STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JULIE PARKER, Petitioner, vs. ST. JOHNS COUNTY, Respondent, and THE ESTUARIES LIMITED LIABILITY COMPANY, a Florida limited liability company, Intervenor.	)	Case No. 02-2658

RECOMMENDED ORDER

Notice was given and on October 2, 3, and 23, 2002, a final hearing was held in this case. Pursuant to the authority set forth in Sections 120.569, 120.57, and 163.3187(3)(a), Florida Statutes, the hearing was conducted by Charles A. Stampelos, Administrative Law Judge, in St. Augustine, Florida.

APPEARANCES

For Petitioner: Deborah J. Andrews, Esquire
11 North Roscoe Boulevard
Ponte Vedra Beach, Florida 32082-3625

For Respondent St. Johns County:

Isabelle Lopez, Esquire
St. Johns County Attorney's Office
4020 Lewis Speedway
St. Augustine, Florida 32084-8637

For Intervenor The Estuaries Limited Liability Company:

George M. McClure, Esquire
James W. Middleton, Esquire
Rogers, Towers, Bailey, Jones, & Gay, P.A.
170 Malaga Street, Suite A
St. Augustine, Florida 32084-3568

STATEMENT OF THE ISSUES

Whether the proposed amendment to the St. Johns County 2015 Future Land Use Map (FLUM), adopted by Ordinance No. 2002-31, is "in compliance" with the relevant provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part, II, Florida Statutes. A second issue raised by St. Johns County (County) and The Estuaries Limited Liability Company (Estuaries) is whether, if the proposed amendment is not "in compliance," it is nevertheless valid and authorized pursuant to Chapter 70, Florida Statutes, the Bert J. Harris, Jr., Private Property Rights Protection Act.

PRELIMINARY STATEMENT

On May 28, 2002, and pursuant to Ordinance No. 2002-31, the Board of County Commissioners of St. Johns County adopted an amendment to the County's FLUM, which changed the land use category designation of a 9.99 acre parcel of land known as "The

Estuaries," from Residential Coastal A (.4 to 1 units per acre) to Residential Coastal D (4 to 8 units per acre), hereinafter referred to as the FLUM Amendment.

On June 27, 2002, and within 30 days of rendition of this Ordinance (the Ordinance was filed with the County clerk and therefore rendered on May 29, 2002), Petitioner, Julie Parker (Parker), filed a Petition for Hearing with the Department of Community Affairs (Department). On July 2, 2002, by facsimile, counsel for the Department forwarded the Petition, with a cover letter, to the Clerk of the Division of Administrative Hearings (Division). The Petition was filed with the Division on July 2, 2002.

On July 12, 2002, the County filed a Motion to Dismiss, contending that the Petition, challenging a decision on a small scale development amendment, was not filed with the Division, as opposed to the Department, within 30 days from the date of adoption, pursuant to Section 163.3187(3)(a), Florida Statutes. Estuaries also filed a Motion to Dismiss and Parker filed a response. A telephone hearing was held on July 22, 2002, to consider the motions and response. During the hearing, the parties were requested to file memoranda of law, addressing whether Section 163.3187(3)(a), Florida Statutes, is jurisdictional and whether the doctrine of equitable tolling applied. Parker filed a sworn brief in response to the motions

to dismiss and the County and Estuaries filed separate memoranda. The motions to dismiss were denied by written order of August 9, 2002, which is incorporated herein by reference.

Parker also filed a Motion to Amend Petition and an Amended Petition. The motion was granted and Parker proceeded to hearing on the basis of the Amended Petition.

Prior to the final hearing, Parker filed a Request for Public Comment, which was granted, and public comment was received on October 4, 2002. (Two exhibits were admitted in evidence from the public comment session during the final hearing.) A final hearing was held on October 2, 3, and 23, 2002, in St. Augustine, Florida.

During the hearing, Parker presented the testimony of Teresa Bishop, Robert Burks, Donald Burgess, Patrick Hamilton, and Julie Parker. Parker's Exhibits 1, 4A-P, 11-18, and 20-24, were admitted into evidence. Ruling was reserved on Parker Exhibits 19A-C. Exhibits 19A-C are admitted. Julie Parker also testified in rebuttal to expand on her explanation regarding her deposition testimony/errata sheet.

The County presented the testimony of Scott Clem. The County's Exhibits 9, 25, 26, 26A, 32, 43, 44K, 54, 59, and 60, were admitted into evidence. Ruling was reserved on the admissibility of County Exhibits 1-4, 7, 13-17, 34-42, 42A, 44E-H, 44J, 44N, 56, 57, and 61. These exhibits are admitted.

Estuaries presented the testimony of Melvine McCall, Bill Pace, Scott Clem, Kevin Davenport, and Julie Parker (by deposition excerpts). Estuaries' Exhibits 1, 7, 23, 23A, 24-25, 31, 60-67, 87, and B24 were offered into evidence, but ruling was reserved on their admissibility. These exhibits are admitted.

The Transcript of the final hearing (volumes I-V) was filed with the Division on November 14, 2002. The County and Estuaries filed a joint proposed recommended order and Parker filed a proposed recommended order and a brief in support of the proposed recommended order. All of these post-hearing submissions have been considered in preparing this Recommended Order.

FINDINGS OF FACT

The Parties

1. Petitioner, Julie Parker, resides in St. Augustine, Florida, less than one and one-half miles from the proposed project site. Parker also owns other property in St. Johns County. Parker submitted oral comments to the County at the adoption hearing on May 28, 2002, regarding the FLUM Amendment and Ordinance No. 2002-31. The parties agreed that Parker has standing in this proceeding.

2. The County is a political subdivision of the State of Florida. The County adopted its Comprehensive Plan in 1990. The County proceeded with the evaluation and appraisal report process in 1997 and 1998. This process ultimately resulted in the

adoption of the 2015 Comprehensive Plan Amendment, Goals, Objectives, and Policies, and Adopted EAR-Based Comprehensive Plan Amendment in May 2000 (May 2000 EAR-Based Plan Amendment), which was subjected to a sufficiency review by the Department and found "in compliance."

3. Estuaries owns the 9.99 acres (the Property) that is the subject of the FLUM Amendment. Estuaries also owns approximately 8.5 acres outside, adjacent to, and west of the Property. The 8.5 acres are subject to a Conservation Easement, which prohibits any development activity thereon. (The total contiguous land owned by Estuaries is approximately 18.5 acres.) The parties stipulated that the legal description of the Property attached to Ordinance No. 2002-31 contains less than 10 acres.

