

MODEL PROCEDURAL GUIDELINES FOR SPECIAL MASTER PROCEEDINGS

ANNOTATION. THE MODEL PROCEDURAL GUIDELINES, PREPARED BY THE FLORIDA CONFLICT RESOLUTION CONSORTIUM AT FLORIDA STATE UNIVERSITY, ARE INTENDED TO SERVE AS A SINGLE-SOURCE REFERENCE FOR THE CONDUCT OF SPECIAL MASTER PROCEEDINGS UNDER THE FLORIDA LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION ACT. THEY INCLUDE STATUTORY PROCEDURAL REQUIREMENTS, IN A LOGICAL GROUPING AND SEQUENCE, AS WELL AS ADDITIONAL PROCEDURES REGARDING ISSUES NOT ADDRESSED BY THE STATUTE.

THE MODEL PROCEDURAL GUIDELINES WERE PREPARED FOR USE BY STATE, REGIONAL AND LOCAL GOVERNMENTS. THEY MAY BE ADAPTED TO THE NEEDS OF EACH GOVERNMENTAL ENTITY. THEY MAY BE ADOPTED BY A GOVERNMENTAL ENTITY BY ORDINANCE OR RULE.

PROCEDURES SHOULD BE ADOPTED BY EACH GOVERNMENTAL ENTITY WHICH TAKES FINAL ACTION ON A DEVELOPMENT ORDER OR ENFORCEMENT ACTION. FOR EXAMPLE, IF A CITY'S CODE ENFORCEMENT BOARD MAY TAKE FINAL ACTION WITHOUT REVIEW OR APPROVAL BY THE MUNICIPALITY'S GOVERNING BODY, THEN THE BOARD SHOULD ADOPT PROCEDURAL GUIDELINES FOR SPECIAL MASTER PROCEEDINGS IN ADDITION TO ANY PROCEDURAL GUIDELINES ADOPTED BY THE GOVERNING BODY OF THE MUNICIPALITY.

SAMPLE FORMS FOR USE WITH THE MODEL PROCEDURAL GUIDELINES ARE IDENTIFIED IN GUIDELINE __ AND ARE ATTACHED.

THE MODEL PROCEDURAL GUIDELINES FOR SPECIAL MASTER PROCEEDINGS ARE AVAILABLE ON DISKETTE FROM THE OFFICE OF THE GENERAL COUNSEL, FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS, 2740 CENTERVIEW DRIVE, TALLAHASSEE, FLORIDA 32399.

General Provisions

1. Purpose and Intent

- (a) These guidelines establish procedures for the initiation, conduct and conclusion of a special master proceeding under the Florida Land Use and Environmental Dispute Resolution Act involving a development order or enforcement action by [adopting governmental entity]. This proceeding is voluntary for the landowner. *Ch. 95-181, §§ 2(24), 2(28), L.O.F.*
- (b) This is a nonadjudicatory settlement and expedited hearing procedure. A special master may not impose a decision but is intended primarily to explore opportunities for compromise and to assist the parties in negotiation. Settlement

through the special master process is intended to save time and money for everyone. *Ch. 95-181, § 2(28), L.O.F.*

- (c) If a settlement is not reached, the special master will conduct an independent and impartial assessment of the dispute and prepare a nonbinding recommendation. *Ch. 95-181, § 2(28), L.O.F.*
- (d) The special master proceeding is intended to be a speedy, inexpensive, simple and solution-oriented method for settlement of land use and environmental disputes. As much as possible, a landowner and regulator meet face-to-face and discuss issues directly without the need for advocacy by a lawyer. *Ch. 95-181, § 2(28), L.O.F.*
- (e) The special master and the parties should adapt these guidelines to the needs of each case, consistent with the requirements of law. *Ch. 95-181, § 2(28), L.O.F.*

2. Definitions

- (a) "Development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into [insert number] or more parcels, and all other work customarily associated with it. *Ch. 95-181, § 2(28), L.O.F.; § 380.04, F.S.*

ANNOTATION. GOVERNMENTAL ENTITIES WISHING TO ADOPT THE DEFINITION OF "DEVELOPMENT" CONTAINED IN SECTION 380.04, FLORIDA STATUTES, SHOULD INSERT THE NUMBER "THREE" IN THE BLANK. OTHER GOVERNMENTAL ENTITIES SHOULD INSERT A NUMBER BASED ON APPROPRIATE PROVISIONS OF THEIR LAND DEVELOPMENT CODES, INCLUDING THEIR SUBDIVISION REGULATIONS. A GOVERNMENTAL MAY UTILIZE AN ALTERNATIVE DEFINITION OF "DEVELOPMENT" THAT IS CONSISTENT WITH THE STATUTE.

- (b) "Development order" means any order, or notice of proposed state or regional governmental agency action, which is or will have the effect of granting, denying, or granting with conditions an application for a development permit. It includes the rezoning of a specific parcel of land. It does not include actions on an amendment to the local comprehensive plan. *Ch. 95-181, § 2(a), L.O.F.*

ANNOTATION. STATE, REGIONAL AND LOCAL GOVERNMENTAL ENTITIES WHICH DO NOT ADOPT A LOCAL COMPREHENSIVE PLAN OR ZONING CODE SHOULD OMIT THE LAST TWO SENTENCES OF GUIDELINE 2(B). LOCAL GOVERNMENTAL ENTITIES SHOULD OMIT THE PHRASE "OR NOTICE OF PROPOSED STATE OR REGIONAL GOVERNMENTAL AGENCY ACTION."

