

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: PETITION TO MERGE SPLIT )  
PINE COMMUNITY DEVELOPMENT ) Case No. 09-2345  
DISTRICT AND THE TOLOMATO )  
COMMUNITY DEVELOPMENT DISTRICT )  
\_\_\_\_\_ )

REPORT OF FINDINGS AND CONCLUSIONS

Pursuant to Section 190.005(1)(d), Florida Statutes, the initial two sessions of a local public hearing were conducted on July 7, 2009, before David M. Maloney, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), at the Ponte Vedra Beach Library Community Room, 101 Library Boulevard, Ponte Vedra, Florida 32082 and the Baymeadows Residence Inn Marriott, 8365 Dix Ellis Trails, Jacksonville, Florida 32256. Two additional sessions were held on July 27, 2009, at the same locations.

APPEARANCES

For Petitioners Tolomato Community Development District and Split Pine Community Development District:

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ORAL COMMENT

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## STATEMENT OF THE ISSUES

Whether the Florida Land and Water Adjudicatory Commission (the "Commission") should grant the Petition of the Tolomato Community Development District ("Tolomato") and the Split Pine Community Development District ("Split Pine") (collectively, the "Districts" or "Petitioners") to merge the two community development districts pursuant to Section 190.046(3), Florida Statutes?

Concomitantly, whether the Commission should adopt a rule pursuant to Section 190.005, Florida Statutes, that establishes a single community development district with boundaries that incorporate the areas of Tolomato and Split Pine merged into the single district to be known as the Tolomato Community Development District (the "Merged District")?

## PRELIMINARY STATEMENT

Filed with the Commission on March 23, 2009, the District's Petition is a comprehensive and extensive document composed of nine pages of text and twelve attached exhibits for a total 408 pages. The Petition seeks to merge the Tolomato Community Development District and Split Pine Community Development District into one community development district. Once merged, the Merged District will consist of approximately 13,370 acres

located in unincorporated St. Johns County and the City of Jacksonville.

The Commission referred the Petition to the Division of Administrative Hearings ("DOAH") on April 28, 2009. The referral letter asked DOAH to conduct a local public hearing pursuant to Section 190.005(1)(d), Florida Statutes. Two sessions of the local public hearing were held in unincorporated St. Johns County and the City of Jacksonville on July 7, 2009. The St. Johns County session was held at 10:00 a.m. at the Ponte Vedra Beach Library Community Room, 101 Library Boulevard, Ponte Vedra Beach, Florida 32082. The City of Jacksonville session was held at 3:00 p.m. at the Baymeadows Residence Inn Marriott, 8365 Dix Ellis Trail, Jacksonville, Florida 32256. Two additional sessions followed on July 27, 2009, and were held at the above mentioned locations at 11:00 a.m. in St. Johns County and 2:00 p.m. in the City of Jacksonville.

The hearing sessions were conducted for the purpose of taking testimony and public comment and receiving exhibits. This report is of the public hearing and the hearing record. It is submitted to the Commission for consideration in its determination whether to adopt a rule to effectuate a merger of the Districts' boundaries and in so doing establish a single

community development district that merges what had been two separate districts.

At the local public hearing, Petitioners presented the testimony of six witnesses: Richard Ray, Gregory Barbour, Douglas Miller, Donald Smith, Joe MacLaren, and James Perry. The Petitioner also introduced seven exhibits, designated as Exhibits A through G. At both St. Johns County sessions, one member of the public, Ms. Ellen Whitmer, attended and presented testimony.

The owners of one hundred percent of the land within the existing Districts have consented to the merger. Neither St. Johns County nor the City of Jacksonville elected to hold an optional local hearing on the Petition and neither entity has objected to the merger.

#### SUMMARY OF RECORD

##### Submission of the Petition to Local Governments

1. The Petition, see Exhibit A, Volumes 1 and 2, was submitted to St. Johns County. It was submitted "along with a filing fee check in the amount of \$15,759 . . . filed with the St. Johns County Planning Department on March 11, 2009."

(Exhibit D, WT-RR: P. 5, L. 43-44.)

2. The Petition was submitted to the City of Jacksonville along with a check in the amount of \$15,000 on March 11, 2009.

Filing of the Petition with the Commission and its Exhibits

3. The Petition was filed with the Commission on March 23, 2009.

4. Petition Exhibit 1 contains the Tolomato and Split Pine resolutions that authorize the merger of the Districts and approve a merger agreement.

5. Petition Exhibit 2 is a letter dated February 23, 2009. Directed to Barbara Leighty, a staff member to the Commission; it is from Counsel for the Districts and covers copies of the Limited Offering Memorandums of Split Pine and Tolomato.

6. Petition Exhibit 3 is a "General Location Map" that sets forth the general location of the existing Districts. Split Pine currently covers approximately 2,015 acres of land located entirely within Duval County, Florida, and the City of Jacksonville. Tolomato currently covers approximately 11,355 acres of land located entirely within St. Johns County, Florida.

7. Petition Exhibit 4 consists of two rules, Florida Administrative Code Rules 42TT-1.002 and 42SS-1.002. The two rules set out the boundaries of the Districts by metes and bounds descriptions.

8. Petition Exhibit 5 contains a "Metes and Bounds Description for [the] Merged District."

9. Petition Exhibit 6 provides legal descriptions of parcels located inside the boundaries of the Districts that are

excluded from the Districts. It also includes the property owners of the excluded parcels and their last known addresses. The excluded parcels will continue to be excluded from the Merged District.

10. Petition Exhibit 7 is written consent to merge the boundaries of Split Pine and Tolomato from the owners of one hundred percent of the land within the existing Districts. After execution, the documents reflecting consent were recorded so as to "run with the land." (Exhibit D, WT-RR, at 4.)

11. Petition Exhibit 8 is a map that shows the existing and future land use designations of the Merged District. It depicts the existing and future general distribution, location and extent of the public and private land uses proposed within the Merged District.

12. Petition Exhibit 9 is described in Petitioners' Proposed Report of Findings and Conclusions as "a map of the proposed Merged District showing the current major trunk water mains, sewer interceptors and outfalls." See, Petitioners' Proposed Report of Findings and Conclusions, at 5 of 31. Petition Exhibit 9 is a composite exhibit of four maps: the Master Wastewater Plan (Exhibit 9A), the Master Reclaimed Water Plan (Exhibit 9B), the Master Water Plan (Exhibit 9C) and the Master Stormwater Plan of the Merged District (Exhibit 9D).

