

June 2, 2009

SB 360's Provisions Addressing Transportation Concurrency and DRI Exemptions and the Extension of Permits

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Senate Bill 360 became effective on June 1, 2009, upon its signing by Governor Charlie Crist.

Senate Bill 360 exempts developments in the following areas from transportation concurrency and from the DRI program:

1. municipalities which qualify as dense urban land areas;
2. the urban service areas in counties which qualify as dense urban land areas; and
3. counties, and their municipalities, with a population of at least 900,000 which qualify as dense urban land areas and which do not have urban service areas.

What constitutes a dense urban land area is based on population and density criteria.

The local governments which qualify as a dense urban land area will be determined by the legislative Office of Economic and Demographic Research by July 1, 2009 and posted on the Department of Community Affairs' website. Preliminary analyses indicate that somewhere between 230 to 240 municipalities and eight counties will meet the population and density criteria.

The counties which are expected to qualify as dense urban land areas are:

- Pinellas
- Broward
- Seminole
- Orange
- Duval
- Hillsborough
- Miami-Dade
- Palm Beach

Although Broward County meets the criteria for a dense urban land area, the transportation concurrency exemption is not applicable to its transit oriented concurrency districts. As a result, developments within Broward County's transit oriented concurrency districts will continue to be assessed the applicable transit fees while develop-

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ments within Broward County's two standard transportation concurrency areas will be exempt from transportation concurrency. The transportation concurrency exemption is also not applicable in a county which has exempted more than 40% of the area inside its urban service area for transportation concurrency. This exception is applicable to Miami-Dade County.

Local governments which do not qualify as dense urban land areas may exempt urban infill or redevelopment areas, downtown revitalization areas, or urban service areas from transportation concurrency and from the DRI program through a comprehensive plan amendment.

SB 360 acknowledges the home rule powers of local governments and states that SB 360's establishment of transportation concurrency exemption areas does not limit a local government's home rule power to adopt ordinances or impose fees. Some local governments are carefully analyzing this provision and their home rule powers to determine their authority to address transportation backlogs.

Certain areas within dense urban land areas will remain subject to the DRI program. The exemption from the DRI program does not apply to:

1. areas within the boundary of any area of critical state concern;
2. areas within the boundary of the Wekiva Study Area; and
3. areas within two miles of the boundary of the Everglades Protection Area. The Everglades Protection Area includes certain water conservation areas, the Arthur R. Marshall Loxahatchee National Wildlife Refuge, and the Everglades National Park.

A development with a pending DRI application for development approval may elect to continue in or may withdraw from the DRI program. An existing DRI may also withdraw from the DRI program provided all mitigation related to the existing development has been completed.

SB 360 also extends for two years the expiration date of certain environmental resource permits; development orders and building permits issued by a local government; buildout dates, including DRI buildout dates; and the commencement and completion dates for any required mitigation associated with a phased construction project. The environmental resource permits which are extended are those with an expiration date of September 1, 2008 through January 1, 2012. Although the bill language is not entirely clear, similar provisions in other bills and some staff bill analyses suggest that the September 1, 2008 through January 1, 2012 limitation is applicable to the other permit categories as well as to environmental resource permits.

The holder of a permit eligible for the two-year extension must notify the authorizing agency in writing no later than **December 31, 2009** of the permit to be extended and the anticipated timeframe for acting on the authorization.

Those interested in SB 360 should closely monitor state and local government implementation of the legislation. Proposed and existing DRIs should begin assessing the pros and cons of staying within or withdrawing from the DRI program.

If you have questions regarding this topic contact Margaret-Ray Kemper or any Ruden McClosky land use law attorney. Margaret-Ray Kemper is a partner in Ruden McClosky's Land Use Practice Group, in Tallahassee, Florida. For more information about Ruden McClosky visit www.ruden.com.