

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GREGORY L. STRAND,)
)
 Petitioner,)
)
 vs.) Case No. 03-2980GM
)
 ESCAMBIA COUNTY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Notice was given, and on October 21, 2003, 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 Pensacola, Florida.

APPEARANCES

For Petitioner: Margaret T. Stopp, Esquire
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For Respondent: Alison Perdue, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether the Small Scale Comprehensive Plan Amendment No. 2003-03 adopted by Escambia County (County) through enactment of Ordinance No. 2003-40 (Plan

Amendment) is "in compliance," as that term is defined by Section 163.3184(1)(b), Florida Statutes.

PRELIMINARY STATEMENT

The County adopted the Plan Amendment on August 7, 2003. The Plan Amendment changed the future land use designation on the County's Future Land Use Map (FLUM) of an 8.98-acre parcel from Low Density Residential (LDR) to Commercial. On August 19, 2003, Petitioner, Gregory L. Strand, filed a Petition for Administrative Hearing with the Division of Administrative Hearings (Division) under Section 163.3187(3), Florida Statutes, to contest the Plan Amendment.

The parties filed a Pre-Hearing Stipulation.

During the hearing, Petitioner presented the testimony of Richard Duane, P.E., and J. Taylor Kirschenfeld. The County presented the testimony of Keith T. Wilkins. Joint Exhibits 1 through 5, and 6A through H, were admitted into evidence. After the parties filed their respective proposed recommended orders, a conference call was conducted at the request of the undersigned to consider supplementing the final hearing record with several portions of the Escambia County Comprehensive Plan. Without objection, the parties filed a copy of relevant portions of the Plan and they have been designated as Joint Exhibit 7.

The Transcript of the final hearing was filed with the Division on November 14, 2003. The parties stipulated to filing

their Proposed Recommended Orders on December 1, 2003. Both Proposed Recommended Orders have been considered in preparing this Recommended Order. (All citations are to the Florida Statutes (2003) unless otherwise indicated.)

FINDINGS OF FACT

The Parties

1. Petitioner, Gregory L. Strand, resides in Escambia County, Florida. Petitioner submitted oral written comments to the County at the adoption hearing on August 7, 2003, regarding the Plan Amendment and Ordinance No. 2003-40. The parties agree that Petitioner has standing in this proceeding.

2. The County is a political subdivision of the State of Florida. The County adopted a Comprehensive Plan (Plan) which has been subjected to a sufficiency review by the Department of Community Affairs (DCA), and found "in compliance."

The Property

3. T. Riley Shipman, Sandra I. Shipman, and Betty J. Shipman (Shipman's) own the 8.98-acre parcel (parcel) that is the subject of the Plan Amendment. The total contiguous land owned by the Shipmans is approximately 12.7 acres.

4. The parties stipulated that the legal description of the property attached to Ordinance No. 2003-40 contains less than 10 acres. The parcel extends 850 feet east of, and parallel to,

the right of way of Blue Angel Parkway, and north of Sorrento Road, but does not front on Sorrento Road.

5. The future land use designation of the 250-foot width of the property that fronts Blue Angel Parkway is Commercial, with only approximately 150 feet outside of the road right-of-way.

6. Two single-family homes, a mobile home, and a storage building are located on the parcel.

7. A Wal-Mart Super Store is at the intersection of Blue Angel Parkway and Sorrento Road, across Blue Angel Parkway from the parcel.

8. Approximately 3,300 acres across Blue Angel Parkway west of the parcel is managed by the State of Florida's Board of Trustees of the Internal Improvement Trust Fund, and preserved as part of the Pitcher Plant Prairie.

9. Two man-made lakes are located on the parcel.

10. Wetlands likely exist on the parcel.

11. The parcel is surrounded by LDR future land use, and proximate to Commercial future land use to the west.

12. The zoning for the parcel is Commercial (C-1).

The County's Comprehensive Plan

13. In 1993, the County adopted its Comprehensive Plan and associated FLUM. The Plan established an area of Commercial future land use following Blue Angel Parkway from just south of Sorrento Road and Dog Track Road. The area is approximately 450

feet to 500 feet wide, and centers on and curves with the road. The result is a future land use of Commercial for the 250 feet of the subject parcel fronting on Blue Angel Parkway, with approximately 150 feet outside of the road right-of-way. The balance of the property is LDR.