According to their legends, they depict any existing forcemains, existing regional pump stations, proposed forcemains, proposed regional pump stations, master pump stations, proposed reclaimed watermains, existing reclaimed watermains, reclaimed watermains "low-pressure from WWTP," reclaimed water storage and re-pump distribution stations, existing watermains, proposed watermains, drainage divides, sub-basin divides and flow arrows for the lands to be included in the Merged District.

13. Petition Exhibit 10 is a summary of joint master infrastructure costs for the Merged District. A joint transportation sub-total of \$411,279,000 plus a joint recreation sub-total of \$27,000,000 results in a joint master infrastructure total of \$428,279,000. This total added to a Tolomato recreation sub-total of \$18,000,000 and a Split Pine recreation sub-total of \$7,000,000 yields a master infrastructure total for both districts of \$463,279,000.

14. Petition Exhibit 11 is a summary of neighborhood infrastructure costs for the two Districts. It shows a total of estimated costs to be \$356,040,000.

15. Petition Exhibit 12 is a Statement of Estimated Regulatory Costs ("SERC"). Governed by Section 120.542, Florida Statutes, the SERC was prepared by Fishkind & Associates for the Boards of Supervisors of the two Districts.

## The Petition's Allegations

16. The Petition alleges that merger of the boundaries of the Districts should be granted for the following reasons:

a. As with the existing districts, the surviving or new district, and all land uses and services planned within the surviving or new district, are not inconsistent with applicable elements or portions of the adopted State Comprehensive Plan or the effective local Comprehensive Plans.

b. As with the existing districts, the area of land within the surviving or new district will continue to be of sufficient size, sufficiently compact, and sufficiently contiguous to be developable as one functionally related community.

c. As with the existing districts, the surviving or new district will continue to prevent the general body of taxpayers in St. Johns County and the City of Jacksonville/Duval County from bearing the burden for installation of the infrastructure and the maintenance of the above-described facilities within the surviving or new district. The surviving or new district will continue to be the best alternative for delivering community development services and facilities within the applicable district boundaries without imposing an additional burden on the general population of the local general-purpose government. The surviving or new district will continue to allow for a more efficient use of resources as well as providing the opportunity for new growth to pay for itself.

d. The community development services and facilities of the surviving or new district will not be incompatible with the capacity and use of existing local and regional community development services and



facilities. In addition, the surviving or new district will serve as a perpetual entity capable of making reasonable provisions for the operation and maintenance of the services and facilities for the district lands.

e. As with the existing districts, the area of land that will lie in the boundaries of the surviving or new district is amenable to separate special district government.

(Petition, at 7-8.)

The First Session of the Local Public Hearing  
and Bond Counsel's Opinion Letter

17. The local public hearing on the Petition was noticed and held on July 7, 2009, at 10:00 a.m., at the Ponte Vedra Beach Library Community Room, 101 Library Boulevard, Ponte Vedra, Florida 32082. Pursuant to Section 190.005, Florida Statutes, notice of the public hearing was advertised over a period of four consecutive weeks, on June 9, June 16, June 23 and June 30, 2009, in The St. Augustine Record, a newspaper of general paid circulation in St. Johns County, and of general interest and readership in the community, not one of limited subject matter, pursuant to Chapter 50, Florida Statutes. The published notice gave the time and place for the hearings, a description of the area to be included within the Merged District, including a map showing the lands of the Merged District and other relevant information. The advertisement was published as a display advertisement, not in the portion of the

newspaper where legal notices and classified advertisements appear.

18. Petitioners presented the following witnesses, who were all present at the hearing: Richard T. Ray, Chairman of the Tolomato Community Development District; Gregory J. Barbour, Chairman of the Split Pine Community Development District; James A. Perry, District Manager for the Districts, with Governmental Management Services, LLC; Douglas C. Miller, CEO of England-Thims and Miller, Inc., ("England-Thims") "the district engineer for both the Split Pine CDD and Tolomato Districts," TR-I, at 28; Donald R. Smith, Planner for the Districts, with England-Thims; and Joseph MacLaren, Financial Advisor for the Districts, with Fishkind and Associates, Inc.

19. The Petition, including its exhibits, and consisting of two volumes in separate binders, was marked as Hearing Exhibit A and admitted into the record. The Petition and its exhibits except Exhibit 7 comprise Exhibit A, Volume 1. Petition Exhibit 7 comprises Exhibit A, Volume 2.

20. Petitioners offered a certified copy of Chapter 2009-142, effective July 1, 2009, which in relevant part amended Section 190.046, Florida Statutes, relating to merger. It was admitted as Hearing Exhibit B.

21. Petitioners also offered the opinion of bond counsel, Greenberg Traurig, in a letter to the Florida Land and Water Adjudicatory Commission dated January 30, 2009. It was admitted as Hearing Exhibit C.

The Testimony of Petitioner's Witnesses

22. The first witness for the Petitioners was Richard Ray. Mr. Ray testified that he has served as the Chairman of the Tolomato Community Development District since the inception of Tolomato.

23. Mr. Ray's testimony addresses the steps that were taken by the Board of Supervisors of Tolomato to file the Petition. Tolomato filed several copies of the Petition, along with a filing fee of \$15,759, with the St. Johns County Planning Department on March 11, 2009. The CDD Processing Group of St. Johns County reviewed the Petition and counsel for the Districts answered their questions. The Processing Group recommended there was no need for the County to hold its own public hearing. The County Commission concurred with the staff recommendation.

24. Mr. Ray testified that the Petitioners arranged newspaper notice of the hearing to be published in the St. Augustine Record for four consecutive weeks immediately preceding the local public hearing.

25. Mr. Ray identified the Petition and its exhibits. He testified:

[S]ince the filing of the Petition, the Districts approved a correction to the legal description of the proposed Merged District found in Petition Exhibit 5. The Board of Supervisors of Tolomato has adopted Resolution No. 2009-04, supplementing Tolomato Resolution 2009-01, approving the use of a substituted legal description, attached to my [pre-filed] testimony as **Exhibit RR-1.**

(Exhibit D, WT-RR at 1.)

26. Mr. Ray stated the Districts currently serve one large community, commonly called Nocatee, which is located in both St. Johns County and the City of Jacksonville/Duval County. He identified the overall master land plan for the Nocatee Development of Regional Impact. Mr. Ray testified that roughly 85% of the land within the proposed Merged District is in St. Johns County and approximately 15% of the land is in the City of Jacksonville. The overall master land plan was admitted as Hearing Exhibit E. Mr. Ray noted that there are major transportation and recreation improvements under construction by the Districts to serve all of residents of Nocatee, irrespective of the County in which they live or the District by which they are governed.

