

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

FLORIDA DEPARTMENT OF COMMERCE

Petitioner,

DOAH Case No.: 24-1427

vs.

LEVY COUNTY,

Respondent,

\_\_\_\_\_ /

**STIPULATED SETTLEMENT AGREEMENT**

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Commerce and Levy County, Florida.

**Recitals**

WHEREAS, the State of Florida, Department of Commerce (“Department”) is designated as the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Levy County, Florida (“Local Government”) is a local government within the State of Florida with the duty and responsibility to adopt comprehensive plan amendments that are “in compliance;” and

WHEREAS, by letter dated October 3, 2022, the Department notified the Local Government that it was time to initiate an Evaluation and Appraisal of the County’s Comprehensive Plan; and

WHEREAS, the Local Government adopted a Comprehensive Plan Amendment (the “Amendment”) by Ordinance Number 23-10 on February 20, 2024; and

WHEREAS, the Amendment proposes to update the Comprehensive Plan to satisfy the Evaluation and Appraisal requirements in Section 163.3191, Florida Statutes; and

WHEREAS, the Department issued its Statement of Intent on April 12, 2024, and published its Notice of Intent regarding the Amendment on April 12, 2024; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Amendment is not “in compliance” as outlined in Exhibit A attached hereto and incorporated herein; and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, the Department has initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the Local Government does not dispute the allegations of the Statement of Intent regarding the Amendment; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so;

NOW, WHEREFORE, in consideration of the mutual covenants and promises herein below set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

### **General Provisions**

1. **Definitions:** As used in this agreement, the following words and phrases shall have the following meanings:

- a. **Act:** The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.
- b. **Agreement:** This stipulated settlement agreement.
- c. **Comprehensive Plan Amendment or Amendment:** The comprehensive plan amendment adopted by the Local Government on February 20, 2024, as Ordinance Number 23-10.
- d. **DOAH:** The Florida Division of Administrative Hearings.
- e. **In compliance or into compliance:** The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

- f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the Amendment not in compliance.
  - g. Petition: The petition for administrative hearing and relief filed on April 12, 2024, by the Department in this case.
  - h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.
  - i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.
  - j. Statement of Intent: The statement of intent to find the Amendment not in compliance issued by the Department in this case.
  - k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Amendment or Remedial Plan Amendment.
2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Amendment is in compliance.
3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Amendment not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.
4. Dismissal. If the Local Government completes the Remedial Actions required by this Agreement, the Department will issue a cumulative Notice of Intent addressing both the Remedial Plan

Amendment and the initial Amendment subject to these proceedings. The Department will file the cumulative Notice of Intent with the DOAH. The Department will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for compliance. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Amendment will be in compliance.

6. Remedial Actions to be Considered for Adoption. The Local Government agrees to consider for adoption by formal action of its governing body all Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7. Adoption or Approval of Remedial Plan Amendments. No later than July 1, 2025, the Local Government shall consider for adoption all Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the Local Government shall transmit the amendment to the Department. The Local Government also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted intervenor status in this proceeding. The Remedial Plan Amendment transmitted to the Department shall also contain a letter which describes the remedial action(s) adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the “based upon” provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 20 days after receipt of the adopted Remedial Plan Amendments and Support Documents, the Department shall issue a Notice

of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

- a. In Compliance: If the Department determines that the adopted Remedial Actions satisfies this Agreement, the Department will issue a cumulative Notice of Intent addressing both the Amendment and the Remedial Plan Amendment as being in compliance. The Department agrees to file the cumulative notice with DOAH and move to realign the parties or to have this proceeding dismissed, as may be appropriate.
  - b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.
10. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this

Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

11. Approval by Governing Body. This Agreement has been approved by the Local Government's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(6)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the Local Government's charter or other regulations.

12. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

13. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

14. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

15. Effective Date. This Agreement shall become effective immediately upon execution by the Department and the Local Government.

16. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

17. Retention of Right to Final Hearing. Each party hereby retains the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

18. Construction of Agreement. All parties to this agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

19. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

20. Governmental Discretion Unaffected. This Agreement is not intended to bind the Local Government in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

21. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

22. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

**APPROVED by the Local Government** on January 7, 2025.

**BOARD OF COUNTY COMMISSIONERS  
OF LEVY COUNTY, FLORIDA**

\_\_\_\_\_  
\_\_\_\_\_, Chair

ATTEST: Matt Brooks, Clerk  
of the Circuit Court and Ex-officio Clerk  
to the Board of County Commissioners

\_\_\_\_\_  
Matt Brooks, Clerk

Approved as to form and legal sufficiency

\_\_\_\_\_  
Nicolle M. Shalley, County Attorney

**APPROVED by the Department** on January \_\_\_\_\_, 2025.

**FLORIDA DEPARTMENT OF COMMERCE**

\_\_\_\_\_  
By: J. Alex Kelly, Secretary

Approved as to form and legal sufficiency, subject  
only to full and proper execution by the Parties.

OFFICE OF GENERAL COUNSEL  
FLORIDA DEPARTMENT OF COMMERCE

By: \_\_\_\_\_

Approved Date: \_\_\_\_\_



# Exhibit A to Stipulated Settlement Agreement

POSTED ON THE DEPARTMENT INTERNET WEBSITE ON

APRIL 12, 2024

FLORIDA DEPARTMENT OF COMMERCE  
THE STATE LAND PLANNING AGENCY  
NOTICE OF INTENT TO FIND THE  
LEVY COUNTY ORDINANCE NUMBER 23-10  
COMPREHENSIVE PLAN AMENDMENT  
NOT IN COMPLIANCE  
DOCKET NO. 23-01ER-NOI-38-01-(A)-(I)

The Florida Department of Commerce (“Department”) gives notice of its intent to find the Amendment to the Comprehensive Plan for the Levy County Comprehensive Plan Amendment, adopted by Ordinance No. 23-10 on February 20, 2024, NOT IN COMPLIANCE, pursuant to Section 163.3184(4), F.S.

The Department will file this Notice of Intent, including the attached and incorporated by reference Statement of Intent, and a Petition with the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an administrative hearing pursuant to section 120.569 and 120.57, Florida Statutes. The purpose of the administrative hearing will be to present evidence and testimony on noncompliance issues alleged by the Department in this Notice of Intent and Statement of Intent in order to secure a recommended order from an Administrative Law Judge.

Affected persons may petition to intervene at DOAH in accordance with the requirements of Rule 28-106.205, Florida Administrative Code and section 163.3184(5)(b)2., Florida Statutes. Failure to file a petition to intervene within the allowed timeframe constitutes a waiver of any right such person has to request a hearing on the Plan Amendment pursuant to section 120.569 and 120.57, or to participate in the administrative hearing. After an administrative hearing petition is timely filed, mediation may be available pursuant to the provisions of section 163.3184(7), Florida Statutes.

/s/James D. Stansbury, Chief  
Bureau of Community Planning and Growth  
Division of Community Development  
Florida Commerce  
107 East Madison Street  
Tallahassee, Florida 32399

**STATE OF FLORIDA  
DEPARTMENT OF COMMERCE**

IN RE: LEVY COUNTY FLORIDA  
COMPREHENSIVE PLAN AMENDMENT  
23-01ER; ADOPTING AN EVALUATION  
AND APPRAISAL AMENDMENT TO THE  
COUNTY COMPREHENSIVE PLAN

DOCKET NO. 23-01ER-NOI-38-01-(A)-(I)

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**STATEMENT OF INTENT TO FIND  
COMPREHENSIVE PLAN AMENDMENT NOT IN COMPLIANCE**

The Florida Department of Commerce (“Department”), pursuant to section 163.3184(5)(b), Florida Statutes, hereby issues this Statement of Intent to find the comprehensive plan amendment adopted by Levy County Ordinance No. 23-10 on February 20, 2024 (“Plan Amendment”), not “in compliance” based upon the Objections, Recommendations, and Comments Report issued by the Department on December 18, 2023, which is hereby incorporated by reference. The Plan Amendment is also substantially changed from the proposed amendment. The substantial changes are also not in compliance for the reasons outlined herein.