- (c) "Development permit" means:

- (1) Any building permit, zoning permit, subdivision approval, certification, special exception, variance, or any other similar action of the [adopting governmental entity], or
 - (2) Any other permit by [adopting governmental entity] authorized to be issued under state law which has the effect of authorizing the development of land including, but not limited to, programs implementing Chapters 125, 161, 163, 166, 187, 258, 372, 373, 378, and 403, Florida Statutes. *Ch. 95-181, § 2(2)(b), L.O.F.*
- (d) "Governmental entity" includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies. *Ch. 95-181, § 2(2)(f), L.O.F.*
- (e) "Land" or "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest. *Ch. 95-181, § 2(2)(g), L.O.F.*
- (f) "Owner" means a person with a legal or equitable interest in land who filed an application for a development permit for the land with [adopting governmental entity] and who received a development order, or who has an interest in land that is the subject of an enforcement action by [adopting governmental entity]. *Ch. 95-181, § 2(2)(d), L.O.F.*
- (g) "Participant" means:
- (1) A person with a legal or equitable interest in land contiguous to the owner's property; or
 - (2) A substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity support for or objections to the development order or enforcement action in a prior proceeding, including a public hearing. *Ch. 95-181, § 2(12), L.O.F.*
- (h) "Party" or "parties" include the owner, [adopting governmental entity] and any other governmental entity made a party to the proceeding. *Ch. 95-181, § 2(11), L.O.F.*
- (i) "Person" includes individuals, firms, incorporated or unincorporated associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. *§ 1.01(3), F.S.*

- (j) "Proposed use of the property" means the proposal filed by the owner to develop or otherwise use the owner's land. *Ch. 95-181, § (2)(e), L.O.F.*

3. Time Requirements and Furnishing Copies

- (a) A special master proceeding may not continue longer than 165 days from the date the owner files the request for relief. The parties may agree in writing to extend the time for performing any act under these guidelines. *Ch. 95-181, §§ 2(23), 2(28) L.O.F.*
- (b) In computing a period of time under these Guidelines, the day of the act on which the time period begins shall not be counted. The last day shall be counted unless it is a Saturday, Sunday or legal holiday, in which case the last day shall be period shall end on the next day which is not a Saturday, Sunday or legal holiday. When a time period is less than 7 days, any intervening Saturday, Sunday or legal holiday shall not be counted. *Ch. 95-181, § 2(28), L.O.F.; Rule 1.090, Fla.R.C.P.*
- (c) Any copy which must be furnished to the special master, a party or a participant may be sent by regular mail, postage prepaid, or by hand delivery to the recipient's last known address. A copy furnished by mail will be deemed furnished upon being deposited in the mail. The burden of proving a copy has been furnished is on the person responsible for furnishing it. *Ch. 95-181, §§2(5), 2(28), L.O.F.*
- (d) Any document which must be submitted, or any copy which must be furnished to the special master, a party or a participant, may be submitted or furnished by facsimile transmission, except as provided by Guideline 7(e). Such documents will be deemed submitted or furnished on the date transmitted as shown on the recipient's copy, if the copy is complete. *Ch. 95-181, §§ 2(5), 2(28), L.O.F.*
- (e) Any document received after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. *Ch. 95-181, § 2(28), L.O.F.; Rule 60Q-2.003(5), F.A.C.*

4. Standards of Conduct

- (a) The special master holds a position of trust and should adhere to the highest standards of personal integrity, impartiality and competence. The special master should be honest and unbiased, act in good faith, be diligent and avoid any conflict of interest or the appearance of a conflict of interest. The special master should disclose any facts or circumstances that may give rise to justifiable doubts as to impartiality or independence. *Ch. 95-181, § 2(28), L.O.F.*
- (b) The parties and the special master may establish additional standards of conduct for special master, and standards of conduct for parties and participants, in a

special master agreement as authorized by Guideline (). *Ch. 95-181, § 2(28), L.O.F.*

Pre-Hearing Procedures

5. Administrative Appeals and Judicial Review

- (a) An application by the owner for judicial review of the development order or enforcement action, or a formal administrative hearing pursuant to Section 120.57, F.S., if applicable, shall waive all rights to a special master proceeding. *Ch. 95-181, § 2(10)(a), L.O.F.*
- (b) A request for relief shall toll the time for filing an application for judicial review of the development order or enforcement action, or a formal administrative hearing pursuant to Section 120.57, F.S., if applicable. *Ch. 95-181, § 2(28), L.O.F.*

ANNOTATION. A COUNTY OR CITY SHOULD REVISE GUIDELINES 5(A) AND 5(B) TO OMIT THE PHRASE ", OR A FORMAL ADMINISTRATIVE HEARING PURSUANT TO SECTION 120.57(1), F.S., IF APPLICABLE," UNLESS CHAPTER 120 IS AN AVAILABLE REMEDY IN THE JURISDICTION. A COUNTY OR CITY SHOULD CONSIDER AMENDING ITS LAND DEVELOPMENT CODE OR OTHER APPROPRIATE REGULATIONS TO CONFORM TO GUIDELINE 5(B).

