

# 19

## PLANNING, ZONING, AND ENVIRONMENTAL HAZARDS

### 1 LEARNING OBJECTIVES

2 *When you have completed this unit, you will be able to accomplish the following.*

- 3 ■ Describe the composition and authority of the local planning agency and the purpose of land-use controls and the role of zoning ordinances.
- 4
- 5 ■ Calculate the number of lots available for development, given the total number of acres contained in a parcel, the percentage of land reserved for streets and other facilities, and the minimum number of square feet per lot.
- 6
- 7
- 8 ■ Distinguish among the five general zoning classifications, zoning ordinances, building codes, and health ordinances.
- 9
- 10 ■ Explain the purpose of a variance, a special exception, and a nonconforming use and describe the characteristics of planned unit developments.
- 11
- 12 ■ Understand the basic provisions of the national flood insurance program.
- 13 ■ Explain the various environmental hazards associated with real estate.

### 14 KEY TERMS

asbestos	environmental impact statement (EIS)	special exception
buffer zone	health ordinance	special flood hazard area (SFHA)
building codes	nonconforming use	special purpose property
building inspection	planned unit development (PUD)	variance
building permit		zoning ordinance
certificate of occupancy		
concurrency		

## 1 INTRODUCTION

2 In a residential community located in a fashionable area, homes are meticulously land-  
3 scaped with rose bushes and beautiful fountains. It is a neighborhood of executives and  
4 their families. Across the street from one of the fashionable homes is a small candy factory,  
5 and farther down the street is a soft-drink bottling company. This is just one example of  
6 what happens when community planning and land-use control are absent.

## 7 19.1 HISTORY OF PLANNING AND ZONING

8 Before the Industrial Revolution, the United States was primarily an agrarian society.  
9 Industrialization brought about urbanization as field workers moved to the cities to find  
10 factory work. The philosophy of *laissez-faire* prevailed among business and political lead-  
11 ers. Laissez-faire, a philosophy of noninterference by the government in private business  
12 affairs, advocated letting the owners of land and business fix the rules of competition.  
13 Planning and growth management were largely ignored. Property owners used their land  
14 to produce the greatest private gain without regard for the impact on the community.  
15 Unorganized growth resulted.

16 In 1916, the first serious efforts were made to create and enforce zoning ordinances.  
17 The garment industry in New York City was about to expand into the exclusive Fifth  
18 Avenue district. A zoning ordinance was enacted to protect Fifth Avenue property values  
19 by prohibiting all but specified property uses in that district. Other cities began to adopt  
20 zoning ordinances to create or protect local property values.

21 In 1926, the U.S. Supreme Court ruled that legally enacted zoning laws were constitu-  
22 tional. This ruling gave powers of enforcement to municipalities that had enacted zoning  
23 laws for the purpose of regulating future growth and to protect residential property. These  
24 controls gave rise to city planning and growth management all across the nation.

### 25 Florida's Growth Policy and Community Planning Act

26 Florida's Growth Policy Act requires on a statewide basis that a **concurrency** provi-  
27 sion mandating infrastructure for sanitary sewers, potable (drinking) water, and waste  
28 treatment facilities be in place before new development is allowed. Many communities  
29 have experienced complete curtailment of new construction because of a building mora-  
30 torium until a new sewage treatment plant, for example, is completed.

31 Florida's Community Planning Act (CPA) placed growth decisions in the hands of  
32 local government while the state's role is to focus designated areas of critical concern.  
33 Regulation was shifted from state oversight to local government control of the plan-  
34 ning and growth management process. State's role is to focus on protecting the functions  
35 of important state resources and facilities. The purpose of the CPA is to manage future  
36 development consistent with the role of local government by recognizing and protecting  
37 the traditional economic base of the state (agriculture, tourism, and military presence)  
38 while also encouraging economic diversification, workforce development, and community  
39 planning.

40 Under the CPA, state-mandated concurrency is not required for transportation,  
41 schools, and parks. Local governments have been delegated the discretion to implement  
42 as optional elements, or delete existing regulations through a plan amendment. The CPA  
43 significantly downsized state growth planning and created the Department of Economic  
44 Opportunity (DEO).

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1 Local governments, municipalities, and counties establish development goals by cre-  
 2 ating a *comprehensive plan*. The comprehensive plan is not a regulatory document. It is  
 3 a guide that attempts to anticipate changing needs within the community. The plan is a  
 4 long-term strategic plan that anticipates future growth and services to meet the growth.

## 5 **Planning Goals**

6 City planning attempts to achieve the following basic goals:

- 7 ■ *Save tax money by preventing sprawl.* Urban sprawl is characterized by low density,  
 8 automobile-dependent development with either a single use or multiple uses that  
 9 are not functionally related, requiring the extension of public facilities and ser-  
 10 vices in an inefficient manner, and failing to provide a clear separation between  
 11 urban and rural uses.
- 12 ■ *Provide adequate provision of services.*
- 13 ■ *Provide for road right-of-ways and setbacks.* Setback provisions are designed to  
 14 keep buildings away from streets and to ensure that occupants have more light  
 15 and air and less noise, smoke, dust, danger of spread of fire, and in some cases, a  
 16 better view at street intersections.
- 17 ■ *Protect against costly drainage, flooding, and environmental problems.*
- 18 ■ *Reduce problems associated with political and equity issues caused by existing landfills,*  
 19 *prisons, and so forth.*

## 20 **LOCAL PLANNING AGENCY**

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### 21 **Composition**

22 Planning commissions are most effective when composed of members who represent  
 23 all walks of life. Members most often are not trained professional planners. The overriding  
 24 goal is to have representatives from a cross section of interests. A planning commission  
 25 composed entirely of developers, for example, could not possibly speak for all the people.  
 26 The homes, desires, and goals of all residents should be considered.

