

TREASURE COAST REGIONAL PLANNING COUNCIL

MEMORANDUM

To: Council Members AGENDA ITEM 6G  
From: Staff  
Date: December 13, 2013 Council Meeting  
Subject: Local Government Comprehensive Plan Review  
Draft Amendment to the City of Palm Beach Gardens Comprehensive Plan  
Amendment No. 13-2ESR

Introduction

The Community Planning Act, Chapter 163, *Florida Statutes*, requires that the Treasure Coast Regional Planning Council (TCRPC) review local government comprehensive plan amendments prior to their adoption. TCRPC comments are limited to adverse effects on regional resources and facilities identified in the Strategic Regional Policy Plan (SRPP) and extrajurisdictional impacts that would be inconsistent with the comprehensive plan of any local government within the Region. TCRPC must provide any comments to the local government within 30 days of the receipt of the proposed amendments and must also send a copy of any comments to the State Land Planning Agency.

The amendment package from the City of Palm Beach Gardens includes one text amendment to the Conservation Element of the comprehensive plan. This report includes a summary of the proposed amendment and TCRPC comments.

Summary of Proposed Amendment

The proposed amendment is to add the following language to Policy 6.1.4.5 in the Conservation Element:

6. The City shall provide for relief from the requirements of this policy for publicly owned lands upon which environmentally significant lands and/or listed species are located through the Land Development Regulations. Any such regulations shall establish criteria that the proposed public development must meet in order to qualify for relief from this policy.

Policy 6.1.4.5 includes specific criteria the City is to implement either in combination or singly for any proposed alteration of environmentally significant lands in order to ensure the protection of environmentally sensitive areas and listed species. The specific criteria address issues related

to project design; alternative forms of mitigation; upland preservation requirements; wetland preservation, mitigation, and buffering; and protection of listed species.

The proposed amendment provides relief from the requirements of Policy 6.1.4.5 for publicly owned lands with environmentally sensitive features. Based on a review of the comprehensive plan text amendment alone, it is not clear if the intent of the new policy language is to only remove the requirements to meet specific criteria listed in Policy 6.1.4.5, or if the intent is to completely remove any requirement to protect environmentally sensitive areas and listed species for development that occurs on publicly owned lands. However, review of an amendment to the City of Palm Beach Gardens Land Development Regulations (LDRs) in Ordinance 19, 2013 provides clarification on the intent of the comprehensive plan text amendment. The amended LDRs provide for a waiver from the minimum 25 percent set aside and/or associated mitigation requirements for upland preservation of environmentally sensitive lands for planned developments on publically owned land. A request for a waiver from the 25 percent set aside for a publicly owned planned development must satisfy a number of existing criteria, as well as one or more of the following new criteria:

- 1) The proposed development fulfills a critical government infrastructure need.
- 2) The proposed development will have a substantial and beneficial economic impact through revenue generation and job creation.
- 3) The request demonstrates that granting the waiver will result in a development that makes a significant contribution to the City's recreational and/or park space needs.

#### Extrajurisdictional Impacts

The proposed amendment was circulated by the Palm Beach County Intergovernmental Plan Amendment Review Committee Clearinghouse Coordinator on July 22, 2013. No extrajurisdictional impacts have been identified.

#### Regional Impacts

The proposed amendment has the potential to impact upland natural communities, which are resources of regional significance. However, according to the LDRs, a request for a waiver from the 25 percent environmental set aside is required to demonstrate that granting the waiver will result in preservation of valuable natural resources. Given the narrow circumstances under which the waiver is likely to be implemented, and given the overall commitment to the protection of natural resources in the City's comprehensive plan, it is likely that the proposed amendment will result in only limited impacts to natural resources of regional significance.

#### Conclusion

The proposed new policy language could be improved by adding a statement to clarify that it refers to a waiver from the minimum 25 percent set aside and/or associated mitigation requirements for upland preservation of environmentally sensitive lands for planned

developments on publicly owned land. Otherwise, the proposed language could be interpreted to apply to other criteria related to the protection of wetlands and listed species. The clarifying language is necessary to ensure that the proposed amendment is consistent with the SRPP.

Recommendation

Council should approve this report and authorize its transmittal to the City of Palm Beach Gardens and the Florida Department of Economic Opportunity.

