

TREASURE COAST REGIONAL PLANNING COUNCIL

MEMORANDUM

To: Council Members AGENDA ITEM 9
REVISED
From: Staff
Date: May 21, 2010 Regional Planning Council Meeting
Subject: Scripps Florida – Phase II/Briger Tract Development of Regional Impact
Development Order

Introduction

Council reviewed the Scripps Florida – Phase II/Briger Tract Development of Regional Impact (DRI) and adopted an impact assessment report for the project on September 18, 2009. The DRI was issued a Development Order (DO) by the City of Palm Beach Gardens on April 1, 2010. The DO has been rendered to Council and the Department of Community Affairs (DCA). At this point, the Council is to advise DCA on: 1) whether the City's DO addresses all regional issues raised in Council's DRI assessment report and recommendations; and 2) whether DCA should appeal the DO. DCA must make the determination whether or not to appeal the DO. Council's comments to DCA are due on May 24, 2010.

Background

The Scripps Florida – Phase II/Briger Tract DRI is a proposed multi-use development on approximately 681.69 acres in the City of Palm Beach Gardens, Florida. The project site is located immediately east of the Florida Turnpike, south of Donald Ross Road, and north of Hood Road (Appendix A, Project Location Map). The site is divided north-south into two pieces by I-95. The site is bounded by utilities and the Florida Turnpike to the west; the Abacoa DRI to the north, residential and the Benjamin School to the east, and residential and vacant property to the south. The properties to the north of the project are located in the Town of Jupiter.

The Master Development Plan proposes several components, including the Scripps Campus District, a Biotech District, a Town Center District, a Neighborhood District, a Neighborhood Commercial District, and upland and wetland preserve areas (Appendix B, Master Development Plan – Map H). The plan proposes a total of 2,600,000 square feet (SF) of biotech research and development, 1,200,000 SF of office, 500,000 SF of retail, 2,700 residential dwelling units, and a 300-room hotel. Development is proposed to occur in four, four-year phases with buildout in 2028.

Council's impact assessment report included a comprehensive evaluation of regional issues and 66 recommended DO conditions of approval designed to: 1) minimize or eliminate unfavorable impacts on state and regional resources and facilities; 2) strengthen and detail the master plan to address fundamental regional planning and urban design issues; 3) mitigate affordable housing and environmental impacts; 4) protect archeological resources; and 5) assure that adequate public facilities and infrastructure related to transportation, schools, emergency public shelters, water, sewer, police and fire protection, solid waste disposal, water management, and parks and recreation are provided to support this development.

Evaluation

The Scripps Florida – Phase II/Briger Tract DO (Appendix C, City of Palm Beach Gardens Resolution 80, 2009) addresses most of the concerns raised by Council in the DRI assessment report. All regional issues have been addressed as identified by Council. Additional recommendations on regional issues related to concerns with the Master Development Plan, Upland Preservation, and Listed Species, are provided to the City and DCA for their consideration.

Master Development Plan

Council recommended four DO conditions related to strengthening and detailing the DRI Master Development Plan or "Map H." None of the four conditions are included in the City's DO. No additional detail has been provided on Map H (Appendix B, Master Development Plan and Appendix D, Council's Recommended Conditions).

Council suggested these conditions to assure that: 1) fundamental regional planning, environmental, urban design and public infrastructure efficiency issues are addressed consistent with the Strategic Regional Policy Plan (SRPP); and 2) beneficial design objectives described and committed to by the developer in the DRI application would be realized. Council's most significant recommendation was to focus all development on the 475-acre parcel east of I-95, using a normal and regular pattern of streets, blocks and open spaces, while leaving the 200-acre parcel west of I-95 for preservation, passive recreation, and other functions.

Several regional benefits of organizing development on this site as recommended by Council were identified in the DRI Assessment Report transmitted to the City on September 28, 2009. These included:

- unified preserve area and management opportunities
- reduced public and private infrastructure costs
- increased feasibility and cost-effectiveness of public transit
- reduced vehicle miles traveled, greenhouse gas emissions, and energy use
- reduced off-site traffic impacts to Hood Road
- increased groundwater recharge
- allowing all environmental mitigation to be done on-site
- increased usable passive recreation area
- improved habitat arrangement for listed species

- reduced land consumption
- greater opportunities for physical activity by facilitating the use of non-motorized modes of travel, such as walking and bicycling
- establishing a more compact, complete, and connected community

An alternative Map H or Master Development Plan was provided by Council to the City, illustrating one way in which regional issues and concerns could be addressed while achieving the benefits listed above.

