STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

1000 FRIENDS OF FLORIDA, INC., MARTIN COUNTY CONSERVATION ALLIANCE, INC., AND DONNA SUTTER MELZER,	)	
Petitioners,	)	
vs.	)	Case No. 10-10007GM
MARTIN COUNTY AND DEPARTMENT OF COMMUNITY AFFAIRS,	)	
Respondents,	)	
and	)	
TURNER GROVES, LTD., AND CONSOLIDATED CITRUS LIMITED PARTNERSHIP,	)	
Intervenors.	)	

RECOMMENDED ORDER

Pursuant to notice, this matter was heard before the Division of Administrative Hearings by its assigned Administrative Law Judge, D. R. Alexander, on March 15 and 16, 2011, in Stuart, Florida.

APPEARANCES

For Petitioners: Virginia P. Sherlock, Esquire
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For Respondent: (County)	David A. Acton, Esquire Office of County Attorney 2401 Southeast Monterey Road Stuart, Florida 34996-3322
For Respondent: (Department)	Lynette Noor, Esquire Department of Community Affairs 2555 Shumard Oak Boulevard Tallahassee, Florida 32399-2100
For Intervenor: (Turner Groves)	Kenneth G. Oertel, Esquire Angela K. Oertel, Esquire Oertel, Fernandez, Cole & Bryant, P.A. Post Office Box 1110 Tallahassee, Florida 32302-1110
For Intervenor: (Consolidated)	Cari L. Roth, Esquire Bryant Miller Olive, P.A. 101 North Monroe Street, Suite 900 Tallahassee, Florida 32301-1546

STATEMENT OF THE ISSUE

The issue is whether plan amendments CPA 10-4 and CPA 10-5 adopted by Martin County (County) by Ordinance Nos. 881 and 882 on August 10, 2010, are in compliance.

PRELIMINARY STATEMENT

Ordinance No. 881 (CPA 10-4) changes the land use designation on a 1,717-acre tract of property in the County from Agriculture to AgTEC. Ordinance No. 882 (CPA 10-5) is a text amendment to the Future Land Use Element (FLUE) that creates a new site-specific future land use category labeled AgTEC, which allows a mix of industrial, commercial, agricultural, and conservation land uses on the property. The property is owned by Intervenors, Turner Groves, Ltd., and Consolidated Citrus

Limited Partnership. The Department of Community Affairs (Department) found the amendments to be in compliance, and notice of this action was published on October 7, 2010. (The notice also addressed three other amendments which are not relevant to this dispute.)

On October 28, 2010, Petitioners, 1000 Friends of Florida, Inc., Martin County Conservation Alliance, Inc., and Donna Sutter Melzer, filed with the Department a Petition for Formal Administrative Hearing (Petition) contending the new amendments are not in compliance on numerous grounds. The Department referred the matter to the Division of Administrative Hearings on November 2, 2010, with a request that an administrative law judge be assigned to conduct the hearing. By Order dated November 4, 2010, Intervenors were authorized to intervene in support of the challenged amendments.

By agreement of the parties, a final hearing was scheduled on June 21-23, 2011, in Stuart, Florida. After Intervenors filed a demand for expeditious resolution of the proceeding, the hearing was rescheduled to March 15-17, 2011, at the same location. By Order dated February 22, 2011, Petitioners were authorized to file an amended petition. Their request to file a second amended petition was denied by Order dated March 4, 2011.

