

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRIENDS OF LLOYD, INC.)
ROBERT B. RACKLEFF and)
JO ELLYN RACKLEFF,)
)
Petitioners,)
)
vs.) CASE NO. 90-6264GM
)
DEPARTMENT OF COMMUNITY AFFAIRS)
and JEFFERSON COUNTY,)
)
Respondents.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, William F. Quattlebaum, held a formal hearing in the above-styled case on February 20-21, 1991, in Monticello, Florida.

APPEARANCES

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For Respondent
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For Intervenor
Texaco: Lee Elzie, III, Esq.
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STATEMENT OF THE ISSUE

The issue in this case is whether the Comprehensive Plan adopted by Jefferson County is not "in compliance" as such is defined at Section 163.3184(1)(b), Florida Statutes, as alleged in the Petition for Administrative Hearing to Review the Comprehensive Plan Adopted by Jefferson County, filed by the Petitioners in this case.

PRELIMINARY STATEMENT

Pursuant to the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, Jefferson County, by ordinance of July 19, 1990, adopted the Jefferson County Comprehensive Plan (hereinafter the plan), and thereafter transmitted the plan to the Department of Community Affairs (hereinafter DCA) for review. On September 7, 1990, the DCA published a Notice of Intent To Find The Jefferson County Comprehensive Plan in Compliance.

By Petition for Administrative Hearing to Review the Comprehensive Plan Adopted by Jefferson County, dated September 26, 1990 and filed with the DCA, Friends of Lloyd, Inc., Robert B. Rackleff and Jo Ellyn Rackleff (hereafter Petitioners) asserting that the plan is not in compliance. On October 2, 1990, the DCA filed the Petition with the Division of Administrative Hearings for further proceedings. By Notice of Hearing issued by the Hearing Officer on November 5, 1990, the hearing was scheduled for February 20-22, 1991. In the Order Establishing Prehearing Procedure, also issued on November 5th, the Hearing Officer set deadlines for exchange of information between the parties, completion of discovery, and filing of a prehearing stipulation.

Texaco Trading and Transportation, Inc. (hereinafter Texaco), filed a Petition to Intervene in this case on January 24, 1991, and filed an Amended Petition on January 31, 1991. The Amended Petition was granted on February 1, 1991. On February 19, 1991, eighteen days after Texaco was granted leave to intervene and one day prior to the hearing, the Petitioners filed a Motion to Continue or to Strike Texaco's Witness List, alleging that insufficient time remained for the Petitioners to conduct discovery related to the intervenor. At the time the Motion To Continue was filed, the Petitioners had not initiated discovery related to Texaco. Rule 22I-6.017, Florida Administrative Code, requires that a motion for continuance must be filed at least five days prior to the date set for hearing except in cases of extreme emergency. The motion was denied. Texaco ultimately offered no witnesses or exhibits at hearing.

The Order Establishing Prehearing Procedure required the parties to exchange exhibits not later than February 8, 1991. Although Texaco and Jefferson County filed exhibit lists, there is no record that the Petitioners or the DCA did likewise.

The Order further required that a prehearing stipulation be filed not later than February 15, 1991. The Respondents and the Intervenor conferred and timely filed a prehearing stipulation as required by the order. On February 18, 1991, the Petitioners filed a unilateral prehearing stipulation. The Petitioners stipulation indicated, in part, that among the issues for consideration at hearing were allegations of insufficient public participation in the preparation and adoption of the plan. Such issues were not alleged in the Petition for Hearing and are contradicted by the Petition wherein the Petitioners set forth the manner of their participation during the drafting of the plan and the local government review and adoption process. Accordingly, no evidence related to insufficient public participation in the preparation and adoption of the plan was admitted at hearing, and no Findings of Fact related to this issue are contained herein.

On February 20, 1991, immediately prior to formal hearing, Respondent Jefferson County moved to impose sanctions on the Petitioners for the failure to comply with various requirements of the November 5th Order Establishing Prehearing Procedure. The motion was denied.

At hearing, Petitioners presented the testimony of Robert B. Rackleff, Patricia Dugan, Carmen Bishop, and Robert J. Livingston and had four exhibits admitted into evidence. Respondent Jefferson County presented the testimony of Gail Easley and had one exhibit admitted. Respondent Department of Community Affairs and Intervenor Texaco presented no witnesses or exhibits. The Jefferson County Comprehensive Plan was admitted as Hearing Officer's exhibit #1.

A transcript of the hearing was filed on March 14, 1991. All parties filed proposed recommended orders. 1/ The proposed findings of fact are ruled upon either directly or indirectly as reflected in this Recommended Order, and in the Appendix which is attached and hereby made a part of this Recommended Order.

On March 28, 1991, the Petitioner's filed a "Request For Judicial Notice" seeking to have a January 1991 United States General Accounting Office report admitted into evidence. The Intervenor and Respondent Department of Community Affairs filed responses in opposition to the request. For the reasons set forth in the responses to the request, the "Request For Judicial Notice" is hereby denied.

FINDINGS OF FACT

1. Robert B. Rackleff and Jo Ellyn Rackleff own property in Jefferson County. The Rackleff's represent the "Friends of Lloyd, Inc.", an organization opposed to a proposed siting of petroleum product terminal facilities near Lloyd, a town within Jefferson County.

2. The Department of Community Affairs (DCA) is the state land planning agency and administers the requirements of the "Local Government Comprehensive Planning and Land Development Regulation Act", Chapter 163, Part II, Florida Statutes.

3. On or about July 19, 1991, The Board of County Commissioners of Jefferson County adopted a comprehensive plan (plan). The plan was reviewed by the DCA and determined to be "in compliance". 2/

4. Jefferson County, population 12,243, is located in the northern part of Florida, bordered by the Aucilla River and Madison and Taylor Counties to the east, the Gulf of Mexico to the south, Leon and Wakulla Counties to the west, and the State of Georgia to the north. Jefferson County contains a land area of approximately 392,192 acres. The bulk of the county's residents live in or near Monticello (the county seat), Lloyd, Wacissa, Lamont, Drifton, Capps, Aucilla, Waukeenah, Dills, Thomas City, and Nash.