27. Mr. Ray further identified various parcels within Nocatee that are split by the County boundaries and therefore are today served by two different Districts.

28. Mr. Ray testified that the Petitioners are seeking to merge the Districts because it would be more cost effective and efficient to have one district. At the time of the establishment of the Districts, the statutory definition of a community development district included the clause, "the boundaries of which are contained wholly within a single county." See § 190.003(6), Fla. Stat. (2006). The law changed in 2007 to eliminate the clause that restricted community development districts to ones wholly within a single county. See § 190.003(6), Fla. Stat. (2008).

29. Mr. Ray testified that Tolomato Resolution No. 2009-06, states the preference of Tolomato to remain as the surviving entity (the "Surviving District"). In his view, having Tolomato survive will be less disruptive than would be establishing a new district. It will also allow the transition to a resident elected board to proceed as originally contemplated.

30. Finally, Mr. Ray testified that the five persons designated in the Petition to serve as the Board of Supervisors of the Merged District are Richard O'Steen, Michael O'Steen,

Stephen Grossman, Austin Barbour, and himself, all five of whom make up the current board of Tolomato.

31. The second witness for the Petitioners was Gregory Barbour, Chairman of Split Pine.

32. Mr. Barbour testified that there was a change to Petition Exhibit 5. After the Petition was filed, the Split Pine Board adopted Resolution No. 2009-05. It supplements Split Pine Resolution No. 2009-01 by approving the use of a substituted legal description as the legal description of the proposed Merged District. See Exhibit GB-1 to the Pre-filed Testimony of Gregory Barbour, Hearing Composite Exhibit D.

33. Mr. Barbour identified Petition Exhibit 1A as a true and correct copy of Split Pine's Resolution 2009-01. He also testified that Petition Exhibit 7 "includes consent by all the landowners within Split Pine at the time of the execution of those documents and further evidences their consent to the extension of landowner voting consistent with the existing schedule at Tolomato." (Exhibit D, WT-GB: P. 2, L. 20-25.)

34. Mr. Barbour testified that the Petitioners filed the Petition, along with a filing fee check in the amount of \$15,000 with the City of Jacksonville's Office of the General Counsel and the Office of Planning and Development on March 11, 2009.

The City opted not to hold a hearing because a local public hearing would be held in Duval County.

35. Mr. Barbour testified that the Petitioners arranged newspaper notice of the hearing to be published in the Florida Times Union for four consecutive weeks immediately preceding the hearing. See Exhibit GB-3 to the Pre-filed Testimony of Gregory Barbour, Hearing Composite Exhibit D.

36. Just as Mr. Ray had done on behalf of Tolomato, Mr. Barbour testified that the Petitioners are seeking to merge the Districts because of the 2007 change in the definition of community development district. The Districts have worked cooperatively to operate as efficiently as possible, using inter-local agreements to avoid duplication. Now that Florida law has changed, it makes economic and efficiency sense, in his view, to merge the Districts.

37. Mr. Barbour testified that he expects that the overall costs to those living in Nocatee will be less with the merger than they otherwise would be without the merger. This is because the overhead costs of two boards will be reduced, as well as legal costs associated with preparing and functioning under inter-local agreements.

38. Mr. Barbour testified that Split Pine adopted Resolution No. 2009-07, which states the preference of Split

Pine is for Tolomato to remain as the surviving entity. He further testified that Split Pine board members recognize that their individual tenure as supervisors will end if Tolomato is the surviving entity. See Exhibit GB-2 to the Pre-filed Testimony of Gregory Barbour, Hearing Composite Exhibit D. Mr. Barbour noted that because there are many residents within Tolomato, having Tolomato survive will be less confusing to those residents than a new district. Mr. Barbour testified that there are presently no residents living in Split Pine.

39. Finally, Mr. Barbour testified that the five persons designated to serve as the Board of Supervisors for the proposed Merged District are Richard Ray, Richard O'Steen, Michael O'Steen, Stephen Grossman, and Austin Barbour. The Split Pine Board members will no longer hold office.

40. The third witness for the Petitioners was Douglas Miller, the Chief Executive Officer of England-Thims. England-Thims serves as the District Engineer of the Tolomato and Split Pine Community Development Districts. Mr. Miller is qualified as an expert in civil engineering and the provision of public infrastructure.

41. Mr. Miller's testimony at the local public hearing primarily addresses the status of infrastructure construction by the Districts and the associated costs.



42. Mr. Miller testified in the pre-filed testimony found in Exhibit D that Petition Exhibit 5 has been revised. The revised metes and bounds descriptions were adopted by both Districts and sent to the Commission. He further testified that the lands described in the revised metes and bounds descriptions had some minor formatting changes and a correction was made to eliminate a scrivener's error that was found in the original legal description for Tolomato. Tolomato's original legal description excluded a parcel that is not in the vicinity of the District. See Exhibit DM-1 to the Pre-filed Testimony of Douglas Miller, Hearing Composite Exhibit D. Mr. Miller also testified that the capital facilities being provided by the Districts will not change because of the merger. The proposed Merged District will continue to provide regional transportation infrastructure, recreation infrastructure and neighborhood infrastructure.

43. Mr. Miller identified the cost estimates prepared under his supervision as Petition Exhibits 10 and 11. He further testified that the costs were based on current construction contracts in place and underway and by using plans and preliminary infrastructure layouts for future costs based on pricing they have seen in the area.

44. Mr. Miller outlined the improvements presently under construction by the Districts. These include the transportation

improvements to Nocatee Parkway and local neighborhood roads (about a \$9 million improvement) and a roadway improvement that includes two major interchanges (about a \$65 million improvement.) There are also improvements that are recreational in nature: a major water park and community center (about a \$20 million improvement.) The total value of this construction is approximately \$94 million.

45. Mr. Miller explained that Split Pine and Tolomato have entered into an inter-local agreement to allow Tolomato to manage the construction projects. As the Split Pine District Engineer, however, he is required to provide construction updates "and all of those things necessary to report back to [Split Pine] on the progress ... outlined in the interlocal agreement." TR-I at 34. While this arrangement has worked, it is not, in his view, the most efficient or cost effective. Given the state of development and construction, it is preferable in Mr. Miller's view to have Tolomato be the surviving district.

46. Mr. Miller testified that, in his opinion as a professional engineer, the construction costs for the proposed facilities for the Merged District are reasonable based on an analysis of the proposed improvements and historical costs of similar improvements, as well as the Districts' own historical costs and his understanding of future projects.

