FINAL ORDER NO. DCA 11-GM-124

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC, OLD CORKSCREW PLANTATION, LLC, OLD CORKSCREW PLANTATION V, LLC, AND TROYER BROTHERS FLORIDA, INC.,

Petitioners,

vs. Case No. 10-2988GM

LEE COUNTY AND DEPARTMENT OF COMMUNITY AFFAIRS

Respondents,

and

FLORIDA WILDLIFE FEDERATION, COLLIER COUNTY AUDUBON SOCIETY, CONSERVANCY OF SOUTHWEST FLORIDA, INC., ESTERO COUNCIL OF COMMUNITY LEADERS, INC., NICK BATOS, OLD CORKSCREW GOLF CLUB, LLC, AND ALICO LAND DEVELOPMENT, INC.,

Intervenors.

_____/

PARTIAL FINAL ORDER

An Administrative Law Judge (ALJ) of the Division of Administrative Hearings has entered an Order Relinquishing Jurisdiction as to Certain Amendments to the Lee County Comprehensive Plan in this proceeding. A copy of the Order,

which relinquishes jurisdiction back to the Department for entry of a final order on the Lee County Comprehensive Plan Policies 16.2.3, 16.2.5, 16.2.6, 16.2.7, 16.3.8, 16.3.9, 33.3.2, 33.3.4, Objective 16.8, the Glossary Definitions for "Conservation Easement" and "Private Recreation Facilities," and Maps 4 and 17, is attached to this Final Order as Exhibit A.

BACKGROUND

This is a proceeding to determine whether the portions of the Lee County Comprehensive Plan Amendment 10-1 adopted by Ordinance Numbers 10-19, 10-20, and 10-21 on March 3, 2010, as remediated by Comprehensive Plan Amendment 10-R1, adopted by Ordinance Number 10-43 on November 1, 2010, are "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes.

The Department, the County, and several but not all intervenors entered into a Stipulated Settlement Agreement which required the County to adopt certain remedial amendments. The County adopted the remedial amendments and the Department subsequently published its Cumulative Notice of Intent to find the Plan Amendment and the Remedial Amendment to be "in compliance" with Chapter 163, Part II, Florida Statutes, and Rule 9J-5, Florida Administrative Code. The parties who did not enter into the settlement agreement do not object to the entry of this partial Final Order dismissing the Lee County

Comprehensive Plan Policies 16.2.3, 16.2.5, 16.2.6, 16.2.7, 16.3.8, 16.3.9, 33.3.2, 33.3.4, Objective 16.8, the Glossary Definitions for "Conservation Easement" and "Private Recreation Facilities," and Maps 4 and 17.

No affected person, as defined by Section 163.3184(1)(a), Florida Statutes, filed a petition challenging the Cumulative Notice, and the time for doing so has expired.

ORDER

WHEREFORE, it is ORDERED that all compliance issues pertaining to the Lee County Comprehensive Plan Policies 16.2.3, 16.2.5, 16.2.6, 16.2.7, 16.3.8, 16.3.9, 33.3.2, 33.3.4, Objective 16.8, the Glossary Definitions for "Conservation Easement" and "Private Recreation Facilities," and Maps 4 and 17 are DISMISSED.

DONE AND ORDERED this day in Tallahassee, Florida.

for Deborah K. Kearney, 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 by Electronic or U.S. Mail to each of the persons listed below on this 24th day of June, 2011.

Paula Ford
Agency Clerk

By U.S. Mail

The Honorable Bram D. E. Canter
Administrative Law Judge
Division of Administrative Hearings
The Desoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

By Electronic Mail

Susan Henderson, Esquire
Donna Marie Collins, Esquire
Lee County Attorney`s Office
Post Office Box 398
Fort Myers, Florida 33902-0398
shenderson@leegov.com
dcollins@leegov.com

Gregory T. Stewart, Esquire
Carly J. Schrader, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
gstewart@ngnlaw.com
cschrader@ngnlaw.com

Thomas W. Reese, Esquire
2951 61st Avenue South
St. Petersburg, Florida 33712-4539
twreeseesq@aol.com

Kenneth G. Oertel, Esquire
Angela Oertel, Esquire
Oertel, Fernandez, Cole & Bryant, P.A.
301 South Bronough Street
Post Office Box 1110
Tallahassee, Florida 32302-1110
koertel@ohfc.com
aoertel@ohfc.com

Roger W. Sims, Esquire
Jason Boffey, Esquire
Holland & Knight, LLP
200 South Orange Avenue, Suite 2600
Orlando, Florida 32801
roger.sims@hklaw.com
jason.boffey@hklaw.com

Neale Montgomery, Esquire
Pavese Law Firm
Post Office Box 1507
Fort Myers, Florida 33902
nealemontgomery@paveselaw.com

Ralf G. Brookes, Esquire
1217 East Cape Coral Parkway, Suite 107
Cape Coral, Florida 33904-9604
ralf@ralfbrookesattorney.com

Susan L. Stephens, Esquire
Vinette Godelia, Esquire
Hopping Green & Sams, P.A.
Post Office Box 6526
Tallahassee, Florida 32314-6526
susans@hgslaw.com
VinetteG@hgslaw.com

Gregory N. Woods, Esquire
Michael Traficante, Esquire
Grant, Fridkin, Pearson, Athan & Crown, P.A.
5551 Ridgewood Drive, Suite 501
Naples, Florida 34108-2719
gwoods@gfpac.com
mtraficante@gfpac.com

Charles J. Basinait, Esquire
Henderson Franklin Starnes & Holt, P.A.
Post Office Box 280
Fort Myers, Florida 33902
Charles.Basinait@henlaw.com

Lynette Norr, Assistant General Counsel
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100
Lynette.Norr@dca.state.fl.us