- (c) Invoking the procedures for a special master proceeding is not a pre-condition for judicial review of the development order or enforcement action. *Ch. 95-181, § (23), L.O.F.*
- (d) Prior to initiating a special master proceeding, the owner must request review through [type of local administrative appeal] so long as review takes no longer than four months. The filing of a valid [type of local administrative appeal] will toll the time for filing a request for relief. *Ch. 95-181, § 2(10)(a), L.O.F.*
- (e) The owner may initiate a proceeding within 30 days after conclusion of the [type of local administrative appeal] or, if the [type of local administrative appeal] has not concluded, within 30 days after four months from its commencement. *Ch. 95-181, § 2(10)(a), L.O.F.*

ANNOTATION. GUIDELINES 5(D) AND 5(E) ARE APPLICABLE TO COUNTIES AND CITIES AND SHOULD NOT BE INCLUDED IN ADOPTED GUIDELINES FOR OTHER GOVERNMENTAL ENTITIES. A COUNTY OR CITY SHOULD SPECIFY THE APPLICABLE ADMINISTRATIVE APPEAL PROCESS BY NAME OR APPROPRIATE CITATION.

6. Pre-Initiation Meeting

- (a) Prior to filing a request for relief, an owner may request an informal meeting with [adopting governmental entity] staff, to ascertain whether the issues relating to a

development order or enforcement action would be appropriate for a special master proceeding or other form of alternative dispute resolution. Upon request, staff shall participate in such a meeting. *Ch. 95-181, §2(28), L.O.F.*

- (b) The [adopting governmental entity] may agree with the owner in writing to extend the time for filing a request for relief to create an opportunity mediation or other form of alternative dispute resolution. *Ch. 95-181, §§2(23), 2(28), L.O.F.*
- (c) A special master proceeding is intended to be an additional remedy for the owner. It does not supplant other methods agreed to by the parties and lawfully available for arbitration, mediation or other form of dispute resolution. *Ch. 95-181, § 2(29), L.O.F.*

7. Request for Relief

- (a) Each development order or enforcement action shall inform the owner that he may request a special master proceeding by filing a request for relief under these Guidelines. The notification shall state the time period within which a request must be filed and where the owner may obtain a copy of these Guidelines. *Ch. 95-181, § 2(28), L.O.F.*

ANNOTATION. EACH ADOPTING GOVERNMENTAL ENTITY SHOULD CONSIDER AMENDING ITS RULES OR LAND DEVELOPMENT CODE TO SPECIFY THE LANGUAGE TO BE INCLUDED IN A NOTIFICATION TO OWNER IN A DEVELOPMENT ORDER OR ENFORCEMENT ACTION, NOTIFYING THE OWNER OF THE AVAILABILITY OF RELIEF UNDER THESE GUIDELINES.

- (b) Any owner who believes that a development order or enforcement action, by itself or in conjunction with the actions of other governmental entities, is unreasonable or unfairly burdens the use of the owner's land may file a request for relief. *Ch. 95-181, § 2(3), L.O.F.*
- (c) A request for relief must be filed within 30 days after:
 - (1) Receipt of the development order or enforcement action; or,
 - (2) If [type of local administrative appeal] is permissible, the later of its conclusion or the expiration of four months after its initiation.
- (c) A request for relief must be filed within 30 days after receipt of the development order or notification of the enforcement action.

ANNOTATION. THE ADOPTING GOVERNMENTAL ENTITY SHOULD ADOPT ONLY ONE OF THE ABOVE PROVISIONS FOR GUIDELINE 7(C). THE FIRST OPTION IS INTENDED TO APPLY TO COUNTIES AND CITIES AND SHOULD BE MODIFIED TO IDENTIFY THE APPLICABLE LOCAL ADMINISTRATIVE APPEAL PROCESS BY NAME OR CITATION. THE SECOND OPTION IS INTENDED

TO APPLY TO STATE, REGIONAL AND LOCAL GOVERNMENTAL ENTITIES WHICH DO NOT HAVE A LOCAL ADMINISTRATIVE APPEAL.

- (d) A signed original and one copy of the request for relief must be filed with [elected or appointed head of adopting governmental entity] at [address]. No fee will be charged for filing a request for relief. *Ch. 95-181, §§2(3), 2(4), L.O.F.*
- (e) The request for relief must contain:
 - (1) A brief statement of the owner's proposed use of the property.
 - (2) A summary of the development order or description of the enforcement action. A copy of the development order or documentation of the enforcement action must be attached.
 - (3) A brief statement of the impact of the development order or enforcement action on the ability of the owner to achieve the proposed use of the property, including an explanation why the development order or enforcement action is unreasonable or an unfair burden.
 - (4) The signature of the owner or, if the owner is a corporation, partnership or other organization, the signature of a responsible official, and the mailing address and telephone number at which the owner may be reached.
 - (5) A statement regarding whether [type of local administrative appeal] is available and, if so, whether and when it was commenced by the owner and, if completed, the date of completion.
 - (6) A certification by the signer of the request identifying the persons, if any, who have been furnished with copies of the request for relief. *Ch. 95-181, § 2(6), L.O.F.*
- (f) Upon receipt of a request for relief, the [elected or appointed head of the adopting governmental entity] shall forward the copy to [designated official], who shall:
 - (1) Notify appropriate staff that the request was filed and direct preparation of a response; and
 - (2) Confer with the owner or owner's representative, if one, and any other governmental entity identified as a party in the request for relief to agree on a special master no later than 10 days from the date the request for relief was received. *Ch. 95-181, §2(4), 2(28), L.O.F.*
 - (3) Furnish a copy of the request for relief to:

