STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

DIANE C. BROWN,

Petitioner,

DOAH Case No. 10-0858GM

vs.

DEPARTMENT OF COMMUNITY AFFAIRS
and BAY COUNTY,

Respondents.
_____/

FINAL ORDER

This matter was considered by the Executive Director of the Department of Economic Opportunity following receipt of a Recommended Order issued by an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings on June 30, 2011.[1]

Background and Summary of Proceedings

Bay County adopted Evaluation and Appraisal Report ("EAR") based amendments to its Comprehensive Plan by Ordinance No. 09-36. The Department of Community Affairs published a Notice of Intent to find the EAR-based Amendments in compliance, and the Petitioner challenged the EAR-based Amendments pursuant to

[1] The Recommended Order was submitted to the Department of Community Affairs. However, most of the powers, duties and functions of the Department of Community Affairs, including the state land planning agency powers and duties at issue in this case, were transferred to the Department of Economic Opportunity on October 1, 2011. Chapter 2011-142, Laws of Florida.

section 163.3184(9), Florida Statutes[2]. By agreement of the parties, the ALJ relinquished jurisdiction to the Department over the EAR-based Amendments not challenged by the Petitioner, and the Department issued a Final Order finding those Amendments in compliance. Also by agreement of the parties, the Petitioner's challenge to Conservation Element Policy 6.11.3(3), which had also been challenged by another affected person, was heard separately in DOAH Case No. 10-0859GM. The following EAR-based Amendments remained at issue before the ALJ in this case, were addressed in the Recommended Order, and are now addressed in this Final Order:

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 Conservation Element (except Policy 6.11.3(3)), 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(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;

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[2] All citations to chapter 163 will be to the 2010 edition, unless otherwise noted.

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.

The ALJ entered a Recommended Order recommending that the Amendments be found "in compliance." The Petitioner filed exceptions, a memorandum of law, and an amended motion to recuse and disqualify the Secretary of the Department of Community Affairs. Bay County filed responses to the exceptions, and Bay

County and the Department filed responses to the amended motion to recuse and disqualify.

RULING ON AMENDED MOTION TO RECUSE AND DISQUALIFY THE SECRETARY OF THE DEPARTMENT OF COMMUNITY AFFAIRS

Chapter 2011-142, Laws of Florida, transferred the state land planning agency duties of the Secretary of the Department of Community Affairs to the Executive Director of the Department of Economic Opportunity. The grounds alleged for recusal and disqualification of Secretary Buzzett, even if sufficient to warrant disqualification and recusal, do not apply to Executive Director Doug Darling. Therefore, the Amended Motion To Recuse And Disqualify The Secretary Of The Department Of Community Affairs is moot, and is DENIED.

ROLE OF THE DEPARTMENT

The Executive Director of the Department must either determine that the Amendments are in compliance and enter a Final Order to that effect, or determine that the Amendments are not in compliance and submit the Recommended Order to the Administration Commission for final agency action. § 163.3184(5)(e), Fla. Stat. (2011).

After review of the Recommended Order and the Record, the Executive Director accepts the recommendation of the ALJ and determines that the EAR-based Amendments are in compliance.

STANDARD OF REVIEW OF RECOMMENDED ORDER

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

> Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. § 120.57(1)(*l*), Fla. Stat.

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

The Administrative Procedure Act also specifies the manner in which the agency is to address conclusions of law in a Recommended Order.

> The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. §120.57(1)(*l*), Fla. Stat.

See also, DeWitt v. School Board of Sarasota County, 799 So.2d 322 (Fla. 2nd DCA 2001).

The label assigned a statement is not dispositive as to whether it is a finding of fact or conclusion of law. Kinney v. Dept. of State, 501 So.2d 1277 (Fla. 5th DCA 1987); and Goin v. Comm. on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995). Conclusions of law labeled as findings of fact, and findings labeled as conclusions, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

RULINGS ON EXECPTIONS

Exceptions Regarding The Weight Of The Evidence

Several of Petitioner's exceptions argue that the ALJ ignored the preponderance of the evidence and ask the Department

to reweigh the evidence. This the Department cannot do. Heifetz, supra. Exceptions 1, 7G, K, L, P, T, V, CC, DD, EE, GG, HH, II, KK, YY, BBB, CCC, EEE, FFF, GGG, HHH, JJJ, KKK, MMM, NNN and 8B are DENIED.

