STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA WILDLIFE FEDERATION INC., and FRIENDS OF MATANZAS, INC.,	)	
Petitioners,	)	
	)	Case No. 03-2164GM
DEPARTMENT OF COMMUNITY AFFAIRS and ST. JOHNS COUNTY,	)	
Respondents,	)	
and	)	
D.D.I., INC.,	)	
Intervenor.	)	

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, Donald R. Alexander, on January 12-15, 2004, in St. Augustine, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue is whether St. Johns County Comprehensive Plan Policies E.2.2.5, E.2.2.10, E.2.2.13, E.2.2.17, and D.2.3.4 adopted by Ordinance No. 2003-31 on March 25, 2003, are in compliance.

PRELIMINARY STATEMENT

This matter began on March 25, 2003, when Respondent, St. Johns County (County), adopted Ordinance No. 2003-31, which, among other things, amended, deleted, and added new language to Policies E.2.2.5(a)(1), E.2.2.10(b), E.2.2.13, E.2.2.17, and D.3.2.4 in the Conservation/Coastal Management and Infrastructure Elements of the Comprehensive Plan (Plan).[1] The amendments generally pertain to wetland buffers and related environmental matters. On May 21, 2003, Respondent, Department of Community Affairs (Department), published its

Notice of Intent to find the plan amendments in compliance.

On June 3, 2003, Petitioners, Florida Wildlife Federation, Inc. (FWF) and Friends of Matanzas, Inc. (FMI), filed their Petition for Hearing (Petition) under Section 163.3184(9), Florida Statutes (2003),[2] challenging the County's action. The matter was forwarded to the Division of Administrative Hearings on June 11, 2003, with a request that an administrative law judge conduct a hearing.

By Notice of Hearing dated June 26, 2003, a final hearing was scheduled on September 23-26, 2003, in St. Augustine, Florida. On September 8, 2003, the Department's unopposed Motion to Continue was granted, and the matter was rescheduled to January 12-15, 2004, at the same location.

By Order dated August 11, 2003, Intervenor, D.D.I., Inc. (DDI), was authorized to intervene as a party. The disposition of other procedural and discovery matters is found in numerous preliminary Orders entered prior to the final hearing.

At the final hearing, Petitioners presented the testimony of Manley K. Fuller, III, President and Chief Executive Officer of the FWF; Patrick Hamilton, a charter member of FMI; Georgia Katz, a County Special Projects Manager; Jan P. Brewer, a County Environmental Manager; Charles R. Gauthier,

Department Chief of Comprehensive Planning; Debra S. Segal, a Senior Environmental Scientist with Jones, Edmonds & Associates; Dr. Mark T. Brown, an associate professor at the University of Florida; and Scott A. Clem, County Director of Growth Management Services. Also, they offered Petitioners' Exhibits 1-4, 5A and B, 6-8, 11-13, 14A and B, 15, 18A-H, 20-28, 30, 32, 33, 38-41, 43-47, 48A, B, H, and M-O, 49, and 50. All were received except Exhibit 7 and portions of Exhibits 9, 10, and 20. The County and DDI jointly presented the testimony of Scott A. Clem, Director of Growth Management Services for the County, and accepted as an expert; Dr. William Michael Dennis, a biologist and accepted as an expert; Dr. James R. Newman, a biologist and accepted as an expert; and James E. Sellen, a planner and accepted as an expert. The testimony of Jeffrey C. Elledge, Director of the St. Johns River Water Management District Water Resources Department, was presented by a deposition filed on February 24, 2004. Also, they offered County Exhibits 11, 35, 36, 38, and 41, which were received in evidence. The Department presented the testimony of Michael D. McDaniel, State Initiatives Administrator and accepted as an expert, and offered Department Exhibit 1, which was received in evidence. The parties also offered Joint Exhibits 1, 2A and B, and 3-5, which were received in evidence. Finally, the undersigned

took official recognition of the St. Johns River Water Management District Applicant's Handbook.

The Transcript of the hearing (5 volumes) was filed on February 10, 2004. By agreement of the parties, the time for filing proposed findings of fact and conclusions of law was extended to March 10, 2004, and then again to March 18, 2004. The same were timely filed by the parties, and they have been considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

A. Background

1. The County's current Plan was adopted in 1990. At that time, the County adopted a minimum buffer between wetlands and "natural drainage courses" of 25 feet. During the preparation of its Evaluation Appraisal Report (an update to the Plan) in 1999, the County directed its staff to initiate a study of wetlands and upland buffers. After a Request for Proposals was issued, the County eventually contracted with Jones, Edmunds & Associates (JEA) to prepare a study of the available science concerning upland buffers and develop a wetland buffer plan which would protect environmentally sensitive lands from development activities.

In conducting this study, JEA relied upon its own personnel, County staff, and outside consultants.

2. In August 1999, JEA completed and submitted to the County a "Background Report in Support of Development of Wetland Buffer Zone Ordinance" (Background Report).

3. In January 2000, JEA completed and submitted to the County a final report entitled "Calculating Buffer Zone Widths for Protection of Wetlands and Other Environmentally Sensitive Lands in St. Johns County" (Final Report). The Final Report generally provided a methodology for calculating buffer widths based on vegetation and groundwater drawdown and recommended that the County adopt a 300-foot buffer around all wetlands in the County.

4. In response to the Final Report, on May 10, 2000, the County adopted various amendments to its wetland buffer provisions, including a new Policy E.2.2.5(a)(1)(c) which required that it adopt Land Development Regulations (LDRs) pertaining to wetlands within two years "after completion of the consultant's wetland buffer study," or by January 2002. In February 2000, the County also created a volunteer working group (Working Group) made up of County staff, biologists, environmental scientists, and representatives of environmental organizations and landowners, to review data and analysis related to wetland buffers, including the JEA Final Report.

That group held at least nineteen meetings between February 2000 and May 2001, and it analyzed scientific and technical data and expert testimony from various federal and state agencies. On July 24, 2001, the County staff recommended that the County adopt new LDRs which identified upland buffer zones and required wetland buffers ranging from 50 to 150 feet, depending on the sensitivity of the area; however, this recommendation was rejected by a 3-2 vote.