47. Mr. Miller opined that the proposed Merged District is of sufficient size, compactness and contiguity to be developed as a functional interrelated community. Even though the land area of Nocatee crosses county lines, the project, as reflected in the DRI Development Orders, is intended to operate and develop as one large, multi-use project. Currently the Districts function reasonably well because of a series of inter-local agreements to ensure there would not be duplicative construction activities or any disconnection between projects. In Mr. Miller's opinion, the area to be served is sufficiently contiguous and compact to be served by one district.

48. Mr. Miller testified that, based on his training and experience, the proposed Merged District is the best available alternative for delivering community services and facilities to the areas that will be served by the proposed Merged District. He stated that having one surviving district provide the services to the land will reduce duplication and potential inconsistency or disconnect in the construction and ultimate maintenance of infrastructure. While two districts are possible, the best alternative, in his view, is to merge the Districts and have Tolomato be the surviving district.

49. Mr. Miller testified that, based on his experience and information provided by the City of Jacksonville and St. Johns County, the services and facilities provided by the proposed

Merged District are not incompatible with the capacities and uses of existing local and regional community facilities and services. The Districts are already providing needed and required public infrastructure which are fully consistent with the existing capacity and facilities in the area. The merger will not change what is being provided, and therefore cannot be inconsistent with existing facilities.

50. Finally, Mr. Miller testified that, based on his experience, the area being included within the proposed Merged District is amenable to being served by a separate special district government. The area is presently being served by special district governments separate from local general purpose governments. Having one separate special district government will serve the area well by streamlining the process for getting District board approval and it will also allow the long-term maintenance of infrastructure to be provided by a single entity focused on the entire community rather than having a division created by county lines.

51. The fourth witness for the Petitioners was Donald Smith. Mr. Smith is employed by England-Thims as Vice President of Regulatory Planning.

52. Mr. Smith was qualified as an expert in the field of planning.

53. Mr. Smith testified that, based on his experience as a planner, the proposed Merged District is not inconsistent with any portion or element of the State Comprehensive Plan and in fact, promotes it. Of the 25 subjects the State Comprehensive Plan provides, "Subject 20 - Governmental Efficiency" advocates the elimination of needless duplication of governmental activities. A merger in this instance would eliminate the inherent duplication of having two entities serve one project. In addition, "Subject 17 - Public Facilities" has a goal to finance new facilities in a timely, orderly and efficient manner. In Mr. Smith's opinion, a Merged District will provide the needed public transportation and other infrastructure in a more orderly and efficient manner.

54. Mr. Smith testified that, based on his experience as a planner, the proposed Merged District is not inconsistent with any applicable element or portion of the City of Jacksonville's Local Comprehensive Plan. The Surviving District will not have authority to make zoning or development permitting decisions and cannot act in a manner that is inconsistent with the comprehensive plan.

55. Mr. Smith testified that, based on his experience as a planner, the proposed Merged District is not inconsistent with any applicable element or portion of the St. Johns County Comprehensive Plan. Goal H.1, of the Capital Improvements

Element states that the County is to ensure the orderly and efficient provisions of infrastructure facilities and services. The Surviving District will continue to serve as an alternative provider of these infrastructure systems and services to meet the needs of the lands within its boundaries. Currently St. Johns County and Tolomato have entered into several inter-local agreements with respect to infrastructure. Having Tolomato remain as the Surviving District is the easiest way to ensure there is no interruption in the agreements.

56. The fifth witness for Petitioners was Joe MacLaren. Mr. MacLaren is the Director of the Public Finance Department at Fishkind and Associates, Inc. Mr. MacLaren serves as the Financial Advisor for the Tolomato and Split Pine Community Development Districts.

57. Based on his credentials and experience, Mr. MacLaren was qualified as an expert in the field of economic and financial analysis.

58. Mr. MacLaren testified that he prepared the SERC attached to the Petition as Petition Exhibit 12. The scope of the economic analysis included in the SERC addresses only the merger of the Districts, and not the planning or development of the property itself. The SERC contains the estimates, anticipated effects, analyses, additional information, descriptions and statements listed in the six elements that

Section 120.541(2), Florida Statutes, requires. In addition to explaining the applicability of a SERC to the merger of a community development districts, Mr. MacLaren offered the following when questioned about the economic analysis presented in the SERC:

Once the Districts are merged, there are no direct costs to the City of Jacksonville . . . or St. Johns County. . . . While the Surviving District will provide certain reports and budgets to the City and County for their discretionary review, there are no requirements that they incur any obligations or expense associated with their review. In addition, to the extent the Surviving District utilizes the services of the Duval County and St. Johns County Property Appraisers or Tax Collectors under the provisions of Chapter 197, Florida Statutes, to collect its assessments, the Surviving District must pay the costs associated with those services. There will be no increase in costs to the local general purpose governments as a result of the merger of the Districts.

Finally, it is important to note that under Chapter 190, the debt of the Surviving District cannot become the debt of the City, the County or the State of Florida. Since the Surviving District will be an independent unit of government, the Surviving District will not have any effect on the bonding capacity of the City of Jacksonville, St. Johns County or the State of Florida.

(Exhibit D, WT-JL, at 3 of 5, L. 7-21.)

59. Mr. MacLaren addressed the outstanding bond issues for each District and testified that there will be no adverse impact

on the outstanding bonds. The outstanding bonds for Tolomato include \$91,020,000 Special Assessment Bonds, Series 2006 and \$167,185,000 Special Assessment Bonds, Series 2007, for a total of \$258,205,000 in Special Assessment Bonds in the two series. Split Pine has issued \$32,885,000 in Special Assessment Bonds in one series, Series 2007A.

60. The bonds will continue to be secured by the assessments on the lands within each District. Tolomato, as the Surviving District, will certify for collection the assessments on the land within Duval County, and enforce the collection, as necessary, in the same way it currently does for its bonds secured by assessments on the land within St. Johns County. Since the security for the bonds does not change, Mr. MacLaren opined there should be no adverse impact on the bonds as the result of the merger.

61. Mr. MacLaren further opined that Merged District is expected to be financially viable and feasible. He expects the Surviving District to be able to reduce total administrative costs, streamline its operations and be an overall economic benefit to landowners and residents of the Merged District.

62. Mr. MacLaren testified that a merger is the best available alternative to provide the most economically efficient, focused and professional operations and management to



continue to assure that growth within the area encompassed by the Surviving District pays for itself. The Merged District should be able to construct or acquire certain infrastructure and community facilities in a more efficient way. This should result in a lower cost per acre or per unit cost than what would have resulted with two independent districts.

