



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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April 28, 2005

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 PLANNING & ZONING
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The Honorable Manuel Diaz
 Mayor, City of Miami
 P.O. Box 330708
 Miami, Florida 32333-0708

RE: City of Miami Adopted Evaluation and Appraisal Report, Resolution No. R-04-0806

Dear Mayor Diaz:

The Department has completed its 90-day final sufficiency review of the adopted Evaluation and Appraisal Report (EAR) for the City of Miami, adopted on December 9, 2004, by Resolution Number R-04-0806. The Department has determined the adopted EAR to be Insufficient because it does not fulfill the requirements of Section 163.3191(2), Part II, Florida Statutes (F.S.). This determination follows our 60-day preliminary sufficiency review determination of Insufficiency, as indicated in a March 29, 2005 letter to you from this office.

In the interim 30-day period between the preliminary sufficiency review determination and this final sufficiency review determination, the City of Miami Department of Planning and Zoning and its consultants have been diligent in supplying to this office a considerable amount of information addressing the deficiencies identified in the Department's March 29 preliminary sufficiency review. However, because this supplemental information has not been formally adopted into the EAR by the City, the Department must necessarily find the December 2004 adopted EAR insufficient. Once the supplemental information has been included in a revised version of the EAR and re-adopted by the City, it is likely the revised EAR would be determined to be sufficient, upon re-submission to the Department.

The deficiencies noted in the final sufficiency review are identical to those identified in the earlier preliminary sufficiency review, namely that the EAR does not meet minimum requirements as provided for in §163.3191, F.S., including:

1. The EAR does not adequately evaluate the financial feasibility of implementing the comprehensive plan and of providing needed infrastructure to achieve and maintain adopted level-of-service standards and sustain concurrency management systems, as required pursuant to § 163.3191(2)(c), F.S.

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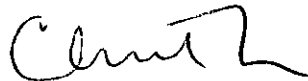
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2. The EAR does not adequately evaluate the location of existing development in relation to the location of development as anticipated in the comprehensive plan, as required pursuant to § 163.3191(2)(d), F.S.
3. The EAR does not adequately evaluate relevant changes to the minimum criteria contained in Chapter 9J-5, F.A.C., as required pursuant to § 163.3191(2)(f), F.S.
4. The EAR does not provide sufficient data and analysis to adequately evaluate whether the plan objectives within each element, as they relate to major issues, have been achieved, as required pursuant to § 163.3191(2)(g), F.S.
5. The EAR does not evaluate whether any past reduction in land use density within the coastal high-hazard area impairs the property rights of current residents when redevelopment occurs, as required pursuant to § 163.3191(2)(m), F.S.

Please note that the Department's final determination of insufficiency will require that the City adopt a revision of the EAR, addressing the deficiencies identified above, and submit the revised EAR for review by the Department.

The Department's staff is available should you require additional assistance in addressing the issues identified in the attached report. If you have any questions, please contact Mr. Roger Wilburn, Principal Planner, or Mr. Paul Darst, Senior Planner, at (850) 922-1764.

Sincerely yours,



Charles Gauthier, AICP
Chief of Comprehensive Planning

CG/pds

Enc.

cc: Ms. Ana Gelabert-Sanchez, Director, City of Miami Department of Planning and Zoning
Ms. Carolyn A. Dekle, Executive Director, South Florida Regional Planning Council

FINAL SUFFICIENCY REVIEW
ADOPTED EVALUATION AND APPRAISAL REPORT
CITY OF MIAMI

SUFFICIENCY ISSUES

1. EAR REQUIREMENT § 163.3191(2)(C): FINANCIAL FEASIBILITY OF PLAN

The financial feasibility of implementing the comprehensive plan and of providing needed infrastructure to achieve and maintain adopted level-of-service standards and sustain concurrency management systems through the capital improvements element, as well as the ability to address infrastructure backlogs and meet the demands of growth on public services and facilities.

