

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

**CATEGORY:**  
Committees/Boards/Commissions/Examiners

**CODE NUMBER:**  
AC-2-16

**TITLE:**  
Procedural Rules for Special Magistrate Dispute Resolution under the Florida Land Use and Environmental Dispute Resolution Act.

**ADOPTED:**  
03/20/96

**AMENDED:**  
04/03/01; 08/09/05

**ORIGINATING DEPARTMENT:**  
County Attorney

**PURPOSE/SCOPE:**

The purpose of this administrative code is to adopt procedural guidelines for Special Magistrate proceeding designed to implement the Florida Land Use and Environmental Dispute Resolution Act.

**POLICY/PROCEDURE:**

The following procedural guidelines will apply to the Special Magistrate process in Lee County:

**A. SPECIAL MAGISTRATE TIMELINE AND DUE DATES**

<u>DAY</u>	<u>ACTION</u>
<b>0</b>	Private Property Owner receives development order or notice of enforcement action by the County,
<b>30</b>	Private Property Owner must have filed for relief by serving the County.

**RECEIPT OF REQUEST FOR RELIEF BY COUNTY**

<u>DAY</u>	<u>ACTION</u>
<b>+ 10</b>	County and Private Property Owner agree on who will serve as Special Magistrate and forward the request for relief to Special Magistrate.
<b>+ 10</b>	County serves copies of the request for relief on contiguous land owners and any substantially affected person who participated in any of the previous proceedings and who requested notice of the request for relief. They have 21 days from receipt of the request for relief to request participation in the proceedings.
<b>+ 15</b>	Special Magistrate provides notice of the place, date and time of the hearing to all parties and all others requesting notice. (This must occur at least 40 days prior to the hearing.)

- + 15** County files response to request for relief with the Special Magistrate and serves the Private Property Owner with a copy. Any governmental entity added by the Special Magistrate have 15 days to file a response to the request for relief with the Special Magistrate.
- + 45** Special Magistrate commences hearing on request for relief unless parties agree otherwise.
- + 165** Entire procedure (including the pre-hearing stage, the mediation phase, the information gathering hearing stage and recommendation) must conclude unless all parties agree otherwise.

**SPECIAL MAGISTRATE HEARING CONCLUDED**

<u>DAY</u>	<u>ACTION</u>
<b>+ 14</b>	Special Magistrate prepares a written recommendation and provides it to all parties and the Department of Legal Affairs.
<b>+ 45</b>	Each Governmental Entity must confer among themselves and each must convey to the Private Property Owner in writing their decision to accept the recommendation, or accept the recommendation with modifications, or reject the recommendation. Failure to act on the recommendation within 45 days constitutes a rejection.
<b>+ 60</b>	Each Governmental Entity must notify the Department of Legal Affairs in writing as to the action it has taken on the Special Magistrate's recommendation.
<b>+ 75</b>	The County must issue a written decision that describes as specifically as possible the uses available to the property, if (1) the County rejects the Special Magistrate recommendation or (2) the County accepts the Special Magistrate recommendation with or without modification and the Private Property Owner rejects the County's action.

**B. PROCEDURAL GUIDELINES FOR SPECIAL MAGISTRATE PROCEEDINGS**

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### **General Provisions**

#### **Guideline 1. Purpose and Intent**

- (1) These guidelines establish procedures for the initiation, conduct and conclusion of a Special Magistrate proceeding under the Florida Land Use and Environmental Dispute Resolution Act involving a development order or enforcement action by Lee County. This proceeding is voluntary for the landowner.
- (2) This is a nonadjudicatory settlement and expedited hearing procedure. A Special Magistrate may not impose a decision but is intended primarily to explore opportunities for compromise and to assist the parties in negotiation. Settlement through the Special Magistrate process is intended to save time and money for everyone.
- (3) If a settlement is not reached, the Special Magistrate will conduct an independent and impartial assessment of the dispute and prepare a nonbinding recommendation.

- (4) The Special Magistrate proceeding is intended to be a speedy, inexpensive, simple and solution-oriented method for settlement of land use and environmental disputes. As much as possible, a landowner and regulator meet face-to-face and discuss issues directly without the need for advocacy by a lawyer.
- (5) The Special Magistrate and the parties should adapt these guidelines to the needs of each case, consistent with the requirements of law.

## **Guideline 2. Definitions**

- (1) "Development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels, and all other work customarily associated with such activities.
- (2) "Development order" means any order, or notice of proposed state or regional governmental agency action, which is or will have the effect of granting, denying, or granting with conditions an application for a development permit. It includes the rezoning of a specific parcel of land. It does not include actions on an amendment to the local comprehensive plan.
- (3) "Development permit" means:  
  
Any building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, or any other official action of Lee County having the effect of authorizing the development of land including, but not limited to, programs implementing Chapters 125, 161, 163, 166, 187, 258, 372, 373, 378, and 403, Florida Statutes, or
- (4) "Governmental entity" includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies.
- (5) "Land" or "real property" means land and includes any appurtenances and improvements to the land, including any other relevant real property in which the owner had a relevant interest.
- (6) "Owner" means a person with a legal or equitable interest in land who filed an application for a development permit for the land with Lee County and who received a development order, or who has an interest in land that is the subject of an enforcement action by Lee County.
- (7) "Participant" means:

- (a) A person with a legal or equitable interest in land contiguous to the owner's property; or
  - (b) A substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity support for or objections to the development order or enforcement action in a prior proceeding, including a public hearing.
- (8) "Party" or "parties" include the Owner, Lee County and any other governmental entity made a party to the proceeding.
  - (9) "Person" includes individuals, firms, incorporated or unincorporated associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
  - (10) "Proposed use of the property" means the proposal filed by the owner to develop or otherwise use the owner's land.

**Guideline 3. Time Requirements and Furnishing Copies**

- (1) Unless the parties agree in writing to extend the time for performing any act under these guidelines, including the overall 165-day time period, a Special Magistrate proceeding may not continue longer than 165 days from the date the owner files the request for relief.
- (2) Any copy which must be furnished to the Special Magistrate, a party or a participant may be sent by regular mail, postage prepaid, or by hand delivery to the recipient's last known address. The burden of proving a copy has been furnished is on the person responsible for furnishing it.
- (3) Except for an owner's request for relief, any document which must be submitted, or any copy which must be furnished, may be submitted or furnished by facsimile transmission. Facsimile documents will be deemed submitted or furnished on the date transmitted as shown on the recipient's copy, if the copy is complete.
- (4) Filing means that the signed original must be received by the office that is to receive the document by the date specified. Any document received after 5:00 p.m. will be deemed filed as of 8:00 a.m. the next regular business day.

**Guideline 4. Standards of Conduct**

- (1) The Special Magistrate holds a position of trust and should adhere to the highest standards of personal integrity, impartiality and competence. The Special Magistrate should be honest and unbiased, act in good faith, be diligent and avoid any conflict of interest or the appearance of a conflict of interest. The Special Magistrate should disclose any facts or circumstances that may give rise to justifiable doubts as to impartiality or independence.