4. Estuaries submitted comments to the County at the adoption hearing on May 28, 2002, regarding the FLUM amendment. Estuaries has standing to participate as a party in this proceeding.

The Property

5. The Property is part of a larger tract owned by Estuaries, i.e., approximately 9.9 acres out of a total tract of approximately 18.5 acres.

6. The entire 18.5 acre tract is located on Anastasia Island, a barrier island, which extends from the St. Augustine Inlet to the Matanzas Inlet. According to the 2000 Census, there

are approximately 12,000 dwelling units on Anastasia Island. This includes condominium units and single-family units.

7. The approximately 18.5-acre site is also located in the Coastal High Hazard Area under the County May 2000 EAR-Based Plan Amendment.

8. The Property is part of Butler Beach (bordering the Atlantic Ocean), which is an historic area because it was settled in the early 1900's by black citizens and provided them with access to the beach, which was previously unavailable. However, no historic structures or uses have occurred on the Property.

9. The entire 18.5 acre tract is located on the south side of Riverside Boulevard. The Property is located approximately 300 feet west of Highway A1A South (A1A runs north and south). The Intracoastal Waterway and the Matanzas River are west and adjacent to the 18.5 acres.

10. The Estuaries site is also located adjacent to the Guana Tolomato Matanzas National Estuarine Research Reserve (NERR).

11. The Property is vacant, partially wooded, and also consists of undeveloped wetlands. Of the 9.99 acres, approximately 6.7 acres are uplands and developable, and 3.29 acres are wetlands. As noted, the remaining approximately 8.5 acres of the Estuaries' property, and to the west of the Property, is subject to a Conservation Easement in favor of the County.

12. The properties adjacent to the Property include the following: Single-family residential units are located along and on the north side Riverside Boulevard. The existing FLUM designations for this area are Residential Coastal Density A and C, with the existing zoning of open rural (OR). (Residential Coastal Density C permits 2.0 to 4.0 units per acre.) The Intracoastal portion of Butler State Park is to the south of the Property, with a FLUM designation of parks and open space and existing zoning of OR and is not in a conservation area. To the east of the Property is a utility substation site, Butler Avenue, various commercial uses, Island House Rentals or Condominiums (three-story oceanfront condominiums), and the Mary Street Runway. There is another condominium called Creston House, directly south of the Butler Park (ocean portion) area (distinguished from the Butler State Park), consisting of three stories. (Butler Park and Creston House are located east of A1A and southeast of the Estuaries property.) The existing FLUM designations are Coastal Residential Coastal Density A and C, and have existing zoning designations of Residential General (RG)-1 and Commercial General (CG). There are no Residential Density D FLUM land use designations in the contiguous area.

13. In short, the Property is proximate to a state park, a densely developed area comprised of small residential lots of 25 by 100 feet lots, and the two three-story condominiums, which

were built prior to the adoption of the County's 1990 Comprehensive Plan.

The County's Comprehensive Plan and EAR-Based Amendments

14. On September 14, 1990, the County adopted a Comprehensive Plan-1990-2005, with amendments (the 1990 Plan). Under the 1990 Plan, the Property was assigned a Residential Coastal-A land use designation under the existing FLUM, which meant that residential development was restricted to no more than one residential unit per upland (non-wetland jurisdictional) acre. Under this designation, approximately seven units could have been built on the Property.

15. The zoning on the Property was and is RG-1. According to the County, at least as of a June 11, 1999, letter from the County's principal planner, Timothy W. Brown, A.I.C.P., to Kevin M. Davenport, P.E., the total units which would be allowed on the Property were 116 multi-family units, derived after making a detailed density calculation based in part on using 40 percent of the wetlands used for the density calculation.

16. In May 2000, the County adopted the EAR-Based Plan Amendment, with supporting data and analysis, which the Department of Community Affairs found to be "in compliance." As required by Chapter 163, Part II, Florida Statutes, this would have included data and analysis for the Future Land Use Element (FLUE), which was adopted as part of these plan amendments. This

is part of the data and analysis which supports the FLUM Amendment at issue in this proceeding.

17. The May 2000 EAR-Based Plan Amendment continued the Residential Coastal A land use designation of the Property, which allows 0.4 to 1.0 units per acre. (Residential Coastal B allows 2.0 units per acre; Residential Coastal C allows 2.0 to 4.0 units per acre; and Residential Coastal D allows 4.0 to 8.0 units per acre.)

18. The Residential Coastal A designation authorizes residential and non-residential uses, such as schools, public service facilities, police, fire, and neighborhood commercial. Restaurants and banks without drive-thru facilities, gasoline pumps, and professional office buildings are examples of neighborhood commercial uses. The May 2000 EAR-Based Plan Amendment does not limit the lot size, subject to limitations on, for example, impervious surface ratios, which do not change regardless of whether the land use designation is Residential Coastal A or D. Also, any development would also have to comply with the textural provisions of the May 2000 EAR- Based Plan Amendment, including the coastal and conservation elements.

The Circuit Court Litigation

19. There are many documents in this case which pertain to the litigation between Estuaries and the County. The civil action was filed in the Circuit Court of the Seventh Judicial

Circuit, in and for St. Johns County, Florida, and styled The Estuaries Limited Liability Company v. St. Johns County, Florida, Case No. CA-00271.

20. On February 11, 2000, Estuaries filed a Complaint against the County "relating to certain representations made by the County in connection with the development of certain real property located south of St. Augustine Beach in St. Johns County, Florida." A Second Amended Complaint was filed on or about May 30, 2001. Estuaries claimed that County staff made representations to Estuaries, which resulted in Estuaries having a vested right to develop its Property up to a maximum of 116 multi-family residential units. (The County took the position that Estuaries could build no more than 25 units on the Property.) Estuaries claimed that it had vested rights based upon a claim of equitable estoppel against the County. (One of Estuaries' claims was brought pursuant to the Bert Harris, Jr., Private Property Rights Protection Act, Chapter 70, Florida Statutes.)[1]

21. After discovery and the denial of motions for summary judgment, the parties entered into a "Settlement Agreement and Complete Release" (Settlement Agreement).

