STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TANIA GARCIA, PEDRO ROMERO, and
MIGUEL A. GONZALEZ,

Petitioners,

vs. Case No. 15-3834GM

CITY OF HIALEAH,

Respondent,

and

HIALEAH 10.1 ACRES, LLC, and
CHALET INVESTMENTS, LLC,

Intervenors.
_____/

RECOMMENDED ORDER

A duly-noticed hearing was held in this matter on October 6 and 7, 2015, in Miami, Florida, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether the amendment to the Future Land Use Map of the City of Hialeah Comprehensive Plan, adopted by Ordinance 2015-34 on June 9, 2015, is "in compliance," as that term is defined in section 163.3184(1)(b), Florida Statutes (2014).[1/]

PRELIMINARY STATEMENT

On July 6, 2015, Petitioners filed with the Division of Administrative Hearings (DOAH) a Petition challenging the Future Land Use Map Amendment adopted by City of Hialeah Ordinance 2015-34 (the FLUM Amendment). The FLUM Amendment changes the land use designation on a 9.99-acre parcel from Low-Density Residential to Medium-Density Residential.

The final hearing was scheduled for October 5 through 7, 2015, in Miami, Florida. Hialeah 10.1 Acres, LLC and Les Chalet Investments, LLC, the owners of the property subject to the FLUM Amendment, were authorized to intervene on July 15, 2015, in support of the FLUM Amendment.

On July 27, 2015, Respondent and Intervenors jointly moved to dismiss the Petition, or in the alternative, for a more definite statement, which was denied. The case was transferred to the undersigned on September 22, 2015.

On September 23, 2015, Petitioners moved to amend the Petition, which motion was denied, as was Petitioners' subsequent Motion for Rehearing or Reconsideration.[2/] On October 2, 2015, the undersigned entered an Amended Notice of Hearing, rescheduling the final hearing for October 6 and 7, 2015.

The parties jointly submitted a Pre-hearing Stipulation on September 25, 2015, an Amended Pre-hearing Stipulation on October 2, 2015, and a Restated Amended Pre-hearing Stipulation on October 14, 2015.

At the final hearing, Petitioners offered the testimony of Debora Storch, City of Hialeah Planning and Zoning Official; Petitioner Tania Garcia; C. Wesley Blackman, accepted as an expert in urban planning; Raul Martinez; and David Alonso, City of Hialeah Public Works Department water and sewer foreman (temporary appointment). Petitioners' Exhibits P1 through P7, portions of P13, and P20 were admitted in evidence.

Respondent and Intervenors jointly offered the testimony of Ms. Storch, accepted as an expert in urban planning; Joseph Corradino, accepted as an expert in traffic concurrency; and

Armondo Vidal, City of Hialeah Director of Public Works, accepted as an expert in sewer and water engineering. Respondent's Exhibits R1 through R25 were admitted in evidence. Intervenors' Exhibits I1 through I8 were admitted in evidence. The parties' Joint Exhibit J1 was also admitted in evidence.

The three-volume Transcript of the hearing was filed on October 22, 2015. The parties timely filed Proposed Recommended Orders, which have been considered by the undersigned in preparation of this Recommended Order.[3/]

FINDINGS OF FACT

The Parties

1. Respondent, City of Hialeah (the City), is a municipal corporation in the State of Florida with the duty and responsibility to adopt and maintain a comprehensive growth management plan pursuant to section 163.3167, Florida Statutes.

2. Petitioners, Tania Garcia, Pedro Romero, and Miguel Gonzalez, reside in and own property within the city of Hialeah. Petitioners submitted oral or written comments concerning the FLUM Amendment to the City, either in person or through their attorney, during the period of time beginning with the transmittal hearing for the FLUM Amendment and ending with the adoption of the FLUM Amendment.

3. Intervenors, Hialeah 10.1 Acres, LLC and Les Chalet, LLC, own the property which is the subject of the challenged FLUM Amendment.

The Subject Property

4. The property subject to the FLUM Amendment (the Property) is located in the northwest quadrant of the City in an established residential area. The 9.9-acre parcel is bounded on the east and west by West 9th and 10th Avenues, respectively; and on the north and south by West 36th Street and West 33rd Place, respectively. None of the boundary roads is an arterial road.

