STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

DON AND PAMELA ASHLEY,
SIERRA CLUB, INC., and PANHANDLE
CITIZENS COALITION, INC.,

Petitioners,

v.

DEPARTMEMT OF COMMUNITY
AFFAIRS and FRANKLIN COUNTY,

Respondents,

Final Order No.: DCA06-GM-260
DOAH Case Nos. 05-2361GM
05-2730GM

and

ST. JOE COMPANY and EASTPOINT
WATER AND SEWER DISTRICT,

Intervenors.
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FINAL ORDER

This matter was considered by the Secretary of the Department of Community Affairs ("the Department") following receipt and consideration of a Recommended Order and a Supplement to Recommended Order issued by an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings. A copy of the Recommended Order and the Supplement to Recommended Order are attached hereto as Exhibits A and B, respectively.

BACKGROUND

This matter involves a challenge to comprehensive plan amendments adopted by Franklin County in Ordinance No. 2005-20. The ordinance, adopted on April 5, 2005, contains several evaluation and appraisal report (EAR) – based amendments to update, revise, and amend Franklin County's comprehensive plan, including amendments to the Future Land Use Element (FLUE) and Future Land Use Map (FLUM) to add four new categories on areas of St. James Island (SJI).

After receipt of the adopted amendments, the Department published its Notice of Intent to find the amendments "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. A formal administrative hearing was initiated by the timely filing of petitions by Don and Pamela Ashley, Sierra Club Inc., and Panhandle Citizens Coalition, Inc., pursuant to section 163.3184(9)(a), Florida Statutes. The St. Joe Company and Eastpoint Water and Sewer District were granted leave to intervene in the proceeding. Subsequently, Sierra Club, Inc. and Panhandle Citizens Coalition, Inc. filed a Notice of Voluntary Dismissal and did not further participate in the proceedings.

Following the formal administrative hearing, the Administrative Law Judge (ALJ) issued a Recommended Order (RO). The RO concluded that the amendments are not in compliance because of the lack of a capital improvements element, inaccurate and inconsistent Housing Element Objectives 2 and 3, and an inaccurate and inconsistent coastal high hazard area. On these issues, the Department has issued a Determination of Noncompliance and has submitted the Recommended Order to the Administration Commission. With respect to the other compliance issues, the ALJ determined that they were at least fairly debatable.

Don and Pamela Ashley ("Petitioners") timely filed exceptions to portions of the recommended order. The Respondents and Intervenor St. Joe Company (collectively "Respondents") filed responses to those exceptions. The Respondents filed exceptions to portions of the recommended order, particularly to the portions determining that the amendments are not "in compliance." The Petitioners filed responses to those exceptions.

Portions of the Petitioners' exceptions contended that the ALJ failed to make findings of fact and conclusions of law regarding certain stipulated disputed issues of material fact, and requested that those issues be remanded to the ALJ. Additionally, Petitioners filed a Motion for Remand. On July 17, 2006, the Department issued an Order of Remand to the ALJ to address issues regarding: (1) the potable water level of service standard and (2) the demonstration of need for residential and non-residential land uses.

The ALJ issued a Supplement to Recommended Order (SRO) on these issues, which made supplemental findings and determined that no supplemental conclusion of law was

required. The SRO made no change to the recommendation made in the RO. The Petitioners subsequently filed exceptions to the SRO, and the Respondents filed responses to those exceptions.

On September 26, 2006, the Petitioners filed a Request for Official Recognition of Chapter 2006-68, Laws of Florida, and the Department's final order in the case of Sierra Club et. al v. Dept. of Community Affairs, et. al, Final Order No. DCA06-GM-219 (Fla. Dept. of Community Affairs, Sept. 12, 2006). That request is granted and those matters are officially recognized.

This Final Order addresses the portions of the ALJ's RO that were found to be fairly debatable, the SRO, and the Petitioners' and Respondents' exceptions to those orders.

ROLE OF THE DEPARTMENT

Throughout the pendency of the formal administrative proceedings, the Department's litigation staff contended that the amendments are in compliance. After the ALJ issued his Recommended Order, the Department assumed two functions in this matter. The attorney and staff who advocated the Department's position throughout the formal proceedings continued to perform that function. The other role is performed by the Secretary of the Department and agency staff who took no part in the formal proceedings, and who have reviewed the entire record and the Recommended Order and Supplement to Recommended Order in light of the Exceptions. Based upon that review, the Department shall:

> issue a final order if the [Department] determines that the plan or plan amendment is in compliance. If the [Department] determines that the plan or plan amendment is not in compliance, the agency shall submit the recommended order to the Administration Commission for final agency action.

§ 163.3184(9)(b), Fla. Stat.

Having reviewed the entire record, the Secretary adopts the findings of fact and conclusions of law in the Supplement to Recommended Order and in the Recommended Order, with the exception of findings of fact 24 (last sentence), 29-32, 37, 41-42, and conclusion of law

103 (last three sentences), and portions of findings of fact 34 and 35, which have been submitted to the Administration Commission for final agency action.

STANDARD OF REVIEW OF RECOMMENDED ORDER AND EXCEPTIONS

The Administrative Procedure Act contemplates that the Department will adopt the Recommended Order except under certain limited circumstances. The Department has only limited authority to reject or modify the ALJ's findings of fact:

> Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

§ 120.57(1)(l), Fla. Stat. (2006)

The Department cannot reweigh the evidence considered by the ALJ, and cannot reject findings of fact made by the ALJ if those findings of fact are supported by competent substantial evidence in the record. Heifetz v. Department of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985); Bay County School Board v. Bryan, 679 So.2d 1246 (Fla. 1st DCA 1996) (construing a provision substantially similar to section 120.57(1)(l), Fla. Stat.); see also Pillsbury v. Dept. of Health and Rehabilitative Services, 744 So. 2d 1040 (Fla. 2d DCA 1999).

The Department may reject or modify the ALJ's conclusions of law or interpretation of administrative rules, but only those

> conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

§ 120.57(1)(l), Fla. Stat. (2006)

The label assigned to a statement is not dispositive as to whether it is a conclusion of law or a finding of fact. Kinney v. Department of State, 501 So.2d 129 (Fla. 5th DCA 1987).

Conclusions of law, even though stated in the findings of fact section of a recommended order, may be considered under the same standard as any other conclusion of law.

