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** Via Electronic Mail **

Memo Discussing Issue Coming before BoCC on Thursday, February 3, 2022

This memorandum does not solicit feedback from any Commissioner and Commissioners are specifically asked not to respond to it (or discuss it amongst one another outside of a duly noticed BoCC meeting) as doing so could and likely would constitute a violation of one or more provisions of Chapters 119 and/or 286, Fla. Stat. So that it may be made available to the public, a copy of this memo is being provided to the Clerk to the Board so that it may be included in the minutes for the **Thursday, February 3, 2022** BoCC meeting. Please see the previously provided County Attorney's Office Inter-Office Memo dated December 12, 2016 which indicates that communications of this variety are authorized under applicable law.

This memo pertains to Item "**H.14. Public Hearing, Re: Adoption of EAR Based Amendments, 2017-2.2. DEO #17-3ER**" as listed in the agenda. The proposed language for this item reads, in pertinent part, as follows:

Policy 14.6 The County should develop mechanisms to evaluate and recommend new design and development standards for public and private infrastructure projects that consider future climate conditions, and amend Land Development Regulations to reduce obstacles that hinder nature-based design standards and/or Low Impact Development.

Policy 14.9 Based on the 2021 Resilient Brevard Community Survey, completed by the ECFRPC, the County should encourage nature-based design standards and/or Low Impact Development design for development and redevelopment within areas vulnerable to current and future flooding impacts. Such adaptation strategies may include:

- a. Multi-use stormwater parks,
- b. Bioswales as stormwater management techniques,
- c. Green streets,
- d. Reduced impervious areas,
- e. Florida-friendly landscaping/xeriscaping, and
- f. Ecological asset preservation (e.g., tree canopy, natural areas, mangroves, wetlands, dunes, aquifer recharge areas).

District 2 Includes

Avon by the Sea • Cape Canaveral • Cape Canaveral SFS • Cocoa • Cocoa Beach • Kennedy Space Center •
Merritt Island • Patrick SFB • Port Canaveral • Rockledge • Snug Harbor

With respect to Policies 14.6 and 14.9, I would suggest that we adopt the following language which would add clarity to both without increasing the likelihood Brevard County would be successfully sued for taking or reducing the value of any property or properties beyond what would be the case should we adopt unchanged the language proposed by staff in the agenda item. The language in **bold** is not included in the draft provided by staff.

Policy 14.6 The County ~~should~~ **must** develop mechanisms to evaluate and recommend new design and development standards for public and private infrastructure projects that consider future climate conditions, and amend Land Development Regulations to reduce obstacles that hinder nature-based design standards and/or Low Impact Development **unless it can be clearly demonstrated that:**

- a. Strict application will be contrary to the public interest;**
- b. The public values being protected are insignificant and strict application will result in an excessive hardship to the project;**
- c. Strict application will place an excessive hardship on the project, and an alternative action is available which is equal to or superior than the original requirements in reaching the policy's objective, and;**
- d. The activity is not financially feasible for the local government.**

Policy 14.9 Based on the 2021 Resilient Brevard Community Survey, completed by the ECFRPC, the County ~~should~~ **must** encourage nature-based design standards and/or Low Impact Development design for development and redevelopment within areas vulnerable to current and future flooding impacts **unless it can be clearly demonstrated that:**

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- d. The activity is not financially feasible for the local government.**

Such adaptation strategies may include:

- a. Multi-use stormwater parks,
- b. Bioswales as stormwater management techniques,
- c. Green streets,
- d. Reduced impervious areas,
- e. Florida-friendly landscaping/xeriscaping, and
- f. Ecological asset preservation (e.g., tree canopy, natural areas, mangroves, wetlands, dunes, aquifer recharge areas).

Thank you for your consideration of the above.