- a. Persons holding title to land contiguous to the owner's property, at the address on the latest County tax roll.
 - b. Persons who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity support for or objections to the development order or enforcement action. A copy must be furnished to such a person only if that person requested in writing or at a public hearing a desire to be placed on a mailing list to receive notice of any subsequent proceeding on the development order or enforcement action at issue. *Ch. 95-181, § 2(5), L.O.F.*
- (g) At its next regular meeting after receipt of a request for relief, the [name of elected or appointed head of adopting governmental entity] shall be informed by [designated official] that a request for relief has been filed, the name of the owner, a description of the development order or enforcement action at issue, and the timetable for consideration of the matter. *Ch. 95-181, § 2(28), L.O.F.*

ANNOTATION. GUIDELINE 7(G) SHOULD BE ADOPTED ONLY BY GOVERNMENTAL ENTITIES, SUCH AS AGENCIES UNDER CONTROL OF THE GOVERNOR AND CABINET, WATER MANAGEMENT DISTRICTS, COUNTIES AND CITIES, FOR WHICH THE HEAD IS A COLLEGIAL BODY.

- (h) The owner may voluntarily dismiss the proceeding at any time by submitting a written request for dismissal to the special master or, if one has not been selected, to [elected or appointed head of adopting governmental entity] . A voluntary dismissal shall be effective upon filing with the special master or, if one has not been selected, [elected or appointed head of adopting governmental entity] . *Ch. 95-181, § 2(28), L.O.F.*

8. Selection of Special Master

- (a) In order to serve as a special master in a proceeding under these guidelines, a person must:
 - (1) Be a resident of the State of Florida;
 - (2) Possess experience and expertise in mediation; and
 - (3) Possess experience and expertise in at least one of the following disciplines and a working familiarity with the others:
 - a. Land use and environmental permitting;
 - b. Land planning;

- c. Land economics;
- d. Local and state government organization and powers, and the law governing the same. *Ch. 95-181, § 2(2)(c), L.O.F.*

A special master need not be a lawyer or a mediator certified by the Florida Supreme Court.

- (b) The [designated official] shall forward the original request for relief to the special master upon selection. *Ch. 95-181, § 2(4), L.O.F.*
- (c) Any member of the Florida Bar selected as a special master in a particular matter shall not, for that reason, be disqualified from serving as counsel in any other matter before [adopting governmental entity] . *Ch. 95-181, § 2(28), L.O.F.; Rule 9.02(h), U.S.D.C., M.D.Fla.*
- (d) If the owner, any other governmental entity identified as a party in the request for relief and [designated official] do not agree on a special master, they shall jointly agree on an impartial third party to select the special master according to agreed criteria. *Ch. 95-181, § 2(28), L.O.F.*

ANNOTATION. GUIDELINE 8(D) IS INTENDED TO REMEDY AN OMISSION IN THE STATUTE, WHICH DOES NOT SPECIFY A DEFAULT PROCEDURE FOR SELECTION OF A SPECIAL MASTER IN THE EVENT THE OWNER AND GOVERNMENTAL ENTITY OR ENTITIES ARE NOT ABLE TO SELECT ONE WITHIN 10 DAYS. INSTITUTIONS SUCH AS THE FLORIDA CONFLICT RESOLUTION CONSORTIUM MAY PROVIDE THIS SERVICE ON THE BASIS OF NEUTRAL SELECTION CRITERIA AGREED UPON BY THE PARTIES.

9. Special Master Agreement; Fees and Expenses

- (a) The special master and the parties shall memorialize the selection of the special master in an agreement which shall provide for the payment of all fees and expenses associated with the proceeding. In addition, a special master agreement may:
 - (1) Vary the time for performance of any act.
 - (2) Establish groundrules for the conduct of the proceeding, including standards of conduct for the special master, parties and participants.
 - (3) Identify factual issues to be addressed in the proceeding or specify procedures for resolving factual issues, including stipulation.

- (4) Provide for the exchange of information by the parties prior to the mediation or hearing.
 - (5) Set forth whether witnesses will be sworn or unsworn and, if sworn, who will administer oaths.
 - (6) Identify participants known to the parties who should be notified of the proceeding.
 - (7) Address such other issues as the parties may decide will assist in settlement of the dispute. *Ch. 95-181, § 2(28), L.O.F.*
- (b) Payment of fees and expenses for the special master, and costs of providing notice and effecting service, shall be borne equally by the parties. Other costs shall be paid as agreed by the parties. *Ch. 95-181, § 2(28), L.O.F.*
 - (c) A special master shall be compensated as agreed in writing by the special master and the parties upon selection or as thereafter modified in writing. Parties may place funds on deposit to assure payment at the conclusion of the proceeding, or provide a retainer against which fees and expenses will be charged. *Ch. 95-181, § 2(28), L.O.F.*
 - (d) The parties may authorize the special master to retain an independent expert, or to obtain any materials, to assist in evaluating any issue. Fees and costs will be paid as agreed in writing by the parties and the special master. *Ch. 95-181, § 2(2(7), 2(17)(c), 2(28), L.O.F.*