The Small Scale Development Application

14. On or about May 28, 2003, the Shipman's agent filed a "Future Land Use Map Amendment Application" with the County. The application requests a change in the FLUM category or designation for the 8.98-acre parcel from LDR to Commercial.

15. In part, the change was sought so that the property could be used for ". . . small businesses that could be represented in an area where large businesses already have been permitted."

16. The application was reviewed by the County's Department of Growth Management staff and presented to the Escambia County Planning Board (Planning Board). Staff prepared a "Memorandum" which recites, in part, a positive staff recommendation. A Staff Analysis was prepared which analyzes the existing and proposed land uses in and around the parcel which is described above. The Staff Analysis also favorably evaluates infrastructure availability, such as potable water, sanitary sewer, solid waste disposal, stormwater management, traffic, and

recreation and open space. Comprehensive Plan consistency is also discussed.

17. The "Impact on Natural Environment" is also discussed in the Staff Analysis. The Shipman's agent provided the County with a study prepared by Billy H. Owen, MPA, Coastal Zone Management Consultant, which "examines potential effects that recent, environmental, land use, regulatory, changes might have upon the future use, of a tract of land owned by Riley Shipman." The study is mentioned in the Staff Analysis.

18. Mr. Owen performed on-site investigations of the parcel from April 24 through April 30, 2003. Mr. Owen used a "test-site" which "constitutes approximately two of a total of thirteen, or so, acres, and is situated directly adjacent to Blue Angel Parkway." Mr. Owen discusses, in part, the nature of wetlands on the parcel, whether these wetlands are jurisdictional wetlands (he concludes they are not), and provides an assessment of a two-acre parcel regarding "vegetation, soil, and hydrology." He states, in part: "The surface of this area has a patchy cover of similar sandy clay soil material as is found in the reclaimed fishpond region. Where the sandy clay fill is thin, that is less than one inch thick or not present, scattered collections of white pitcher plants, Sarracenia Leucophylla, an endangered plan [Rule 5B-40.0055(1)(a) 165, F.A.C.], were noted. Thin patches of Large-

leaved Jointweed, Polygonella macrophylla, a rare vascular plant, were present in this site, which is dominated by wiregrass." See Fla. Admin. Code R. 5B-40.0055(1)(a)334 and (1)(b)73.

19. The Staff Analysis refers, in part, to Comprehensive Plan Policy 11.A.2.6.c and d, see Finding of Fact 27, and states:

NESD Staff reviewed the consultant's study submitted by the Agent and provided input to Growth Management Staff regarding the potential wetlands impacts on the subject property. A subject matter expert from NESD Staff is available for specific comments if requested. Of note is the current policy that requires the degree of hydrological or biological significance to be determined prior to applying to the Florida Department of Environmental protection (FDEP) and/or the Corps of Engineers for permits. Without an exemption as recommended by the Agent's consultant in his study, the owners will be required to apply to the relevant agencies for mitigation if impacts to the wetlands are proposed. Furthermore, enforcement of the "Wetlands Ordinance" (Ordinance 2003-9, Attachment "C") will assure clustered development with wetland buffers outside any wetland portions on the site, as well as compliance with Comprehensive Plan Policy 11.A.2.6.

20. County staff also discuss "changed conditions and development patterns," and noted that while "[l]arge portions of this area are now designated as Pitcher plant Prairie Preserve," "uplands within this area, especially at or near the intersection of main roads, are ripe for development. To

further protect the wetlands from development impacts, commercial development should be clustered at these intersections. The intersection of Blue Angel Parkway and Sorrento Road is designated as a 'commercial node' in the draft Southwest Area Sector Plan currently being completed by EDAW. This amendment will further increase the concentration of commercial uses near the intersection, defining a sizable commercial node and reducing the potential for strip commercial development along Blue Angel Parkway."