- (2) The parties and the Special Magistrate may establish additional standards of conduct for Special Magistrate, and standards of conduct for parties and participants, in a Special Magistrate Agreement as authorized by Guideline 9(1).

### **Pre-Hearing Procedures**

#### **Guideline 5. Administrative Appeals and Judicial Review**

- (1) A petition by the owner for judicial review of the development order or enforcement action or a formal administrative hearing pursuant to Section 120.57, F.S., if applicable, will waive all rights to a Special Magistrate proceeding.
- (2) A request for relief through a Special Magistrate proceeding will toll the time for filing a petition for judicial review of the development order or enforcement action, or a formal administrative hearing pursuant to Section 120.57, F.S., if applicable.
- (3) Invoking the procedures for a Special Magistrate proceeding is not a pre-condition for judicial review of the development order or enforcement action or a formal administrative hearing pursuant to Section 120.57, F.S., if applicable.
- (4) Prior to initiating a Special Magistrate proceeding, the owner must request review through an administrative appeal before the county hearing examiner if applicable under the Land Development Code (LDC), so long as review takes no longer than four months. The filing of a valid administrative appeal before the county hearing examiner will toll the time for filing a request for relief.
- (5) The owner may initiate a Special Magistrate proceeding within 30 days after conclusion of the administrative appeal before the county hearing examiner or, if the administrative appeal before the county hearing examiner has not concluded, within 30 days after four months from its commencement.

#### **Guideline 6. Pre-Initiation Meeting**

- (1) Prior to filing a request for relief, an owner may request in writing an informal meeting with the County Attorney, the County Manager, or designee to ascertain whether the issues relating to a development order or enforcement action would be appropriate for a Special Magistrate proceeding or other form of alternative dispute resolution. The County Attorney and the County Manager will convene such a meeting promptly and include staff necessary to address the owner's concerns.
- (2) The County may agree with the owner in writing to extend the time for filing a request for relief to create an opportunity for mediation or other form of alternative dispute resolution.

- (3) A Special Magistrate proceeding is intended to be an additional remedy for the owner. It does not supplant other lawfully available methods agreed to by the parties, such as arbitration, mediation or other form of dispute resolution.

**Guideline 7. Request for Relief**

- (1) Any owner who believes a development order or enforcement action, by itself or in conjunction with the actions of other governmental entities, is unreasonable or unfairly burdens the use of the owner's land may file a request for relief.
- (2) A request for relief must be post marked or hand delivered within 30 days after:
  - (a) Receipt of the development order or enforcement action; or,
  - (b) If an administrative appeal before the county hearing examiner is permissible, the later of its conclusion or the expiration of four months after its initiation.
- (3) A signed original and one copy of the request for relief must be filed with the Chairman of the Board of County Commissioners at 2115 Second Street, Fort Myers, Florida 33901. No fee will be charged for filing a request for relief.
- (4) The request for relief must contain:
  - (a) A brief statement of the owner's proposed use of the property.
  - (b) A summary of the development order or description of the enforcement action. A copy of the development order or documentation of the enforcement action must be attached.
  - (c) A brief statement of the impact of the development order or enforcement action on the ability of the owner to achieve the proposed use of the property, including an explanation why the development order or enforcement action is unreasonable or an unfair burden.
  - (d) The signature of the owner or, if the owner is a corporation, partnership or other organization, the signature of a responsible official, and the mailing address and telephone number at which the owner may be reached. An attorney may sign the request for relief on behalf of the owner.
  - (e) A statement regarding whether an administrative appeal before the county hearing examiner is available and, if so, whether and when it was commenced by the owner and, if completed, the date of completion.
  - (f) A certification by the signer of the request identifying the persons who have been furnished with copies of the request for relief.

- (5) Upon receipt of a request for relief, the Chairman of the Board of County Commissioners must forward the copy of the request to the County Attorney, who will:
- (a) Notify appropriate staff that the request was filed and direct preparation of a response; and
  - (b) Confer with the owner or owner's representative, if one, and any other governmental entity identified as a party in the request for relief to agree on a Special Magistrate no later than 10 days from the date the request for relief was received.
  - (c) Furnish a copy of the request for relief to:
    - 1. Persons holding title to land contiguous to the owner's property, at the address on the latest County tax roll.
    - 2. Persons who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity support for or objections to the development order or enforcement action. A copy must be furnished to such a person only if that person requested in writing or at a public hearing a desire to be placed on a mailing list to receive notice of any subsequent proceeding on the development order or enforcement action at issue.

The mailing to the persons listed in 1 and 2 above must include the following information:

      - (a) Request for relief.
      - (b) Application number and date of filing.
      - (c) Location and total area of the property.
      - (d) Present zoning and comprehensive plan designation of the property.
      - (e) Instructions for obtaining further information regarding the application.
    - 3. A copy provided for purposes of notice may omit attachments or supporting documentation so long as it informs the recipient where such materials may be inspected and copied.
- (6) At the next regular meeting of the Board of County Commissioners after receipt of a request for relief, the County Attorney must inform the Board that a request for relief has been filed, the name of the owner, a description of the development order or enforcement action at issue, and the timetable for consideration of the matter.



- (7) The owner may voluntarily dismiss the proceeding at any time by submitting a written request for dismissal to the Special Magistrate or, if one has not been selected, to the Chairman of the Board of County Commissioners. A voluntary dismissal will be effective upon filing with the Special Magistrate or, if one has not been selected, the Chairman of the Board of County Commissioners.

**Guideline 8. Selection of Special Magistrate**

- (1) In order to serve as a Special Magistrate in a proceeding under these guidelines, a person must:
- (a) Be a resident of the State of Florida;
  - (b) Possess experience and expertise in mediation; and
  - (c) Possess experience and expertise in at least one of the following disciplines and a working familiarity with the others:
    - 1. Land use and environmental permitting;
    - 2. Land planning;
    - 3. Land economics;
    - 4. Local and state government organization and powers, and the law governing the same.

A Special Magistrate need not be a lawyer or a mediator certified by the Florida Supreme Court.

- (2) The County Attorney will forward the original request for relief to the Special Magistrate upon selection.
- (3) Any member of the Florida Bar selected as a Special Magistrate in a particular matter will not, for that reason, be disqualified from serving as counsel in any other matter before Lee County.
- (4) If the owner, any other governmental entity identified as a party in the request for relief and the County Attorney do not agree on a Special Magistrate, they may jointly agree on an impartial third party to select the Special Magistrate according to agreed criteria.