A Joint Prehearing Stipulation (stipulation) was filed by the parties on March 11, 2011. At the final hearing, Petitioners presented the testimony of Donna Sutter Melzer, an attorney and accepted as a fact witness; Charles G. Pattison, Executive Director of 1000 Friends of Florida, Inc., and accepted as an expert; and Clyde Dulin, County Senior Planner. Also, they offered Petitioners' Exhibits 4A, 4B, 5, 8, 12, 13A, 13B, and 15-18. Exhibit 16 is the deposition testimony of Nicki van Vonno, County Growth Management Director. All were received in evidence except Exhibit 18, which was proffered by counsel. The County presented the testimony of Nicki van Vonno, who was accepted as an expert. Intervenors presented the testimony of Dr. James C. Nicholas, an economist/planner and accepted as an expert; Daniel DeLisi, a land use planner with DeLisi Fitzgerald, Inc., and accepted as an expert; Mitch Hutchcraft, an employee of King Ranch Florida Operations, LLC; Tobin R. Overdorf, an ecologist with Crossroads Environmental Consultants, Inc., and accepted as an expert; Jason B. Matson, a traffic engineer with Kimley-Horn and Associates, Inc., and accepted as an expert; and Charles Lucas, director of operations at King Ranch Florida Operations, LLC, and accepted as an expert. Also, they offered Intervenors' Exhibits 1, 3-8, 9A-E, 10, 11, 13-15, 18, 19, 21, and 24, which

were received in evidence. Exhibits 21 and 24 are the depositions of Chris Stahl, an Environmental Specialist III with the Department of Environmental Protection, and Jennifer Goff, a Biological Administrator II with the Florida Fish and Wildlife Conservation Commission. The Department did not present any witnesses. Finally, Joint Exhibits 1-6 were received in evidence.

On March 9, 2011, Martin County Conservation Alliance, Inc., and Donna Melzer filed a Motion for Attorney's Fees and Costs Pursuant to § 57.105, F.S. On April 11, 2011, Intervenors filed a Motion for Recovery of Costs and Attorney Fees pursuant to sections 120.595(1) and 120.569(2)(e), Florida Statutes (2010). These motions are addressed in a later portion of this Recommended Order.

The Transcript of the hearing (three volumes) was filed on April 6, 2011. Proposed findings of fact and conclusions of law were filed by Petitioners, the County, and jointly by Intervenors and the Department on April 18, 2011, and they have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

A. The Parties

1. The County is a political subdivision of the State and has the responsibility of administering its Comprehensive Plan

(Plan). It adopted the two amendments being challenged.

2. The Department is the state land planning agency charged with the responsibility for reviewing plan amendments of local governments, such as the County.

3. The parties have stipulated that Petitioners all reside or operate a business in the County, and they submitted oral or written comments to the County during the adoption process.

4. Intervenors are limited liability corporations owned by King Ranch Florida Operations, LLC, an agricultural operation with offices in Florida and Texas. Intervenors own the subject property, which is more commonly known as Sunrise Groves. The parties have stipulated to the facts necessary to establish that Intervenors are affected persons.

B. The Plan Amendments

5. The amendments concern a 1,717-acre parcel of land located immediately west of, and adjacent to, Interstate 95 (I-95) in the northern part of the County. Southwest Martin Highway (also known as County Highway 714), which runs in an east-west direction, is situated on the south side of the parcel, while the site is separated by a canal on its northern boundary from the City of Port St. Lucie in St. Lucie County. Aerial photographs reflect that undeveloped land lies to the west of the property. See Intervenors' Exhibit 18. At least

four large and very urban Developments of Regional Impact (DRIs) have been approved in Port St. Lucie, immediately north of the parcel, including a planned regional mall on the immediate northern boundary of the parcel.

6. From the mid-1960's until the mid-2000's, the parcel was an active orange grove. Due to damage from citrus canker and "greening," which is an incurable, aggressive, and deadly virus affecting citrus plants, the parcel has become a literal wasteland of dead orange trees. The property is now desolate and unprofitable and cannot be converted to any other profitable or feasible agriculture use.

