STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

COUNTY OF VOLUSIA; THOMAS STEVENS; ALMA MAE BUCKHALT; And MARGARET BENNETT RAULERSON,

Petitioners,

vs.

Case No. 07-5107GM

DEPARTMENT OF COMMUNITY AFFAIRS and PUTNAM COUNTY,

Respondents,

and

WAL-MART STORES EAST, LP,

Intervenor.
_____/

FINAL ORDER

This matter was considered by the Secretary of the Department of Community Affairs following receipt of a Recommended Order (RO) issued by an Administrative Law Judge of the Division of Administrative Hearings (DOAH). A copy of the RO is appended to this Final Order as Exhibit A.

Background and Summary of Proceedings

In August 2007, Putnam County adopted Ordinance 2007-27 which amended the text of the Putnam County Comprehensive Plan to create a new distribution warehouse planning area, and correspondingly amended the Future Land Use Map (FLUM) to change the land use

designation of a 220-acre tract of land from Agriculture I to Industrial. The owner of the affected property is Wal-Mart Stores East, LP (Wal-Mart). The affected property is located on the southern border of Putnam County, adjacent to Volusia County.

In October 2007, following its review of the amendment, the Department of Community Affairs (Department) issued a Notice of Intent to find it "not in compliance." In November 2007, the Department filed a petition for hearing with DOAH.

Wal-Mart petitioned to intervene in support of Putnam County's amendment. Thomas Stevens, Alma Mae Buckhalt, and Margaret Bennett Raulerson (Individual Petitioners), Lake Crescent Citizens for Responsible Growth, Inc., and Volusia County petitioned to intervene in opposition to the amendment. All the petitions to intervene were granted. Subsequently, Lake Crescent Citizens for Responsible Growth, Inc., voluntarily dismissed its petition.

The case was placed in abeyance to allow for settlement negotiations and in September 2008, the Department, Putnam County, and Wal-Mart entered into a settlement agreement which identified the remedial measures that, if adopted by the County, would satisfy the Department's objections to the amendment. Upon notice of the settlement agreement, this proceeding was stayed.

On September 23, 2008, Putnam County adopted Ordinance 2008-32, which amended the comprehensive plan to implement the remedial measures called for in the settlement agreement. On October 30, 2008, the Department published its Cumulative Notice of Intent to find the amendment adopted by Ordinance 2007-27, as remediated by Ordinance 2008-32, "in compliance." The parties were then realigned.

The issue to be litigated, as framed in the Pre-hearing Stipulation, was whether the amendment to Putnam County's Comprehensive Plan adopted by Ordinance 2007-28 and modified by Ordinance 2008-32 is "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes.

The parties also stipulated to the following matters of fact:

> **The Plan Amendment**
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> 8. The Plan Amendment's primary purpose is to reclassify a 220.23-acre tract of land owned by Wal-Mart ("Wal-Mart Property") from "Agricultural I" to "Industrial" on Putnam County's Future Land Use Map ("FLUM"). The Plan Amendment also amends the text of Policy A.1.9.3.6 of the Putnam County Comprehensive Plan, which pertains to the "Industrial" Future Land Use Category, to create a special planning district known as the "South Putnam Distribution Warehouse Special Planning Area" ("SPDW Special Planning Area"). The SPDW Special Planning Area is specifically tailored to the Wal-Mart Property and establishes conditions applicable to any development thereon.
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> **The Wal-Mart Property**
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> 9. The Wal-Mart property consists of approximately 220.23 acres located in southern Putnam County, south of Clifton Road. The Wal-Mart Property fronts Clifton Road on the north. The future land use designation of the abutting property immediately to the north of Clifton Road is Planned Unit Development. The properties to the east and west of the Wal-Mart Property are designated as Agriculture on Putnam County's FLUM. To the south, the Wal-Mart Property abuts the Volusia County boundary line.

Pre-hearing Stipulation, filed March 24, 2009, at pages 17-18.

Volusia County was permitted to amend its petition at the final hearing to add claims that the amendment was not supported by appropriate data and analysis and that there was no demonstrated need for additional industrial lands in Putnam County.

At the final hearing, Joint Exhibits 1 through 38 were admitted into evidence. Individual Petitioners presented the testimony of Alma Mae Buckhalt, Brian Hammons, Margaret Bennett

Raulerson, and Thomas Stevens. Individual Petitioners Exhibits 4 and 5 were admitted into evidence.

Volusia County presented the testimony of Mack Cope, James Bennett, Jon Cheney, and Lea Gabbay. Through introduction of his deposition transcript, Volusia County also presented the testimony of John Weiss. Volusia County Exhibits 2 through 4, 7, 8, 10, 11, 13, 13A through 13G, 20, 24, 27, 36, 41, 46, 48, 50, and 52 were admitted into evidence.

The Department presented the testimony of Jonathan Frederick. Department Exhibit 1 was admitted into evidence.

Putnam County participated in the examination of witnesses, but did not call a witness or offer an exhibit into evidence.

Wal-Mart presented the testimony of David Cooper, Laura Dedenbach, James Emerson, Thomas Fann, Christopher Hatton, Patrick Kennedy, Wes Larsen, and Michael McDaniel. Through the introduction of their deposition transcripts, Wal-Mart also presented the testimony of Jon Cheney and Gregg Stubbs. Wal-Mart Exhibits 2, 9, 17, 24, 26 through 28, 31, 32, 36, 41, 42, 47, 51 through 56, 58 through 63, 66 through 69, 75 through 77, 85 through 88, and 90 were admitted into evidence.

Standard of Review of Recommended Order

The Administrative Procedure Act contemplates that the Department will adopt an Administrative Law Judge's RO as the agency's Final Order in most proceedings. To this end the Department has been granted only limited authority to reject or modify findings of fact in a RO.

> 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.

Fla. Stat. § 120.57(1)(l).

Absent a demonstration that the underlying administrative proceeding departed from the essential requirements of law, "[a]n ALJ's findings cannot be rejected unless there is no competent, substantial evidence from which the findings could reasonably be inferred." Prysi v. Department of Health, 823 So. 2d 823, 825 (Fla. 1st DCA 2002)(citations omitted). In determining whether challenged findings are supported by the record in accord with this standard, the Department may not reweigh the evidence or judge the credibility of witnesses, both tasks being within the sole province of the Administrative Law Judge as the finder of fact. See Heifetz v. Department of Bus. Reg., 475 So. 2d 1277, 1281-83 (Fla. 1st DCA 1985).

The Administrative Procedure Act also specifies the manner in which the Department is to address conclusions of law in a RO.

> The agency in its final order may reject or modify the 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.

Fla. Stat. § 120.57(1)(l); DeWitt v. School Board of Sarasota City, 799 So. 2d 322 (Fla. 2nd

DCA 2001).

The label assigned a statement is not dispositive as to whether it is a finding of fact or conclusion of law. See Kinney v. Department of State, 501 So. 2d 1277 (Fla. 5th DCA 1987). Conclusions of law labeled as findings of fact, and findings labeled as conclusions, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

Volusia County's Exception No. 1: Finding of Fact 33

Volusia County questions the finding that it is likely to benefit from development of the Wal-Mart property. Mr. Wes Larson of the Putnam County Chamber of Commerce, when questioned about whether the project would create jobs for residents of Volusia County, testified that the site was adjacent to the poorest parts of Volusia County and that Volusia residents who lived near the site "would be very interested in having a job at Wal-Mart." (Tr. at 796). Although Wal-Mart will be directing its hiring efforts towards Putnam County, there is nothing in the comprehensive plan amendment or any agreement between Putnam County and Wal-Mart that limits hiring to residents of Putnam County or grants them favorable treatment in the hiring process. (Tr. at 795-796). Volusia County's proximity to the project site and the economic status of its residents in the vicinity of the project site support the ALJ's finding that Volusia County is likely to benefit from the development.

Volusia County's Exception 1 is DENIED.

Volusia County's Exception No. 2: Finding of Fact 34

Volusia County challenges the ALJ's finding that data and analysis demonstrate the need for additional industrial land on which to build the proposed distribution center. Volusia County

explains that there is no need for more industrial land in Putnam County because much of the land already designated as industrial is undeveloped, and available for development of a distribution center.

The data and analysis used to evaluate need for industrial land in Putnam County, a designated rural county, is different than that used for non-rural counties. (Tr. at 1047-49). Putnam County is considered a rural county because its population is less than 75,000. (Tr. at 1313). Section 163.3177(6)(a), Florida Statutes, identifies specific factors that must be considered when designating industrial land in rural counties, as follows:

> [F]or rural communities, the amount of land designated for future planned industrial use shall be based upon surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies, and may not be limited solely by the projected population of the rural communities.

This provision makes clear that the need for job creation and strengthening the local economy in a rural county is to be considered when evaluating the need for industrial land in a rural county. (Tr. at 982, 1047-49, 1313-14). The total amount of undeveloped acres designated for industrial use is less of a factor than it is for other land use categories. (Tr. at 1049).

Economic studies show high poverty rates in Putnam County and that the proposed amendment would create jobs there. (Tr. at 783, 793, 982). In addition, Putnam County has been designated as a Rural Area of Critical Economic Concern, (WM Ex. 66), which means its "economy is viewed by the state as being in crisis and in need of incentives to increase and build economic development." (Tr. at 1314). The record shows that Putnam County's rural character

and depressed economy qualify it to designate the land as industrial because it will create jobs. The finding of fact is therefore supported by competent substantial evidence.

Volusia County's Exception 2 is DENIED.

Volusia County's Exception No. 3: Finding of Fact 45, Conclusion of Law 118.

Volusia County claims that the ALJ mischaracterized its position on the interpretation of the term "shall encourage" as used in a provision of the amendment and two other provisions of the comprehensive plan. The ALJ stated that Volusia County interprets "shall encourage" to mean "shall always require." The County does not question the ALJ's determination that the language is permissive, but only the ALJ's description of the County's position. In paragraph 103 of its proposed recommended order, Volusia County argues that the phrase "is meant to be mandatory," which accords with the ALJ's characterization of the County's position.

Volusia County's Exception No. 3 is DENIED.

Volusia County's Exception No. 4: Findings of Fact 46, 59 and 62.

Volusia County questions the ALJ's statement that it "did not show that the amendment is part of a pattern of Putnam County" to allow dense development outside of Putnam County's urban services area. Volusia County contends that it did not attempt to show that the amendment was part of a pattern and that it was not required to because there is no such legal standard. Volusia County's exception is granted and paragraph 46, the second sentences of paragraphs 59 and 62 are deleted from the Final Order. This action does not change the outcome of the case because the finding of fact was, as noted by Volusia County, irrelevant in the first place. Its presence adds no substance and its removal takes no substance away.

Volusia County's Exception No. 4 is GRANTED.

Volusia County's Exception No. 5: Finding of Fact 63.

Volusia County claims that the finding that U.S. 17 had adequate capacity is not supported by competent substantial evidence. Volusia County claims that the only traffic study which predicted adequate capacity was the only traffic study not reviewed by the Florida Department of Transportation (DOT). The County states that a plan amendment is not complete until the traffic analysis is "included." It is not clear what the County means by "included." The record demonstrates that the Amendment was supported by a traffic study, signed and sealed by a professional engineer, that showed U.S. 17 would have adequate capacity to support the proposed distribution center. (WM Ex. 42; Jt. Ex. 34)

Volusia County claims that interagency coordination with DOT, pursuant to Sections 163.3184(3) and (4), Florida Statutes, and Rule 9J-11.009, Florida Administrative Code, was lacking and that this is grounds for rejecting the finding of fact. The County is simply pointing to evidence that it believes will support a contrary finding, and is improperly asking the Department to reweigh the evidence and engage in fact-finding. The issue is not whether the evidence would support a contrary finding but whether the record can support the finding that was made. As explained in the above paragraph, there is competent substantial evidence to support Finding of Fact 63.

Volusia County's Exception No. 5 is DENIED.

Volusia County Exception No. 6: Finding of Fact 86.

Finding of Fact 86 includes a statement that access to I-95, I-75 and I-10 from Putnam County is not convenient, and that this inconvenient access is probably a factor contributing to the County's poor economy. This paragraph is part of the ALJ's urban sprawl analysis and addresses Rule 9J-5.006(5)(g)12., Florida Administrative Code, regarding whether the plan amendment results in poor accessibility among linked or related land uses. Volusia County claims this statement is speculative.

This finding is not supported by competent substantial evidence; however, it does not undermine the conclusion of the ALJ that the project does not contribute to urban sprawl. The record contains competent substantial evidence to support the ALJ's conclusion that the project does not contribute to urban sprawl, (Tr. at 980-982, 1311-1328), including evidence that the amendment does not result in poor accessibility among linked or related land uses (Tr. at 1325-6). Paragraph 86 of the RO is therefore stricken.

Volusia County's Exception No. 6 is GRANTED.

Volusia Exception No. 7: Finding of Fact 89.

In paragraph 89 of the RO the ALJ found that the traffic analysis was progressively refined due to requests for additional information from Volusia County and DOT, and revisions made by Wal-Mart's traffic engineers. He also found that the final traffic analysis, dated April 2007, was the most reliable. Volusia County claims these findings are not adequately supported by record evidence because: 1) a DCA Bureau Chief identified a preferred methodology for the traffic analysis, in violation of Section 163.3177(10)(e), Florida Statutes, (stating that "the [D]epartment shall not evaluate whether one accepted methodology is better than another"); and,

2) the decision to use that methodology was not made in consultation with FDOT or Volusia County, and FDOT had rejected the methodology on more than one occasion. Volusia County concludes that the April 2007 analysis was not the result of progressive refinement but rather an effort to make the predicted impacts smaller.

As acknowledged by the ALJ in paragraphs 88 and 89 of the RO, there is evidence to support Volusia County's position and his finding that the April 2007 analysis was the most accurate. The ALJ weighed the evidence and Department cannot reweigh it. The record contains competent substantial evidence in support of the ALJ's findings. (Tr. at 1079-80, 1082-9, 1092, 1095-6, 1101-11, 1224-5, 1264-6, 1273-4).