5. The City characterized the Property as an entire city block. Assuming that description is accurate, the city blocks surrounding the subject Property are roughly half the size of the subject Property.

6. The existing land use designation of the Property is Low-Density Residential, but the Property is not developed for residential use. Since 1928, the Property has been used by DuPont Weathering Systems as the Florida Weathering and Testing Lab for performing outdoor weathering tests on a variety of finished products (e.g., garden products, automotive coatings). The prominent structures on the Property include a laboratory facility and multiple parallel rows of aluminum racks.

The FLUM Amendment

7. The FLUM Amendment changes the FLUM designation of the Property from Low-Density Residential (LDR), which allows construction of up to 120 single-family dwelling units, to Medium-Density Residential (MDR), allowing up to 240 multi-family dwelling units. The FLUM Amendment authorizes a two-fold increase in density, as well as a change in the type of structures which may be developed on the Property. While both the LDR and MDR categories allow development of single-family detached houses, townhouses, duplexes, and mobile homes, MDR additionally allows condominiums, garden apartments, and apartments.

8. Intervenors originally applied to change the FLUM designation on the Property from LDR to HDR, or High-Density Residential. The application was altered to an amendment from LDR to HDR prior to the City Council's second public hearing on the application on June 9, 2015. Thus, the application considered by the City's Growth Management Advisory Committee on April 10, 2015; by the City's Planning and Zoning Board on April 22, 2015; and by the City Council on May 12, 2015, would have allowed development of roughly 400 units on the Property.

9. In this case, the FLUM Amendment has been adopted with a binding Declaration of Restrictions (Declaration). Through the Declaration, Intervenors have agreed to restrict development to

240 garden apartments, provide sidewalks six and one-half feet in width around the perimeter of the Property, establish and maintain perimeter landscaping, develop any on-street parking abutting the Property required by the City during site plan review, and provide "improvements to the water and sewer facility located at the southwest corner of West 10th Avenue and West 35th Street as the City determines is necessary for the proposed project."

Pump Station 106

10. The City operates a sewer collection and transmission system only. The City's system connects to the Miami-Dade County sewer system which provides sewer treatment and disposal.

11. The City system collects effluent from residential and non-residential uses within 83 distinct service areas, or basins. The effluent is collected into gravity sewer lines which transport the effluent through a series of small pump stations into a master pump station for each basin. The master pump station transports the collected effluent into the County sewer system at a number of connections with the County force main. The master pump stations operate on a system of high pressure.

12. The City of Hialeah is subject to a Consent Decree among Miami-Dade County, the Florida Department of Environmental Protection, and the United States Environmental Protection

Agency, requiring repair of a number of sewer pump stations by November 2017.

13. The Property and the surrounding neighborhood are within the basin served by pump station 106. The station is located directly across West 10th Avenue from the Property and across West 35th Street from Petitioner Garcia's residence. The station has a history of system failures, which have caused sewage overflows in the surrounding residential area. Poor-performing pumps at the station have also leaked effluent on-site, releasing offensive odors. To put it mildly, the station has been a bone of contention between the City and some area residents.

14. The station was last improved in 2007 by the addition of two booster pumps designed to work during periods of high flow in conjunction with the four pumps located "in the ground" at the station.

15. At the time of hearing, pump station 106 was under conditional moratorium, meaning no new development can connect to the station until it is repaired or released from moratorium status.

16. Plans to improve the station are incorporated in the Inventory of Needs and Funding Sources section of the City's Comprehensive Plan, Capital Improvements Element (CIE), as follows:

c. Sanitary Sewer

* * *

> (3) Upgrades and Maintenance of the Sanitary Sewer System: Planned projects include a new regional sanitary sewer pump station to serve the northwest area of the City, and an environmental project. Planned upgrades include the reconstruction and rehabilitation of two regional sewer pump stations (Pump Station 106 and Pump Station 6), and the design and implementation of two rehabilitation programs including the reduction of infiltration and inflow by relining sewer mains and the upgrade and rehabilitation of all 84 sanitary sewer pump stations.

17. The City has contracted with the environmental engineering firm of Hazen and Sawyer to redesign the station and oversee reconstruction and rehabilitation. The station will be redesigned to a "fully submersible" station, eliminating the exterior booster pumps.