22. The "General Terms of Settlement" in the Settlement Agreement provided in part:

1. Estuaries shall prepare and file an application to amend the future land use map of the St. Johns County Comprehensive Plan to amend the designation of only that portion of the Property such that Estuaries may build 56 multi-family residential units on the Property and such that the amendment be a "Small-scale Amendment" as defined by the Local Government Comprehensive Planning Act. Estuaries agrees on behalf of itself, its successors and assigns to build not more than 56 units on the Property. County will waive or pay the application fee and will expedite its processing.

2. The parties will forthwith prepare and submit to the Court a joint motion for the approval of this Agreement pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act, §70.001(4)(d)2.

3. During the review and consideration of the amendment application, the County will expeditiously process the Estuaries' revised construction plans and, in connection therewith, the construction codes in effect as of November 13, 2001 (to the extent the County may do so without violating county, state or federal law), the existing certificate of concurrency and the terms of the vesting letter as it relates to the Land Development Code, of Sonya Doerr dated September 27, 1999, shall continue to apply. In all other respects, the revised construction plans shall comply with all other Comprehensive Plan and County ordinances and regulations.

23. On or about November 16, 2001, counsel for the parties signed a Joint Motion, requesting the circuit court to approve the Settlement Agreement pursuant to Section 70.001(4)(d)2., Florida Statutes.

24. On November 16, 2001, Circuit Judge John Michael Traynor, entered an "Order Approving Settlement Agreement pursuant to Bert J. Harris, Jr. Private Property Rights Protection Act." Judge Traynor stated in part:

> The central issue in this litigation has been the number of dwelling units that would be permitted on the Property. The issues in the case are legally complex and, although the credibility of the testimony and authenticity of the exhibits expected to be introduced was not expected to be substantially in dispute or challenged, the meaning of the testimony and the meaning and inferences to be drawn from such evidence was very much in dispute. The issues included the extent of vested rights, the extent to which estoppel may be applied to the County, contractual liability, and potential liability under the Bert J. Harris, Jr. Private Property Rights Protection Act . . . and the relief requested included the request for a declaration that the Plaintiff is entitled to build up to 116 dwelling units on the Property and damages against the County.

25. Judge Traynor also "Ordered and Adjudged," in part:

> 2. Pursuant to Florida Statute § 70.001(4)(a) & (c) and applicable law, this Court finds that proper notice of a Bert Harris Act claim was timely provided to the County, and other governmental entities, and the County did make a written settlement offer to the Plaintiff, in accordance with the Bert Harris Act, that was accepted by Plaintiff. Florida Statute § 70.001(4)(c) permits, inter alia, for an adjustment of land development provisions controlling the development of a plaintiff's property; increases or modifications in the density, intensity, or use of areas of development; the transfer of development rights;

conditioning the amount of development or use permitted; issuance of a development order, a variance, special exceptions, or other extraordinary relief; and such other actions specified in the statute.

3. While the parties may dispute whether an amendment is necessary to the County's Comprehensive Plan, the parties have agreed that the Plaintiff shall submit a small-scale amendment to the County for consideration and approval pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act. . .; without waiver of either party's rights to contest and defend the necessity of submitting such an amendment, in light of this Court's approval of the settlement agreement pursuant to the Bert Harris Act and applicable law.

4. The Court finds that the Settlement Agreement and Complete Release is fair, reasonable and adequate; is in the best interests of the parties and protects the public interest served by the Local Government Comprehensive Planning and Land Development Regulation Act. . .; and is the appropriate relief necessary to prevent the County's regulatory efforts from inordinately burdening the Property with regard to density, impact on public services, the environment and the public health, safety and welfare of the community and the rights of individuals to reasonably utilize their property and to rely on the representations of government, taking into consideration the risks that both parties had in this litigation. This litigation has been ongoing for more than 18 months, and substantial discovery and record has been presented to the Court that provides ample basis for this Court's approval of this settlement as being fair, reasonable and adequate and appropriate under the Bert Harris Act. There is no evidence before the Court that would suggest that the proposed

> settlement is the result of any collusion among the parties or their counsel. In fact, the record is to the contrary, whereby counsel on both sides have aggressively and zealously pursued the interests of their respective clients. . . .

26. Judge Traynor directed the parties to implement the terms of the Settlement Agreement, "subject to the right of the public to comment at an appropriate public hearing pertaining to the above referenced small scale amendment to the County's Comprehensive Plan, and shall cooperate to accomplish in good faith the responsibilities under the Settlement Agreement and Complete Release."

27. There is no evidence that Judge Traynor's Order has been rescinded or otherwise modified. There is no statutory authority to collaterally attack Judge Traynor's Order in this proceeding nor is there any authority which provides that this Order can be ignored. Also, this is not the appropriate proceeding to determine whether Estuaries has, in fact, vested rights. Accordingly, Judge Traynor's Order, approving the Settlement Agreement, is accepted as binding authority.

The Small Scale Development Application

28. In compliance with Judge Traynor's Order and the Settlement Agreement, on March 26, 2002, Estuaries filed a "Small Scale Amendment Comprehensive Plan Amendment Application Form" with the County. Estuaries requested a change in the Property's

FLUM designation from Residential Coastal A, Zoning RG-1 to Residential Coastal D, Zoning RG-1.

29. Estuaries represented, in part, that the Property consisted of 9.99 acres of vacant land, including 3.2 acres of wetlands and approximately 6.7 acres of developable land (uplands) "which will be developed into a 56 unit Multi-Family Condominium."

30. County staff reviewed the application and recommended approval. As part of the agenda item for consideration by the St. Johns County Board of County Commissioners, County staff, in light of the criterion of "Consistency with the Goals, Objectives and Policies of the Comprehensive Plan, State Comprehensive Plan and the Northeast Florida Regional Policy Plan," stated: "[t]he approved Settlement Agreement was filed pursuant to Chapter 70.001." With respect to "Impacts on Public Facilities and Services," County staff stated: "The project has received a Certificate of Concurrency addressing the impacts on transportation, water, sewer, recreation, drainage, solid waste and mass transit. The Certificate of Concurrency is based on impacts of 84 multi-family dwelling units. Pursuant to the Settlement Agreement, the project contains 56 multi-family dwelling units. St. Johns County provides central water and sewer." With respect to "Compatibility with Surrounding Area," County staff stated: "The area is developed with a mixture of

residential, commercial, park (Butler Park), and vacant land of various zoning."