Volusia County's Exception No. 7 is DENIED.

Volusia County's Exception No. 8: Finding of Fact 91.

In paragraph 91 of the RO, the ALJ states that there are two land use codes in the Institute of Transportation Engineers (ITE) Manual relevant to the Wal-Mart project – ITE Land Use Codes 150 and 152. The ALJ determined that ITE Land Use Code 152 best suits the project. Volusia County claims that these findings of fact are not supported by competent substantial evidence.

Again, Volusia County asks the Department to reweigh evidence. The findings of fact in paragraph 91 are supported by competent substantial evidence. The record contains testimony that both land use codes were potentially appropriate, (Tr. at 1079-80); that local data collected by Wal-Mart's traffic engineer demonstrated that the use of ITE Land Use Code 152 was a better predictor of traffic than ITE Land Use Code 150, (Tr. at 1161-2); a calculation based on ITE

Land Use Code 152 resulted in 144 trips during the p.m. peak hour, which exceeds the locally collected data by only two trips, (Tr. at 1110-1). In short, the local data collected by Wal-Mart's traffic engineer correlated better with ITE Land Use Code 152 than 150, which is why the engineer proposed using ITE Code 152. (Tr. at 1111, 1115-6, 1161-2, 1164-7, 1271-2). These facts support the ALJ's findings of fact in paragraph 91 of the RO.

Volusia County's Exception No. 8 is DENIED.

Volusia County's Exception No. 9: Finding of Fact 92.

In this exception, Volusia County again attacks the ALJ's basis for finding that use of ITE Land Use Code 152 for the traffic analysis was acceptable. The ALJ stated that "Land Use Code 150 is only statistically more reliable to predict traffic associated with its particular type of warehousing operation." The County claims that Land Use Code 150 describes precisely the type of warehousing operation at issue. Even if this is so, Land Use Code 152 was found to better match the data collected locally than Land Use Code 150. (Tr. at 1110-1, 1115-6, 1161-2, 1164-7, 1271-2). The use of Land Use Code 152 is supported by competent substantial evidence.

The County also contends that the ALJ's characterization of FDOT's posture in the case is misleading. Specifically, the County claims the ALJ's finding that "FDOT consistently expressed a preference for Land Use Code 150" to be misleading because FDOT rejected ITE Land Use Code 152 on more than one occasion. Volusia County contends that FDOT's position on Land Use Code 150 was more than a preference.

The FDOT is a commenting agency, (Tr. at 438-9, 536-7), and does not control which Land Use Code is accepted by the Department, (Tr. at 439, 454, 464, 479, 483-4, 958-9, 978). As has been explained above, the record contains competent substantial evidence that the use of ITE Code 152 was appropriate because it best fit the data actually collected in Florida as part of the traffic analysis. (Tr. at 1161-7, 1271-4)

Volusia County's Exception No. 9 is DENIED.

Volusia County's Exception No. 10: Finding of Fact 94

Volusia County challenges the ALJ's finding that the predictions of Land Use Code 152 closely matched the data collected at the Florida sites and that Land Use Code 152 was therefore a better fit than Land Use Code 150. As has been discussed above, the record contains competent substantial evidence that supports the ALJ's findings. (Tr. at 1101-1, 1115-6, 1161-2, 1164-7, 1271-4).

Volusia County's Exception No. 10 is DENIED.

Volusia County's Exception No. 11: Finding of Fact 95

The first sentence of paragraph 95 of the RO says that Mr. McDaniel, a Department Bureau Chief, told Mr. Hatton, Wal-Mart's traffic engineer, that use of land Use Code 152 was acceptable to the Department to analyze the effect of the amendment on traffic. Volusia County claims that Mr. McDaniel did not say this to Mr. Hatton but to a lawyer for Wal-Mart. Volusia County is correct. (Tr. at 1278). The first sentence of paragraph 95 of the RO is stricken, however this change does not materially affect the ALJ's recommendation.

Volusia County's Exception No. 11 is GRANTED.

Volusia County's Exception No. 12: Findings of Fact 96 and 97.

In paragraph 96 of the RO, the ALJ states that his findings regarding the acceptability of using Land Use Code 152 are not based on Mr. McDaniel's opinion because he is not a traffic engineer. Paragraph 97 concludes that the use of Land Use Code 152 is professionally acceptable. Volusia County claims these statements are not supported by competent substantial evidence.

Mr. Hatton, a traffic engineer, clearly stated that the April 2007 traffic study, which used Land Use Code 152 was the best of all the studies conducted. (Tr. at 1273-4). Mr. Hatton found that the local data he collected specifically for this project matched the projections of Land Use Code 152 better than those of Land Use Code 150. (Tr. at 1110-1, 1115-60. This provides competent substantial evidence to show that the ALJ relied on a traffic engineer or could have relied on a traffic engineer rather than Mr. McDaniel. It also provides competent substantial evidence that use of Land Use Code 152 was professionally acceptable.

Volusia County's Exception No. 12 is DENIED.

Volusia County's Exception No. 13: Findings of Fact 98, 99, 100

Volusia County's Exception No. 13 is not clearly defined. It appears that the County disagrees with the way in which the ALJ addressed the County's concern that the study area in the accepted traffic analysis (April 2007) excluded the segment of U.S. 17 in Volusia County that previous studies had determined would fall below level of service standard (LOS).

Specifically, the County appears to be concerned that the ALJ misinterprets information in the April 2007 study.

In paragraph 100 the ALJ found that "the study area was defined in consultation with `Putnam County staff and with FDOT based on roadway segments on which projected traffic from the distribution warehouse facility would constitute five percent or greater of the LOS capacity of the segment." Volusia County contends that this finding was based on information in the April 2007 study at page 6 in the section titled Study Area Determination. However, the County is concerned that the ALJ misinterpreted the Study Area Determination to mean "that FDOT reviewed or agreed with Mr. Hatton's decision regarding the study area." Volusia County Exception No. 13.

This exception is without merit because the ALJ found, in paragraph 100, that the "study area was defined in consultation with Putnam County staff and with FDOT," not that FDOT reviewed the study or agreed with it. In any event, the ALJ's statement is supported by competent substantial evidence. (Tr. at Jt. Ex. 34 at pg. 6).

Volusia County's Exception No. 13 is DENIED.

Volusia County's Exception No. 14: Finding of Fact 125.

In paragraph 125 of the RO the ALJ found that the "Petitioners failed to prove that the amendment is not based on appropriate data and analysis." The County claims that this finding is not supported by competent substantial evidence. However, the ALJ relied on a traffic study

conducted by a professional engineer. The study employed an ITE Land Use Code that was appropriate, based on data collected in Florida specifically to analyze the effects of the project. (Tr. at 1110-1, 1115-6). The study area included roadway segments on which project traffic was expected to constitute greater than 5% of the adopted LOS capacity in the p.m. peak hour peak direction, two-way peak hour, or daily scenarios. (Jt. Ex. 34 at pg. 6). Volusia County points to contrary evidence in the record, however the existence of contrary evidence is not reason to overturn an ALJ's findings of fact. An ALJ's findings can only be rejected when there is no competent substantial evidence from which the findings could be reasonably inferred. Prysi, 832 So. 2d at 825. Finding of Fact 125 is supported by competent substantial evidence.

Volusia County's Exception No. 14 is DENIED.

Individual Petitioners' Exception No. 1: Finding of Fact 29 and 30

The Individual Petitioners contend that paragraphs 29 and 30 of the RO misstate the positions of themselves and Volusia County. The Individual Petitioners do not contend that the data and analysis for the EAR-based comprehensive plan, which target Highway 207 and other four-lane roads for distribution center sites, means that "distribution centers cannot go elsewhere." RO at 29. Rather, the Individual Petitioners contend that the data and analysis do not support a plan amendment to add a new area of industrial land use, specifically for a distribution center, in a location that is not on Highway 207 or another four-lane road. The Individual Petitioners further contend that competent substantial evidence doe not support the factual mischaracterization.

The Individual Petitioners' exception is without merit. The finding of fact is a fair summary of Volusia County's and the Individual Petitioners' position in the context of this proceeding and is supported by competent substantial evidence. (Tr. at 234-5, 254-5, 812-3; *see also* Volusia County's Proposed Recommended Order at ¶ 19; Petitioners' Proposed Recommended Order Supplementing That of Volusia County at ¶ 37-38.

Even if the finding was a mischaracterization, and was stricken from the RO, it would have no effect on the outcome of the case.

Individual Petitioners' Exception No. 1 is DENIED.

Individual Petitioners' Exception No. 2: Findings of Fact 29 and 30.

The Individual Petitioners claim that paragraphs 29 and 30 "impliedly adopt an erroneous rule of law, one holding that only an absolute general prohibition against locating a given type of development in areas other than the areas specifically indicated in the data and analysis would suffice to show a lack of data and analysis to support a comprehensive plan amendment that locates such development in such non-indicated areas."

It appears that this Exception targets the statement in paragraph 30 that, "a statement of desire or preference is not the same as a prohibition against any alternative." This is not an erroneous rule of law.

Individual Petitioners' Exception No. 2 is DENIED.

Individual Petitioners' Exception No. 3: Finding of Fact 34.

The Individual Petitioners claim that the following statement from paragraph 34 of the RO is not supported by competent substantial evidence. Paragraph 34 provides:

> The data and analysis, especially the data and analyses associated with the designation of the area as a Rural Area of Critical Economic Concern, demonstrate that there is a need for additional industrial land to accommodate the important economic opportunity that has been presented to Putnam County.

Individual Petitioners claim that the data and analysis show there is a significant acreage of undeveloped land already designated for industrial use along four-lane roads in Putnam County so there is no need for additional industrial land. The ALJ's finding in paragraph 34 was upheld against a similar objection made in Volusia County's Exception No. 2, and the reason for denying that Exception applies here.

Individual Petitioners' Exception No. 3 is DENIED.

Individual Petitioners' Exception No. 4: Finding of Fact 37.

The Individual Petitioners claim that the ALJ made an incorrect conclusion of law in paragraph 37 by saying that, "because the objective (Objective A.1.1 of the Comprehensive Plan) expressly provides that it is to be achieved through the implementation of Policies A.1.1.1 through A.1.1.5, the amendment cannot be inconsistent with the objective unless it is inconsistent with one of its incorporated policies." While an amendment in some instances may be inconsistent with an objective and consistent with implementing policies, Objective A.1.1 on its face unequivocally provides that it will be achieved "through implementing the following policies." Testimony on this topic supports Finding of Fact 37. (Tr. 1331-33).

Individual Petitioners' Exception No. 4 is DENIED.

Individual Petitioners' Exception No. 5: Finding of Fact 39.

The Individual Petitioners contend that paragraph 39 of the RO contains an erroneous conclusion of law. The alleged error stems from the ALJ's interpretation of FLUE Policy A.1.4.2, the text of which is provided in paragraph 38 of the RO. In short, they claim that the erroneous interpretation is as follows: because the first sentence of FLUE Policy A.1.4.2 states that the Putnam County Land Development Code (LDC) is to provide measures to protect against premature conversion of agricultural lands, the Plan Amendment cannot be inconsistent with that part of the Policy because inconsistency with that part of the FLUE Policy would require a showing that the County failed to include such protection measures in its LDC.

Testimony in the record states that FLUE Policy A.1.4.2 incorporates three "not entirely related activities," (Tr. at 1291-2), the first activity being inclusion of protection measures in the LDC. (Tr. at 1291-3). This activity is not really relevant to the challenged amendment. (Tr. at 1292). The first sentence of the FLUE Policy requires Putnam County to include measures in its LDC which prevent the premature conversion of agricultural lands. The Plan Amendment does not prevent Putnam County from including such measures in its LDC, (Tr. at 1292), and it is therefore not inconsistent with the first sentence of the FLUE Policy, (Tr. at 1291-2). For this reason the ALJ's finding is supported by competent substantial evidence.

Individual Petitioners' Exception No. 5 is DENIED.

Individual Petitioners' Exception No. 6: Finding of Fact 40.

The Individual Petitioners contend that the following statement from paragraph 40 is an erroneous conclusion of law: "[t]he possible future conversion of adjacent agricultural lands, which Petitioners concede would be at the request of the owners of the agricultural lands, is not a compatibility issue." The Individual Petitioners have taken this statement out of context and misread it. The statement is part of the finding in paragraph 40 that the Individual Petitioners did not prove that a distribution warehouse would interfere with adjacent agricultural uses.

The Individual Petitioners' expert planning witness conceded that the new connector road would not affect the existing agriculture activities in the area, (Tr. at 261-2, 273-4), and that such a contention was speculative, (Tr. at 231-2). Furthermore, the amendment contains specific requirements for buffers and setbacks which ensure that adjacent agricultural activities are protected. (Jt. Ex. 30; Tr. at 1321-2). There is no erroneous conclusion and the finding of fact is supported by competent substantial evidence.

Individual Petitioners' Exception No. 6 is DENIED.

Individual Petitioners' Exception No. 7: Finding of Fact 43.

In an argument similar to that made by the Individual Petitioners in Exception No. 4, Individual Petitioners claim the following statement is an erroneous conclusion of law: "[t]he amendment cannot be inconsistent with [FLUE Objective A.1.6] unless it is inconsistent with one of the incorporated policies." The text of Objective A.1.6 pertains to the discouragement of urban sprawl and is provided in paragraph 42 of the RO. The Individual Petitioners interpret Objective A.1.6 as establishing standards on urban sprawl independent of FLUE Policies A.1.6.1 through A.1.6.3. Their interpretation ignores the plain language of Objective A.1.6, which states

that the Objective will be achieved "by immediately implementing the following policies." Therefore, in order to determine whether the amendment is consistent with Objective A.1.6, it is necessary to determine whether it is consistent with Policies A.1.6.1 through A.1.6.3. For these reasons, and those provided in the ruling on Exception No. 4, Exception No. 7 is without merit.

Individual Petitioners' Exception No. 7 is DENIED.

Individual Petitioners' Exceptions No. 8, 9, 25, 28 : Findings of Fact 45, 59, 62.

