

## ST. PETERSBURG CITY COUNCIL

Meeting of April 2, 2009

**TO:** The Honorable Jeff Danner, Chair, and Members of City Council

**SUBJECT:** Resolution opposing the Pinellas Planning Council's proposed amendment to the Countywide Rules regarding the Countywide Coastal Storm Area (CSA).

**EXPLANATION:** The Pinellas Planning Council (PPC) staff is preparing an amendment to the Countywide Rules to create a Countywide Coastal Storm Area (CSA). This area is essentially an extension of the State-mandated CHHA (Coastal High Hazard Area) within which the PPC staff will provide "additional scrutiny," i.e., regulation, to Future Land Use Map amendments which increase density (number of dwelling units per acre) or intensity (an increase in the floor-area-ratio). The City Administration and the City Attorney's Office are opposed to the PPC's proposed amendment for several reasons, detailed below.

### **Brief Background**

In 2006, the State legislature amended the definition of the CHHA (coastal high hazard area) from "Hurricane Evacuation Level A," to "the area defined by the SLOSH (Sea, Lake and Overland Surges from Hurricanes) Model to be inundated from a Category 1 Hurricane." The CHHA definition change was welcomed. It resulted in a smaller geographic area being identified; moreover, because the new definition was tied to a scientific computer model, it was more defensible than the not-so-scientific boundaries for Evacuation Level A, which were in part based on the roadway network and familiar landmarks.

In the latter part of 2006, TBRPC's Regional Planning Advisory Committee (RPAC) formed a CHHA Working Group, comprised of emergency management officials and senior planning staff from the region's local governments, as well as TBRPC staff. The CHHA Working Group met on several occasions to discuss a variety of emergency management issues including the following two concerns with the SLOSH Model: 1) wave height is not addressed by the model; and 2) the model created isolated areas surrounded by storm surge. In October 2007, a series of recommendations from the RPAC and CHHA Working Group was published. Included was a recommendation that local governments consider a Comprehensive Plan amendment to define a Coastal Storm Zone "to include all properties/parcels connected to the mainland by bridges and/or low-lying properties restricting evacuation and emergency access." The second part of the recommendation was that local governments amend their LDRs to expand (extend) CHHA policies and regulations to the new Coastal Storm Zone.

In October 2007, the PPC staff also indicated support for the Coastal Storm Area (CSA) concept, based in part on their review of a series of proposed text amendments to Pinellas County's Comprehensive Plan (Coastal Management Element). A PPC memo dated October 17, 2007

recommended that each Pinellas County local government define and embrace the CSA concept for regulatory purposes, and indicated that PPC staff will propose amending the Countywide Rules to do the same.

### **PPC Staff Recommendation Concerning the CSA Concept**

Since September 2008, with the initial distribution of a package of proposed amendments to the Countywide Rules, the PPC staff made clear that they support a Countywide CSA concept, and that it is their desire to have the Countywide Rules amended, accordingly.

The PPC staff proposes that the CSA be defined as follows: Shall include the CHHA and all land connected to the mainland of Pinellas County by bridges or causeways; those isolated areas that are defined by a SLOSH (Sea, Lake and Overland Surges from Hurricanes) Model to be inundated by a Category 2 hurricane or above and that are surrounded by the CHHA or by the CHHA and a body of water; and all land located within the Velocity Zone (V-Zone), as designated by FEMA.

The PPC staff also proposes that a local government Future Land Use Map amendment within the CSA that would result in an increase in density or intensity shall be approved only upon an “affirmative determination” that such an amendment is in the public interest after accounting for the following:

- the nature of the proposed use;
- the size and location of the property; and
- the property’s particular relationship to the CSA based upon a balancing of up to 11 criteria, as are determined applicable and significant to the subject amendment.