In its final form, the Scripps Florida – Phase II/Briger Tract DRI Master Development Plan fails to address Council’s fundamental regional planning, urban design, environmental, or infrastructure efficiency concerns and issues identified in Council’s DRI Assessment Report. The Master Development Plan for the DRI cannot be determined to be consistent with Council’s SRPP (see Appendix B, Summary of SRPP Goals, Strategies and Policies Relevant to the DRI Master Development Plan).

The land development scheme for the project is more of an entitlement or concept plan. The plan offers no commitment or reasonable level of assurance that all of the positive features committed to in the DRI application will be realized. The limited road network illustrated on the plan divides the parcel into large pods. This will result in a sprawl development pattern of large, isolated and internally focused pods, connected only by auto-dominant roadways. The plan is vague. It does not portray or assure the type of built environment that will improve the urban form of the City or Region in an efficient and sustainable manner. Condition 5 of the City’s DO adds further uncertainty by allowing the transfer of up to 1,000,000 cumulative SF of office development and 250,000 SF of retail development between the three largest parcels east of I-95.

The City has assigned the DRI a general future land use designation of Mixed Use. The DRI was rezoned by the City to Planned Community Development (PCD), with an underlying zoning of Mixed Use (MXD). The applicant has also prepared a set of local “Design Guidelines” for the project. Although not part of the DRI application or the DO, these guidelines have the potential to positively influence the built environment of the project and address some of Council’s original concerns.

The final version of the Design Guidelines has been made part of the City’s MXD zoning code as was recommended by Council. Unfortunately, because the DRI is zoned PCD, nearly all provisions in the underlying MXD zoning code affecting urban form and the built environment can be waived and are subject to negotiation. As such, the “Design Guidelines” and future land use and local zoning classifications assigned to this DRI by the City provide no assurance the regional issues and concerns outlined above and in Council’s DRI Assessment Report will be addressed consistent with the SRPP.

The DRI process is not used solely as a development entitlement or traffic vesting process. It is a planning process to be used in refining a local government’s general future land use plan into a predictable master plan and set of impacts for a specific area. In return for providing a specific plan of development, the developer receives a long-term, predictable approval to build without additional governmental requirements. This exchange represents the value of the DRI process to

the public and private sectors and provides long-term certainty that state, local and regional issues will be addressed. Allowing an overly flexible and vague master plan reduces the certainty and benefits the public sector should gain from the DRI process.

Over the years, Council has considered the argument for “flexibility” in DRI Master Development Plans. The debate has always revolved around two concerns: 1) too much detail in Map H will result in too many changes in the future that must be processed by government; and 2) it is too difficult or even impossible to do lot, block and street level planning at this stage for large projects.

First, it is surprisingly simple to do master planning at the lot, block and street level for projects of this size or larger. Doing this level of detail, even if labeled “conceptual,” defines the “vision” for the project, leaves very little doubt about what is intended by the developer, and indicates how the development will address regional issues and what the citizens can expect.

Second, a detailed Map H can be prepared that will provide the necessary flexibility for shifting the location of land uses, changing land use mixes, and relocating streets and open spaces without further local, regional and state review. It is possible within a DRI application to establish a very detailed conceptual master plan as part of Map H. This master plan would be viewed as a commitment from the developer to a blueprint for creating final PUD or PCD site plans. It would then be referenced as such in the local DRI DO. This approach would at least provide: 1) immediate clarity to local citizens and the City about the kind of built environment they can expect from this development; 2) an accurate assessment of impacts to state and regional resources and facilities; and 3) a way to minimize or eliminate Map H changes that must be processed by the city, state and regional planning council.

The success of the project will be measured not only in its employment numbers and growth of the local bio-science industry; but in whether and to what extent the urban planning is accomplished and sustainable. Palm Beach County has made a significant investment of public dollars in the project. As such, planning for the project should be exemplary and affirm that the City and County are serious about improving the urban form and sustainability of the area. The City can address the regional concerns related to the DRI Master Development Plan by amending the DO to require the developer to submit and commit to a more detailed conceptual master plan based on a normal and regular system of streets, blocks and public open spaces; and on the Design Guidelines adopted by the City of Palm Beach Gardens for the Scripps Florida-Phase II/Briger Tract DRI.