RULINGS ON RESPONDENTS' EXCEPTIONS TO THE RECOMMENDED ORDER

The Respondents filed five exceptions to the Recommended Order. Petitioners filed responses to those exceptions. Because Respondents' exceptions 3, 4, and 5 relate to the portion of the amendments that the ALJ recommended to be found not in compliance, the Department does not address them in this Final Order but rather has submitted them to the Administration Commission, along with recommended rulings. Respondents' Exception 2 to FOF 72 is addressed in the ruling on the Petitioners' exception to FOF 72.

Respondents' Exception 1. (FOF 2).

Respondents take exception to the portion of the first sentencing stating that St. James Island is bounded on the east by the City of Carrabelle. The Respondents point out that St. James Island is actually bounded on the west by the City of Carrabelle. The Petitioners have no objection to this apparent scriveners' error, which is supported by the record and does not modify essential facts found by the ALJ.

Respondents' Exception 1 is GRANTED and FOF 2 is modified to reflect that St. James Island is bounded on the west by the City of Carrabelle.

RULINGS ON PETITIONERS' EXCEPTIONS TO THE RECOMMENDED ORDER

Petitioners' Preliminary Statements.

In their preliminary statements contained within the Petitioners' Exceptions to the RO and SRO, Petitioners make several arguments. They contend that the RO failed to contain findings of fact (FOF) or conclusions of law (COL) on some issues. This issue has been addressed in the Department's July 17, 2006, Order of Remand and in the Supplement to Recommended Order.

Petitioners also contend that the ALJ "improperly characterizes portions of the Ashley's PROs as acting as a limitation on the FOF and COL to be addressed in the RO." However, it

appears that the ALJ was merely summarizing the Petitioners' claims, and the ALJ was not required to repeat, verbatim, the Petitioners' allegations and arguments.

In their Preliminary Statements and in various exceptions, Petitioners contend that the ALJ improperly made findings of fact based on the fairly debatable standard of proof. The Petitioners contend that findings of fact must be based upon the preponderance of the evidence, and that only the ultimate conclusion of compliance can be determined under the fairly debatable standard. Petitioners also incorrectly characterize various substantive compliance criteria as "procedural" and contend that the fairly debatable standard was improperly applied.

It is clear that the fairly debatable standard of proof applies to the determination of compliance in this proceeding. § 163.3184(9)(b), Fla. Stat. However, Petitioners are not correct that the fairly debatable standard applies only to the ultimate determination of compliance:

> The compliance determination is driven by the various consistency determinations. Once it has been determined, for instance, that a plan is internally inconsistent, it necessarily follows that a plan is not in compliance, regardless of the standard of proof employed for the compliance determination. Applying the fairly debatable standard merely to the ultimate question of compliance would therefore be meaningless.

Cooper v. City of St. Petersburg Beach, 14 FALR 3589, 3612 (Fla. Admin. Comm'n 1991).

In the Recommended Order, the ALJ found various facts without reference to the fairly debatable standard. The ALJ then addressed potentially dispositive issues according to the fairly debatable standard. The ALJ's utilization of the fairly debatable standard in this manner comports with Cooper and Chapter 163, Part II, Florida Statutes, and is more reasonable than the method advocated by the Petitioners.

Petitioners' exceptions regarding the application of the fairly debatable standard are DENIED.

General Rulings Applicable to Numerous Exceptions.

In their exceptions, the Petitioners repeat several arguments. First, in exceptions 1-2, 6, 21-22, 28-29, 31-35 and 37, Petitioners essentially contend that the ALJ accepted the evidence of the Respondents over that offered by the Petitioners, or that the ALJ accepted the evidence of the

Respondents despite contradicting evidence, or that the ALJ failed to make a finding of fact that the Petitioners believe was supported by the Petitioners evidence. The Department cannot reweigh the evidence or make supplemental findings of fact. § 120.57(1)(l), Fla. Stat.; Prysi v. Dept. of Health, 823 So.2d 823 (Fla. 1st DCA 2002); Lawnwood Med. Ctr. v. Agency for Health Care Admin., 678 So.2d 421 (Fla. 1st DCA 1996; Heifetz v. Department of Business Regulation, Div. of Alcoholic Beverages & Tobacco, 475 So.2d 1277, 1281-1282 (Fla. 1st DCA 1985). To the extent that those exceptions ask the Department to reweigh the evidence, they are DENIED.

Second, exceptions 5-6, 21, 37, and 39 do not comply with the statutory requirement set forth under section 120.57(1)(k), Florida Statutes:

> The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

Therefore, to the extent that those exceptions fail to comply with any of the listed statutory requirements, they are DENIED. Additionally, the claims that the ALJ mischaracterized, oversimplified, or misstated Petitioners' allegations or citations to the evidence – such as those found in portions of exceptions 2, 6-8, 10, 12-14, 21, 24-29, 34-35, 37-38, and 41 – do not constitute legal bases for exceptions to the extent that they are solely based upon those claims, and are DENIED.

Petitioners' Exception 1. (FOF 4).

The ALJ's finding in Finding of Fact (FOF) 4 is supported by competent, substantial evidence. [PET EX. 86; VI, 772-75, 794]. This exception asks the Department to reweigh the evidence, which it cannot do. Heifetz, 475 So.2d at 1281-1282.

For these reasons, Petitioners' Exception 1 is DENIED.

Petitioners' Exception 2. (FOF 5).

Exception 2 states that the first sentence of FOF 5 misstates the Ashleys' argument and evidence. However, Petitioners offer no explanation as to how the sentence is a misstatement; nor is any legal basis offered as to why such an alleged misstatement would require rejection or

modification of the finding. See § 120.57(1)(k) ("an agency need not rule on an exception that does not . . . identify the legal basis for the exception . . . ."). Moreover, FOF 5 is supported by competent, substantial evidence. [PET EX 86; VI, 772-75, 794]. Petitioners' recitation of other evidence merely asks the Department to reweigh the evidence, which it cannot do. Heifetz, 475 So.2d at 1281-1282.

Petitioners' Exception 2 is DENIED.

Petitioners' Exception 3. (FOF 19).

The Department agrees that the reference to Capital Improvements Element is singular. See § 163.3177(3), Fla. Stat. It appears that this reference was a scrivener's error. The Respondents express no objection to this exception.