Exceptions Which Seek Supplemental Findings Of Fact

Several of Petitioner's exceptions ask the Department to supplement the ALJ's findings of fact with additional findings of fact. However, "[i]t is not proper for the agency to make supplemental findings of fact...." Fla. Power & Light Co. v. State Siting Bd., 693 So. 2d 1025 (Fla. 1st DCA 1997). Exceptions 6 and 7A are DENIED.

Unexplained Exceptions

Several of Petitioner's exceptions do not explain why the exception should be granted. "[A]n agency need not rule on an exception ... that does not clearly identify the legal basis for the exception...." S. 120.57(1)(k). Exceptions 7D, R, S, W, Y, BB, JJ, MM, RR, second AAA, DDD, FFF, and OOO are DENIED.

Exceptions Which Do Not Cite To The Record

Several of Petitioner's exceptions dispute findings of fact in the Recommended Order, but do not cite to the record to support the exceptions. "[A]n agency need not rule on an exception ... that does not include appropriate and specific citations to the record." S. 120.57(1)(k). Exceptions 7Q, Z,

QQ, RR, SS, TT, WW, XX, CCC, DDD, EEE, FFF, GGG, III, NNN are DENIED.

Exception Which Does Not Clearly Identify The Disputed Portion Of The Recommended Order

Exception 4 purports to dispute a conclusion of law, but does not identify the portion of the Recommended Order in which the conclusion appears. "[A]n agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph...." S. 120.57(1)(k). Exception 4 is DENIED.

Change in Law and Issues Not Specifically Addressed

In paragraph 88, the ALJ noted that Chapter 2011-139, Laws of Florida, substantially revised the compliance criteria in chapter 163. The ALJ concluded that

> Because these changes are substantive in nature, they cannot be given retroactive application. Therefore, the compliance criteria in effect prior to the enactment of House Bill 7207 have been used to adjudicate this dispute.

The Petitioner appears to argue that this conclusion of law is incorrect. However, the final hearing in this case was held on November 8, 9 and 12, 2010, and the transcript was filed on May, 11, 2011, but Chapter 2011-139 became effective on June 2, 2011. Application of the new compliance criteria would have required re-opening the record. Furthermore, the Petitioner

does not explain how application of the new compliance criteria would have resulted in a different recommendation from the ALJ.

It may be that the Petitioner is contending that the ALJ must have applied the new compliance criteria (despite the ALJ's statement that he applied the old criteria) because the ALJ allegedly failed to consider all the issues raised by the Petitioner. This argument is refuted by the 45 pages of the Recommended Order and by paragraph 87:

> All other issues not specifically addressed herein have been considered and found to be without merit, contrary to the more persuasive evidence, or not subject to a challenge in this proceeding.

Exceptions 2 and 5 are DENIED.

Requirements for EAR-Based Amendments

The ALJ concluded in paragraph 8 that,

> Although the EAR discusses a number of issues and concerns in the first three sections of the report, the EAR-based amendments must only be based on the recommended changes. See § 163.3191(10), Fla. Stat. Therefore, it was unnecessary for the County to react through the amendment process to the discussions in the Issues and Element Reviews portions of the EAR.

The Petitioner contends that this conclusion of law is "too narrow," and that recommendations that are located in other sections should also be implemented by the EAR-based amendments.

Section 163.3191(10), Fla. Stat., provides:

> The governing body shall amend its comprehensive plan based on the recommendations in the report and shall update the comprehensive plan based on the components

of subsection (2), pursuant to the provisions of ss. 163.3184, 136.3187, and 163.3189.