Upland Preservation

The 681.89-acre project site is primarily undeveloped and has an extensive coverage of forested upland communities (Appendix F, Wildlife and Plant Resources Map). The main native upland communities include pine flatwoods (305.98 acres); upland scrub, pine and hardwoods (46.93 acres); pine-mesic oak (17.62 acres); temperate hardwoods (10.80 acres); and dry prairie (0.29 acres). The total amount of upland natural communities on the project site is 381.62 acres. This total does not include other upland communities on site that are impacted by exotic vegetation including, disturbed pine flatwoods (108.37 acres) and dry prairie/melaleuca (7.17 acres).

The Master Development Plan in the DO commits to providing 83.26 acres of upland preservation/restoration on the project site and 12.34 acres off site. The location of the upland preserve area is shaded on the Master Development Plan (Appendix B). There are two issues with the preserve area that are inconsistent with the SRPP. The first issue relates to the quality of the areas proposed for preservation. The second issue relates to the design of the Upland Preserve shown on the Master Development Plan (Appendix B).

Quantity

The Scripps Florida – Phase II/Briger Tract DRI Application for Development Approval (ADA) proposed to protect more than 25 percent of the significant upland natural communities located on the project site. Twenty-five percent of 381.62 acres equals 95.40 acres. The DO commits to protecting 83.26 acres on site and 12.34 acres of the upland preservation requirement at an off site location. The 12.34-acre off site option is being afforded to the Scripps II portion of the DRI to maximize the development potential of Palm Beach County’s 60.81-acre Scripps campus site. This is consistent with SRPP **Regional Policy 6.7.1.2**, which states as a minimum baseline measure for consistency with the SRPP, the Regional Planning Council will strive to achieve protection of 25 percent of upland natural communities in the evaluation of development plans.

Quality

One issue with the upland preserve area shown on the Master Development Plan is that it includes a variety of areas that are not considered to be the native upland communities discussed above. For example, the upland preserve includes areas identified in the ADA as mobile home units, improved pastures, Brazilian pepper, exotic wetland hardwoods, disturbed pine flatwoods, and several other wetland categories not considered to be upland natural communities. Including these areas has the effect of decreasing the amount of true upland natural communities protected and reducing the ecological value of the preserve area. The proposal to use these areas to meet the 25 percent upland preservation commitment is inconsistent with SRPP **Regional Goal 6.7**, protection of upland natural communities and ecosystems.

Design

Another issue with the uplands is the current design of the Upland Preserve shown on the Master Development Plan (Appendix B) provides for much of the preserve to exist in long, narrow linear strips. These bands of preserve area function primarily as buffers along the boundaries of the project. The narrow linear strips have limited value in providing habitat for wildlife and protected species of plants. This is especially important when listed species, such as the gopher tortoise and hand fern occur on the project site. The design of the Upland Preserve shown on the Master Development Plan in the DO is inconsistent with SRPP **Regional Strategy 6.8.1**, which states that preserve areas should be designed and established to protect endangered and potentially endangered species.

Council assisted in providing an expedited review of the Scripps Florida – Phase II/Briger Tract DRI. The expedited permitting review process recognizes that economic development projects

have to be thoughtfully planned to take into consideration the protection of the state's environment. A goal of the process is for the project to provide a net ecosystem benefit. One of the ways this project could provide a net ecosystem benefit is to establish a permanent natural preserve area designed to maximize its ecological potential. The preserve area could be designed to provide a net ecosystem benefit by consolidating the required upland preserve in one location. A consolidated preserve area could accommodate a greater diversity of wildlife, provide more suitable habitat for the protection of endangered and potential endangered plants and animals, and facilitate management of the system.

The City can address the regional concerns related to upland preservation by revising the Master Development Plan to ensure the preserve area is redesigned and established to protect endangered and potentially endangered species on site.