21. In the conclusion to the Staff Analysis, staff stated:

The requested Future Land Use amendment from Low Density Residential to Commercial follows a logical plan for development. A re-survey of the parcels is recommended to clearly define the subject area and to delineate potential wetland impacts. Understanding that wetland mitigation or, alternatively, a re-survey of the property may be necessary to reduce potential wetland impacts, Staff recommends that the future land use of the designated areas within the subject parcels be changed from Low Density Residential to Commercial.

22. On July 16, 2003, the Planning Board considered the Plan Amendment. County growth management staff, including the Director of the Growth Management Department and the Escambia County Neighborhood and Environmental Services Department (NESD), provided the Planning Board with information during the hearing. Petitioner, a Planning Board member, raised several concerns, including whether the proposed FLUM amendment was

inconsistent with Plan Policy 11.A.2.6.d. The Planning Board recommended the approval of the Plan Amendment by a vote of four to one (Petitioner).

23. The matter was presented to the Board of County Commissioners of Escambia County (Board). The Board was presented with, among other documents, the Memorandum and Staff Analysis mentioned above. After a properly noticed public hearing, the Board approved the Plan Amendment on August 7, 2003, in Ordinance 2003-40.

24. The Plan Amendment, as a future land use designation on the FLUM is not a development order. The Plan Amendment does not authorize development on or of the parcel, which includes any wetlands on the parcel.

Internal consistency

25. Petitioner contends that the Plan Amendment is inconsistent with Plan Goal 11.A, Objective 11.A.1, Policy 11.A.1.2, Policy 11.A.2.6.d, and Policy 11.A.2.7, because the Plan Amendment re-designates the parcel from a LDR future land use to a Commercial future land use, notwithstanding that the parcel has "wetlands that have a high degree of hydrological or biological significance." Petitioner also contends that the Plan Amendment is inconsistent with Section 163.3177(6)(a), Florida Statutes, because the County approved the Plan Amendment without utilizing "its own surveys, studies, or data regarding

the property, including the character of the undeveloped land."
See Petitioner's Proposed Recommended Order, pp. 12-13.

26. The County adopted Chapter 11 of the Comprehensive Plan Coastal Management and Conservation Element. Material here and under the heading "Coastal Management," Goal 11.A. provides: "Protect people and property by limiting expenditures in areas subject to destruction by natural disasters and by restricting development activities that would damage or destroy coastal resources." (Emphasis added.) Objective 11.A.1, "Coastal and Upland," provides: "Continually, the county shall protect, conserve and enhance coastal ecosystems, environmentally sensitive areas, wetlands, water resources, living marine resources, remaining coastal barriers and wildlife habitats by monitoring these areas and implementing Policies 11.A.1.1 through 11.A.1.7, among others, upon adoption of this ordinance (reference Section 15.01)." Policy 11.A.1.2, "Future Land Use Element Resource Protection Policies," provides: "Limit the specific impacts and cumulative impacts of development or redevelopment upon wetlands, water quality, wildlife habitats, living marine resources or other natural resources." (Emphasis added.)

27. Policy 11.A.2.6, "Wetland Development Provisions," provides:

Development in wetland areas as defined by the FDEP shall be subject to the following provisions:

a. Where sufficient uplands exist to locate the proposed development in the upland portion of the site, the county may allow the transfer of development at the future land use densities established on the future land use map from the wetlands to the upland portion of the site. The transfer of density may occur provided all other plan provisions regarding upland and floodplain resource protection, compatibility of adjacent land use, stormwater management, airport environs, etc., are met.

b. Development in wetlands shall not be allowed unless sufficient uplands do not exist to avoid a taking. In this case, development in the wetlands shall be restricted to allow residential density use at a maximum density of one unit per five acres or to the density established by the future land use map containing the parcel, whichever is more restrictive, or one unit per lot of record as of the date of this ordinance if the lot of record is less than five acres in size. (Lots of record do not include contiguous multiple lots under single ownership).

c. Prior to construction in wetlands, all necessary permits must have been issued by the Florida Department of Environmental Protection, and/or the U.S. Army Corps of Engineers, as required by the agency or agencies having jurisdiction and delivered to the county.

d. With the exception of water-dependent uses, commercial and industrial land uses will not be located in wetlands that have a high degree of hydrological or biological significance, including the following types of wetlands:

Wetlands that are contiguous to Class II or Outstanding Florida Waters;

Wetlands that are located in the 100-year floodplain;

Wetlands that have a high degree of biodiversity or habitat value, based on maps prepared by the Florida Fish and Wildlife Conservation Commission or Florida Natural Areas Inventory, unless a site survey demonstrates that there are no listed plant or animal species on the site.

e. Also, see Policies 7.A.5.7, 7.A.5.8 and 11.A.1.7.¹

(Emphasis added.)