The Individual Petitioners claim that the ALJ misstates their interpretation of the phrase "shall encourage" in FLUE Policy A.1.6.1, and that this constitutes an erroneous conclusion of law. The ALJ states that Individual Petitioners interpret the phrase to mean "shall always require." A similar objection was made by Volusia County with respect to its position in its Exception No. 3.

The relevant part of Policy A.1.6.1 states,"[t]he County shall encourage infill and higher density and intensity development within the Urban Services designated areas of the County . . . [emphasis added.]" The Individual Petitioners claim that they interpret this to mean that the phrase "shall encourage" is mandatory with respect to the County but not as applied to unilateral acts of developers or businesses, and note that they have stated their interpretation in paragraph 68 of their proposed RO.

The ALJ's interpretation is not inconsistent with that of the Individual Petitioners. That is, he is saying that the Petitioners interpret the phrase "the County shall encourage" to mean "the county shall always require." There is nothing in the RO to indicate that the ALJ means that the provision is mandatory with respect to unilateral acts of developers or businesses.

Furthermore, there is no functional difference in this case between the phrase "the County shall always require" and the Individual Petitioners explanation of what they mean by "it is mandatory that the County shall encourage." The Individual Petitioners claim that, under the facts of this case, the County is encouraging "outfill" when it must encourage "infill." Individual Petitioners' Proposed RO at ¶ 68. Given the facts of this case, the Individual Petitioners draw a distinction with no difference. The ALJ is justified in his characterization of the Individual Petitioners' position. In addition, because ¶ 45 contains nothing more than the characterization of their position, it is not a conclusion of law.

Individual Petitioners' Exception No. 8 is DENIED.

Individual Petitioners' Exceptions No. 10 and 26: Findings of Fact 46 and 59.

These exceptions raise the same issue that is addressed under Volusia County's Exception No. 4; that is, the ALJ's statement that the Petitioners did not show that the amendment is part of a pattern of Putnam County to allow high density and intensity development outside of its urban services areas. Accordingly, ¶ 46 and the last sentence of ¶ 59 are stricken from the RO. This has no material effect on the ALJ's recommendation.

Individual Petitioners' Exceptions No. 10 and 26 are GRANTED.

Individual Petitioners' Exception No. 11: Finding of Fact 47.

The Individual Petitioners contend that there is a statement in paragraph 47 of the Recommended Order that the "entire" Wal-Mart property is within Crescent City's Chapter 180 Utility Service District (District) and that this statement is not supported by competent substantial evidence because only a small, northern portion of the Wal-Mart property is in the

District. The Individual Petitioners further contend that the ALJ failed to include a finding that Crescent City put that small portion of the Wal-Mart property into the District only after the City had first entered into a contract with Wal-Mart to provide those services.

Paragraph 47 does not state that the "entire" Wal-Mart property is located within the District. No party contended that the "entire" Wal-Mart property is located within the District, which indicates that the ALJ's statement does not mean that the entire property is in the District. Competent substantial evidence supports the finding that a portion of the property is located within the District. (Tr. at 696-97, 986-87, 1323).

Individual Petitioners' Exception No. 11 is DENIED.

Individual Petitioners' Exception No. 12: Finding of Fact 47.

The Individual Petitioners contend that the finding in paragraph 47 that the Skinner property will be served by Crescent City water and sewer services is not supported by competent substantial evidence. The Individual Petitioners contend that, although the Skinner PUD requires the Skinner property to be served by central water and sewer systems, the Skinner PUD does not identify the provider or require Crescent City to be the provider. Thus, the Individual Petitioners contend that it is possible that a private package plant would serve the Skinner property.

Competent substantial evidence supports the finding that the Skinner property will be served by Crescent City water and sewer services. The City's Chapter 180 Utility Service Area establishes the City as the exclusive provider of water and sewer utilities for properties located within the boundaries of such Service Area. The District would prevent utility providers other than Crescent City from providing service to the Skinner property. (Tr. at 693-96, 756, 986;

WM Exs. 54, 55, 56).

Individual Petitioners' Exception No. 12 is DENIED.

Individual Petitioners' Exceptions No. 13 and 41: Findings of Fact 47 and 83.

The Individual Petitioners contend that the findings in paragraphs 47 and 83 that Crescent City's water and sewer utilities have adequate capacity to serve a distribution center on the Wal-Mart property is not supported by competent substantial evidence because the City and Wal-Mart had to enter into an agreement calling for the construction of water and sewer lines to serve the property, an expansion of the City's existing wastewater treatment plant, construction of a new City-owned potable water treatment plant, upgrades to the City's existing water piping, and construction of new pump/lift stations.

The Individual Petitioners ask the Department to re-weigh the evidence and engage in fact-finding. Competent substantial evidence supports the finding that Crescent City's water and sewer facilities have capacity to serve a distribution center on the Wal-Mart property. (Tr. at 693-96, 698, 744, 756, 981, 983, 986-87, 1297-98; WM Exs. 53, 54, 55, 56).

Individual Petitioners' Exceptions No. 13 and 41 are DENIED.

Individual Petitioners' Exception No. 14: Finding of Fact 47.

The Individual Petitioners contend that the last sentence of paragraph 47 incorporates an erroneous conclusion of law by stating that "the purpose of Policy A.1.6.1 [is] to encourage the location of high intensity land uses within areas where urban infrastructure is already available or planned." The Individual Petitioners contend that the ALJ erroneously added words and meaning to the Policy. The Individual Petitioners also contend that, if the framers of the Putnam

County Comprehensive Plan had intended that the Policy refer to areas where infrastructure did not exist but was planned, they would have said so. Thus, the Individual Petitioners contend that the ALJ erroneously re-wrote and recast the Policy as a concurrency provision when it in fact is a sprawl provision.

The Individual Petitioners misconstrue the ALJ's finding. Although the ALJ uses the word "planned," the use of such word was not the basis for the consistency finding with the Policy. Rather, the ALJ was responding to the Individual Petitioners' argument regarding the "shall encourage" language. Thus, the last sentence of Paragraph 47 does not add words to Policy A.1.6.1, as it is not a finding of what the Policy actually states, but rather is a finding as to the Policy's purpose. The ALJ drew a permissible inference from the evidence.

The last sentence of Paragraph 47 is a finding of fact supported by competent substantial evidence. (Tr. at 1293-94).

Individual Petitioners' Exception No. 14 is DENIED.

Individual Petitioners' Exception No. 15: Finding of Fact 47.

The Individual Petitioners contend that the last sentence of paragraph 47, which states that "[t]herefore, the purpose of Policy A.1.6.1 to encourage the location of high intensity land uses within areas where urban infrastructure is already available or planned is achieved and furthered" is unsupported by competent substantial evidence. The Individual Petitioners further contend that the undisputed facts show that the Plan Amendment encourages and directs a high intensity land use to a rural location where the necessary urban infrastructure is not already available.

The ALJ's finding is related to the issue of what it means to "encourage," as opposed to whether public facilities and infrastructure are available or planned. Additionally, there is competent substantial evidence to support the ALJ's finding. (Tr. at 776, 806, 983-84, 986-87, 1293-94, 1296-98, 1322-23).

Individual Petitioners' Exception No. 15 is DENIED.

Individual Petitioners' Exception No. 16: Finding of Fact 48.

The Individual Petitioners contend that paragraph 48 sets forth an erroneous conclusion of law by treating Policy A.1.6.1 as a concurrency provision rather than as a sprawl provision, and erroneously applies the definition of "facility availability" in Rule 9J-5.003(46), Florida Administrative Code, that is expressly intended to apply to concurrency management systems.

Although they contend that Paragraph 48 contains an erroneous conclusion of law, the Individual Petitioners do not indicate what the correct conclusion of law should be. Accordingly, the Individual Petitioners have failed to advance a conclusion of law that is as or more reasonable than that of the ALJ.

Additionally, the finding is a response to the Individual Petitioners' arguments regarding the meaning of "shall encourage" in the Policy, and not specifically as to whether facilities are available or the definition of available. Moreover, the Policy A.1.6.1 references facility availability, but contains no definition of the term. In the absence of a definition of facility availability in the Putnam County Comprehensive Plan, it was reasonable for the ALJ to refer to the definition in Rule 9J-5.003, Florida Administrative Code. See **Fla. Stat.** § 163.3177(10)(g). Lastly, there is nothing in the finding which indicates that the ALJ was ignoring the Individual

Petitioners' arguments regarding sprawl and instead addressing concurrency issues.

Individual Petitioners' Exception 16 is DENIED.

Individual Petitioners' Exception No. 17: Finding of Fact 48.

The Individual Petitioners contend that the last sentence in paragraph 48, finding that water and sewer utilities are not unavailable to the site, may have been influenced by an erroneous conclusion and application of law, as discussed under Exception Number 16, and is unsupported by competent substantial evidence.

It is undisputed that the Wal-Mart property will utilize the existing public facilities and services provided by Crescent City, i.e., the City's potable water system and the City's sanitary sewer system. (Jt. Ex. 26; Tr. at 983, 1322). Indeed, the extension of water and sewer lines from these existing systems in Crescent City to the Wal-Mart property is consistent with the City's Chapter 180 Utility Service Area. (WM Exs. 54, 55, 56; Tr. at 693-96, 756, 986). Thus, competent substantial evidence supports the finding that water and sewer utilities are available to the site.

Individual Petitioners' Exception No. 17 is DENIED.

Individual Petitioners' Exception No. 18: Finding of Fact 50.

The Individual Petitioners contend that the statement in paragraph 50 regarding FLUE Policy A.1.9.3.A.6.d., that "the amendment would further the policy of using existing utilities" is unsupported by competent substantial evidence and may have been influenced by erroneous conclusions and applications of law, for the reasons set forth in Exceptions Number 13 through 17.

It is undisputed that the Wal-Mart property will be served by Crescent City's existing potable water system and Crescent City's existing sewer system. (Tr. at 298, 1297-98). It is reasonable for Putnam County to construe the phrase "existing utilities or resources" as referring to the City's existing potable water system and the City's existing sewer system. (Tr. at 983, 1297-98). Indeed, the extension of water and sewer lines to the Wal-Mart property from these existing systems is consistent with the City's Chapter 180 Utility Service Area. (WM Exs. 55, 56; Tr. at 696, 986-87). Moreover, during cross-examination, the Petitioners' expert planning witness conceded that the reference to "resources" could include existing facilities and services provided by Crescent City, i.e., the City's potable water system and the City's sewer system. (Tr. at 300). Thus, competent substantial evidence supports the ALJ's finding.

Individual Petitioners' Exception No. 18 is DENIED.

Individual Petitioners' Exceptions No. 19 and 33: Findings of Fact 51 and 69.

The Individual Petitioners contend that the statements in paragraphs 51 and 69 stating that the traffic associated with the distribution warehouse facility would use a new connector road, which would keep traffic out of the Clifton Road neighborhood, is unsupported by competent substantial evidence because there is no guarantee that the traffic will only use the connector road.

Competent substantial evidence establishes that the Plan Amendment mandates that access to and from the Wal-Mart property shall be limited to the new connector road, which will extend for approximately seven-tenths (7/10) of a mile from U.S. 17 to the Wal-Mart property. (Jt. Ex. 30; WM Exs. 17, 52; Tr. at 177). While it is possible that an access from Clifton Road

through property that will be owned by the City may be allowed to the new connector road, such access (a) is not part of the Plan Amendment, (b) would require approval by Putnam County and the City, and (c) would be limited to providing emergency access in the event of an accident on the new collector road. (Tr. at 881-83). Thus, competent substantial evidence supports the ALJ's finding.

Individual Petitioners' Exception No. 19 is DENIED.

Individual Petitioners' Exceptions No. 20: Finding of Fact 53.

The Individual Petitioners contend that paragraph 53 misstates their position. The Individual Petitioners' state that their contention that the Plan Amendment violates Intergovernmental Coordination Element (ICE) Goal G.1 is not based primarily upon the fact that Volusia County objects to the Plan Amendment. Rather, the Individual Petitioners contend that the Plan Amendment violates ICE Goal G.1 because the Plan Amendment is not coordinated with development activities in the adjacent area of Volusia County and diminishes the quality of life of residents of the surrounding rural community.

The ALJ did not mischaracterize the Individual Petitioners' position regarding ICE Goal G.1. The record reflects that the Individual Petitioners contended that the Plan Amendment violates ICE Goal G.1 because Putnam County allegedly failed to coordinate the Plan Amendment with Volusia County. (First Amended Petition of Thomas Stevens, Alma Buckhalt, and Margaret Bennett Raulerson at ¶ 18). In addition, during the final hearing, both the Individual Petitioners and Volusia County consistently elicited testimony regarding meetings and communications, or lack thereof, between Putnam County and Volusia County. (Tr. at 647-51,

925). In response to the ALJ's inquiry as to the relevance of this line of questioning, counsel replied that it "goes to the intergovernmental coordination." (Tr. at 649).

It is irrelevant whether the ALJ properly described the Individual Petitioners' argument regarding the Plan Amendment's consistency with ICE Goal G.1. Rather, what is relevant is whether the Plan Amendment is consistent with ICE Goal G.1. ICE Goal G.1 does not mandate a particular outcome as a result of Putnam County improving its coordination with "adjacent local governments and local, regional and state agencies." In addition, there is nothing about the Plan Amendment that would prevent Putnam County from improving coordination between "Putnam County and adjacent local governments and local, regional and state agencies." (Tr. at 1372-73).

Competent substantial evidence establishes that Putnam County coordinated the Plan Amendment with Volusia County through numerous written and personal interactions between Putnam County Staff and Volusia County Staff. (WM Exs. 58-63; Tr. at 405, 407, 472-74, 581-83, 669-70, 685-92, 744, 766-67, 1086-87).

. Volusia County participated in the meetings with representatives of Wal-Mart, Putnam County, and the FDOT Districts 2 and 5 regarding the traffic analysis for the Plan Amendment. (Tr. at 405, 407, 472-74, 581-83, 1086-87). In August 2006, the Putnam County Board of County Commissioners postponed its transmittal hearing on the Plan Amendment for thirty (30) days in order to provide Volusia County with additional time to analyze Wal-Mart's traffic analysis for the Plan Amendment. (Tr. at 692).