10. Response to Request for Relief

- (a) No more than 15 days after the filing of a request for relief, the [designated official] shall file a response to the request for relief on behalf of [adopting governmental entity] . A copy shall be furnished to the owner and any participant who has requested to participate in the proceeding. *Ch. 95-181, § 2(16)(a), L.O.F.*
- (b) The response shall set forth in reasonable detail the position of [adopting governmental entity] regarding the matters raised by the owner. The response must include a brief statement explaining the public purpose of the regulations on which the development order or enforcement action is based. *Ch. 95-181, § 2(16)(a), L.O.F.*
- (c) The response may include a request that the special master dismiss the owner's request for relief if it fails to include the information required in Guideline 6(d), or for any other failure to observe these Guidelines. If the request is dismissed, the owner shall be permitted to file an amended request within a reasonable time fixed by the special master. Failure to file an adequate amended request within the time

specified by the special master shall result in final dismissal of the matter without the right to submit another request. Final dismissal may not be appealed to [elected or appointed head of adopting governmental entity]. *Ch. 95-181, § 2(8), 2(28), L.O.F.*

- (d) Any party may request, in its response or otherwise, a request to be dropped from the proceeding. The request must set forth facts and circumstances to aid the special master in deciding on the request. All such requests must be disposed of prior to a hearing on the substance of the owner's request for relief. If the special master denies a request to be dropped, that party shall participate in the proceeding. *Ch. 95-181, § 2(16)(c), L.O.F.*

11. Additional Parties to the Proceeding

- (a) The special master may add additional governmental entities as parties to the proceeding when:
 - (1) The owner or [adopting governmental entity] asks the special master to add that governmental entity to the proceeding as a party; and
 - (2) The development order or enforcement action is the culmination of a process involving a governmental entity in addition to the [adopting governmental entity]; or
 - (3) A complete resolution of all relevant issues would require active participation of that additional governmental entity. *Ch. 95-181, § 2(11), L.O.F.*
- (b) A governmental entity added as a party shall actively participate in the proceeding as set forth in these Guidelines and as required by the special master. *Ch. 95-181, § 2(28), L.O.F.*

ANNOTATION. GUIDELINE 11(B) GIVES THE SPECIAL MASTER THE FLEXIBILITY TO ALTER THE TIME PERIODS WITHIN WHICH A GOVERNMENTAL ENTITY ADDED TO A PROCEED MUST PERFORM ANY ACT. A GOVERNMENTAL ENTITY ADDED AS A PARTY MUST SUBMIT A RESPONSE TO THE REQUEST FOR RELIEF UNDER GUIDELINE 10(A) AND MAY REQUEST DISMISSAL OF THE REQUEST FOR RELIEF UNDER GUIDELINE 10(C). ORDINARILY, A REQUEST TO BE DROPPED UNDER GUIDELINE 10(B) WOULD BE WITHOUT PURPOSE.

12. Other Persons Who May Participate

- (a) Other persons who may participate in the proceeding are:
 - (1) Any person with a legal or equitable interest in land contiguous to the owner's property; or

- (2) Any substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity support for or objections to the development order or enforcement action in a prior proceeding. *Ch. 95-181, § 2(12), L.O.F.*
- (b) Within 21 days after receiving a copy of the request for relief, a person seeking to participate must submit a written request to participate. The request must state:
 - (1) The person has a legal or equitable interest in land contiguous to the owner's property and, if so, identify the land in relation to the owner's property; or
 - (2) How the person is substantially affected by the development order or enforcement action at issue.

The request must be submitted to the special master or, if one has not yet been selected, to the [designated official] for forwarding to the special master after selection. *Ch. 95-181, § 2(12), L.O.F.*

- (c) The special master may decide any issue necessary to determine whether a person qualifies as a participant. If the special master accepts a request to participate, the person or any witnesses and representatives shall address only those issues raised regarding alternatives, variances, and other types of adjustment to the development order or enforcement action which may impact the participant's substantial interests, unless the parties agree to allow a participant to address additional issues. Denial of a request to participate may not be appealed to [elected or appointed head of adopting governmental entity]. *Ch. 95-181, § 2(12), L.O.F.*

13. Consolidation

- (a) If there are separate matters which involve similar issues or identical parties, they may be consolidated if the parties agree and it appears that consolidation would promote the speedy, efficient, and inexpensive resolution of the matters. *Ch. 95-181, § 2(28), L.O.F.*
- (b) If the separate matters are pending before different special masters, the parties may decide which special master will conduct the consolidated proceeding. If they cannot agree on one or multiple special masters to conduct the proceeding, the proceedings shall not be consolidated. *Ch. 95-181, § 2(28), L.O.F.*

Conduct of the Proceeding

14. Representatives

- (a) A party or participant may be represented by an attorney or other person at any phase of the proceeding, but such representation is not required. *Ch. 95-181, § 2(17), L.O.F.*
- (b) At the mediation, each party shall be represented by a person with authority to bind that party to a settlement, or to recommend a settlement directly to the persons with authority to bind the party. The special master or a party may ask a representative to provide proof of such authority. *Ch. 95-181, § 2(17)(a), L.O.F.*

15. Mediation Phase

- (a) The special master's first responsibility is to facilitate a resolution of the dispute and arrive at a settlement acceptable to the parties. It may involve a modification of the owner's proposed use of the property or adjustment in the development order or enforcement action or regulatory efforts by one or more of the governmental parties. *Ch. 95-181, § 2(17)(a), L.O.F.*
- (b) The special master shall, among other things, suggest alternatives, analyze issues, question perceptions, use logic, stimulate and facilitate negotiations between the parties, and keep order. The special master at all times will promote conciliation, cooperation, compromise and settlement of the dispute within the bounds established by law. *Ch. 95-181, § 2(17)(a), L.O.F.; Rule 16.2(A)(1), U.S.D.C., S.D.Fla.*
- (c) The special master may conduct the mediation phase on the same day as the hearing provided by Guideline 16 or on a different day. *Ch. 95-181, § 2(28), L.O.F.*