27 Members of the planning commission are usually appointed (not elected) and serve  
 28 in a voluntary, unpaid capacity. The primary legislative body of the city or the county is  
 29 the appointing authority, usually a city council or a county commission. Planning com-  
 30 missions vary in size, and the terms for which planning commissioners are appointed may  
 31 vary from the terms of their colleagues. This ensures a staggered rate of replacement and is  
 32 designed to prevent any one appointing authority from selecting an entire planning com-  
 33 mission. Planning commissioners are usually appointed for terms longer than the term of  
 34 the appointing authority to reduce the commissioners' obligation to any single political  
 35 body. This minimizes political influence within the planning body.

36 The planning commission or board serves as an advisory body to the elected city or  
 37 county government. As important as the planning function may be to the future welfare  
 38 of a community, the commission is not the final authority in matters related to planning.  
 39 The commission is responsible for planning, just as the police department is responsible  
 40 for law enforcement, but the elected government must make the final decisions based on  
 41 recommendations from subordinate agencies.

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## 1 Authority

2 Three areas of responsibility for which city planning commissions are commonly dele-  
3 gated final authority are (1) subdivision plat approval, (2) site plan approval, and (3) sign  
4 control.

5 **Subdivision Plat Approval.** A developer planning to create a subdivision must submit a  
6 *subdivision plat* to the planning commission for approval (also see Unit 1). A developer is  
7 not issued a building permit until final approval is granted by the planning commission.  
8 When approval is received, the developer may proceed to record the plat in the public  
9 records and receive a building permit.

10 **Site Plan Approval.** The *site plan* serves the same function that a subdivision plat serves  
11 for a subdivision. It is a detailed plan of how the project is to be developed, how traffic and  
12 parking will be dealt with, and what impact on neighboring properties may be expected.  
13 This is an area in which the expertise of the planning commission's support staff can be of  
14 great assistance. Reviewing and checking site plan proposals requires painstaking atten-  
15 tion to detail and a well-rounded background of information. This ensures compliance  
16 with all physical, economic, and environmental requirements.

17 **Sign Control.** More and more cities are exercising control over signs. The primary aims  
18 of sign control are to minimize distraction to motorists and to eliminate actual safety haz-  
19 ards created by signs at blind corners, lighted signs that glare into the eyes of drivers at  
20 night, and the like. Any aesthetic improvement resulting from sign control is a welcomed  
21 by-product.

## 22 Support Staff

23 While appointed members of the commission may be experts in their own fields, they  
24 often are not urban planning experts. The planning commission's function is to make  
25 policy recommendations regarding the type of city it feels that citizens want in the future.  
26 It sets goals and provides residents with a number of feasible alternative plans for achiev-  
27 ing those goals. The job of collecting, sorting, analyzing, and reporting is handled by the  
28 staff of the planning commission.

29 The planning commission support staff is composed of full-time city or county employ-  
30 ees. Staff members are normally college- or university-trained planners. They have learned  
31 how to evaluate the economic base of a city. They know the most productive sources of  
32 information regarding population, proper land uses, and support requirements for future  
33 growth. The planning support staff collects and refines the raw data to produce the basic  
34 studies needed to develop a flexible, comprehensive plan for future growth.

## Practice Questions

1. List the three areas of final authority of local planning commissions.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

2. The philosophy of noninterference by the government with regard to land use is \_\_\_\_\_.

3. One of the goals of city planning is to prevent \_\_\_\_\_.

## 19.2 CALCULATING LOTS PER ACRE

Assume that a particular residential zone—for example, R-1A—requires that all lots in that subcategory contain at least 9,000 square feet of land. This automatically restricts the number of lots a developer can create from each acre in a subdivision. Every acre of land contains 43,560 square feet. With this information, we can calculate the number of lots available for development. In the process of turning raw land into a subdivision, between 20% and 25% of the land is commonly used for streets and open space. Wider streets and open green space add quality but reduce the amount of land available for lots.

### Formula: Buildable Lots in a Tract

43,560 square feet per acre  $\times$  percent available for lots = square feet available for lots per acre

Square feet available for lots per acre  $\times$  number of acres in tract = total available square feet

Total available square feet  $\div$  minimum square feet per lot = number of buildable lots in tract

**EXAMPLE 1:** A tract of 100 acres is being developed. The applicable zoning requires a minimum of 9,000 square feet per residential lot. The developer must set aside 25% of the acreage for streets, sidewalks and so forth. How many buildable lots are in the tract?

43,560 square feet per acre  $\times$  .75 available for lots = 32,670 square feet available for lots per acre

32,670  $\times$  100 acres in tract = 3,267,000 total available square feet

3,267,000  $\div$  9,000 minimum square feet per lot = 363 buildable lots

**EXAMPLE 2:** A tract of 20 acres is being developed. The county requires that the subdivision reserve 10% of the tract for common space. The developer is also planning for an entry road that will be 500 feet long by 30 feet wide. The county requires a minimum of 12,000 square feet per residential lot. How many buildable lots are in the tract?