18. In the 2009 Annual Update to its Capital Improvement Plan, the City budgeted a total of $18,171,000 for pump station projects through 2015. For fiscal year 2015-2016, the City's Public Works Department Budget includes $3,900,000 for construction and upgrades to City pump stations subject to the consent decree. The City anticipates resolving all issues related to pump station 106 by January 2016.

Petitioners' Challenge

19. Petitioners allege three bases on which the FLUM Amendment should be found not "in compliance." First, Petitioners allege broadly that the FLUM Amendment is not supported by data and analysis regarding the area "including the character of the community and consistency of adjacent future land uses and the availability of public infrastructure capacity," citing sections 163.3177(6)(a)2. and 8. as grounds therefore. Petitioners break this allegation down further into two subsets: (1) the FLUM Amendment is not supported by data and analysis concerning the suitability of the Property "for the proposed residential development density and intensity," and (2) the FLUM Amendment is not based on data and analysis demonstrating availability of sewer facilities.[4/]

20. Additionally, Petitioners allege the FLUM Amendment is internally inconsistent with the following policies of the Comprehensive Plan: Policies 1.1.3 and 1.6.5 of the Future Land Use Element (FLUE) and Policy 1.2.2 of the CIE.

Availability of Sewer Service

21. Section 163.3177(6)(a)2. requires plan amendments to be based upon "surveys, studies, and data regarding the area, as applicable, including . . . the availability of water supplies, public facilities, and services."

22. Petitioners stipulated that the City has adequate sewer capacity to serve the density of development allowed under the FLUM Amendment, except with regard to pump station 106.

23. The most significant data on this issue is the fact that the station is under a conditional moratorium, meaning no new development can be connected to the station until it is released from moratorium. The City was well aware of that fact when it considered the FLUM Amendment. The City has accepted the applicant's contribution of $250,000 toward needed repairs at the station to bring it out of moratorium status.

24. Petitioners introduced evidence supporting a finding that, at various times in the weeks and months prior to the final hearing, the station was not functioning at full capacity. For example, both of the booster pumps had recently been sent out for repair and only one booster pump was in place and functioning on the date of hearing.

25. Petitioners introduced the testimony of David Alonso, a temporarily-appointed City sewer and water foreman, who has had substantial experience with maintenance of the station. Mr. Alonso testified that the station has been functioning for some time with "minimal maintenance," and described effluent leaks and other malfunctions at the station.

26. Petitioners also introduced evidence that the capacity of the station to collect and transport effluent is reduced by

infiltration and inflow (I/I) of ground and surface waters. Infiltration occurs when ground water seeps into gravity sewer pipes through cracks during seasons when the water table is high. Inflow refers to the introduction of large volumes of surface water into the system during rainstorm events.

27. The City did not deny the impact of I/I on sewer capacity. In fact, Armondo Vidal, Director of Sewer and Water, testified that he always takes I/I into account in calculating the amount of capacity needed to service a development by adding "cushion" to the numbers.

28. Mr. Alonso further testified that a manhole within the basin had been intentionally plugged by an employee some six or seven months prior to the final hearing. Mr. Alonso speculated that the plug would have artificially increased capacity at the station.

29. Mr. Vidal acknowledged the plugging of the sewer manhole and confirmed that it had been remedied shortly after it was brought to his attention. Mr. Vidal explained that plugging the manhole would have temporarily minimized inflow to the system.

30. The City must meet the Miami-Dade County standard limiting I/I to 5,000 gallons per day per inch per mile (gpdim). The City has undertaken a relining project to reduce ground water infiltration into the system. Mr. Vidal testified that lining is

complete on 37 to 39 percent of the sewer pipes in the basin served by pump station 106. According to the City's 2014 Sewer Rehabilitation Annual Report (January 2015), the City's lining project has been "highly successful" in reducing I/I. The report documents a system-wide level of 3,655 gpdim, well below the 5,000 limit.[5/]

31. Petitioners proved, at most, that the station is not operating at its design capacity and requires significant repairs in order to do so. Petitioners proved that, until recently, the station has not been maintained well.

32. Pursuant to the City's Comprehensive Plan and concurrency management system, development proposed under the FLUM Amendment will be evaluated during site plan review in relation to existing and projected sewer system needs. The basis for sanitary sewer concurrency analysis will be the available capacity at the master pump station.