5. When the County failed to adopt new wetland buffer regulations within the two year period, as required by the Plan, on June 11, 2002, Petitioners filed a complaint with the Department under Section 163.3202, Florida Statutes (2001), seeking enforcement of Policy E.2.2.5(a)(1)(c).

6. After the Department made a determination that the County had failed to amend its LDRs, as required by the Plan, on October 16, 2002, the County submitted to the Department for its compliance review a package of proposed amendments, including amendments to Policies E.2.2.5, E.2.2.10, E.2.2.13, and E.2.2.17. On December 20, 2002, the Department issued its Objections, Recommendations, and Comments Report (ORC), which raised objections to Policies E.2.2.5, E.2.2.10, and E.2.2.13. More specifically, the ORC raised the following two issues:

> The amendments establishing averaging of buffers do not provide a predictable standard for buffering. In particular

there is no minimum buffer width [Issue 1]. Additionally, the amendment is not supported by data and analysis demonstrating the proposed minimum and averaging is adequate to protect the resources referenced in the County. Therefore, the amendment has not demonstrated consistency with requirements to protect natural resources including upland habitat and wetlands [Issue 2].

7. In response to the ORC, on March 25, 2003, the County adopted Ordinance No. 2003-31, which made changes to Policies E.2.2.5 and D.3.2.4. The Ordinance also readopted (without further change) Policies E.2.2.10, E.2.2.13, and E.2.2.17, which had been previously submitted to the Department on October 16, 2002. Policies E.2.2.5, E.2.2.10, E.2.2.13, and E.2.2.17 are found in the Conservation/Coastal Management Element of the Plan while Policy D.3.2.4 is found in the Stormwater Management Sub-Element of the Infrastructure Element of the Plan.

8. As noted above, while the County made further amendments to Policy E.2.2.5(a)(1)(a) and (b), which addressed the minimum buffer issue raised in the ORC, it did not make any changes (e.g., altering the width of the buffers) which addressed the issue of whether the buffers were adequate in size to protect the natural resources. Finally, for the purpose of providing "clarification and consistency" with

other provisions within the Plan, the County also made minor modifications to Policy D.3.2.4.

9. In very broad terms, Ordinance No. 2003-31 added a requirement that the LDRs address "wetland buffer averaging" and establish a variance procedure. It also deleted the requirement that the wetland buffer regulations be amended within two years after the completion of the consultant's study.

10. On May 21, 2003, the Department published its Notice of Intent to Find Amendment in Compliance in a local newspaper. In making this determination, the Department concluded that it was legally prohibited by Section 163.3184(6)(c), Florida Statutes, from compelling the County to adopt larger upland buffers. That statute provides that when a state agency, here the St. Johns River Water Management District (District), has implemented a permitting program, "the [Department] shall not require a local government to duplicate or exceed that permitting program in its comprehensive plan."

11. On June 3, 2003, Petitioners filed their Petition contending that the amendments were not in compliance for numerous reasons. As set forth in the parties' Pre-Hearing Stipulation, Petitioners contend that there was insufficient data and analyses to support the amendments in violation of

Sections 163.3177(8) and (10)(e), Florida Statutes, and Florida Administrative Code Rules 9J-5.005(1)(c), (2)(a) and (b), 9J-5.006(2)(b) and (c), 9J-5.012(2), and 9J-5.013(1); that the amendment is not in compliance with Florida Administrative Code Rule 9J-5.013(2)(b)(4), (c)(5) and (6), and (3); that the amendment is not in compliance with Section 163.3177(6)(d), Florida Statutes; that the amendment to Policy E.2.2.10(b) is not in compliance because it is a self-amending policy; that the amendment to Policy E.2.2.5(a)(1) is not in compliance because it fails to provide a clear, predictable standard for variances; that the amendment is internally inconsistent with Future Land Use Element Goal A.1 and Objective A.1.1, Conservation Goal E.2, Objective E.2.2, and associated Policies E.2.2.4, E.2.2(c),[3] E.2.2.8, E.2.2.9, E.2.2.10, E.2.2.17, and E.2.2.18; that the amendment is internally inconsistent with Conservation Objectives E.2.3 and E.2.8 and Policies E.2.3.7, E.2.8.7, and E.2.8.8; and that the amendment is inconsistent with the following portions of the State Comprehensive Plan: Section 187.201(8)(b)10. and 12., (10)(b)1., 3., and 7., and (26)(b)7., Florida Statutes.

B. The Parties

12. The County is the local government responsible for adopting a Plan and amendments thereto.

13. FWF is a not-for-profit corporation whose purpose, according to its president, is "conservation and natural resources and education." FWF submitted objections to the County prior to the adoption of the challenged amendments. Although FWF's offices are located in Tallahassee, it currently has 173 members who reside within the County. FWF does not assert that it resides or owns property or a business within the County; however, FWF does contend that it has standing to participate in this proceeding on the theory that it operates a business within the County.

14. Besides making comments, recommendations, and objections to local governments regarding growth management issues, the evidence shows that the organization (primarily if not wholly from its Tallahassee office) collects dues from its members; periodically sends members a newsletter providing information on conservation issues; organizes and takes field trips; issues press releases; occasionally makes presentations to the public; and provides information to the news media concerning conservation-related issues. The organization also has a web site with a "merchandise store," which sells merchandise (more than likely to members but also to the public) from its Tallahassee office. However, the sale of merchandise is only incidental to the primary purpose described above by its president.

15. FWF does not maintain an office in the County; it does not have an occupational license to engage in a business; it has no employees in the County; it has no telephone listing in the County; it has not filed any tangible personal property tax returns or requested exemptions from the County Tax Collector; it holds no formal meetings within the County; and its president could not recall when or if merchandise was sold by the Tallahassee office (via the web site) to a County resident within the last 12 months. It is fair to find from the evidence that FWF does not operate a business within the County.