Individual Petitioners' Exception No. 20 is DENIED.

Individual Petitioners' Exception No. 21: Finding of Fact 54.

The Individual Petitioners contend that paragraph 54 impliedly adopts an erroneous conclusion of law by finding that ICE Goal G.1 requires only procedural coordination in the form of communications and does not require any objective achievement of coordination of development activities themselves or preservation or quality of life.

This issue is addressed under Exception 20.

Individual Petitioners' Exception No. 21 is DENIED.

Individual Petitioners' Exception No. 22: Finding of Fact 54.

The Individual Petitioners contend that paragraph 54 sets forth a finding of fact that may be influenced by an erroneous conclusion of law and that is unsupported by competent substantial evidence, namely that regarding Putnam County's consistency with ICE Goal G.1, "the evidence fell short of establishing that Putnam County did not coordinate with Volusia County with respect to this amendment." The Individual Petitioners contend that there is no competent substantial evidence that the Plan Amendment's development activities are objectively coordinated with those of the adjacent area of Volusia County.

The uses allowed pursuant to the amendment are coordinated with the existing land uses in Volusia County. Competent substantial evidence exists that the more intense use, i.e., a distribution center, can coexist with the adjacent and surrounding uses and that the more intense use would not cause any unduly negative impacts to the adjacent and surrounding uses. Thus, the Plan Amendment allows uses on the Wal-Mart property that would be compatible with the existing uses on adjacent and surrounding properties, including those located in Volusia County.

(Jt. Ex. 30; WM Exs. 2, 17, 24, 26-28, 52; Tr. at 177, 238-40, 308, 832-36, 864-65, 874-75, 877-80, 884-86, 905-07, 990, 1285-90).

Individual Petitioners' Exception No. 22 is DENIED.

Individual Petitioners' Exception No. 23: Finding of Fact 56.

The Individual Petitioners contend that paragraph 56 misstates their position regarding ICE Objective G.1.2 in much the same way it was misstated in regard to ICE Goal G.1. The Individual Petitioners incorporate by reference in this Exception their discussion of the conclusions of law and findings of fact addressed in Exceptions Number 20 and 21 and apply those arguments to ICE Objective G.1.2.

ICE Objective G.1.2. does not mandate a particular outcome as a result of Putnam County maintaining coordinating relationships with adjacent local governments. Rather, the Objective simply requires Putnam County to maintain coordinating relationships with adjacent local governments. (Tr. at 1306). Moreover, as conceded by the Petitioners' expert planning witness during cross-examination, the Plan Amendment does not interfere with Putnam County's ability to maintain coordinating relationships with adjacent local governments. (Tr. at 313). Accordingly, the Plan Amendment is consistent with ICE Objective G.1.2. (Tr. at 1306).

For the reasons provided in Exceptions 20-22, this exception is without merit.

Individual Petitioners' Exception No. 23 is DENIED.

Individual Petitioners' Exception No. 24: Finding of Fact 57.

The Individual Petitioners contend that paragraph 57 sets forth a finding of fact that may be influenced by an erroneous conclusion of law and that is unsupported by competent

substantial evidence: that the Petitioners did not show that the Plan Amendment creates incompatibility with adjacent land uses in Volusia County. They incorporate their Exception No. 6 by reference. The Individual Petitioners further contend that the finding appears to be influenced, at least in part, by the alleged erroneous legal conclusion, set forth in paragraph 40 of the RO, that the possible future conversion of adjacent agricultural lands is not a compatibility issue, and also by the alleged unsupported finding of fact in paragraph 68 of the RO that the nearest residence is 1,000 feet away, when Petitioner Raulerson testified that her house is 350 feet from the Wal-Mart property.

The ALJ's finding of fact is supported by competent substantial evidence as explained in the responses to Exceptions 6, 20, 21, and 22 and transcript pages 305-6.

Individual Petitioners' Exception No. 24 is DENIED.

Individual Petitioners' Exception No. 27: Finding of Fact 60.

The Individual Petitioners contend that paragraph 60 sets forth a finding of fact that may be influenced by an erroneous conclusion of law regarding the applicable meaning of "available" and that it is unsupported by competent substantial evidence - that "public services and infrastructure are available to the Wal-Mart property." The Individual Petitioners additionally contend that Economic Development Element (EDE) Policy I.2.1.1 does not use the term "available" and instead expressly refers to "existing" public services and infrastructure and, thus, that the finding is fatally flawed by the substitution of a different term. The Individual Petitioners contend that there is no competent substantial evidence to support a finding that the necessary public services and infrastructure already "exist" at the Wal-Mart property. The

Individual Petitioners incorporate by reference the arguments set forth in Exceptions Number 13 through 17.

Some provisions of the Putnam County Comprehensive Plan, such as EDE Policy I.2.1.1, refer to public facilities and infrastructure that is "existing," while others refer to public facilities and infrastructure that is "available." Throughout the proceedings and the testimony presented at the final hearing, the parties and witnesses referred to both terms when discussing the issues regarding public facilities and infrastructure. Although the finding of fact uses the word "available" instead of "existing," the Individual Petitioners have failed to demonstrate why the use of the term "available" would make any difference in this proceeding. Competent substantial evidence supports findings that public facilities and infrastructure are "existing" and "available," regardless of the term used. (Tr. at 696, 986-87, 1050-51, 1296-98, 1374; WM Exs. 52, 53, 54, 55, 56; Jt. Ex. 34).

Moreover, the Individual Petitioners' contention that the Wal-Mart property is not located on a site which utilizes existing utilities or resources is incorrect. It is undisputed that the Wal-Mart property will be served by Crescent City's existing potable water system and Crescent City's existing sewer system. (Tr. at 298, 1297-98). It is reasonable for Putnam County to construe the phrase "existing utilities or resources" as referring to the City's existing potable water system and the City's existing sewer system. (Tr. at 983, 1297-98). The extension of water and sewer lines to the Wal-Mart property from these existing systems is consistent with the City's Chapter 180 Utility Service Area. (WM Exs. 55, 56; Tr. at 696, 986-87).

For these reasons, and for those set forth in the Responses to Exceptions Number 13

through 17, the ALJ's Finding of Fact is supported by competent substantial evidence.

Individual Petitioners' Exception No. 27 is DENIED.

Individual Petitioners' Exception No. 29: Finding of Fact 62.

This Exception raises the same issue as Volusia County's Exception No. 4. For the reasons expressed under that Exception, the last sentence of ¶ 62 is stricken. This has no material effect on the ALJ's recommendation.

Individual Petitioners' Exception 29 is GRANTED.

Individual Petitioners' Exception No. 30 : Finding of Fact 63.

The Individual Petitioners contend that Paragraph 63 of the Recommended Order sets forth a finding of fact unsupported by competent substantial evidence: that U.S. Highway 17 has adequate capacity. Competent substantial evidence supports the finding that roadway capacity exists on U.S. Highway 17. (WM Ex. 42; Jt. Ex. 34; Tr. at 747).

Individual Petitioners' Exception No. 30 is DENIED.

Individual Petitioners' Exception No. 31 : Finding of Fact 66.

The Individual Petitioners contend that paragraph 66 impliedly incorporates an erroneous conclusion of law. The paragraph states:

> Although a large distribution warehouse facility would not contribute positively to the "rural character" of the area, such facilities are often located in rural areas. This is due, in part, to the amount of land needed and the difficulty in meeting LOS standards on roads in urbanized areas.

Contrary to the Individual Petitioners' contention, paragraph 66 is a finding of fact, not a conclusion of law, and is supported by competent substantial evidence. (Tr. at 749-52, 990-91).

Individual Petitioners' Exception No. 31 is DENIED.

Individual Petitioners' Exception No. 32 : Finding of Fact 68.

The Individual Petitioners contend that the following finding of fact in paragraph 68 is unsupported by competent substantial evidence: "[t]he nearest residence is about 1,000 feet from the Wal-Mart property." The Individual Petitioners contend that Petitioner Raulerson testified that her house is 350 feet from the Wal-Mart property.

It is true that Petitioner Raulerson testified that her house is 350 feet from the Wal-Mart property line. However, as set forth in the Response to Exception Number 24, the finding that the nearest residence is about 1,000 feet from the Wal-Mart property is part of the discussion regarding the compatibility of the uses allowed by the Plan Amendment with the properties located along Clifton Road. The Raulerson residence is not located along Clifton Road, but rather, is located south of the Wal-Mart property. Competent substantial evidence supports the finding. (Tr. at 305-06).

Individual Petitioners' Exception No. 32 is DENIED.

Individual Petitioners' Exception No. 34 : Finding of Fact 70.

The Individual Petitioners contend that paragraph 70 sets forth an erroneous conclusion of law: that traffic on adjacent arterial roads is generally not a compatibility issue and impliedly that traffic volumes on U.S. Highway 17 are not properly considered as a compatibility issue in this case. The Individual Petitioners contend, however, that the case law holds that "a comprehensive plan amendment will require that the governmental entity . . . consider the likely impact that the proposed amendment would have on traffic." City of Jacksonville v. Coastal Dev. of North Florida, Inc., 730 So. 2d 792, 794 (Fla. 1st DCA 1999).

The Individual Petitioners have misconstrued the Coastal Development case, as it does not hold that traffic volumes are a compatibility issue. The case contains no reference to a compatibility issue. Rather, the issue in that case was whether a small-scale plan amendment is a legislative or quasi-judicial decision. Although the First District briefly mentioned traffic impacts, it did so to illustrate the types of considerations involved with comprehensive plan amendments to show that such decisions are policy decisions, and, therefore, legislative in nature.

This Exception does not raise any issues of law. Even assuming that this finding is a conclusion of law, which it is not, the Individual Petitioners have not advanced a conclusion of law that is as or more reasonable than that of the ALJ.

Individual Petitioners' Exception No. 34 is DENIED.

Individual Petitioners' Exception No. 35 : Finding of Fact 72.

The Individual Petitioners contend that paragraph 70 sets forth a finding of fact unsupported by competent substantial evidence as it pertains to compatibility: the impact of the uses allowed by the Plan Amendment would not be unduly negative. The Individual Petitioners incorporate by reference the arguments set forth in Exceptions 6, 24, and 34.

The finding that the Amendment's impact would not be unduly negative is contained in paragraph 72, not paragraph 70. The rulings on Exceptions 6, 24 and 34 are incorporated into this ruling by reference. Competent substantial evidence supports the finding that the Plan Amendment's impacts would not be unduly negative.

Individual Petitioners' Exception No. 35 is DENIED.

Individual Petitioners' Exception No. 36: Finding of Fact 75.

The Individual Petitioners contend that the finding in the last sentence of paragraph 75 that "[n]either the 220-acre Wal-Mart property nor the total acreage of industrial lands in Putnam County constitutes a substantial area of the jurisdiction designated for a single use" is unsupported by competent substantial evidence. The Individual Petitioners incorporate by reference the arguments set forth in Exception No. 3. Competent substantial evidence supports the ALJ's finding. (Tr. at 251, 1050, 1312-13).

Individual Petitioners' Exception No. 36 is DENIED.

Individual Petitioners' Exception No. 37: Finding of Fact 76.

The Individual Petitioners contend that the finding in the last sentence of paragraph 76 that the amendment does not designate additional acreage for industrial uses in excess of demonstrated need is unsupported by competent substantial evidence. The Individual Petitioners incorporate by reference the arguments set forth in Exception No. 3. Competent substantial evidence supports the finding in paragraph 6. (Tr. at 221, 243-44, 780-83, 793, 981-82, 1047-50, 1069-70, 1313-16, 1374-75, 1377-78, WM Ex. 53). The ruling on Exception No. 3 is incorporated herein by reference.

Individual Petitioners' Exception No. 37 is DENIED.

Individual Petitioners' Exception No. 38: Finding of Fact 78.

The Individual Petitioners contend that the finding in the last sentence of paragraph 78 that the Skinner PUD creates a transition of land uses that ameliorates the leap-frog character of the Amendment is unsupported by competent substantial evidence. Competent substantial

evidence supports this finding. (Tr. at 188, 749-50, 984, 988-89, 1317-19).

Individual Petitioners' Exception No. 38 is DENIED.

Individual Petitioners' Exception No. 39 : Finding of Fact 79.

The Individual Petitioners contend that paragraph 79 impliedly adopts an erroneous conclusion of law, which is that the amendment cannot be contrary to Rule 9J-5.006(5)(g)3., Florida Administrative Code, and that the ribbon-like extension of utility lines from Crescent City to the Wal-Mart property cannot be contrary to that Rule because water and sewer lines within rights-of-way are not "development," as provided in Section 163.3164(6), Florida Statutes.

The Individual Petitioners contend that such a conclusion misreads Rule 9J-5.006(5)(g)3. because it ignores the isolated location of the Wal-Mart property in relation to other urban uses and that the proposed urban use of the site constitutes "development." The Individual Petitioners contend that, even though the water and sewer lines themselves may not be development, their presence would tend to promote further urban development along that ribbon or strip.

Paragraph 79 is a finding of fact supported by competent substantial evidence. (Tr. at 1319-20).

Individual Petitioners' Exception No. 39 is DENIED.

Individual Petitioners' Exception No. 40: Finding of Fact 82.

The Individual Petitioners contend that paragraph 82 contains an erroneous conclusion of law, which is that the potential future conversion of adjacent agricultural lands is not a proper issue to consider. The Individual Petitioners incorporate by reference the arguments set forth in

their Exception No. 6.

For the reasons set forth in the Response to Exception No. 6, which is incorporated herein by reference, the Individual Petitioners' Exception Number 40 is without merit.

Individual Petitioners' Exception No. 40 is DENIED.

Individual Petitioners' Exception No. 42: Finding of Fact 87.

The Individual Petitioners contend that the finding in paragraph 87 that the Amendment does not constitute a failure to discourage urban sprawl is unsupported by the evidence. The Individual Petitioners incorporate by reference the arguments set forth in Exceptions No. 36 through 41.