The EAR states that: (1) the City currently has a supply of recreation and open space in excess of that required under its LOS standard; (2) the City is meeting its LOS standards for solid waste and storm sewer; and (3) the City has 26 road segments projected to be at LOS "F" by 2025, which does not meet its LOS "E" standard. In its discussions of these public facilities and services, however, the EAR does not adequately address the financial feasibility of providing needed infrastructure to achieve and maintain adopted level-of-service standards and sustain concurrency management systems.

Recommendation: The EAR should evaluate retrospectively the performance of the City in meeting the adopted level of service standards adopted in the comprehensive plan for sanitary sewer, solid waste, drainage, potable water, parks and recreation, and transportation facilities. Where the level of service standard was not met or where development was delayed because the level of service standard would not have been met, the EAR should describe why this happened and what steps are necessary to ensure that situation does not recur and that the level of service will be achieved. The EAR should also look ahead for the current short-range and long-range planning periods. For the short-range planning period (until 2010) the EAR should identify the public facilities that will be needed and the provide an estimate of costs for which the local government has fiscal responsibility, which are necessary to implement the comprehensive plan, including a delineation of when facilities will be needed, the general location of the facilities, and financially feasible revenue sources to fund the facilities. For the long-range period (until 2015) the EAR should do generally the same thing, but the planning program need not demonstrate financial feasibility.

2. EAR REQUIREMENT § 163.3191(2)(D): LOCATION OF DEVELOPMENT

The location of existing development in relation to the location of development as anticipated in the original plan, or in the plan as amended by the most recent evaluation and appraisal report update amendments, such as within areas designated for urban growth.

The EAR states: "The development and redevelopment that has occurred in the City has been consistent with the City's adopted Future Land Use Map, as it may be periodically amended

as the result of specific applications.” What the EAR appears to be saying is that growth in the City has been consistent with the FLUM except where amendments were needed. However, the EAR should recognize that for those areas where amendments were needed, growth in the City was not consistent with the FLUM prepared at the end of the last EAR cycle.

Recommendation: The EAR should assess where growth and redevelopment was originally targeted and where it actually occurred or is occurring. If growth and redevelopment did not occur in accordance with the City’s plan, the analysis should seek to determine why and what might be done differently in the next planning period.

3. EAR REQUIREMENT § 163.3191(2)(F): CHANGES TO THE STATUTE AND RULE

Relevant changes to the state comprehensive plan, the requirements of this part, the minimum criteria contained in chapter 9J-5, Florida Administrative Code, and the appropriate strategic regional policy plan since the adoption of the original plan or the most recent evaluation and appraisal report update amendments.

FLORIDA ADMINISTRATIVE CODE RULE 9J-5

Rule 9J-5.0055, Concurrency: Although the City’s initial EAR was adopted in 1995, after Rule 9J-5 was amended in 1989 and 1994 to further refine what should be addressed in a local government concurrency management system, the City’s comprehensive plan contains insufficient detail to satisfy the statutory and administrative rule requirements. The City’s concurrency management system is essentially contained in the following objective and policies: Policy LU-1.1.1, Policy LU-1.1.2, Policy LU-1.6.4, Objective CI-1.2, Policy CI-1.2.2, and Policy CI-1.2.3.

Note that Policy CI-1.2.2 authorizes the issuance of development orders if the capital improvements which would eliminate any resulting service deficiency are programmed to begin within one year and are included in the current Capital Budget. This is not consistent with the requirement in §. 163.3180(2)(a), F.S., which requires that sanitary sewer, solid waste, drainage, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent.