Petitioners' Exception 3 is GRANTED. The reference in FOF 19 is modified to "capital improvements element."

Petitioners' Exception 4. (FOF 20).

Petitioners contend that there is no competent, substantial evidence to show that the Eastpoint Sprayfield future land use map amendment (FLUMA) was not adopted. In their response to the Petitioners' exceptions, the Respondents indicate that it is understood that the Eastpoint Sprayfield FLUMA was in fact adopted, and explain that it was the Petitioners' challenge to the sprayfield that was not pursued at the final hearing. The Respondents have no objection to a clarification of this matter.

A review of the record indicates that the Eastpoint Sprayfield FLUMA was adopted and that the challenge to that amendment was dropped. [JT EX 1, RESP ORC, p. 43-44; II, 137].

Accordingly, Petitioners' Exception 4 is GRANTED. FOF 20 is modified to indicate that the Eastpoint Sprayfield FLUMA was adopted, and that the challenge to that amendment was not pursued at the final hearing.

Petitioners' Exception 5. (FOF 26).

Petitioners take exception to the last sentence, contending that it is a mislabeled COL. However, other than quoting the requirements for the capital improvements element, the Petitioners do not articulate a legal basis.

The ALJ's finding that "only capital improvements needed to meet concurrency need to be on the CIS" is supported by competent, substantial evidence. [IV, 502]. Even assuming that this statement is a conclusion of law, the Petitioners do not offer an interpretation that is as or more reasonable than that of the ALJ. See Fla. Admin. Code R. 9J-5.016(4)(b); § 163.3177(3)(a)5. (the schedule of capital improvements is to include projects "necessary to ensure that adopted level-of-service are achieved and maintained.").

Petitioners' Exception 5 is DENIED.

Petitioners' Exception 6. (FOF 33).

Petitioners take exception to the second and last sentences in FOF 33. The Petitioners contend that the second sentence is a mixed FOF and COL. However, other than making that statement, Petitioners offer no legal basis for the exception. See § 120.57(1)(k), Fla. Stat. Petitioners also take exception to the second sentence, contending that "there is no evidence to support the inference that most of the suitable areas are within the coastal planning area." (emphasis added). However, paragraph 33 of the RO discussed the propriety and compliance implications of combining the coastal and conservation elements; there is no mention of the term suitable or suitability in that paragraph, nor does the paragraph contain a finding as to the "suitability" of coastal lands. Rather, the second sentence to which the Petitioners take exception merely appears to be a description of the county lands in relation to the analysis as to why the ALJ found it was appropriate to combine the two elements. Moreover, the second sentence is supported by competent, substantial evidence. [XIII, 1812; RES EX 23].

As for the last sentence, it is supported by competent, substantial evidence, and the Petitioners merely set forth the unsupported assertion that "[i]t is inconsistent to rely upon a land use planner's opinion on a legal issue (whether an ordinance is consistent with a statutory or rule provision) where, based upon the evidence, the Administrative Law Judge has rejected that opinion of the ultimate issue in the case."

Finally, Petitioners' reliance on Williams v. Department of Transportation, 579 So. 2d 226, 230-21 (Fla. 1st DCA 1991) for the proposition that experts cannot render competent, substantial evidence as to the legal determinations at issue is misplaced. Williams, which did not

involve a Chapter 120 administrative proceeding, stands for the proposition that it is improper for a fact-finding jury to receive expert testimony on a substantive legal issue and make a legal determination based upon that expert testimony. In the administrative context, however, the ALJ is empowered with the dual responsibility of making findings of fact and conclusions of law. See § 120.57(1)(k), Fla. Stat. ("the presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition. . . ."). Therefore, an ALJ may receive expert planning testimony on planning issues that are also legal issues because he or she also has the ultimate responsibility of making conclusions of law in the recommended order.

Petitioners' Exception 6 is DENIED.

Petitioners' Exception 7 and 8. (FOF 34 and 35).

Portions of Petitioners' Exceptions 7 and 8 that pertain to the five-year planning period and recommended rulings on those exceptions have been addressed in the Department's Determination of Noncompliance and Recommendation to the Administration Commission. These exceptions are otherwise denied. The ALJ's findings regarding the long-term planning horizon are supported by competent, substantial evidence, and Petitioners have not articulated an interpretation that is as or more reasonable than that of the ALJ.

Petitioners' Exception 9. (FOF 41).

The Petitioners contend that the last sentence of FOF 41 is a COL, but offer no explanation or argument. The Petitioners also contend that the last sentence should include citations to section 163.3178(2)(h) and Rule 9J-5.003(17). The Respondents have no objection to this portion of the exception.

The additional citations proposed by the Petitioners are legally correct and do not modify essential facts found by the ALJ.

Accordingly, Petitioners' exception 9 is GRANTED and FOF 41 is modified to add citations to section 163.3178(2)(h) and Rule 9J-5.003(17).

Petitioners' Exceptions 10 and 12. (FOF 44 and 49).

Petitioners contend that the first sentences mischaracterize the Petitioners' argument and allegations, but do not explain how and do not offer a legal basis for this exception.

The Petitioners further contend that the RO makes no findings of fact as to whether the plan is based upon an appropriate inventory and analysis of natural disaster planning concerns as required by Rule 9J-5.012(2)(e). However, as indicated in the Department's Order of Remand issued on July 17, 2006, consistency with Rule 9J-5.012 is addressed in paragraphs 44-57 of the Recommended Order and these findings are supported by competent, substantial evidence. Petitioners' discussion of other evidence improperly invites the Department to reweigh the evidence.

With regard to Petitioners' argument that anticipated populations and sheltering needs have not been considered for hurricane purposes, there is competent, substantial evidence in the record that the entirety of Franklin County evacuates for every storm even above a category 1 storm, and that there are Plan provisions committing the County to both coordinating with neighboring counties to ensure the availability of out-of-county sheltering and re-assessing its out-of-county sheltering needs "at least every five years." [JT EX 1 (C/CE 14.8); XI, 1505-06].

Petitioners' Exceptions 10 and 12 are DENIED.

Petitioners' Exceptions 11 and 13. (FOF 48 and 54).

Petitioners take exception to FOF 48 and 54 because they allegedly mischaracterize the Petitioners' arguments, but again offer no explanation or legal basis for this exception.