For the reasons set forth in the Responses to Exceptions Number 36 through 41, which are incorporated herein by reference, the Individual Petitioners' Exception Number 42 is without merit.

Individual Petitioners' Exception No. 42 is DENIED.

Individual Petitioners' Exception No. 43: Finding of Fact 105.

The Individual Petitioners contend that the finding of fact in paragraph 105 is unsupported by the evidence. The Individual Petitioners contend that, because the ALJ found in Paragraph 84 that "there would not be a clear separation between the industrial use on the Wal-Mart property and the adjacent rural uses" pursuant to urban sprawl indicator number 9, the Plan Amendment must be inconsistent with the State Comprehensive Plan provision in Section 187.201(15)(b)2., Florida Statutes, which contains the policy to "[d]evelop a system of incentives and disincentives which encourages a separation of urban and rural land uses. . . ."

A plan amendment is consistent with the State Comprehensive Plan if it is "compatible with" and "furthers" the State Comprehensive Plan. § 163.3177(10)(a), Fla. Stat. (2008). The term "compatible with" means that the local plan is not in conflict with the State Comprehensive Plan. Id. The term "furthers" means to take action in the direction of realizing goals or policies of the State Comprehensive Plan. Id. In reviewing local comprehensive plans, the State Comprehensive Plan is to be construed as a whole, and no specific goal or policy shall be construed in isolation from the other goals and policies in the plans. Id.

In paragraph 105 of the Recommended Order, the ALJ concluded that the Individual Petitioners did not establish that Putnam County has not developed a system of incentives and disincentives to encourage a separation of urban and rural land uses, and that, based upon the findings regarding compatibility, urban sprawl, and the economic benefit of the proposed distribution warehouse facility, the Plan Amendment is consistent with the State Comprehensive Plan when the State Comprehensive Plan is construed as a whole. Competent substantial evidence supports the ALJ's findings regarding compatibility, urban sprawl, and the economic benefit of the proposed distribution warehouse facility. (Tr. at 1327-29).

Individual Petitioners' Exception No. 43 is DENIED.

Individual Petitioners' Exception No. 44: Conclusion of Law 118.

The Individual Petitioners contend that paragraph 118 sets forth an erroneous conclusion of law. The Individual Petitioners incorporate by reference the arguments set forth in Exceptions No. 8 and 9 pertaining to the phrase "shall encourage."

For the reasons set forth in the responses to Exceptions No. 8 and 9, which are

incorporated herein by reference, the conclusions of law are correct.

Individual Petitioners' Exception No. 44 is DENIED.

Individual Petitioners' Exception No. 45: Conclusion of Law 120.

The Individual Petitioners contend that paragraph 120 sets forth an erroneous conclusion of law pertaining to intergovernmental coordination. It appears that the Individual Petitioners agree with paragraph 120 but claim that the conclusion of law was not applied to the facts.

Paragraph 120 contains a correct conclusion of law that was properly applied to the facts for the reasons set forth in the rulings on Exceptions No. 20 through 23, which are incorporated herein by reference.

Individual Petitioners' Exception No. 45 is DENIED.

Individual Petitioners' Exceptions No. 46-52, 54, 56, 57: Conclusions of Law 121-125, 128, 129, 132, 135, 136.

In Exceptions No 46-52, 54, the Individual Petitioners contend that parts of the above-listed conclusions of law are erroneous "for the reasons set forth in the above Exceptions," meaning Exceptions No. 1-45.

These Exceptions are improper. Pursuant to Section 120.57(1)(k), Florida Statutes, the Department is not required to rule on an exception that does not identify the legal basis for the exception. The Individual Petitioners do not identify the legal basis for their exceptions and, instead, generally refer to the "reasons" made in the preceding 45 exceptions. Although the legal bases for these exceptions are unclear, I have reviewed the conclusions of law and find them

acceptable.

Individual Petitioners' Exceptions No. 46-52, 54, 56 and 57 are DENIED.

Individual Petitioners' Exceptions No. 53: Conclusions of Law 131.

The Individual Petitioners contend that paragraph 131 sets forth a conclusion of law that is erroneous "for the reasons set forth in the above Exceptions." The Individual Petitioners contend that the localized impact of significant additional traffic entering and exiting at a single point raises a compatibility issue in regard to uses and residents in the immediate area regardless of whether there is capacity for the traffic or level of service issues.

The conclusion of law in paragraph 131pertains to the compatibility aspects of traffic and is not erroneous, as is explained in the above rulings.

Individual Petitioners' Exception No. 53 is DENIED.

Individual Petitioners' Exceptions No. 55: Conclusions of Law 133.

The Individual Petitioners contend that paragraph 133 is actually a finding of fact that is unsupported by the evidence because it states that "Petitioners did not raise a State Comprehensive Plan issue in their petitions." The Individual Petitioners contend that their Petition and their First Amended Petition raised inconsistency with the State Comprehensive Plan.

The Individual Petitioners are correct that the ALJ mistakenly stated that the Individual Petitioners did not raise a State Comprehensive Plan issue in their Petition and their Amended Petition. Accordingly, paragraph 133 is stricken from the RO. However, the misstatement did not prejudice the Individual Petitioners because, in paragraphs 134-136 of the RO the ALJ

specifically addressed the State Comprehensive Plan issue that the Individual Petitioners raised in their Petition and their Amended Petition. The issue is also addressed in the response to Exception No. 43.

Individual Petitioners' Exception No. 55 is GRANTED.

ORDER

Accordingly, it is hereby ordered as follows:

1. Petitioner Volusia County's Exceptions 4, 6 and 11 are GRANTED. All other Exceptions filed by Petitioner Volusia County are DENIED.

2. Individual Petitioners' Exceptions 10, 26, 29 and 55 are GRANTED. All other Exceptions filed by the Individual Petitioners are DENIED.

3. The Administrative Law Judge's Recommendation is ACCEPTED.

4. The amendment to the Putnam County Comprehensive Plan adopted by Ordinance 2007-27, as amended by a remedial plan amendment adopted by Ordinance 2008-32, is hereby deemed to be "in compliance."

DONE AND ORDERED in Tallahassee, Florida, this 12th day of July, 2010.

Thomas G. Pelham, Secretary
DEPARTMENT OF COMMUNITY AFFAIRS
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

NOTICE OF RIGHTS

EACH PARTY IS HEREBY ADVISED OF ITS RIGHT TO SEEK JUDICIAL REVIEW OF THIS FINAL 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.

MEDIATION UNDER SECTION 120.573, FLA. STAT., IS NOT AVAILABLE WITH RESPECT TO THE ISSUES RESOLVED BY THIS ORDER.

CERTIFICATE OF 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 of the foregoing have been furnished to the persons listed below in the manner described, on this 12th day of July, 2010.

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Bram D. E. Canter
Administrative Law Judge
Division of Administrative Hearings

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

COUNTY OF VOLUSIA, THOMAS STEVENS, ALMA MAE BUCKHALT, and MARGARET BENNETT RAULERSON, Petitioners, vs. DEPARTMENT OF COMMUNITY AFFAIRS and PUTNAM COUNTY, Respondents, and WAL-MART STORES EAST, LP, Intervenor.	)	Case No. 07-5107GM

RECOMMENDED ORDER

The final hearing in this case was held on March 30 through April 3, 2009, in Palatka, Florida, before Bram D. E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioners Thomas Stevens, Alma Mae Buckhalt, and Margaret Bennett Raulerson:

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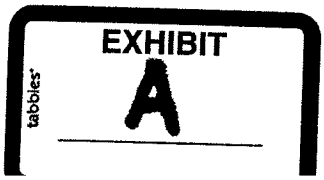

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For Intervenor Wal-Mart Stores East, LP:

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STATEMENT OF THE ISSUE

The issue in this case is whether the amendment to the Putnam County Comprehensive Plan adopted pursuant to Ordinance 2007-27, as modified by Ordinance 2008-32, is "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes (2008).[1/]

PRELIMINARY STATEMENT

In August 2007, Putnam County adopted Ordinance 2007-27,[2/] which amended the text of the Putnam County Comprehensive Plan to create a new distribution warehouse planning area, and amended the Future Land Use Map (FLUM) to change the land use designation of a 220-acre tract of land from Agriculture I to Industrial. The owner of the affected property is Wal-Mart Stores East, LP (Wal-Mart). The affected property is located on the southern border of Putnam County, adjacent to lands in Volusia County.

In October 2007, following its review of the amendment, the Department of Community Affairs (Department) issued a Notice of Intent to find the ordinance "not in compliance." In November 2007, the Department filed a petition for hearing with DOAH.

Wal-Mart petitioned to intervene in support of Putnam County's amendment. Thomas Stevens, Alma Mae Buckhalt, and Margaret Bennett Raulerson (Individual Petitioners), Lake Crescent Citizens for Responsible Growth, Inc., and Volusia County petitioned to intervene in opposition to the amendment. All the petitions to intervene were granted. Subsequently, Lake Crescent Citizens for Responsible Growth, Inc., voluntarily dismissed its petition.

The case was placed in abeyance to allow for settlement negotiations and in September 2008, the Department, Putnam

County, and Wal-Mart entered into a settlement agreement which identified the remedial measures that, if adopted by the County, would satisfy the Department's objections to the amendment. Upon notice of the settlement agreement, the case was stayed.

On September 23, 2008, Putnam County adopted Ordinance 2008-32, which amended the comprehensive plan to implement the remedial measures called for in the settlement agreement. On October 30, 2008, the Department published its Cumulative Notice of Intent to find the amendment adopted by Ordinance 2007-27, as remediated by Ordinance 2008-32, "in compliance." The parties were then realigned.

Upon the motion of Volusia County, it was permitted to amend its petition at the final hearing to add claims that the amendment was not supported by appropriate data and analysis and that there was no demonstrated need for additional industrial lands in Putnam County.

At the final hearing, Joint Exhibits 1 through 38 were admitted into evidence. Individual Petitioners presented the testimony of Alma Mae Buckhalt, Brian Hammons, Margaret Bennett Raulerson, and Thomas Stevens. Individual Petitioners Exhibits 4 and 5 were admitted into evidence.

Volusia County presented the testimony of Mack Cope, James Bennett, Jon Cheney, and Lea Gabbay. Volusia County also presented the testimony of John Weiss through the introduction

of his deposition transcript. Volusia County Exhibits 2 through 4, 7, 8, 10, 11, 13, 13A through 13G, 20, 24, 27, 36, 41, 46, 48, 50, and 52 were admitted into evidence.

The Department presented the testimony of Jonathan Frederick. Department Exhibit 1 was admitted into evidence.

Putnam County participated in the examination of witnesses, but did not call a witness or offer an exhibit into evidence.

Wal-Mart presented the testimony of David Cooper, Laura Dedenbach, James Emerson, Thomas Fann, Christopher Hatton, Patrick Kennedy, Wes Larsen, and Michael McDaniel. Wal-Mart also presented the testimony of Jon Cheney and Gregg Stubbs through the introduction of their deposition transcripts. Wal-Mart Exhibits 2, 9, 17, 24, 26 through 28, 31, 32, 36, 41, 42, 47, 51 through 56, 58 through 63, 66 through 69, 75 through 77, 85 through 88, and 90 were admitted into evidence.

The 10-volume Transcript of the final hearing was prepared and filed with DOAH. The parties filed Proposed Recommended Orders, which were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. The Department is the state land planning agency and is statutorily charged with the duty of reviewing comprehensive plan amendments, and determining whether the amendments are "in

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

2. Putnam County is a political subdivision of the State of Florida and has adopted a comprehensive plan that it amends from time to time pursuant to Section 163.3167(1)(b), Florida Statutes.

3. Wal-Mart is a Delaware limited partnership authorized to do business in the State of Florida. Wal-Mart owns the 220-acre tract of land that is affected by the amendment (the Wal-Mart property). Wal-Mart submitted comments and recommendations to Putnam County concerning the amendment during the time beginning with the transmittal hearing and ending with the adoption of the amendment.

4. Thomas Stevens owns property and resides in Putnam County approximately one mile to the east of the Wal-Mart property. Mr. Stevens submitted comments, recommendations, or objections to Putnam County during the period of time beginning with the transmittal hearing for the amendment and ending with the adoption of the amendment.

5. Alma Mae Buckhalt owns property and resides in Putnam County east of the Wal-Mart property. Ms. Buckhalt submitted comments, recommendations, or objections to Putnam County during the period of time beginning with the transmittal hearing for the amendment and ending with the adoption of the amendment.

6. Margaret Bennett Raulerson owns property in Putnam County. She resides in Volusia County on property that is contiguous to the Wal-Mart property. Ms. Raulerson submitted comments, recommendations, or objections to Putnam County during the period of time beginning with the transmittal hearing for the amendment and ending with the adoption of the amendment.

7. Volusia County is a political subdivision of the State and is adjacent to Putnam County to the south. The Wal-Mart property is contiguous to Volusia County's northern boundary.

The Amendment

8. The amendment adopted by Ordinance 2007-27 changes the future land use designation for the Wal-Mart property from "Agriculture I" to "Industrial," and amends a policy in the Future Land Use Element of the comprehensive plan to create a planning district known as the South Putnam Distribution Warehouse Special Planning Area (SPDW Special Planning Area). The SPDW Special Planning Area applies exclusively to the Wal-Mart property.

9. Ordinance 2007-27 amended Policy A.1.9.3.6 of the Future Land Use Element of the Putnam County Comprehensive Plan, which addresses industrial land uses, to add a new subsection "h":

In order to strengthen the planning process, the industrial property described below shall be subject to the special conditions and development standards set forth in the following provisions:

1. The industrial property described below is hereby designated as the South Putnam Distribution Warehouse Special Planning Area (SPDW Special Planning Area"):

[metes and bounds description of the Wal-Mart property]

2. The SPDW Special Planning Area shall be subject to the following special conditions:

(i) The SPDW Special Planning Area shall be limited to a water treatment plant and ancillary facilities and distribution and warehouse uses, including ancillary uses of truck maintenance garage with truck wash; fuel islands; fire services facilities; and security gatehouses.