16. Information-gathering Hearing

- (a) Within 5 days of his receipt of the request for relief, the special master shall provide written notice of the place, date, and time of the hearing to all parties, and to all persons who have requested such notice. The hearing must be held within 45 days of the special master's receipt of the request for relief. The parties may agree to extend the date for the hearing. *Ch. 95-181, § 2(15)(a)-(b), L.O.F.*
- (b) The hearing must be held in _____ County. The special master's decision on the specific place of the mediation and hearing shall be final.
- (b) The hearing must be held in the City of _____. The special master's decision on the specific place of the mediation and hearing shall be final.

- (b) The hearing must be held in the county where the owner's property is located. The special master's decision on the specific place of the mediation and hearing shall be final. *Ch. 95-181, § 2(15)(a), L.O.F.*

ANNOTATION. ONLY ONE OF THE ABOVE ALTERNATIVES SHOULD BE INCLUDED FOR GUIDELINE 16(B). THE FIRST ALTERNATIVE IS INTENDED TO APPLY TO COUNTIES. THE SECOND ALTERNATIVE IS INTENDED TO APPLY TO CITIES. THE THIRD ALTERNATIVE IS INTENDED TO APPLY TO STATE AND REGIONAL GOVERNMENTAL ENTITIES.

- (c) The hearing shall be open to the public and be held in a location accessible to the public, including the physically handicapped. *Ch. 95-181, § 2(17), L.O.F.*
- (d) The hearing shall be conducted under the direction and supervision of the special master. The special master shall determine the order of presentation of issues and information unless otherwise set forth in the special master agreement. *Ch. 95-181, § 2(17), L.O.F.*
- (e) The special master shall hear from anyone with information necessary to understand the matter. The special master may question anyone presenting information at the hearing but shall give all parties an opportunity for follow-up questions. *Ch. 95-181, § 2(17)(c), L.O.F.*
- (f) The special master shall weigh all information offered at the hearing. Information shall not be subject to the rules of evidence, but the special master may require verification or authentication of any information by the person offering it at hearing. *Ch. 95-181, §§ 2(17)(c), 2(28), L.O.F.*
- (g) Prior to or at hearing, the special master may require any party to provide additional information in the interest of gaining a complete understanding of the request for relief. *Ch. 95-181, § 2(7), L.O.F.*
- (h) Each party may record the hearing at its own expense. The special master may record the hearing to assist in preparing a recommendation as required by Guideline 21. If the special master makes such a recording, it shall be forwarded to [adopting governmental entity] with the recommendation but shall be subject to the restrictions on information contained in Guideline 19. *Ch. 95-181, §§2(20), 2(28), L.O.F.*
- (i) Any documents or tangible materials presented to the special master at hearing shall be submitted to [elected or appointed head of adopting governmental entity] with the special master's recommendation. Any notes or drafts produced by the special master and not intended to record information in a permanent form shall remain the property of the special master. *Ch. 95-181, § 2(28), L.O.F.*

- (j) If a party fails to appear at the hearing after notice, the special master may proceed without that party or may adjourn the hearing to another day, giving notice to the absent party. *Rule 53(d)(1), F.R.C.P.*
- (k) Testimony may be given and parties, participants or their representatives may participate by telephone or other electronic communications medium unless otherwise agreed in a special master agreement. *Ch. 95-181, § 2(28), L.O.F.; Trawick § 22-22.*

17. Witnesses and Materials

- (a) Each party must assure attendance at the hearing by those persons qualified by training or experience to address issues raised by the request for relief, the response, or by the special master, or to address alternatives, variances, and other types of modifications to the development order or enforcement action. *Ch. 95-181, §2(13), L.O.F.*
- (b) Witnesses may be sworn or unsworn, as determined by the special master or by agreement of the parties. *Ch. 95-181, § 2(13), L.O.F.*
- (c) The special master may issue a subpoena for any nonparty witness in the state who will aid in the disposition of the matter. A subpoena issued by a special master may require the witness to bring a specified document or thing. *Ch. 95-181, § 2(14), L.O.F.*
- (d) The special master may require and receive documents and other tangible materials from ant party or participant. All parties and participants shall have the opportunity to examine and respond to such submissions. *Ch. 95-181, § 2(28), L.O.F.*
- (e) When necessary, the special master may weigh the credibility of witnesses. *Ch. 95-181, § 2(28), L.O.F.; Trawick § 22-21.*
- (f) Although an attorney is not required, any person compelled to appear or furnish documents or tangible materials, or who appears voluntarily, may be represented and advised by legal counsel at his or her own expense. *Ch. 95-181, § 2(28), L.O.F.; Rule 28-5.1055, F.A.C.*

18. Access to the Property

- (a) A request for relief constitutes a consent by the owner for the special master and representatives of parties to have reasonable access to the owner's land. Prior to gaining access to the owner's land, the special master and parties shall agree with the owner on a reasonable time and manner to inspect the property. *Ch. 95-181, § 2(9), L.O.F.*