There is competent, substantial evidence that the four SJI FLUMA considered the anticipated populations for 2010 and 2020, although there are no neat tables to this effect. The County's population is forecast to increase from 9,829 persons to approximately 12,912 persons in 2010 and 15,690 persons in 2020. [RES EX 24]. Expert witness Mr. Collins testified that, if reasonable mitigation measures in the Plan were employed, current clearance times of 4½ hours for category 1 hurricane evacuations and 8 ¼ hours for category 2 through 5 hurricane evacuations could be maintained even with the additional populations from the four SJI FLUMA. [JT EX 1 (C/CE 14, 14.1); XI, 1515-18] The demonstrated countywide need for 3,500 to 4,000 additional residential units roughly equates to the total maximum number of units allowed under

the SJI FLUMA. [JT EX 1 (RESP ORC, p. 9-13; ATT. 16 "Revised Roadway Analysis," p. 5 of 8, Table 2)]. Mr. Collins converted the additional units to the number of people evacuating based on census tract data. [XIII, 1579-81]. Because the "eastern coastal region of the county will continue to bear a majority of the mainland development of the county," the bulk of the increase in residential development will be on St. Joe lands in the SJI FLUMA, which are concentrated on St. James Island. [JT EX 2 (TD&A RT, p. I-11); RES EX 23].

Petitioners' Exceptions 11 and 13 are DENIED.

Petitioners' Exception 14. (FOF 56).

Petitioners contend that the first sentence mischaracterizes their argument, but offer no explanation or legal basis for this exception. Petitioners further contend that there is nothing in the record that provides a basis for determining the number of persons with special needs in the hurricane vulnerability zone in 2010 or 2010.

However, the record contains a basis for making this determination, and the County need not undertake the duplicative, additional analysis urged by Petitioners. [RES EX 32, p. 60; RES EX 24; JT EX 1 (C/CE 14.10)].

Petitioners' Exception 14 is DENIED.

Petitioners' Exception 15. (FOF 57).

Petitioners contend that the last sentence is a COL, but offer no explanation or legal basis for this exception. Petitioners further contend that the evidence and findings in FOF 44-56 do not support the conclusion that the 2020 Plan is consistent with Rule 9J-5.012(2)(e). However, the record contains competent, substantial evidence to support this finding. [JT EXS 3, 4; RES EX 32; PET EX 150; XI, 1505-07].

Petitioners' Exception 15 is DENIED.

Petitioners' Exception 16. (FOF 59).

Petitioners take exception to the sentence "No FAR is included, or arguably, required because ConRes is primarily a residential concept," and contend that the Conservation Residential land use category does not contain an intensity standard because it does not contain a

Floor-Area Ratio (FAR). Petitioners also contend that "whether or not an intensity standard is required is a COL."

Assuming that the ALJ's finding is a conclusion of law, it is legally correct. Intensity, which is defined in Rule 9J-5.003(60), does not require the use of a floor-area ratio. Additionally, the record contains competent, substantial evidence that each land use category contains density and intensity standards for residential and non-residential uses. [JT EX 1 (FLUE 2.2); X, 1341; XII, 1669-70]. In the case of Conservation Residential, the intensity standard is an impervious surface coverage limitation of no greater than 15% (including residential uses, accessory uses, and infrastructure). [JT EX 1 (FLUE 2.2(m))]. Impervious surface ratios are a type of intensity standard, much like floor area ratios. [X, 1341]. Accordingly, there is competent, substantial evidence in the record that Conservation Residential includes an intensity standard.

Petitioners' Exception 16 is DENIED.

<u>Petitioners' Exception 17. (FOF 62).</u>

Petitioners take exception to the last sentence of FOF 62. They base their exception on the ALJ's finding of fact that, even if the argument advanced by the Petitioners in their Proposed Recommended Order were correct – i.e. that the Conservation Residential and Rural Village categories are mixed-use categories -- these categories are the kinds of "residential mixed use" categories under FLUE Policy 2.2(e) to which the provisions of FLUE Policy 2.25 explicitly apply and therefore the requirements for a minimum mix of uses and percentage distribution of those uses have been met. However, the ALJ also recognized that there is competent, substantial evidence in the record supporting the Responding parties' position that Conservation Residential and Rural Village are not true mixed-use categories, so that Rule 9J-5.006(4)(c) does not apply. [RO ¶ 64; XIII, 1794-95, 1797-98].

Petitioners' Exception 17 is DENIED.

<u>Petitioners' Exception 18. (FOF 64).</u>

Petitioners contend that the last sentence is a COL and that the ALJ erred in applying the "fairly debatable" standard.

Even assuming that the finding that the Rural Village and Conservation Residential categories are not true mixed-use categories is a conclusion of law, Petitioners have not provided an interpretation that is as or more reasonable than that of the ALJ. As to the application of the fairly debatable standard, this issue has been addressed above.

Petitioners' Exception 18 is DENIED.

Petitioners' Exception 19. (FOF 65).

Competent, substantial evidence supports the finding that "it is not clear from the policy that [free-standing non-residential or commercial] uses are allowed at all in ConRes." [JT EX 1 (FLUE 2.2(m))]. Petitioners also essentially contend that Conservation Residential does not include an intensity standard. However, there is competent, substantial evidence in the record that it does include an intensity standard and that ConRes is not a true mixed-use category. [JT EX 1 (FLUE 2.2(m)); X, 1341; XIII, 1794-95, 1797-98]].

Petitioners' Exception 19 is DENIED.

Petitioners' Exception 20. (FOF 66).

Petitioners state that the "obvious implication" of FOF 66 is that they "were required" to offer expert testimony as to whether the 2020 FLUE policies met the cited statutory and rules requirements, and to offer expert testimony that the 2020 Plan was not in compliance for those reasons. However, this is a misleading and inaccurate inference. After all of the evidence – including expert testimony presented by both sides – was considered, the ALJ found that the Petitioners failed to prove beyond fair debate that the Plan creates mixed-use categories without complying with state planning law. The record contains competent, substantial evidence to support those findings.

Additionally, as discussed under the ruling on Exception 6 above, the Petitioners' reliance on Williams for the proposition that planning experts cannot render competent, substantial evidence as to the planning criteria that are legal determinations at issue, is misplaced. Finally, the Petitioners cite no legal authority for the proposition that an ALJ may not agree with an expert witness on an underlying consistency determination if he or she did not also agree with the same expert witness with regard to an ultimate compliance determination.