7. Around the same time that the citrus grove was being destroyed, the County commissioned Urbanomics, Inc., and Leak-Goforth Company, LLC, to perform an economic study to determine how the County could better compete in the Florida market. In November 2006, the results of that study were released. See Intervenors' Ex. 11. The study indicated that the County should be pursuing various types of industrial development, with a focus on recruiting firms and institutions with 50 to 100 or more employees, or those that have capabilities and are on pace to reach this minimum employment threshold in three to five years. The study also concluded that in order to accommodate the types of industries that the County would need to pursue, it

would need more space designated for industrial use. Based upon the study, the County has adopted policies in the Economic Element of the Plan regarding future economic development in the County. See Joint Ex. 1, Ch. 15.

8. On September 30, 2009, Intervenors applied to the County for a new land use designation to be added to the Plan, allowing industrial uses to be combined with commercial and agricultural uses on their parcel of land. See Intervenors' Ex. 2. Intervenors also applied for a change in the land use category on their property from Agricultural to the new land use category. The re-designated parcel would become a "freestanding urban service district," which requires that the property be served by water and sewer services from a regional supplier rather than individual wells, septic tanks, or on-site package treatment plants. It would be one of two freestanding urban service districts (USDs) in the County.[1]

9. When Intervenors initially applied to the County for the amendments, the proposed future land use category was titled "I-95 Agricultural Technology & Employment Center." As the amendment evolved in subsequent months, however, a decision was made to shorten the name to something less cumbersome, which ultimately became "AgTEC," an acronym for Agriculture and Targeted Employment Center.

10. As proposed, the AgTEC designation was significantly different from other land use designations in the Plan in a number of ways. AgTEC is a "site-specific" land use designation, tailored for a specific parcel of property, the 1,717 acres owned by Intervenors. It allows for agricultural uses to continue indefinitely on 817 acres of the parcel, if a viable agricultural use can be found in the future. It also permits new uses on a maximum of 900 acres of the parcel, but limited to certain "Primary Targeted Employment" uses and others which are ancillary to them. Residential is not an allowable use. Finally, it imposes a strict requirement that all future development of the parcel must be subject to a Planned Unit Development (PUD) approval process.

11. On April 14, 2010, the Board of County Commissioners (Board) approved the application and voted to transmit Amendments 10-4 and 10-5 to the Department. On June 25, 2010, the Department issued its Objections, Recommendations, and Comments (ORC) report recommending that the two amendments not be adopted unless additional data were supplied and certain revisions made. See Petitioners' Ex. 4B, pp. 26-47. The Department's objections related to urban sprawl, a failure to demonstrate need, transportation deficiencies, lack of access to public facilities, and a failure to preserve agricultural lands.

12. On July 17, 2010, Intervenors submitted a response to the ORC report, which included an update to the original application addressing the Department's concerns. They also provided additional data and analysis concerning the structure of the County's economy; location quotient data (ratios by type of economic activity in the region), which were consistent with a report submitted by Dr. Nicholson, an economist employed by Intervenors; and environmental information.

13. On August 10, 2010, by a 3-2 vote, the Board adopted the FLUM amendment as Ordinance No. 881 and a revised version of the text amendment as Ordinance No. 882. See Joint Ex. 4 and 5. On October 6, 2010, the Department issued its notice of intent to find the amendments in compliance. See Joint Ex. 6. On October 7, 2010, the Department published notice of its intent to find the amendments in compliance in The Stuart News. Petitioners then timely filed their Petition, as later amended.

14. Ordinance No. 881 refers in its title to a parcel of land known as "Sunrise Groves," which is described in the main body of the ordinance as 1,717 acres of land located west of I-95 and north of Southwest Martin Highway. The site is also defined by legal description attached as Exhibit A to that ordinance. See Joint Ex. 4, pp. 4 and 5. The title indicates

that the land designation on the FLUM is being changed from Agricultural to AgTEC.

