

MEMORANDUM OF LAW

**CONSISTENCY REQUIREMENTS OF COMPREHENSIVE PLAN:
INDUSTRIAL (IN) - CHEMICAL MANUFACTURING OR REFINING PROHIBITED**

**By Ralf Brookes Attorney
Board Certified in City, County and Local Government Law by The Florida Bar**

Consistency with the Comprehensive Plan is required by Florida Statutes Chapter 163.

The Community Planning Act (Chapter 163, Part II, Fla. Stat.) (“Act”) mandates that all local governments adopt and maintain a comprehensive plan, which guides future land development. § 163.3167(1)(b)1; § 163.3167(2).

It is the express “intent of [the] act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof...” § 163.3161(6), Fla. Stat.

Once a local government has adopted a comprehensive plan as mandated by the Act, all subsequent actions taken by it with regard to authorizing development must be consistent with that plan. §163.3194(1) & (3), §163.3201, §163.3213 and §163.3215, Fla. Stat.

The Act strictly prohibits the approval of a development order that is inconsistent with an adopted plan. §§163.3161(5), 163.3184(7), and 163.3194(1) (a), Fla. Stat.; *Pinecrest Lakes v. Shidel*, 795 So.2d 191 (Fla. 4th DCA. 2001), review denied, 821 So. 2d. 300 (Fla. 2002).

A development order is “any order granting, denying, or granting with conditions an application for a development permit.” §163.3164(7), Fla. Stat. A “development permit” is defined to include “any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.” §163.3164(8), Fla. Stat.

A comprehensive plan is a statutorily mandated plan to control and direct the use and development of property - like a constitution governing all future development decisions. *Machado v. Musgrove*, 519 So. 2d 629, 631 (Fla. 3d DCA 1987) (“the enactment of the comprehensive statutory scheme manifests a clear legislative intent to mandate intelligent, uniform growth management throughout the state in accord with the statutory scheme.”).

“It is well established that a development order shall be consistent with the governmental body’s objectives, policies, land uses, etc., as provided in its comprehensive plan.” *Dixon v. City of Jacksonville*, 774 So. 2d 763 (Fla. 1st DCA 2000).

1. Under the Act, cities and counties “shall have power and responsibility ... [t]o adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth. § 163.3167(1)(b), Fla. Stat.

Prohibition Of Chemical Manufacturing or Refining

The Plan emphasizes the preservation of residential character, promotion of tourism, and protection of natural resources, which are incompatible with potentially dangerous industrial activities involving chemical processing and production. Under the City Comprehensive Plan and zoning regulations, chemical processing facilities are a prohibited land use within designated Industrial zones within the City of Fernandina Beach.

The City of Fernandina Beach Comprehensive Plan clearly prohibits chemical manufacturing and refining in the Industrial land use designation:

Policy 1.07.12 Industrial (IN)

... (g) “Heavy metal fabrication, batch plants, salvage yards, **chemical or petroleum manufacturing or refining**, rubber or plastics manufacturing, or other uses generating potentially harmful environmental or nuisance impacts **shall be prohibited.**”

[Future-Land-Use-Element_2030_Reprint2022 \(fbfl.us\)](#)

Ethanol Manufacturing and Refining is not consistent with the Comprehensive Plan.

A large-scale industrial process plant for the manufacturing, production and refining of 7.5 million gallons per year of chemical ethanol has recently been proposed in the City of Fernandina Beach on a parcel that has an Industrial (IN) future land use designation. An ethanol manufacturing or refining plant is inconsistent with the language of the Fernandina City Comprehensive Plan, which expressly prohibits such a use in the Industrial land use category:

Policy 1.07.12 Industrial (IN)

(g):“*Heavy metal fabrication, batch plants, salvage yards, **chemical or petroleum manufacturing or refining**, rubber or plastics manufacturing, or other uses generating potentially harmful environmental or nuisance impacts **shall be prohibited.***”

City of Fernandina Beach Comprehensive Plan, Future Land Use Element.

Sincerely,



Ralf Brookes Attorney



Ralf Brookes Attorney 1217 E Cape Coral Parkway #107 Cape Coral Florida 33904
(239) 910-5464 Ralf@RalfBrookesAttorney.com