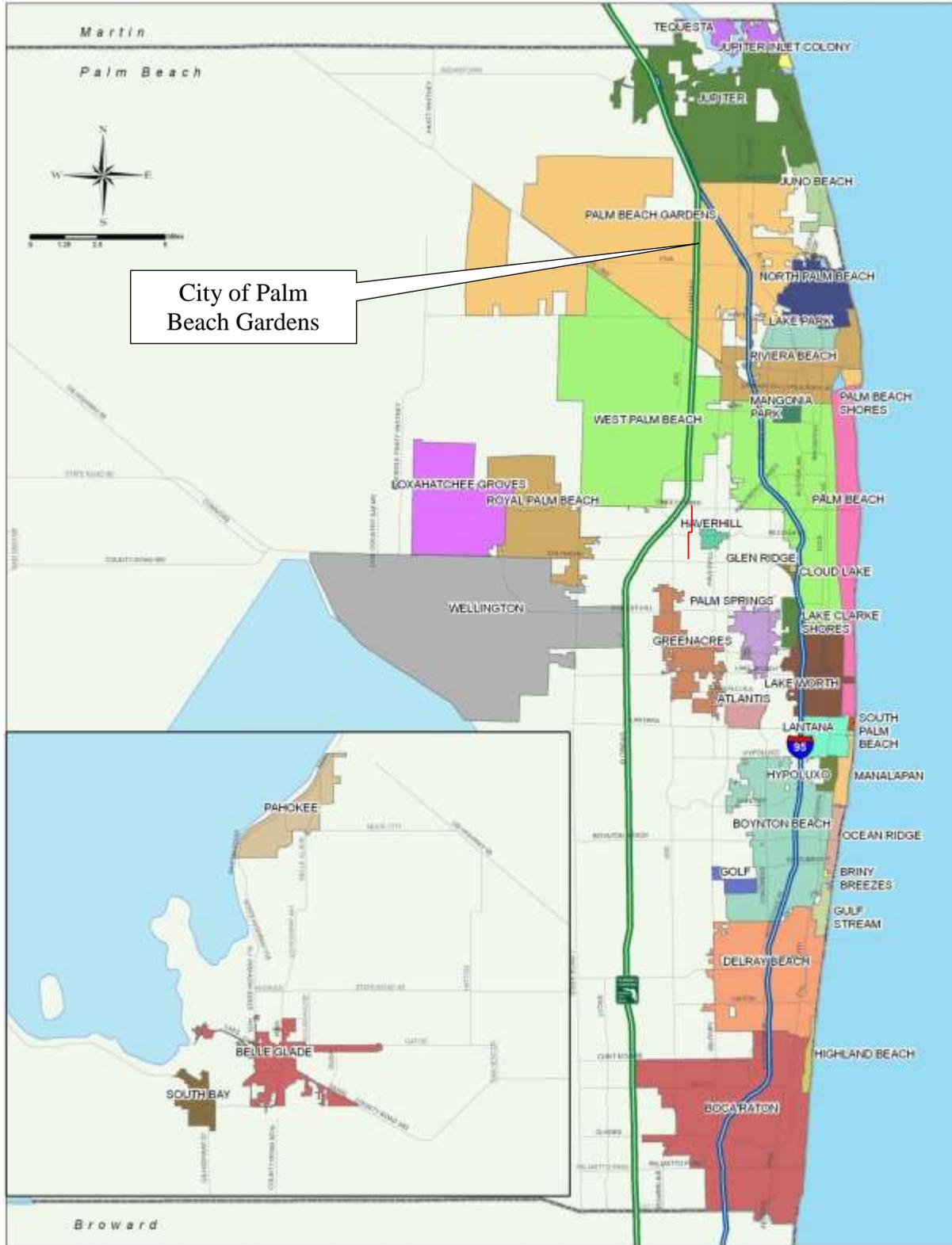
Attachments

## **List of Exhibits**

### **Exhibit**

- 1 General Location Map
- 2 Existing Policy 6.1.4.5
- 3 Ordinance 19, 2013 Amendment to the Land Development Regulations

# Exhibit 1 General Location Map



## **Exhibit 2**

### **Existing Policy 6.1.4.5**

Policy 6.1.4.5.: To ensure protection of environmentally sensitive areas and listed species, the City shall implement the following criteria either in combination or singly for any proposed alteration of lands designated as environmentally significant pursuant Comprehensive Plan policy 6.1.4.3.

1. The project design provides for the protection and preservation of valuable or unique existing natural resources, listed species and environmentally significant lands on site;
2. If no listed species have been determined to exist on the site or on-site preservation would yield a preserve area that is less than the preferred minimum of ten acres or unavoidable impacts to wetlands occur, an alternative form of mitigation acceptable to the City Council is implemented;
3. The City shall continue to require, through Land Development Regulations, that all development with significant environmental impacts, including agricultural development, set aside as preserve areas a minimum of 25 percent of the total upland native plant communities on site. The 25 percent set-aside shall be based on the quality and viability of the vegetative ecosystem. The city shall have the option to designate the portion of the plant community which will be included in the 25 percent set-aside. Such set-aside habitat shall be preserved and managed in viable condition with existing canopy, understory, and ground cover.