28. Policy 11.A.2.7, "LDC and Wetlands," provides: "The county shall implement the land use categories shown on the future land use maps by inclusion of the appropriate regulations within the LDC. Such implementation will ensure the protection of environmentally sensitive land adjacent to the shoreline and near any wetlands."

29. Objective 7.A.2. of the Plan dealing with "Future Land Use and Natural Resources" provides "Amendments to future land uses will be required to demonstrate consistency with the appropriate topography, soil conditions and the availability of facilities and services." Policy 7.A.4.7 provides future land use categories, including the low density residential category that is, in part, "intended to provide for the protection of important natural resources." Policy 7.A.4.7.c. Neighborhood

commercial uses that are not a part of a predominantly residential development or planned unit development are allowed when they meet locational and other criteria of Plan Policy 7.A.4.13(A). Policy 7.A.4.7.c. Furthermore, "[r]ezonings and future land use map amendments to categories allowing higher densities will be discouraged consistent with Policy 7.A.4.3." Policy 7.A.4.7.c.(4).

30. Policy 7.A.4.1 requires that all new development be consistent with the Comprehensive Plan.

31. In his testimony at the final hearing, Richard Duane, P.E., Director of Planning and Engineering for the County, stated that when a land use change is sought as here, "[t]here is a policy to know what's on there [regarding wetlands]," but "[t]here is not a policy to delineate specific wetlands on future land use maps" nor whether they are high quality, bio-diverse wetlands. He further stated that the policy of Planning and Engineering "is to let the Land Development Code dictate to the Wetlands Ordinance [Section 7.13.00, "Wetlands and environmentally sensitive lands," Escambia County Land Development Code (Wetlands Ordinance)] through the development process." He discussed this policy with Keith T. Wilkins, Director of the Neighborhood Environmental Services Department (NESD) of the County.² Mr. Duane stated that this is not an official policy of the Board of County Commissioners. But see

Policy 7.A.5.8, Endnote 1. Mr. Duane stated that the reason for the policy is that a ". . . future land use map will not impact any wetlands on any site. Only through the development of the site will any impact to any site be made, and those impacts will be mitigated or determined through the development and review process." (The parties stipulated that "Escambia County has a Wetlands Ordinance in its Land Development Code that governs development in areas that have wetlands present.")

32. Mr. Duane testified that the provision in Comprehensive Plan Policy 11.A.2.6.d would be met at the Development Review Committee (DRC) phase when wetlands would be delineated by the NESD staff. He also stated that this provision would not "impact his decision involving the small scale amendment." However, he did not ignore this provision; he discussed it with Mr. Wilkins and thought the wetlands should be reviewed through the Land Development Code.

33. J. Taylor Kirschenfeld, now Senior Water Quality Scientist and formerly (as of two weeks before the final hearing) Senior Environmental Scientist in the NESD of the County, was requested by the Growth Management Department to review Mr. Owen's study. (Carol Heileman, Planning Board Coordinator provided the study to Mr. Kirschenfeld.) After reading the study, Mr. Kirschenfeld opined "that there are wetlands on the property." Mr. Kirschenfeld did not personally

verify or view the conditions on the parcel. Mr. Kirschenfeld testified that the applicant's consultant's (Mr. Owen) report listed species of plants that would only occur in wetland areas, and in his opinion, there are wetlands on the property, which is consistent with the parties stipulation - "Wetlands likely exist on the property."