15. Ordinance No. 882 also refers in its title to a parcel of land as "Sunrise Groves," and that a new site-specific land use category, AgTEC, is being created for that parcel. The text amendments, which are attached as Exhibit A, provide further site-specific indicators of where the new land use designation applies. See Joint Ex. 5, pp. 5-17. They describe an area that is 1,717 acres in size, state that AgTEC uses may be no closer than 300 feet from any existing residential use, and require provision of the right-of-way for a multi-lane arterial north-south roadway "connecting Martin Highway [in Martin County] to Becker Road [in adjoining St. Lucie County], providing the opportunity for a regional parallel reliever road to I-95 . . . ." Id. at pp. 6 and 7. This roadway (an extension of Village Parkway) is specifically depicted on a conceptual map showing the general location where it is to be built. See Joint Ex. 5, AgTEC Long Range Transp. Map.

16. Petitioners contend that the text amendment does not clearly identify the location of the property or Intervenors' parcel as the subject of the amendments, partly because the ordinance title and conceptual map will not become a part of the Plan. However, Ordinance Nos. 881 and 882 clearly refer to the

same specific parcel of land intended for designation as "AgTEC" and subject to the requirements of the AgTEC future land use category. When reading the two ordinances, a reasonable person would not be confused as to which property designated for the new land use category applies. The more persuasive evidence supports a finding that no other parcel of land within the County could be similarly designated as "AgTEC," absent an amendment to the AgTEC future land use category in the Plan.

C. Petitioners' Objections

17. As narrowed by their stipulation and the withdrawal of certain issues at hearing, Petitioners contend that the amendments are internally inconsistent with other provisions within the Plan; that the amendments encourage urban sprawl; that the amendments impermissibly convert land designated for agricultural purposes to other uses; that the text amendment is based upon the Plan that was in effect prior to the Evaluation and Appraisal Report (EAR) amendments that became effective in January 2011, thereby creating internal inconsistencies; that there is no demonstrated need for the amendments; that the amendments are not supported by adequate data and analysis; and that the amendments fail to provide meaningful and predictable standards for implementation. A contention that the text amendment includes unauthorized self-amending language is not

addressed in Petitioners' proposed recommended order and is presumed to be abandoned.

a. Internal Inconsistency

18. Petitioners contend that the amendments are internally inconsistent with other FLUE provisions in numerous respects. Some of these consistency arguments are based on the fact that the text amendments in Ordinance No. 882 use the numbering system for the goals, objectives, and policies of the FLUE that was in effect when Ordinance No. 882 was adopted on August 10, 2010, rather than the new numbering system that became effective on January 3, 2011.[2] As described in Endnote 2, infra, the new numbering system was adopted by the County during the months-long process of amending the Plan during the EAR process. The new text added to the Plan during that time-frame will simply be re-numbered by the Municipal Code Corporation, which publishes the codified version of the Plan, to conform to the new numbering system. This is consistent with the publisher's authority under Part 6 of Ordinance No. 882, which states in relevant part: "CODIFICATION. The word 'ordinance' may be changed to 'article[,]' 'section[,]' or other word and the sections of this ordinance may be renumbered or re-lettered." Joint Ex. 5, p. 3. This codification provision is found in every ordinance adopting a text amendment. By way of example,

the content in section 4.4.g.1.n(3) in Ordinance No. 882 (on page 17 of Joint Exhibit 5) will be recodified in new policy 4.7A.14, which replaces the old section. Except for the new number, the content of both provisions is the same. See Joint Ex. 1, Ch. 4, p. 50. There was no evidence that the new EAR-based amendments create an inconsistency with these amendments.

19. Petitioners also contend that an internal inconsistency in the Plan arises due to two references to "I-95 AgTEC" in Ordinance No. 882 (on pages 7 and 11), and a single reference to "AgTech" in Ordinance No. 881 (on page 2). They also argue that the "I-95 AgTEC" category lacks "meaningful and predictable standards for implementation" as a land use designation if it is distinct from the "AgTEC" category. However, they failed to present any evidence that Intervenors or the County intended to create two different future land use categories.