5. Major transportation routes through Jefferson County include Interstate 10 running east-west through the county just south of Monticello, U.S. Highway 90 lying north of and parallel to I-10 and running through the center of Monticello, U.S. Highway 27 lying south of I-10 and running east-west through the county, and U.S. Highway 98 lying south of U.S. 27 and also running east-west. U.S. Highway 19 enters north Jefferson County at the Georgia border and runs south until it merges with U.S. 27. State Roads 257 and 59 also run north-south. Both State Roads 257 and 59 intersect with I-10, as does U.S. Highway 90.

6. The plan designates land parcels surrounding the I-10/U.S. 90 and I-10/S.R. 59 interchanges and land parcels on the north side of the I-10/S.R. 257 interchange as "Mixed Use Interchange Business". Future Land Use Element Objective 1, Policy 1-3, of the plan defines the "Mixed Use Interchange Business" designation as follows:

A mixed use category located at an interchange with I-10, with a variety of primarily commercial businesses. Because there are but three such interchanges in Jefferson County, the amount of land is necessarily limited; uses in the category are, therefore, limited to those activities requiring locations with high vehicular traffic and easy access to I-10. Appropriate uses include (1) tourist oriented facilities, such as restaurants, automotive service stations, truck stops, motels, campgrounds, and the like; (2) region serving retail complexes or office centers; (3) commerce parks; (4) facilities for the storage and distribution of foods and products including wholesale activity; (5) light manufacture of goods for distribution to other locations; and (6) truck stops. Intensity of use, as measured by impervious land coverage shall not exceed 80%. More intense truck transport and highway oriented activities, and regional distribution centers may also be allowable, subject to special exception approval by the Board of County Commissioners in order to ensure the closest possible scrutiny of such uses. Activities subject to such special exception approval include: uses exceeding 50,000 square feet impervious land coverage; uses with a total land area of five or more acres; uses which have storage capacity for more than 500,000 gallons of petroleum product; or uses on environmentally sensitive lands as defined in the Conservation Element. Performance standards shall be included in the land development regulations for special exceptions to insure that on-site and off-site impacts are adequately planned for and monitored. Impacts include trip generation, transportation access, drainage, water quality, visual appearance, avoidance of environmentally sensitive lands and mitigation of impacts, noise, signage, and air quality. Information to support the application shall be provided by the applicant at the applicant's expense. Activities subject to special exception in this district shall only be required to obtain special exception approval for plan land use changes, and shall not be required at the time of application or receipt of a building permit. (emphasis supplied)

Local governments are required to adopt and enforce, within one year following submission of the comprehensive plan for review by the state land planning agency, land development regulations (LDR's) which are consistent with and implement the adopted comprehensive plan. Section 163.3202(1), Florida Statutes.

7. According to the data in the plan, the interchange at I-10/S.R. 59 exists over a potential area of high groundwater recharge. The county's groundwater system includes the upper and lower Floridan Aquifer. Support documents to the Jefferson County plan note that aquifer recharge occurs through sinkholes near Lake Miccosukee, along the Aucilla River, and through the northeast area of the county. Water contamination can occur through drainage from septic tanks, leaking underground storage tanks, hazardous waste, and contaminated stormwater runoff.

8. The Petitioners generally assert that the plan is not in compliance because the possible siting of a petroleum product facility over the potential area of high groundwater recharge fails to adequately protect water quality and the Floridan Aquifer.

9. Under the "mixed use interchange business" designation, land uses permitted through a special exception process receive specific scrutiny by the Jefferson County Board of County Commissioners. Uses including storage capacity for more than 500,000 gallons of petroleum product or which lie on environmentally sensitive lands as defined in the Conservation Element are required to undergo the "special exception" process. Special exception uses are governed by the performance standards which will be included in the county's land development regulations. Such regulations must insure that on-site and off-site impacts, including water quality, avoidance of environmentally sensitive lands and mitigation of impacts, trip generation, transportation access, drainage, visual appearance, noise, signage, and air quality are adequately planned for and monitored.

10. Section 163.3177, Florida Statutes, identifies the elements of a local government comprehensive plan. Some elements identified in this section may be included in the plan at the local government's option; others are required. 3/

FUTURE LAND USE ELEMENT

11. Section 163.3177(6)(a), Florida Statutes, requires the inclusion of a Future Land Use Element, which "may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to ensure development in accord with the principles and standards of the comprehensive plan and this act". Rule 9J-5.006(3)(c)(6), Florida Administrative Code, states that a Future Land Use Element must contain one or more policies addressing the implementation of protection of potable water wellfields and environmentally sensitive land.

12. The Jefferson County Comprehensive Plan Future Land Use Element includes the information required by the statute and rules.

13. Jefferson County's Future Land Use Element Policy 1-5 states:

Existing, revised, and/or new land development regulations shall ensure protection of environmentally sensitive lands. Such lands include areas designed 4/ as Conservation on the Future Land Use Map, and may include other isolated areas identified on a site-by-site basis shall be included in the land development regulations. All development is subject to site plan review which is the primary means of ensuring protection. Also refer to specific objectives and policies of the Conservation Element.

14. Future Land Use Element Policy 1-6 provides:

The LDR's 5/ shall require protection of all future potable water well fields developed in the County with a design capacity of 100,000 gallons per day or greater through development of locational criteria including a minimum 200 ft. prohibited development zone around the well's perimeter and consideration of distance from hazardous waste storage or generation (including petroleum storage tanks). (This is the same as the G-1 rule from DER.)

15. Future Land Use Element Objective 3 provides:

Throughout the planning period, the County shall require that the natural and historic resources of the County be protected from the negative impacts of development activities, and shall require that future land uses are coordinated with the appropriate topography and soil conditions. This objective shall be accomplished using Policies 3-1 through 3-3

16. Future Land Use Element Policy 3-1 provides:

Encourage development and allow growth only in areas without steep slopes.