The city shall, for development occurring east of the Urban Growth Boundary, have the option of accepting off-site preservation or a cash payment in lieu of preservation and shall accumulate such payments from development for the purchase and management of off-site upland native plant communities. The Land Development Regulations shall establish criteria for assessing the cash payment amount and for determining which projects warrant the use of the cash payment option. A property owner of a platted upland preserve shall not be allowed to use the off-site preservation or the cash payment option to modify the preserve area.

- 4a. Wetland habitats are set-aside as preserves, and development is prohibited in wetlands except under the following circumstances consistent with Treasure Coast Regional Planning Council Policy 6.6.1.1:
  - 1) Such an activity is necessary to prevent or eliminate a public hazard;
  - 2) Such an activity would provide direct public benefit which would exceed those lost to the public as a result of habitat alteration, degradation, or destruction;
  - 3) Such an activity is proposed for habitats in which the functions and values currently provided are significantly less than those typically associated with such habitats and cannot be reasonably restored;

- 4) Such an activity is water dependent or, due to the unique geometry of the site, minimal impact is the unavoidable consequence of development for uses which are appropriate given site characteristics, or;
- 4b. Wetlands shall be protected by a density transfer program to upland areas. Where development occurs within wetlands, the developer must mitigate the function and value of those wetlands. Development activities shall occur at a density of no more than one dwelling unit per five acres in the urban area and one dwelling unit per twenty acres in the rural area, shall be clustered to the least environmentally sensitive portion of the site and shall include design considerations to protect the wetland functions of the rest of the site. Consistent with SFWMD regulations, a minimum 15-foot upland buffer composed of native vegetation shall be preserved or established around wetland areas.
5. For a site on which listed species are known or suspected to be present, one of the following criteria shall be satisfied:
  1. It shall be successfully demonstrated that the proposed land alteration/development activity will not preclude the continued survival and viability of those listed species located on site; or
  2. A plan for relocation, either on-site or off-site, for those listed species, shall be approved by all appropriate agencies.

**Exhibit 3**  
**Ordinance 19, 2013**  
**Amendment to the Land Development Regulations**

ORDINANCE 19, 2013

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3  
4 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM  
5 BEACH GARDENS, FLORIDA AMDENDING CHAPTER 78. LAND  
6 DEVELOPMENT. BY REPEALING SUBSECTION 79-158(d),  
7 READOPTING SAME, AS REVISED, AND ADOPTING NEW  
8 SUBSECTION (j) IN ORDER TO PROVIDE RELIEF FROM THIS  
9 SUBSECTION FOR PUBLICLY OWNED PLANNED  
10 DEVELOPMENTS AND TO PROVIDE CRITERIA FOR GRANTING  
11 SUCH RELIEF; PROVIDING A CONFLICTS CLAUSE, A  
12 SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY;  
13 PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.  
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15  
16 WHEREAS, the City Council adopted an amendment to the City's  
17 Comprehensive Plan pursuant to Ordinance 16, 2013; and  
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19 WHEREAS, the City Council has determined that a need exists to amend the  
20 Land Development Regulations by providing criteria for granting relief from the  
21 environmental set aside requirement in accordance with the Comprehensive Land Use  
22 Plan of the City of Palm Beach Gardens; and  
23

24 WHEREAS, on \_\_\_\_\_, the Planning, Zoning, and Appeals Board,  
25 sitting as the duly constituted Local Planning Agency for the City, recommended  
26 approval of the subject amendment to the Land Development Regulations; and  
27

28 WHEREAS, the City Council deems approval of this Ordinance to be in the best  
29 interests of the health, safety, and welfare of the residents and citizens of the City of  
30 Palm Beach Gardens and the public at large.  
31

32 NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
33 OF PALM BEACH GARDENS, FLORIDA that:  
34

35 **SECTION 1.** The foregoing recitals are hereby affirmed and ratified.  
36

37 **SECTION 2.** Chapter 78. Land Development. of the Code of Ordinances of the  
38 City of Palm Beach Gardens is hereby amended at Section 79-158. Waivers to planned  
39 development district requirements. by repealing sub-section (d), readopting same as  
40 revised and adopting new subsection (j); providing that Section 78-158. shall hereafter  
41 read as follows:  
42

43 **Sec. 78-158. Waivers to planned development district requirements.**  
44

45 (a) – (c) (These subsections shall remain in full force and effect as previously  
46 enacted.)