33. Whether the station will have the capacity to serve development under the FLUM Amendment at the time the development takes place is a subject of fair debate, given the pump station repairs underway, the relining project to reduce infiltration, and other planned improvements for completion in January 2016.

Land Use Suitability

34. Section 163.3177(6)(a)8.b. requires future land use map amendments to be based on an analysis of "the suitability of the

plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site." Section 163.3177(6)(a)2.c. requires plan amendments to be based upon data regarding the character of the undeveloped land.[6/]

35. In processing the FLUM application, Ms. Storch consulted the Comprehensive Plan data regarding topography and soils of the area and determined that neither presented any limitation on development of the Property.

36. Ms. Storch further consulted the Comprehensive Plan list of historic archaeological and architectural sites and confirmed that none were located on the Property.

37. Finally, Ms. Storch visited the Property and observed no wetlands or other natural resources which would limit development of the Property.

38. Petitioners introduced no evidence to contradict Ms. Storch's findings as to the suitability of the Property for the proposed use.

Internal Consistency

Policy 1.6.5

39. Petitioners next argue that the FLUM Amendment creates an internal inconsistency with FLUE Policy 1.6.5., which states, "[l]and uses that generate high traffic counts shall be

encouraged to locate adjacent to arterial roads and mass transit systems."

40. Ms. Storch testified that the proposed use of the Property (MDR) is not a use that generates high traffic counts. She testified that commercial uses, such as grocery stores and movie theaters, are much higher trip generators than multi-family development. Further, she testified that single-family development is sometimes a higher trip generator than multi-family.

41. Ms. Storch's opinion was based in part upon her review of a State Department of Transportation (DOT) publication which assigns trip generation rates to various land uses. The DOT data is the type of data upon which a planning expert would reasonably rely in formulating such an opinion.[7/]

42. Petitioners' expert, C. Wesley Blackman, offered the opposite opinion--the proposed use constitutes a high traffic generator. Mr. Blackman's opinion was based on a comparison between the traffic associated with LDR, for which the Property is already approved, and MDR, the category being sought by the applicant. In Mr. Blackman's opinion, the term "high traffic generator" is a relative term. He concluded the proposed use is a high traffic generator because it will allow development at twice the density of the existing category. Under Mr. Blackman's

theory, it appears that any use that is more dense or intense than LDR would be considered a high traffic generator.

43. Ms. Storch's testimony is accepted as more credible and more persuasive on the issue.

44. Petitioners did not prove that the FLUM Amendment is inconsistent with FLUE Policy 1.6.5. Whether the proposed use of the Property MDR is a "high traffic generator" is at least subject to fair debate.

FLUE Policy 1.1.3

45. Petitioners further urge that the FLUM Amendment is inconsistent with FLUE Policy 1.1.3, which provides that "[w]here excess public infrastructure exists, densities and land use intensities may be increased, consistent with the future land use plan."

46. Essentially, Petitioners' argument is that because pump station 106 is under a conditional moratorium, there is no excess sewer capacity to serve increased development density on the Property.

47. The station has a maximum design capacity of between 6.5 and 8.2 million gallons per day (mgpd). That capacity is contingent upon proper functioning of all six pumps--the four in-ground pumps and the two booster pumps.

48. Mr. Vidal testified that the station is currently meeting a demand of 2.7 mgpd generated by the existing basin

population. Mr. Vidal calculated the sewer demand which would be generated by 240 units as 0.14 mgpd. Thus, the total demand on the station, even with the anticipated development, is 2.84 mgpd, well below the station's capacity of 6.5 to 8.2 mgpd.

49. Mr. Vidal conceded that I/I diminishes capacity by inflating the flow through the station. Mr. Vidal testified that the station has an average flow of 4.5 mgpd taking into account I/I. Thus, the station has excess capacity to collect and transmit an additional 0.14 mgpd, even accounting for I/I, when operating at design capacity.

50. Petitioners introduced no evidence to refute the numbers and calculations presented by Mr. Vidal. Instead, Petitioners presented the testimony of Mr. Alonso regarding ongoing maintenance issues at the station. Mr. Alonso admitted that he could not provide calculations regarding capacity of the station.