The comprehensive plan’s description of the City’s concurrency management system should:

- List the public facilities and services for which concurrency is required: sanitary sewer, solid waste, drainage, potable water, parks and recreation, and transportation facilities (and any others the City has chosen to implement concurrency for). Policy CI-1.2.3 sets LOS standards for sanitary sewer, solid waste, storm sewer, potable water, recreation and open space, and traffic circulation; however, the comprehensive plan does not directly state which public facilities are subject to concurrency requirements. See s. 163.3180(1)(a), F.S., and F.A.C. Rule 9J-5.0055(1)(a) and (2)(a).
- State that the public facilities and services required to serve development, unless already available, are to be consistent with the capital improvements element of the local comprehensive plan or guaranteed in an enforceable development agreement. See § 163.3177(10)(h), F.S.

- State that, consistent with public health and safety, sanitary sewer, solid waste, drainage, and potable water facilities shall be in place and available to serve new development no later than the issuance by the local government of a certificate of occupancy or its functional equivalent. See § 163.3180(2)(a), F.S.
- State that, consistent with the public welfare, and except as otherwise provided in this section, parks and recreation facilities to serve new development shall be in place or under actual construction no later than 1 year after issuance by the local government of a certificate of occupancy or its functional equivalent. See § 163.3180(2)(b), F.S.
- Include the objectives, policies and standards for the establishment of a concurrency management system. See Rule 9J-5.0055(1).
- Include a system for monitoring and ensuring adherence to the adopted level of service standards, the schedule of capital improvements, and the availability of public facility capacity. See Rule 9J-5.0055(1)(c).
- Include guidelines for interpreting and applying level of service standards to applications for development orders and development permits and determining when the test for concurrency must be met. The latest point in the application process for the determination of concurrency is prior to the approval of an application for a development order or permit which contains a specific plan for development, including the densities and intensities of development. See Rule 9J-5.0055(1)(d).
- Additional requirements for the elements of a concurrency management system to be contained in a local government comprehensive plan are set forth in F.A.C. Rule 9J-5.0055(3) – (9), as applicable.

Note that Policy LU-1.1.2 requires the City's Planning Department to submit their concurrency reviews of proposed development to the Department of Community Affairs, which is not required by either Chapter 163, F.S., or F.A.C. Rule 9J-5.

4. EAR REQUIREMENT § 163.3191(2)(G): ACHIEVEMENT OF PLAN OBJECTIVES

An assessment of whether the plan objectives within each element, as they relate to major issues, have been achieved. The report shall include, as appropriate, an identification as to whether unforeseen or unanticipated changes in circumstances have resulted in problems or opportunities with respect to major issues identified in each element and the social, economic, and environmental impacts of the issue.

The major issues identified in the EAR are: (1) the need for and impacts of equitable redevelopment and development; (2) preservation and enhancement of natural, historic, archaeological, and recreational resources; (3) threats to neighborhood integrity; and (4) transportation problems and need. Although the EAR need only have assessed the comprehensive plan objectives which related to its identified major issues, it appears to have evaluated every objective in the comprehensive plan. By so doing, the EAR makes this evaluation of objectives serve also as the required § 163.3191(2)(h) assessment of successes and shortcomings related to each element of the plan

The approach in the EAR is to evaluate the comprehensive plan objectives by evaluating the policies associated with each objective. This is an acceptable approach, especially when a comprehensive plan is designed in this way, with the policies representing the smaller steps or actions under the broader objective. However, the Miami comprehensive plan contains a number of objectives which are stated in measurable form, with numerical targets and dates. Plainly the intent of § 163.3191, Florida Statutes, is that the EAR should directly evaluate such measurable objectives, and this has not been done.

Most of the comprehensive plan objectives are not measurable or not directly measurable, and for that matter neither are many, perhaps most, of the associated policies. Perhaps because of this, the EAR tends, for objective after objective, to reach the generalized conclusion that the City has made progress in achieving the objective. Even for the purpose of reaching a generalized conclusion that progress has been made, the EAR should supply supporting data and analysis (or summaries) substantiating that conclusion and indicating how much progress has been made. The EAR for the most part does not provide sufficient data and analysis to enable a more precise determination of the extent to which the policy has been achieved.