### **Guideline 9. Special Magistrate Agreement; Fees and Expenses**

- (1) The Special Magistrate and the parties must memorialize the selection of the Special Magistrate in an agreement which provides for the payment of all fees and expenses associated with the proceeding. In addition, a Special Magistrate Agreement may:
  - (a) Vary the time for performance of any act.
  - (b) Establish ground rules for the conduct of the proceeding, including standards of conduct for the Special Magistrate, parties and participants, and the enforceability of subpoenas in circuit court.
  - (c) Identify factual issues to be addressed in the proceeding or specify procedures for resolving factual issues, including stipulation.
  - (d) Provide for the exchange of information by the parties prior to the mediation or hearing.
  - (e) Identify participants known to the parties who should be notified of the proceeding.
  - (f) Address such other issues as the parties may decide will assist in settlement of the dispute.
- (2) Payment of fees and expenses for the Special Magistrate, and costs of providing notice and effecting service, will be borne equally by the parties. Other costs will be paid as agreed by the parties.
- (3) A Special Magistrate will be compensated as agreed in writing by the Special Magistrate and the parties upon selection or as thereafter modified in writing. Parties may place funds on deposit to assure payment at the conclusion of the proceeding, or provide a retainer against which fees and expenses will be charged.
- (4) The parties may authorize the Special Magistrate to retain an independent expert, or to obtain any materials, to assist in evaluating any issue. Fees and costs will be paid as agreed in writing by the parties and the Special Magistrate.

### **Guideline 10. Response to Request for Relief**

- (1) No more than 15 days after the filing of a request for relief, the County Attorney will file a response to the request for relief on behalf of the county. A copy must be furnished to the owner and any person who has requested to participate in the proceeding.
- (2) The response must set forth in reasonable detail the position of the county regarding the matters raised by the owner. The response must include a brief statement

explaining the public purpose of the regulations on which the development order or enforcement action is based.

- (3) The response may include a request that the Special Magistrate dismiss the owner's request for relief for any failure to observe these Guidelines (Sufficiency Report). If the request is dismissed, the owner will be permitted to file an amended request within a reasonable time fixed by the Special Magistrate. Failure to file an adequate amended request within the time specified by the Special Magistrate will result in final dismissal of the matter without the right to submit another request. Final dismissal may not be appealed to the Board of County Commissioners.
- (4) Any party may request, in its response or otherwise, a request to be dropped from the proceeding. The request must set forth facts and circumstances to aid the Special Magistrate in deciding on the request. All such requests must be disposed of prior to a hearing on the substance of the owner's request for relief. If the Special Magistrate denies a request to be dropped, that party must participate in the proceeding.

**Guideline 11. Additional Parties to the Proceeding**

- (1) The Special Magistrate may add additional governmental entities as parties to the proceeding when:
  - (a) The owner or County asks the Special Magistrate to add that governmental entity to the proceeding as a party; and
  - (b) The development order or enforcement action is the culmination of a process involving a governmental entity in addition to the County; or
  - (c) A complete resolution of all relevant issues would require active participation of that additional governmental entity.
- (2) A governmental entity added as a party must actively participate in the proceeding as set forth in these Guidelines and as required by the Special Magistrate.
- (3) These Guidelines are intended to give the Special Magistrate the flexibility to alter the time periods within which a governmental entity added to a proceeding must perform any act. A governmental entity added as a party must submit a response to the request for relief under Guideline 10(1) and may request dismissal of the request for relief under Guideline 10(3). Ordinarily, a request to be dropped under Guideline 10(4) would be without purpose.

**Guideline 12. Other Persons Who May Participate**

- (1) Other persons who may participate in the proceeding are:
  - (a) Any person with a legal or equitable interest in land contiguous to the owner's property; or
  - (b) Any substantially affected person who submitted oral or written testimony, sworn or unsworn, of a substantive nature which stated with particularity support for or objections to the development order or enforcement action in a prior proceeding.
- (2) Within 21 days after receiving a copy of the request for relief, a person seeking to participate must submit a written request to participate. The request must state:
  - (a) The person has a legal or equitable interest in land contiguous to the owner's property and, if so, identify the land in relation to the owner's property; or
  - (b) How the person is substantially affected by the development order or enforcement action at issue.

The request must be submitted to the Special Magistrate or, if one has not yet been selected, to the County Attorney for forwarding to the Special Magistrate after selection.

- (3) The Special Magistrate may decide any issue necessary to determine whether a person qualifies as a participant. If the Special Magistrate accepts a request to participate, the person or any witnesses and representatives may address only those issues raised regarding alternatives, variances, and other types of adjustment to the development order or enforcement action which may impact the participant's substantial interests, unless the parties agree to allow a participant to address additional issues. Denial of a request to participate may not be appealed to the Board of County Commissioners.

**Guideline 13. Consolidation**

- (1) If there are separate matters which involve similar issues or identical parties, they may be consolidated if the parties agree and it appears that consolidation would promote the speedy, efficient, and inexpensive resolution of the matters.
- (2) If the separate matters are pending before different Special Magistrates, the parties may decide which Special Magistrate will conduct the consolidated proceeding. If they cannot agree on one or multiple Special Magistrate to conduct the proceeding, the proceedings will not be consolidated.

## **Conduct of the Proceeding**

### **Guideline 14.        Representatives**

- (1) A party or participant may be represented by an attorney or other person at any phase of the proceeding, but such representation is not required.
- (2) At the mediation, each party must be represented by a person with authority to bind that party to a settlement, or to recommend a settlement directly to the persons with authority to bind the party. The Special Magistrate may ask a representative to provide assurances of such authority.

### **Guideline 15.        Order of the Proceeding**

- (1) In keeping with the overriding intent of the Legislature that the Special Magistrate proceeding be a flexible, problem-solving procedure which results in a voluntary settlement, the Special Magistrate may conduct the phases of the proceeding in any sequence and on separate days.
- (2) The proceeding will be open to the public and be held in a location accessible to the public, including the physically handicapped.
- (3) The proceeding will be recorded and minutes will be kept.
- (4) The proceeding will be conducted under the direction and supervision of the Special Magistrate. The Special Magistrate will determine the order of presentation of issues and information unless otherwise set forth in the Special Magistrate Agreement. The Special Magistrate will decide questions of procedure in a manner which provides reasonable due process.
- (5) Prior to any other portion of the proceeding, the Special Magistrate will conduct a hearing on any request to dismiss the request for relief (Sufficiency Hearing).
- (6) At any time after commencement of the information-gathering hearing, the Special Magistrate may recess the hearing to recommence mediation and facilitation.
- (7) After the hearing, the Special Magistrate may reconvene the parties to present a written recommendation, in draft or final form, and seek to re-commence negotiations.

### **Guideline 16.        Mediation Phase**

- (1) The Special Magistrate's first responsibility is to facilitate a resolution of the dispute and arrive at a settlement acceptable to the parties. It may involve a modification of the owner's proposed use of the property or adjustment in the development order or enforcement action or regulatory efforts by one or more of the governmental parties.