In this example, there is an extra step to subtract the square footage allocated for the entry road. Proceed with the first two steps in the formula for buildable lots in a tract.

43,560 square feet per acre  $\times$  .90 = 39,204 square feet available after allowing for common space

39,204 square feet available per acre  $\times$  20 acres = 784,080 total available square feet (before allowing for the road)

Now, calculate the square footage allocated to the entry road and subtract that value to determine the total buildable square footage in tract.

500  $\times$  30 = 15,000 square feet for road

784,080  $-$  15,000 = 769,080 total buildable square feet in tract

769,080  $\div$  12,000 minimum square feet per lot = 64 buildable lots

### Practice Questions

- A residential zoning category requires at least 10,000 square feet per lot. The developer is reserving 30% of the land to streets, sidewalks, and a community center. The tract of land for development consists of 125 acres. How many residential lots are available for development?

## 19.3 ZONING, LAND USE RESTRICTIONS, AND BUILDING CODES

### Zoning Ordinances

**Zoning ordinances** are local laws that implement the comprehensive plan. Local government exercises *police power* by regulating and controlling the use of land and structures within designated land-use districts or zones. Each zone is assigned a specific land-use classification. No other land-use controls affect all properties in a community to a greater degree than zoning ordinances. Zoning regulations control types of structures allowed, lot sizes, building heights, setbacks (distance from the lot line to the building line), and density. Used in conjunction with building codes, they are effective in protecting property values.

### Zoning Classifications

**Residential.** Residential zoning controls *density*, or the number of homes per acre. The zoning classification for residential typically begins with "R." Residential zoning regulates minimum lot size, setback requirements (distance from the lot line to the building line), and lot coverage. The residential zoning classification is usually further divided into subcategories that establish different minimum sizes for lots. For example, in the same county, residential zoning subcategory R-1AA may require one-acre lots, while R-1B may require only a minimum of 8,000 square feet per lot. Zoning authorities may create as many zoning subcategories as needed.

**Commercial.** The purpose of commercial zoning is to regulate *intensity* of use. Commercial zoning regulates parking requirements and building height and size limitations. Zoning ordinances often create a buffer zone between residential and commercial zones. A **buffer zone** is a strip of land separating one land use from another. Frequently, the buffer zone will allow multifamily zoning (for example, apartments) next to single-family residential areas, then a professional business zone, then higher intensity commercial zones.

**Industrial.** Industrial zoning controls emissions and effluents. Industrial zoning controls industry's by-products, such as noise, odor, smoke congestion, and chemicals.

**Agricultural.** The agricultural zoning classification is an all-inclusive category; it is not divided into subcategories. If the existing use of the property is for some type of agriculture, no zoning controls will attempt to regulate the type of agriculture permitted. If the use fails to qualify for an agricultural classification, the property then can be rezoned into another zoning category.

**Special Use.** Most zoning authorities consider all property owned by all levels of government as a type of special use property. Special use zoning includes, for example, city parks, county courthouses, and federal post office buildings. This zoning category is exempt from local zoning regulation.

### Building Codes

**Building codes** protect the public health and safety from inferior construction practices. Building codes set minimum standards for materials and quality of workmanship, sanitary equipment, electrical wiring, fire prevention, and so forth. Florida has a statewide building code called the *Florida Building Code (Code)*. The Florida Building Commission is responsible for the Florida Building Code. The Code incorporates building, electric, plumbing, mechanical and administrative codes, including accessibility, energy, coastal,

1 manufactured, and state agency codes. Included in the Code is Florida's energy code. It is a  
 2 minimum standard for energy use in buildings. The energy code sets minimum *R-values* for  
 3 walls, ceilings, and floors. R-value refers to the effectiveness of insulation and is measured  
 4 by its resistance to heat flow. The higher the R-value, the better the energy efficiency. The  
 5 energy code also sets standards for overall energy efficiency of residential structures, called  
 6 the building envelope.

7 The Florida Building Code also includes wind-speed maps. Coastal areas of Florida  
 8 must meet higher *wind load* requirements compared with interior counties. The Florida  
 9 Building Code requires that new construction and structural renovations to existing struc-  
 10 tures be engineered to withstand high winds. Wind load (not wind speed alone) controls  
 11 design requirements for construction. Implementation of the Code requires many design  
 12 considerations to be taken into account to properly determine a structure's wind load  
 13 design.

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14 Local government enforces building codes. The process begins by issuing a **building**  
 15 **permit** after review of the architectural and engineering drawings. Part of the building  
 16 permit process is the energy code compliance certification. A code official must review the  
 17 plans and specifications and the energy calculations and sign off on the building permit  
 18 that the project is in compliance with the Florida Energy Code. Also included in the per-  
 19 mit process is determining whether the plans and specifications meet wind load require-  
 20 ments for roofs, doors, windows, shutters, and so forth.

21 Inspectors visit each job site and conduct **building inspections** at various phases of  
 22 construction. The inspections must pass before the next phase of construction can pro-  
 23 ceed. A final **certificate of occupancy** is issued once construction is completed and the  
 24 municipal building inspector agrees that the structure conforms to code.