16. FMI is a not-for-profit Florida corporation (created in 1997) whose principal address is 201 Owens Avenue, St. Augustine, Florida. (That address is also the address of a charter member, Patrick Hamilton.) FMI submitted objections to the County prior to the adoption of the challenged amendments. According to Mr. Hamilton, the purpose of the organization is to "preserve and protect the Matanzas River Basin [which runs north-south along the eastern part of the County] and the lands that affect it." The organization has members who reside within the County, although the exact number is not of record. Like FWF, FMI does not reside or own property or a business within the County; however, FMI

contends that it is an affected person because it operates a business within the County.

17. To substantiate this assertion, FMI presented evidence that it collects dues from its members; sends newsletters to its members; prepares and submits objections, recommendations, and comments to the County regarding growth management issues; hires attorneys and consultants to represent its interests in environmental and land use matters; provides educational information to local news media; has been involved in various projects over the years (such as seeking to have Highway A1A designated as a state scenic highway and providing input to the State on the purchase of lands for conservation purposes); takes occasional field trips; and conducts meetings within the County.

18. FMI maintains a bank account but has no office. (When meetings are held, it generally uses the office or home of one of its members.) There is no evidence that FMI has a telephone listing, an occupational license to engage in any type of business, or any full or part-time employees. Even though FMI engages in a number of commendable activities, it is fair to infer from the evidence that FMI is not engaged in a "business" within the County, as that word is commonly understood.

19. The parties have stipulated that DDI is a Florida corporation that owns property and operates a business in the County, and that it submitted oral and written comments to the County prior to the adoption of the plan amendments. These stipulated facts establish that DDI is an affected person within the meaning of Section 163.3184(1)(a), Florida Statutes.

C. The Amendments

20. Although a local government is not required by statute or rule to adopt buffers in a comprehensive plan, in the 1990 Plan, the County established a 25-foot buffer between developed areas and natural drainage courses as a protective measure for wetlands and other environmentally sensitive lands. The primary purpose of implementing wetland buffers is, of course, to protect water quality. When the Plan was updated in 2000, the County adopted its current regulation to provide a 50-foot upland buffer adjacent to the contiguous wetlands associated with the Guana, Tolomato, Matanzas, and St. Johns Rivers. For all other contiguous wetlands in the County, the Plan required a 25-foot buffer. The update also required that both the Plan and the LDRs be amended within two years after completion of the JEA's study of wetland buffers.

21. There are three accepted strategies in comprehensive planning used by local governments for protecting wetlands. The first approach is a mapping strategy, where the local government performs an assessment of wetlands and environmentally sensitive lands and reflects those areas on a map. Alternatively, a local government may choose to rely on policies incorporated into the text of its comprehensive plan. Or, the local government may choose a combination of the first two strategies that would involve both mapping and policies to guide land uses for the wetland areas. The County's choice appears to be a combination of the first two strategies.

22. In broad terms, the 2003 text amendments to Policies E.2.2.5(a)(1)(a) and (b), E.2.2.13(b), and D.3.2.4 relate to a system of "wetland buffers" as one of the County's strategies for protection of wetlands and other environmentally sensitive lands, while the amendments to Policies E.2.2.10 and E.2.2.17 relate to another proposed strategy, the use of Environmentally Sensitive Overlay Zone (ESOZ) regulations. More specifically, Policy E.2.2.5(a)(1), as amended, reads as follows:

> E.2.2.5. The County shall protect Environmentally Sensitive Lands (ESLs) through the establishment of Land Development Regulations (LDRs) which address the alternative 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 maintain buffers between the wetlands/OFW/estuaries and upland development as stated in the County's Land Development Regulations (LDRs), and as follows:

(a) A minimum natural vegetative upland buffer of 25 f[ee]t shall be required and maintained between the developed areas and the contiguous wetlands to protect the water quality of the wetlands, except where buffer averaging may allow less than the required minimum of 25 feet in certain locations while achieving a greater buffer width or where a variance is granted. Except where a variance is granted, no buffer shall be reduced to less than 10 feet except in circumstances where an unavoidable wetland impact occurs such as but not limited to a road crossing. Such wetland buffer shall be measured from the jurisdictional wetland line as determined by the SJRWMD and FDEP.

(b) [A] minimum of a 50 f[oo]t natural vegetative upland buffer shall be required and maintained between the development area and the St. Johns, Matanzas, Guana and Tolomato Rivers and their associated tributaries, streams, and other interconnecting water bodies, except where buffer averaging may allow less than the required minimum 50 feet in certain locations while achieving a greater buffer width or where a variance is granted. Except where a variance is granted, no buffer shall be reduced to less than 25 feet except in circumstances where an unavoidable wetland impact occurs such as but not limited to a road crossing. Such wetland buffer shall be measured from the

> jurisdictional wetland line as determined by the SJRWMD and FDEP.

In addition, the County deleted subparagraph (a)(1)(c), which required that it adopt LDR wetland requirements within two years after completion of the consultant's wetland buffer study.

23. As amended, Policy E.2.2.10(b) reads as follows:

> E.2.2.10. By December 2005 or sooner, the County shall develop and adopt guidelines and standards for the preservation and conservation of wetlands through various land development techniques including, but not limited to, the following:
>
> * * *
>
> (b) The County shall protect wetlands, uplands[,] and their associated wildlife habitats through the implementation of natural vegetative buffers, the preservation of Significant Natural Communities Habitat, and the protection of Listed Species within St. Johns County as provided in the County Land Development Regulations.

The County also deleted reference in the Policy to an ESOZ ordinance and the requirement that it adopt ESOZ regulations within two years after the completion of the consultant's wetland buffer study.

24. As amended, Policy E.2.2.13(a) reads as follows:

> 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:

> (a) St. Johns County shall require a buffer zone adjacent to the wetlands and open water habitats on all new development sites as specified in the LDRs and [P]olicy E.2.2.5.

In addition, the County deleted language which required that it adopt "new wetland buffer regulations" within two years after completion of the consultant's wetland buffer study.

25. As amended, Policy E.2.2.17 reads in relevant part as follows

> E.2.2.17. By 2005 or sooner, the County shall consider adoption of an Environmentally Sensitive Overlay Zone (ESOZ) for areas designated on the Environmentally Sensitive Lands Map.
>
> The ESOZ shall establish standards and procedures to address the following: (list of criteria omitted)

The amendment also deleted language requiring that the County adopt an ESOZ ordinance within two years after the completion of

the consultant's wetland buffer study and by 2005 adopt LDRs for the ESOZ.