Petitioners' Exception 20 is DENIED.

Petitioners' Exception 21. (FOF 67).

Petitioners contend that the first sentence mischaracterizes their allegations, but offer no further explanation or legal basis for this exception. Because it does not state a legal basis as required under section 120.57(1)(k), Florida Statutes, and asks the Department to reweigh the evidence, Petitioners' Exception 21 is DENIED.

Petitioners' Exception 22. (FOF 68).

Petitioners take exception to FOF 68 by improperly asking the Department to reweigh the evidence in their favor. Petitioners' exception also argues that the "2020 Plan policies are required to set forth density and intensity standards." There is competent, substantial evidence in the record indicating that density and intensity standards are provided in the Plan. [JT EX 1(FLUE 2.2); X, 1341; XII, 1669-70].

Petitioners' Exception 22 is DENIED.

Petitioners' Exception 23. (FOF 69).

Petitioners take exception to FOF 69 for essentially the same reasons they took exception to FOF 66 in Exception 20. For the same reasons set forth under the ruling on Exception 20 above, Petitioners' Exception 23 is DENIED.

Petitioners' Exception 24. (FOF 70).

Petitioners take exception to FOF 70 because the Plan deleted the provisions that required the adoption of a St. James Island overlay and associated policies. Petitioners appear to argue that, for that reason, the Plan cannot be based upon proper consideration of FLUE Policies 11.12 and 11.13. However, there is competent, substantial evidence in the record to support the findings regarding this matter in FOF 70. [X, 1317; XIII, 1769-71, 1817-18].

Additionally, the County has the discretion to adopt or remove provisions (such as FLUE Policies 11.12 and 11.13) that duplicate or exceed statutory requirements. [XIII, 1776, 1840-41]. Most of the criteria in FLUE Policies 11.12 and 11.13 are Chapter 163, Florida Statutes, and Rule 9J-5, Florida Administrative Code, issues and were addressed. [XIII, 1774]. Adoption of

an overlay for St. James Island is not a planning requirement in Chapter 163, Florida Statutes, or Rule 9J-5, Florida Administrative Code. [XIII, 1775-76].

Petitioners' Exception 25. (FOF 71).

Petitioners contend that the second sentence mischaracterizes their data-related claims and citation to the evidence. However, the ALJ's finding is supported by the record – including paragraph 67 of Pamela Ashley's PRO cited by the Petitioners, and Petitioners merely ask the Department to reweigh the evidence.

Petitioners' Exception 25 is DENIED.

Petitioners' Exception 26. (FOF 72) and Respondents' Exception 2. (FOF 72).

Respondents take exception to any implication that the number of units considered by the County at adoption of the SJI FLUMA was "2,965." However, the plain language of the ALJ's finding references "transmittal" with respect to the number 2,965, and not adoption. Furthermore, the record indicates that the number "2,965" came from the transmittal package, and not the adoption package, and thus the finding is supported by competent, substantial evidence. [III, 316; IV, 495-96; Joint EX 2, App. H, "Traffic Study," p. 3 of 5, Table 2; Joint EX 1, Att. 16, "Revised Roadway Analysis," p. 5 of 8, Table 2].

Petitioners take exception to the first and second sentences, claiming that they mischaracterize their claims, citation to the evidence, and PROs. However, Petitioners merely cite, without explanation, to numerous paragraphs in their Amended Petition and in Pamela Ashley's PRO. The Petitioners also contend that projections of residential units are not data, but offer no explanation or legal support. As discussed above, Petitioners' reliance on Williams is misplaced.

Finally, as discussed in the ruling on the Respondents' exception to FOF 72, the ALJ's findings are supported by competent, substantial evidence. [IV, 493-96; X, 1307-1318; XIII, 1818, 1908-09].

Petitioners' Exception 26 and Respondents' Exception 2 are DENIED.

Petitioners' Exception 27. (FOF 73).

Petitioners take exception to FOF 73 because it allegedly includes a mixed finding of fact and conclusion of law and mischaracterizes their suitability-related claims. However, as discussed above and throughout this Order, these contentions are not legally sufficient bases for exceptions.

Petitioners also take exception to FOF 73 on the ground that no county-wide suitability study consistent with Rule 9J-5.006(2) was conducted in support of the updated FLUE. However, there is competent, substantial evidence that the Plan was thoroughly analyzed and updated through the prism of FLUE Policies 11.12 (county-wide) and 11.13 (SJI), and that most of these considerations are the same as those required under Chapter 163, Part II, Florida Statutes and Chapter 9J-5, Florida Administrative Code. [XIII, 1769-1776, 1817-18]. Moreover, there is ample competent, substantial evidence in the record that the amendments to the Plan were based upon the best available data and analyzed using professionally accepted methodologies. In essence, Petitioners improperly ask the Department to reweigh the evidence regarding the suitability analyses and to reject the ALJ's findings of fact and supplant them with other findings.

Petitioners' Exception 27 is DENIED.

Petitioners' Exception 28 (FOF 75).

Petitioners contend that the first sentence mischaracterizes their claims and citation to the evidence, but do not explain how or why the alleged mischaracterization requires a rejection of the finding.

Petitioners take exception to the fifth, sixth, and last sentences that contain findings regarding soil suitability. However, these findings are supported by competent, substantial evidence. [VI, 820; VII, 943-44, 979-84; VIII, 982; JT EX 1 (RESP ORC, att. 2, pp. 4, 15, 26, 38)]. The Petitioners' citation to other record evidence improperly invites the Department to reweigh the evidence regarding soil suitability. Petitioners also assert that opinion as to compliance with a statute or rule is a COL. However, Petitioners offer no interpretation that is as or more reasonable than that of the ALJ.

Petitioners' Exception 29. (FOF 76)

Petitioners contend that the first sentence mischaracterizes their claims and citations to the evidence, but do not explain how.

Petitioners also take exception to FOF 76 based upon topography. However, there is competent, substantial evidence in the record to support this finding. [X, 1343-44; JT EX 1 (C/CE 13, 13.2); JT EX 1 (TD&A RT; RESP ORC)]. The Petitioners' citation to other record evidence improperly invites the Department to reweigh the evidence.

Petitioners' Exception 9 is DENIED.

Petitioners' Exception 30. (FOF 78).