(ii) Prior to any development activity, a delineation of the extent of wetlands and a survey to determine the presence or absence of protected species shall be completed. If the environmental assessment identifies the presence of any protected species, proper protection for the species shall be provided in accordance with the requirements of the U.S. Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and the County. If the wetlands delineation identifies the presence of any jurisdictional wetlands, the requirements of the applicable environmental agency and the County shall be complied with.

(iii) Potable water and sanitary sewer utilities to the SPDW Special Planning Area shall be provided by a centralized, community or regional level water and sewage system capable of serving all proposed uses

within the SPDW Special Planning Area at the time of development.

(iv) Access to the SPDW Special Planning Area shall be provided from US 17 by a paved road to be constructed south of the road known as Crawford Road ("Connector Road").

(v) The following transportation improvements shall be completed prior to the issuance of a certificate of occupancy:

a. a northbound to eastbound right-turn lane at the intersection of US 17 and the Connector Road;

b. a southbound to eastbound left-turn lane at the intersection of US 17 and the Connector Road; and

c. an exclusive westbound to southbound left-turn lane and an exclusive westbound to northbound right-turn lane at the intersection of US 17 and the Connector Road.

(vi) If determined to be needed by the Florida Department of Transportation, a traffic signal at the intersection of US 17 and the Connector Road shall be installed.

(vii) Any needed infrastructure improvements shall be funded through state economic development grants or by a private party.

3. The SPDW Special Planning Area shall be subject to the following development standards:

(i) The maximum Floor Area Ratio for all development within the SPDW Special Planning Area shall be 0.125:1.

(ii) The total impervious surface including all paved surfaces shall not exceed 40 percent.

(iii) A minimum of 10 percent of the SPDW Special Planning Area shall remain as undisturbed open space. Buffer areas shall be considered open space for purposes of this development standard.

(iv) The maximum building height of any building shall not exceed 112 feet from the exterior grade at the highest point of the roof structure.

(v) Buildings and loading areas shall be a minimum of 300 feet from the north boundary line, with the exception of a guard house to provide security along the northern internal access way, which shall be 150 feet from the north boundary. Building and loading areas shall be a minimum of 100 feet from the east and west boundary lines of the SPDW Special Planning Area. Parking lots shall be a minimum of 50 feet from the east and west boundary lines of the SPDW Special Planning Area. Buildings, loading areas and parking lots shall be a minimum of 300 feet from the south boundary line of the SPDW Special Planning Area.

(vi) A buffer consisting of trees planted every 50 feet within 8 feet from the boundary line of the SPDW Special Planning Area shall be installed and maintained on the east and west boundary lines of the SPDW Special Planning Area, except within preserved wetland areas. A vegetative buffer shall be installed and maintained on the southern boundary line of the SPDW Special Planning Area, except within the preserved wetland areas. An 8 foot high masonry wall and a vegetative buffer at least 9 feet in width shall be installed and maintained along the north boundary line of the SPDW Special Planning Area adjacent to the Clifton Road right-of-way.

> 4. In the event of a conflict between the special conditions and development standards established in Policy A.1.3.6.h. and any goal, objective, or policy in this comprehensive plan, the more strict provisions shall control.

10. Ordinance 2007-27 also added a new Policy H.2.1.4 to the Capital Improvements Element of the Putnam County Comprehensive Plan:

> Potable water, fire protection water, and sanitary sewer service shall be provided to the South Putnam Distribution Warehouse Special Planning Area, established in Policy A.1.9.3.6 of the Future Land Use Element of the Putnam County Comprehensive Plan, by the City of Crescent City in accordance with the Utility Agreement between the City of Crescent City and Wal-Mart Stores East, LP dated April 11, 2006, and the Addendum to Agreement dated April 12, 2007.

11. The Department issued its initial Notice of Intent to find Ordinance 2007-27 "not in compliance" because the Capital Improvement Element of the comprehensive plan did not address the traffic improvements required by the ordinance. Pursuant the settlement agreement between the Department, Putnam County, and Wal-Mart, the County adopted Ordinance 2008-32, which amended Table HH-2 of the Capital Improvements Element to include the transportation improvements in Putnam County's FY 2011-2012 road projects.

12. Petitioners did not express a specific objection to Ordinance 2008-32, but whether this remedial ordinance is "in compliance" is dependent on whether Ordinance 2007-27 is determined to be "in compliance." Unless otherwise specifically noted, references to "the amendment" in the Findings of Fact and Conclusions of Law address the amendment adopted by Ordinance 2007-27, which created the SPDW Special Planning Area, modified the FLUM, and added a new policy regarding the provision of water and sewer services to the planning area.

The Wal-Mart Property and Surrounding Land Uses

13. The Wal-Mart property is located about 3.5 miles south of Crescent City, a small municipality in Putnam County. The property is located .7 miles east of U.S. 17, which is a two-lane undivided road in this area of Putnam County. The property lies on the south side of Clifton Road, a two-lane local road. The Wal-Mart property is currently in active agricultural use to grow potatoes.

14. The area surrounding the Wal-Mart property is rural in character, dominated by agriculture and low density single-family residences. Most of the residences along Clifton Road are on the north side of the road, east of the Wal-Mart property. The residences are served by private wells and septic tanks.

15. North of the Wal-Mart property, across Clifton Road, is land designated Rural Residential. It is currently being used as a plant nursery. The nursery is part of an approved planned unit development (PUD), referred to as the Skinner PUD, that authorizes 600 acres of nursery, 50,000 square feet of commercial, 270 residences, a 500-unit RV park, and a grass air strip. Only the plant nursery operation and grass airstrip exist today. The other PUD uses have not yet been undertaken. The plant nursery would remain where it is now located, across Clifton Road from the Wal-Mart property.

16. East of the Wal-Mart property is land designated Agriculture I and is also being used to grow potatoes, but includes some wooded and wetland areas.

17. South of the Wal-Mart property, is land designated Conservation and owned by the St. Johns River Water Management District. Also to the south, in Volusia County, is property owned by the Raulersons, with some agricultural uses and a residence.

18. Farther south, in Volusia County, are lands designated for agricultural use. The Haw Creek Preserve State Park and the Haw Creek Conservation Area are also south of the Wal-Mart property.

19. West of the Wal-Mart property are two parcels designated Agriculture I. One parcel is another potato farm.

The other parcel is a semi-wooded area that has been used as a fern farm.

20. Further west about a half-mile from the Wal-Mart property and abutting U.S. 17, is a tract of land designated Rural Center. The Rural Center designation allows agricultural, residential, neighborhood commercial, community commercial, and industrial uses. The industrial uses are restricted to no more than 25 percent of the total land area.

Rural Area of Critical State Concern

21. In 2003, Governor Jeb Bush designated Putnam County a Rural Area of Critical Economic Concern (RACEC). Governor Charlie Christ extended the RACEC designation in 2008 and it remains in effect.

22. The purpose of a RACEC designation is to promote economic development in rural communities that are suffering from unusually depressed economic conditions, including high levels of unemployment, underemployment, and poverty compared to the State as a whole. In addition to the adverse effect these economic conditions have on individuals and families, the conditions adversely affect the ability of a local government to generate adequate revenues for education and other important government services.

23. In 2006, 15.8 percent of the families in Putnam County were below the poverty level, compared to 9.0 percent for the

State as a whole. In southern Putnam County, 41 percent of the population was below the poverty level in 2006.

24. It is estimated that a distribution warehouse facility on the Wal-Mart property would create about 600 primary jobs and more than 100 secondary jobs. The increase in wages paid for these jobs would result in millions of dollars in increased purchases of local goods and services.

25. The Office of Tourism, Trade, and Economic Development of the Governor's Office has certified that this amendment meets the goals and objectives of the RACEC.

26. The Wal-Mart property is also located in a Florida Enterprise Zone. The Florida Enterprise Zone is a designation that provides additional incentives for businesses to locate in economically distressed areas of the State.

Data and Analysis

27. Petitioners assert that the data and analysis associated with the amendment do not demonstrate a need for more industrial lands in Putnam County. In support of this assertion, Petitioners refer to the Evaluation and Appraisal Report (EAR) and the EAR-based amendments adopted by Putnam County in 2006, which made no provision for industrial uses on the Wal-Mart property.

28. However, relevant data and analysis are not confined to the EAR or the documentation associated with the EAR-based

amendments. They also include the data and analysis submitted in conjunction with the amendment application, all other data available at the time of the adoption of the amendment, and all subsequent analyses presented through the date of the final hearing.

29. Volusia County points out that the data and analysis for the EAR-based amendments identifies actions to promote the development of distribution facilities in Putnam County, including identifying sites along four-lane corridors and "targeting highway 207 as a center for distribution and transportation facilities." Volusia County contends that by targeting Highway 207 and other four-lane roads for distribution center sites, the "EAR-amended plan" indicates that distribution centers cannot go elsewhere.

30. There was no evidence presented that Putnam County has abandoned its desire to locate distribution facilities along Highway 207 or other four-lane roads. However a statement of desire or preference is not the same as a prohibition against any alternative. Putnam County responded to a specific proposal by Wal-Mart and determined that the proposal meets the goals, objectives, and policies of the Comprehensive Plan when the plan is considered in its entirety.

31. Industrial uses are treated differently than other land uses with regard to demonstrations of need. Section 163.3177(6)(a), Florida Statutes, provides:

> In addition, for rural communities, the amount of land designated for future planned industrial use shall be based upon surveys and studies that reflect the need for job creation, capital investment, and the necessity to strengthen and diversify the local economies, and shall not be limited solely by the projected population of the rural community.

32. The undisputed evidence shows that there is a critical need for new jobs and capital investment in Putnam County. There is a critical need to strengthen and diversify the local economy.

33. The utility agreement and other steps taken by Wal-Mart establish a reasonable expectation by Putnam County that the Wal-Mart property will be developed in a timeframe that can substantially reduce current unemployment, underemployment, and poverty levels in Putnam County. It is also likely to benefit Volusia County.

34. The data and analyses, especially the data and analyses associated with the designation of the area as a Rural Area of Critical Economic Concern, demonstrate that there is a need for additional industrial land to accommodate the important economic opportunity that has been presented to Putnam County.

Internal Consistency

35. The Petitioners contend that the amendment is inconsistent with several goals, objectives, and policies of the Putnam County Comprehensive Plan. Each of these goals, objectives, and policies is identified and discussed below.[3/]

36. Future Land Use Element (FLUE) Objective A.1.1 states:

> In order to achieve maximum utilization of land by reducing sprawl and thereby providing the opportunity for improved use of resources (both man-made and natural), the County shall continue to coordinate future land uses with the appropriate topography, adjacent land uses, soil conditions and the availability of facilities and services through implementing the following policies:
>
> [policies omitted]

37. The Individual Petitioners contend that the amendment violates Objective A.1.1 because the amendment does not reduce urban sprawl. However, because the objective expressly provides that it is to be achieved through the implementation of Policies A.1.1.1 through A.1.1.5, the amendment cannot be inconsistent with the objective unless it is inconsistent with one of its incorporated policies. Petitioners presented no evidence to show how the plan amendment is inconsistent with Policies A.1.1.1 through A.1.1.5.

38. FLUE Policy A.1.4.2 states:

> The Land Development Code shall provide protection measures for the premature

> removes [sic] conversion of agricultural lands. The county shall analyze land use changes and development activities proposed adjacent to existing agricultural areas to ensure compatibility with agricultural uses. Land uses shall be administered in strict conformance with the Future Land Use Map and the specified density, intensity and land use allocation thresholds.

39. Petitioners contend that the amendment will lead to the conversion of adjacent agricultural lands to non-agricultural uses. However, only the first sentence of Policy A.1.4.2 addresses the conversion of agricultural lands and it is directed to the Land Development Code.[4/] Petitioners did not show that Putnam County failed to include protection measures in its Land Development Code as directed by Policy A.1.4.2.

40. The second sentence of Policy A.1.4.2 addresses compatibility with adjacent agricultural uses. Florida Administrative Code Rule 9J-5.003(23) defines compatibility as follows:

> a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition.

Petitioners did not show that a distribution warehouse facility would interfere with adjacent agricultural uses. The possible future conversion of adjacent agricultural lands, which

Petitioners concede would be at the request of the owners of the agricultural lands, is not a compatibility issue.

41. Petitioners did not claim that the amendment was inconsistent with the last sentence of Policy A.1.4.2, which requires that land uses be consistent with the prescribed densities and intensities of the FLUM designations.

42. FLUE Objective A.1.6 states:

> Putnam County shall discourage urban sprawl by immediately implementing the following policies. Further, regulations in the Land Development Code shall that [sic] implement the following policies:

43. Individual Petitioners contend that the amendment violates Objective A.1.6 because the amendment does not discourage urban sprawl. However, they misconstrue Objective A.1.6 in the same manner as Objective A.1.1. Objective A.1.6 expressly provides that it is to be achieved through implementation of its incorporated policies. The amendment cannot be inconsistent with this objective unless it is inconsistent with one of the policies.

44. FLUE Policy A.1.6.1 states:

> The County shall encourage infill and higher density and intensity development within the Urban Services designated areas of the County, where services and facilities are available to accommodate additional growth.

Petitioners contend that the amendment is inconsistent with Policy A.1.6.1 because the amendment allows an industrial use outside of the urban services area of Putnam County.

45. The parties disagree about the meaning of the words "shall encourage" that are used in Policy A.1.6.1 and in two other comprehensive plan provisions that are at issue in this case. Petitioners believe that "shall encourage" should be given a meaning indistinguishable from "shall always require." Respondents do not explain what "shall encourage" means, but assert that it does not mean that the action to be encouraged must be effectuated with every plan amendment.

46. Petitioners did not show that the amendment is part of a pattern of Putnam County to allow high density and high intensity development outside of the County's urban services area.

