

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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.)
_____)

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

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For Respondent Putnam County:

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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.



BRAM D. E. CANTER
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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.