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25 To learn more about the Florida building code, visit [https://www.floridabuilding.org/](https://www.floridabuilding.org/dca/dca_fbc_default.aspx)  
 26 [dca/dca\\_fbc\\_default.aspx](https://www.floridabuilding.org/dca/dca_fbc_default.aspx).

## 27 Health Ordinances

28 **Health ordinances** control maintenance and sanitation of public spaces. The local  
 29 health department inspects and enforces sanitary standards in a community's food and  
 30 drinking establishments.

## Practice Questions

5. List five major zoning classifications.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

6. \_\_\_\_\_ are local laws that implement the comprehensive plan.

7. Residential zoning controls \_\_\_\_\_ by regulating minimum \_\_\_\_\_  
 \_\_\_\_\_, \_\_\_\_\_ requirements, and \_\_\_\_\_.

8. A \_\_\_\_\_ is a strip of land separating one land use from another.

## 1 19.4 APPEALS AND EXCEPTIONS

### 2 Zoning Board of Adjustment

3 Owners of real estate may appeal enforcement of zoning restrictions in cases where  
4 strict compliance would cause undue hardship or reduce property values. To handle appeals  
5 and requests for relief, most zoning authorities have established a semijudicial body called  
6 the zoning board of adjustment or, simply, board of adjustment. The primary function of  
7 the zoning board of adjustment is to provide property owners some degree of relief from  
8 otherwise rigid zoning codes. The board must take all possible precautions to render objec-  
9 tive, unbiased decisions because its quasi-judicial powers give it some of the characteris-  
10 tics of a court. Once the zoning board of adjustment renders a decision, most zoning laws  
11 will allow a property owner only one additional avenue of appeal, litigation in the courts.

12 **Variances.** A **variance** allows a property owner to *vary* from strict compliance with all  
13 or part of a zoning code because to comply would force an undue hardship on the property  
14 owner. Two conditions must be met before a property owner may be granted a variance  
15 from existing zoning requirements:

- 16 ■ The property owner must show that a *hardship* exists or will be created by strict  
17 compliance with zoning requirements and that the owner did nothing to cause  
18 the hardship. This will prevent a property owner or developer from taking some  
19 action designed for private benefit with the expectation that the zoning board of  
20 adjustment will accept or approve the situation the property owner or developer  
21 created.
- 22 ■ The zoning board of adjustment must use the same established criteria to judge  
23 the validity of all requests for a variance. This ensures fair and impartial treat-  
24 ment for each property owner requesting a variance.

25 Many people have trouble with the word *hardship*. It has nothing to do with economic  
26 or personal hardships. It involves land *use*, and the hardship must relate to the use of the  
27 property. For example, suppose you bought a nice lot on a river where zoning restrictions  
28 require “setback” distances of 25 feet from the front of the lot and 30 feet from the river or  
29 rear of the lot. Imagine you are about to start construction of a new house designed to fit  
30 precisely according to the setback requirements when a survey reveals that erosion by the  
31 river over time has carried away 10 feet from the river side of your lot. The maximum set-  
32 back distance possible is now only 20 feet. Because zoning restrictions require 30 feet, you  
33 will be in violation if you go ahead with construction. Violation of zoning laws can cause  
34 removal of the offending structure. To prevent potential trouble, you request a variance.  
35 The hardship exists, and you did nothing to cause the hardship. You would have met the  
36 hardship requirement for a variance (the first condition in the preceding list).

37 **Special Exceptions.** The zoning board of adjustment is authorized to issue **special**  
38 **exceptions** for controlling the location of particular land uses. A dentist’s office might  
39 be granted a special exception in an area located near a large mobile home community.  
40 Another example is an adult day care facility in a residential area composed primarily of  
41 retirees. A special exception grants a specific use of a particular parcel. Special exceptions  
42 are a departure from the zoning ordinance, generally permitted in cases where it is deter-  
43 mined that the surrounding area would be better served by allowing the special exception.  
44 Most communities require public hearings before a special exception is granted so that  
45 property owners of surrounding parcels have an opportunity to provide input in the deci-  
46 sion process. **Special purpose property** refers to a combination of land and improvements  
47 with only one economically feasible use because of some special design, such as a place of  
48 worship, nursing home, school, post office, or hospital.



1 **Legally Nonconforming Uses.** If a property's use was lawfully established but no longer  
 2 conforms to the use regulations of the zone in which it is located because of the enactment  
 3 of a new zoning ordinance, the use is allowed to continue as a **nonconforming use**. For  
 4 example, a small neighborhood gas station might have located in an area that was later  
 5 zoned residential. The gas station is *grandfathered* as a nonconforming use.

6 The U.S. Constitution prohibits depriving a person of property without due process  
 7 or fair compensation. Local governments may not employ eminent domain powers to cor-  
 8 rect nonconforming uses unless the property is taken for a public use. The methods used  
 9 to correct a nonconforming use vary around the state. Most zoning authorities allow a  
 10 time period long enough for nonconforming property owners to recapture their invest-  
 11 ment in the property. After the expiration of this designated period, the property owner  
 12 must convert the use of the property to that use for which the area is zoned. If, during the  
 13 designated period, the structure on the property is damaged or more than 50% destroyed,  
 14 the property must be converted to a use that conforms to area zoning. Other communities  
 15 allow a legal nonconforming use to continue until ownership changes. Nonconforming-  
 16 use properties usually are not permitted to be increased in size or to undergo structural  
 17 changes. Most zoning authorities restrict repairs and maintenance of such properties to  
 18 those needed for sanitation and safety purposes. These procedures are designed to result in  
 19 all properties eventually becoming conforming-use properties (see Figure 19.1).