Measurable objectives that were not directly evaluated in the EAR include the following. More examples could be adduced.

Future Land Use Objective LU-2.3:

Encourage the preservation of all historic and architectural resources that have major significance to the city by increasing the number of nationally and locally designated sites by five percent each year for the period 1996-2001.

Objective LU-2.3 is related to one of the identified major issues, "preservation and enhancement of natural, historic, archaeological, and recreational resources." This is a measurable objective and should be evaluated directly, instead of evaluating only its associated policies, as the EAR does. The EAR concludes that the City has made some progress in achieving Objective LU-2.3.

Housing Element Objective HO-1.1:

Provide a local regulatory, investment, and neighborhood environment that will assist the private sector in increasing the stock of affordable housing within the city at least 10 percent by 2005.

Objective HO-1.1 is related to another of the major issues, "the need for and impacts of equitable redevelopment and development." This is a measurable objective and should be evaluated directly, instead of evaluating only its associated policies, as the EAR does. The EAR concludes that the City has made some progress in achieving Objective HO-1.1.

Transportation Element Objective TR-1.1:

All arterial and collector roadways under County and State jurisdiction that lie within the City's boundaries will operate at levels of service established by the respective agency. . . .

Objective TR-1.1 is related to another of the major issues, "transportation problems and needs." This is a measurable objective and should be evaluated directly, instead of evaluating only its associated policies, as the EAR does. However, the EAR does not present a conclusion

as to whether the objective has been achieved. Nor does the EAR present such conclusions for any of the other Transportation Element objectives evaluated, although there is a discussion of the associated policies.

Parks, Recreation and Open Space Objective PR-1.2:

Increase public safety and security within the City's parks, reducing crime and accident rates by at least five percent each five years 1995-2015.

Objective PR-1.2 is related to another of the major issues, "threats to neighborhood integrity." This is a measurable objective and should be evaluated directly, instead of evaluating only its associated policies, as the EAR does. The EAR concludes that the City has made progress in achieving Objective PR-1.2 and suggests that police crime statistics should be reviewed to verify reduction of crime in parks. Exactly right; but this should be included in the EAR and assessed.

Recommendation:

The EAR should be revised to evaluate directly those comprehensive plan objectives that are stated in measurable terms. Appropriate data should be provided substantiating the EAR's conclusion that progress has been achieved, even for objectives which are not directly or easily measurable.

5. EAR REQUIREMENT § 163.3191(2)(M): COASTAL HIGH HAZARD AND PROPERTY RIGHTS

If any of the jurisdiction of the local government is located within the coastal high-hazard area, an evaluation of whether any past reduction in land use density impairs the property rights of current residents when redevelopment occurs, including, but not limited to, redevelopment following a natural disaster. The property rights of current residents shall be balanced with public safety considerations. The local government must identify strategies to address redevelopment feasibility and the property rights of affected residents. These strategies may include the authorization of redevelopment up to the actual built density in existence on the property prior to the natural disaster or redevelopment.

This requirement is not addressed in the EAR.

Recommendation: Revise the EAR to address the requirement.

COMMENTS ON EAR

The Department's comments on the EAR, set forth below, do not represent sufficiency issues with the EAR, but are advisory recommendations for improvement. These comments, however, could become compliance issues with the EAR-based updating amendment to be prepared by the City.

In its discussion of affordable housing under the major issue, "The Need for and Impacts of Equitable Redevelopment and Development," the EAR states that the City's strategy for addressing affordable housing needs is described in the Community Development Department's 2004-2009 Consolidated Plan. Recommend that the EAR should make clear that

the Shimberg Center's Affordable Housing Needs Assessment was used in developing the City's strategy, to demonstrate compliance with § 163.3177(6)(f), F.S., and F.A.C. Rule 9J-5.010(2)(b), which require that local governments utilize the data and analysis from the affordable housing needs assessment developed for the Department by the University of Florida Shimberg Center.