17. Future Land Use Element Policy 3-2 provides:

Drainage improvement plans will be submitted as part of the site plan and/or subdivision review process. Standards will be included in the land development regulations for drainage improvements during development.

18. Future Land Use Element Policy 3-3 provides:

Existing regulations in the Jefferson County Development Code shall be continued; the regulations are designed to ensure protection from flood damage, protection of the aquifer, protection of lands adjacent to lakes, streams, and within wetlands. Regulations

will be revised for consistency with the objectives and policies of the Jefferson County Comprehensive Plan.

CONSERVATION ELEMENT

19. Section 163.3177(6)(d), Florida Statutes, requires the plan to include a Conservation Element for the conservation, use, and protection of natural resources in the area, including water, water recharge areas, and waterwells. Rule 9J-5.013(2)(c)(1), Florida Administrative Code, states that a Conservation Element shall contain policies addressing the implementation activities for the protection of water quality by restriction of activities known to adversely affect the quality and quantity of identified water sources including existing cones of influence, water recharge areas, and waterwells. Rule 9J-5.013(2)(c)(6), Florida Administrative Code, states that a Conservation Element shall contain policies addressing the implementation activities for the protection and conservation of the natural functions of existing soils, fisheries, wildlife habitats, rivers, bays, lakes, floodplains, harbors, wetlands including estuarine marshes, freshwater beaches and shores, and marine habitats. Rule 9J-5.013(2)(c)(9), Florida Administrative Code, states that a Conservation Element shall contain policies addressing the implementation activities for the designation of environmentally sensitive lands for protection based upon locally determined criteria which further the goals and objectives of the Conservation Element. Rule 9J-5.013(2)(c)(10), Florida Administrative Code, states that a Conservation Element shall contain policies addressing the implementation activities for the management of hazardous wastes to protect natural resources.

20. The Jefferson County Comprehensive Plan Conservation Element includes the information required by the statute and rules.

21. Conservation Element Objective 2 provides:

In order to protect water quality, the County shall protect all its surface waters and ground waters from the intrusion of pollutants throughout the planning period. This shall be accomplished through:
continued implementation and enforcement of the Jefferson County Land Development Code, which requires a site plan review process for all development; correction of drainage deficiencies by 1992, and by the creation of a stormwater drainage plan for Lake Miccosukee and the Aucilla River (north of US27/19) as soon as funding is available. Upon completion of the drainage plan, the County will amend the comprehensive plan for consistency with the recommendations of the drainage plan.

22. Conservation Element Policy 2-1 provides:

Throughout the planning period, the County shall require that all new development provide stormwater management systems designed so that post development rates of

runoff do not exceed pre-development rates, and to provide treatment of stormwater prior to surface water discharge, consistent with Chapter 17-25, F.A.C. This shall be accomplished using the site plan review process, mandatory for all development, adopted as part of the land development regulations by the statutory deadline.

23. Conservation Element Policy 2-2 provides:

The County shall coordinate with the Department of Environmental Regulation, Bureau of Waste Management to ensure that the existing underground leaking tanks are remediated by the owner expediently, and in a manner which does not further threaten ground water quality.

24. Conservation Element Policy 2-3 provides:

The County shall adopt a wellfield protection ordinance (for protection of cones of influence and waterwells) by the statutory deadline, a hazardous waste management ordinance by 1991, and a shoreline/waterfront protection ordinance by 1992 to ensure protection of ground and surface water.

25. Conservation Element Policy 2-4 requires the county to consult with the DER and the water management districts to ensure that water withdrawal within two named sites will not increase groundwater contamination from said sites.

26. Conservation Element Policy 2-7 provides:

The County shall coordinate with the Suwanee river and Northwest Florida Water Management Districts in the protection of prime recharge areas, once such areas have been designated by the Districts.

27. Conservation Element Policy 2-8 provides:

The land development regulations shall limit impervious surfaces, and require onsite retention of stormwater runoff in the County's high recharge areas.

28. Conservation Element Objective 3 provides:

Throughout the planning period, the County shall protect all areas that fall within the 100-year floodplain. The County shall use the Flood Insurance Rate map and the site plan review process for all development, as the tools for implementation.

29. Conservation Element Policy 3-1 provides:

The County shall continue to enforce the existing floodplain ordinance restricting development in floodprone areas. The ordinance shall continue to prohibit the following within the 100 year floodplain: fill; structures (other than on stilts); common water supplies or sewage treatment facilities; and roads, except as infrequent intervals as necessary to provide access to private or public property. Permitted uses in the 100 year floodplain shall include agriculture; silviculture; residential structures, only where fill is not required and the first floor elevation is at least one foot above the 100 year flood, and, only at very low densities; recreation (such as hiking trails); native vegetation and wildlife habitat. The ordinance shall continue to protect the functions of floodprone areas through its requirement that flood areas are to be treated as positive visual open space, wildlife habitat, and as water recharge and discharge resources.

30. Conservation Element Policy 3-2 provides:

The floodplain ordinance shall protect the water quality and wildlife habitat values of shorelines and riverine floodplains by establishment of a contiguous vegetative buffer along the Wacissa and Aucilla Rivers, of at least 50 foot in width, measured from the wetlands jurisdictional line, within which permanent structures will be prohibited, and clearing of native vegetation (other than areas designated for silvicultural use) shall be limited to only to provide reasonable access to the shoreline. Shoreline buffers shall be established for Lake Miccosukee.

31. Conservation Element Objective 4 provides:

Throughout the planning period, the County shall conserve the water supply and protect the quantity and quality of current water source and any new water sources. This objective shall be accomplished using Policies 4-1 through 4-4.

32. Conservation Element Policy 4-1 provides:

The County shall enforce water conservation during times of drought by enacting an ordinance which prohibits irrigation between 10:00 AM to 6:00 PM, and shall keep the public informed of these restrictions through newspaper notices and posted notices.

33. Conservation Element Policy 4-2 provides:

The County shall continue to adhere to any emergency water conservation measures imposed by the Northwest Florida and Suwanee River Water Management Districts.