63. Furthermore, non-ad valorem or special assessments on the properties used to pay debt will not change after the merger. The assessments on the land within Split Pine will continue to secure Split Pine's debt and the assessments on the land within Tolomato will continue to secure Tolomato's debt. Thus, assessments for debt service will not be affected, according to Mr. MacLaren. Mr. MacLaren expects that operation and maintenance assessments will be lower than they otherwise would have been if the Districts are merged.

64. Mr. MacLaren testified that, based on his experience, the land within the proposed Merged District is amenable to being served by a separate special district government. A Surviving District will be a more efficient mechanism to oversee the installation of capital improvements. In addition, from a financial perspective, having one Surviving District, Tolomato, will be the least confusing to the financial markets.

65. The final witness for the Petitioners was James Perry. Mr. Perry is employed by Governmental Management Services, LLC as Managing Director and serves as the Districts' manager.

66. Mr. Perry was qualified as an expert in the field of district management.

67. Mr. Perry identified a letter dated May 22, 2009, addressed to Jerry McDaniel, Secretary of the Florida Land and Water Adjudicatory Commission from Mike McDaniel, Chief Division of Comprehensive Planning. The letter was marked as Hearing Exhibit F and admitted into the record. The letter reflects that the Division of Comprehensive Planning has reviewed the Petition and identified no potential inconsistency with Chapter 163, Florida Statutes.

68. Mr. Perry testified that the Districts are petitioning to merge their boundaries in order to become a more effective and more efficient local unit of special-purpose government. He testified that recent changes in the law provided the Districts the opportunity to merge.

69. Mr. Perry testified that there are several benefits from merger for the current residents and landowners within the existing Districts including administrative cost savings, having to deal with only one entity, and intangible benefits that flow from a greater sense of community that the merger would promote.

Furthermore, having Tolomato as the Surviving District will mean that the time for transition from landowner voting to resident voting will be uninterrupted. This will be the least disruptive to the residents in Tolomato. While Tolomato has not determined the precise number of residents who live there, as of April 15, 2009, the St. Johns County Supervisor of Elections confirmed there are 551 registered voters living in Tolomato. It is safe to assume that the actual number of residents living in Tolomato exceeds the number of registered voters. Split Pine has no residents.

70. Mr. Perry testified that if a new entity is established, then it could be argued that a new ten year time frame for landowner voting provided by statute would begin. Split Pine landowners have already consented to the Tolomato landowner-to-resident schedule. See Exhibit 7 to the Petition to Merge the Split Pine Community Development District and Tolomato Community Development District, Hearing Composite Exhibit A. Thus, having Tolomato as the Surviving Entity would allow the current ten year time-table to continue unimpeded.

71. Mr. Perry testified that both Districts have stated a preference for Tolomato to remain as the surviving entity as a result of the proposed merger. Split Pine Resolution No. 2009-

07 and Tolomato Resolution No. 2009-06 both declare that preference.

72. Mr. Perry testified that the merger will have no effect on the daily field operations but it will result in a more efficient administrative function. He further testified that the proposed merger will affect the Districts' budgets and the assessments supporting them by reducing the administrative budget.

73. Mr. Perry outlined potential savings in various line items of the Districts' budgets that may be realized if merger is approved. These include supervisor salaries and related taxes, engineering fees, legal fees and district management fees. Meeting expenses and legal advertising, as well as printing costs would also be reduced.

74. Mr. Perry estimated savings based on the fiscal year 2008-2009 budget "in the range of \$50,000." TR-I, p. 45. He also explained that he expects these savings to increase over time, particularly as Split Pine becomes more developed.

75. Mr. Perry testified that, based on his experience in district management and operations, the proposed Merged District is the best alternative available to provide the proposed community development services and facilities. The Districts will be able to eliminate numerous administration costs.

Furthermore, it would eliminate administrative duplication and time. The Surviving District will provide the highest level of services and facilities in the most cost-effective, efficient and convenient manner to this project.

76. Mr. Perry further testified that the proposed Merged District is of sufficient size, is sufficiently compact and sufficiently contiguous to be developable as one functional, interrelated community. The Districts are adjacent, so there are no physical barriers to interfere with the delivery of services and facilities by the Surviving District. He further opined that the Surviving District is sufficiently compact, contiguous and of sufficient size to allow for the successful delivery of improvements, management and operations to the land.

77. Mr. Perry testified that, based on his experience in district management and operations, the proposed Merged District will not be incompatible with the uses and existing local and regional facilities and services. The facilities and services within the Merged District will not duplicate any available regional services or facilities and are not intended to be different from the services and facilities currently planned and being provided. The proposed merger will not impact the Surviving District's ability to successfully manage its existing services and facilities.

78. Finally, Mr. Perry testified that the area to be included within the proposed Merged District will not affect the Districts' ability to function as separate special district governments. Merging the Districts will streamline decision making and be more efficient in levying assessments for operations and maintenance. Residents of Nocatee will benefit by having to deal with only one authority. It will also provide a greater sense of community and identity to the area.

Public Comment

79. One member of the public, Ellen Whitmer, attended the first and third sessions of the local public hearing, both of which were conducted in St. Johns County. Ms. Whitmer, although not a resident of either District, entered her appearance as a resident of St. Johns County and stated her purpose in testimony under oath:

[F]rom my perspective, I am trying to protect St. Johns County. I live in St. Johns County. I vote in St. Johns County. I am a tax payer in St. Johns County. I have standing in St. Johns County.

(TR-I, at 53.)

80. Ms. Whitmer opposes the merger of the Districts.

81. Long on record as opposed to the Nocatee Development in which the two Districts are located, Ms. Whitmer initiated an administrative proceeding in 2001 (the "2001 Administrative

Proceeding") to challenge amendments to the St. Johns County Comprehensive Plan applicable to Nocatee. Among the amendments were the creation of a new Future Land Use Element category denominated "New Town Development" and a change on the Future Land Use Map designation of 11,332 acres (the site of the Nocatee Development of Regional Impact) from "Rural/Silviculture" to "New Town." Her petition in DOAH Case No. 01-1852GM was consolidated with a petition brought by The Sierra Club (DOAH Case No. 01-1851GM) to defeat the same amendments. Formal hearings in the consolidated cases led to a Recommended Order from the Division of Administrative Hearings that the amendments be found "in compliance" with the State's growth management laws. The administrative hearing culminated in a Final Order from the Department of Community Affairs that the amendments, just as recommended by the administrative law judge in issuing the Recommended Order, were in compliance.

82. Ms. Whitmer appealed the Final Order to the Fifth District Court of Appeal. The Final Order was affirmed per curiam by the court and the amendments stood, clearing the way for the Nocatee Development. See Whitmer v. St. Johns County et al., 857 So. 2d 897 (Fla. 5th DCA 2003).