- (2) The Special Magistrate will, among other things, suggest alternatives, analyze issues, question perceptions, use logic, stimulate and facilitate negotiations between the parties, and keep order. The Special Magistrate will at all times promote conciliation, cooperation, compromise and settlement of the dispute within the bounds established by law.
- (3) As alternatives, variances, and other types of adjustments to the development order or enforcement action are presented, the Special Magistrate will afford participants an opportunity to address the impacts of such adjustments on their substantial interests.

**Guideline 17. Information-gathering Hearing**

- (1) Within 5 days of receipt of the request for relief, the Special Magistrate will provide written notice of the place, date, and time of the hearing to all parties, and to all persons who have requested such notice. The hearing must be held within 45 days of the Special Magistrate's receipt of the request for relief. The parties may agree to extend the date for the hearing.
- (2) The hearing must be held in Lee County. The Special Magistrate's decision on the specific place of the mediation and hearing will be final.
- (3) The Special Magistrate will hear from anyone with information necessary to understand the matter. The Special Magistrate may question anyone presenting information at the hearing but will give all parties an opportunity for follow-up questions.
- (4) The Special Magistrate will weigh all information offered at the hearing. Information will not be subject to the rules of evidence, but the criteria for determining and the determination of verification and authentication are within the Special Magistrate's discretion.
- (5) At any time, the Special Magistrate may require any party to provide additional information in the interest of gaining a complete understanding of the request for relief.
- (6) Each party may record the hearing at its own expense. The Special Magistrate may record the hearing to assist in preparing a recommendation as required by Guideline 22. If the Special Magistrate makes such a recording, it will be forwarded to the county with the recommendation but will be subject to the restrictions on information contained in Guideline 20.
- (7) Any documents or tangible materials presented to the Special Magistrate at hearing will be submitted to the Chairman of the Board of County Commissioners with the Special Magistrate's recommendation. Any notes or drafts produced by the Special

Magistrate and not intended to record information in a permanent form will remain the property of the Special Magistrate.

- (8) If a party fails to appear at the hearing after notice, the Special Magistrate may proceed without that party or may adjourn the hearing to another day, giving notice to the absent party.
- (9) Information may be given and parties, participants or their representatives may participate by telephone, videotape or other communications medium unless otherwise agreed in a Special Magistrate Agreement.

**Guideline 18. Witnesses and Materials**

- (1) Each party must assure attendance at the hearing by those persons qualified by training or experience to address issues raised by the request for relief, the response, or by the Special Magistrate, or to address alternatives, variances, and other types of modifications to the development order or enforcement action.
- (2) The Special Magistrate may issue a subpoena for any nonparty witness in the state who will aid in the disposition of the matter. A subpoena issued by a Special Magistrate may require the witness to bring a specified document or thing.
- (3) The Special Magistrate may require and receive documents and other tangible materials from any party or participant. All parties and participants will have the opportunity to examine and respond to such submissions.
- (4) The Special Magistrate may weigh the credibility of witnesses.
- (5) Although an attorney is not required, any person compelled to appear or furnish documents or tangible materials, or who appears voluntarily, may be represented and advised by legal counsel at his or her own expense.
- (6) Any part of the evidence may be received in written form, and all testimony will be under oath.

**Guideline 19. Access to the Property**

- (1) A request for relief constitutes a consent by the owner for the Special Magistrate and parties or representatives to have reasonable access to the owner's land.
- (2) The owner may grant access to the land to participants.

**Guideline 20. Offer to Compromise**

- (1) As provided by law:
  - (a) All actions or statements of the Special Magistrate, the parties and all participants are evidence of an offer to compromise and are inadmissible in any judicial or administrative proceeding.
  - (b) The proceeding may not be made known by a party or participant to any judicial or administrative tribunal, or be construed for any purpose as an admission against interest.
- (2) A party or participant is not bound by anything said or done during the proceeding unless a written settlement is reached, in which case only the terms of the written settlement will be binding.
- (3) The Special Magistrate may not be called to appear before the Board of County Commissioners with respect to any aspect of the proceeding, nor may the Special Magistrate be compelled to furnish notes or drafts.

**Guideline 21. Settlement**

- (1) The owner and the county may enter into a settlement agreement or other agreement as to the permissible use of the owner's land prior to the Special Magistrate filing a recommendation under Guideline 22.
- (2) A settlement agreement or other agreement as to the permissible use of the owner's land may be executed subject to approval by the Board of County Commissioners. Any such agreement will not bind any party until duly approved and executed by all parties to the agreement.

**Post-Hearing Procedures**

**Guideline 22. Special Magistrate's Recommendation**

- (1) The Special Magistrate must file a recommendation with the chairman of the Board of County Commissioners within 14 days after the conclusion of the hearing. The Special Magistrate must also furnish a copy to all parties and participants.
- (2) If a settlement agreement or other agreement as to the permissible use of the owner's land is executed prior to the Special Magistrate's recommendation, the recommendation will only:
  - (a) Set forth the date and location of the hearing;
  - (b) Identify the parties and other participants in attendance at the hearing;



- (c) Record, without comment, the fact that a settlement agreement or other agreement as to the permissible use of the owner's land has been executed; and
  - (d) Include as an attachment an executed copy of the settlement agreement or other agreement as to the permissible use of the owner's property.
- (3) If a settlement agreement or other agreement as to the permissible use of the owner's land is not executed prior to the filing of the Special Magistrate's recommendation, the Special Magistrate will consider the facts and circumstances set forth in the request for relief, any responses, and any other information produced at the hearing to determine whether the development order or enforcement action, by itself or in conjunction with an action of the county or another governmental entity, is unreasonable or unfairly burdens the owner's land.
- (4) In making a determination, the Special Magistrate may consider, among other things:
- (a) The history of the land, including when it was purchased, how much was purchased, where it is located, the nature of the title, the composition of the property, and how it was previously used.
  - (b) The history of development and use of the land, including what was developed and by whom, if it was subdivided and how and to whom it was sold, whether plats were filed or recorded, and whether infrastructure and other public services or improvements may have been dedicated to the public.
  - (c) The history of relevant environmental protection and land use controls and other regulations, including how and whether the land was classified, any uses that may have been proscribed, and what changes in classifications have occurred.
  - (d) The present nature and extent of the land, including natural and altered characteristics.
  - (e) The reasonable expectations of the owner at the time of acquisition, or immediately prior to the implementation of the regulation at issue, whichever is later, under the regulations then in effect and under common law.
  - (f) The public purpose sought to be achieved by the development order or enforcement action, including the nature and magnitude of the problem addressed by the underlying regulations on which the development order or enforcement action is based; whether the development order or enforcement action is necessary to the achievement of the public purpose; and whether there are alternative development order or enforcement action conditions that

would achieve the public purpose and allow for reduced restrictions on the use of the owner's land.