20. The evidence supports a finding that both references to "I-95 AgTEC" in Ordinance 882 were merely "vestigial" references (i.e., references made during an early stage of the amendment process) to the initial title proposed for the land use category when Intervenors first applied to the County. The evidence shows that the County staff simply missed the two references when it conducted an electronic "find and replace"

search intended to convert all references in the ordinance to "AgTEC" before presenting the final draft to the Board for adoption. Except for these two references to "I-95 AgTEC," the ordinance consistently uses the "AgTEC" title for the land use designations. Both references are merely scrivener's errors.

21. The single reference to "AgTech" in Ordinance No. 881 is simply a misspelling of the proper title of the new future land use category to be applied to the property. The simultaneous adoption of the two ordinances, the application for both ordinances by the same applicant, and the obvious similarity between the correct spelling and the misspelling support a finding that the use of "AgTech" in Ordinance No. 881 is also a scrivener's error.

22. Historically, after securing Board approval, the staff has been authorized to correct errors in the FLUM without a formal amendment; however, the County Growth Management Director could not recall a situation where a scrivener's error in a text amendment had occurred and was unsure as to how that type of error would be corrected. More than likely, these scrivener's errors will be corrected by another plan amendment. In any event, these non-substantive, minor scrivener's errors do not render the amendments not in compliance.

23. Petitioners further contend that the amendments are inconsistent with the County's stated policy of preserving agricultural lands. See Joint Ex. 1, FLUE policy 4.12A.1. However, the amendments preserve almost one-half of the land (817 acres) for agricultural purposes even though the entire parcel is now unproductive. Petitioners also argue that the amendments are internally inconsistent with FLUE Objectives 4.13A.1.(2)(a) and (b), which provide that the conversion of agricultural land to another land use may be done only when it does not affect the hydrology or productive capacity of adjacent farmlands, and only when it is a "logical and timely extension of a more intense land use in a nearby area." As noted above, there are four approved DRIs immediately north of the parcel in the southwestern quadrant of Port St. Lucie, including a large regional mall on the parcel's northern boundary. The new land use is a logical extension of a more intense land use in a nearby area. Also, there is no evidence that the new land use will affect the hydrology or productive capacity of adjacent farmlands. To the contrary, the evidence shows that any adjacent agricultural areas to the west are protected by a requirement that 75 percent of the common open space be along the western border. It is fairly debatable that the amendments are consistent with the cited policies.

24. Petitioners contend that the amendments are internally inconsistent with a series of FLUE policies that, in general terms: (a) require the availability of services and facilities before expanded urban development may be approved (FLUE policies 4.1B.2., 4.1B.3., and 4.13A.1.(b)); (b) prohibit any regional utility from serving customers outside the Primary Urban Service District (PUSD) and Secondary Urban Service District (SUSD) (FLUE policies 4.7A.2.-4., 4.7A.10., 4.7B.8.(6)-(7), and 4.7B.9.); and (c) prohibit urban development outside the PUSD (FLUE policy 4.13A.9.). Although couched differently, the essence of the argument is that the amendments allow development in an area that is not presently within any PUSD or SUSD, thereby creating an issue of internal inconsistency with other provisions of the Plan.

25. The existing Plan establishes two main types of "urban service districts" in the County: a PUSD and a SUSD. See Joint Ex. 1, Ch. 4. There is an "eastern" PUSD that includes most of the unincorporated coastal area of the County, surrounding the Cities of Stuart, Sewall's Point, Jupiter Island, and Ocean Breeze Park. Adjacent to the eastern PUSD is a much smaller eastern SUSD. See Joint Ex. 3. Several miles west of the boundaries of the eastern PUSD and SUSD there is a smaller "Indiantown" PUSD that consists of the unincorporated inland

area of the County known by that name, and an adjacent Indiantown SUSD. Id.

26. The County's purpose for having USDs is to "regulate urban sprawl by directing growth in a timely and efficient manner to areas with urban public facilities and services, where they are programmed to be available, at the levels of service adopted in the Plan." Joint Ex. 1, FLUE Goal 4.7.