- (b) The owner may grant access to the land to participants. *Ch. 95-181, § 2(9), 2(28), L.O.F.*

19. Offer to Compromise

- (a) As provided by law:
 - (1) All actions or statements of the special master, the parties and all participants are evidence of an offer to compromise and are inadmissible in any judicial or administrative proceeding.
 - (2) The proceeding may not be made known by an party or participant to any judicial or administrative tribunal, or be construed for any purpose as an admission against interest. *Ch. 95-181, § 2(20), L.O.F.; § 90.408, Fla. Stat. (1993).*
- (b) A party or participant is not bound by anything said or done during the proceeding unless a written settlement is reached, in which case only the terms of the written settlement shall be binding. *Ch. 95-181, § 2(20), L.O.F.; Rule 16.2(G)(2), U.S.D.C., S.D.Fla.*
- (c) The special master may not be called to appear before the [elected or appointed head of adopting governmental entity] or any administrative or judicial tribunal with respect to any aspect of the proceeding, nor may the special master be compelled to furnish notes or drafts from any such proceeding. *Ch. 95-181, §§ 2(20), 2(28), L.O.F.*

20. Settlement

- (a) The owner and the [adopting governmental entity] may enter into a settlement agreement or other agreement as to the permissible use of the owner's land prior to the special master filing a recommendation under Guideline 21. *Ch. 95-181, § 2(19)(c), L.O.F.*
- (b) A settlement agreement or other agreement as to the permissible use of the owner's land may be executed subject to approval by the [elected or appointed head of adopting governmental entity]. Any such agreement shall not bind any party until duly approved and executed by all parties to the agreement. *Ch. 95-181, §§ 2(19)(c), 2(28), L.O.F.*

Post-Hearing Procedures

21. Special Master's Recommendation

- (a) The special master shall file a recommendation with the [elected or appointed head of adopting governmental entity] within 14 days after the conclusion of the hearing. The special master shall furnish a copy to all parties and participants. *Ch. 95-181, § 2(19), L.O.F.*
- (b) If a settlement agreement or other agreement as to the permissible use of the owner's land is executed prior to the special master's recommendation, the recommendation shall only:
- (1) Set forth the date and location of the hearing;
 - (2) Identify the parties and other participants in attendance at the hearing;
 - (3) Record, without comment, the fact that a settlement agreement or other agreement as to the permissible use of the owner's land has been executed; and
 - (4) Include as an attachment an executed copy of the settlement agreement or other agreement as to the permissible use of the owner's property. *Ch. 95-181, §§ 2(19)(c), 2(28), L.O.F.*
- (c) If a settlement agreement or other agreement as to the permissible use of the owner's land is not executed prior to the filing of the special master's recommendation, the special master shall consider the facts and circumstances set forth in the request for relief, any responses, and any other information produced at the hearing to determine whether the development order or enforcement action, by itself or in conjunction with an action of [adopting governmental entity] or another governmental entity, is unreasonable or unfairly burdens the owner's land. *Ch. 95-181, § 2(17)(b), L.O.F.*
- (d) In making a determination, the special master shall consider:
- (1) The history of the land, including when it was purchased, how much was purchased, where it is located, the nature of the title, the composition of the property, and how it was previously used.
 - (2) The history of development and use of the land, including what was developed and by whom, if it was subdivided and how and to whom it was sold, whether plats were filed or recorded, and whether infrastructure and other public services or improvements may have been dedicated to the public.
 - (3) The history of relevant environmental protection and land use controls and other regulations, including how and whether the land was classified, any uses that may have been proscribed, and what changes in classifications have occurred.

- (4) The present nature and extent of the land, including natural and altered characteristics.
 - (5) The reasonable expectations of the owner at the time of acquisition, or immediately prior to the implementation of the regulation at issue, whichever is later, under the regulations then in effect and under common law.
 - (6) The public purpose sought to be achieved by the development order or enforcement action, including the nature and magnitude of the problem addressed by the underlying regulations on which the development order or enforcement action is based; whether the development order or enforcement action is necessary to the achievement of the public purpose; and whether there are alternative development order or enforcement action conditions that would achieve the public purpose and allow for reduced restrictions on the use of the owner's land.
 - (7) Uses authorized for and restrictions placed on similar property, including adjacent lands.
 - (8) Any other information determined to be relevant by the special master or agreed by the parties to be addressed by the special master. *Ch. 95-181, § 2(18), L.O.F.*
- (e) The special master shall utilize his or her expertise in formulating a recommendation and shall rely upon the sort of information that a reasonable, prudent person would rely upon in the conduct of his or her affairs. *Ch. 95-181, § 2(28), L.O.F.; Rule 28-5.304, F.A.C.*
- (f) If the special master determines the development order or enforcement action, by itself or in conjunction with another action of [adopting governmental entity] or another governmental entity, is not unreasonable and does not unfairly burden the owner's land, the special master shall recommend that the development order or enforcement action remain undisturbed. *Ch. 95-181, § 2(19)(a), L.O.F.*
- (g) If the special master determines the development order or enforcement action, by itself or in conjunction with another action of [adopting governmental entity] or another governmental entity, is unreasonable or unfairly burdens the owner's property, and the owner has consented, the special master shall recommend one or more alternative actions that protect the public interest served by the regulations at issue but allow for reduced restraints on the use of the owner's real property. The alternatives may include:

- (1) An adjustment of land development or permit standards or conditions controlling the development or use of the owner's land.
- (2) Increases or modifications in the density, intensity, or use of areas of development.
- (3) The transfer of development rights.
- (4) Land swaps or exchanges.
- (5) Mitigation, including payments in lieu of on-site mitigation.
- (6) Location of the development or use at issue on the least sensitive portion of the property.
- (7) Conditioning the amount of development or use permitted on the owner's land.
- (8) A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
- (9) Issuance of the development order, a variance, special exception, or other extraordinary relief, including withdrawal of the enforcement action.
- (10) Purchase of the owner's land, or an interest in it, by the City/County or another governmental entity. *Ch. 95-181, § 2(19)(b), L.O.F.*

If an apportionment of responsibility among governmental entities is necessary where the special master determines a development order or enforcement action is unreasonable or an unfair burden, the special master shall make such apportionment.