51. Mr. Vidal conceded the maintenance issues raised by Mr. Alonso and gave a detailed account of the repairs that are outstanding and estimates for completion. Mr. Vidal testified that three of the pumps were being repaired in Jupiter, Florida, on the date of the hearing and should be repaired and reinstalled within four to six weeks. Further, another pump was in the yard awaiting a part for replacement. When that pump is repaired, it will be installed "in the ground" as a standby pump.

52. Pursuant to Mr. Vidal's testimony, the station will be operating at design capacity within four to six weeks of the hearing date.

53. Petitioners did not prove beyond fair debate that the City does not have excess sewer capacity to serve the increased residential density allowed under the FLUM Amendment.

CIE Policy 1.2.2

54. Finally, Petitioners assert the FLUM Amendment conflicts with CIE Policy 1.2.2, which reads, as follows:

> In coordination with other City departments, the Planning and Development Department shall evaluate land use amendments to determine the compatibility of those amendments with the adopted level of service standards and to ensure adequate funding is available when improvements are necessary pursuant to such land use amendments.

55. Petitioners' argument seems to be that Ms. Storch did not either have or obtain information regarding the impact of the FLUM Amendment on sewer level of service and funding available to improve pump station 106 between the time she received the application and made her recommendation for approval to the City Council.

56. The City has an established Growth Management Advisory Committee, or GMAC, consisting of representatives of the following departments: planning and development, water and sewer, police, fire, and streets. The GMAC convenes on a regular

basis to consider proposed Comprehensive Plan amendments. One of the purposes of the GMAC is to provide recommendations to the local planning agency on applications for plan amendment.

57. Ms. Storch provides GMAC members copies of the proposed amendments in advance of the meetings and she leads the meetings. Department heads may discuss at GMAC meetings any issues of interest to their respective departments. The meetings are informal, although they are advertised and open to the public.

58. The FLUM Amendment was considered by the GMAC at its meeting on April 10, 2015. Cesar Castillo represented the Public Works Department at the meeting. During the meeting, Mr. Castillo stated for the record that pump station 106 was under a conditional moratorium and that the applicant had been informed of that fact. Mr. Castillo further stated that the applicant was negotiating with the Department and the Mayor for an agreement to contribute to needed repairs to the station. He emphasized that the station would have to be released from conditional moratorium before the development could be permitted.

59. Ms. Storch was also present, briefly, at a meeting prior to the GMAC meeting between the applicant, the Mayor, and Mr. Vidal, at which she was informed that the application was forthcoming and that Mr. Vidal was meeting with the applicant to resolve issues with regard to pump station 106.

60. Ms. Storch is the City's Planning and Zoning official and the only planner on the City staff. She is responsible for implementing the Comprehensive Plan, preparing and coordinating amendments thereto, and preparing evaluations of and updates to the plan.

61. Ms. Storch is well aware of the contents of the CIE and the five-year schedule of capital improvements for each Department, which are incorporated into the plan and updated on an annual basis. As such, Ms. Storch had knowledge of the Needs and Inventory Analysis regarding pump station 106 in the CIE and the schedule of capital improvements adopted therein for sewer system repairs.

62. Petitioners did not prove beyond fair debate that the Planning Department did not coordinate review of the FLUM Amendment with other departments regarding whether public facility improvements were needed and whether funding was available for those improvements.

CONCLUSIONS OF LAW

63. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to sections 120.569, 120.57(1), and 163.3187(5)(a), Florida Statutes (2015).

64. To have standing to challenge a plan amendment, a person must be an affected person as defined in section

163.3184(1)(a). Petitioners are affected persons within the meaning of the statute.

65. Intervenors have standing to intervene in this proceeding because they own the property affected by the FLUM Amendment.

66. As the party challenging the FLUM Amendment, Petitioners have the burden to prove the FLUM Amendment is not "in compliance," as that term is defined in section 163.3184(1)(b).

67. The City's determination that the FLUM Amendment is in compliance is presumed to be correct and must be sustained if the City's determination is "fairly debatable."

68. The term "fairly debatable" is not defined in chapter 163, but in Martin County v. Yusem, 690 So. 2d 1288, 1295 (Fla. 1997), the Supreme Court of Florida explained that "[t]he fairly debatable standard is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety."

69. The standard of proof to establish a finding of fact is preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

70. Section 163.3177(6)(a)2. requires that a plan amendment be based upon "surveys, studies, and data regarding the area, as applicable, including . . . [t]he character of the undeveloped

land" and "[t]he availability of water supplies, public facilities, and services."