34. Conservation Element Policy 4-3 provides that all new construction and all remodeling activities utilize fixtures conforming to a specified schedule of maximum water usage.

35. Conservation Element Policy 4-4 provides:

The County shall enact policies that allow septic tanks only in areas where public sewer is unavailable and only upon issuance of a Jefferson County Health Department permit.

36. Conservation Element Policy 4-5 provides that the county will promote and encourage agricultural land owners to incorporate specified water conserving farming methods.

37. Conservation Element Policy 4-6 provides:

Future water demand for nonpotable water uses should be met through the use of water of the lowest acceptable quality for the purpose intended. To this end, the County may require that developers requiring large amounts of water for use other than drinking water utilize reclaimed water from stormwater systems and treated wastewater.

38. Conservation Element Policy 5-1 provides:

By the statutory deadline for adoption of land development regulations, the County shall adopt regulations for the preservation and conservation of those areas which are known habitats for threatened and endangered species, and species of special concern, and those areas characterized by wetlands. By 1995, the County shall develop and complete a program to identify, protect and enhance those specific areas which contain unique vegetative communities, springs, caves, sinkholes, ravines, or are suitable for,

habitats for threatened and endangered species, and species of special concern, and those areas characterized by wetlands.

39. Conservation Element Policy 5-7 provides:

In order to carry out Policy 5-1, the County shall:

- a) establish a citizens or other committee to initiate the vegetation and wildlife habitat identification program, based upon the initial data provided by the Comprehensive Plan, and coordination with US Fish and Wildlife and the Florida Game and Freshwater Fish Commission.
- b) use innovative techniques in the land development regulations for preservation of such areas, such as: designation and regulations of conservation areas; site plan review; on-site density transfers to allow clustering of allowable units to protect environmentally sensitive portions of a site; and, overlay zoning whereby density calculations and developable land expectations area (sic) based on net developable acreage after excluding the environmentally sensitive portions.

40. Conservation Element Policy 5-8 provides:

The County shall promote the designation and protection of natural reservations designated within the County, through cooperation with the federal government regarding St. Mark's National Wildlife Refuge and the Aucilla Wildlife Management Area, the State's CARL program, the Water Management District's Save Our Rivers and SWIM Program, and designation of such areas on the Future Land Use Map as conservation.

41. Conservation Element Policy 5-10 provides:

Natural resources, such as wetlands, water bodies, springs, sinkholes, caves, and habitat of endangered, threatened and species of special concern are valuable resources which need protection, and are therefore designated as environmentally sensitive lands. These lands which are threatened by urban development, as well as any lands identified during the County's vegetation and wildlife habitat program to be of critical habitat for designated species, shall be protected from encroachment through the land development regulations, adopted by the statutory deadline. The Regulations shall establish performanc

standards for development in such environmentally sensitive areas. Any environmentally sensitive lands designated for Silviculture shall be required to us (sic) the US Forest Service Best Management Practices, and are subject to the requirements of Policy 5-11.

Policy 5-11 prohibits development of land designated as "Agriculture I" on the Future Land Use Map. To develop such land requires amendment of the comprehensive plan, preceded by an inventory of all wetlands and other environmentally sensitive lands as well as documentation that the proposed use will not negatively impact the environmentally sensitive lands.

42. Conservation Element Policy 5-6 provides conservation-related criteria for permitting commercial mining activities in the county, however, there are currently no commercial mining activities in Jefferson County.

43. Conservation Element Policy 5-13 requires that the county continue its efforts in reducing erosion in coordination with the Soil Conservation Service, and continue to notify farmers of the opportunities available towards reducing erosion.

44. Conservation Element Policy 5-14 requires that silvicultural lands be managed to reduce erosion.

45. Conservation Element Policy 5-15 requires that best management practices be utilized for soil conservation.

46. Conservation Element Objective 6 provides:

Throughout the planning period, the County shall prohibit the disposal of hazardous wastes into the public sewer system, canals and ditches, wetlands, stormwater facilities, unlined landfills and other unsafe areas. The hazardous wastes which are prohibited will be listed in the County's revised land development regulations. The County shall ensure that all hazardous waste is properly handled, generated or stored during the site plan review process, required for all development.

47. Conservation Element Policy 6-1 provides:

Through intergovernmental coordination and public education programs, beginning within six months after plan adoption, the County shall encourage that residents participate with the City of Monticello in promoting and participating in hazardous waste amnesty days.

48. Conservation Element Policy 6-2 provides:

In order to protect natural resources and public sewer systems, the County shall prohibit the unsafe disposal of hazardous wastes by enacting and enforcing an ordinance by the statutory deadline for adoption of the land development regulations. The ordinance shall prohibit disposal into canals, ditches, wetlands, stormwater facilities, unlined landfills and other safe areas, as well as require that any land use proposing to store, generate, or handle hazardous waste; develop an emergency response plan addressing accidents; ensure that DER standards for transfer and storage of hazardous waste are implemented; and, ensure that the site will not degrade quality of ground or surface water or other natural resources.

INFRASTRUCTURE ELEMENT

49. Section 163.3177(6)(c), Florida Statutes, requires that the plan include a general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element (commonly identified as the "Infrastructure Element") as follows:

A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area. The element may be a detailed engineering plan including a topographic map depicting areas of prime groundwater recharge. The element shall describe the problems and needs and the general facilities that will be required for solution of the problems and needs. The element shall also include a topographic map depicting any areas adopted by a regional water management district as prime groundwater recharge areas for the Floridan or Biscayne aquifers, pursuant to s. 373.0395. These areas shall be given special consideration when the local government is engaged in zoning or considering future land use for said designated areas. For areas served by septic tanks, soil surveys shall be provided which indicate the suitability of soils for septic tanks. (emphasis supplied)

50. Section 373.0395, Florida Statutes, provides:

Each water management district shall develop a ground water basin resource availability inventory covering those areas deemed appropriate by the governing board. This inventory shall include, but not be limited to, the following:

- (1) A hydrogeologic study to define the ground water basin and its associated recharge areas.
- (2) Site specific areas in the basin deemed prone to contamination or overdraft resulting from current or projected development.
- (3) Prime ground water recharge areas.
- (4) Criteria to establish minimum seasonal surface and ground water levels.
- (5) Areas suitable for future water resource development within the ground water basin.
- (6) Existing sources of wastewater discharge suitable for reuse as well as the feasibility of integrating coastal wellfields.
- (7) Potential quantities of water available for consumptive uses.