### **City Administration’s Opposition to the CSA Concept**

As stated previously, the City Administration (as represented by City staff at the various PAC, PPC and CPA meetings and public hearings) is opposed to the CSA concept for several reasons, a few of which are inter-related, as follows:

1. Florida Statutes define the CHHA (Chapter 163, Part II, F.S.). All local governments are required to adopt the State’s definition. The Department of Community Affairs (DCA) essentially prohibits any Map amendments within the CHHA that would result in an increase in density or intensity. The proposed CSA concept is more restrictive because it goes beyond what is required by state law.
2. The PPC staff should continue to encourage Pinellas County and all its local governments to adopt the CSA concept, but should not work toward adopting it for them through an amendment to the Countywide Rules. *The County’s local governments should decide for themselves if the CSA concept is appropriate.*
3. PPC staff has indicated that Map amendments within the CSA which will result in a

greater density or intensity will be subject to “additional scrutiny,” i.e., additional regulation, and will be approved only upon an affirmative determination that such an amendment is in the public interest. A consequence of this is that such a Map amendment could be approved and the ordinance adopted at the local level, and approved by DCA, and recommended for denial by the PPC. A super majority vote would then be needed by the CPA in order to overcome the PPC’s recommendation of denial. *Local governments which choose not to adopt the CSA concept should not then be subjected to additional scrutiny and required to balance the requested amendment against the identified criteria.*

4. The PPC staff concluded that, based on their research and phone conversations with representatives from the State Office of Insurance Regulation, it is highly unlikely that property insurance coverage or cost would be affected by a parcel’s location within the proposed CSA (or for that matter the CHHA). However, no one can *definitively* say that a property, whether located in the proposed CSA or CHHA, could never be affected from an insurance standpoint because of such designation. In addition, although the State Office of Insurance Regulation has not seen the CSA or CHHA as justification to increase their rate increases or rate filings at this time, insurance in high risk areas may be provided by other private market companies not subject to rate regulation and can therefore charge what the market will bear.
5. The PPC staff has stated that 10 local governments have not adopted the CSA concept (including St. Petersburg, Largo, Gulfport and Tarpon Springs). By definition, the CSA is a larger geographic area than the CHHA. The PPC staff’s research has confirmed that the proposed CSA affects the City of St Petersburg more than any other Pinellas jurisdiction, in terms of the number of acres of land that would be designated CSA:
  - 9,355 acres of land in St. Petersburg would be designated CSA, compared to 7,665 acres in the unincorporated area of Pinellas County. Tarpon Springs and Dunedin are next with 1,694 and 1,627 acres, respectively.

In terms of the percentage of land that would be designated CSA, and not accounting for the barrier island communities:

- Tarpon Springs is first at 28.7 percent of its total land area, Dunedin second at 24 percent and St. Petersburg third at 23.2 percent. Approximately 11.2 percent of the unincorporated area of Pinellas County would be designated CSA.
6. Since 2006, when the State’s new CHHA definition took effect, approximately 16 Map amendments have been processed by the PPC within the CHHA or the proposed CSA, and all have been approved. If this is the case, it is unclear why an amendment to the Countywide Rules is needed.

## Conclusion

At its March 18, 2009 meeting, the PPC voted to direct staff to prepare an ordinance to amend the Countywide Rules to add the definition of CSA, to be utilized for the purpose of Map amendment review. City staff was present to oppose this request and to advocate for the alternative of “do nothing,” meaning that the State’s definition of the CHHA that is currently reflected in the Countywide Rules will be maintained and utilized. Councilmember Kennedy was the only dissenting vote.

It is anticipated that the ordinance will be reviewed by the Planners Advisory Committee (PAC) on April 6, and discussed by the PPC on April 15, 2009. The matter is then likely to be scheduled for a PPC public hearing on May 20, 2009.

Attached to this report is a proposed City Council resolution expressing opposition to the proposed amendment to the Countywide Rules. The PPC’s Executive Director, David Healey, is invited to the City Council’s April 2, meeting to address this matter.

**RECOMMENDATION:** City Administration recommends adoption of the attached resolution expressing opposition to the proposed amendment to the Countywide Rules related to the Countywide Coastal Storm Area (CSA).

Attachment: Proposed City Council Resolution

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF ST. PETERSBURG OPPOSING  
AMENDMENTS TO THE COUNTYWIDE  
RULES REGARDING INCLUSION OF A  
COASTAL STORM AREA; AND PROVIDING  
FOR AN EFFECTIVE DATE.