31. According to Mr. Scott Clem, the County's Director of Growth Management Services, County staff felt that there were adequate public facilities for a 56-unit project, because Estuaries had previously demonstrated that facilities were available for an 84-unit project. However, County staff expressly noted in the Planning Department Staff Report submitted to the Planning and Zoning Agency that "[t]here are no development plans included in the Application. However, all site engineering, drainage and required infrastructure improvements will be reviewed pursuant to the Development Review Process to ensure that the development complies with all applicable federal, state and local regulations and permitting requirements. No permits shall authorize development prior to compliance with all applicable regulations." At this point in time, County staff were "analyzing the potential for 56 units to be on the property. It was a site specific analysis at that point."

32. On April 18, 2002, the Planning and Zoning Agency unanimously recommended approval of the FLUM amendment.

33. After a properly noticed public hearing, on May 28, 2002, the County approved the FLUM Amendment in Ordinance 2002-31.

34. In Ordinance 2002-31, the County approved the FLUM Amendment at issue, which changed the FLUM land use classification of the Property from Residential Coastal A to Residential Coastal D. Ordinance 2002-31 also provided: "The Land Uses allowed by this Small Scale Comprehensive Plan Amendment shall be limited to not more than 56 residential units, built in not more than four buildings with residential uses, not more than 35 feet in height."

The Challenge

35. Parker filed an Amended Petition challenging the lack of data and analysis to support the FLUM Amendment; challenging the increase in density of the Property located in a Coastal High Hazard Area; challenging the internal consistency of the FLUM Amendment with the May 2000 EAR-Based Plan Amendment; challenging the decision by the County to process the application as a small scale development amendment; and challenging the failure to provide Parker with adequate notice of a clear point of entry to challenge Ordinance No. 2002-31.

Notice

36. The County provided notice, by newspaper, of the Board of County Commissioners' meeting of May 28, 2002.

37. Before this meeting, a sign was placed on the Property, providing notice of the meeting.

38. Parker personally attended the May 28, 2002, meeting and addressed the Commission regarding the FLUM Amendment.

39. Ordinance No. 2002-31 provided: "This ordinance shall take effect 31 days after adoption. If challenged within 30 days after adoption, this ordinance shall not become effective until the state land planning agency or the Administration Commission issues a final order determining the adopted small scale amendment is in compliance." This Ordinance does not advise a person of the right to challenge the Ordinance pursuant to Chapter 120, Florida Statutes, the Uniform Rules of Procedure, or Section 163.3187(3)(a), Florida Statutes. This type of notice is not required for the reasons set forth in the Conclusions of Law.

Does the FLUM Amendment, covering 9.99 acres, involve a "use" of 10 acres or fewer, pursuant to Section 163.3187(1)(c)1., Florida Statutes?

40. "A small scale development amendment may be adopted only [if] [t]he proposed amendment involves a use of 10 acres or fewer." Section 163.3187(1)(c)1., Florida Statutes.[2] In the Amended Petition and in her Prehearing Stipulation, Parker contends that the "use," which is the subject of the FLUM Amendment, relates to more than the 9.99 acre parcel and, therefore, the FLUM Amendment is not a small scale development amendment defined in Section 163.3187(1)(c)1., Florida Statutes.

41. Parker contended that because the FLUM Amendment authorizes a maximum of 56 residential units to be developed on

the Property, and the maximum density under the Residential Coastal D and RG-1 zoning designations is 42.12 units, using the on-site wetlands density bonus, that Estuaries "must be using the off-site wetlands that are contained within the 18.5 acre parcel to obtain the density credit necessary to reach 56 units for the site under" the FLUM Amendment. The 56 residential unit maximum was the product of the circuit court litigation and Settlement Agreement, as approved by Judge Traynor, which resolved the differences between the County and Estuaries regarding the maximum residential density which could be authorized on the Property.

42. Parker also contended that because Estuaries may use a proposed lift station owned by the County off-site, that this causes the proposed "use" of the Property to exceed 10 acres. It appears that at some prior time in the "vesting rights" chronology of events, Magnolia S Corporation, in order to downscale the project, agreed to sell a 40' by 80' parcel to the County, located adjacent to the Property and in the northeast portion, to expand the existing County lift station on Riverside Boulevard.

43. There is a lift station adjacent to the Property that serves as "a repump station that serves the development along Riverside [Boulevard] west of the lift station and serves all the development in St. Johns County on the island south of Riverside

Boulevard." It is proposed that sewage effluent from development on the Property would be deposited on site and then pumped into an adjacent force main which eventually ends up in the station. According to Mr. Kevin Davenport, Estuaries' civil engineer, "56 units added to that pump station would be extremely miniscule in the overall amount of sewage that goes through it." Thus, Estuaries anticipates having their own on-site lift station, which "would be pumped through a pipe to the Riverside right-of-way, where it would connect to an existing county-owned pipe which currently goes to the lift station."

44. Mr. Clem stated that "[u]tilities are very commonly done off site where water or sewer distribution or transmission lines are constructed to the site." This would include the use of off-site lift stations. However, the proposed use of the lift station does not necessarily compel the conclusion that the FLUM Amendment exceeds 9.99 acres. If this were so, any proposed use of any off-site utilities would cause a pro rata calculation and increase of the size of the site providing the service, then be added to the 9.99 acres. This is not a reasonable construction of Section 163.3187(1)(c)1., Florida Statutes.

45. Parker also claimed that when the Estuaries granted the County a Conservation Easement for the approximately 8.5 acres (out of 18.5 acres) of wetlands adjacent to the Property, Estuaries "used" this property to secure the FLUM Amendment, and

therefore, exceeded the 9.99 acres. The Conservation Easement precludes development activity on the approximately 8.51 acres. ("The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the property." Prohibited uses include "[a]ctivities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.") The "use" of the 8.51 acres as a potential visual amenity for potential residents on the Property is not a "use" within a reasonable reading of Section 163.3187(1)(c)1., Florida Statutes.

46. Parker also suggested that Estuaries will need to improve Riverside Boulevard (paving and drainage) and the public right-of-way consisting of approximately 1.51 acres, which is not owned by Estuaries. It appears that Riverside Boulevard is already open, improved, and paved. Also, Mr. Clem stated that it is common to have off-site improvements associated with a project, which might include intersection or roadway improvements that are not on or within the project site. Mr. Clem opined that while these improvements would be required for the project, they would have been off-site. Some improvements, such as improvements to Riverside Boulevard, would most likely benefit the general public, and not be limited to the future residents on

the Property. It is common for local governments to require improvements to public infrastructure as a condition of development. These off-site improvements do not necessarily make the "development activity" larger than the size of the landowner's site, here the Property.