Bay County is the author of the EAR Report, and the County chose to clearly identify its recommendations in that Report. The ALJ's interpretation of section 163.3191 is more reasonable than that advanced by the Petitioner. Exceptions 3, and 7B, C, JJ, LL, NN, QQ, SS, UU, VV, XX, YY, first AAA, LLL are DENIED.

Adequacy of EAR and ORC

The ALJ concluded in Paragraph 10 that, "The only issue in this proceeding is whether the EAR-based amendments are in compliance." The Petitioner contends that the adequacy of the EAR, and unresolved issues in the Department's Objection, Recommendations and Comments ("ORC") Report, should also be issues in this proceeding.

The Petition was filed pursuant to Section 163.3184(9), Fla. Stat., and challenged the Department's Notice of Intent which found the EAR-based Amendments to be "in compliance." The Notice of Intent did not find the EAR or the ORC Report to be "in compliance." The adequacy of the EAR was previously determined when the Department found the EAR sufficient on September 21, 2007, more than two years before the EAR-based amendments were adopted. The Petitioner was not prevented from using the ORC Report as inspiration for her Petition, and the issues raised in her Petition were addressed by the ALJ's

Recommended Order. Section 163.3184(9), Fla. Stat., provides that compliance determinations pertain to the adopted amendments, not EARs or ORC Reports. The ALJ's conclusion of law is more reasonable than that advanced by the Petitioner. Exceptions 7D and E are DENIED.

Fairly Debatable Standard

The ALJ concluded in Paragraph 11 that,

> Because this is a challenge to an in-compliance determination by the Department, Petitioner must show that even though there is evidence to support the propriety of these amendments, no reasonable person would agree that the amendments are in compliance.

The Petitioner contends that the ALJ incorrectly omitted the requirement of Section 120.57(1)(j), Fla. Stat., that findings of fact must be based on a preponderance of evidence. The ALJ is not required to include every legal principle in each conclusion of law. The ALJ's summary of the fairly debatable standard, which does apply to this proceeding, is correct. Exception 7F is DENIED.

Southport Planning Area

The ALJ determined in paragraph 15 that, "The effect of [new FLUE Policy 3.4.8] is simply to identify Southport as a potential planning area that includes a mixture of uses," and that the new Policy does not convey development rights. The Petitioner asserts that this is not correct.

The text of the Policy itself states that the Policy does not change "the land use category of any parcel on the Future Land Use Map," and that it is "subject to the review and approval of the amendments to the Future Land Use Map in accordance with Chapter 163 of the Florida Statutes." The ALJ's characterization of Policy 3.4.8 is supported by competent substantial evidence. Exceptions 7H and I are DENIED.

The ALJ also stated in Paragraph 15 that the Petitioner alleged that there are no central water and wastewater facilities available to serve the Southport Planning Area. The Petitioner states that she made no such allegation, Bay County supports her statement, and a review of documents filed by the Petitioner yielded no such allegation. Therefore, Exception 7J is GRANTED, and the last sentence of Paragraph 15 is modified as follows:

> More precisely, Petitioner generally contends that the amendment will encourage urban sprawl; that there is no need for the additional development; ~~that there are no central water and wastewater facilities available to serve that area;~~ that there is no mechanism for monitoring, evaluating, and appraising implementation of the policy; that it will impact nearby natural resources; that it allows increased density standards in the area; and that it is not supported by adequate data and analysis.

Granting Exception 7J does not require any other modifications to the Recommended Order.

The ALJ found in Paragraph 18 that "Southport is located within the suburban service area of the County," and that "it is fairly debatable that Southport will not encourage urban sprawl." The Petitioner contends that all the competent, substantial evidence in the record demonstrates that a portion of the Southport Planning Area lies within the Rural Service Area, and that Southport is leap-frog urban sprawl.