34. Mr. Kirschenfeld sent an e-mail to Ms. Heileman that the parcel would meet the wetland definition in Section 3 of the County's Land Development Code and would be jurisdictional to the County, and, as such, Policy 11.A.2.6.d would apply to the parcel and the Plan Amendment. The e-mail was not provided to the Planning Board or to the Board of County Commissioners.

35. On cross-examination by the County, Mr. Kirschenfeld testified that Policy 11.A.2.6.b refers to development of the wetlands and provides: "Development in wetlands shall be restricted to allow residential density use. . . ." He further stated that this provision does not refer to commercial density use or industrial density use. It simply talks about development in the wetlands being restricted to allow residential density use. He further stated that Policy 11.A.2.6.d ". . . talks about the exception of the water-dependent uses" and again states: "commercial [and] industrial land uses will not be located in wetlands." He then stated that

the provision further talks about high degree of hydrological or biological functions.

36. Upon further questioning of Mr. Kirschenfeld on cross-examination, Mr. Kirschenfeld stated that he understood that his supervisors believe that the NESD staff responsibility is to do wetlands review during the DRC process. However, he stated further that, particularly subparagraph d refers to land uses, making him think of zoning and future land uses, not just development.

CONCLUSIONS OF LAW

Jurisdiction

37. The Division of Administrative Hearings has jurisdiction to conduct a hearing on the subject matter of this proceeding. §§ 120.569, 120.57(1), and 163.3187(3)(a), Fla. Stat.

Standing

38. Petitioner is an "affected person" as defined in Section 163.3184(1)(a), Florida Statutes, and has standing in this proceeding.

Burden of Proof

39. 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).

40. Section 163.3187(3)(a), Florida Statutes, imposes the burden of proof on the affected person, here Petitioner, 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.^[3]

41. 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. § 163.3184(1)(b), Fla. Stat. For the reasons stated herein, Petitioner did not prove that the FLUM Plan Amendment is not "in compliance."

The Plan Amendment is "in compliance"

42. A comprehensive plan is composed of several elements including but not limited to a future land use element. § 163.3177, Fla. Stat. The future land use element designates "proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses,

industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land."

§ 163.3177(6)(a), Fla. Stat. The FLUM is a component of the future land use element of the plan as "[t]he proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives." Id. In other words, "[t]he FLUM is a pictorial depiction 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 Development of North Florida, Inc. v. City of Jacksonville, 788 So. 2d at 208. (Citations omitted.)

43. A small scale development amendment reviewed under Section 163.3187(1)(c), Florida Statutes, by a local government, "does not involve a text change to the goals, policies, and objectives of the local government's comprehensive plan, but only proposes a land use change to the future land use map for a site-specific small scale development activity."

§ 163.3187(1)(c)1.d., Fla. Stat.

44. Coastal Management Policy 11.A.2.6 expressly provides for "Wetland Development Provisions" and that "[d]evelopment in

wetland areas as defined by the FDEP shall be subject to" subparagraphs a through e. Subparagraphs a and b pertain to development of uplands and wetlands, respectively. For example, subparagraph b provides that in order to avoid a taking, wetlands may be developed, but restricted to allow residential density or the density established by the FLUM containing the parcel. Subparagraph c pertains to the required issuance of "all necessary permits" by appropriate agencies "[p]rior to construction in wetlands." Subparagraph d provides that "[w]ith the exception of water-dependent uses, commercial and industrial land uses will not be located in wetlands" that meet stated criteria. Subparagraph e refers to other Policies. See Endnote 1.

45. The Plan, including the FLUM and amendments thereto, are legislative decisions. Coastal Development of North Florida, Inc. v. City of Jacksonville, 788 So. 2d at 208-209. The Plan should be read as a whole in determining the County's intent with respect to a discrete portion. Id.⁴

46. Policy 11.A.2.6 provides "Wetland Development Provisions." Notwithstanding the use of the term "land uses" in subparagraph d, when read as a whole, it appears that the County intended Policy 11.A.2.6.a through e to apply to decisions of the County regarding development applications and not to changes in future land use designations or categories in a FLUM.

Petitioner did not prove by a preponderance of the evidence that the Plan Amendment is inconsistent with Goal 11.A, Objective 11.A.1, and Policies 11.A.1.2, 11.A.2.6, and 11.A.2.7.