83. Ms. Whitmer maintains her opposition to the Nocatee Development in general on the same basis advanced in the 2001 Administrative Proceeding. In her view it is "urban sprawl

. . . not cost feasible, not financially sound like it should have been and . . . the current market conditions have proved me to be correct." Furthermore, she testified, "[o]ne of the primary things that my case was about at the Fifth District was that Nocatee is not a new town. It doesn't matter what you call it. It is not a new town." (TR-I, at 52.)

84. Ms. Whitmer's main point in opposition to the merger, however, stems from the change in the law, see, Exhibit B, Chapter 2009-142, Laws of Florida amending Section 190.046(3), Florida Statute, that allowed, for the first time, the merger of community development districts as that change relates, in her view, to Section 190.047, Florida Statutes.

85. Section 190.047, Florida Statutes, governs incorporations and annexations of community development districts. The first sentence of the section mandates a referendum, when certain conditions are met, on whether a community development district wholly located in an unincorporated area of a county should incorporate. The second sentence of the statutory section insofar as it might pertain to the proposed Merged District is of concern to Ms. Whitmer. It reads: "However, any district contiguous to the boundary of a municipality may be annexed to such municipality pursuant to the provisions of Chapter 171 [the chapter of the Florida Statutes



that governs local government boundaries.]" § 190.047(1), Fla. Stat.

86. Ms. Whitmer pointed out in testimony that the local government in which Split Pine is located is a consolidation of the governments of both Duval County and the City of Jacksonville. Split Pine, therefore, is located in a municipality, the City of Jacksonville. Tolomato, wholly located in St. Johns County, is located contiguous to the municipality of Jacksonville and as such may be annexed into the City of Jacksonville, in her view, under the second section of Section 190.047(1), Florida Statutes. Ms. Whitmer takes her argument further. She sees the merger as a step in a process that began with approval of the Nocatee DRI, proceeded with amendments to the St. Johns County Comprehensive Plans and creation of the Districts, is now undertaking the merger of the Districts, and could lead to annexation of the portion of the Merged District located in St. Johns County into the City of Jacksonville. Ultimately, she fears that this process could lead to the annexation into the City of Jacksonville of parts of St. Johns County outside the Merged District.

Petitioners' Response to Public Comment

87. Petitioners' answer Ms. Whitmer's fears by pointing out that the merger of the Districts does nothing to increase or diminish the City of Jacksonville's authority, whatever that

authority may be, to annex what is now Tolomato. In its pre-merger status, Tolomato is a district "contiguous to the boundary of a municipality," the description Section 190.047, Florida Statutes, sets out as a qualification for annexation by a municipality. The merger of the districts, therefore, will have no effect on the ability of the City of Jacksonville to annex the land currently in St. Johns County that is Tolomato. Whatever it is, that ability remains neither enhanced nor diminished in the wake of the 2009 amendment that allows districts to merge.

88. Petitioners also state in their proposed report that there is no evidence that an attempt by the City of Jacksonville to annex the area that is within the current boundaries of Tolomato "would in any case, meet the provisions of Chapter 171, Florida Statutes . . . . [T]hat issue is well beyond the scope of these proceedings." Petitioners' Proposed Report of Findings and Conclusions, at 36. In summary, Petitioners posit that the issues in this proceeding concern a merger of community development districts and in no way encompass the issues with regard to annexation raised by Ms. Whitmer.

89. Along these lines, it is worth examining the context in which the recent legislative amendments including the authority for merging community development districts have taken place. Chapter 190, Florida Statutes, (the Act), governs

community development districts in Florida. It bears the short title: the "Uniform Community Development District Act of 1980." See § 190.001, Fla. Stat.

90. Prior to July 1, 2007, the definitions section of the Act defined "community development district" with the clause "the boundaries of which are contained wholly within a single county." § 190.003(6), Fla. Stat. (2006). In 2007, however, the clause was stricken from the definition of "community development district." See Chapter 2007-160, Section 1, Laws of Florida, effective July 1, 2007. By the same enactment, Chapter 2007-160, Laws of Florida, the Legislature amended Section 190.005, Florida Statutes, which governs "establishment of a district." The amendment added a new sub-paragraph 3., to paragraph (1)(b) so that the section, in pertinent part, now reads:

Prior to filing the petition, the petitioner shall

\* \* \*

3. If land to be included within a district is located partially within the unincorporated area of one or more counties and partially within a municipality or within two or more municipalities, pay a \$15,000 filing fee to each entity. Districts established across county boundaries shall be required to maintain records, hold meetings and hearings, and publish notices only in the county where the majority of the acreage within the district lies.

§ 190.005(1)(b), Fla. Stat. (emphasis supplied.) The result of the merger proposed by Petitioners, land within a district located partially within one or more counties and partially within a municipality, therefore, has been a situation expressly contemplated by the Act since July 1, 2007. The Legislature must be presumed to have known of the potential for a merger to occur of districts contiguous to each other but located in different counties and partially within a municipality when it amended Section 190.046(3), Florida Statutes, in the 2009 session to allow districts to merge. Furthermore, the Legislature must be presumed to know of whatever the potential there is for municipal annexation as the result of the proposed merger.

The Second Session of the Local Public Hearing

91. The second session of the local public hearing on the Petition was noticed and held on July 7, 2009, at 3:00 p.m., at the Baymeadows Residence Inn Marriott, 8365 Dix Ellis Trail, Jacksonville, Florida 32256. Pursuant to Section 190.005, Florida Statutes, notice of the public hearing was advertised on June 9, June 16, June 23, and June 30, 2009, in the Florida Times Union, a newspaper of general paid circulation in the City of Jacksonville, and of general interest and readership in the community, not one of limited subject matter, pursuant to Chapter 50, Florida Statutes. The published notice gave the time and place for the hearings, a description of the area to be

included within the merged Districts, including a map showing the lands of the proposed merged Districts and other relevant information. The advertisement was published as a display advertisement, not in the portion of the newspaper where legal notices and classified advertisements appear. See Exhibit GB-3 of the Pre-filed Testimony in Hearing Composite Exhibit D.

92. The second session of the hearing commenced as scheduled at 3:00 p.m. In addition to Petitioners' counsel, all of the Petitioners' witnesses who appeared in St. Johns County also appeared in Duval County.

93. No members of the public entered appearances or testified during the session in Duval County.

#### The Third Session

94. The third session of the public hearing was conducted on July 27, 2009 at 11:00 a.m. at the Ponte Vedra Beach Library, and at 2:00 pm. Residence Inn in Jacksonville.

