

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: CUTLER BAY COMPREHENSIVE
PLAN; ORDINANCE NUMBER 08-07

Docket No. NOI-(1336)-(A)-(N)

STATEMENT OF INTENT TO FIND
A PORTION OF A COMPREHENSIVE PLAN
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Rule 9J-11.012(6), *Florida Administrative Code*, hereby issues this Statement of Intent regarding the Comprehensive Plan adopted by Cutler Bay in Ordinance Number 08-07 on April 28, 2008. The Department finds the "Town of Cutler Bay Miami-Dade County Coastal High Hazard Area" Map (Exhibit FLU-8 on page FLU-25 in the Future Land Use Element) and Policy CM-8E in the Coastal Management Element (page CM-11) of the Comprehensive Plan not "in compliance," as defined in Section 163.3184(1)(b), *Florida Statutes*, and the rest of the Comprehensive Plan "in compliance." The Department finds that Exhibit FLU-8 and Policy CM-8E of the Comprehensive Plan are not in compliance because they are not consistent with Chapter 163, Part II, *Florida Statutes*, the State Comprehensive Plan, and Rule 9J-5, *Florida Administrative Code*, for the following reasons:

I. FUTURE LAND USE ELEMENT AND COASTAL MANAGEMENT ELEMENT

A. Inconsistent provisions. The inconsistent provisions of the Comprehensive Plan under this subject heading follow:

1. Ordinance Number 08-07 adopts a Comprehensive Plan for the Town of Cutler Bay, including the "Town of Cutler Bay Miami-Dade County Coastal High Hazard Area" Map (Exhibit FLU-8 on page FLU-25 in the Future Land Use Element) and Policy CM-8E in the Coastal Management Element (page CM-11).

The Coastal High Hazard Area Map depicts Zones A, B, and C. Coastal Management Policy CM-8E defines Zone A as the Coastal High Hazard Area. Zone A encompasses a very small area in the northeastern corner of the Town.

The Coastal High Hazard Area Map and Policy CM-8E are not consistent with the definition of the coastal high hazard area set forth in Section 163.3178(2)(h), Florida Statutes, which states: "The coastal high-hazard area is the area below the elevation of the category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model." Section 163.3178(9)(c), Florida Statutes, provides that "This subsection shall become effective immediately and shall apply to all local governments. No later than July 1, 2008, local governments shall amend their future land use map and coastal management element to include the new definition of coastal high-hazard area and to depict the coastal high hazard area on the future land use map."

2. The Department specifically finds the Coastal High Hazard Area Map and Policy CM-8E adopted in the Comprehensive Plan to be inconsistent with the following rule and statutory provisions: Rules 9J-5.006(4)(b)6, and 9J-5.012(2)(e)3 and (3)(c)7, *Florida Administrative Code*, and Sections 163.3178(2)(h), and 163.3178(9)(c), *Florida Statutes*.

B. Recommended remedial actions. The above inconsistencies may be remedied by taking the following actions:

Revise the Town's Coastal High Hazard Area Map to identify the coastal high hazard area as defined in Section 163.3178(2)(h), Florida Statutes, and as required by Section 163.3178(9)(c), Florida Statutes. Revise Coastal Management Element Policy CM-8E to incorporate the definition of the coastal high hazard area as defined in Section 163.3178(2)(h), Florida Statutes.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

The Comprehensive Plan amendment is inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, *Florida Statutes*, including the following provisions:

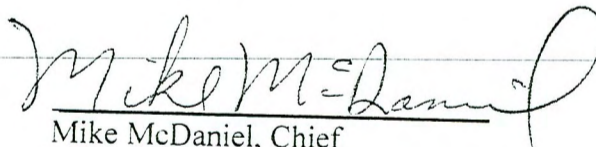
1. **Public Safety.** The amendment is inconsistent with the Goal set forth in Section 187.201(6)(a), *Florida Statutes*, and the Policy set forth in Section 187.201(4)(b)22, *Florida Statutes*; and
2. **Coastal and Marine Resources.** The amendment is inconsistent with the Goal set forth in Section 187.201(8)(a), *Florida Statutes*, and the Policy set forth in Section 187.201(7)(b)3, *Florida Statutes*; and

3. **Plan Implementation.** The amendments are inconsistent with the Goal set forth in Section 187.201(25)(a), *Florida Statutes*, and the Policy set forth in Section 187.201(25)(b)7, *Florida Statutes*.
- B. Recommended remedial action. These inconsistencies may be remedied by revising the Comprehensive Plan amendment as described above in Section I.B.

CONCLUSIONS

1. The coastal high hazard area as depicted in the Comprehensive Plan is not consistent with the State Comprehensive Plan, Chapter 9J-5, *Florida Administrative Code*, and Chapter 163, Part II, *Florida Statutes*.
2. The coastal high hazard area as mapped and defined in the Comprehensive Plan is not "in compliance," as defined in Section 163.3184(1)(b) *Florida Statutes*.
3. In order to bring the coastal high hazard area as mapped and defined in the Comprehensive Plan into compliance, the Town may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 24th day of June 2008, at Tallahassee, Florida.



Mike McDaniel, Chief
Office of Comprehensive Planning
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

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Manager's Office

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND PORTIONS OF THE TOWN OF
CUTLER BAY PLAN, COASTAL HIGH HAZARD AREA MAP AND
COASTAL MANAGEMENT POLICY CM-8E,
ADOPTED BY ORDINANCE NO. 08-07 ON APRIL 28, 2008,
NOT IN COMPLIANCE, AND THE REMAINING PORTIONS OF THE PLAN
ADOPTED BY ORDINANCE 08-07,
IN COMPLIANCE
DOCKET NO. PLAN-NOI-1336-(A)-(N)

The Department gives notice of its intent to find the Coastal High Hazard Area Map and Coastal Management Policy CM-8E of the Town of Cutler Bay Comprehensive Plan adopted by Ordinance No. 08-07 on April 28, 2008, NOT IN COMPLIANCE, and the remaining portions of the plan adopted by Ordinance No. 08-07, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

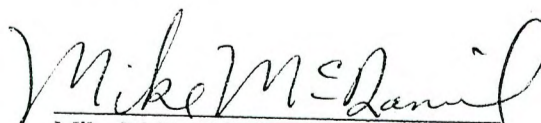
The adopted Cutler Bay Comprehensive Plan, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find portions of the Comprehensive Plan Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Town of Cutler Bay, Town Hall, 10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida 33189.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that portions of the above referenced Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for portions of the plan found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the non-compliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.



Mike McDaniel, Chief
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