Upon completion, a copy of the ground water basin availability inventory shall be submitted to each affected municipality, county, and regional planning agency. This inventory shall be reviewed by the affected municipalities, counties, and regional planning agencies for consistency with the local government comprehensive plan and shall be considered in future revisions of such plan. It is the intent of the Legislature that future growth and development planning reflect the limitations of the available ground water or other available water supplies. (emphasis supplied)

51. Although Jefferson County's groundwater system includes the upper and lower Floridan Aquifer, the regional water management districts have not completed their studies and have not designated areas of Jefferson County as prime groundwater recharge areas for the Floridan or Biscayne aquifers, pursuant to Section 373.0395. Accordingly, the plan does not designate areas of prime groundwater recharge. Plan maps indicate where the potential for high recharge exists. As stated in the "needs assessment" at page 57 of the support documents to the Conservation Element:

[A]t the present time insufficient information is available to allow the county to institute a site specific comprehensive aquifer recharge protection program. This problem should be remedied with the completion of the GWBRAI groundwater basin study for Jefferson County by the NWFWMD (Northwest Florida Water Management District)

and the SRWMD (Suwanee River Water Management District). Until this GWBRAI becomes available, the county should adopt interim measures to promote protection of aquifer recharge functions, based on the known characteristics of development within the County, and general knowledge of aquifer recharge principles.

52. The interchange at I-10/S.R. 59 exists over a potential area of high groundwater recharge. Pursuant to the special exception requirements set forth in the "mixed use business interchange" designation, the area shall receive special consideration in zoning or considering future land use for the area. Until prime groundwater recharge areas are designated, in order to promote protection of aquifer recharge functions, land use decisions will be based on the known characteristics of development within the County, and general knowledge of aquifer recharge principles.

53. Rule 9J-5.011(2)(c)(3), Florida Administrative Code, states that an Infrastructure Element shall contain policies addressing the implementation activities for establishing and utilizing potable water conservation strategies and techniques. Rule 9J-5.011(2)(c)(4), Florida Administrative Code, states that an Infrastructure Element shall contain policies addressing the implementation activities for regulating land use and development to protect the functions of natural drainage features and natural groundwater aquifer recharge areas.

54. The Jefferson County Comprehensive Plan Infrastructure Element includes the information required by the statute and rules.

55. Jefferson County's Infrastructure Element Goal 4 is to conserve and preserve the values and functions of the County's natural groundwater aquifer recharge areas. Infrastructure Element Goal 4, Objective 1 provides:

The County shall conserve and protect the values and functions of natural groundwater aquifer recharge areas from adverse impacts through adoption of land development regulations by the statutory deadline and coordination with federal, state, and local agencies throughout the planning period.

56. Infrastructure Element Goal 4, Policy 1-1 provides:

The County shall seek assistance from the Northwest Florida and Suwanee River Water Management Districts in the management of prime aquifer recharge areas, once such information is made available. The comprehensive plan shall be amended at that time as necessary to protect prime aquifer recharge areas.

57. Infrastructure Element Goal 4, Policy 1-2 provides:

The land development regulations shall limit impervious surface ratios for new development and shall require management of stormwater to ensure post development run-off does not exceed predevelopment run-off rates.

58. Infrastructure Element Goal 4, Policy 1-3 provides:

The County shall allow the re-use of treated effluent and stormwater for irrigation, and shall encourage such re-use during the site plan review process.

59. Infrastructure Element Goal 4, Policy 1-8 provides for closure of the current landfill upon completion of the replacement landfill, such closure to be handled in accordance with DER requirements.

60. Infrastructure Element Goal 2, Policy 2-1 sets forth limits on the use of new on-site wastewater treatment systems in new development and provides that such existing on-site systems may remain in service until central service is available.

INTERGOVERNMENTAL COORDINATION

61. Petitioners allege that the Intergovernmental Coordination Element contained within the plan is not in compliance, in that it allegedly fails to provide a mechanism for coordinating protection of the Floridan Aquifer and water quality in Leon and Jefferson Counties. Petitioners further allege that the plan contains no coordination of common issues such as fire protection and protection of drinking water.

62. The goals, objectives, and policies of the Intergovernmental Coordination Element appropriately provide for formalized coordination of land use decisions with surrounding counties in order to protect water quality and quantity. The Intergovernmental Coordination Element does not specifically address fire protection. However, the evidence fails to establish that currently available fire protection is inadequate, or that, if additional protection is required, the county is unable to provide such services.

INTERNAL INCONSISTENCY

63. Section 163.3177(2), Florida Statutes, provides:

Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent....

64. Rule 9J-5.005(5)(a), Florida Administrative Code, provides:

The required elements and any optional elements shall be consistent with each other. All elements of a particular comprehensive plan shall follow the same general format.

Where data are relevant to several elements,
the same data shall be used, including
population estimates and projections.

65. Petitioners allege that the plan's Future Land Use Element, which includes the "mixed use interchange business" designation, is inconsistent with the policies and goals of the Conservation Element, which includes the policies related to water quality protection. The evidence fails to support the assertion that the plan is internally inconsistent. The "mixed use interchange business" designation, including the enhanced scrutiny of the special exception provisions for specified and more intensive uses, is not inconsistent with the provisions of the plan related to protection of groundwater and aquifer recharge areas. Further, the evidence does not establish that the plan is inconsistent with Chapter 187, Florida Statutes, the state's comprehensive plan.