47. Further, Petitioner did not prove by a preponderance of the evidence that the County did not have sufficient surveys, studies, or data regarding the parcel when the Plan Amendment was adopted. See § 163.3177(6)(a), Fla. Stat.

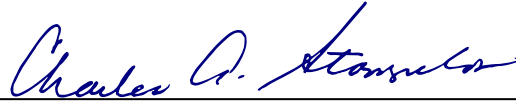
48. Based upon the foregoing, Petitioner did not prove that the Plan Amendment is not "in compliance."

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 concluding that the FLUM Plan Amendment No. 2003-03, adopted by the Board of County Commission of Escambia County in Ordinance No. 2003-40, is "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes.

DONE AND ENTERED this 23rd day of December, 2003, in
Tallahassee, Leon County, Florida.



CHARLES A. STAMPELOS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of December, 2003.

ENDNOTES

^{1/} Section 7.04 of the Plan pertains to "Management of Future Development." Objective 7.A.5 pertains to "Historical and Environmental Resources," and provides: "The county shall ensure the protection of natural and historic resources." Policy 7.A.5.7 pertains to "Wetlands Buffers" and provides, in part: "Buffers will be created between development and environmentally sensitive areas, including wetlands. The purpose of the buffer is to protect natural resources from the activities and impacts of development. . . ." (Emphasis added.) Policy 7.A.5.8 pertains to "Wetlands or Wildlife Indicators" and provides:

The county does adopt and will use the National Wetlands Inventory Map and the Escambia County Soils Survey and the Florida Game and Freshwater Fish Commission LANDSAT imagery of the county as indicators of the potential presence of wetlands or listed wildlife habitat. In reviewing applications for development approval, if a parcel is determined to have wetlands or listed wildlife habitat potential based on any of these or any other reliable information, the

county will require a site-specific wetlands or listed wildlife habitat determination and such determination shall be used to determine the buildable area (uplands) of the parcel or lot. Preparation of the site-specific survey must be approved by Escambia County and in a form and format acceptable to the county. Protection of the wetlands or listed wildlife habitat as determined in the site-specific survey shall be afforded during and after construction activities. Also, for protection of the floodplain and to regulate any activities proposed therein, the county will adopt the FEMA floodplain maps (community panels) in the LDC. Also, see Policy 7.A.5.3 above and Objective 11.A.2 and the policies thereunder.

(Emphasis added.)

^{2/} Mr. Wilkins administers several divisions ranging from environmental quality, neighborhood enhancements, soil and water conservation, and marine resources. He sits as one of three members on the DRC. The NESD staff applies the County's Wetland Ordinance during the DRC process when proposed projects are subject to development review. The Wetland Ordinance governs the development or redevelopment in areas that have wetlands and is designed to protect the County's natural resources. As part of the DRC review process, the NESD staff is required to determine the presence of protected species of wildlife, protected botanical species, and protected species. Wetland delineations are also conducted. In order to obtain DRC approval for a development order, the proposed project must be consistent with the Plan. The Wetland Ordinance is designed to implement Policy 11.A.2.6.

^{3/} 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. Robert J. Denig v. Town of Pomona Park, Case No. 01-4845GM, 2001 WL 1592220 (DOAH June 18, 2002; Admin. Comm. Oct. 23, 2002).

⁴/ The court found the following analysis persuasive:
"[A]mendments to a legislatively adopted statement of general policy are legislative acts. Even if the comprehensive plan amendment consists of an amendment to the comprehensive plan's future land use map which is applicable only to a single tract of land, the amendment should be deemed legislative. The future land use plan map alone does not determine or control the uses which can be made of a particular tract of land. Rather, the comprehensive plan as a whole, including the future land use map and all of the other policies of the plan, consists of legislative policies that must be applied to determine what uses can be made of a specific tract of land. Thomas G. Pelham, Quasi-Judicial Rezoning: A Commentary on the Snyder Decision and the Consistency Requirement, 9 J. Land Use & Env'tl. L., 243, 300-301 (1994)." Id. at 208-209.

COPIES FURNISHED:

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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.