Data and Analysis

47. Parker contended that the FLUM Amendment is not supported by appropriate data and analysis.

48. As noted herein, Estuaries sought approval of a FLUM Amendment for its Property, i.e., a land use change to the FLUM. No text (goals, objectives, and policies) changes to the May 2000 EAR-Based Amendment were requested nor made. This is normal for a "site-specific small scale development activity." Section 163.3187(1)(c)1.d., Florida Statutes.

49. Consideration of the FLUM Amendment in this proceeding is unusual for several reasons. First, the necessity for the FLUM change arose as a result of the Settlement Agreement, approved by Judge Traynor, which resolved the differences existing between the County and Estuaries regarding the number of units which could, as a maximum number, be developed on the Property. Second, the data and analysis, which normally is presented to the local government, here the County, at the time the plan amendment is adopted, is not in its traditional format

here, largely, it appears, because of the manner in which consideration of the FLUM Amendment arose.

50. Nevertheless, this situation is not fatal for, under existing precedent, see, e.g., Conclusion of Law 96, data, which was in existence at the time the FLUM Amendment was adopted by the County, may be considered in determining whether there is, in fact, adequate data supporting the FLUM Amendment.

51. The data relied on by the County and Estuaries to support the FLUM Amendment was compiled and initially presented to the County on or about July 6, 1999, when Estuaries sought authorization from the County for a proposed project to construct 84 multi-family residential units on the same general area as the Property. This started the County's development review process. Estuaries began the process at this time, believing that it had "vested rights" to develop the Property.

52. Mr. Clem explained that the development review process is "extremely detailed. It involves 11 or 12 different programs within the [C]ounty, looking at everything from the actual site plan itself, water and sewer provision, for all the things that would go into site construction, roadway design, the environmental considerations. We basically look at how this site will be developed in accordance with the land development code and any other regulations. We ensure that the water management

district permits are obtained, if applicable, or other state agencies."

53. This record contains County Department comments which pertain to a host of issues, including but not limited to, drainage, traffic, fire services, urban forestry (trees and landscape on-site), utilities, zoning (e.g., buffers, setbacks), concurrency requirements, etc. County staff raised questions (identified as submittals) on at least four separate occasions followed by written responses by the applicant on at least three occasions. However, not all issues were resolved.

54. A July 1999, Land Development Traffic Assessment, prepared by Beachside Consulting Engineers, Inc., was submitted to the County as part of the request for a concurrency determination. The analysis "indicates that the roadway segments within the impact area will continue to operate at an acceptable LOS through the construction of this project." The "Summary" of the assessment states: "This project meets traffic concurrency standards, as defined by the St. Johns County Concurrency Management Ordinance, for all roads within the traffic area."

55. "Stormwater Calculations" for the 84-unit, multi-family housing development were also provided in a report dated July 7, 1999.

56. The applicant also furnished the County with a "geotechnical report," which analyzed the soil conditions related

to storm water ponds and to the placement of the buildings and the support of the buildings on the site. Soil borings and other testing revealed the capabilities of the soil for, for example, percolation rates for the storm water ponds.

57. There is no evidence that there are any specific historic buildings or geological or archeological features on the Property.

58. In July 1999, the applicant submitted an application for concurrency. At that time, County staff analyzed this information to ensure that public facilities and services were in place to serve the project. This application was reviewed in relation to the County's concurrency management provisions of the County's Land Development Code. On September 3, 1999, the County's Planning Department prepared a report regarding this application and recommended "approval of a Final Certificate of Concurrency with Conditions for the development of 84 residential condominium units." (Staff made findings of fact, which included a discussion of traffic, potable water/sanitary sewer, drainage, solid waste, and mass transit.)

59. On September 8, 1999, the Concurrency Review Committee met and adopted the Staff's Findings of Fact with conditions, including but not limited to, the applicant providing a copy of the Department of Environmental Protection permits "necessary for connection to central water and wastewater service prior to

Construction Plan approval," and "[t]he applicant receiving approval of construction/drainage plans from the Development Services Department prior to commencement of construction."

60. The Final Certificate of Concurrency with Conditions was issued on October 1, 1999, and was due to expire on September 8, 2001. However, the Settlement Agreement provided, in part, that "the existing certificate of concurrency and the terms of the vesting letter as it relates to the Land development Code, of Sonya Doerr dated September 27, 1999, shall continue to apply." (Emphasis added.) (Ms. Teresa Bishop's (County Planning Director) November 7, 2001, letter indicated, in part, that Estuaries' request for "tolling [of the Final Certificate of Concurrency] cannot be reviewed until the outcome of the pending litigation is known. . . . After the litigation is concluded, your request for tolling may be resubmitted for review." The Settlement Agreement post-dates this letter.)

61. In evaluating a small scale plan amendment, County staff evaluates the availability of public services which, according to Mr. Clem, is "one of the major components," and County staff "is looking at virtually the same issues that [the County] would look at in concurrency to evaluate and make recommendations on small scale amendments." Mr. Clem also advised that the County's analysis of the 84-unit project did not involve, and was not based on, "a specific site plan with buildings at a certain

location or parking in a certain location. It was more an 84-unit project with certain data and analysis associated with that site or project."

62. By letter dated October 4, 1999, the Department of Environmental Protection indicated that it had received a "Notification for Use of the General Permit for Construction of an Extension to a Drinking Water Distribution System" submitted for the Estuaries project. The Department stated further: "After reviewing the notice, it appears that your project will have minimal adverse environmental effect and apparently can be constructed pursuant to a general permit as described in Chapter 62-555, F.A.C." The permit expires on October 4, 2004. This permit allows the applicant to demonstrate that it will offer a central water service, available to be served through the County's utility department. This would ensure that there is sufficient potable water available.

63. By letter dated October 6, 1999, the Department of Environmental Protection also issued a permit for the construction of a sewage collection/transmission system (domestic waste).

64. By letter dated November 11, 1999, the St. Johns Water Management District issued a "formal permit for construction and operation of stormwater management system." This permit authorized "[a] new stormwater system with stormwater treatment

by wet detention to serve Estuaries Multi-family Development, a 5.88 acre project to be constructed as per plans received by the District on 7/12/1999." This permit did not relieve the applicant "from the responsibility for obtaining permits from any federal, state, and/or local agencies asserting concurrent jurisdiction over this work." Mr. Clem believed that this permit was evidence that "the state agencies ha[d] considered the environmental issues relating to storm water and all the issues that they deal with in issuing a permit."