66. Petitioners asserted that the plan did not contain the best available information in existence at the time the plan was adopted. Section 163.3177(10)(e), Florida Statutes, provides:

It is the Legislature's intent that support data or summaries thereof shall not be subject to the compliance review process, but the Legislature intends that goals and policies be clearly based on appropriate data....Chapter 9J-5, F.A.C., shall not be construed to require original data collection by local governments....

67. The county did not, and is not required to, produce original data in order to prepare and adopt a comprehensive plan.

68. Petitioners suggest that the DCA erred in not considering Department of Environmental Regulation data identifying petroleum storage facilities which experienced leaks or spills reported to the DER. However, the evidence offered by Petitioners at hearing did not support the suggestion that such data was more appropriately considered than the data set forth in the county's plan.

69. The inference suggested by Petitioner's evidence is that some petroleum storage facilities pose a threat to groundwater supplies due to leaking tanks and operational errors. However, the evidence does not indicate whether such facilities were designed to prevent such occurrences, the types of safeguards installed, the types of maintenance required at such facilities (and whether it was performed), or whether, and the extent to which, the reported leaks or spills resulted in ground or surface water contamination.

70. The Petitioners further assert that the plan's data related to aquifer recharge is unacceptable because it is not site specific. The general aquifer recharge map in the plan is based upon U.S. Geological Survey data, and a U.S. Bureau of Geology map. The plan also includes wetlands maps based on U.S. government information and a National Wetlands Conservatory survey. Due to the failure of the water management districts to complete the study of the county's prime aquifer recharge areas, reliable site specific information is not yet available. The plan maps adequately indicate the areas where the potential for high groundwater recharge may exist.

CONCLUSIONS OF LAW

71. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Sections 120.57(1) and 163.3184(9)(b), Florida Statutes.

72. The Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, (the "act") requires that each county and municipality adopt a comprehensive plan. Section 163.3167(3), Florida Statutes, defines a comprehensive plan as a plan which meets the requirements of Sections 163.3177 and 163.3178, Florida Statutes. Pursuant to Section 163.3167, Florida Statutes, local government comprehensive plans are submitted to the DCA. Each local government transmits the proposed comprehensive plan to the DCA, which coordinates a review of the plan by various government agencies, and thereafter transmits objections, recommendations and comments to the local government. The local government subsequently reviews such objections, recommendations and comments, adopts a plan, and transmits the adopted plan to the DCA. The DCA reviews the adopted plan and determines whether the adopted plan is in compliance with the act. Section 163.3184, Florida Statutes.

73. Section 163.3184(1)(b), Florida Statutes, defines "in compliance" to mean "consistent with the requirements of ss. 163.3177, 163.3178, and 163.3191, the state comprehensive plan, the appropriate regional policy plan, and rule 9J-5, F.A.C., where such rule is not inconsistent with chapter 163, part II". The DCA has determined the Jefferson County Comprehensive Plan to be "in compliance".

74. In this proceeding the local plan shall be determined to be in compliance if the local government's determination of compliance is fairly debatable. Section 163.3184(9)(a), Florida Statutes. The "fairly debatable" test asks whether reasonable minds could differ as to the issue at hand. *Norwood-Norland Homeowners v. Dade County*, 511 So.2d 1009 (Fla. 3rd DCA 1987). The Petitioners burden of proof in this proceeding is to establish that the determination of compliance is not fairly debatable. The Petitioners have failed to meet the burden.

75. The evidence establishes that the Jefferson County Comprehensive Plan Future Land Use, Conservation, Infrastructure, and Intergovernmental Coordination Elements are responsive to the requirements of relevant statutes and rules. The evidence fails to establish that the plan is internally inconsistent. The relevant evidence establishes that the plan is "in compliance".

76. The Petitioners assert that the plan is not in compliance because the possible siting of a petroleum product facility over the potential area of high groundwater recharge fails to adequately protect water quality and the Floridan Aquifer. Specifically, the plan's Future Land Use Element, which includes the "mixed use interchange business" designation, is allegedly inconsistent with the policies and goals of the Conservation Element, which includes the policies related to water quality protection. However, the special exception process requires that the Jefferson County Board of County Commissioners enact performance standards which provide that on-site and off-site impacts, including water quality, avoidance of environmentally sensitive lands and mitigation of impacts, trip generation, transportation access, drainage, visual appearance, noise, signage, and air quality are adequately planned for and monitored.

77. The reliance on such as-yet-undeveloped LDR's and performance standards is acceptable. Neither the act nor Chapter 9J-5, Florida Administrative Code, setting forth the minimum criteria for review of comprehensive plans and determination of compliance of such plans, require the inclusion of implementing regulations in the comprehensive plan. A comprehensive plan is intended to identify the programs, activities, and land development regulations that will be a part of the strategy for implementing the comprehensive plan. Rule 9J-5.005(6), Florida Administrative Code. The Jefferson County Comprehensive Plan identifies the programs, activities, and land development regulations which will be a part of the strategy for implementing the plan.

78. Petitioners allege that the plan did not contain the best available information in existence at the time the plan was adopted. Section 163.3177(10)(e), Florida Statutes, provides:

It is the Legislature's intent that support data or summaries thereof shall not be subject to the compliance review process, but the Legislature intends that goals and policies be clearly based on appropriate data....Chapter 9J-5, F.A.C., shall not be construed to require original data collection by local governments....

79. The county did not, and is not required to, produce original data in order to prepare and adopt a comprehensive plan. The data upon which the County relies is appropriate.

80. The Petitioners suggest that the plan's data related to aquifer recharge is unacceptable because it is not site specific. The general aquifer recharge map in the plan is based upon U.S. Geological Survey data, and a U.S. Bureau of Geology map. The plan also includes wetlands maps based on a National Wetlands Conservatory survey and additional federal government data. Due to the failure of the state water management districts to complete the study of the county's prime aquifer recharge areas, reliable site specific information is not yet available. The plan maps adequately indicate the areas where the potential for high groundwater recharge may exist.