The ALJ's determination that the amendment does not encourage urban sprawl is based on findings that Southport is in the Suburban Service Area, that it is currently developed with low-density residential uses, and that it is becoming more urbanized. For the most part, these findings are supported by competent substantial evidence in the EAR. See e.g. County Ex. 1C, Element Reviews Tab, Ch. 3; County Ex. 1C at Maps 4, 22 and 23; and County Ex. 1C, Overview Special Topics Tab, Ch. 1 at 4 of 9. However, a comparison of Map 3.1 and 3.2 of the Comprehensive Plan (County Ex. 1A) shows that a small part of the Southport Planning Area extends north into the Rural Service Area along part of Highway 77.

Therefore, Exception 7L is GRANTED in part, and the first portion of the second sentence of paragraph 18 is modified to read, "However, Southport is located mostly within the suburban service area of the County...." The remainder of Exception 7L is DENIED.

The ALJ stated in Paragraph 19 that,

> The new [Southport Neighborhood Planning Area] STZ ["Special Treatment Zone"] specifically excludes the Deer Point Reservoir Protection Zone. Therefore, concerns that the new policy will potentially threaten the water quantity and quality in that reservoir are not credited. In addition, there are other provisions within the Plan that are designed to protect the reservoir.

The Petitioner claims this finding is not based on any evidence in the record. However, Map 3.2 demonstrates that the STU does not include the Deer Point Reservoir Protection Zone. The Comprehensive Plan contains the following provisions to protect the quantity and quality of water in the Reservoir: Comprehensive Plan Chapter 5 (Infrastructure), Section C (Potable Water Sub-Element), Objective 5C.4 and Policy 5C.4.1 provides that the Board of County Commissioners will maintain control over all water withdrawals from the Reservoir and that the Board must approve water withdrawals. Policy 3.4.8 will only allow a density of up to 15 du/ac if the new development is served by central water and sewer, but the amendment does not authorize such development because the densities of the underlying land uses have not been changed. Paragraph 19 is supported by competent substantial evidence. Exception 7M is DENIED.

The ALJ stated in Paragraph 20 that,

> Petitioner criticized the County's failure to perform a suitability analysis before adopting the amendment.

> However, a suitability study is performed when a land use change is proposed. Policy 3.4.8 is not an amendment to the FLUM. In fact, the Plan notes that "[n]othing in this policy shall be interpreted as changing the land use category of any parcel of the [FLUM]."

The Petitioner objects to Paragraph 20 because it "impl[ies] that no development can occur under the amendment without a 'suitability study' because the amendment is not a change to the land use map."

The ALJ determined that a suitability analysis was not required because the amendment did not change the densities of the land uses underlying the Southport Planning Area. In other words, there is nothing to analyze at this time. The ALJ correctly concluded that the requirement for a suitability study applies to changes to the Future Land Use Element which change the density or intensity of a parcel. The ALJ's conclusion is more reasonable that that advanced by the Petitioner. Exception 7N is DENIED.

In Paragraph 21, the ALJ stated that in determining the need for the Southport Planning Area amendment the County "took into consideration" the fact that the EAR-based amendments deleted residential as an allowed use in commercially designated lands, and therefore reduced the number of potential residential units. The Petitioner objects to this observation on the

grounds that the reduction was not sufficient to demonstrate that more residential units are needed elsewhere.

Paragraph 21 did not reach the conclusion described by the Petitioner. The ALJ did not determine there was a need for more residences; he determined that the amendment will not increase the number of residential units. This finding is supported by competent, substantial evidence in the record. Nov. 9, 2010 Testimony of Ian Crelling, pg. 134. Exception 7O is DENIED.

Neighborhood Commercial - 50 Foot Height Restriction

The ALJ stated in Paragraph 25 that:

> The EAR contains a section that analyzes data regarding residential development in commercial land use categories. See County Ex. 1C, § 2. There is, then, data and analysis that support the amendment. The 50-foot height limitation actually limits the intensity that would normally be allowed under current Land Development Regulations (LDRs) if this limitation were not in the Plan. Therefore, it will not increase the intensity of development within this district.

The Petitioner claims that the amendment increased the height limit of commercial buildings from 35 to 50 feet, but she does not cite to the record as required by Section 120.57(1)(k), Fla. Stat. Page 3-15 of the amended Comprehensive Plan demonstrates that a height limitation of 50 feet was added where no limitation previously existed. Exception 7Q is DENIED.