1 (d) *Prohibited waivers.* The waivers listed below shall not be granted by the city  
2 council.

3  
4 (1) A waiver from the requirements of division 2 of article V, establishing the  
5 PGA overlay district.

6  
7 (2) A waiver from the minimum twenty-five (25) percent set aside and/or  
8 associated mitigation requirements for upland preservation of the  
9 environmentally sensitive lands as provided in division 5 of article V, except  
10 for planned developments on publically owned land that satisfy the criteria  
11 set forth in subsection (j).

12  
13 (3) A waiver from any requirement associated with the city's concurrency  
14 management requirements established in division 3 of article III.

15  
16 (e) – (f) (These subsections shall remain in full force and effect as previously  
17 enacted.)

18  
19 Table 20: Waivers to Planned Developments (This table shall remain in full force and  
20 effect as previously enacted.)

21  
22 (g) – (h) (These subsections shall remain in full force and effect as previously  
23 enacted.)

24  
25 (i) *Criteria.* A request for the city council to approve a waiver from one or more of  
26 the standards and requirements applicable to a planned development, PUD, or PCD  
27 shall comply with a majority of the criteria listed below.

28  
29 (1) The request is consistent with the city's comprehensive plan.

30  
31 (2) The request is consistent with the purpose and intent of this section.

32  
33 (3) The request is in support of and furthers the city's goals, objectives, and policies  
34 to establish development possessing architectural significance, pedestrian  
35 amenities and linkages, employment opportunities, reductions in vehicle trips, and  
36 a sense of place.

37  
38 (4) The request demonstrates that granting of the waiver will result in a development  
39 that exceeds one or more of the minimum requirements for PUDs.

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42 (5) The request for one or more waivers results from innovative design in which other  
43 minimum standards are exceeded.

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- 1 (6) The request demonstrates that granting of the waiver will result in preservation of  
2 valuable natural resources, including environmentally-sensitive lands, drainage  
3 and recharge areas, and coastal areas.  
4
- 5 (7) The request clearly demonstrates public benefits to be derived, including but not  
6 limited to such benefits as no-cost dedication of rights-of-way, extensions of  
7 pedestrian linkages outside of the project boundaries, preservation of important  
8 natural resources, and use of desirable architectural, building, and site design  
9 techniques.  
10
- 11 (8) Sufficient screening and buffering, if required, are provided to screen adjacent  
12 uses from adverse impacts caused by a waiver.  
13
- 14 (9) The request is not based solely or predominantly on economic reasons.  
15
- 16 (10) The request will be compatible with existing and potential land uses adjacent to  
17 the development site.  
18
- 19 (11) The request demonstrates the development will be in harmony with the general  
20 purpose and intent of this section, and that such waiver or waivers will not be  
21 injurious to the area involved or otherwise detrimental to the public health, safety,  
22 and welfare.  
23
- 24 (i) A request for a waiver from the 25% environmental set aside for a publically  
25 owned planned development must satisfy one (1) or more of the following criteria in  
26 addition to the requirements of subsections (i)(1) – (11) hereinabove:  
27
- 28 (1) The proposed development fulfills a critical government infrastructure need.  
29
- 30 (2) The proposed development will have a substantial and beneficial economic  
31 impact through revenue generation and job creation.  
32
- 33 (3) The request demonstrates that granting the waiver will result in a development  
34 that makes a significant contribution to the city's recreational and/or park space  
35 needs.  
36

37 **SECTION 3.** All ordinances or parts of ordinances in conflict be and the same are  
38 hereby repealed.  
39

40 **SECTION 4.** Should any section or provision of this Ordinance or any portion  
41 thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction  
42 to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.  
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44 **SECTION 5.** Specific authority is hereby given to codify this Ordinance.  
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46 **SECTION 6.** This Ordinance shall become effective immediately upon adoption.

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**PASSED** this \_\_\_\_ day of \_\_\_\_\_, 2013, upon first reading.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2013, upon second and final reading.

<b>CITY OF PALM BEACH GARDENS</b>	<u><b>FOR</b></u>	<u><b>AGAINST</b></u>	<u><b>ABSENT</b></u>
BY: _____ Robert G. Premuroso, Mayor	_____	_____	_____
_____ Eric Jablin, Vice-Mayor	_____	_____	_____
_____ Joseph R. Russo, Councilmember	_____	_____	_____
_____ Marcie Tinsley, Councilmember	_____	_____	_____
_____ David Levy, Councilmember	_____	_____	_____

**ATTEST:**

BY: \_\_\_\_\_  
Patricia Snider, CMC, City Clerk

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

BY: \_\_\_\_\_  
R. Max Lohman, City Attorney