Petitioners take exception to FOF 78 because it references "development anticipated in each SJI FLUMA," even though the ALJ found in FOF 85 that no site plan exists. A review of the record and the RO indicates that the reference is apparently to the density and intensity potentially allowed under the FLUMAs. The reference is supported by competent, substantial evidence, as the record is replete with similar general, shorthand references to increased development potential. [I, 66-67; 11, 103; IV, 485-86; VI, 799; VIII, 1036-37, 1047].

Petitioners' Exception 30 is DENIED.

Petitioners' Exception 31. (FOF 79).

FOF 79 is supported by competent, substantial evidence. [VI, 782-86, 798; VIII, 957-58; 968-70, 975, 978-79]. The Petitioners merely invite the Department to reweigh the evidence.

Petitioners' Exception 31 is DENIED.

Petitioners' Exception 32. (FOF 80).

There is competent, substantial evidence in the record for the finding that there is a confining layer in between the surficial aquifer and the underlying Floridan aquifer in eastern Franklin County. [PET EX 86; VI, 772-75, 794]. Petitioners merely ask the Department to reweigh the evidence.

Petitioners' Exception 32 is DENIED.

Petitioners' Exception 33. (FOF 81).

FOF 81 is supported by competent, substantial evidence. [PET EX 86; VI, 772-76, 798-812]. Petitioners' Exception 33 is DENIED.

Petitioners' Exception 34. (FOF 82).

Petitioners contend that the first sentence mischaracterizes their claims and citations to the evidence, but do not explain how or why the alleged mischaracterization requires rejection of the finding.

Petitioners' Exception 34 is DENIED.

Petitioners' Exception 35. (FOF 83).

Petitioners contend that the first sentence mischaracterizes their claims and citations to the evidence, but do not explain how. FOF 83 is supported by competent, substantial evidence. [VIII, 1022-32, 1036-38; XII, 1642-45, 1678-79; XIII, 1883-84; RES EX 36; RESP ORC].

Petitioners' Exception 35 is DENIED.

Petitioners' Exception 36. (FOF 85).

The findings in FOF 85 are supported by competent, substantial evidence. [JT EX 1, C/CE 10.11, FLUE 2.2(l)-(o), FLUE 1.2(d); RESP ORC, att. 2, pp. 4, 15, 26, 38; VIII, 1047; X, 1447-48]. Exception 36 is DENIED.

Petitioners' Exception 37. (FOF 86).

Petitioners contend that the first sentence oversimplifies their "floodplain-related claims and citation to the evidence bearing on the issue of whether the Ordinance is supported by data and analysis to 'insure' that floodplain suitability criteria are met when considering other factors." Again, the Petitioners do not explain how and offer no legally cognizable basis for this exception.

Petitioners appear to take exception to the findings in FOF 86 regarding suitability. However, these findings are supported by competent, substantial evidence. [X, 1343-44; JT EX 1 (C/CE 13, 13.2); JT EX 1 (TD&A RT; RESP ORC)]. Moreover, Petitioners merely ask the Department to reweigh the evidence.

Petitioners' Exception 37 is DENIED.

Petitioners' Exception 38. (FOF 87).

Petitioners contend that the first sentence oversimplifies their "vegetative cover and wildlife habitat-related claims and citation to the evidence bearing on the issue whether the

Ordinance is supported by data and analysis to 'insure' that habitat suitability criteria are met when considered with other factors." Again, Petitioners do not explain how or why the alleged oversimplification requires a rejection of the finding.

Additionally, competent, substantial evidence supports the finding that data and analysis regarding bears and bear habitat was presented and analyzed at the final hearing. [IX, 1212-83]

Exception 38 is DENIED.

Petitioners' Exception 39. (FOF 91).

Petitioners take exception to FOF 91, simply claiming, without explanation or argument, that it is a COL. Petitioners thus offer no legal basis for this exception. See § 120.57(1)(k), Fla. Stat. Even assuming that this is a COL, Petitioners offer no interpretation that is as or more reasonable than that of the ALJ. See § 120.57(1)(l), Fla. Stat.

Exception 39 is DENIED.

Petitioners' Exception 40. (FOF 92 and FOF 93).

Petitioners take exception to FOF 92 and to the second sentence in FOF 93, simply claiming, without explanation or argument, that each is a COL. However, even assuming that they are COLs, Petitioners offer no interpretation that is as or more reasonable than that of the ALJ. See § 120.57(1)(l), Fla. Stat. Petitioners also contend that FOF 92 misstates the issues regarding the data and analysis requirements and suitability, but offer no explanation or argument.

Petitioners take exception to FOF 93, contending that the substantive aspects of FLUEPs 11.12 and 11.13 were not considered. However, there is competent, substantial evidence that the updated plan was supported by consideration of each of the eight key areas listed by FLUEPs 11.12 and 11.13. [X, 1317; XIII, 1769-71, 1817-18].

As discussed above under the ruling on Petitioners' Exception 6, their reliance on Williams is misplaced.

Petitioners' Exception 40 is DENIED.

Petitioners' Exception 41 and 42 (FOF 94 and 95).

Petitioners take exception to the first sentence of FOF 94, contending that it is an oversimplification of Policy 11.12. Additionally, the Petitioners contend that the third and last sentences of FOF 95 are COLs. However, Petitioners offer no legal basis for these exceptions. See § 120.57(1)(k), Fla. Stat. The findings in FOF 94 and FOF 95 that the County transmitted the overlay as part of the County's Technical Data and Analysis Report are supported by competent, substantial evidence. [JT EX 1, TD&A RT, app. G; XIII, 1774-75].

Exceptions 41 and 42 are DENIED.

Petitioners' Exception 43. (COL 97).

Petitioners take exception to COL 97 because no findings of fact were made with regard to whether Petitioners were "substantially affected" for purposes of appellate standing. However, Petitioners do not offer a conclusion of law that is as or more reasonable than that which the Petitioners propose should be rejected.

Indeed, the ALJ correctly concluded that "[i]t is considered to be unnecessary and premature to determine whether any party would be entitled to judicial review of the final order in this case." Standing for appellate purposes under section 120.68(1), Florida Statutes, is narrower than standing for administrative purposes under section 163.3184, Florida Statutes. Melzer v. Department of Community Affairs, 881 So. 2d 623, 624-25 (Fla. 4th DCA 2004); O'Connell v. Department of Community Affairs, 874 So. 2d 673, 675 (Fla. 4th DCA 2004); Fla. Chapter of the Sierra Club v. Suwannee American Cement Co., 802 So. 2d 521, 521 (Fla. 1st DCA 2001).