Listed Species

Council's recommended conditions included several special provisions to protect the gopher tortoise (state listed – Threatened), and hand fern (state listed – Endangered) on the project site. In order to protect the gopher tortoise population, recommended Condition 42 (Appendix D, page D-13) called for the developer to develop a detailed management plan that provides for the protection and relocation of gopher tortoises into the preserve areas identified on Map H, Master Development Plan. The recommended condition calls for compliance with the Florida Fish and Wildlife Conservation Commission gopher tortoise protection guidelines for this species. In order to protect the hand fern population on the project site, Condition 43 (Appendix D, page D-14) called for the developer to develop a detailed management plan that provides for the protection of hand fern in the preserve areas identified Map H, Master Development Plan. The details of all protection measures for listed species are to be provided in a Preserve Area Management Plan.

The adopted DO includes conditions requiring the protection of gopher tortoises and hand fern (Appendix C, Conditions 43 and 44 on page C-21) nearly identical to Council's recommended conditions, except each of the adopted conditions includes the phrase, "or an appropriate off-site recipient area." The addition of this language would allow all the gopher tortoises and hand fern to be relocated off the project site. This could effectively eliminate one population of each of these species in the region. Furthermore, the applicant has not provided any evidence that hand fern can be relocated successfully. The upland preserve area, which should be at least 95.4 acres, is adequate in size to protect populations of these species on the project site. However, as discussed above under **Upland Preservation**, the upland preserve area should be enlarged and redesigned in order to provide proper protection for the listed species. DO Conditions 43 and 44 are inconsistent with SRPP **Regional Strategy 6.8.1**, which states that preserve areas should be designed and established to protect endangered and potentially endangered species.

The City can address the regional concerns related to listed species by deleting the phrase "or an appropriate off-site recipient area" from Conditions 43 and 44, and by redesigning the Preserve Area to accommodate the listed species as described in the section above under **Upland Preservation**.

Comments

Findings of Fact

Resolution 80, 2009 includes a finding of fact stating that the proposed development is consistent with the report and recommendations of the Treasure Coast Regional Planning Council. However, not all issues have been addressed as recommended in Council's assessment report. As described in preceding sections of this report, major regional issues related to the Master Development Plan, Upland Preservation, and Listed Species are not adequately addressed in the DO.

Conclusions of Law

Resolution 80, 2009 includes a conclusion of law stating: "the proposed development meets the requirements contained in Section 380 Florida Statutes." The DCA should consider whether the lack of detail provided on the Master Development Plan/Map H meets the requirement and intent of DCA's DRI ADA referenced under Chapter 380. The ADA questionnaire describes Map H as showing "proposed land uses and locations, development phasing, major public facilities, utilities, preservation areas, easements, right-of-way, roads, and other significant elements such as transit stops, pedestrian ways, etc." Showing these plan elements, especially transit stops and pedestrian ways implies a requirement for far more detail than is currently included on Map H. Council considers these elements as well as the entire street network and network of parks and greens as significant elements that are missing from the DRI Master Development Plan and critical in determining: 1) how the plan will function; 2) how the plan will address regional issues; 3) its consistency with the SRPP, and 4) whether developer commitments to connectivity, walkability and design as described in the developer's DRI Application will be achieved under the proposed master plan.

Transportation

New Exhibit 3 dealing with conversion examples and service generation rates (Appendix C, page C-81) was added to the DO to allow conversion of uses. Conversions are based on the following control values: waste water, potable water, solid waste, and trips segregated into the east and west side of I-95. This section only deals with trips and their generation rates. The following issues have been identified:

- Service Generation Rates – Trip Demand Matrix
 - i. Approved retail is only 50,000 SF as opposed to 500,000 SF shown in the table: West Side of I-95 – AM Peak Hour.
 - ii. Generation rate for Apartment appears to be calculated incorrectly as 0.498, the correct value should be 0.497 trips/unit: West Side of I-95 – AM Peak Hour.
 - iii. Generation rate for Apartment appears to be calculated incorrectly as 0.582, the correct value should be 0.583 trips/unit: West Side of I-95 – PM Peak Hour.