Policies CM-2.2.1 and 2.2.2: The EAR recommends deleting the dates and continuing to work with Miami-Dade County to develop the master plans mentioned in the policies. According to the table on page 150 of the EAR these master plans have been developed, which calls into question why the City should continue to work on developing them. In addition, these policies both call for identifying funding sources by a date certain. The EAR does not reveal whether this has been done. Thus the case for deleting the policies is not made. Recommend that the EAR be clarified to indicate whether the master plans have been developed and whether the funding sources have been identified; on this basis justify recommendations regarding the policies.

Objective IC-3.1: This objective requires maximizing the use of informal, cooperative agreements as mechanisms for intergovernmental conflict resolution within Miami-Dade County and minimize the use of litigation. The EAR reports that the City has an ombudsman and therefore has achieved Objective 3.1. An ombudsman is normally an official who investigates citizens' complaints about government actions. Thus it is not clear that an ombudsman will help with intergovernmental conflict resolution, and the EAR's conclusion does not appear warranted. Furthermore, the EAR does not explain how this will "maximize the use of informal, cooperative agreements"? The establishment of the ombudsman position is *consistent* with the objective, but does not *achieve* it. Recommend that the EAR be revised to address the identified shortcomings.

COMMENTS ON EAR-RECOMMENDED AMENDMENTS

The Department's comments on the EAR-recommended amendments, set forth below, do not represent sufficiency issues with the EAR; however, these comments could become compliance issues with the EAR-based updating amendment to be prepared by the City.

Revision of measurable objectives and policies. A number of the EAR's recommendations are to remove measurability (numerical targets and dates) from comprehensive plan objectives and policies. For some objectives the EAR's recommendation to remove a date is based on the target date in the objective having passed. In these cases, it would be better to establish a new target in the objective than to take away the objective's measurability. Measurable objectives enable meaningful evaluation of the objective in the next EAR cycle and help to focus public resources for the task. Note that the purpose of the EAR is not to bring about the removal of numerical targets in objectives that were not achieved but to improve the targeting in the objectives, to make them more achievable.

Policy LU-1.2.3: The EAR recommends that Policy LU-1.2.3 be revised to state that the City's priorities in implementing, facilitating, and encouraging redevelopment and revitalization projects will be determined on an area-specific basis in accordance with the City of Miami Consolidated Plan, FY 2004 – 2009, adopted redevelopment plans, specific neighborhood and area plans, and the land development regulations, as appropriate. Recommend that the

revision of FLUE Policy LU-1.2.3 should properly cite the Consolidated Plan, adopted redevelopment plans, specific neighborhood and area plans, et al., in accordance with the administrative rule for incorporation by reference, F.A.C. Rule 9J-5.005(2)(g).

Policy LU-1.3.5: The EAR's recommended change to Policy LU-1.3.5 would state that the development of activity centers will be in accordance with standards amended into the land development regulations. This revision is acceptable provided the City does not delegate to the land development regulations that which must be in the comprehensive plan. See F.A.C. Rule 9J-5.006(4)(c).

Objective LU-2.3: The EAR recommends that it be amended to delete reference to increasing the number of designated historic sites by 5 percent a year between 1996 and 2001. To do so, however, would remove the measurability of the objective. Recommend that the objective's target be retained or revised.

Policy HO-1.25: This policy defines substandard housing as housing which has incomplete kitchen or plumbing facilities or which does not meet health and safety codes (page 26 of the EAR). The EAR recommends that this be amended to include housing with Code violations which detract from the physical appearance of neighborhoods. The City may wish to consider tracking the definition of "substandard" in § 420.0004(12), F.S.

Policy PR-1.1.5: The EAR recommends that Policy PR-1.1.5 be amended from its present statement that a majority of the land on Watson Island should be retained for recreational use to a statement that recreational lands should be included in any redevelopment plans for the island. This is a significant change, which the Department will review if submitted as a comprehensive plan amendment.