Under section 120.68(1), Florida Statutes, "[a] party who is adversely affected by final agency action is entitled to judicial review." (emphasis supplied). The ALJ's Recommended Order is not final agency action.

The ALJ also correctly concluded that "[i]t is believed that such determinations, if they become necessary, can be made upon the evidence in the record." See Legal Environmental Assistance Foundation, Inc. v. Clark, 668 So. 2d 982, 987 (Fla. 1996). Accordingly, the ALJ appropriately concluded that the Responding parties "reserve the right to oppose such findings at the appropriate time."

Petitioners' Exception 43 is DENIED.

Petitioners' Exception 44. (COL 101).

Exception 44 does not state a legal basis as required under section 120.57(1)(k), Florida Statutes, and therefore is DENIED.

Petitioners' Exception 45. (COL 102).

Petitioners take exception to COL 45, contending that the RO contains neither FOF nor COL on all of the disputed compliance issues, as stated in the Preliminary Statement of the Petitioners' Exceptions.

This exception resulted in the Department's July 17, 2006, Order of Remand to the ALJ to address in a supplemental recommended order the issues in paragraphs 9 and 19 of the Pre-Hearing Stipulation. As for the remaining stipulated disputed issues set forth in the Petitioners' Preliminary Statement, they were addressed in the Order of Remand, which is incorporated herein by reference, and thus it is not necessary to repeat those rulings here.

Although it is unclear, Petitioners also appear to argue (here and in the Preliminary Statement) that certain statutory and rule criteria are "procedural requirements" and that the ALJ erred in applying the fairly debatable standard to those requirements. This argument has been addressed above.

The remainder of the Petitioners' exception, which "incorporate[s] by reference the argument supplied in the exceptions to FOF stating that FOF 26, 33-35, 41, 57, 64-66, 73, 75, 83, 85, 91, 92 and 95 contain mislabeled COL; that the 'fairly debatable' standard applies to procedural requirements of statute, 9J-5, and County Ordinance; and that consistency with a statute or rule requirement is a FOF" and their argument as to remand and the fairly debatable standard, have been addressed throughout this Order.

Petitioners' Exception 45 is DENIED.

Petitioners' Exception 46. (COL 103).

In this exception, the Petitioners repeat and re-hash their arguments made in other exceptions regarding mislabeled conclusions of law, application of the fairly debatable standard, whether all disputed issues were addressed in the recommended order, and whether consistency

with statutory and rule requirements is a legal issue, all of which have been addressed above throughout this Final Order.

Petitioners' Exception 46 is DENIED.

RULINGS ON PETITIONERS' EXCEPTIONS
TO THE SUPPLEMENT TO RECOMMENDED ORDER

Petitioners' Exception 1. (FOF 2).

Petitioners take exception to the second, fourth, and fifth sentences of FOF 2 regarding the issue of whether the County's potable water level of service standard (LOSS) was supported by the best available data and a professionally acceptable analysis. Petitioners cite extensively to other record evidence and attack Mr. Greer's testimony. However, the issue for the Department is whether there is competent, substantial evidence to support the ALJ's findings of fact, and not whether there is competent, substantial evidence to support the position advocated by the Petitioners. § 120.57(1)(l), Fla. Stat.; Heifitz, 475 So. 2d at 1281-1282. The ALJ's findings in paragraph 2 are supported by competent, substantial evidence. [IX, 1094-1104, 1123-24; JT EX 1].

Petitioners also contend that the data upon which Mr. Greer relied for his seasonal adjustments of FSU's data and analysis was not offered or admitted into evidence. However, experts may rely upon data and analysis (i.e., facts) not admitted into evidence to form their expert opinions, subject to cross-examination. See § 90.705(1), Fla. Stat. Also, Petitioners contend that FSU's telephone interviews with utility and government employees do not constitute data, but offer no explanation or legal basis in support.

Petitioners' Exception 1 is DENIED.

Petitioners' Exception 2. (FOF 6).

Petitioners take exception to FOF 6 regarding Franklin County's industrial land use need through 2020. Petitioners essentially disagree with the ALJ's calculations, and offer alternative calculations and analysis of the evidence. However, the ALJ's findings are based upon competent, substantial evidence in the record, and the Department cannot retry the facts or reweigh the evidence. § 120.57(1)(l), Fla. Stat.; Heifetz, 475 So.2d at 1281-1282.

Petitioners' Exception 2 is DENIED.

Petitioners' Exception 3. (FOF 7).

Petitioners take exception to the first sentence of FOF 7, contending that it is based upon pure speculation and is without record support.

However, the record contains competent, substantial evidence to support this finding. [XIII, 1853; IX, 1134-37, 1146-47; IV, 503; IX, 1144].

Petitioners also contend that they were never put on notice that the supplemental recommended order "would contain speculation about an analysis that was not placed at issue, or the subject of testimony or evidence." However, Dr. Fishkind testified regarding structural change and the Petitioners cross-examined Dr. Fishkind on this matter. [IX, 1134-37, 1143-53, 1153-1210]. Moreover, the ALJ's findings in FOF 7 are supported by competent, substantial evidence in the record. [IX, 1134-53; V, 503].

Petitioners' Exception 4. (FOF 8).

Petitioners take exception to the finding that there was data and analysis that Franklin County is designated a rural area of critical economic concern. The Petitioners further contend that a statute and executive order are neither data nor analysis, but offer no explanation as to why not.

The ALJ's finding of fact 8 is supported by competent, substantial evidence. [XIII, 1796]. The Petitioners' exception merely asks the Department to reweigh the evidence. § 120.57(1)(l), Fla. Stat.; Heifetz, 475 So.2d at 1281-1282.

Petitioners' Exception 4 is DENIED.

Petitioners' Exception 5. (FOF 9).

Petitioners contend that FOF 9 is based upon a faulty legal premise because they are under no legal requirement to present expert testimony, and because they were entitled to, and did, offer into evidence and rely on the needs analysis prepared by FSU's Planning Department.