Seasonal Resort - 230 Foot Height Restriction

Prior to the adoption of the EAR-based amendments, there was no intensity standard in the Plan for the Seasonal Resort

land use category and all development was governed by the land development regulations ("LDRs"). Paragraph 27. The EAR-based amendments adopted a new intensity standard for buildings in Seasonal Resort in the form of a height restriction of no more than 230 feet. Paragraph 26. In Paragraph 28, the ALJ observed that, "The new height limitation is the same as the maximum height restriction found in the Seasonal Resort zoning district, which now applies to new construction in the district."

The Petitioner argues that in Paragraph 28 the ALJ "relie[d] on standards in the land development regulations as supporting the Amendment." However, the ALJ was actually approving the County's decision to place the intensity standard in the Comprehensive Plan, rather than continuing to rely upon the LDRs. In doing so, the County was correcting a defect in the Seasonal Resort category. See, section 163.3177(6)(a), Fla. Stat. (2010) ("Each land use category ... must include standards to be followed in the control and distribution of population densities and building and structure intensities"); and Village of Key Biscayne v. Dept. of Community Affairs, 696 So. 2d 495 (Fla. 3d DCA 1997). The ALJ's conclusion of law is more reasonable than that advanced by the Petitioner. Exception 7U is DENIED.

Transportation Element

The Petitioner contends that the next to last sentence of Paragraph 30 misconstrues her Amended Petition and her "questioning of the County witness." Even if the ALJ misunderstood the Amended Petition or a line of questioning, that is not a basis for modification of the Recommended Order by the Department. Exception 7X is DENIED.

Groundwater Aquifer Recharge

The Petitioner objects to Paragraph 32 "because it does not acknowledge all allegations in the Amend[ed] Petition . . . ." It is not for the ALJ to refute every allegation in her Petition, but for the Petitioner to put on evidence to show beyond fair debate that the Amendments are not in compliance. Furthermore, the ALJ did acknowledge all her allegations in Paragraph 87:

> All other issues not specifically addressed herein have been considered and found to be without merit, contrary to the more persuasive evidence, or not subject to a challenge in this proceeding.

Exception 7Y is DENIED.

In Paragraph 33, the ALJ determined that the Deer Point Lake Hydrologic Analysis is based upon a professionally acceptable methodology and is responsive to the EAR. The Petitioner argues that the Deer Point Hydrologic Analysis ("Analysis") is a surface water analysis, not a groundwater

analysis, and therefore is not responsive to the EAR recommendations on groundwater aquifer recharge.

Paragraph 33 does not state that the Analysis is a ground water analysis. Paragraph 33 explains the methodology of the Analysis and concludes that it is professionally acceptable. The Petitioner does not claim otherwise. Furthermore, she does not provide citations to the record to support the argument she is making, other than to refer to testimony of "the most credible groundwater expert witness," which does not comply with Section 120.57(1)(k), Fla. Stat. Exception 7Z is DENIED.

In Paragraph 36, the ALJ stated that,

> Petitioner's expert criticized the report as not sufficiently delineating the karst features or the karst plain within the basin. However, the report addresses that issue. See County Ex. 4, p. 2-36. Also, Map 13 in the EAR identifies the Karst Regions in the County. See County Ex. 1C, § 5, Map 13.

The Petitioner disagrees with this statement, but does not allege that Paragraph 36 is not supported by competent substantial evidence is the record. The Petitioner's argument is an effort to have the Department reweigh the evidence, which is not a proper basis for an exception. Exception 7AA is DENIED.

The ALJ determined in Paragraph 40 that, "[A] contention that policy 5F3.2 allows solid waste disposal facilities in high recharge areas is without merit." Based on the ALJ's

description of the Policy, he apparently meant Policy 5F3.3, which provides:

> The County shall continue following Ch. 62-7, F.A.C. regulations at all County solid waste disposal facilities to protect the water quality of the Floridan and surficial aquifers.