WHEREAS, the Pinellas Planning Council (PPC) has proposed adoption of an amendment to the Countywide Rules to create a Coastal Storm Area (CSA) which will encompass a broader land area than the existing Coastal High Hazard Area (CHHA) designation contained in Chapter 163, Florida Statutes; and

WHEREAS, the State Legislature has defined the CHHA to consist of the area below the elevation of the Category 1 storm surge lines as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model; and

WHEREAS, all local governments in the state must adopt the CHHA in their comprehensive plans, specifically their coastal management element; and

WHEREAS, the PPC has proposed adoption of the CSA, which is defined to include all of the CHHA, all land connected to the mainland of Pinellas County by bridges or causeways, those isolated areas that are defined by a SLOSH model to be inundated by a Category 2 hurricane or above and surrounded by the CHHA or by the CHHA and a body of water, and all land located within the Velocity Zone as designated by the Federal Emergency Management Agency; and

WHEREAS, if the CSA is adopted, a proposed amendment to the Countywide Future Land Use Plan Map for a property located within the CSA, that would result in a potential increase in density or intensity, would be denied unless the PPC makes an affirmative determination that the amendment is in the public interest after accounting for the nature of the proposed use, the size and location of the property in question, and its particular relationship to the CSA based on the balancing of eleven criteria; and

WHEREAS, there is no provision contained in Chapter 163, Florida Statutes which would require a local government to adopt or implement stricter restrictions such as the CSA and the adoption of the CSA could be preempted by state law; and

WHEREAS, ten municipalities in Pinellas County have not adopted the CSA concept, including the City of St. Petersburg; and

WHEREAS, the land area which comprises the City of St. Petersburg exceeds the land areas that comprise the unincorporated area and other municipalities located in Pinellas County and therefore, would be most negatively affected by adoption of the CSA; and

WHEREAS, pursuant to Chapter 88-464, Laws of Florida, as amended, the Special Act creating the PPC only provides the PPC limited authority to develop rules, standards, policies and objectives which would implement the Countywide Future Land Use Plan and does not provide for the imposition or adoption of stricter restrictions such as the CSA, by either the PPC or the Countywide Planning Authority (CPA), which could be preempted by existing state law; and

WHEREAS, there is no notice provision contained in the proposed amendment to the Countywide Rules to inform a current owner or potential buyer of property, which may not be located within the CHHA but is located within the CSA, that a Map amendment resulting in an increase of density or intensity is potentially subject to an additional review process by the PPC and CPA; and

WHEREAS, a current owner or potential buyer of property, which may be located within the CSA, could be approved by the City and DCA but denied by the PPC resulting in inconsistent findings making compliance with both State law and the Countywide Rules impossible; and

WHEREAS, it has not been definitively determined by the State Office of Insurance Regulation that a property, whether located in the proposed CSA or CHHA, could never be affected from an insurance standpoint, including the availability of coverage and the increase in cost of such coverage because of such designation; and

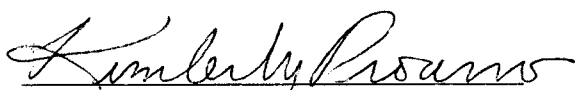
WHEREAS, the proposed amendment to the Countywide Rules, if adopted, would erode the authority of municipalities by usurping their determination of whether to adopt the CSA or continue to utilize the CHHA designation provided by Chapter 163, Florida Statutes; and

WHEREAS, the proposed amendment to the Countywide Rules would also erode the authority of municipalities which have decided not to adopt the CSA, by encroaching on those municipalities' ability to review a proposed plan amendment in conjunction with the CHHA criteria which has been adopted in their comprehensive plans as required by Chapter 163, Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida, that this Council hereby expresses its opposition to the proposed amendment to the Countywide Rules that would allow for the Pinellas Planning Council and Countywide Planning Authority to establish rules related to the establishment of the Coastal Storm Area.

This resolution shall become effective immediately upon its adoption.

APPROVED AS TO FORM AND SUBSTANCE:

  
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City Attorney (or designee)

  
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Development Services Department