81. The evidence offered by the Petitioners to support the assertion that the DCA should have considered Department of Environmental Regulation data identifying petroleum storage facilities which experienced leaks or spills reported to the DER is not persuasive. The DER data fails to indicate whether such facilities were designed to prevent such occurrences, the types of safeguards installed, the types of maintenance required at such facilities (and whether it was performed), or whether, and the extent to which, the reported leaks or spills resulted in ground or surface water contamination. The fact that such incidents have occurred does not establish beyond fair debate that the comprehensive plan's special exception procedures set forth in the Future Land Use Element fail to protect water quality.

82. The evidence fails to support the Petitioner's assertion that the plan is internally inconsistent. The Future Land Use Element's "mixed use interchange business" designation, which requires the enhanced scrutiny of the special exception provisions for specified and more intensive uses, is not inconsistent with the provisions of the plan related to protection of

groundwater and aquifer recharge areas. Further, the evidence does not establish that the plan is inconsistent with Chapter 187, Florida Statutes, the state's comprehensive plan.

RECOMMENDATION

Based on the foregoing, it is hereby recommended that the Department of Community Affairs enter a Final Order dismissing the Petition of Friends of Lloyd, Inc., Robert B. Rackleff and Jo Ellyn Rackleff and finding the Jefferson County Comprehensive Plan to be "in compliance" as defined at Section 163.3184(1)(b), Florida Statutes.

RECOMMENDED this 31st day of July, 1991, in Tallahassee, Florida.

WILLIAM F. QUATTLEBAUM
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of July, 1991.

ENDNOTES

- 1/ The Department adopted the proposed recommended order submitted by Jefferson County as it's own.
- 2/ "In compliance" means consistent with the requirements of ss. 163.3177, 163.3178, and 163.3191, the state comprehensive plan, the appropriate regional policy plan, and rule 9J-5, F.A.C., where such rule is not inconsistent with chapter 163, part II. Section 163.3184(1)(b), Florida Statutes. Rule 9J-5, F.A.C., sets forth the minimum criteria for review of comprehensive plans and compliance determinations.
- 3/ Although the Jefferson County Comprehensive Plan contains all elements required by statute, this Recommended Order contains Findings of Fact related only to the elements specifically challenged by Petitioner.
- 4/ The word "designed" was likely intended to be "designated".
- 5/ Land Development Regulations

APPENDIX TO RECOMMENDED ORDER, CASE NO. 90-6264GM

The following constitute rulings on proposed findings of facts submitted by the parties.

Petitioners

The Petitioners proposed findings of fact are accepted as modified in the Recommended Order except as follows:

1. Second sentence is rejected. The greater weight of the evidence establishes that the referenced interchange is located above an area where the potential for high aquifer recharge exists.
2. Rejected. The greater weight of the evidence establishes that the referenced interchange is located above an area where the potential for high aquifer recharge exists.
3. Rejected, unnecessary.
4. Rejected, contrary to greater weight of evidence. The evidence related to leaking tanks and operational errors at petroleum storage does not indicate whether such facilities were designed to prevent such occurrences, the types of safeguards installed, the types of maintenance required at such facilities (and whether it was performed), or whether and the extent to which the reported leaks or spills resulted in ground or surface water contamination. Such data was not more appropriate than the data set forth in the county's plan.
5. The area is one of potential high groundwater recharge.
6. Rejected, unnecessary.
8. Rejected as to assertion that the plan "makes no provision for the protection of the Floridan Aquifer in connection with proposed petroleum tank farm construction", contrary to greater weight of evidence.
- 9-11. Rejected, irrelevant. Support data is not subject to compliance review. Additional data collection is not required. "Special consideration" is provided through the special exception process and related performance standards.
12. Rejected, unnecessary.
- 14-15. Rejected, unnecessary. The evidence cited establishes that aromatic hydrocarbon, a compound found in unleaded gasoline, poses a threat of harm to living organisms which consume such substances. The special exception process included in the "mixed use business interchange" designation requires that on-site and off-site impacts (including water quality, air quality, and avoidance of environmentally sensitive lands and mitigation of impacts) must be adequately planned for and monitored.

Respondent Jefferson County and Department of Community Affairs

Respondent Department of Community Affairs' adopted the Proposed Recommended Order filed by Respondent Jefferson County. Respondent Jefferson County's proposed findings of fact are accepted as modified in the Recommended Order.

Intervenor

The Intervenor's proposed findings of fact are accepted as modified in the Recommended Order except as follows:

14. Rejected. The cited policy states only that the existing landfill be closed consistent with DER regulations.
39. Rejected, unnecessary.
45. Rejected as to traffic circulation, irrelevant.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS:

All parties have the right to submit written exceptions to this Recommended Order. Pursuant to Section 163.3184(9)(b), Florida Statutes, the state land planning agency shall allow 10 days for the filing of exceptions to this recommended order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.

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AGENCY FINAL ORDER

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STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

FRIENDS OF LLOYD, INC.,
ROBERT B. RACKLEFF and
JO ELLEN RACKLEFF,

Petitioners,

DOAH CASE NO. 90-6264GM

vs.

DEPARTMENT OF COMMUNITY AFFAIRS,
and JEFFERSON COUNTY,

Respondents.

_____ /

FINAL ORDER

On July 31, 1991, a Hearing Officer of the Division of Administrative Hearings entered his Recommended Order in this proceeding. The Recommended Order was received by the Department of Community Affairs ("Department" hereafter) on August 7, 1991. A copy is attached to this Order as Exhibit A.

BACKGROUND

Petitioners have challenged the comprehensive plan adopted by Jefferson County ("County" hereafter) in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act, Ch. 163, Part II, Florida Statutes ("Act" hereafter). The Department issued its Notice of Intent to find the County's plan in compliance with the Act. Petitioners filed a petition in accordance with Section 163.3184 (9), Florida Statutes, alleging that the plan was not in compliance with the Act for reasons that are summarized below. The Department forwarded the petition to the Division of Administrative Hearings. A Hearing Officer was assigned, and the final hearing was conducted on February 20 and 21, 1991, in Monticello, Jefferson County, Florida.