**FIGURE 19.1 ■ Government Land-Use Controls**

Method	Function
Building code	Controls construction and materials
Zoning ordinance	Controls use
Health ordinance	Controls maintenance and sanitation
Variance	Permission to build or use to relieve a hardship not caused by owner
Special exception	Permission to build or use in apparent conflict with existing zoning ordinance
Nonconforming use	Permission to continue to use in spite of enacted zoning ordinance

## 20 **Developments of Regional Impact**

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21 Florida statute defines *developments of regional impact (DRIs)* as any development that,  
 22 because of its character, size, or location, will have a substantial effect on the health,  
 23 safety, or welfare of citizens of more than one county in the state. Statewide guidelines  
 24 and standards, along with numerical "thresholds" (limits), are used to determine whether  
 25 particular developments must undergo DRI review. DRIs include projects such as shop-  
 26 ping centers and malls, and attraction and sports facilities.

27 Guidelines and standards considered when evaluating DRI proposals include the  
 28 following:

- 29 ■ Extent to which the development would create or alleviate environmental prob-  
 30 lems, including air, water pollution, or noise
- 31 ■ Amount of pedestrian or vehicular traffic likely to be generated
- 32 ■ Number of persons likely to be residents, employees, or otherwise present
- 33 ■ Size of the site to be occupied
- 34 ■ Likelihood that additional or subsidiary development will be generated

- 1 ■ Extent to which the development would create an additional demand for,  
2 or additional use of, energy, including the energy requirements of subsidiary  
3 developments
- 4 ■ Unique qualities of particular areas of the state

### 5 **Planned Unit Development**

6 A **planned unit development (PUD)** is a type of special land use allowed under most  
7 local zoning ordinances. The developer clusters residential units on smaller lots to create  
8 maximum open spaces. The open spaces are typically developed into parks and recreation  
9 areas. The dwelling lots and structures are individually owned. A nonprofit community  
10 association is organized to provide for maintenance of the common areas. The special  
11 characteristics of PUDs are summarized in the paragraphs that follow.

12 **Clustered Homes.** Clustering homes together on smaller lots allows for large open green  
13 spaces. Clustering results in the same overall density as in a conventional development;  
14 however, the clustered improvements result in more open common areas.

15 **Mixed Land Use.** A variety of types of housing may include single-family detached homes  
16 in addition to, for example, town houses and garden apartments. Some PUDs incorporate  
17 shopping, restaurant, and entertainment facilities into the development to create a sense  
18 of community. *Mixed land use* is the use of real property for more than one use, such as a  
19 condominium that has residential and commercial units. It could, for example, combine  
20 residential units with a neighborhood restaurant and office space.

### **Practice Questions**

9. A property owner may qualify for a \_\_\_\_\_ if the owner can prove a hard-  
ship exists.
10. Legal permission to change the use of a property in apparent conflict with a zoning  
classification requires the owner to seek a \_\_\_\_\_.

## 21 **19.5 ENVIRONMENTAL REQUIREMENTS AND LEGISLATION**

### 22 **Environmental Impact Statement**

23 When a large project is proposed, an environmental impact study is conducted to  
24 analyze the long-term impact the project will have on the quality of the surrounding  
25 environment. The study must estimate the impact on waste-disposal systems, air quality,  
26 traffic, local employment, and so forth. An **environmental impact statement (EIS)** sum-  
27 marizes into a single document the long-term effect the proposed project will have on the  
28 surrounding environment. The EIS provides local government agencies and the public  
29 with important information regarding the environmental impact that can be expected  
30 from proposed development.

### 31 **National Flood Insurance Program (NFIP)**

32 **Qualifying for the Flood Insurance.** Congress created the National Flood Insurance Program  
33 (NFIP) to help provide property owners with coverage against losses due to flooding. The  
34 NFIP offers flood insurance to homeowners, renters, and business owners if their community  
35 participates in the NFIP. Participating communities agree to adopt and enforce ordinances  
36 that meet or exceed Federal Emergency Management Agency (FEMA) requirements to reduce

1 the risk of flooding. FEMA administers the flood program. Flood insurance can be purchased  
2 through insurance agencies for property located in communities participating in the NFIP.  
3 More than 40% of purchasers of flood insurance are Floridians.

4 **Flood Insurance Rate Maps (FIRMs).** FEMA prepares Flood Insurance Rate Maps  
5 (FIRMs) for every city and county in the United States. Flood maps identify flood zones,  
6 which are geographic areas that FEMA has defined according to varying levels of flood  
7 risk and type of flooding. The zones are depicted on the FIRM. Zones are categorized as  
8 low-risk, moderate-risk, and high-risk areas.