- (g) Uses authorized for and restrictions placed on similar property, including adjacent lands.
  - (h) Any other information determined to be relevant by the Special Magistrate or agreed by the parties to be addressed by the Special Magistrate.
- (5) The Special Magistrate will utilize his or her expertise in formulating a recommendation and, in applying this expertise, must rely upon the sort of information that a reasonable, prudent person would rely upon in the conduct of his or her affairs.
- (6) If the Special Magistrate determines the development order or enforcement action, by itself or in conjunction with another action of the county or another governmental entity, is reasonable and does not unfairly burden the owner's land, the Special Magistrate will recommend that the development order or enforcement action remain undisturbed.
- (7) If the Special Magistrate determines the development order or enforcement action, by itself or in conjunction with another action of the county or another governmental entity, is unreasonable or unfairly burdens the owner's property, and the owner has consented, the Special Magistrate will recommend one or more alternative actions that protect the public interest served by the regulations at issue but allow for reduced restraints on the use of the owner's real property. The alternatives may include:
- (a) An adjustment of land development or permit standards or conditions controlling the development or use of the owner's land.
  - (b) Increases or modifications in the density, intensity, or use of areas of development.
  - (c) The transfer of development rights.
  - (d) Land swaps or exchanges.
  - (e) Mitigation, including payments in lieu of on-site mitigation.
  - (f) Location of the development or use at issue on the least sensitive portion of the property.
  - (g) Conditioning the amount of development or use permitted on the owner's land.

- (h) A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
- (i) Issuance of the development order, a variance, special exception, or other extraordinary relief, including withdrawal of the enforcement action.
- (j) Purchase of the owner's land, or an interest in it, by the county or another governmental entity.

If an apportionment of responsibility among governmental entities is necessary, the Special Magistrate will make such apportionment.

- (8) The Special Magistrate will furnish a copy of the written recommendation to the Florida Department of Legal Affairs.
- (9) The Special Magistrate's recommendation is a public record. A copy will be available for public inspection and copying at the office of the Clerk of the Board of County Commissioners.

**Guideline 23. Effect of Special Magistrate's Recommendation**

- (1) The Special Magistrate's recommendation is advisory and not binding on the owner or the Board of County Commissioners.
- (2) A Special Magistrate's recommendation constitutes data which will be considered with respect to any pertinent amendment to the comprehensive plan.
- (3) A Special Magistrate's determination that the development order or enforcement action, by itself or in conjunction with actions of the county or another governmental entity, is unreasonable or unfairly burdens the owner's land will constitute a determination of hardship which will support a modification, variance, or special exception as otherwise authorized by applicable rules and regulations.

**Guideline 24. Disposition of Special Magistrate's Recommendation**

- (1) Within 45 days of receipt of the Special Magistrate's recommendation, the Board of County Commissioners must deliberate and determine whether to:
  - (a) accept the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations; or
  - (b) modify the recommendation as submitted and implement it in the ordinary course and consistent with all other rules and regulations; or
  - (c) reject the recommendation as submitted. Failure to act within 45 days of receipt of the recommendation will be deemed a rejection, unless the owner and the county agree to an extension of time.

- (2) The deliberations of the Board of County Commissioners regarding whether to accept, reject or modify the Special Magistrate's recommendation will be made at a public hearing.

The Board of County Commissioners will determine the appropriate course of action based solely upon the request for relief, the Special Magistrate's recommendation and supporting documents. All persons addressing the Board will be limited to five minutes. The Board, at its discretion, may allow additional time to the staff or the property owner, or his designee.

- (3) Notice of public hearing:

- (a) Newspaper Publication.

The County must publish notice of the Board of County Commissioner public hearing in a newspaper of general circulation in the County at least ten (10) calendar days prior to the public hearing. The notice must include the name of property owner requesting relief, location of the property and substance of the proposed request for relief. The notice must also include the date, time, and place of the hearing and state the place in the County where the file may be inspected by the public. The notice must also advise that interested parties may appear at the hearing and be heard with respect to the Board of County Commissioner's deliberations regarding whether to accept, reject or modify the Special Magistrate's recommendation.

- (b) Mailed Notice.

The County will mail notice of the public hearing to all parties of record in the Special Magistrate proceeding at least ten (10) calendar days prior to the Board of County Commissioner's consideration of the matter; however, the mailed notice is a courtesy only and is not jurisdictional. Accordingly, the County's failure to mail or to timely mail such notice or the failure of any party of record in the Special Magistrate proceeding to receive mailed notice will not constitute a defect in notice or bar the public hearing as scheduled.

- (4) If the Board of County Commissioners adopts a recommendation to grant a modification, variance, or special exception to the application of ordinances or regulations as they otherwise would apply to the land, the owner will not be required to duplicate processes that the owner previously has participated in order to effectuate the modification, variance or special exception.
- (5) If the Special Magistrate recommends relief or other action in conjunction with another governmental entity, the County Attorney must confer with appropriate staff from the other entities to review the recommendation and determine whether a joint staff recommendation can be made to the heads of the respective governmental entities.

- (6) Within 15 days after final action on the Special Magistrate's recommendation by the Board of County Commissioners, its Clerk will send a copy of the order or other document memorializing final action to the Florida Department of Legal Affairs.
- (7) Within 10 days of final action on the recommendation, the owner must notify the County Attorney in writing whether the owner accepts the decision on the recommendation.
- (8) If the Board of County Commissioners accepts the recommendation or modifies it and the owner rejects the acceptance or modification, or if the Board of County Commissioners rejects the recommendation, the Board of County Commissioners must issue a written decision that describes as specifically as possible the use or uses available on the owner's land. The decision must be issued within 30 days of final action on the recommendation.
- (9) After the Board of County Commissioners has acted on the Special Magistrate's recommendation and a written decision has been issued describing the use or uses available on the owner's land, or if the Board of County Commissioners has not acted within 45 days, the owner may seek a formal adjudication on the development order or enforcement action as otherwise authorized by law.

**C. APPENDIX A - SAMPLE FORMS**

Appendix A  
Sample Forms

These sample forms are nonexclusive and their use is permissive. The following sample forms may be used in a Special Magistrate proceeding under these guidelines:

**(a) OWNER'S REQUEST FOR RELIEF FORMS**

**1. Local Development Order; Administrative Appeal Available**

TO: CHAIRMAN, LEE COUNTY BOARD OF COMMISSIONERS  
(2115 SECOND STREET, FORT MYERS, FL 33901)  
P.O. BOX 398  
FORT MYERS, FLORIDA 33902-0398

This is a request for relief pursuant to Section 70.51, F.S.

1. I own real property at [address].
2. On [date], I filed an application for [type of application] in order to [briefly describe proposed use of the property]. A copy of the application is attached as Attachment A.
3. On [date], the [adopting governmental entity] took the following action: [summarize development order]. A copy of the development order is attached as Attachment B.
4. On [date], I appealed the development order to [name of appellate body].
5. Four months have elapsed since I filed that appeal.  
(or)
5. On [date], the [name of appellate body] issued a final decision regarding the \_\_\_\_\_ development order which [briefly summarize the development order based on the appellate decision].