The Petitioner argues that the Policy really does allow solid waste disposal facilities in high recharge areas. However, the language of Policy 5F3.3 does not even address the location of solid waste facilities. The ALJ's conclusion of law is more reasonable than that advanced by the Petitioner. Exception 7FF is DENIED.

Air Pollution

Paragraph 44 states that the air pollution provisions of the Comprehensive Plan were discussed in the EAR, that the EAR included no recommendations for changing the provisions, and that the Petitioner alleged that the air pollution provisions of the Comprehensive Plan should have been amended to correct major air quality problems in the County.

The Petitioner contends that the ALJ excluded certain documents and testimony on hearsay grounds, and further contends that a hearsay exception applied to that evidence. The Department has no authority to revisit evidentiary rulings by the ALJ.

Paragraph 44 is supported by competent substantial evidence. The recommendations section of the EAR did not recommend any change of the air pollution provisions. Ex 1C. Exception 7JJ is DENIED.

Wetlands

Before adoption of the EAR-based Amendments, some policies in the Plan provided that all wetlands should be protected, while others indicated that only those covered by state laws and regulations will be protected. The ALJ found in Paragraph 48 that,

> The real issue involves isolated wetlands, which at the time of the EAR were not regulated by the Northwest Florida Water Management District. The EAR did not recommend a specific solution, but only to resolve any apparent "ambiguity."

The Petitioner contends that the discussion portions of the EAR indicate that the policies should be amended to clearly apply to all wetlands. However, Paragraph 48 accurately describes the actual recommendation in the EAR. County Ex. 1C, Recommended Changes Tab, pg. 6 of 9, Item 9 of the recommendations for the Conservation Element. Therefore, Paragraph 48 is supported by competent substantial evidence. Exception 7NN is DENIED.

In Paragraph 49, the ALJ determined that the County reacted to the recommendation to resolve the ambiguity by amending Policy 6.11.3. The Petitioner contends there is no evidence in

the record to support this finding, and that there is no evidence that any such ambiguity exists. Recommendation 9 for the Conservation Element states that there is an ambiguity. The remaining portion of Paragraph 49 describes the evidence that supports resolution of that ambiguity: the testimony of Dan Garlick and the adoption of new rules by the Northwest Florida Water Management District. Paragraph 49 is supported by competent substantial evidence. Exceptions 7OO and PP are DENIED.

Objective 6.7

In Paragraph 57, the ALJ found that Objective 6.7 was not amended by the EAR-based Amendments. The Petitioner contends that Objective 6.7 was amended, and points out that the Performance Measure for the Objective was changed. The County's Comprehensive Plan, as amended by the EAR-based Amendments (County Exhibit 1A), reveals that the language of Objective 6.7 was not changed. The ALJ's finding of fact is supported by competent substantial evidence in the record; therefore, Exception 7ZZ is DENIED.

Conclusions of Law

The Petitioner's exceptions to the paragraphs in the Conclusions of Law section of the Recommended Order are based on the preceding exceptions, which have been denied. Exceptions 8 A and C are DENIED.

ORDER

IT IS THEREFORE ORDERED as follows:

1. The findings of fact and conclusions of law are ADOPTED, except as modified or rejected herein.

2. The Administrative Law Judge's recommendation is ACCEPTED.

3. The following EAR-based Amendments adopted by Bay County Ordinance No. 09-36, are determined to be "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes:

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 Conservation Element (except Policy 6.11.3(3)), 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(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.

DONE AND ORDERED in Tallahassee, Florida.

Doug Darling, Executive Director
DEPARTMENT OF ECONOMIC OPPORTUNITY

NOTICE OF RIGHTS

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

TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 107 EAST MADISON STREET, MSC 110, TALLAHASSEE, FLORIDA 32399-4128, 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 Economic Opportunity, and that true and correct copies have been furnished to the persons listed below in the manner described, on this 17th day of November, 2011.

Miriam Snipes, Agency Clerk
DEPARTMENT OF ECONOMIC OPPORTUNITY
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