Florida League of Cities
Comments on SB 208 Amendment

Revises s. 163.3164 Revised Definition of "Compatibility" (Lines 22-32):

The League opposes this change. It requires that any proposed residential use (regardless of height, bulk, scale, or density) be deemed compatible with any other residential use, so long as they are in the same land use category. This presumes that any type of residential development will always be compatible, which is not true. Many comprehensive plans adopt several types of residential future land use categories but within each category are several zoning districts, which may vary in allowable density and type of dwelling. A high-rise development of 50 units per acre is not always compatible with a 20-unit per acre subdivision. *Attachment A* illustrates this incompatibility. Stating that all residential uses of any type are compatible by legislative fiat eliminates the ability to address real-world incompatibilities with proper development tools to mitigate short and long-term conflicts.

Creates "Infill Residential Development" and requirements for its approval (Lines 33-42):

The bill creates an uncategorized use called "Infill Residential Development" that is not subject to consistency review with the comprehensive plan and land development regulations as written. This new classification can be up to 100 acres in size and include any type of residential use (e.g., multifamily) and of any density. It need only share 50% of its boundary (even if the boundary is across a lake or an interstate highway) to obtain this special status.

100 acres is not "infill" in any context.[1] 100 acres equals 75 football fields. That is sprawl, not infill. In addition, the requirement to share only 50% of a boundary with existing residential use means the other 50% of the property could be bordered by an entirely different and non-residential use, such as industrial. This language would prohibit consideration of compatibility with both the residential use on one side and the industrial use on the other side.

Residential uses are allowed in most future land use categories, including agricultural categories. Would an agriculturally zoned property that contains a single house and a pig farm trigger the "contiguity" language in this bill if a residential subdivision is proposed next door? This section sets up clear conflicts between existing uses (such as the pig farm) and incoming new residential uses.

Limits application of Land Development Regulations to mitigate incompatibilities between Residential uses (Lines 47-59):

The new language in Lines 72-77 will prohibit local governments from imposing conditions to mitigate incompatibilities between uses. The League opposes this change.

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[1] Compare this proposal with the statutory definition of "urban infill" in section 3164(51):
"the development of vacant parcels in otherwise built-up areas where public facilities such as sewer systems, roads, schools, and recreation areas are already in place and the average residential density is at least five dwelling units per acre, the average nonresidential intensity is at least a floor area ratio of 1.0 and vacant, developable land does not constitute more than 10 percent of the area."

Local government land development regulations include requirements to mitigate impacts between different land uses through site design standards. These include setbacks, buffers, site design, lighting, and noise requirements. These requirements are almost always included as a "condition" of approval. These conditions are important because they allow an otherwise incompatible or "slightly" incompatible" development to proceed, so long as the impacts are mitigated through these conditions.

What are the consequences? It would allow a high-rise apartment building to go up on the lot line of a low-rise single-family neighborhood, with no setback, no buffer, and with the building's trash compactor and dumpster literally located next to someone's backyard with no screen or fence. It would allow that same high rise apartment building to be located next to a cement plant, with no conditions to address incompatibilities, so long as another residential use is on the other side of the apartment building.

Requires administrative approval of "infill residential development" with no plan amendment, rezoning, etc. (Lines 118-131):

The League is categorically opposed to mandating administrative approval. Local government business should be conducted in the Sunshine, and the public has a fundamental right to participate in government decisions. Government in the dark erodes public trust in government at all levels.

This section creates a new unclassified use called "infill residential development" and prohibits any comprehensive plan amendment or zoning change to incorporate these areas. Thus, these areas will exist independently of the comprehensive plan and zoning districts. This negates the entire statutory premise of legal consistency in local land use decisions. *See* section 163.3231, Florida Statutes.

Prohibits development fees that are based on project costs (Lines 147-166):

There are 2-4 local governments that apparently impose some type of fee associated with an application for a development permit that is based on the total cost of a project. The bill language is intended to prohibit this practice, but the amendment language remains overbroad. Any fee should be reasonably based on the direct and indirect costs of reviewing the permit application. The amendment language does not permit this and would result in both overbilling and underbilling unless the local government staff keeps hourly time sheets and bills the applicant after the fact. This creates uncertainty for applicants. This problem is easily rectified, and we hope you will consider our suggested fix as presented in Attachment B.

Proposed Solutions:

Based on our discussions with you, we understand the frustration underlying this bill is with how the term "compatibility" is applied when reviewing residential project applications. The term is by nature subjective, which can both help and hurt applicants. It can help applicants defend local government approvals when challenged by third parties. It can hurt applicants when local governments face pressure from neighborhood groups and deny an application for the vague reason that it is in "incompatible with community character." We believe the issues that prompted you to file this bill can be addressed by requiring local governments to include more objectivity into compatibility analyses and provide explicit explanations in the record when something is not compatible. The applicant should be entitled to

propose mitigation to avoid compatibility problems, and the local government should be required to explain why mitigation will or will not work.

We respectfully submit the attached amendment for your consideration (*see* Attachment B). It is intended as a strike-all amendment because it addresses the crux of the issue without the adverse consequences of the current bill language. It also addresses the issue we identified with the development fee language. This language will be difficult for many local governments who have relied on vague expressions of compatibility for many years. It will be a burden, but it is equitable outcome. It will result in greater accountability while avoiding the disruptive consequences posed by the current amendment and bill.