- (h) The special master shall furnish a copy of the written recommendation to the Florida Department of Legal Affairs, [address]. *Ch. 95-181, § 2(27), L.O.F.*

22. Effect of Special Master's Recommendation

- (a) The special master's recommendation shall be advisory only and not binding on the owner or the [elected or appointed head of adopting governmental entity]. *Ch. 95-181, § 2(21), L.O.F.*
- (b) A special master's recommendation constitutes data which shall be considered with respect to any pertinent amendment to the comprehensive plan. *Ch. 95-181, §2(26), L.O.F.*

- (c) A special master's determination that the development order or enforcement action, by itself or in conjunction with actions of [adopting governmental entity] or another governmental entity, is unreasonable or unfairly burdens the owner's land shall constitute a determination of hardship which will support a modification, variance, or special exception as otherwise authorized by applicable rules and regulations. *Ch. 95-181, § 2(25), L.O.F.*

23. Disposition of Special Master's Recommendation

- (a) Within 45 days of receipt of the special master's recommendation, the [elected or appointed head of adopting governmental entity] shall:
- (1) Accept the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations.
 - (2) Modify the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations.
 - (3) Reject the recommendation as submitted. Failure to act within 45 days of receipt of the recommendation shall be deemed a rejection, unless the owner and the [adopting governmental entity] agree to an extension of time. *Ch. 95-181, § 2(21), L.O.F.*
- (b) If the [elected or appointed head of adopting governmental entity] adopts a recommendation to grant a modification, variance, or special exception to the application of ordinances or regulations as they otherwise would apply to the land, the owner shall not be required to duplicate processes in which the owner previously has participated in order to effectuate the modification, variance or special exception. *Ch. 95-181, § 2(21)(a), L.O.F.*
- (c) If the special master recommends relief or other action in conjunction with another governmental entity, the [designated official] shall confer with appropriate staff from the other entities to review the recommendation and determine whether a joint staff recommendation can be made to the heads of the respective governmental entities. *Ch. 95-181, § 2(21), L.O.F.*
- (d) Within 15 days after final action on the special master's recommendation by the [elected or appointed head of adopting governmental entity], its Clerk shall send a copy of the order or other document memorializing final action to the Florida Department of Legal Affairs, [address]. *Ch. 95-181, § 2(27), L.O.F.*
- (e) Within 10 days of final action on the recommendation, the owner shall notify the [designated official] in writing whether the owner accepts the decision of the recommendation. *Ch. 95-181, §§ 2(22), 2(28), L.O.F.*

- (f) If the [elected or appointed head of adopting governmental entity] accepts the recommendation or modifies it and the owner rejects the acceptance or modification, or if the [elected or appointed head of adopting governmental entity] rejects the recommendation, the [designated official] shall issue a written decision that describes as specifically as possible the use or uses available on the owner's land. The written decision shall be issued within 30 days of final action on the recommendation. *Ch. 95-181, § 2(22), L.O.F.*
- (g) After the [elected or appointed head of adopting governmental entity] has acted on the recommendation and a written decision has been issued describing the use or uses available on the owner's land, or if the [elected or appointed head of adopting governmental entity] has not acted within 45 days, the owner may seek a formal adjudication on the development order or enforcement action as otherwise authorized by law. *Ch. 95-181, § 2(23), L.O.F.*

24. Public Record

The special master's recommendation shall be a public record. A copy shall be available for public inspection and copying at the office of the Clerk of the [adopting governmental entity], at [address]. *Ch. 95-181, § 2(20), L.O.F.*

25. Sample Forms

The following sample forms may be used in a special master proceeding under these guidelines:

- (a) Notice of Right to a Special Master Hearing
- (b) Owner's Request for Relief
- (c) Notice of Filing of Owner's Request for Relief
- (d1 & 2) Special Master Agreement
- (e) Response to Owner's Request for Relief
- (f) Request to Dismiss Owner's Request for Relief
- (g) Request to Participate in Special Master Hearing
- (h) Order Granting/Denying Request to Participate in Special Master Hearing
- (i) Notice of Special Master Hearing
- (j) Settlement Agreement

- (k) Special Master's Recommendation--With Settlement
- (l) Special Master's Recommendation--Finding for Owner
- (m) Special Master's Recommendation--Finding for Governmental Entity
- (n) Notice of Action Taken on Special Master's Recommendation
- (o) Statement of Uses Available on Owner's Land
- (p) Subpoena
- (q) Subpoena Duces Tecum

ANNOTATION. THE SAMPLE FORMS ARE NONEXCLUSIVE AND THEIR USE IS PERMISSIVE.

63335.02