The Department finds the Plan Amendment is not “in compliance,” as the term is defined by section 163.3184(1)(b), Florida Statutes, and as support states as follows:

I. INCONSISTENCY WITH CHAPTER 163, PART II, FLORIDA STATUTES

a. Comprehensive Plan Update

The Plan Amendment does not update the County’s Comprehensive Plan to comply with statutory requirements relating to the County’s planning period, does not establish coordination of and consistency between the elements, and is not based on relevant and appropriate data and analysis.

Chapter 2023-31, Laws of Florida, modified section 163.3177(5)(a), Florida Statutes, to require local governments to increase the two required planning periods in their comprehensive plans from 5-year and 10-year to 10-year and 20-year planning periods. While the County’s Comprehensive Plan should contain a long-

term planning period covering a period from now until 2043, the County's current long-term planning period is through 2026.

The Plan Amendment does not update the County's Comprehensive Plan elements to address the required planning periods, based upon relevant and appropriate data and analysis, consistent with the requirements of section 163.3177(1)(f), Florida Statutes, that all mandatory and optional elements of the comprehensive plan and plan amendments shall be based upon relevant and appropriate data and an analysis by the local government. Coordination of the elements of the local comprehensive plan shall be a major objective of the planning process, and the elements shall be consistent. Where data is relevant to several elements, consistent data shall be used, including population estimates and projections unless alternative data can be justified for a plan amendment through new supporting data and analysis. Updates to the require elements and optional elements of the comprehensive plan must be processed in the same plan amendment cycle.

The Plan Amendment does not update the Comprehensive Plan planning periods based upon relevant and appropriate data and analysis of permanent and seasonal population estimates and projections consistent with the requirements of sections 163.3177(1)(f)3., and 163.3177(2), Florida Statutes. The Plan Amendment does not update the Comprehensive Plan elements to be coordinated and consistent based upon updated population estimates and projections consistent with the requirements of sections 163.3177(1)(f)3., and 163.3177(2), Florida Statutes.

The Plan Amendment update to the Comprehensive Plan (Infrastructure Element, Transportation Circulation Element and Capital Improvements Element) is not based upon relevant and appropriate data and analysis of public facilities (potable water, sanitary sewer, solid waste, stormwater and transportation facilities) addressing the following for the required planning periods: (1) current and projected demand upon public facilities based upon relevant and appropriate population estimates and projections; (2) current and projected designed capacity of public facilities; (3) current and projected operating levels of service of public facilities; (4) identification of any improvements that are needed to public facilities, including the timing and scope of such improvements, in order to achieve and maintain the adopted level of service standards of public facilities; and (5) coordination of any needed improvements with the Capital Improvements Element.

The Plan Amendment update to the Future Land Use Element is not based upon relevant and appropriate data and analysis consistent with the requirements of section 163.3177(6)(a)2., Florida Statutes, for the required planning periods. The Plan Amendment update to the Housing Element is not based upon relevant and appropriate data and analysis consistent with the requirements of section 163.3177(6)(f)2., Florida Statutes.

**Statutory Authority:** Sections 163.3177(1)(f), 163.3177(1)(f)3., 163.3177(2), 163.3177(5)(a), 163.3177(6)(a)2., 163.3177(6)(f)2., 163.3177(6)(b),

163.3177(6)(c), 163.3177(6)(d), 163.3177(6)(e), 163.3177(6)(g), 163.3178, 163.3184(4) and 163.3191, Florida Statutes.

b. Substantial Change to the Future Land Use Element Policy 1.2, Public and Institutional Facilities

The Plan Amendment includes a substantial change to the Future Land Use Element Policy 1.2, Public and Institutional Facilities, that was not previously included in the proposed amendment. The Plan Amendment removes the intensity of use standard entirely from the Public and Institutional Facilities future land use category. The substantial change was not in response to any of the objections or comment raised by the Department.