Objective PR-1.2: The EAR recommends (page 45) that Objective PR-1.2 be revised to remove the numerical target and the target year for reducing crime and accident rates. It would be better to establish a new target than to take away the objective's measurability.

Policies CM-1.1.2, 1.1.3, 1.1.4, 2.1.6, and 2.1.7: The EAR recommends eliminating the dates from these policies, because they are "ongoing" or are being "realized." Unless the actions which were proposed in the policies to be accomplished have been accomplished or realized, the presence of the dates in the policies is still appropriate. If the actions have not been accomplished, the EAR should provide a measurement of the progress made to date.

Policy CM-4.1.6: The EAR recommends deleting Policy 4.1.6 because it has been "satisfied." The post-disaster plan is said to be in place. However, F.A.C. Rule 9J-5.012(3)(b)8 states the comprehensive plan shall have an objective that addresses "Prepare post-disaster redevelopment plans which will reduce or eliminate the exposure of human life and public and private property to natural hazards." See also F.A.C. Rule 9J-5.012(3)(c)(5), requiring the comprehensive plan to contain policies identifying regulatory or management techniques for post-disaster redevelopment. Therefore it is not justifiable to remove this policy from the comprehensive plan merely because the action it specifies has been accomplished. In fact, the EAR should note that the Coastal Management Element should be amended to add an objective addressing the need for post-disaster redevelopment plans. Recommend further that the EAR be revised to recommend that the objective or policy should state that the post-disaster redevelopment plan will be revised as necessary to keep it up to date. Otherwise the

redevelopment plan could get out of date and there would be no objective or policy in the comprehensive plan requiring that it be updated. Furthermore, the EAR should evaluate whether the Coastal Management Element contains the policies required under F.A.C. Rule 9J-5.012(3)(c)5.

Objective NR-1.1: This objective is not measurable, but some of its associated policies are: Policies NR-1.1.1, 1.1.2, 1.1.3, 1.1.5, and 1.1.6. The EAR does not state whether the targets set in Policies 1.1.5 and 1.1.6 have been achieved. The EAR proposes to eliminate the dates by when to achieve the targets in Policies 1.1.2 and 1.1.3. Pursuant to F.A.C. Rule 9J-5, comprehensive plan policies are not required to have targets with dates; however, since their associated objective is not measurable as Rule 9J-5 defines objectives to be, these measurable policies do help to focus the City's effort to achieve the objective. Recommend that the EAR be revised to: (1) eliminate the recommendation that the dates be removed from Policies NR-1.1.2 and 1.1.3; or (2) make Objective NR-1.1 measurable.

Policy NR-2.1.8: The EAR recommends deletion of Policy NR-2.1.8, which states that the City will adopt an emergency water conservation ordinance by 1990 that is consistent with the existing Miami-Dade County emergency water conservation ordinance as well as the emergency water conservation policies of the South Florida Water Management District. However, F.A.C. Rule 9J-5.013(3)(c)4 requires that there be a policy addressing emergency conservation of water sources in accordance with the plans of the regional water management district. Recommend that the City either not delete Policy NR-2.1.8 or that it make certain that the comprehensive plan retains a policy satisfying the F.A.C. Rule 9J-5.013(3)(c)4 requirement.

Objective IC-2.2: The EAR states that the City has achieved IC-Objective 2.2 and its supporting policy and therefore they may be deleted. The objective directs coordination with the state, region, and Miami-Dade County in establishing LOS standards for public facilities, infrastructure and services and reconciling differences by 1990. Note, however, that F.A.C. Rule 9J-5.015(3)(b)3 requires the comprehensive plan to contain an objective which ensures coordination in establishing level of service standards for public facilities with any state, regional or local entity having operational and maintenance responsibility for such facilities. Recommend that the EAR be revised to state that either Objective 2.2, suitably revised, or another objective satisfying the Rule 9J-5.015(3)(b)3 requirement be retained in the comprehensive plan.