e., the purchase of approximately 46,800 acres that expires in October 2015) and the "Entire Option Property Non-Exclusive Option" (i.e., approximately 153,000 acres or the balance of that if the Initial Non-Exclusive Option is exercised, which expires in October 2020); Both require the purchase of all the identified lands on the map, and thus the District cannot pick and choose parcels within the layout and must acquire all or nothing for each option. (page 62, paragraphs 26(a)(ii) and (iii) of the Second Amended and Restated Agreement for Sale and Purchase.)
- Thus, the land use changes in the proposed Sector Plan could impact the District's ability to effectuate the purchase.
- This land acquisition option "represents an unprecedented opportunity to protect and restore the Everglades in a way we never anticipated." (per SFWMD website).
- The existing water management and storage options developed by the District under the *River of Grass* restoration planning process overlap with lands for which the Sector Plan would allow an increased range of uses and development densities and intensities.
- The inability to locate those projects on this land would adversely impact Everglades Restoration, which is an issue of statewide importance.

DEP's comments should elaborate on the question its staff raised during a pre-application meeting on Aug. 14, 2013. The notes for that meeting reflect that "FDEP asked how the Sector Plan property related to existing restoration projects and asked about the long term plan for the large southwest area of the sector plan area." [FDEP 8.14.13.meeting (page 36 of the Sector Plan Submittal Package). There is nothing mentioned about a response, but the notes indicate that "FDEP will send...list of restoration projects."

It is essential for SFWMD and DEP to provide this information in a formal comment letter to the DEO because the Sector Planning documents appear to wholly fail to even acknowledge the existence of the District's contractual rights and of the River of Grass project alternatives and underlying data and analysis. There is no mention of the prior restoration/ reservoir planning performed by SFWMD for the proposed U.S. Sugar acquisition lands, or of the overlap of potential restoration projects with any of the areas for which the proposed Sector Plan would allow new development or other uses. There is no analysis of the compatibility of the newly-allowed land uses with potential restoration projects.

Further, DEP and SFWMD should correct the following statements in the Sector Plan's Environmental Analysis:

- **"There are no proposed acquisition areas within this portion of Hendry County.** This attests to the lack of environmental sensitivity and regional significance of these lands...." [Aug. 26 Submittal Package at 192/363 (Environmental Analysis p.1)]
- "land acquisition programs have identified various portions of Hendry County as environmentally and regionally significant; thus warranting these areas for acquisition and conservation.... None of these...include the portions of Hendry County that are the subject of the Sugar Hill Sector Plan. This further attests to the **lack of** environmental sensitivity and **regional significance** of the lands within this part of Hendry County." [Aug. 26 Submittal Package at 196/363 (Environmental Analysis p.5)]