65. The Property is located in a "development area boundary" as indicated on the FLUM, which means that these areas allow "development potential." Other areas, such as rural silviculture and agricultural lands, are outside the development area and only limited and low density development is allowed. Conservation areas are also designated on the FLUM. Given the location of the Property within the development area boundary, the County thereby eliminated the necessity of producing some of the data normally required.[3] Mr. Clem explained:

> So by being within a development area boundary it's in essence already had rights to develop, depending on the classification what those rights are, whether it's residential, commercial, industrial. So by virtue of the fact that this site [the Property] was already in the developmental boundary, we didn't deal with issues such as need, which is a big issue in the county when we add developmental boundary. Is there need for additional residential units,

> and so forth. So that is one part of the answer. The other part is when we're looking at changing from one residential classification to another, we're not dealing with the same issues we might have if it was going from residential to commercial or residential to industrial. So in the context of a plan amendment like this, we're looking at what can this land support in terms of density and are there public facilities available? Is it generally compatible with the surrounding area? What are the potential impacts to natural resources? So those things are still analyzed, but they're done in a probably more confined context. And then the other factor is this being a small scale amendment further reduces the amount of data that is typically done. And if it was a major amendment, there's a whole new range of issues when we deal with major amendments. By definition, they can cause more of an impact.

66. For Mr. Clem, the data and analysis which was generated during the concurrency process for the proposed 84-unit project was significant and would be applicable to a proposed 56-unit project. Mr. Clem opined that the data for this small scale amendment was "[f]ar in excess of anything [he had] seen in the county."

Environmental Impacts of the FLUM Amendment

67. The area on and around the Estuaries' property is an area of tidal marsh intermixed with upland scrub. Many wildlife species have been seen utilizing the wetlands on and adjacent to the Estuaries' site (the 18.5 acre parcel). These include woodstorks, snowy egrets, roseate spoonbills, little blue herons,

tri-colored herons, white ibis, and ospreys. Owls, foxes, raccoons, opossums, fiddler crabs, clams, fish, shrimp, and turtles also frequent the area.

68. Parker's environmental scientist and ecologist, Mr. Robert Burks, testified to the environmental effects of any development of the Property subject to the FLUM Amendment. Mr. Burks has worked with American Institute of Certified Planners (A.I.C.P.) designated planners, providing them with opinions with respect to environmental issues. But he is not an expert in land use planning.

69. The National Estuarine Research Reserve (NERR) is a program of the National Oceanic and Atmospheric Administration, a federal program administered by the Department of Environmental Protection. It is a program to do research and education on estuarine systems. The estuarine ecosystem composed of the Guana, Tolomato, and Matanzas Rivers has been designated as a NERR.

70. There is testimony that development and increases in population in the area, in general, have been responsible for, for example, the decline and closure of shell-fishing and decline of water quality in the area.

71. Conservation Goal E.2 provides:

> The County shall conserve, utilize, and protect the natural resources of the area, including air, water, wetlands, water wells,

estuaries, water bodies, soils, minerals, vegetative communities, wildlife, wildlife habitat, groundwater recharge areas and other natural and environmental resources, insuring that resources are available for existing and future generations.

72. Objective E.2.2 provides:

Native Forests, Floodplains, Wetlands, Upland Communities, and Surface Water

The County shall protect native forests, floodplains, wetlands, upland communities, and surface waters within the County from development impacts to provide for maintenance of environmental quality and wildlife habitats.

73. Policy E.2.2.5.(a)(1)(b) provides:

The County shall protect Environmentally Sensitive lands (ESLs) through the establishment of Land Development Regulations (LDRs) which address the alternate types of protection for each type of Environmentally Sensitive Land. Adoption and implementation of the Land Development Regulations shall, at a minimum, address the following issues:

(a) For Wetlands, Outstanding Florida Waters (OFW), and Estuaries:

(1) establish and modify buffers between the wetlands/ OFW/ estuaries and upland development as stated in the County's Land Development Regulations (LDRs), and as follows:

* * *

(b) Except a minimum of a 50 ft. natural vegetative upland buffer shall be required and maintained between the development areas and the St. Johns, Matanzas, Guana and Tolomato Rivers and their associated tributaries, streams and other interconnecting water bodies.

74. Policy E.2.2.13(b)(6) provides:

> By December 1999, the County shall develop and adopt guidelines and standards for the preservation and conservation of uplands through various land development techniques as follows:
>
> (b) The County shall recognize the following vegetative natural communities as Significant Natural Communities Habitat. Due to the rarity of these vegetative communities, a minimum of 10 percent of the total acreage of the Significant Natural Communities Habitat (excluding bona fide agriculture and/or silviculture operations) shall be preserved and maintained by the development.
>
> * * *
>
> (6) Scrub.
>
> Where on-site preservation of the native upland communities are not feasible, the County as an alternative shall accept a fee in lieu of preservation or off-site mitigation in accordance with the County Land Development Regulations.

75. Mr. Burks opined that "generally," and if Goal E.2 is read "literally", the FLUM Amendment did not meet this Goal and afford protection for wetlands, vegetative communities, estuaries, wildlife and wildlife habitat. He perceives that "[a]nytime there's a development there will be impacts to the estuarine--the water bodies because of surficial runoff from the parking lots, from the impervious surfaces, and it will carry pollutants into those areas. And that includes soils also. . . . As far as upland habitat, when you develop an area like this,

unless you leave certain parts, the upland habitat will be negatively impacted obviously. There won't be the trees there, the vegetation that was normally there before the development."

76. For Mr. Burks, any development of the Property would generally be inconsistent with the Plan provisions recited above. But, his opinion is specifically based on how each system or plan for the site, or here, the Property, is actually designed--"it would depend on the design of the housing structures themselves and where they were placed. If you design anything in a manner which is going to protect that buffer and literally protect the water quality and the runoff in that area, then you may--it may not violate it."

77. For example, if the Property were developed with 25-foot buffers instead of 50-foot buffers, Mr. Burks says that, from an ecology standpoint, there would be insufficient protection for wildlife, including threatened and endangered species. He offered the same opinion if the FLUM Amendment did not require a minimum ten percent set aside of the total acreage for significant natural communities habitat on the Property, such as, scrub of approximately 6.7 acres, a protected vegetative community existing on the upland portion of the Property.