26. Finally, as amended, Policy D.3.2.4 reads as follows:

> D.3.2.4. The County shall require a vegetative buffer between contiguous wetlands and developed areas to protect the water quality of the drainage course as established in the County Land Development Regulations and Policy E.2.2.5 of this Comprehensive Plan.

This amendment merely eliminated reference to a "minimum 25-foot" vegetative buffer and added language that the buffer provisions in Policy E.2.2.5 would now apply.

27. Prior to the 2003 amendments, the wetland buffer averaging and variance provisions were not included in the Plan, but instead were established in the County's LDRs. The amendments conform the Plan policies to the County's existing practices for averaging and variances. The changes to Policy E.2.2.5(a)(1)(a) and (b) require that the County's LDRs address wetland buffer averaging by only allowing buffers to fall below the established minimums if an overall greater buffer width is achieved. (In other words, the County must maintain 25 and 50-foot natural vegetative buffers around wetlands and wetlands associated with certain rivers, respectively; however, through an averaging process, the buffers may average 25 and 50 feet, rather than be a static 25

and 50 feet around the entire wetland.) Averaging allows the County to consider site-specific conditions, thereby providing better protection and conservation of wildlife and resource protection. Similarly, the change to the Policy requires that the LDRs address variances to the wetland buffer requirement. Variance procedures follow those previously set out in the County's LDRs. (The record shows that in the last four years, the County has never granted a variance to reduce or eliminate a buffer.)

28. Before the amendments to Policies E.2.2.10(b) and E.2.2.17, those Policies required LDRs which would establish standards for certain identified environmental features, such as shellfish harvesting, water quality, flood plain capacity, and water dependent wildlife, through the use of a zoning overlay, that is, an ESOZ. The amendments changed the policy from mandatory establishment of an ESOZ in the LDRs to a discretionary act. (Policy E.2.2.17 now provides that "[b]y 2005 or sooner, the County shall consider adoption of an [ESOZ] . . . .")

29. The original ESOZ provision was placed in the Plan during the Plan update in 1999-2000 as a strategy to protect environmentally sensitive lands. Since that time, the County has determined that other types of protection strategies may protect environmentally sensitive lands as well as or better

than an ESOZ. The County intends to conduct a study of the ESOZ to determine whether or not it is a preferred strategy for environmental protection. The amendments are designed to provide the County with flexibility to rely on other strategies if they provide a better way to achieve the same result.

30. Since adoption of the ESOZ policy, the County has instituted new regulations, adopted further protective measures, established regulatory programs, and hired additional personnel for the purpose of protecting the natural resources in the County. If these (and other) measures address the issues that the ESOZ would address, there is no need to duplicate the other natural resource protection programs. If the Plan as a whole protects environmentally sensitive lands, then the change to the ESOZ Policies will not reduce protection of natural resources in the County.

31. The ESOZ is designed to establish standards and procedures to address shellfish harvesting areas; surface water quality; flood storage and flood plain capacity; wetland dependent wildlife and other endangered species; environmental scenic views and vistas; provisions for development mitigation, revegetation, buffering, and setback measures within the ESOZ; and provisions for building and development practices and techniques which protect the integrity of the

ESOZ. There are, however, numerous other Plan provisions which address these same areas of concern. The County will analyze these policies and other possible protection measures to determine whether an ESOZ is the preferred alternative. Accordingly, the more persuasive evidence establishes that the amendments to Policies E.2.2.10(b) and E.2.2.17 do not reduce the protection currently afforded environmentally sensitive lands by the Plan.

D. Wetland Data and Analysis

32. The JEA Background Report compiled a literature review of the basic principles of buffer zones, set forth the ecological benefits of buffer zones, and compiled a summary of various buffer ordinances adopted by counties throughout the State. The JEA Final Report provided a methodology for calculating buffer widths based on vegetation and groundwater drawdown and recommended that a 300-foot wetland buffer be preserved adjacent to all wetlands in order to provide protection to water quality, water quantity, and wildlife habitat.

33. With regard to water quality, buffers are primarily beneficial for protecting against the effects of sedimentation and turbidity. However, methods other than buffers can be implemented which can be equally effective in reducing sediment transport. In other words, a 300-foot buffer is not

always necessary to prevent sediment transport. Based upon information presented to the Working Group over an 18-month period after the Final Report was submitted, the County determined that, through its Environmental Resource Permit program, the District effectively regulates activities which can cause sedimentation and turbidity, and that additional buffer widths were not needed to protect against sedimentation and turbidity. The County is not required to duplicate or exceed the requirements of a state or regional agency's permitting program.

34. With regard to water quantity, the Final Report and Working Group considered the extent to which wetland buffers may provide the benefit of protecting against adverse effects of groundwater drawdown. Based on evidence presented to the Working Group, the County determined that adequate measures were in place (through District oversight and permitting requirements) to prevent adverse groundwater effects, and that additional buffers were not needed to address this issue.

35. As to the habitat protection issue, the Final Report recommended a 300-foot wetland buffer to protect those species "that require a wide surrounding upland area," but also stated that, based on unspecified "policy decisions," a wetland buffer of less than 300 feet can provide protection to wetlands.

36. The Final Report's recommendation was based on the assumption that the spatial requirements for various wildlife species present in the County ranged from 20 to 6,336 feet. There was no evidence, however, of a direct correlation between spatial requirements and the upland habitat needs of the studied species. Also, the Final Report does not contain any data and analysis of the upland habitat needs of the species.

37. The methodology used by JEA in reaching a wetland buffer recommendation was not professionally acceptable. First, although the Final Report contains several tables purportedly summarizing "recommended buffer widths," citing several scientific studies to support those conclusions, those studies do not support the JEA conclusions. That is to say, the studies cited in the Final Report as the basis for buffer width recommendations are neither consistent with, nor support, the buffer widths contained in the Final Report.

38. Similarly, although the recommendations in the Final Report are based upon Appendix A attached thereto ("Species List of Wetland-Dependent Wildlife Habitat"), Appendix A does not relate to the upland habitat needs for a species. In other words, there is no direct correlation between the spatial requirements as shown in Appendix A and the upland habitat needs of the listed species.