9 **Special Flood Hazard Areas.** High-risk flood hazard areas are identified on the FIRM as  
10 **special flood hazard areas (SFHAs).** SFHAs are located in a base flood area (100-year  
11 floodplain) and are areas that have a 1% or greater chance of being inundated by a flood  
12 event in a given year, which is equivalent to a 26% chance of flooding over the life of  
13 a 30-year mortgage. Floodplain areas located in SFHAs are identified on the FIRM as  
14 A zones.

15 **High-Risk Coastal Areas.** Coastal land located in SFHAs is identified on the FIRM as  
16 V zones. High-risk coastal areas have a 1% or greater chance of flooding and an additional  
17 hazard associated with storm waves. In communities that participate in the NFIP, manda-  
18 tory flood insurance purchase requirements apply to high-risk coastal areas (Zone V).

19 **Development Within SFHAs.** Because of their coastal location, buildings in V zones are  
20 subject to a greater hazard than buildings built in floodplain A zones. NFIP regulations  
21 require coastal communities to ensure that buildings built in V zones are anchored to  
22 protect against the impact of waves, hurricane-force winds, and erosion acting simultane-  
23 ously. The NFIP requires that all new and substantially improved residential structures  
24 in V zones be elevated to or above the base flood elevation (BFE), on open foundations  
25 (such as pilings) that allow floodwaters and waves to pass beneath the elevated structures.  
26 Nonresidential structures must meet the residential requirement or be watertight below  
27 the BFE.

28 **Mortgage Loan Requirements.** For every mortgage transaction involving a structure in  
29 the United States, lenders review the current FIRM, for the community in which the  
30 property is located, to determine its location relative to the Special Flood Hazard Area  
31 (SFHA). Structures located in an SFHA (A zones and V zones) that are financed with  
32 mortgage loans from federally regulated or insured lenders are required to have flood insur-  
33 ance. Flood insurance is available, but not mandatory, for property located in low-risk and  
34 moderate-risk areas in communities that participate in the NFIP.

35 **Cost of Flood Insurance.** Recent changes have been made to funding of the NFIP. These  
36 changes may result in substantial increases in the flood insurance premiums a new owner  
37 will be required to pay. Licensees should advise buyers to research the cost of flood insur-  
38 ance premiums for a property located in an SFHA.

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39 For additional information regarding flood insurance, visit [www.floodsmart.gov](http://www.floodsmart.gov) and  
40 [www.fema.gov/national-flood-insurance-program/](http://www.fema.gov/national-flood-insurance-program/).

**Practice Questions**

11. Land located in a base flood area (100-year floodplain) is called a \_\_\_\_\_

\_\_\_\_\_.

## 19.6 ENVIRONMENTAL HAZARDS ASSOCIATED WITH REAL ESTATE

### Asbestos

Asbestos is a mineral fiber in common use until 1978 in a variety of building construction materials for insulation and as a fire retardant. These products include, for example, pipe insulation wrapping; furnace encasements; shingles, siding, and roofing; resilient floor tiles; the backing on vinyl sheet flooring; and stove and oven door gaskets. Any products manufactured today that contain asbestos must be labeled clearly. Asbestos fibers become dangerous when they are disturbed or removed improperly, causing the fibers to become airborne. Inhaling microscopic asbestos fibers can result in respiratory diseases, including lung scarring, lung cancer, and cancer of the chest cavity.

Not all asbestos-containing material poses a hazard. It is best not to disturb asbestos material that is in good condition. Generally, material in good condition does not release asbestos fibers. Care should be taken to prevent the material from being damaged, disturbed, or touched. The danger escalates when the fibers become fragile or exposed to the air. An alternative to removing the asbestos is to encapsulate (seal off) disintegrating asbestos. A Phase I environmental assessment should include an asbestos inspection in any structure built before 1978. The EPA recommends periodic inspection of known asbestos-containing material for signs of damage or deterioration. An owner who is considering renovating or remodeling a structure containing asbestos materials should consult an asbestos specialist.

### Radon

You cannot see, smell, or taste radon, yet it is all around us—even in the fresh air we breathe. Outdoors, radon is not a problem because the surrounding air and natural breezes allow the gas to dissipate into the atmosphere. However, when radon gas accumulates in high concentrations within buildings, it is known to cause lung cancer. Well-insulated, energy-efficient homes especially tend to trap radon gas. Decaying uranium in the soil produces radon gas, which can seep into homes and accumulate. Radon typically moves up through the ground to the air above and into a home through cracks in the foundation, utility conduits, spaces around the plumbing, basement floors and walls, and crawl spaces.

Chapter 404, F.S., mandates radon disclosure at the time or before a person enters into a contract for sale and purchase or a rental agreement. Florida law does not require testing to determine radon levels before sale or lease of any building (see “Disclosures,” Unit 11).

### Lead-Based Paint

It is estimated that 75% of the nation’s housing stock built before 1978 (about 64 million dwellings) contains lead-based paint, and the vast majority of homes built before 1950 contain substantial amounts of lead-based paint. The federal government has determined that as many as 3 million children younger than age six in this country have low-level lead poisoning. The ingestion of household dust containing lead from deteriorating lead-based paint is the most common cause of lead poisoning in children. At low levels, lead poisoning in children causes intelligence quotient deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems.