First, it does not appear that the ALJ determined that the Petitioners were required as a matter of law to present expert testimony. Rather, it appears that the Petitioners failed to convince the ALJ – based upon their arguments and evidence in the record alone – that the

amendments inappropriately allocated non-residential land use need. There is competent, substantial evidence in the record to support the opposite conclusion that was reached by the ALJ. [JT EX 1 (Technical Data & Analysis Report, pp. I-30 – I-35; IX, 1151-53; XII, 1780-81, 1796]. Petitioners' exception improperly asks the Department to reweigh the evidence. § 120.57(1)(l), Fla. Stat.; Heifetz, 475 So.2d at 1281-1282.

Petitioners' Exception 5 is DENIED.

Petitioners' Exception 6. (FOF 10).

In this exception, Petitioners repeat their argument that none of the four St. James Island FLUMAs contain the policies required by Rule 9J-5.006(4)(c). However, there is competent, substantial evidence in the record that the Rural Village and Conservation Residential categories are not true mixed-use categories. [XIII, 1798]. Additionally, there is competent, substantial evidence in the record that the Marina Village Center and Carrabelle East Village FLUMAs, which are true mixed-use FLUMAs, do identify the percentage distribution of the mix of uses. [JT EX 1; XIII, 1798]. Petitioners also repeat their arguments that they were inappropriately required to present expert testimony and that experts cannot render competent, substantial evidence as to legal determinations at issue in administrative proceedings. Those exceptions have been addressed above.

Additionally, there is competent, substantial evidence to support the ALJ's findings. [JT EX 1 (FLUE Policy 2.2); X, 1341-43; XII, 1669-70]. Petitioners' exception improperly asks the Department to reweigh the evidence. § 120.57(1)(l), Fla. Stat.; Heifetz, 475 So.2d at 1281-1282.

Petitioners' Exception 6 is DENIED.

Petitioners' Exception 7. (FOF 11).

Petitioners state that because the fourth sentence references the RO, the Petitioners incorporate by reference their exceptions to FOF 61, 67-69 of the RO.

The Petitioners' exceptions to the RO do not reference FOF 61. Above, Petitioners' Exceptions to FOF 67-69 to the RO were denied, and those rulings are incorporated herein by reference.

Petitioners' Exception 7 is DENIED.

Petitioners' Exception 8. (FOF 12).

Petitioners take exception to the first four sentences on the basis that they "contain comments on the testimony offered (or not offered) by the Ashleys and Respondents regarding the needs analysis, but no findings of fact."

The Petitioners offer no legal basis for this exception. Petitioners also offer no explanation as to why it is improper for the ALJ to characterize the testimony offered or not offered at the hearing. Because it is the ALJ's specific task to render findings of fact and conclusions of law on specific issues based upon the evidence in the record, some characterization or description of the evidence actually presented by the parties is not inappropriate.

Additionally, Petitioners contend that because FLUE Policy 2.2(o), which is the Carrabelle East Village FLUMA, allows a mix of residential and non-residential uses, standards for the percentage distribution among the mix of uses or other objective measurement of the distribution, density, and intensity of each use is required. Petitioners thus suggest that this was not done.

However, there is competent, substantial evidence in the record that Carrabelle East Village FLUMA, which is a mixed-use land use category under the County's Plan, identifies the percentage distribution of the mix of uses by operation of FLUE Policy 2.25, which requires development within it to include a minimum of three of the listed land uses, none of which may comprise less than 10% of the total land area of the development. [JT EX 1; XIII, 1798].

Petitioners also contend that the "obvious implication" of FOF 12 is that they were required to offer expert testimony as to whether the Plan's policies met the cited statutory and rule criteria. However, it appears that – after all of the evidence – including expert testimony, if any, presented by either side – was considered, the ALJ found that the Petitioners failed to prove beyond fair debate that the Plan over-allocated commercial and industrial land uses. The record contains competent, substantial evidence to support this conclusion. Petitioners' exception essentially requests that the Department reweigh the evidence or reject findings of fact that are based upon competent, substantial evidence.

As discussed above, Petitioners' reliance on Williams is misplaced. Finally, Petitioners provide no legal support for the contention that an ALJ cannot rely on a portion of an expert's opinion if the ALJ rejects the expert's overall opinion.

Petitioners' Exception 8 is DENIED.

ORDER

Upon review and consideration of the entire record of the proceeding, including the Recommended Order and Supplement to Recommended Order, it is hereby ordered that:

1. Respondents' Exception 1 is GRANTED and FOF 2 is modified to reflect that St. James Island is bounded on the west by the City of Carrabelle.

2. Petitioners' Exception 3 is GRANTED. The reference in FOF 19 is modified to "capital improvements element."

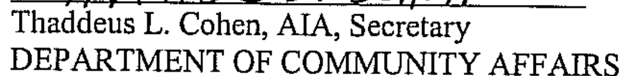
3. Petitioners' Exception 4 is GRANTED and FOF 20 is modified to indicate that the Eastpoint Sprayfield FLUMA was adopted, and that the challenge to that amendment was not pursued at the final hearing.

4. Petitioners' exception 9 is GRANTED and FOF 41 is modified to add citations to section 163.3178(2)(h) and Rule 9J-5.003(17).

5. Petitioners' and Respondents' remaining exceptions are DENIED as set forth above.

6. The findings of fact and conclusions of law, with the exception of those that have been forwarded to the Administration Commission for final agency action, are adopted except as modified herein, and those portions of the amendments are determined to be "in compliance."

DONE AND ORDERED in Tallahassee, Florida.



Thaddeus L. Cohen, AIA, Secretary
DEPARTMENT OF COMMUNITY AFFAIRS

NOTICE OF RIGHTS

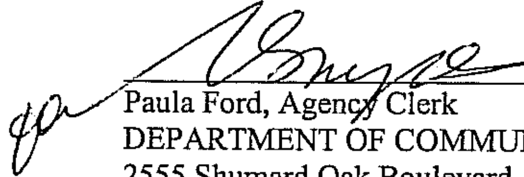
ANY PARTY TO THIS FINAL ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW OF THE ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(b)(1)(C) AND 9.110.

TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 2555 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-2100, WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(a). A COPY OF THE NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

YOU WAIVE YOUR RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH THE AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed with the undersigned Agency Clerk of the Department of Community Affairs, and that true and correct copies have been furnished to the persons listed below this 10th day of Oct., 2006.



Paula Ford, Agency Clerk
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