47. The Wal-Mart property is within Crescent City's Chapter 180 Utility Service District. The Skinner PUD, just north of the Wal-Mart property, will be served by the City's water and sewer utilities. The City and Wal-Mart have executed a utility agreement for the extension of water and sewer service to the Wal-Mart property. Crescent City's water and sewer utilities have adequate capacity to serve a distribution center on the Wal-Mart property. Therefore, the purpose of Policy A.1.6.1 to encourage the location of high intensity land uses

within areas where urban infrastructure is already available or planned is achieved or furthered.

48. "Facility availability" is not defined in the Putnam County Comprehensive Plan, but it is defined in Florida Administrative Code Rule 9J-5.003(46) as satisfying the concurrency management system. The concurrency management system applies at the time of land development to assure that public infrastructure can accommodate the development. See Fla. Admin. Code R. 9J-5.0055. Using this definition, the fact that water and sewer lines have not yet been extended to the Wal-Mart property from Crescent City's existing water and sewer utilities, does not make these utilities unavailable.

49. FLUE Policy A.1.9.3.A.6.d states in relevant part:

> Industrial Uses shall be located on sites that utilize existing utilities or resources; utilize one or more transportation facilities such as air ports, water ports, collector roads, arterial roads, and railroads; do not require significant non-residential vehicular traffic to pass through established neighborhoods; and are sufficiently separated and/or buffered when necessary from residential and other urban uses to minimize adverse impacts of noise, glare, dust, smoke, odor or fumes.

50. Individual Petitioners contend that the amendment is inconsistent with Policy A.1.9.3.A.6.d because the Wal-Mart property is not located on a site that utilizes existing utilities or resources. For the reasons already stated above,

the amendment would further the policy of using existing utilities.

51. Individual Petitioners contend that the amendment would cause significant non-residential vehicular traffic to pass through an established neighborhood. However, the traffic associated with the distribution warehouse facility would use a new connector road, which would keep traffic out of the Clifton Road neighborhood. The amendment also provides for buffering, which the evidence shows would minimize the adverse impacts of noise, glare, dust, smoke, odor and fumes.

52. Intergovernmental Coordination Element (ICE) Goal G.1 states:

> Improve coordination between Putnam County and adjacent local governments and local, regional and state agencies in order to coordinate all development activities, preserve the quality of life, and maximize use of available resources.

53. Petitioners contend that the amendment violates Goal G.1 because Putnam County failed to coordinate the amendment with Volusia County. This contention is based primarily on the fact that Volusia County objects to the amendment. Coordination is not synonymous with agreement. Goal G.1 cannot be reasonably interpreted as requiring that Putnam County's coordination with other local governments must always result in their agreement with Putnam County's ultimate action.

54. Although Petitioners presented evidence to show that Putnam County's coordination with Volusia County could have been better, there was coordination in the form of meetings, shared information, and responses to input. The evidence fell short of establishing that Putnam County did not coordinate with Volusia County with respect to this amendment, or that Putnam County has not improved its coordination efforts as directed by Goal G.1.

55. ICE Objective G.1.2 states:

> Putnam County shall maintain coordinating relationships with adjacent local governments to ensure the compatibility of adjacent land uses, development proposed in the local comprehensive plan, and the preservation of wildlife and plant habitats.

56. Petitioners contend that the amendment is inconsistent with Objective G.1.2 because the amendment causes incompatibility with adjacent uses in Volusia County. Petitioners point to the word "ensure" in the policy to argue that the coordination required by the objective must have an outcome with which adjacent local governments are in agreement. This interpretation of the objective is rejected for the reason previously stated.

57. Petitioners did not show that coordinating relationships with Volusia County were not maintained. Petitioners did not show that the amendment creates incompatibility with adjacent land uses in Volusia County.

58. Economic Development Element (EDE) Policy I.2.1.1 states:

> The County and its designated economic development representative shall continue to encourage expansion of existing business and industry and/or development of new business and industry in appropriate locations within designated areas, as feasible and applicable, in order to maximize the use of existing public services and infrastructure.

Individual Petitioners contend that the amendment is inconsistent with Policy I.2.1.1 because the amendment allows an industrial use in a rural area on a site that does not utilize existing public services and infrastructure.

59. As explained above with regard to FLUE Policy A.1.6.1, Putnam County's use of the words "shall encourage" does not create an absolute prohibition against any contrary action. Petitioners did not present evidence that Putnam County has established a pattern of allowing industrial uses where there are no existing public services or infrastructure.

60. Moreover, as described above, public services and infrastructure are available to the Wal-Mart property.

61. EDE Policy I.2.1.5 states:

> The County, with its designated economic development representative, shall encourage clustering of major commercial and industrial activities in locations that:
>
> a. are in close proximity to principle [sic] arterials;

b. have access to utilities (water, sewer, electricity, natural gas, telephone) or allow for provision of these utilities;

c. have on-site rail facilities, when appropriate;

d. have access to mass transit routes;

e. minimize impacts to the natural environment and adjacent land uses;

f. have access to barge port facilities, when appropriate.

Individual Petitioners contend that the amendment violates Policy I.2.1.5 because the amendment allows an industrial use that is distant from other industrial uses and the affected roads cannot accommodate the traffic that would be generated.

62. The wording "shall encourage" in Policy I.2.1.5 does not create an absolute prohibition against any new industrial use that is not clustered with existing industrial uses, or that would not meet all the other criteria listed in the policy. Petitioners did not show that Putnam County has a pattern of locating industrial uses in locations that do not meet these criteria.

63. The roads in the area, particularly U.S. 17, were shown to have adequate capacity, as discussed later in this Recommended Order.

Compatibility

64. Petitioners contend that the distribution warehouse facility would be incompatible with surrounding rural uses. Their claim of incompatibility is based primarily on visual, noise, and traffic impacts.

65. As stated above, Florida Administrative Code Rule 9J-5.003(23) defines "compatibility" as avoiding "unduly" negative impacts. By using the adverb "unduly," the definition indicates that the creation of some negative impacts does not necessarily make a use or condition incompatible.

66. Although a large distribution warehouse facility would not contribute positively to the "rural character" of the area, such facilities are often located in rural areas. This is due, in part, to the amount of land needed and the difficulty in meeting LOS standards on roads in urbanized areas.

67. The evidence does not establish that the residents in the area would encounter any noxious odors, unreasonable noise levels, or glaring lights associated with the distribution warehouse facility.

68. The nearest residence is about 1,000 feet from the Wal-Mart property. Most of the residences in the area are located east and north of the Wal-Mart property. They are situated at the far end of long lots to take advantage of their views of Crescent Lake. Most of the lots are wooded. Only a

few of the residents, when at home, would be able to see the distribution warehouse facility or hear any activities associated with the facility. The principal impact to the residents would be seeing the facility when they drive by it on Clifton Road and encountering its traffic when they drive on U.S. 17.

69. Petitioners state that it must be assumed that Clifton Road would also be used for access to a distribution facility on the Wal-Mart property, because the amendment does not expressly state that the new collector road would be the "sole access" to the property. However, the requirement to construct the collector road, to make improvements at U.S. 17 to accommodate vehicle turns onto the collector road, and other evidence in the record, show that the amendment is intended to make the new collector road the sole access to the Wal-Mart property, except perhaps for emergency vehicles.

70. Traffic on adjacent arterial roads is generally not a compatibility issue. Increases in the traffic volume on an arterial road will be due to land uses all along the road, near and far from each other. Traffic impacts are reviewed against adopted LOS standards. Compatibility with rural land uses does not mean that traffic volumes on U.S. 17 must be kept at "rural" levels.

71. Finally, it must be noted that the land use changes that have been authorized for the adjacent Skinner PUD and the Rural Center will change the character of the area when their allowable uses are developed. These mixed uses will cause the area to be less rural in character.

72. Compatibility is an objective criterion for the purpose of a compliance determination. The rural character of the area will be diminished if the existing potato field is replaced with a distribution warehouse facility. However, that impact, taking into account all relevant circumstances, would not be "unduly" negative.

Urban Sprawl

73. Florida Administrative Code Rule 9J-5.006(5)(g) identifies 13 "primary indicators" of urban sprawl to be considered in the review of a comprehensive plan amendment to determine whether the presence of multiple indicators "collectively reflect a failure to discourage urban sprawl." The several primary indicators for which some evidence was presented by Petitioners are addressed below.[5/]

74. Indicator 1 is the designation for development of "substantial areas of the jurisdiction" as low-intensity, low density, or single-use development or uses in excess of demonstrated need." Fla. Admin. Code R. 9J-5.006(5)(g)1.

75. Respondents contend that the 220-acre Wal-Mart property does not constitute a substantial area of Putnam County. However, the wording of the rule does not make the indicator applicable exclusively to an amendment that would, by itself, designate a substantial area of land for low-density uses. The wording allows for a consideration of whether an amendment contributes to the local government's total acreage of similar land uses in excess of demonstrated need. Neither the 220-acre Wal-Mart property nor the total acreage of industrial lands in Putnam County constitutes a substantial area of the jurisdiction designated for a single use.

76. Petitioners contend that the amendment triggers Indicator 1 because the amendment designates additional acreage for industrial uses in excess of demonstrated need. Based on the findings previously made regarding need, especially the designation of Putnam County as a Rural Area of Critical Economic Concern, the amendment does not designate additional acreage for industrial uses in excess of demonstrated need.

77. Indicator 2 is allowing or designating significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands which are available and suitable for development. Fla. Admin. Code R. 9J-5.006(5)(g)2.

78. The Wal-Mart property is located 3.5 miles from Crescent City and even farther from the urban areas of Putnam County. There are substantial areas of undeveloped land between the urbanized areas and the Wal-Mart property. However, the Skinner PUD creates a transition of land uses to the Wal-Mart property, which ameliorates to some degree the "leap frog" character of the re-designation of the Wal-Mart property to Industrial.

79. Indicator 3 is allowing urban development in radial, strip, isolated or ribbon patterns. Fla. Admin. Code R. 9J-5.006(5)(g)3. Petitioners contend that the amendment triggers Indicator 3 because the water and sewer utility lines for the Wal-Mart property would be extended from Crescent City to the property in a ribbon-like manner. The construction of water and sewer lines within rights-of-way, however, is excluded from the definition of "development." See § 163.3164(6), Fla. Stat. Water and sewer lines do not constitute strip development.

80. Indicator 4 is failing to protect natural resources as a result of premature or poorly planned conversion of rural land to other uses. Fla. Admin. Code R. 9J-5.006(5)(g)4. There are no significant natural resources on the Wal-Mart property and there was no showing that natural resources would be unprotected as a result of the amendment. Petitioners did not prove that the amendment constitutes premature or poor planning.

81. Indicator 5 is failing to protect adjacent agricultural areas and activities. Fla. Admin. Code R. 9J-5.006(5)(g)5. Petitioners contend that the amendment triggers Indicator 5 because the amendment will cause agricultural parcels adjacent to the new connector road to be converted to non-agricultural uses.

82. As discussed above, the potential future conversion of adjacent agricultural lands at the request of the agricultural landowners is not a compatibility issue. Petitioners did not show that a distribution warehouse facility would interfere with adjacent agricultural uses.

83. Indicators 6, 7, and 8 are related to the orderly and efficient provision of public services and facilities. Urban sprawl is generally indicated when new public facilities must be created to serve the proposed use. As discussed above, Crescent City's utilities have sufficient capacity to serve the Wal-Mart property.[6/] Wal-Mart would bear the cost of extending the water and sewer lines and constructing the collector road to U.S. 17. The amendment would maximize the use of Crescent City's existing water and sewer utilities.

84. Indicator 9 is failing to provide a clear separation between rural and urban uses. Although the amendment contains requirements for setbacks, buffers, and site design criteria,

there would not be a clear separation between the industrial use on the Wal-Mart property and the adjacent rural uses.

85. Indicator 12 is allowing poor accessibility among linked or related land uses. Petitioners are treating four-lane and larger roads as land uses for the purpose of their argument regarding Indicator 12. It is not clear that roads, which are clearly "links," can also be land uses for the purpose of an analysis under Indicator 12. Petitioners did not identify any linked or related land uses among which the distribution warehouse facility would have poor accessibility.

86. If the interstate highways, I-95, I-75, and I-10, qualify as land uses for the purpose of Indicator 12, access to these land uses is not convenient because they are not close. Putnam County's inconvenient location in relationship to the interstate highways is probably a factor that is contributing to the County's poor economy.

87. Evaluating the amendment using the primary indicators of urban sprawl and the criteria in Florida Administrative Code Rule 9J-5.006(5)(h) through (j), it is found that Putnam County's adoption of the amendment does not constitute a failure to discourage the proliferation of urban sprawl.

Traffic Impacts

88. The data and analyses related to traffic impacts were in great detail, resembling what is required for traffic

concurrency at the time of land development. In addition, Volusia County presented much testimony and evidence on the evolution of the traffic analysis to support a claim that the analysis was arbitrarily changed to make the predicted traffic impacts smaller.

89. The changes in the traffic analysis were due to requests for additional information by Volusia County and the Florida Department of Transportation (FDOT), and by the progressive refinement of the analysis by Wal-Mart's traffic engineers to make its predictions more accurate. The more persuasive evidence established that Wal-Mart's last (April 2007) traffic impact analysis is the most reliable in estimating the likely traffic impacts associated with the development of a distribution warehouse facility on the Wal-Mart property.

90. U.S. 17 is a principal arterial and a part of the Strategic Intermodal System, which is comprised of highways that the FDOT considers important to the State of Florida because they carry the bulk of the State's traffic.[7/]

91. Wal-Mart's traffic engineer, Christopher Hatton of Kimley-Horne and Associates, Inc., used the Institute of Transportation Engineers' Trip Generation Manual (ITE Manual) for his traffic analysis. There are two land use codes in the ITE Manual that are relevant, Land Use Codes 150 and 152. Land Use Code 150 pertains to warehousing for the storage of

manufacturers' goods and Land Use Code 152 pertains to the storage of manufactured goods prior to their distribution to retail outlets. The amendment at issue contemplates a type of land use that is more closely described by Land Use Code 152.