27. The provision of "urban public facilities and services" is generally limited by the Plan to the land inside the County's USDs. The term "public urban facilities and services" is defined as "[r]egional water supply and wastewater treatment/disposal systems, solid waste collection services, acceptable response times for sheriff and emergency services, reasonably accessible community park and related recreational facilities, schools and the transportation network." Joint Ex. 1, Ch. 2, § 2.2(127).

28. The Plan also contains numerous provisions that establish a broad prohibition against all industrial uses and most commercial uses on land outside the County's USDs.

29. The Plan expressly provides for the creation of so-called "Freestanding Urban Service Districts" within the County. See Joint Ex. 1. Ordinance No. 882 includes an amendment to FLUE section 4.4.M.1.h.(5) to establish that land designated as

AgTEC shall be a freestanding USD. See Joint Ex. 5, p. 8. It also amends FLUE section 4.4.g.1.n.(3) to include land designated AgTEC as one of several enumerated "exceptions to the general prohibitions on development outside of the [PUSD]." Id. at p. 17. This means that the amendment creates its own exception from restrictions in the Plan that might otherwise apply to development outside the PUSD. Therefore, the prohibitions against a regional utility serving a customer outside the PUSD and SUSD, or expanding urban development outside a PUSD, do not apply. As noted above, these amended section numbers will be renumbered in the codification process to conform to the numbering in the new EAR-based amendments. However, the content remains the same. See Finding of Fact 18, supra.

30. Petitioners presented no evidence that the freestanding USD for the AgTEC-designated land would lack the urban public facilities and services that would be necessary under the Plan. Utility services do not have to be physically available at the property boundary before a change in land use can be approved; they must only be planned or programmed. To be programmed, the services may be identified in the capital improvement element of the Plan or appear in a DRI approval. According to Mr. Dulin, County Senior Planner, the utility

services for the parcel appear in "one or a number of the [DRIs] approved in the southwestern quadrant of Port St. Lucie." This type of arrangement for services is not unusual, as the County now provides services to some areas in St. Lucie County, while Port St. Lucie and St. Lucie County provide services to certain areas in the County.

31. The evidence shows that Port St. Lucie has the capacity to meet the requirements of the development, and that those services will be paid for by the developer, and not the County. At the amendment stage, the lack of a formal written agreement between the developer and Port St. Lucie is of no concern, as one is not required until the Intervenors seek a development order from the County.

32. It is fairly debatable that the amendments are consistent with the FLUE.

b. Urban Sprawl

33. Florida Administrative Code Rule 9J-5.006(5)(g) identifies 13 "primary indicators" of urban sprawl to be considered in the review of plan amendments to determine whether the presence of multiple indicators "collectively reflect a failure to discourage urban sprawl." Fla. Admin. Code R. 9J-5.005(5)(d). Petitioners' expert, Charles G. Pattison, contends that, with the exception of four indicators (1, 4, 11, and 13),

all other indicators are triggered by the changes effectuated through the amendments being challenged. However, indicator 3 was not raised in the Amended Petition or stipulation. Therefore, only the remaining eight indicators will be addressed. See Heartland Envtl. Council, Inc. v. Dep't of Community Affairs, Case No. 94-2095GM (Fla. DOAH Oct. 15, 1996), modified in part, Case No. DCA-96-FOI-GM (Fla. DCA Nov. 25, 1996), 1996 Fla. ENV LEXIS 163 at *63.

34. Indicator 2 requires a determination as to whether the amendments promote, allow, or designate "significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands which are available and suitable for development." Fla. Admin. Code R. 9J-5.006(5)(g)2. As noted above, large and very urban DRIs have been approved in neighboring Port St. Lucie just north of Intervenors' property, including a planned regional mall on the immediate northern boundary of the property. Also, some of the infrastructure for these developments has been constructed immediately north of Intervenors' parcel, to which the infrastructure on Intervenors' parcel is required to connect. It is unreasonable to ignore this development simply because it lies within an adjacent local government, rather than viewing the existing and approved

development in the area as a whole. A more reasonable approach is to consider the existing urban areas immediately to the north of the parcel.