39. Based upon the spatial requirements JEA listed for each species, JEA then plotted an algebraic curve correlating the number of species with the spatial requirements. Without explaining the reasons, JEA then decided to protect 50 percent of the species in a given type of habitat and, referring to the curve, determined that a 300-foot buffer would be necessary to protect the 50 percent. However, this is not a professionally acceptable methodology for the following reasons: the underlying studies were not necessarily representative of the habitat needs of the species in the County; the spatial requirements did not necessarily correlate with actual upland habitat requirements; and JEA erroneously translated spatial requirements from water's edge or width of forest needed as being the upland habitat needs from wetlands edge. The evidence supports a finding that this is not a professionally acceptable methodology for determining buffer widths.

40. In summary, the County and DDI established that the JEA Background and Final Reports are not based on the best available relevant data and analyses for determining appropriate buffer widths. Besides the questions raised about the acceptability of the methodology used in reaching the 300-foot buffer recommendation, the County determined that other types of regulations could and do provide the same or better

resource protection. As a result of the Working Group process, the County received extensive additional scientific and technical information regarding buffers, including the water quality benefits of buffers; the effectiveness of current regulatory programs of the District in protecting water quality; the effectiveness of the District's programs for protecting against adverse groundwater drawdown; and the relative effectiveness of wetland buffers in protecting wildlife habitat.

E. Petitioners' Objections

41. Petitioners' objections are grouped into six broad categories: that the amendments are not supported by adequate data and analyses; that the amendments are not in compliance with Section 163.3177(6)(d), Florida Statutes, and numerous portions of Florida Administrative Code Rule 9J-5.013 (which pertains to the Conservation Element); that the amendment to Policy E.2.2.10(b) is a self-amending policy; that Policy E.2.2.5(a)(1) fails to provide a clear, predictable standard for variances; that the amendments conflict with other Plan provisions; and that the amendments are inconsistent with six provisions within the State Comprehensive Plan, as established in Chapter 187, Florida Statutes. These objections will be discussed separately below.

a. Data and analyses

42. While the JEA Final Report was original data collected by the County, there is no credible evidence that it is either the best available data or based on a professionally accepted methodology. (See Findings of Fact 32-40.) The County conducted an additional 18 months of extensive data gathering and analyses of the issues addressed in the Final Report. The amendments were consistent with, and an appropriate reaction to, the results of that data and analyses and are based upon the best available, appropriate scientific data gathered using a professionally acceptable methodology. The more persuasive evidence supports a finding that Petitioners have failed to establish beyond fair debate that the amendments are not based upon relevant and appropriate data and analyses.

b. Inconsistency with a statute and rule

43. Petitioners next contend that the amendments are not in compliance with Florida Administrative Code Rule 9J-5.013(3)(b), which addresses the protection and conservation of wetlands, and reads as follows:

> Future land uses which are incompatible with the protection and conservation of wetland functions shall be directed away from wetlands. The type, intensity or density, extent, distribution and location of allowable land uses and the types, values, functions, sizes, conditions and locations of wetlands are land use factors

> which shall be considered when directing incompatible land uses away from wetlands. Land uses shall be distributed in a manner that minimizes the effect and impact on wetlands. The protection and conservation of wetlands by the direction of incompatible land uses away from wetlands shall occur in combination with other goals, objectives and policies in the comprehensive plan. Where incompatible land uses are allowed to occur, mitigation shall be considered as one means to compensate for loss of wetland functions.

44. The County has adopted a three-tiered approach to satisfy this rule. First, the Future Land Use Map directs intensities away from significant water bodies. Second, lower land use densities have been adopted in coastal areas. Third, numerous policies require site-specific review of, and protection for, environmentally sensitive lands. This approach has previously been found to be in compliance, and it is a land use planning type of approach recognized by the Department. Petitioners did not establish beyond fair debate that the amendments are not in compliance with this rule.

45. Petitioners next contend that the amendments are not in compliance with Florida Administrative Code Rule 9J-5.013(2)(b)4., which requires that a plan's Conservation Element contain one or more specific objectives which "[c]onserve, appropriately use and protect fisheries, wildlife, wildlife habitat[,] and marine habitat." As noted above, with the additional provisions for averaging and

variances, the wetland buffer distance requirements remain the same, and they are desirable from a land planning perspective. In addition, the change to the ESOZ provision does not reduce any current provisions in the Plan. Petitioners did not establish beyond fair debate that the amendments are not in compliance with this rule.

46. Petitioners further contend that the amendments are not in compliance with Florida Administrative Code Rule 9J-5.013(2)(c)3., 5., and 6., which requires that a plan's Conservation Element contain at least one policy for each objective which addresses protection of native vegetative communities from destruction by development activities; restriction of activities known to adversely affect the survival of endangered and threatened wildlife; and protection and conservation of the natural functions of existing soils, fisheries, wildlife habitats, rivers, bays, lakes, floodplains, and wetlands. The evidence clearly demonstrates that such policies exist in the Plan, and that there is nothing in the amendments that is inconsistent with, or will override or prevent implementation of, these policies. Accordingly, Petitioners did not establish beyond fair debate that the amendments do not comply with this rule.

47. Petitioners next contend that the amendments are not in compliance with Section 163.3177(6)(d), Florida Statutes,

which requires that a plan must contain a Conservation Element for the "conservation, use, and protection of natural resources" in the area, including "air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources." The parties have stipulated that prior to the adoption of the amendments, the County's Plan was in compliance. The more persuasive evidence is that the amendments will not reduce the conservation, use, and protection measures of the Plan. Therefore, Petitioners have not established beyond fair debate that the amendments are not in compliance with this statute.

c. Self-amending policy

48. Petitioners contend that the amendment to Policy E.2.2.10(b) is a self-amending policy. A self-amending policy is "one which changes as the result of an event that is unknown and unspecified at the time the policy is adopted." Palm Bch. County Bd. of County Comm. et al. v. Town of Jupiter and Dep't of Comm. Affrs., DOAH Case No. 95-5930GM (Div. Admin. Hrgs. Jan. 24, 1997; Admin. Comm. Oct. 21, 1997). However, a policy is not self-amending if it sets out a clear general policy and specific conditions for changing that policy. Id. Comprehensive plans need not include the

implementing regulations, but rather should provide meaningful guidelines for the content of more detailed LDRs. See Fla. Admin. Code R. 9J-5.005(6)("It is not the intent of this chapter to require the inclusion of implementing regulations in the comprehensive plan . . . .")