95. In addition to counsel for Petitioners, Mr. Gregory Barbour and Mr. James Perry, witnesses for the Petitioner in the earlier sessions, attended this session.

96. The Notice of Receipt of Petition, published in the Florida Administrative Weekly on July 17, 2009, was admitted into evidence as Hearing Exhibit G.

97. Ms. Whitmer attended this session and provided additional comment. The comment offered by Ms. Whitmer at the

third session supplemented her comment at the first session with regard to substantially similar issues by further explaining her position of opposition to the merger.

#### The Fourth Session

98. The final session of the local public hearing was held on July 7, 2009, at 2:00 p.m., at the Baymeadows Residence Inn Marriott, 8365 Dix Ellis Trail, Jacksonville, Florida 32256.

99. In addition to counsel for the Petitioners, Mr. Barbour and Mr. Perry also attended this session but no members of the public were present.

100. At the conclusion of the public hearing, the record was left open until August 6, 2009 to allow for receipt of additional written comments from members of the public. No additional comments were filed by that date.

101. A final list of the Exhibits admitted into evidence in support of the Petition is as follows: Hearing Exhibit A: Petition to Merge Split Pine Community Development District and Tolomato Community Development District; Hearing Exhibit B: Certified copy of HB 821 (2009 legislature); Hearing Exhibit C: Bond Counsel Opinion; Hearing Exhibit D: Prefiled Written Testimony of Witnesses: Richard Ray, Gregory Barbour, Douglas Miller, Donald Smith, Joe MacLaren, and James Perry; (and exhibits attached thereto); Hearing Exhibit E: General Location Map of the Split Pine and Tolomato Community Development

Districts; Hearing Exhibit F: DCA Response Letter; and Hearing Exhibit G: Notice of Receipt of Petition.

102. The sole matter at issue in this proceeding is whether or not to grant the petition to merge the two existing community development districts that govern the Nocatee project. Ms. Whitmer's comments regarding whether the Nocatee project is good for St. Johns County is beyond the scope of this proceeding. Further, the only matter related to comprehensive planning that is relevant is whether the merger of the two districts in any way is inconsistent with the state or local comprehensive plans. No testimony was presented demonstrating any inconsistency with either the state comprehensive plan, or the City of Jacksonville or St. Johns County comprehensive plans. Moreover, the Department of Community Affairs has indicated that the proposed merger is not inconsistent with Chapter 163, Florida Statutes. See, Hearing Exhibit F, Letter dated May 22, 2009 to the Secretary of the Commission from the Division of Comprehensive Planning.

#### APPLICABLE LAW

##### A. General

103. Section 190.046(3), Florida Statutes, provides authority for one community development district to merge with other community development districts upon the filing of a

petition pursuant to Section 190.005. It provides in pertinent part:

The district may merge with other community development districts upon filing a petition for establishment of a community development district pursuant to s. 190.005 . . . . The government formed by a merger involving a community development district pursuant to this section shall assume all indebtedness of, and receive title to, all property owned by the preexisting special districts, and the rights of creditors and liens upon property shall not be impaired by such merger. Any claim existing or action or proceeding pending by or against any district that is a party to the merger may be continued as if the merger had not occurred, or the surviving district may be substituted in the proceeding for the district that ceased to exist. Prior to filing the petition, the districts desiring to merge shall enter into a merger agreement and shall provide for the proper allocation of the indebtedness so assumed and the manner in which such debt shall be retired. The approval of the merger agreement and the petition by the board of supervisors of the district shall constitute consent of the landowners within the district.

B. Petition Requirements

104. Section 190.046(3) requires that a petition to merge contain the elements for establishing a community development district found in Section 190.005(1)(a) Florida Statutes. Those eight elements are:

1. A metes and bounds description of the external boundaries of the district. Any real property within the external boundaries of the district which is to be excluded from



the district shall be specifically described, and the last known address of all owners of such real property shall be listed. The petition shall also address the impact of the proposed district on any real property within the external boundaries of the district which is to be excluded from the district.

2. The written consent to the establishment of the district by all landowners whose real property is to be included in the district of documentation demonstrating that the petitioner has control by deed, trust agreement, contract, or option of 100 percent of the real property to be included in the district is owned by a governmental entity and subject to a ground lease as described in s. 190.003(14), the written consent by such governmental entity.

3. A designation of five persons to be the initial members of the board of supervisors, who shall serve in that office until replaced by elected members as provided in s. 190.006.

4. The proposed name of the district.

5. A map of the proposed district showing current major trunk water mains and sewer interceptors and outfalls if in existence.

6. Based upon available data, the proposed timetable for construction of the district services and the estimated costs of constructing the proposed services. These estimates shall be submitted in good faith but shall not be binding and may be subject to change.

7. A designation of the future general distribution, location, and extent of public and private uses of land proposed for the area within the district by the future land use plan element of the effective local government comprehensive plan of which all

mandatory elements have been adopted by the applicable general-purpose government in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act.

8. A statement of estimated regulatory costs in accordance with the requirements of s. 120.541.

(Chapter 2009-142, Laws of Florida, at 5-6 of 19.)

105. The Petition contains exhibits that clearly reflect the requirements of elements 1, 2, 6, 7, and 8 quoted in the paragraph immediately above.

106. As for the designation of initial members of the board of supervisors required by element 3, and provision of the proposed name of Merged District required by element 4, the petition set forth alternatives with the following introduction:

\* \* \*

7. On October 2, 2008, Split Pine and Tolomato each adopted resolutions . . . approving a merger agreement ("Merger Agreement") in the form attached to the resolutions and authorizing the process necessary to accomplish the merger under Chapter 190 of the Florida Statutes.

\* \* \*

Because it is unclear whether the Merger would result in the abolishment of Split Pine and Tolomato and the establishment of a "new district," resulting in a new timetable for the start of elector-based elections under Section 190.006 of the Florida Statutes, or whether the Merger of Split Pine into Tolomato would result in the abolishment of Split Pine and continuation

of Tolomato as a surviving district with the preservation of Tolomato's existing timetable for the start of elector-based elections, the Merger Agreement addresses both scenarios. The Petitioners are agreeable to either scenario.

(Petition, at 2-3.)

107. With regard to element 3., the Petition states:

11. The Merger Agreement provides that, in the event Tolomato continues as the surviving district, Tolomato's Board of Supervisors will continue to serve on the same terms, in the same positions, and with the same election timetable provided for under Section 190.006 of the Florida Statutes, and that, in the event that the Merger results in the establishment of a new district, the new entity's Board of Supervisors will be as set forth in the Merger Agreement with a new election timetable as provided for under Section 190.006 of the Florida Statutes.