92. FDOT expressed concerns about the use of Land Use Code 152, partly because the code was based on fewer traffic studies than Land Use Code 150, making Land Use Code 150 statistically more reliable. However, Land Use Code 150 is only statistically more reliable to predict the traffic associated with its particular kind of warehousing operation. Nevertheless, Mr. Hatton initially used Land Use Code 150 for his traffic analysis for the amendment and FDOT consistently expressed a preference for Land Use Code 150.

93. The ITE Manual states that local trip generation data can be used to verify the appropriateness of a land use code when the land use code is based upon relatively few studies. Mr. Hatton collected local traffic data for existing distribution facilities like the one proposed for the Wal-Mart property to compare them with trip generations predicted by Land Use Codes 150 and 152.

94. The local trip generation data from existing facilities compared closely with the predictions based on Land Use Code 152, but were substantially different (lower) than the predictions based on Land Use Code 150. The local data

demonstrated that Land Use Code 152 was a better fit for the amendment.

95. Mike McDaniel of the Department of Community Affairs told Mr. Hatton that the use of Land Use Code 152 was acceptable to the Department for the analysis of traffic impacts associated with the amendment. Mr. McDaniel testified at the hearing that Land Use Code 152 seemed to him to be more appropriate than Land Use Code 150. Volusia County claims that Mr. McDaniel acted improperly, citing Section 163.3177(10)(e), Florida Statutes, which states in relevant part:

> The Legislature intends that the department may evaluate the application of a methodology utilized in data collection or whether a particular methodology is professionally accepted. However, the department shall not evaluate whether one accepted methodology is better than another.

96. No finding made in this Recommended Order regarding the traffic impacts associated with the amendment is based on Mr. McDaniel's opinion, because he is not a traffic engineer.

97. FDOT's preference for Land Use Code 150 does not require a finding that Mr. Hatton's methodology is not professionally acceptable. Mr. Hatton's methodology, including his use of Land Use Code 152, is professionally acceptable.

98. Volusia County contends that the amendment will cause some segments of U.S. 17 in Volusia County to fall below adopted

LOS standards. Mr. Hatton came to a different conclusion in his April 2007 traffic study:

> the roadway segments of U.S. 17 within the study [area] are expected to operate within an acceptable level of service for existing and future horizon scenarios with the expected buildout of the South Putnam Distribution Warehouse Special Planning Area (of up to 1,200,000 square feet of warehouse distribution center land uses).

99. Mr. Hatton analysis showed that the projected short-term (2011) and long-term (2015 and 2016) traffic volumes within the two segments of U.S. 17 within the study area (County Road 308B to the Volusia County line and Putnam County line to State Road 40) would not cause the segments to operate below the LOS Standard.

100. Volusia County contends that Mr. Hatton did not disclose in the April 2007 analysis that the study area had been redefined to exclude the segment of U.S. 17 in Volusia County that was predicted to fail in the September 2006 traffic analysis. However, the study area was defined in consultation with Putnam County staff and with FDOT based on roadway segments on which projected traffic from the distribution warehouse facility would constitute five percent or greater of the LOS capacity of the segment.

101. Volusia County notes that the amendment calls for certain improvements to be made on U.S. 17 to accommodate

ingress to and egress from the new collector road, but DOT has not concurred in a "proportionate fair share analysis" for mitigating the traffic impacts associated with a distribution warehouse facility, and FDOT's concurrence is required. See § 163.3180(16)(e), Fla. Stat. However, a proportionate share analysis, if necessary, does not have to be conducted until the Wal-Mart property is developed, as a part of concurrency management.

102. The amendment would not put traffic on U.S. 17. Traffic is not generated by future land use designations, but by land development. Land development approvals require concurrency management, including a demonstration that road improvements will be made as necessary to maintain adopted LOS standards on affected roads.

103. The amendment does not indicate that it is intended to establish a proportionate fair share analysis, nor does it state that the developer will not be required to make, or to share in the cost of making, other road improvements as required by a future concurrency determination. Petitioners did not prove that Putnam County made a decision that requires FDOT's concurrence pursuant to Section 163.3180(16)(e), Florida Statutes.

State Comprehensive Plan

104. In their Proposed Recommended Order, Individual Petitioners contend that the amendment is inconsistent with Sections 187.201(15)(b)2., Florida Statutes, which sets forth the following policy of the State Comprehensive Plan, under the heading "Land Use:"

> Develop a system of incentives and disincentives which encourages a separation of urban and rural land uses while protecting water supplies, resource development, and fish and wildlife habitats.

105. Petitioners did not prove that Putnam County has not developed a system of incentives and disincentives. Petitioners' claim is that amendment creates an urban use that is not separated from rural uses. Based on the findings previously made regarding compatibility, urban sprawl, and the economic benefits of the proposed distribution warehouse facility, the amendment is consistent with the State Comprehensive Plan when the State Comprehensive Plan is construed as a whole.

CONCLUSIONS OF LAW

Jurisdiction

106. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Sections 120.569, 120.57(1), and 163.3184(16), Florida Statutes.

Standing

107. In order to have standing to challenge a plan amendment, a challenger must be an "affected person," which is defined in Section 163.3184(1)(a), Florida Statutes, as a person who resides, owns property, or owns or operates a business within the local government whose comprehensive plan amendment is challenged, and who submitted comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing and ending with amendment's adoption.

108. Petitioners Buckhalt, Raulerson, and Stevens and Intervenor Wal-Mart have standing as affected persons.

109. The standing requirement for an adjoining local government is also established in Section 163.3184(1)(a), Florida Statutes. Affected persons include:

> 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.

110. Respondents contend that because Volusia County failed to prove that any LOS standard for a road in Volusia County would be violated, it failed to show there would be an increased need for publicly funded infrastructure, and is without standing. However, Volusia County presented competent

evidence to show LOS standards would be violated and, although its evidence was determined to be less persuasive than the evidence presented by Respondents, Volusia County has standing to present its evidence and to argue that it is the better evidence.

Ultimate Issue

111. Pursuant to Chapter 163.3184, Florida Statutes, the Department is to determine whether comprehensive plan amendments are "in compliance." The term "in compliance" is defined in Section 163.3184(1)(b), Florida Statutes:

> In compliance" means consistent with the requirements of ss. 163.3177, when a local government adopts an educational facilities element, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable.

112. "In compliance" does not involve a determination of whether an amendment is the most clear, most effective, or best approach for accomplishing the local government's purpose.

Burden and Standard of Proof

113. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in the proceeding. See Young v. Department of Community

Affairs, 625 So. 2d 831 (Fla. 1993). As the parties maintaining this action to assert that the amendment is not in compliance, Petitioners have the burden of proof.

114. The standard of proof to establish a finding of fact is preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

115. Section 163.3184(9)(a), Florida Statutes, provides that, if the Department determines that a plan amendment is in compliance, the plan amendment "shall be determined to be in compliance if the local government's determination of compliance is fairly debatable."

116. The term "fairly debatable" is not defined in Chapter 163, Part II, Florida Statutes, but the Florida Supreme Court in Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997), held that, "The fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety." Id. at 1295. The Court stated further that, "an ordinance may be said to be fairly debatable when for any reason it is open to dispute or controversy on grounds that make sense or point to a logical deduction that in no way involves its constitutional validity." Id. It has also been stated that the fairly debatable standard requires approval of a planning action if reasonable persons

could differ as to its propriety." City of Miami Beach v. Lachman, 71 So. 2d 148, 152 (Fla. 1953).

Section 163.3177, Florida Statutes

117. Subsection 163.3177(2), Florida Statutes, requires the elements of a comprehensive plan to be internally consistent. Plan amendments must preserve the internal consistency of the plan. See § 163.3187(2), Fla. Stat.

118. Petitioners argue that the provisions of the Putnam County Comprehensive Plan that use the term "shall encourage," must be interpreted as mandates because the word "shall" means mandatory. However, it is the word "encourage" that is the obstacle for Petitioners' interpretation of the comprehensive plan. The word "encourage" in a comprehensive plan goal, objective, or policy is difficult to apply in a compliance proceeding, but the word plainly indicates an intent to stop short of establishing a requirement from which there can be no deviation." See, e.g., Webster's New Collegiate Dictionary ("encourage" means to inspire or help). Therefore, a plan provision such as FLUE Policy A.1.6.1, which states that Putnam County shall encourage infill, is not an absolute prohibition against any development that is not infill.

119. A future land use designation does not authorize land development that would create impacts to roads and other public infrastructure that do not meet concurrency requirements.

Satisfaction of concurrency requirements is a matter that is subject to later determination and possible challenge at the time that land development approvals are sought.

120. A comprehensive plan goal, objective, or policy that requires coordination between local governments cannot be reasonably interpreted as requiring agreement because that would give local governments a veto power over their neighbors' comprehensive planning efforts. Under such an interpretation, it would not matter whether a proposed land use is compatible with surrounding land uses if the agreement of the adjacent local government could not be obtained. Even if the proposed land use is compatible from an objective point of view, the re-designation would fail because it was not "coordinated."

121. Putnam County's determination that the amendment is internally consistent is fairly debatable.

122. Sections 163.3177(4)(a) and 163.3177(6)(h), Florida Statutes, require coordinated comprehensive planning by adjacent local governments. Petitioners failed to prove that the amendment is inconsistent with these statutes.

123. Section 163.3177(10)(e), Florida Statutes, requires plan amendments to be based upon "appropriate" data. Petitioners failed to prove that the amendment is not supported by appropriate data.

124. Petitioners failed to prove that the amendment is inconsistent with Section 163.3177, Florida Statutes.

Florida Administrative Code Chapter 9J-5

125. Florida Administrative Code Rule 9J-5.005(2)(a) requires all amendments to be based on relevant and appropriate data and analysis. Petitioners failed to prove that the amendment is not based on appropriate data and analysis.

126. Florida Administrative Code Rule 9J-5.006(5)(g) describes 13 primary indicators of urban sprawl. Florida Administrative Code Rule 9J-5.006(5)(d) states that "The presence and potential effects of multiple indicators shall be considered to determine whether they collectively reflect a failure to discourage urban sprawl."

127. The urban sprawl analysis must also apply the criteria in Florida Administrative Code Rule 9J-5.006(5)(h) through (j), which require the consideration of surrounding land uses and circumstances.

128. Petitioners failed to prove that the amendment constitutes a failure by Putnam County to discourage the proliferation of urban sprawl.

129. Petitioners claim that the amendment is inconsistent with Florida Administrative Code Rule 9J-5.006(3)(b)3 and Rule 9J5.006(3)(c)2., which require that all comprehensive plans include objectives and policies that encourage compatibility

land uses. However, Petitioners did not show that the Putnam County Comprehensive Plan does not include such objectives and policies. Furthermore, Petitioners failed to prove that the amendment is incompatible with adjacent land uses.

130. Using the definition of "compatible" in Florida Administrative Code Rule 9J-5.003(23), Volusia County argues that an issue to be determined in this case is whether U.S. 17 is "unduly negatively impacted" by the amendment. A compliance determination for a future land use amendment does not require a finding that the future land use is "compatible" with a road, using the term as it is defined in Florida Administrative Code Rule 9J-5.003(23).

131. Traffic impacts on a particular road are reviewed against the relevant provisions of the comprehensive plan and the LOS standard that has been adopted for the road. In this case, the proposed industrial use is located where it has access to an arterial road, as required by the Putnam County Comprehensive Plan, and the evidence shows that the arterial road has adequate capacity. Therefore, compatibility, in its general sense, was demonstrated.

132. Petitioners failed to prove that the plan amendment is inconsistent with Florida Administrative Code Chapter 9J-5.

State Comprehensive Plan

133. Petitioners did not raise a State Comprehensive Plan issue in their petitions, nor did they seek leave to amend their petitions to add the issue. Nevertheless, because consistency with the State Comprehensive Plan was identified as an issue in the parties' Pre-hearing Stipulation, it is addressed here.

134. The State Comprehensive Plan establishes general planning goals and policies. It would be a rare situation for a plan amendment to be inconsistent with the State Comprehensive Plan if it is consistent with the local comprehensive plan and the criteria found in Florida Administrative Code Chapter 9J-5.

135. Petitioners failed to prove that the amendment is inconsistent with Section 187.201(15)(b)2. of the State Comprehensive Plan.

136. Petitioners failed to prove that the amendment is inconsistent with the State Comprehensive Plan, when the State Comprehensive Plan is construed as a whole. See § 187.101(3), Fla. Stat.

Conclusion

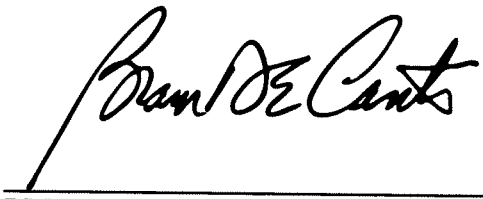
137. Putnam County's determination that the amendment is in compliance is fairly debatable.

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 plan amendment adopted by Putnam County pursuant to Ordinance 2007-27, as modified by Ordinance 2008-32, is "in compliance."

DONE AND ENTERED this 22nd day of September, 2009, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of September, 2009.

ENDNOTES

1/ All references to the Florida Statutes are to the 2008 codification.

2/ The parties incorrectly identified the ordinance in their Proposed Recommended Orders as Ordinance 2007-28.

3/ The internal consistency issues addressed in this Recommended Order are confined to the issues identified in the parties' Pre-Hearing Stipulation and addressed to Petitioners' Proposed Recommended Orders.

4/ Awkward composition or ambiguity in a comprehensive plan cannot be "fixed" in a proceeding to determine whether an amendment to the plan is "in compliance."

5/ Petitioners did not plead or itemize in the Pre-Hearing Stipulation the particular indicators of sprawl which they intend to show were triggered by the amendment.

6/ The utility agreement with Crescent City calls for water and sewer equipment to be installed at the Wal-Mart property, but such on-site equipment is not, like central water and sewer treatment utilities, facilities that must already exist for the purposes of satisfying the comprehensive plan goals, objectives and policies that refer to existing utilities or facilities.

7/ U.S. 17 is actually identified by FDOT as part of the "Emerging" Strategic Intermodal System, but the difference is not material for purposes of this compliance determination.

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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.