35. Indicator 5 requires an analysis to determine whether the amendments fail to "adequately protect adjacent agricultural areas and activities, including silviculture, and including active agricultural and silvicultural activities as well as passive agricultural activities and dormant, unique and prime farmlands and soils." Fla. Admin. Code R. 9J-5.006(5)(g)5. Because the parcel is bordered on the east by I-95 and on the north by DRIs in Port St. Lucie, the only areas of concern affected by this indicator would be to the south or west of the parcel. Petitioners failed to prove, however, that the AgTEC requirements for buffers on the east and south boundaries and required open space on the western border of the site constitute inadequate protection for any adjacent agricultural areas or activities within the meaning of the rule.

36. Indicators 6, 7, and 8 are related to the orderly and efficient provision of public services and facilities. See Fla. Admin. Code R. 9J-5.006(5)(g)6.-8. Urban sprawl is generally indicated when new public facilities must be created to serve a proposed use. As noted above, the provider of water and sewer services to Intervenors' parcel (Port St. Lucie) has ample

capacity to meet its projected needs and the capability of doing so from adequately sized lines located within a quarter of a mile from the parcel. Also, there is no credible evidence that there will be a lack of transportation infrastructure to meet the demand expected to be placed on the parcel.

37. Indicator 9 requires an analysis to determine if the amendments fail "to provide a clear separation between rural and urban uses." Fla. Admin. Code R. 9J-5.006(5)(g)9. Through the use of setbacks, buffers, and other site design criteria, it is at least fairly debatable that the amendments create a sufficiently clear separation between the industrial/commercial uses that would be allowed and any rural uses to the south and west of the site. Petitioners did not identify any adjacent rural uses that would require such separation.

38. Indicator 10 requires that the amendments do not discourage or inhibit infill development or the redevelopment of existing neighborhoods and communities. While Petitioners pointed out that there are other parcels in the County currently designated for industrial use, those parcels are either too small or too scattered to attract the types of industrial development desired by the County, which are described in the Economic Element of the Plan. Further, there was no evidence that the other smaller and scattered parcels would be adversely

affected by the large-scale development envisioned on the AgTEC land.

39. Finally, indicator 12 requires an analysis to determine if the amendments result "in poor accessibility among linked or related land uses." Fla. Admin. Code R. 9J-5.006(5)(g)12. The evidence shows that the AgTEC requirements for new transportation infrastructure, coupled with the existing access from two adjacent interchanges on I-95, provide ample accessibility for the parcel and other related land uses.

40. In summary, it is at least fairly debatable that none of the primary indicators of urban sprawl at issue are triggered by the amendments.

c. Other Issues

41. Petitioners assert that Intervenors failed to demonstrate a need for commercial or industrial land outside the USDs. They also contend that the economic study performed by Dr. Nicholson failed to consider other vacant parcels of land designated for industrial use, including large amounts of acreage in Palm City and Indiantown. However, Dr. Nicholson established that of the 2,590 acres of available industrial land in the County, the vast majority of these sites are small, less than five acres in size, and are inadequate. He also established that the County lacks any well-planned, amenity-

oriented industrial, office, or business parks, which would be the type of development contemplated on Intervenors' parcel. It is fairly debatable that the needs analysis submitted by Intervenors is adequate to support the amendments.

42. Although raised as an issue, there was no evidence that the amendments are internally inconsistent with any provisions within the Economic Element of the Plan.