(Petition, at 4.) The testimony from both Mr. Ray and Mr. Barbour of record establishes that the five board members of Tolomato will be the initial members of the board of supervisors of the Merged District. The testimony is consistent with the resolution passed by the Districts that expressed the preference that Tolomato be the surviving entity rather than a new community development district be created by the merger. See Resolution 2009-06 of the Tolomato Board, Exhibit RR-2, page 2 of 2, attached to Exhibit D and Resolution 2009-07, Exhibit GB-2, page 2 of 2, attached to Exhibit D.

108. As for the proposed name of the district required by element 4, the petition states the following:

\* \* \*

12. In the event a new district is established, Petitioners request that the new district be named "New Tolomato Community Development District."

(Petition, at 4.) Subsequent to the filing of the Petition, however, Tolomato Resolution 2009-06 and Split Pine Resolution 2009-07 were adopted. Both resolutions expressed the preference that Tolomato be the surviving district after the merger rather than a new district be created. See Exhibit RR-2, page 2 of 2, attached to Mr. Ray's pre-filed testimony in Exhibit D and Exhibit GB-2, page 2 of 2, attached to Mr. Barbour's pre-filed testimony in Exhibit D. Provided that the Commission approves of the preference, the Petition and the evidence of record are clear that the name of the Merged District will be the current name of the Surviving District: Tolomato Community Development District.

109. The exhibit designed to meet element 5 is discussed in paragraph 12, above.

#### C. Applicable Procedures

110. Section 190.046(3), provides that a petition seeking a merger of districts shall be filed with the Commission. The petition "shall include the elements set forth in s. 190.005(1)

and . . . shall be evaluated using the criteria set forth in s. 190.005(1)(e)." On March 23, 2009, Petitioner filed one original and twelve copies of the Petition with Petition Exhibits with the Commission.

111. Section 190.005(1)(b)1, Florida Statutes, requires that petitioner provide a copy of the petition and the requisite \$15,000 filing fee to the county and to each municipality whose proposed boundary is within or contiguous to the district prior to filing the petition with the Commission. Petitioners complied with these requirements.

112. Section 190.005(1)(c), Florida Statutes, provides that the County containing all or a portion of the lands within the proposed merged districts has the option to hold a public hearing within 45 days of the filing of a petition. Neither the City of Jacksonville nor St. Johns County opted to hold a public hearing on the Petition.

113. Section 190.005(1)(d), Florida Statutes, requires a local public hearing to be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedures Act. Such public hearing "shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e)" of Section 190.005(1), Florida Statutes.

114. A local public hearing in four sessions was held, two sessions in St. Johns County and two sessions in the City of Jacksonville on July 7 and July 27, 2009.

115. Section 190.005(1)(d), Florida Statutes, requires the petitioner to publish notice of the local public hearing once a week for four successive weeks immediately prior to the hearing in a newspaper of general paid circulation in the county and of general interest and readership in the community. Petitioners published notice of the local public hearing in the Florida Times Union and the St. Augustine Record on June 9, June 16, June 23 and June 30, 2009.

116. Florida Administrative Code Rule 42-1.010 requires the Secretary of the Commission to publish a Notice of Receipt of Petition in the Florida Administrative Weekly within 60 days of receipt. The Notice of Receipt of Petition was published in the Florida Administrative Weekly outside the time required by the rule. Publication occurred on July 17, 2009.

#### D. Factors to be Considered for Granting or Denying Petition

117. The Commission must proceed in accordance with Section 190.005(1)(e), Florida Statutes, upon the receipt of the full record of the local public hearing. It should be noted, however, that this is not technically the consideration of whether or not to establish a new district where none existed before. Instead, it is consideration of whether to allow two

existing districts to become one, and whether that result would meet the statutory criteria. If the merger petition was denied for any reason, then the two districts would continue to exist.

118. Pursuant to Section 190.005(1)(e)1.-6., Florida Statutes, the Commission must consider the entire record of the local hearing, the transcript of the hearing, any resolutions adopted by local general-purpose governments, and the following factors, to make a determination to grant or deny a petition for the merger of the boundaries of districts:

1. Whether all statements contained within the petition have been found to be true and correct;
2. Whether the establishment of the Merged District is inconsistent with any applicable element or portion of the state comprehensive plan or of the effective local government comprehensive plans;
3. Whether the area of land within the Merged District is of sufficient size, is still sufficiently compact, and is still sufficiently contiguous to continue to be developable as one functional interrelated community;
4. Whether the Merged District is the best alternative available for delivering community development services and facilities to the area that will be served by the Merged District;
5. Whether the community development services and facilities of the Merged District will be incompatible with the capacity and uses of existing local and regional community development services and facilities; and

6. Whether the area that will be served by the Merged District is amenable to separate special-district government.

E. Information in Record; Applicable Law

i. Procedural Requirements

119. The evidence of record demonstrates that Petitioners have satisfied the procedural requirements for the merger of the Districts by filing the Petition in the proper form with the required attachments, by tendering the requisite filing fee to the local governments, by arranging for public hearings to be conducted by an administrative law judge, by publishing statutory notices of the local public hearing and by occurrence of the scheduled public hearings.

ii. Six Statutory Factors

120. The evidence demonstrates that the statements in the Petition and its attachments, as revised, are true and correct. Consents for all lands currently included within the Districts were provided and that the consents were true and correct.

121. The evidence is that establishment of the Merged District is not inconsistent with any applicable element or portion of the State and local government comprehensive plan.

122. The evidence is that the Merged District is of sufficient size, is sufficiently compact, and is sufficiently contiguous to continue to be developable as "one functional interrelated community."



123. The evidence is the Merged District is the best alternative available for delivering community development services and facilities to the area that will be served by the Merged District.


124. The evidence is that the community development services and facilities of the Merged District will not be incompatible with the capacity and uses of existing local and regional community development services and facilities.

125. The evidence is that the area that will be served by the Merged District is amenable to separate special-district government.

#### CONCLUSION

Section 190.005(1)(e), Florida Statutes, states that the Commission "shall consider the entire record of the local hearing, the transcript of the hearing, resolutions adopted by local general-purpose governments," and the factors listed in that paragraph. Based on the record evidence, the Petitioners appear to meet the statutory requirements for the Tolomato Community Development District and the Split Pine Community Development District to merge. The record supports having Tolomato continue to exist as the "Surviving District," with the landowner election schedule to continue as it presently exists and the existing Tolomato board members to remain in office.

DONE AND ENTERED this 9th day of October, 2009, in  
Tallahassee, Leon County, Florida.



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Filed with the Clerk of the  
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