In his Recommended Order, the Hearing Officer made detailed findings of fact and conclusions of law. He determined that the County's comprehensive plan was in compliance with the Act, and recommended that the Department enter a final order finding the plan in compliance. Petitioners have filed exceptions to the Recommended Order.

The issues raised in this proceeding relate to a land use designated in the plan as "mixed use interchange business," which, through a special exception process, can allow storage facilities for petroleum products. Petitioners contend that allowing that use in locations where it is permitted in the plan would threaten aquifers that serve as important sources for potable water.

RULINGS ON EXCEPTIONIONS

PETITIONERS' EXCEPTIONIONS

Petitioners' Exception 1

Petitioners take exception to the findings of fact set out in paragraphs 68, 69, and 70 of the Recommended Order. These paragraphs include findings relating to the availability of data and analysis to support provisions of the County's plan, and to the probabilities of risk that petroleum storage facilities might pose if they are established at locations where they would be permissible under the plan.

Petitioners did offer evidence that data was available to support their position, and evidence that petroleum storage facilities have been associated with environmental damage in other places. On the other hand, there is evidence in the record that supports a finding that the County used the best available data, and there is a lack of evidence tying prospects for leaks from storage facilities to any likelihood of damage from such events in Jefferson County. The Hearing Officer's findings are supported by competent substantial evidence in the record. The Department cannot reject findings of fact that are supported by competent substantial evidence. Section 120.57 (1) (1:b) 10, Florida Statutes.

Petitioners' first exception is rejected.

Petitioners' Exception 2

Petitioners contend that the Hearing Officer's conclusions of law are inconsistent with provisions of the Act. The exception does not specify which conclusions are inconsistent with the Act, nor why. The Hearing Officer determined that evidence offered by Petitioners fails to establish that the County's plan is inconsistent with the Act to the exclusion of fair debate. His conclusions, except as set out below, are supported by the findings of fact, which are supported by competent substantial evidence. His conclusions are also supported by the Act. Section 163.3184(9), Florida Statutes. Petitioners' second exception is rejected.

DEPARTMENT EXCEPTIONION

The Department filed an exception to the Recommended Order, and later filed "Amended Exceptions to Recommended Order." The amended exceptions were not filed within the time limits set at Rule 9J-11.012(8)(g), Florida Administrative Code. Accordingly, they are rejected.

In its timely objection, the Department addresses the Hearing Officer's conclusion of law relating to references in the County plan to reliance on land development regulations that have not yet been adopted. The Department asserts that the conclusion is contrary to provisions of the Act.

It is correct, as the Hearing Officer concluded, that a comprehensive plan is intended to identify programs, activities, and land development regulations that will be a part of the strategy for implementing the plan. Rule 9J-5.005 (E), Florida Administrative Code. It is an oversimplification, however, to conclude that reliance upon ordinances that will be adopted in the future satisfies the requirements of the Act and the Department's rules.

The Act requires that plan elements include measurable standards to assure that plan provisions are Section 163.3177 (6), Florida Statutes. The Act directs the Department to adopt rules that include criteria to ensure that plan elements include mechanisms and procedures for "monitoring, evaluating, and appraising implementation of the plan." Section 163.3177 (9) (e), Florida Statutes. As mandated, the Department's rules include such requirements. Rule Ch. 9J-5, Florida Administrative Code.

The Department's exception is granted, and the Conclusions of Law set out in the Recommended Order will be modified as set out below.

FINDINGS OF FACT

The Findings of Fact set out in the Hearing Officer's Recommended Order are hereby adopted, and are incorporated herein by reference.

CONCLUSIONS OF LAW

1. The conclusions of law set out in Paragraphs 1-6 and 8- 11 of the Conclusions of Law in the Hearing Officer's Recommended Order are hereby adopted, and are incorporated herein, by reference.

2. The conclusion of law set out in Paragraph 7 of the Conclusions of Law in the Hearing Officer's Recommended Order is hereby rejected. The following conclusions are substituted:

The Act requires that the mechanisms and procedures for monitoring, evaluating, and appraising implementation of a local government comprehensive plan be included in the plan. Specific measurable objectives and policies designed to meet the objectives also are required. Section 163.177 (9) (e), Florida Statutes; Rule 9J-5.005, Florida Administrative Code. A local government plan that fails to identify, how the plan will be implemented, or that fails to include measurable objectives and implementing policies, would not be in compliance with the Act or the Department's rules. A statement in the plan that implementing objectives and policies will be addressed later, through land development regulation ordinances, would not render the plan in compliance.

The Jefferson County Comprehensive Plan includes measurable objectives and standards to govern implementation of the plan. Leaving the specific performance standards relating to a single use, available only through a special exception process, within one land use category does not necessarily render a plan not in compliance. In this case, the County has set general performance standard that will govern the land use. Deferral of specific standards for petroleum storage facilities does not render th plan out of compliance because provisions of the Conservation Element include goals, objectives and policies that will govern the nature of land development regulations that will need to be adopted to implement the plan. In addition, there was a lack of data available to the County to demonstrate that more stringent criteria than is specified in the plan is necessary. The aquifer recharge area for the locations

where petroleum storage facilities may be located has not been identified as a prime aquifer recharge area by the water management district.

ORDER

The Comprehensive Plan adopted by Jefferson County is determined to be in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act.

NOTICE OF RIGHTS

The parties to this proceeding are hereby advised of their right to seek judicial review of this Final Order pursuant to Section 120.68, Florida Statutes, and Florida Rules of Appellate Procedure 9.030 (1)c and 9.110. To initiate an appeal, a Notice of Appeal must be filed with the Department's Clerk of Agency Proceedings, Rhyne Building, 2740 Centerview Drive, Tallahassee, Florida, 32399-2100, and with the appropriate District Court of Appeal within 30 days of the filing of this Final Order with the Department's Clerk of Agency Proceedings. A Notice of Appeal filed with the District Court of Appeal should be accompanied by the filing fee specified in Section 35.22, Florida Statutes.

DONE and ORDERED this __6__ day of September, 1991.

WILLIAM E. SADOWSKI, Secretary
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