49. Policy E.2.2.10(b) establishes a clear general policy to preserve and conserve wetlands through specific programs. Specific conditions for each program are set forth elsewhere in the Plan, including Policy E.2.2.5(a)(1) (natural vegetative upland buffers); Policy E.2.2.13 (significant natural communities habitat); and Objective E.2.8 (threatened and endangered species) and related policies. All of these are implemented in the planning process, as required by Policy E.2.2.7. In combination, these policies establish clear policy direction and guidelines for developing future LDRs. Therefore, it is found that Policy E.2.2.10(b) is consistent with other policies, and Petitioners have not established beyond fair debate that the Policy is self-amending.[4]

d. Does Policy E.2.2.5 have a clear, predictable standard?

50. Petitioners contend that Policy E.2.2.5(a)(1) is not in compliance because it fails to provide a clear, predictable standard for variances. They go on to assert that because

there is no predictable standard in the Policy, it essentially equates to a form of a self-amending policy.

51. Variances are special exceptions to regulations and allow a non-conforming use in order to alleviate undue burden or unnecessary hardship. See, e.g., Troup v. Bird, 53 So. 2d 717, 720-22 (Fla. 1951). They must be "consistent or in harmony with, or not subversive or in derogation of, the spirit, intent, purpose or general plan of such regulations." Id. at 721. Policy E.2.2.5 merely requires that variances must be established in the LDRs. While the more specific standards and procedures for granting variances will be incorporated into the LDRs, the testimony corroborates that variances can only be approved when "an unavoidable wetland impact occurs such as but not limited to a road crossing," and that in no circumstance can the buffer width be totally eliminated. Further, the variance must be unavoidable, and it cannot be inconsistent with the overall objectives of the Plan or LDRs. Therefore, Petitioners have failed to show beyond fair debate that the amendment does not establish a sufficiently clear general policy direction or that the policy is self-amending.

e. Conflicts with other provisions in the Plan

52. Petitioners next contend that the amendments as a whole, or amendments pertaining to a single policy, conflict

with various Goals, Objectives, and Policies within the Plan, including Goal A.1, Objective A.1.1, Goal E.2, Objective E.2.2, Policies E.2.2.4, E.2.2.5(c), E.2.2.8, E.2.2.9, E.2.2.10, E.2.2.17, E.2.2.18, Objective E.2.3, Policy E.2.3.7, Objective E.2.8, Policy E.2.8.7, and Policy E.2.8.8. If goals, objectives, and policies do not conflict, then they are considered consistent.

53. Goal A.1 in the Land Use Element is the County's overall guiding principle for managing growth and development in a responsible manner, and it requires the County to balance several interests, including encouraging/accommodating land uses which make the County a viable community; creating a sound economic base; offering diverse opportunities for a wide variety of living, working, shopping, and leisure activities; and minimizing adverse impacts on the natural environment. The more persuasive evidence supports a finding that the amendments do not conflict with this guiding principle.

54. Objective A.1.1 in the Land Use Element requires that the County designate future land uses based upon environmental conditions and constraints. Through testimony, the County established that its approach is to direct incompatible land uses away from environmentally sensitive lands, limit the types of land uses adjacent to significant water bodies, reduce land use densities in coastal areas, and

require environmental analysis and protection on a site-by-site basis. The challenged amendments are consistent with that approach. In combination with other provisions of the Plan, they also address the issues required by Objective A.1.1: vegetation; wildlife; aquifer recharge; and the like. Petitioners have failed to establish beyond fair debate that the amendments are inconsistent with Objective A.1.1.

55. Goal E.2 in the Conservation Sub-Element of the Conservation/Coastal Management Element of the Plan requires conservation, use, and protection of natural resources to ensure availability for existing and future generations. Objective E.2.2 requires protection of various natural resources to provide for maintenance of environmental quality and wildlife habitat. Policy E.2.2.4 requires identification of native vegetative communities and their associated wildlife species. The County has identified those resources and protected some of those resources through land acquisition. Policy E.2.2.5(c) requires that criteria be established in the LDRs for listed species protection. The County has implemented such criteria and measures for protection of listed species. Policy E.2.2.8. requires that various habitat measures be implemented; these measures have been implemented and continue to be implemented. Policy E.2.2.9 requires the adoption of guidelines and standards for wildlife corridors

through such measures as Planned Unit Development regulations and optional density bonuses. The County has adopted such measures. Policy E.2.2.10 was amended in part and requires guidelines and standards for the preservation and conservation of wetlands through various land development techniques. This Policy serves as a summary of measures that have been implemented by the County. Policy E.2.2.17 is another amended policy related to the ESOZ. As previously discussed, the Policy was changed from requiring mandatory adoption of an ESOZ in the LDRs to requiring the County to consider adoption of an ESOZ. The County is re-evaluating its prior decision to use the ESOZ as a primary measure to provide protection of environmentally sensitive lands. The amendment allows the County the flexibility to adopt different measures if they are found to be preferable. Finally, Policy E.2.2.18 requires the County to investigate certain Outstanding Florida Water designations. This Policy is unrelated to the amendments and is therefore irrelevant to this proceeding. Petitioners have not established beyond fair debate that the amendments will impact or otherwise conflict with the cited Goal, Objective, or Policies.

56. Objective E.2.3 pertains to surface water quality and requires maintenance of surface water quality. Underlying Policy E.2.3.7 requires restriction of land uses which

adversely affect the quality and quantity of water resources. The amendments do not lessen the protections afforded by the Plan. Likewise, the County has implemented numerous other Policies to protect water quality, such as Policies D.3.2.1, D.3.1.8, and E.2.6.1, and the more persuasive evidence supports a finding that the amendments will not adversely affect those provisions. Again, Petitioners have not established beyond fair debate that the amendments are inconsistent with this Objective and Policy.