The amendment to Future Land Use Element Policy 1.2 to delete the intensity of use standard (maximum floor area ratio of 0.50) from the “Public and Institutional Facilities” future land use category is inconsistent with the requirements of section 163.3177(1), Florida Statutes, (the plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations) and section 163.3177(6)(a)1., Florida Statutes, (each future land use category must include standards to be followed in the control and distribution of buildings and structure intensities). The Public and Institutional Facilities future land use category allows various non-residential land uses (e.g., city halls, fire and police stations, libraries, educational facilities, churches, public clubs, health centers, hospitals and facilities for the care of the aged and infirm). The Plan Amendment deletes in its entirety the intensity of use standard for these non-residential land uses and does not establish meaningful and predictable intensity of use standards for the non-residential land uses allowed within the Public and Institutional Facilities future land use category.

**Statutory Authority:** Sections 163.3177(1), 163.3177(6)(a), and 163.3184(4), Florida Statutes.

II. REMEDIAL ACTIONS

The Department has identified remedial actions that the County may take to bring the Plan Amendment into compliance. The County must revise the Plan Amendment to include planning periods and plan elements that meet the requirements of Chapter 163, Part II, of the Florida Statutes.

The County’s Comprehensive Plan must include one planning period to cover at least the first 10-year period occurring after the plan amendment adoption and another planning period to cover at least a 20-year period. The necessary update to reflect appropriate planning periods must also be based upon relevant and appropriate data and analysis. The update to the planning periods shall also consider the following:

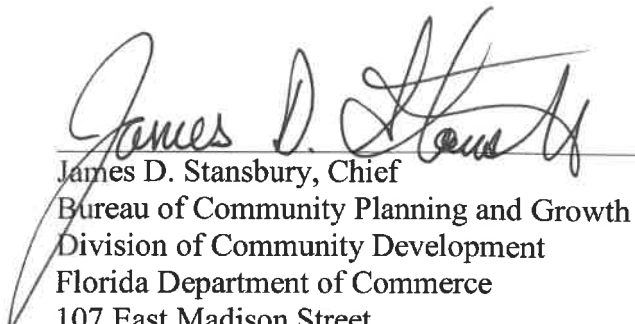
- Data and analysis of the permanent and seasonal population estimates and projections;
- Coordination of and consistency between all of the elements of the Comprehensive Plan; and
- Data and analysis of public facilities (potable water, sanitary sewer, solid waste, stormwater and transportation facilities).

The County must also revise the Future Land Use Element Policy 1.2, Public and Institutional Facilities, to include an intensity of use standard that provides meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

### **CONCLUSION**

The Plan Amendment is not consistent with the requirements of Chapter 163, Part II of the Florida Statutes and the Plan Amendment is not “in compliance,” as defined by section 163.3184(1)(b), Florida Statutes. In order to bring the Plan Amendment into compliance, the County may complete the recommended remedial actions described above or adopt another equivalent remedial action to resolve the Department’s concerns.

Executed this 12th day of April, 2024.