Congress passed the Residential Lead-Based Paint Hazard Reduction Act in 1992. The law requires the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978. Lead-based paint

1 hazards are any conditions that expose people to lead from lead-contaminated dust, lead-  
2 contaminated soil, or lead-contaminated paint that has deteriorated or is present in acces-  
3 sible surfaces, such as window sills. When listing a pre-1978 property for sale, the licensee  
4 is responsible for making certain that sellers comply with the law. The law pertains only  
5 to housing built before 1978 because the Consumer Product Safety Commission banned  
6 the use of lead-based paint for residential use in that year (see “Disclosures,” Unit 11).

## 7 **Mold**

8 Molds reproduce by means of tiny spores; the spores are invisible to the naked eye and  
9 float through outdoor and indoor air. Mold may begin growing indoors when mold spores  
10 land on wet surfaces. There are many types of mold, and none of them will grow without  
11 water or moisture.

482.071, F.S.

12 Molds have the potential to cause health problems. Molds produce allergens (sub-  
13 stances that can cause allergic reactions), irritants, and in some cases, potentially toxic  
14 substances. Inhaling or touching mold or mold spores may cause allergic reactions in sen-  
15 sitive individuals. Allergic responses include hay-fever-like symptoms, such as sneezing,  
16 runny nose, red eyes, and skin rash (dermatitis). Allergic reactions to mold are common.  
17 They can be immediate or delayed. Molds can also cause asthma attacks in people with  
18 asthma who are allergic to mold. In addition, mold exposure can irritate the eyes, skin,  
19 nose, throat, and lungs of both mold-allergic and non-allergic people. Symptoms other  
20 than the allergic and irritant types are not commonly reported as being related to inhaling  
21 mold. Research on mold and health effects is ongoing.

468.84, F.S.

22 The DBPR licenses mold assessors and remediators. Florida law prohibits anyone from  
23 performing or offering to perform mold remediation to a structure if that mold assessor or  
24 the mold assessor’s company provided a mold assessment within the past 12 months. It is  
25 a violation to accept compensation, inducement, or reward from a mold assessor or mold  
26 assessor’s company for the referral of business from the mold assessor or the mold asses-  
27 sor’s company or to offer compensation, inducement, or reward to a mold assessor or mold  
28 assessor’s company for the referral of business from the mold assessor or the mold assessor’s  
29 company.

30 If a real estate licensee suspects that mold is present in a home, the licensee should  
31 ask questions about leaks, floods, and prior damage and remind the sellers to disclose any  
32 insurance claims regarding mold or other water issues.

## 33 **Water Supply**

34 Groundwater is below the earth’s surface and forms the water table, the natural level  
35 at which the ground is saturated. The underground water can be contaminated from leak-  
36 ing underground storage tanks (USTs), septic systems, storm drains, herbicides, and other  
37 sources. Contamination can threaten private wells and public water supplies. The Safe  
38 Drinking Water Act regulates the public drinking water supply. On transfer of ownership,  
39 any water source other than a municipal supply should be tested, as should septic systems.

## 40 **Wood-Destroying Organisms**

41 The Florida Department of Agriculture and Consumer Services licenses individuals  
42 and businesses engaged in the pest control business, including termites and other wood-  
43 destroying organisms. When an inspection for wood-destroying organisms is made by a  
44 pest-control-licensed company for purposes of a real estate transaction and either a fee is  
45 charged for the inspection or a written report is requested by the customer, a wood-destroy-  
46 ing organism inspection report must be provided by the licensed company. The inspection

1 must be made in accordance with standards established by rule and must include inspec-  
 2 tion for all wood-destroying organisms. The inspection findings must be reported to the  
 3 person requesting the inspection.

4 The inspection report must include the date of the inspection; disclosure of any visible  
 5 accessible areas that were not inspected and the reasons for not inspecting them; descrip-  
 6 tion of the areas of the structure that were inaccessible; any visible evidence of previous  
 7 treatments for, or infestations of, wood-destroying organisms; the identity of any wood-  
 8 destroying organisms present; and any visible damage caused.

9 If any pest control treatment is provided at the time of the inspection, the inspection  
 10 report must also provide the name of each of the wood-destroying organisms for which  
 11 treatment was provided, the name of the pesticide used, and all conditions and terms  
 12 associated with that treatment. The inspection report must also include a statement cer-  
 13 tifying that the inspector has no financial interest in the property and the inspector is not  
 14 associated in any way with a party to the transaction other than for inspection purposes.

15 The inspector must post the inspection notice immediately adjacent to the access to  
 16 the attic or crawl area or other readily accessible area of the property inspected. It is a  
 17 violation for anyone other than the property owner to remove the notice. A copy of the  
 18 inspection report must be retained by the pest control company for three years.

### Practice Questions

12. \_\_\_\_\_ is a mineral fiber that was used in a variety of building construction materials for insulation and as a fire retardant.
13. Florida law requires radon \_\_\_\_\_ at the time of or before entering into a contract for sale or rental.
14. Florida law does \_\_\_\_\_ require testing to determine radon levels before sale or lease of real property.
15. When a real estate licensee lists pre-1978 property for sale, it becomes the responsibility of the \_\_\_\_\_ to make certain \_\_\_\_\_ comply with the lead-based paint law.