43. All other contentions not specifically addressed herein have been considered and rejected.

D. Improper Purpose

44. Because they did not substantially change the outcome of the Department's determination that the amendments are in compliance, Petitioners are non-prevailing adverse parties. See § 120.595(1)(e)3., Fla. Stat. Therefore, it is necessary to make a determination as to whether Petitioners participated in this proceeding for an "improper purpose," as that term is defined in section 120.595(1)(e)1.

45. Petitioners generally alleged that the amendments were internally inconsistent with other Plan provisions in numerous respects, that they encouraged urban sprawl, that they contain substantive errors that cannot be corrected in this proceeding, and that there is no needs analysis to support the amendments. Each of these contentions was ultimately found to be without

merit, and contrary evidence on these issues submitted by the County and Intervenors was credited. However, when taken as a whole, the record does not support a finding that Petitioners participated in this proceeding "primarily" to harass the applicants, increase the cost of litigation, or cause them unnecessary delay. The Amended Petition was not frivolous.

CONCLUSIONS OF LAW

46. In order to have standing to challenge a plan amendment, a challenger must be an affected person as defined in section 163.3184(1)(a). The parties have stipulated to the facts necessary to establish standing for Petitioners and Intervenors.

47. Once the Department renders a notice of intent to find a plan amendment in compliance, as it did here, that plan provision "shall be determined to be in compliance if the local government's determination of compliance is fairly debatable." § 163.3184(9)(a), Fla. Stat. Therefore, Petitioners bear the burden of proving beyond fair debate that the challenged plan amendment is not in compliance. This means that "if reasonable persons could differ as to its propriety," a plan amendment must be upheld. Martin Cnty. v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997). Where there is "evidence in support of both sides of a comprehensive plan amendment, it is difficult to determine that

the County's decision was anything but 'fairly debatable.'" Martin Cnty. v. Section 28 Partnership, Ltd., 772 So. 2d 616, 621 (Fla. 4th DCA 2000).

48. For the reasons given in the Findings of Fact, Petitioners have failed to establish beyond fair debate that the amendments adopted by Ordinance Nos. 881 and 882 are not in compliance.

49. Jurisdiction in this matter is retained for the limited purpose of considering Intervenors' request for sanctions under section 120.569(2)(e), if renewed within 30 days after this proceeding becomes final.[3] In the event a final order is rendered in Petitioners' favor, jurisdiction is retained for the limited purpose of considering Petitioners' request for fees and costs under section 57.105(5), if renewed within 30 days after the proceeding becomes final.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Community Affairs enter a final order determining that the amendments adopted by Ordinance Nos. 881 and 882 are in compliance.

DONE AND ENTERED this 5th day of May, 2011, in Tallahassee, Leon County, Florida.

D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of May, 2011.

ENDNOTES

1/ The purpose of a freestanding USD is to provide industrial and commercial development in an area that is not within one of the two primary USDs, as shown on the USD map in the Plan.

2/ On December 16, 2009, the County adopted its EAR-based amendments to every element of its Plan, including Chapter 4, the FLUE, by Ordinance Nos. 843 through 856. Among other things, these amendments renumbered existing goals, objectives, and policies. Seven of the fourteen amendments were challenged by affected parties, including two of the Petitioners in this case. At the conclusion of the administrative proceeding, and after one amendment was repealed, all remaining amendments were found to be in compliance. See Martin Cnty. Conservation Alliance, Inc. v. Martin Cnty., Case No. 10-0913GM, 2010 Fla. ENV LEXIS 154 (Fla. DOAH Sept. 7, 2010), modified in part, Case No. DCA11-GM-001, 2011 Fla. ENV LEXIS 1 (Fla. DCA Jan. 3, 2011). Until that challenge was finally resolved in January 2011, Plan amendments adopted by the County in 2010, including Ordinance Nos. 881 and 882, were obviously required to use the numbering system in the pre-EAR amendments.

3/ The paper to which the motion is directed is apparently the stipulation submitted by the parties on March 11, 2011. See Motion, p. 8, par. 19.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.