**ANNOTATION:** THE PROPERTY OWNER SHOULD CHOOSE THE APPROPRIATE PARAGRAPH 5.

6. The development order is unreasonable and unfairly burdens the use of the property in that it [describe how development order is unreasonable or unfairly burdens property].

Dated  
    /s/  
[name of owner]  
[address]  
[phone number]

Attachment: (copy of the application filed by the owner)

**2. Local enforcement action; administrative appeal unavailable--**

**OWNER'S REQUEST FOR RELIEF**

TO: Chairman, Lee County Board of Commissioners  
(2115 Second Street, Fort Myers, FL 33901)  
P.O. Box 398  
Fort Myers, Florida 33902-0398

This is a request for relief pursuant to Section 70.51, F.S.

1. I own real property at [address].
2. On [date], I was notified that an enforcement action had been instituted by [adopting governmental entity] regarding the property, alleging [briefly describe alleged violation]. A copy of the notification of enforcement action is attached as Attachment A.
3. This governmental action is not subject to a local administrative appeal.
4. As a result, [adopting governmental entity] has taken or is preparing to take the following enforcement action: [briefly describe the enforcement action].
5. The enforcement action is unreasonable and unfairly burdens the use of my property in that it [briefly discuss the impact of the enforcement action on the use of the property].

Dated

/s/

[name of owner]

[address]

[phone number]

Attachment: (copy of the notification of enforcement action)

3. **Development order by agency subject to Section 120.57, F.S.-**

**OWNER'S REQUEST FOR RELIEF**

TO: [elected or appointed head of adopting governmental entity]  
[address]

This is a request for relief provided by Section 70.51, F.S.

1. I own the real property located at [address].
2. On [date], I filed an application for [type of application] so that I could [briefly describe proposed use of the property]. A copy of the application is attached as Attachment A.
3. On [date], Lee County took the following action on my application: [briefly summarize development order or enforcement action]. A copy of the development order is attached as Attachment B.
4. The development order is subject to a proceeding pursuant to Section 120.57, F.S. I have not initiated an adjudicatory proceeding pursuant to that section prior to this request for relief.

Dated

/s/  
[name of owner]  
[address]  
[phone number]

Attachment: (copy of the application filed by the owner)



**(b) NOTICE OF OWNER'S REQUEST FOR RELIEF  
(to be used by the County )**

**NOTICE OF REQUEST FOR RELIEF**

TO: [name of property owner or other person]  
[address]

PLEASE TAKE NOTICE that [name of owner requesting relief] has filed a request for relief provided by Section 70.51, F.S. The property subject to the request for relief is located at [address]. The request for relief relates to [identify development order or enforcement action by name and number, if one] and has been or will be referred to an impartial Special Magistrate for hearing.

As provided by Section 70.51, F.S., you may participate in the proceeding only if you submit a written request to [name and address of Special Magistrate or adopting governmental entity's designated official] within 21 days of your receipt of this notice. Your participation will be limited to addressing those issues regarding alternatives, variances or adjustments of the development order or enforcement action which may affect your substantial interests.

You may obtain a copy of the procedural guidelines and sample forms for Special Magistrate proceedings at the Office of the Lee County Attorney, 2115 Second Street, Fort Myers, FL 33901 (P.O. Box 398, Fort Myers, FL 33902).

Dated

/s/  
[designated official]  
[address]  
[phone number]

**(c) SPECIAL MAGISTRATE AGREEMENT  
(to be used by parties and Special Magistrate)**

**1. Short version.--**

**SPECIAL MAGISTRATE AGREEMENT**

The [owner], LEE COUNTY and [name of Special Magistrate] agree that [name of Special Magistrate] will serve as the Special Magistrate in this proceeding subject to the following provisions:

1. Fees and Expenses. The Special Magistrate will be compensated at a rate of \$\_\_\_\_\_ per hour plus actual expenses. The parties will equally share these fees and expenses. Each party will deposit the sum of \$\_\_\_\_\_ with the [name of custodian of funds] by [date] as a retainer and partial payment for the special magistrate's expected fees and expenses. Any additional fees and expenses in excess of this amount ~~shall~~ will be payable to the Special Magistrate by the parties on an equal basis within 30 days of the conclusion of this proceeding.

2. Standards of Conduct. The conduct of all parties and participants will be governed by the standards set forth in the procedural guidelines for Special Magistrate proceeding adopted by [adopting governmental entity] as supplemented by the standards of conduct set forth in Attachment A.

3. Factual Issues. The parties stipulate to the facts set forth in Attachment B. The parties agree that the factual issues to be addressed in the information-gathering hearing, if one, will include those set forth in Attachment C.

4. Witnesses. Attachment D contains a list of the witnesses each party expects to call.

5. Location. The hearing will be held at [location] at a date specified by the Special Magistrate.

Dated

/s/  
[owner]  
[address]  
[phone number]

/s/  
[designated official]  
[address]  
[phone number]

/s/  
[Special Magistrate]  
[address]  
[phone number]

**2. Long Version.--**

**SPECIAL MAGISTRATE AGREEMENT**

Between the Governmental entity(ies) and Private Property Owner

This Special Magistrate Agreement dated this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ is executed by \_\_\_\_\_, on behalf of the (governmental entity) and by \_\_\_\_\_, on behalf of \_\_\_\_\_, hereinafter referred to as \_\_\_\_\_;

On the \_\_\_ day of 20\_\_\_, the parties enter into this \_\_\_ in response to the Request for Relief filed by \_\_\_\_\_ dated \_\_\_\_\_.

WHEREAS, Lee County has adopted procedures to implement the Florida Land Use and Environmental Dispute Resolution Act to provide a voluntary means of attempting to resolve disputes involving a development order or enforcement action without the necessity of length and costly litigation but without prejudicing such proceedings; and consistent with those procedures the parties agree as follows.

**1. Special Magistrate Proceeding.** The Lee County and \_\_\_\_\_ will engage in a non binding Special Magistrate proceeding on the claim contained in \_\_\_\_\_'s Request for Relief, dated \_\_\_\_\_. The dispute underlying the claim will be presented to a Special Magistrate agreed to and selected by the parties. The Special Magistrate will then issue a report including any agreement reached by the parties, and if necessary, a non-binding finding of reasonableness or undue burden and if requested by the Private Property Owner recommendations regarding settlement of the matter.

**2. Purpose of the Proceeding.** The Special Magistrate proceeding is intended to be a speedy, inexpensive, simple and solution-oriented method for settlement of land use and environmental disputes. A Special Magistrate will explore with the parties opportunities for settlement and will assist the parties in negotiation. If a settlement is not reached, the Special Magistrate will conduct an independent and impartial assessment of the dispute and prepare a non-binding report.

**3. Selection of a Special Magistrate.** The Special Magistrate will be selected by mutual agreement of the parties, who will exchange lists of no more than three potential Special Magistrate. All potential Special Magistrates should meet the statutory definition and must be able to arrange their schedules to hear the dispute continuously over a \_\_\_ period. In addition, the Special Magistrate must be able to devote the time necessary to render a non-binding report within 14 days after the close of the Special Magistrate proceeding. Fees and expenses of the Special Magistrate will be borne by the parties equally.