## 19.7 SUMMARY OF IMPORTANT POINTS

- 20 ■ City planning commissions are delegated final authority for subdivision plat  
 21 approval, site plan approval, and sign control.
- 22 ■ Zoning ordinances authorize the segmentation (dividing) of a community into  
 23 districts or zones in keeping with the character of the land and structures and  
 24 their suitability for particular uses to protect against uses that might reduce the  
 25 value of neighboring properties.
- 26 ■ Building codes protect the public health and safety from inferior construction  
 27 practices. The Florida Building Code is a statewide building code.
- 28 ■ Residential zoning regulates density, meaning the number of homes per acre.  
 29 Commercial zoning regulates intensity of use, such as vehicular traffic generated  
 30 by a commercial enterprise.
- 31 ■ A *buffer zone* is a strip of land separating one land use from another.

- 1 ■ The zoning board of adjustment handles appeals and requests from property own-  
2 ers for zoning changes.
- 3 ■ Variances allow property owners to vary from strict compliance with all or part  
4 of a zoning code because to comply would force an undue hardship on the prop-  
5 erty owner.
- 6 ■ *Special exception* is permission to build or to use property in apparent conflict  
7 with existing zoning ordinances.
- 8 ■ *Nonconforming use* is continuing land use that is not in compliance with a newly  
9 enacted zoning ordinance.
- 10 ■ A *planned unit development (PUD)* is a self-contained development planned  
11 under special zoning ordinances that allow maximum use of open space by reduc-  
12 ing lot sizes and street sizes.
- 13 ■ Environmental impact statements summarize the effect that proposed develop-  
14 ment will have on the surroundings.
- 15 ■ Congress created the National Flood Insurance Program (NFIP) to help provide  
16 property owners with coverage against losses due to flooding. The NFIP offers  
17 flood insurance to homeowners, renters, and business owners if their community  
18 participates in the NFIP.
- 19 ■ Asbestos is a mineral fiber that was used in a variety of building construction  
20 materials for insulation and as a fire retardant.
- 21 ■ Florida law requires radon disclosure at the time of or before entering into a  
22 contract for sale or rental. The law does not require testing to determine radon  
23 levels.
- 24 ■ Sellers and landlords must disclose the presence of lead-based paint in homes  
25 built before 1978.

# UNIT 19 EXAM

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1. One of the major reasons for the lack of emphasis on city planning prior to the 1900s was the
  - a. focus on identifying and locating rural tracts for farming using a new method of describing real property.
  - b. philosophy of laissez-faire.
  - c. reduction in university course offerings in real estate and urban development.
  - d. exodus from the farms to the cities for jobs.
2. The section in Florida's Growth Policy that requires that sewers and drinking water be available before new development is allowed is called the
  - a. utilities provision.
  - b. infrastructure provision.
  - c. concurrency provision.
  - d. level of service provision.
3. A planning commission is usually composed of
  - a. trained professional planners.
  - b. elected officials.
  - c. appointed unpaid members.
  - d. members of the primary legislative city or county body.
4. The BEST composition of a planning commission is generally thought to be one with representation from
  - a. each licensed professional occupation.
  - b. senior adult homeowners because of their experience.
  - c. real estate and mortgage lending firms.
  - d. a cross section of interests.
5. Florida law requires disclosure of which environmental hazard before or at the time of entering into all residential sale or lease contracts?
  - a. Radon gas
  - b. Lead-based paint hazard
  - c. Mold
  - d. Erosion
6. The primary function of a planning commission is to
  - a. make policy recommendations to the elected government body.
  - b. make policy recommendations to the trained professional staff.
  - c. advise the next higher planning board (county, regional, etc.) of its recommendations and actions.
  - d. collect, refine, and produce the basic studies needed to develop a comprehensive plan for future growth.
7. A strip of land that separates one land use from another is called
  - a. an easement.
  - b. an egress.
  - c. a buffer zone.
  - d. a median.
8. Minimum standards for quality of workmanship, electrical wiring, and fire prevention are found in Florida's
  - a. building code.
  - b. concurrency provision.
  - c. comprehensive plan.
  - d. health ordinance.
9. To be granted a variance, a property owner must provide evidence that
  - a. the same treatment has been afforded other owners.
  - b. a hardship related to land use exists.
  - c. the variance, if granted, will be for the owner's use only.
  - d. the land use existed before passage of zoning laws.
10. Residential zoning is designed to regulate
  - a. intensity.
  - b. frequency.
  - c. density.
  - d. all of these.



11. Commercial zoning is designed to regulate
  - a. intensity.
  - b. frequency.
  - c. density.
  - d. all of these.
12. A small general store that existed before a change to residential zoning is an example of a
  - a. special exception.
  - b. variance.
  - c. PUD.
  - d. nonconforming use.
13. The legal right to enact zoning laws is derived from
  - a. police powers.
  - b. public policy.
  - c. property taxation.
  - d. all of these.
14. Zoning ordinances regulate
  - a. the firewall rating of a wall located between the kitchen and dining areas of a restaurant.
  - b. the setback requirements of a building from the property lines.
  - c. the electrical rating of the wiring in a residential home.
  - d. all of these.
15. A parcel of land contains 75 acres. A developer has reserved 25% of the land for streets and green space. Applicable zoning regulations require a minimum of 9,500 square feet per residential lot. The number of permissible lots is
  - a. 86.
  - b. 232.
  - c. 257.
  - d. 260.