- iv. Generation rate for Apartment appears to be calculated incorrectly as 0.415, the correct value should be 0.414 trips/unit: East Side of I-95 – AM Peak Hour.
- v. Generation rate for Apartment appears to be calculated incorrectly as 0.410, the correct value should be 0.411 trips/unit: East Side of I-95 – PM Peak Hour.
- vi. Trip generation rates for Hospital are inconsistent with those included in the *Institute of Transportation Engineers' (ITE) Trip Generation report, 7th Edition*. Trip generation rates for Hospital (ITE Land Use 610) are 1.13 trips/bed during the AM and 1.30 trips/bed during the PM peak hour. Exhibit 3 shows 0.900 for AM and 0.800 for PM peak hour.
- vii. Trip generation rates for Post Secondary School are inconsistent with those included in the *Institute of Transportation Engineers' (ITE) Trip Generation report, 7th Edition*. Trip generation rates for University/College (ITE Land Use 550) are 0.21 trips/student during both the AM and the PM peak hours. Exhibit 3 shows 0.740 for AM – West Side of I-95; 0.340 for AM – East Side of I-95; and 0.220 for PM peak hour, both East and West side of I-95.

The use of the generation rates included in Exhibit 3 of the DO may result in additional traffic impact on regional roadways. The inconsistencies noted above are likely the result of scrivener's errors, but will require the City to amend the DO to correct Exhibit 3 as presented above.

The adopted DO includes some inconsistencies with Council's recommended conditions of development included in the assessment report. The following inconsistencies should be reviewed by the City of Palm Beach Gardens and corrected if appropriate:

- A new condition has been added to provide driveways along Hood Road to access the parcel located to the West of I-95. Council's assessment report recommended no development on this parcel. This issue is discussed in more detail in the section above under **Master Development Plan**.
- Table 1 included in the Proportionate Share Agreement (Exhibit 2) includes Mobility Improvements by Phase. Mobility Improvements included in Council's recommended conditions in Phase 2 have been moved to Phase 3 in this table. However, based on *Florida Administrative Code, Rule 9J-2.045, Transportation Uniform Standard Rule*, "the receiving governmental agency shall agree, as a condition of acceptance, to expeditiously apply the monies for the improvement construction." This appears to be the intent of the table.
- Condition 15 of the DO was added to allow conversion of general office development into medical or veterinary office. The following conversion rate is included:

Conversion Rate from General Office (per 1,000 SF) to Medical Office/Veterinary (per 1,000 SF) is 2.5968.

The conversion rate presented above is open to misunderstanding. The City should consider amending the DO to replace the conversion rate as follows:

1,000 SF of Medical/Veterinary Office = 2,596.8 SF of General Office.

The use of the conversion rate recommended above clarifies the DO by eliminating the need to present the examples included in Condition 15.

- Conversion Examples included in Exhibit 3 (Conversion Examples and Service Generation Rates) present “available credits” in parenthesis. Engineers frequently use parenthesis when referring to negative values. However, it is not the case here, as available credits are positive values. It becomes even more confusing when using these values to perform calculations. The following calculations are presented in the exhibit: **6 trips – 35 trips + (60) trips = (31) trips.** Engineers are likely to misunderstand the calculation above and get a different value: **6 trips – 35 trips – 60 trips = -89 trips or (89) trips.** This potential misunderstanding could be avoided by omitting the parenthesis.

Comments Received from Other Review Agencies Interested Parties

Council has received comments on the Scripps Florida – Phase II/Briger Tract DRI DO from the Florida Department of Transportation and the Palm Beach County Environmental Coalition (Appendix G).

The Palm Beach County Environmental Coalition provided a report, *Impacts to Listed Species and Threatened Habitat on Proposed Scripps Phase II Development/Briger Tract*. The report concludes: 1) the surveys conducted did not sufficiently attempt to look for listed species besides gopher tortoise; 2) the applicant’s environmental review does not deal sufficiently with methods for relocating endangered plant species which are still experimental to relocate; 3) the applicant’s environmental surveys failed to map a realistic quantity of listed plants on site; 4) the Florida Fish and Wildlife Conservation Commission does not have someone reviewing DRI applications; 5) the applicant’s environmental review simply assumes lack of presence for species commensal with gopher tortoise; and 6) the applicant did not sufficiently back up their claim of no impacts.

Conclusion

Council finds that the DO satisfactorily addresses regional issues and **does not** recommend that DCA appeal the DO. Council believes all of its concerns related to the regional issues of the Master Development Plan, Upland Preservation, and Listed Species can be adequately addressed by amending the DO as recommended in this report.

Recommendation

Council should adopt this report and authorize its transmittal to the Florida Department of Community Affairs.

Attachments

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