78. Furthermore, Parker introduced into evidence proposed site plans for the Property dated May 24, 2002, which show, in part, a 25-foot buffer, not a 50-foot buffer.[4] Parker contends

that these site plans are the best available data and analysis regarding whether the FLUM Amendment is "in compliance." However, the purpose of this proceeding is to determine whether the FLUM Amendment is "in compliance," not whether specific draft, and not approved, site plans are "in compliance" with the May 2000 EAR-Based Plan Amendment or the LDRs. If site plans are approved and a development order issued by the County, Parker, and any other aggrieved or adversely affected party may file a challenge pursuant to Section 163.3215, Florida Statutes. But, this is not the appropriate proceeding to challenge proposed site plans.

79. This is not to say that proposed site plans cannot be considered data and analysis; only that they are not incorporated in the FLUM Amendment and are not subject to challenge here. See The Sierra Club, et al. v. St. John County, et al., Case Nos. 01-1851GM and 01-1852GM (Recommended Order May 20, 2002; Final Order July 30, 2002).

Internal Consistency

80. Parker contended that the FLUM Amendment is inconsistent with several provisions of the May 2000 EAR-Based Plan Amendment. Some of these issues have been discussed above in Findings of Fact 68 to 80, pertaining to environmental considerations.

81. Another issue is whether the FLUM Amendment, which changes the maximum density on the Property, is inconsistent with

Policy E.1.3.11 which provides: "The County shall not approve Comprehensive Plan Amendments that increase the residential density on the Future Land Use Map within the Coastal High Hazard Area." See also Policy A.1.5.6 which offers almost identical language.

82. The FLUM Amendment changes the land use designation of the Property, and allows a land use "limited to not more than 56 residential units, built in not more than four buildings with residential uses, not more than 35 feet in height," and thus allows a potential increase in the density of the Property, located in the Coastal High Hazard Area. This resulted from the Settlement Agreement.

83. In Policy A.1.11.6,

> [t]he County recognizes that the Plan's Objectives and Policies sometime serve to support competing interests. Accordingly, in such instances, and in the absence of a mandatory prohibition of the activity at issue, it is the County's intent that the Plan be construed as a whole and that potentially competing Objectives and Policies be construed together so as to render a balanced interpretation of the Plan. It is the further intent that the County interpretation of the Plan, whether by County staff, the Planning & Zoning Agency, or the Board of County Commissioners, shall be afforded appropriate deference. County interpretations of the Plan which balance potentially competing Objectives and Policies shall not be overturned in the absence of clear and convincing evidence that the County

> interpretation has misapplied the Plan construed as a whole.

The May 2000 EAR-Based Plan Amendment Goals, Objectives, and Policies must be read in their entirety and individual provisions cannot be read in isolation.

84. Objective E.1.3 requires the County to engage in "post disaster planning, coastal area redevelopment, and hurricane preparedness. The County shall prepare post-disaster redevelopment plans which reduce or eliminate the exposure of human life and public and private property to natural hazards."

85. Mr. Clem opined that Policy E.1.3.11, see Finding of Fact 81, expressed "the general intent of limiting population increases that would result in adverse impacts to hurricane evacuation of the coastal areas," and, in particular, the "barrier islands." (Policy E.1.9.5, under Objective E.1.9 Hurricane Evacuation Time, provides: "St. Johns County shall attempt to limit the density within the Coastal High Hazard Area as allowed by law.") Mr. Clem further stated that the FLUM Amendment, which restricted the Property to a maximum of 56 residential units, from a possible 116 unit maximum, was consistent with the Policy which restricts density within the coastal hazard zone.

86. In rendering his opinions, Mr. Clem balanced the above-referenced Policies with Objective A.1.16, pertaining to "private property rights."

87. When these May 2002 EAR-Based Plan Amendment provisions are read together, it appears that Mr. Clem's interpretations are not unreasonable.

CONCLUSIONS OF LAW

Jurisdiction

88. The Division of Administrative Hearings has jurisdiction to conduct a hearing on the subject matter of this proceeding. Sections 120.569, 120.57(1), and 163.3187(3)(a), Florida Statutes.

Standing

89. Parker and Estuaries are "affected persons," as defined in Section 163.3184, Florida Statutes, and have standing in this proceeding.

Burden of Proof

90. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceeding. Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993).

91. Section 163.3187(3)(a), Florida Statutes, imposes the burden of proof on the affected person, here Parker, challenging

a small scale development amendment. This subsection also provides in part:

> The parties to a hearing held pursuant to this subsection shall be the petitioner, the local government, and any intervenor. In the proceeding, the local government's determination that the small scale development amendment is in compliance is presumed to be correct. The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the amendment is not in compliance with the requirements of this act.[5]

92. Relevant here, "in compliance" means consistent with the requirements of Sections 163.3177, 163.3178, 163.3180, 163.3191, and 163.3245, Florida Statutes, the state comprehensive plan, the appropriate strategic regional policy plan, and Chapter 9J-5, Florida Administrative Code. Section 163.3184(1)(b), Florida Statutes. For the reasons stated herein, Parker did not prove that the FLUM Amendment was not "in compliance."

Data and Analysis

93. Parker contended that the FLUM Amendment is not based upon relevant and appropriate data and analysis.

94. Any amendment to a comprehensive plan must be based upon appropriate data.[6] "Such data need not be original data, and local governments are permitted to utilize original data as long as appropriate methodologies are used for data collection." Section 163.3177(8) and (10)(e), Florida Statutes.

95. Rule 9J-5.005(2)(a), Florida Administrative Code, requires that, in order for a plan provision to be "based" upon relevant and appropriate "data," the local government must "react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue." The data must also be the "best available existing data" "collected and applied in a professionally acceptable manner." Rule 9J-5.005(2)(a)-(c), Florida Administrative Code.

96. However, the data and analysis which may support a plan amendment are not limited to those identified or actually relied upon by a local government. All data available to a local government in existence at the time of the adoption of the plan amendment may be relied upon to support an amendment in a de novo proceeding. Zemel v. Lee County, et al., 15 F.A.L.R. 2735 (DCA June 22, 1993), aff'd, 642 So. 2d 1367 (Fla. 1st DCA 1994). See also The Sierra Club, et al. v. St. John County, et al., Case Nos. 01-1851 and 01-1852GM (DCA July 30, 2002)("The ALJ need not determine whether the [local government] or the Department were aware of the data, or performed the analysis, at any prior point in time." (citation omitted)). Data which existed at the time of the adoption of a plan amendment may be subject to new or even first-time analysis at the time of an administrative hearing challenging a plan amendment. Zemel, supra.