**4. Independent and Impartial Review.** The Special Magistrate will render an independent and impartial review of the claim presented.

**5. Information Exchange and Submission of Exhibits and Witness Lists.**

(a) Upon selection of the Special Magistrate, the Private Property Owner will provide to the Special Magistrate a copy of the request for relief and to the parties and special magistrate copies of exhibits and other information on which it intends to rely at the hearing and to each other a position and interest paper setting forth.

(b) The governmental entity(ies) will provide a written response to the request for relief including the documentary material on which it intends to rely at the hearing to the Special Magistrate, the owner and any participant who has requested to participate in the proceeding.

(c) No later than \_\_\_\_ days before the hearing, the parties will exchange a listing of witnesses and a brief description of the testimony of each witness.

(d) No later than \_\_\_\_\_ days before the hearing, participants will exchange with the Special Magistrate and the parties a short statement of no more than \_\_\_\_ pages in length, double spaced, setting forth the basis for their participation, their concerns with the or support for the development order or enforcement action that is the subject of the proceedings.

**6. Other governmental entities and controlling procedures.** When there is more than one governmental entity named as a party, the procedures of the governmental entity where the property is located will control.

**7. Proceedings before the Special Magistrate.** The presentations made in the proceeding will be informal. The rules of evidence do not apply and the hearing will be conducted under the direction and supervision of the Special Magistrate. The Special Magistrate will determine the order and presentation of issues and will hear from anyone with information necessary to understand the matter. The special magistrate may question anyone presenting information but will give all parties an opportunity for relevant follow up questions.

**8. Schedule.** The Special Magistrate proceeding will take \_\_\_\_ day(s).

**9. The Special Magistrate Recommendation.** The Special Magistrate will render a written report within 14 days of the conclusion of the proceeding. The report may include: (a) a concise summary of the claim; (b) a summary of the material facts and information presented; (c) a discussion of the issues; (d) a statement of the recommendation of the Special Magistrate.

**10. Recommendation Meeting.** (Optional) The report will be formally presented to representatives of the parties by the Special Magistrate at which time the representatives may attempt to negotiate a settlement.

**11. Admissible Evidence - Subsequent Hearing.** No papers or other written material supplied to the Special Magistrate is admissible in a subsequent proceeding unless otherwise made so by the rules of evidence applicable to such other proceeding. Any Special Magistrate report and recommendations will be admissible in such subsequent proceedings and each party hereby stipulates to its admissibility.

**12. Recording or Transcript.** A recording or transcript of the hearing may be made for the use of the Special Magistrate. In the event that the claim is not resolved, this transcript will constitute an offer to compromise and is not admissible in any judicial or administrative proceeding.

**13. Termination.** The Private Property Owner has the right to terminate this agreement at any time for any reason whatsoever.

**14. Ex Parte Communications.** After the selection of the Special Magistrate, no party will engage in any ex parte communications with the designated Special Magistrate. This prohibition does not apply to routine requests for fees and expenses to be borne by the parties. No written communication will be made between the Special Magistrate and a party without the other party receiving a copy, and no oral communication will take place without the other party being present.

**15. Identification of Hearing Representative.** The hearing representative for \_\_\_\_\_ will be \_\_\_\_\_. The hearing representative for (the governmental entity) will be \_\_\_\_\_.

Dated

/s/  
[owner]  
[address]  
[phone number]

/s/  
[designated official]  
[address]  
[phone number]

/s/  
[Special Magistrate]  
[address]  
[phone number]

**(d) RESPONSE TO OWNER'S REQUEST FOR RELIEF  
(to be used by the county)**

**RESPONSE TO OWNER'S REQUEST FOR RELIEF**

In response to the request for relief filed by [owner] dated [date of request] and relating to [development order by name and number, if any], LEE COUNTY states:

1. The development order is not unreasonable or impose an unfair burden on the property because [state reasons].
2. This development order is based upon [rule or regulation] which serves the necessary public purpose of [briefly state public purpose of the rule or regulation].
3. As an alternative to the current development order, LEE COUNTY offers the following, less restrictive option:

[specify alternative].

Dated

/s/  
[designated official]  
[address]  
[phone number]

Copies furnished to:  
[list persons to be sent copies]

**(e) REQUEST TO DISMISS OWNER'S REQUEST FOR RELIEF  
(to be used by the county)**

**REQUEST TO DISMISS OWNER'S REQUEST FOR RELIEF**

LEE COUNTY requests that the request for relief filed by [owner] on [date] be dismissed because:

1. The owner failed to exhaust local administrative appeals by not appealing to the Lee County Hearing Examiner as provided by the Lee County Land Development Code.
2. The request for relief was received more than 30 days after issuance of the [development order or enforcement action].
3. The request for relief fails to provide a statement of the owner's proposed use of the property.
4. A copy of the [development order or enforcement action] was not attached to the request for relief.
5. The request for relief does not provide a statement of the effect of the [development order or enforcement action] on the owner's ability to use the property.

Dated

/s/  
[designated official]  
[address]  
[phone number]

Copies furnished to:

**(f) REQUEST TO PARTICIPATE IN SPECIAL MAGISTRATE PROCEEDING**

**REQUEST TO PARTICIPATE IN SPECIAL MAGISTRATE PROCEEDING**

TO: [Special Magistrate or designated official of adopting governmental entity]

RE: Request for Relief of [owner requesting relief]

1. I hereby request the right to participate in the proceeding on this request for relief, pursuant to Section 70.51(12), F.S. I received written notice of this Special Magistrate proceeding from Lee County on [date].

2. I own the real property located adjacent to the property which is the subject of this proceeding.

or

2. I submitted oral or written testimony of a substantive nature which stated with particularity objections to or support for the subject of this proceeding at the following time and place: [state body which conducted proceeding and date or appearance or submission of written materials]. I am substantially affected by the action at issue in that [explain how you are substantially affected].

**ANNOTATION.** A PERSON REQUESTING THE RIGHT TO PARTICIPATE IN THE PROCEEDING SHOULD CHOOSE THE VERSION OF PARAGRAPH 2 WHICH IS APPLICABLE.

3. I understand that, if allowed to participate in the proceeding, I will be limited to addressing the prospective relief for the owner as it may affect my substantial interests.

Dated

/s/  
[person requesting participation]  
[address]  
[phone number]



**(g) ORDER RULING ON REQUEST TO PARTICIPATE IN SPECIAL MAGISTRATE PROCEEDING (to be used by Special Magistrate).**

**1. Granting request to participate--**

**ORDER GRANTING REQUEST TO PARTICIPATE IN SPECIAL MAGISTRATE PROCEEDING**

Your request to participate in the Special Magistrate proceeding initiated by [name of owner requesting relief] is granted.

