

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

DIANE C. BROWN,

Petitioner,

vs.

Case No. 10-0858GM

DEPARTMENT OF COMMUNITY  
AFFAIRS and BAY COUNTY,

Respondents.

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**FINAL ORDER**

An Administrative Law Judge of the Division of Administrative Hearings has entered an Amended Order Relinquishing Jurisdiction to the Department of Community Affairs (“Department”) for issuance of a Final Order. A copy of the Order is attached to this Final Order as Exhibit A.

**BACKGROUND**

This is a proceeding to determine whether Bay County’s EAR-based comprehensive plan amendments adopted by Ordinance No. 09-35 on October 20, 2009, are “in compliance” with the Local Government Comprehensive Planning and Land Development Regulation Act, Ch. 163, Part II, Florida Statutes (the “Act”).

Bay County (“County”) adopted its EAR-Based amendments by Ordinance No. 09-35 on October 20, 2009. The Department found the EAR-Based amendments “in compliance” and published its Notice of Intent in the Panama City News Herald on December 16, 2009. On February 4, 2010, St. Andrew Bay Resource Management Association (“RMA”) filed a petition with the Department challenging Conservation Element policy 6.11.3(3). Also on February 4, Diane Brown filed a petition with the Department challenging a number of the EAR-Based

amendments' Goals, Objectives, and Policies (included Conservation Element policy 6.11.3(3)), and in some cases entire Elements. Ms. Brown also challenged a change to the West Bay Sector Plan adopted by Ordinance Number 09-36 on October 20, 2009, via the same petition. The Parties agreed to a settlement regarding the challenge to the amendment adopted by Ordinance Number 09-36 and the Settlement Agreement was filed with the Division of Administrative Hearings on July 30, 2010. On August 30, 2010, a Hearing was held in Bay County, Florida in which RMA and Ms. Brown presented evidence regarding their respective challenges to only Conservation Element policy 6.11.3(3).

On September 27, 2010, Bay County and the Department filed a Joint Motion to Relinquish Jurisdiction of the Non-challenged Amendments. On September 30, 2010 Petitioner Diane Brown filed Objections and Comments to the Joint Motion to Relinquish Jurisdiction. On October 14, 2010 a Hearing on the Motion was held, and on October 15, 2010, an Order was issued relinquishing the non-challenged amendments to the Department for issuance of a Final Order. An Amended Order was issued October 18, 2010, and no exceptions to the Administrative Law Judge's Amended Order were filed.

Pursuant to the Amended Order issued October 18, 2010, jurisdiction over the following Amendments to the Bay County Comprehensive Plan adopted by Ordinance 09-35 on October 20, 2009, shall be **RETAINED** by the Division of Administrative Hearings for a Final Hearing to take place in Bay County, Florida on November 8-12, 2010<sup>1</sup>, and the remainder of the Amendments shall be subject to this Final Order:

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<sup>1</sup> Bay County Ordinance No. 09-35 adopted several hundred amendments to the Bay County comprehensive plan pursuant to section 163.3191(10), Florida Statutes. Therefore, to separately list all of the amendments to the County's plan that will be going into effect as a result of this Final Order would be cumbersome and would not provide adequate notice to the public or other affected parties regarding which portions of the Amendment will remain subject to the Petitioners' challenge. All parties have agreed to this method.

1. The entire Recreation and Open Space, including Policy 9.6.1, and Transportation Elements;
2. Future Land Use Element Policy 3.4.8;
3. The entire Conservation Element, including the following specific provisions:  
Goal Statement and General Strategy statement of the Conservation Element, Policy 6.1.1, Objective 6.2 and Policy 6.2.1, Objective 6.3, Objective 6.5 and Policy 6.5.1, Policy 6.5.2, Objective 6.6 and related policies regarding protection of Lake Powell, Objective 6.7 and related policies, Policy 6.7.1, Policy 6.7.4, Objective (Policy) 6.7.5, Policy 6.7.6, Objective 6.8, Objective 6.9, Policy 6.9.3, Objective 6.10, Policy 6.10.2, Policy 6.10.3, Policy 6.11.3, Policy 6.11.3(2), Policy 6.11.3(3), Policy 6.11.3(5), Objective 6.12, Policy 6.12.2, Objective 6.13, Policy 6.13.1, Policy 6.13.3, Objective 6.14, Policy 6.14.3, Objective 6.15, Objective 6.16 and related policies, Objective 6.17, Policy 6.17.5, Policy 6.18.1, Objective 6.19, Objective 6.20, Objective 6.21;
4. The entire Groundwater Aquifer Recharge Sub-Element, Section F;
5. The entire Coastal Management Element, including the following specific provisions: Objective 7.1, Policy 7.1.1(1), objective 7.2, Policy 7.2.1, Policy 7.2.1(4), Objective 7.3, Policy 7.3.1, Policy 7.3.2, Objective 7.4, Policy 7.4.1, Policy 7.4.2, Objective 7.5, Policy 7.5.1, Policy 7.5.4, Policy 7.5.5, Objective 7.7, and Objective 7.8;
6. The entire Intergovernmental Coordination Element, including the following specific provisions: General Strategy Objective 10.5 as deleted, Objective 10.1, Policy 10.1.1, Objective 10.6 and related policies, Objective 10.7, Policy 10.7.1, Objective 10.9, Policy 10.10.1, Policy 10.10.1.B, Policy 10.11.1, Policy 10.11.2, and Policy 10.11.3;
7. Table 3A of the Seasonal/Resort land use category in the FLUE;

8. Administrative Procedures Objective 1.4;
9. The entire Capital Improvements Element, including the following specific provisions: Policy 11.4.2, Objective 11.5, Objective 11.12, Policy 11.5.2d, Policy 11.8.1, and Policy 11.3.2;
10. The entire Housing Element, including the following specific provisions: Housing Element Policies 8.6.1, 8.7.1, and 8.7.2;
11. Table 3A of the Neighborhood Commercial (Commercial) land use category in the FLUE; and
12. The entire Stormwater Management Sub-Element 5E.

ORDER

WHEREFORE, it is ORDERED that the above listed Amendments, consisting of Elements, Goals, Objectives and Policies, which make up a part of the Bay County Comprehensive Plan Amendments adopted by Ordinance 09-35 shall be retained by the Division of Administrative Hearings for a Final Hearing to take place in Bay County on November 8-12, 2010, and the remainder of the Amendments, which have not been challenged, are IN COMPLIANCE, and shall go into effect pursuant to section 163.3189, Florida Statutes.

DONE AND ORDERED in Tallahassee, Florida.



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Shaw P. Stiller, General Counsel  
DEPARTMENT OF COMMUNITY AFFAIRS  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**NOTICE OF RIGHTS**

EACH PARTY IS HEREBY ADVISED OF ITS RIGHT TO SEEK JUDICIAL REVIEW OF THIS FINAL ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(b)(1)(C) AND 9.110.

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

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

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

**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been filed with the undersigned Agency Clerk of the Department of Community Affairs, and that true and correct copies have been furnished to the persons listed below in the manner described, on this 9<sup>th</sup> day of November, 2010.



Paula Ford  
Agency Clerk  
Florida Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**U.S. MAIL:**

The Honorable D. R. Alexander  
Administrative Law Judge  
Division of Administrative Hearings  
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**Via Hand Delivery:**

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