57. Objective E.2.8, which relates to threatened and endangered species, protects habitat of populations of existing listed species. Policy E.2.8.7 thereunder relates to land use classifications adjacent to certain environmentally sensitive areas. The amendments do not change or reduce the protection afforded by that Policy. Policy E.2.8.8 requires the County to assist state agencies in preparing a wildlife corridor plan and to determine, after completion of the JEA study, whether changes to the wetland buffers are necessary and appropriate. The evidence shows that the County considered the JEA study and related data and analysis and determined that changes to the buffer dimensions were not needed or appropriate, but that clarification of the averaging and variance procedures were. The amendments do not change or reduce the protections established by that Policy.

Petitioners have not established beyond fair debate that the amendments are inconsistent with this Objective and those two Policies.

58. Finally, Petitioners have alleged in very general terms that the amendments are inconsistent with a number of provisions of the State Comprehensive Plan, as codified in Section 187.201, Florida Statutes. They include subparagraphs (8)(b)10. and 12.; (10)(b)1., 3., and 7.; and (26)(b)7.

59. Section 187.201(8)(b)10., Florida Statutes, sets as state policy the protection of "surface and groundwater quality and quantity in the state." Because the evidence clearly establishes that the amendments do not adversely impact the Plan's provisions to protect water quality and quantity, Petitioners have failed to establish beyond fair debate that the amendments are inconsistent with this statute.

60. Section 187.201(8)(b)12., Florida Statutes, sets as state policy the elimination of discharge of inadequately treated wastewater and stormwater runoff into waters of the state. For the reasons previously found, Petitioners have failed to establish beyond fair debate that the amendments are inconsistent with this statute.

61. Section 187.201(10(b)1., Florida Statutes, sets as state policy conservation of certain natural resources, including wetlands and wildlife, to maintain listed functional

values. For the reasons previously found, Petitioners have failed to establish beyond fair debate that the amendments are inconsistent with this statute.

62. Section 187.201(10)(b)3., Florida Statutes, sets state policy prohibiting the destruction of endangered species and protection of their habitats. For the reasons previously found, Petitioners have failed to establish beyond fair debate that the amendments are inconsistent with this statute.

63. Section 187.201(10(b)7., Florida Statutes, sets as state policy the protection and restoration of the "ecological functions of wetland systems to ensure their long term environmental, economic and recreational value." For reasons previously found, Petitioners have failed to show beyond fair debate that the amendments are inconsistent with the statute.

64. Finally, Section 187.201(26)(b)7., Florida Statutes, sets as state policy the development of local plans that "implement and accurately reflect state goals and policies and address problems, issues and conditions that are of particular concern in a region." Petitioners have failed to show beyond fair debate that the amendments are inconsistent with the goals and policies of this statute.

CONCLUSIONS OF LAW

65. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto

pursuant to Sections 120.569, 120.57(1), and 163.3184(9), Florida Statutes.

66. In order to have standing to file a petition challenging a plan amendment, the challenger must be an affected person. See § 163.3184(1)(a), Fla. Stat. An "affected person" is defined in that Section as follows:

> "Affected person" includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

Under this straightforward definition, besides having to submit comments, recommendations, or objections (oral or written) to the County prior to the adoption of the amendment, a person (or corporation) must also own property, reside, or own or operate a business within the County in order to have standing. In this case, FWF and FMI do not contend that they reside or own property or a business within the County;

rather, they assert that they meet the definition of affected persons because they operate a "business" within the County.[5] Since the word "business" is not defined by statute or rule, that word should be given its plain and ordinary meaning. See, e.g., State, Dep't of Bus. Reg. Div. of Alcoholic Bev. & Tobacco v. Salvation Limited, Inc., 452 So. 2d 65, 67 (Fla. 1st DCA 1984)(where a statute does not define a term, it should be given its plain and ordinary meaning); State v. J.H.B., 415 So. 2d 814, 815 (Fla. 1st DCA 1982 ("if a statute or rule uses a word without defining it, then its common or ordinary meaning applies"). "Business" means in part: "The occupation, work, or trade in which one is engaged . . . A specific pursuit or occupation . . . Commercial, industrial, or professional dealings . . . A commercial enterprise or establishment." See Webster's II New College Dictionary, p. 149 (1999). Therefore, in order to be operating a business, as that word is commonly understood, FWF and FMI (and DDI as well) must be pursuing some form of a trade, profession, vocation, or similar endeavor.

67. The parties have stipulated that DDI owns property and operates a business within the County, and that it also submitted oral or written comments to the County prior to the adoption of the amendment. These stipulated facts establish that DDI qualifies as an affected person within the meaning of

the law.

68. In conjunction with its business of "conservation and natural resources and education," FWF engages in a number of activities (principally from Tallahassee), such as conducting meetings, encouraging donations, helping educate and inform its members on growth management issues, preparing and circulating petitions opposing plan amendments, and occasionally selling merchandise from its website (which is wholly incidental to FWF's other activities). None of these activities constitutes the operation of a "business," as that term is commonly understood. Moreover, FWF demonstrated none of the indicia typically associated with operating a business in St. Johns County, such as maintaining an office, having a telephone listing, purchasing an occupational license to engage in a business, or having any full or part-time employees. Therefore, it is concluded that the

activities described above do not equate to the operation of a business, as contemplated by the statute.

69. As a part of its business of protecting and preserving the Matanzas River Basin and the lands that affect the Basin, FMI also conducts many of the same activities as does FWF. These include such things as collecting dues, conducting meetings, taking occasional field trips, issuing press releases, advocating positions before the local government, and hiring outside consultants and attorneys to assert its position in administrative and court proceedings. Like FWF, however, there is no evidence that it has an office, employees, a telephone listing, or any other indicator typically associated with someone who is engaged in a business within the County.[6]

70. The activities of both organizations are commendable and obviously serve a salutary purpose in the community; however, neither corporation is pursuing some form of a trade, profession, vocation, or other similar endeavor, as contemplated by the statute.