  
James D. Stansbury, Chief  
Bureau of Community Planning and Growth  
Division of Community Development  
Florida Department of Commerce  
107 East Madison Street  
Tallahassee, Florida 32399

## Exhibit B to Stipulated Settlement Agreement

Levy County shall amend the Levy County Comprehensive Plan with the following Remedial Plan Amendments as described below:

1. Amend the Comprehensive Plan to establish updated planning periods (10-year and 20-year to reflect 2025-2035-2045 timeframes) to include the following: (1) amendment to the title page of the Comprehensive Plan to identify the updated planning periods; (2) amendment to the Future Land Use Element to include an introductory statement that identifies the updated planning periods; (3) amendments to the Future Land Use Map series and Future Transportation Map series to depict the updated planning periods; and (4) amendments to update any reference to planning period years in any currently adopted goals, objectives, policies, maps, tables and figures of each element of the Comprehensive Plan. The amendments shall be shown in strike-through and underline format. Support the Comprehensive Plan amendments with relevant and appropriate data and analysis based on professionally accepted sources that updates the data and analysis of each element of the Comprehensive Plan based on the following:

- (1) the requirements of Sections 163.3177 and 163.3178, Florida Statutes (F.S.);
- (2) the elements of the Comprehensive Plan shall be coordinated and consistent, and the need to support each element of the Comprehensive Plan with relevant and appropriate data and analysis;
- (3) the need to establish updated planning periods (10-year and 20-year to reflect 2025-2035-2045 timeframes) and the need to update the data and analysis of each element of the Comprehensive Plan to support the planning periods;
- (4) population estimates and projections consistent with the requirements of Sections 163.3177(1)(f)3., and 163.3177(2), F.S.;
- (5) public facilities planning for roads, potable water, sanitary sewer, solid waste, stormwater management and recreation facilities consistent with the requirements of Sections 163.3177(6)(b), (c) and (e), F.S.;
- (6) future land use element data and analysis consistent with the requirements of Section 163.3177(6)(a)2., F.S.;
- (7) housing element data and analysis consistent with the requirements of Section 163.3177(6)(f)(2), F.S.;
- (8) conservation element data and analysis consistent with the requirements of Section 163.3177(6)(d), F.S.;
- (9) coastal management element data and analysis consistent with the requirements of Sections 163.3177(6)(g) and 163.3178, F.S.; and
- (10) capital improvements element data and analysis consistent with the requirements of Section 163.3177(3), F.S.

2. Amend Future Land Use Element Policy 1.2 (Public and Institutional Facilities) as follows:

**The Initial EAR language found NOT in compliance was as follows:**

**Public and Institutional Facilities**

This category provides for public buildings and grounds which includes city halls, post offices, fire and police stations, libraries, utilities (including gas, water, and electric, water power, well houses, electric utility poles, transmission towers and electric substations, power generating facilities, sewerage, landfills, telephone facilities, utility poles and street lighting, cable services, and other similar equipment necessary for the furnishing of adequate services), public potable water wells, County airport and maintenance yards, educational facilities (elementary, middle and high schools, whether public, parochial or private), and other institutional facilities (churches, public clubs, health centers, hospitals and facilities for the care of the aged and infirm, and cemeteries). This land use is permitted within a Municipal Service District or within rural areas outside of the Municipal Service District boundary. ~~The minimum lot size is one (1) fourth (1/4) acre and the maximum floor area ratio is 0.5. Lot coverage shall be based on and shall be required to meet all other local and state land development regulations.~~

**The Remedial amendment will re-instate the stricken language as follows:**

**Public and Institutional Facilities**

This category provides for public buildings and grounds which includes city halls, post offices, fire and police stations, libraries, utilities (including gas, water, and electric, water power, well houses, electric utility poles, transmission towers and electric substations, power generating facilities, sewerage, landfills, telephone facilities, utility poles and street lighting, cable services, and other similar equipment necessary for the furnishing of adequate services), public potable water wells, County airport and maintenance yards, educational facilities (elementary, middle and high schools, whether public, parochial or private), and other institutional facilities (churches, public clubs, health centers, hospitals and facilities for the care of the aged and infirm, and cemeteries). This land use is permitted within a Municipal Service District or within rural areas outside of the Municipal Service District boundary. The minimum lot size is one (1)-fourth (1/4) acre and the maximum floor area ratio is 0.5. Lot coverage shall be based on and shall be required to meet all other local and state land development regulations.