71. Section 163.3177(6)(a)8. requires future land use map amendments to be based upon "[a]n analysis of the availability of facilities and services" and "[a]n analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site."

72. In both the Petition and in Petitioners' issues of fact for determination included in the Restated Amended Pre-hearing Stipulation, Petitioners allege that "the record presented to the City Council for the FLUM Amendment" was not based upon surveys, studies, and data regarding the availability of public facilities and services and the suitability of the Property for the proposed use.

73. Petitioners' allegations misconstrue the applicable law. In a de novo hearing on a plan amendment challenge, the data and analysis which may support a plan amendment are not limited to those identified or actually relied upon by the local government. All data available to the local government in existence at the time of the adoption of the plan amendment may be relied upon to support an amendment in a de novo proceeding. See Zemel v. Lee Cnty., 15 F.A.L.R. 2735 (Fla. Dep't Cmty. Aff. 1993), aff'd, 642 So. 2d 1367 (Fla. 1st DCA 1994). Further, the

plan amendment may be supported by analysis conducted subsequent to adoption of the plan amendment. See id.

74. Petitioners failed to prove beyond fair debate that the FLUM Amendment is not supported by data regarding the character of the undeveloped land or the availability of public facilities and services. See § 163.3177(6)(a)2.c. and d., Fla. Stat. Further, Petitioners failed to prove beyond fair debate that the FLUM Amendment is not based upon an analysis of either the availability of public facilities or the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site. See § 163.3177(6)(a)8.a. and b., Fla. Stat.

75. The elements of a comprehensive plan must be internally consistent. See § 163.3177(2), Fla. Stat. "Comprehensive plans may only be amended in such a way as to preserve the internal consistency of the plan pursuant to section 163.3177." § 163.3187(4), Fla. Stat.

76. Petitioners did not prove beyond fair debate that the FLUM Amendment is inconsistent with FLUE Policy 1.6.3 or 1.1.3, or CIE Policy 1.2.2.

77. In summary, Petitioners failed to prove beyond fair debate that the FLUM Amendment is not "in compliance."

RECOMMENDATION

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

RECOMMENDED that the Department of Economic Opportunity enter a final order determining that the City of Hialeah Comprehensive Plan Amendment adopted by Ordinance No. 2015-34 on June 9, 2015, is "in compliance," as that term is defined in section 163.3184(1)(b).

DONE AND ENTERED this 18th day of November, 2015, in Tallahassee, Leon County, Florida.

SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of November, 2015.

ENDNOTES

[1/] All references herein to the Florida Statutes are to the 2014 version, unless otherwise noted.

[2/] Petitioners sought to raise the issue of whether the FLUM Amendment met the definition of a small scale amendment pursuant to section 163.3187(1), which limits small scale amendments to 10 or fewer acres (with some exceptions). Notably, Petitioners

stipulated in paragraph 4 of the Restated Amended Pre-hearing Stipulation that the property subject to the FLUM Amendment consists of 9.9 acres.

[3/] Respondent's and Intervenors' Joint Motion to Allow Filing of a Proposed Recommended Order of Forty-One Pages was granted.

[4/] The Petition also alleged that the FLUM Amendment would reduce the level of service for transportation facilities, but Petitioners abandoned that issue prior to the final hearing.

[5/] The report also documents the gpdim of I/I on a basin-by-basin level. Unfortunately, no evidence was introduced to support a finding of the particular basin number served by pump station 106. Thus, this Recommended Order contains no finding of the gpdim of I/I for that basin.

[6/] Neither of the cited statutes requires, as Petitioners allege, that the FLUM Amendment be "based upon data regarding the area, including the character of the community and consistency of adjacent future land uses." The evidence introduced by Petitioners regarding compatibility of the FLUM Amendment with the surrounding community and adjacent future land uses is wholly irrelevant. No findings on those allegations are included herein.

[7/] "An expert witness may rely upon facts or data made known to the expert at or before trial when the expert does not have personal knowledge of those facts if the facts or data are of a type reasonably relied on by experts in the subject to support the opinion." Charles W. Ehrhardt, Ehrhardt's Florida Evidence § 704.1, p. 784 (2013). Further, the expert may rely on facts which have not been admitted. See Id. at p. 785.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.