71. While this interpretation of Section 163.3184(1)(a), Florida Statutes, may be viewed by some as being unduly restrictive, had the Legislature intended to place a more expansive meaning on the term "business," so as to include these other types of non-traditional business activities, it

could have easily done so. Accordingly, it is concluded that FWF and FMI are not affected persons and lack standing to file a petition.[7] Even so, those parties have been allowed to fully participate in this proceeding, and each of their claims is addressed in this Recommended Order.

72. Section 163.3184(9), Florida Statutes, provides that when the Department has rendered a notice of intent to find a comprehensive plan provision to be in compliance, those provisions "shall be determined to be in compliance if the local government's determination is fairly debatable." Under this statutory provision, Petitioners must bear the burden of proving beyond fair debate that the challenged amendments are not in compliance. This means that "if reasonable persons could differ as to its propriety," a plan amendment must be upheld. Martin County v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997). In other words, where there is "evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that the County's decision was anything but 'fairly debatable.'" Martin County v. Section 28 Partnership, Ltd., 772 So. 2d 616, 621 (Fla. 4th DCA 2000).

73. Based upon all of the evidence, Petitioners have failed to establish beyond fair debate that the amendments are not supported by adequate data and analyses, that some of the provisions conflict with each other, or that some of the

provisions conflict with the State Comprehensive Plan, pertinent statutes, or Department rules.

74. Finally, one working day before the final hearing, Petitioners filed a Motion to Determine Applicable Standards of Proof (Motion), in which they contended that the Department's formulation of its intent to find the amendments in compliance was procedurally flawed. According to the Motion, the review process was tainted because the County failed to submit for the Department's compliance review the JEA Reports and staff recommendation (with proposed wetland ordinance) dated July 24, 2001. They go on to argue that but for those procedural flaws, the Department would have necessarily formulated the intent to find the amendments not in compliance. On this basis, Petitioners assert that the standard of proof should be changed to a preponderance of the evidence standard used in a not-in-compliance proceeding, rather than the fairly debatable standard.

75. The evidence shows that the Department did in fact have copies of the JEA Reports (but not the staff recommendation dated July 24, 2001) during its compliance review. But even if it did not have either, the standard of proof would not have shifted. This is because Petitioners' argument rests upon an assumption that the JEA Reports are the

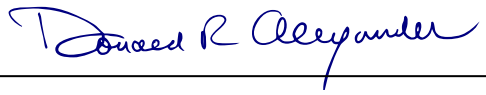
best available, appropriate data. As previously found, the Reports are not based upon professionally acceptable methodologies, and it cannot be concluded that they would have changed the Department's intended action. (The "omitted data" were introduced into evidence at the final hearing, and there was no demonstrated prejudice to Petitioners even if the data and analyses were not considered in formulating the preliminary intent.) More importantly, however, the statute provides no mechanism for inquiry into the Department's procedure for formulating its preliminary action. In other words, the standard of proof is determined by the Department's Notice of Intent, and not by the rigor of its review. If, as here, the Notice of Intent is to find the amendment in compliance, the fairly debatable standard must be utilized. The requested relief is accordingly denied.

RECOMMENDATION

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

RECOMMENDED that the Department of Community Affairs enter a final order determining that the St. Johns County plan amendments adopted by Ordinance No. 2003-31 on March 25, 2003, are in compliance.

DONE AND ENTERED this 30th day of March, 2004, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of March, 2004.

ENDNOTES

1/ Concurrent with the County's adoption of Ordinance No. 2003-31, the County also adopted Ordinance Nos. 2003-24 through 2003-30; however, those Ordinances are not being challenged by Petitioners.

2/ Unless otherwise indicated, all future references are to Florida Statutes (2003).

3/ There is no Policy E.2.2(c); therefore, it is assumed that Petitioners meant to refer to Policy E.2.2.5(c).

4/ In Department of Community Affairs et al. v. Collier County et al., DOAH Case No. 98-0324GM (Div. Admin. Hrgs Mar. 19, 1999; Admin. Comm. June 22, 1999), cited in Petitioners' Proposed Recommended Order, certain Collier County plan provisions were found to be not in compliance because they deferred standards for ground water protection and aquifer recharge areas to LDRs, leaving the Plan without any regulatory content and performance standards against which the LDRs could be compared. Because the amendments being challenged here have a clear general policy to preserve and conserve wetlands through specific programs; there are specific conditions for

each program set forth elsewhere in the Plan; the conditions are implemented in the planning process; and in combination they provide clear policy direction and guidelines for developing future LDRs, it is at least fairly debatable that the amendments are not self-amending and contain clear, predictable standards.

5/ According to representatives of the two organizations, FWF's main purpose, or "business," is "conservation and natural resources and education," while FMI's main purpose, or "business," is "preserv[ing] and protect[ing] the Matanzas River Basin and the lands that affect it."

6/ In their Joint Proposed Recommended Order, and perhaps as a gratuitous gesture, the County and DDI state that even though it does not operate a business within the County, FMI still has standing since it is "'based in' the County and maintains a bank account in the County, and therefore is a resident of the County." (Joint Proposed Recommended Order, paragraph 38) However, there is no precedent for this expansive interpretation of the statute, and even Petitioners do not claim standing under this theory.

7/ The case of Dept. of Comm. Affrs. and Respons. Growth Mgmt. Coalition, Inc. v. Lee County, et al., DOAH Case No. 95-0098GM (Div. Admin. Hrgs. Jan. 31, 1996; Admin. Comm. July 25, 1996), is distinguishable in at least one respect: in that case, Responsible Growth Management Coalition, Inc., apparently maintained an office in Lee County. Besides observing that the intervenor had an office, the hearing officer also took into consideration the fact that the corporation conducted an "educational program" (the nature of which was not disclosed), and it had 157 members who operated a business within Lee County. Conducting some type of "educational program" in conjunction with maintaining an office might arguably constitute the operation of a business; however, the fact that members of an organization reside, own property, or own or operate a business within the local government is irrelevant to a determination of standing under Section 163.3184(1)(a), Florida Statutes. Two other cases cited by Petitioners in their Proposed Recommended Order also appear to be at odds with the statutory definition of an affected person. In those cases, the affected persons held meetings, collected dues, challenged plan amendments, and took field trips, hardly the types of business activities contemplated by the statute.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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