Be advised that pursuant to Section 70.51(12), F.S., your participation in this proceeding is limited to addressing those issues raised regarding alternatives, variances, and other types of adjustment to the [development order or enforcement action] which may impact your substantial interests, unless the owner requesting relief and Lee County agree to allow you to address other issues.

You may obtain a copy of the procedural guidelines and sample forms for special Magistrate proceedings at [location and phone number of office where guidelines and forms may be obtained].

Dated

/s/  
[Special Magistrate]  
[address]  
[phone number]

**2. Denying request to participate.--**

**ORDER DENYING REQUEST TO  
PARTICIPATE IN SPECIAL MAGISTRATE PROCEEDING**

Your request to participate in the Special Magistrate proceeding initiated by [owner requesting relief] is denied.

Your request is denied because [state grounds for denial].

Dated

/s/  
[Special Magistrate]  
[address]  
[phone number]

**(h) NOTICE OF SPECIAL MAGISTRATE HEARING  
(to be issued by Special Magistrate).**

**NOTICE OF SPECIAL MAGISTRATE HEARING**

TO: [name]  
[address]

You are hereby notified that the Special Magistrate hearing on the request for relief filed by [owner requesting relief] has been set as follows:

PLACE: [location by street address and room number]  
TIME: [time]  
DATE: [date]

You may obtain a copy of the procedural guidelines and sample forms for Special Magistrate proceedings at [location and phone number of office where guidelines and forms may be obtained].

Dated

/s/  
[Special Magistrate]  
[address]  
[phone number]

(i) **SPECIAL MAGISTRATE'S RECOMMENDATION**  
(to be issued by Special Magistrate).

1. **With settlement.--**

**SPECIAL MAGISTRATE'S RECOMMENDATION**

RE: Request for Relief of [owner]

A Special Magistrate proceeding has been conducted pursuant to Section 70.51, F.S. A settlement agreement was reached by and between [owner] and Lee County . A copy of the settlement agreement is attached as Attachment A.

Dated

/s/  
[Special Magistrate]  
[address]  
[phone number]

Copies furnished to:

**2. Finding for owner.--**

**SPECIAL MAGISTRATE'S RECOMMENDATION**

RE: Request for Relief of [owner]

A Special Magistrate's hearing was held on [date]. The parties were unable to reach a settlement. Therefore, I received information from the parties, participants and witnesses to determine whether [development order or enforcement action] was unreasonable or an unfair burden on the real property.

Based on this information and pursuant to Section 70.51(19)(b), F.S., I find the [development order or enforcement action] is unreasonable and/or unfairly burdens the real property because: [set forth reasons].

Therefore, with the owner's consent, I recommend the following: [recommended adjustment to development order]

Dated

/s/  
[Special Magistrate]  
[address]  
[phone number]

Copies furnished to:

**3. Finding for governmental entity.--**

**SPECIAL MAGISTRATE'S RECOMMENDATION**

RE: Request for Relief of [owner]

A Special Magistrate's hearing was held on [date]. The parties were unable to reach a settlement. Therefore, I received information from the parties, participants and witnesses to determine whether [development order or enforcement action] was unreasonable or an unfair burden on the real property.

Based on this information and pursuant to Section 70.51(19)(a), F.S., I find this [development order or enforcement action] is not unreasonable and does not unfairly burden the owner's property because: [set forth reasons].

Therefore, I recommend that the development order remain undisturbed.

Dated

/s/  
[Special Magistrate]  
[address]  
[phone number]

Copies furnished to:

**(j) NOTICE OF ACTION TAKEN ON SPECIAL MAGISTRATE'S RECOMMENDATION (to be issued by the county)**

**NOTICE OF ACTION TAKEN ON SPECIAL MAGISTRATE'S RECOMMENDATION**

TO: Florida Department of Legal Affairs  
[address]

RE: Request for Relief of [owner]

On [date], the Special Magistrate issued a recommendation on the above request for relief. As required by Section 70.51(27), F.S., Lee County hereby notifies the Florida Department of Legal Affairs that the following action was taken on the Special Magistrate's recommendation: [summarize action taken].

A copy of the order by the [elected or appointed head of adopting governmental entity] formally taking this action is attached as Attachment A.

Dated

/s/  
[designated official]  
[address]  
[phone number]

Copies furnished to:

**(k) STATEMENT OF USES AVAILABLE ON OWNER'S LAND  
(to be used by the county )**

**STATEMENT OF USES AVAILABLE ON OWNER'S LAND**

RE: Request for Relief of [owner]

1. On [date], the Special Magistrate issued a recommendation on the request for relief by [name of owner]. On [date], the Board of County Commissioners of Lee County [accepted, or accepted with modifications, or rejected] the Special Magistrate's recommendation.

2. On [date], the owner notified [designated official] that the decision of the [elected or appointed head of adopting governmental entity] regarding the Special Magistrate's recommendation had been rejected.

Therefore, as required by Section 70.51(22), F.S., Lee County identifies the following uses that are available on the owner's property:

[specifically describe use or uses available]

Dated

\_\_\_\_\_  
[designated official]

[address]

[phone number]

Copies furnished to:



**(I) SUBPOENA (to be used by Special Magistrate).**

**SUBPOENA**

TO: [name]  
[address]

RE: Request for Relief of [owner]

YOU ARE HEREBY COMMANDED to appear at [location] to testify at a Special Magistrate hearing at \_\_\_ o'clock \_\_.m., on the day of \_\_\_\_\_, 20\_\_\_, with respect to the request for relief filed by [owner] regarding the [development order or enforcement action] by Lee County affecting the owner's real property.

PURSUANT TO SECTION 70.51(14), F.S., you must comply with this subpoena as directed unless excused by the party who requested issuance of the subpoena or by order of the Special Magistrate.

ISSUED this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_, Florida.

/s/  
[Special Magistrate]  
[address]  
[phone number]

THIS SUBPOENA ISSUED  
AT THE REQUEST OF:  
[name of party]  
[address]  
[phone number]

**(m) SUBPOENA DUCES TECUM  
(to be used by the Special Magistrate).**

**SUBPOENA DUCES TECUM**

TO: [name]  
[address]

RE: Request for Relief of [owner]

YOU ARE HEREBY COMMANDED to appear at [location] to testify at a Special Magistrate hearing at \_\_\_ o'clock \_\_.m., on the day of \_\_\_\_\_, 20\_\_\_, with respect to the request for relief filed by [owner] regarding the [development order or enforcement action] by [adopting governmental entity] affecting the owner's real property.

YOU ARE FURTHER COMMANDED to have with you at said time and place the following: [list items to be produced at hearing]

PURSUANT TO SECTION 70.51(14), F.S., you must comply with this subpoena as directed unless excused by the party who requested issuance of the subpoena or by order of the Special Magistrate.

ISSUED this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_, Florida.

/s/  
[Special Magistrate]  
[address]  
[phone number]

THIS SUBPOENA ISSUED  
AT THE REQUEST OF:  
[name of party]  
[address]  
[phone number]