97. The data and analysis which supports the FLUM Amendment is largely recounted in Findings of Fact 47 to 66. Parker did not prove by a preponderance of the evidence that the data and analysis was insufficient to support the FLUM Amendment.

Internal Consistency

98. Parker contended that the FLUM Amendment is not consistent with provisions of the May 2000 EAR-Based Plan Amendment. Section 163.3177(2), Florida Statutes, and Rule 9J5.005(5)(a), Florida Administrative Code, require the elements of a comprehensive plan to be internally consistent. To be "internally consistent," comprehensive plan elements must not conflict. If the objectives do not conflict, then they are coordinated, related, and consistent. See generally Schember v. Department of Community Affairs, Case No. 00-2066GM (DCA Oct. 24, 2001).

99. For the reasons set forth in the Findings of Fact, when the May 2000 EAR-Based Plan Amendment provisions are read as a whole, and given the County's interpretation of these provisions, which are reasonable, Parker did not prove that the FLUM Amendment is inconsistent with any cited provisions of the May 2000 EAR-Based Amendment.

Notice

100. Parker's Petition for Hearing was filed with the Department of Community Affairs within 30 days after the County

adopted Ordinance No. 2002-31. However, Section 163.3187(3)(a), Florida Statutes, required the Petition to be filed with the Division.

101. After the Petition was forwarded to the Division, and filed with the Division outside the 30-day limit, the County and Estuaries moved to dismiss the Petition. The motions to dismiss were denied by Order dated August 9, 2002, which is incorporated herein by reference, based on the application of the doctrine of equitable tolling, i.e., the Petition was filed in the wrong forum, albeit within 30 days, and was, therefore, timely filed at the Division. See Machules v. Department of Administration, 523 So. 2d 1132, 1134 (Fla. 1988). This ruling is re-affirmed.

Settlement Agreement

102. Section 70.001, Florida Statutes, "recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens." Section 70.001(4), Florida Statutes, authorized property owners and units of local government to enter into settlement agreements which would "have the effect of contravening the application of a

statute as it would otherwise apply to the subject real property if approved by the circuit court, finding that "the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property." Section 70.001(4)(d)2., Florida Statutes.

103. The County and Estuaries negotiated the Settlement Agreement, which was approved by Judge Traynor. The undersigned is bound by this court-approved Settlement Agreement and must decide this case in light of the Settlement Agreement, without the necessity to determine whether or not Estuaries has any vested rights.

104. Section 70.001, Florida Statutes, should be read together with the "in compliance" requirements set forth in Chapter 163, Part II, Florida Statutes. This does not mean that the "in compliance" requirements need not be considered; they must. It only means that Parker's challenge to the FLUM Amendment is viewed in light of the judicially approved Settlement Agreement pursuant to Section 70.001, Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be issued by the Department of Community Affairs concluding that the FLUM Amendment adopted by St. Johns County in Ordinance No. 2002-31 is "in compliance" as defined in Chapter 163, Part II, Florida Statutes, and the rules promulgated thereunder.

DONE AND ENTERED this 17th day of December, 2002, in Tallahassee, Leon County, Florida.

CHARLES A. STAMPELOS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of December, 2002.

ENDNOTES

[1]/ In 1999, Estuaries, believing that it had vested rights to build an 84-unit multi-family project, requested the County and numerous state agencies for permission to construct its project. Late in 1999, the County essentially refused or stopped the permitting process because, according to Mr. Scott Clem, the County took the position that the allowable density on the Property was 25 vested units, not 84 or 116 units, based on the 1991 original vesting letter authored by Jerry Napier of the

County. The Estuaries believed that they were vested for 116 units because, according the Estuaries, the Comprehensive Plan did not have a density limitation on the property and further, that the existing (1991) "zoning lot area" controlled the number of units which could be built on the property. This gave rise to the lawsuit. See Findings of Fact 19-27.

[2]/ Parker stipulated that the legal description of the Property subject to the small scale amendment was not greater than 9.99 acres.

[3]/ Policy A.1.2.5 of the May 2000 County EAR-Based Comprehensive Plan Amendment provides in part: "All Comprehensive Plan amendments, except for Small-Scale Plan amendments as defined in Chapter 163, F.S., that propose to expand the existing Development Area Boundaries as depicted on the Future Land Use Map, shall provide justification for the need for the proposed expansion and demonstrate how the proposed expansion will discourage urban sprawl, and not adversely impact natural resources." (Emphasis added.)

[4]/ This Recommended Order does not resolve the nature and extent of any buffers which may be required if the Property is developed.

[5]/ In Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788 So. 2d 204 (Fla. 2001), the court held that "small-scale development amendment decisions made pursuant to section 163.3187(1)(c), Florida Statutes (Supp. 1996), are decisions which are legislative in nature and subject to the "fairly debatable" standard of review." However, the specific statutory burden of proof has been applied in this proceeding.

[6]/ This includes amendments to a FLUM, which "is a component of the future land use element of the comprehensive plan. . . . The FLUM is a pictorial of the future land use element and is supplemented by written 'goals, policies, and measurable objectives.' The FLUM must be internally consistent with the other elements of the comprehensive plan." Coastal, 788 So. 2d at 208 (citation omitted.) See also Section 163.3177(6)(a), Florida Statutes.

COPIES FURNISHED:

Deborah J. Andrews, Esquire
11 North Roscoe Boulevard
Ponte Vedra Beach, Florida 32082-3625

Isabelle Lopez, Esquire
St. Johns County Attorney's Office
4020 Lewis Speedway
St. Augustine, Florida 32084-8637

George M. McClure, Esquire
James W. Middleton, Esquire
Rogers, Towers, Bailey, Jones & Gay, P.A.
170 Malaga Street, Suite A
St. Augustine, Florida 32084-3568

Steven M. Seibert, Secretary
Department of Community Affairs
2555 Shumard Oak Boulevard, Suite 100
Tallahassee, Florida 32399-2100

Cari L. Roth, General Counsel
Department of Community Affairs
2555 Shumard Oak Boulevard, Suite 325
Tallahassee, Florida 32399-2100

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.