STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JACQUELINE ROGERS, CYNTHIA COLE, ANN BENNETT, AND THERESA BLACKWELL,

Petitioners, Case No. 19-1153GM

vs.

ESCAMBIA COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,

Respondent.
_____/

RECOMMENDED ORDER

A duly-noticed final hearing was held in this case in Pensacola, Florida, on October 30, 2019, before Suzanne Van Wyk, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

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For Respondent: Kia M. Johnson, Esquire
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STATEMENT OF THE ISSUE

Whether Escambia County Comprehensive Plan Amendment CPA 2018-02, adopted by Ordinance No. 2019-09 on February 7, 2019, is "in compliance," as that term is defined in section 163.3184(1)(b), Florida Statutes (2018).[1/]

PRELIMINARY STATEMENT

On February 7, 2019, Escambia County adopted CPA 2018-02 ("the Plan Amendment"), which strikes Future Land Use Policy 3.1.5 ("FLU 3.1.5"). The Plan Amendment deletes the County's policy direction to oppose establishment of new rural communities within the County.

On March 6, 2019, Petitioners filed a Petition with the Division of Administrative Hearings ("Division") challenging the Plan Amendment pursuant to section 163.3184. Petitioners allege that the Plan Amendment: (1) renders the Plan internally inconsistent, contrary to section 163.3177(2); (2) is not based on relevant and appropriate data and an analysis by the local government, as required by section 163.3177(1)(f); and (3) fails to discourage urban sprawl, as required by section 163.3177(9).

A final hearing was originally scheduled for July 30, 2019, but was continued to October 30, 2019, following the resignation

of Respondent's initial counsel in this matter. The undersigned conducted a pre-hearing conference with the parties on October 14, 2019, and the parties filed a Pre-hearing Stipulation on October 23, 2019.

The hearing commenced as re-scheduled in Pensacola, Florida, on October 30, 2019. At the final hearing, Petitioners' Exhibits P1 through P29 were admitted in evidence (including Exhibit 18b., which was not on Petitioners' exhibit list incorporated in the Pre-hearing Stipulation). Petitioners testified on their own behalf, and offered the testimony of Christian Wagley, accepted as an expert in environmental planning and sustainable development; Barbara Albrecht, accepted as an expert in marine biology, aquatic ecology, environmental diagnostics, and bio-remediation; Horace Jones, Respondent's Director of Development Services, accepted as an expert in comprehensive planning and zoning; and Juan Lemos, Senior Urban Planner in Respondent's Development Services Department, accepted as an expert in planning and zoning.

Respondent's Exhibits R1 through R27 were admitted in evidence. Respondent presented the testimony of Mr. Jones and Mr. Lemos.

A one-volume Transcript of the final hearing was filed with the Division on November 20, 2019. On November 22, 2019, the undersigned granted the parties' Joint Motion for Extension of

Time to Submit Proposed Recommended Orders, ordering the parties to submit proposed recommended orders on or before December 16, 2019.[2/] The parties timely filed Proposed Recommended Orders, which have been carefully considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties and Standing

1. Each of the four Petitioners owns property in Escambia County and submitted written or oral comments regarding the Plan Amendment to the County between the date the Plan Amendment was transmitted to the Department of Economic Opportunity ("Department") and the date it was adopted by the County Commission.

2. Escambia County is a political subdivision of the State of Florida, with the duty and responsibility to adopt and maintain a comprehensive land use plan, pursuant to section 163.3167, Florida Statutes (2019).

Existing Conditions

3. There are approximately 610 square miles of land in the unincorporated County. Of that, almost half (48.75 percent) is designated for agricultural use.

4. Escambia County can be roughly described as an hourglass shape. The northern portion is dominated by agricultural uses and is overwhelmingly designated as

Agricultural on the County's 2030 Future Land Use Map ("FLUM"). The Agricultural ("AG") land use category allows a maximum residential density of one dwelling unit per 20 acres ("1du/20 acres").

5. In contrast, the southern portion has a much more urban development form. The central urban core, located west of the City of Pensacola, is designated as Mixed-Use Urban, with a sprinkling of Industrial designations, and Commercial designations along the major thoroughfares. Radiating out to the north and west of the urban core is a swath of Mixed-Use Suburban, with some areas designated for Recreation, and Commercial along major thoroughfares. Farther west are lands designated for Conservation, which extend to the Perdido River, the County's western boundary.

6. The "neck" of the hourglass serves as a transition between the agricultural northern portion and the urban and suburban southern portion of the County. The dominant future land use categories in this area are Agriculture, Mixed-Use Suburban, and a category critical to this case, Rural Community, or "RC."

Rural Communities

7. According to the Comprehensive Plan ("the Plan" or "the existing Plan"), the RC FLUM category is:

> [I]ntended to recognize existing residential development and neighborhood serving nonresidential activity through a compact development pattern that serves the rural and agricultural areas of Escambia County.

8. The designation was applied to pockets of mixed residential and commercial developments that served the agricultural areas in existence when the Plan was originally adopted. The FLUM depicts roughly 20 RCs in the County, almost all of which are located in the northern portion.

9. The uses allowed in RC are agriculture, silviculture, residential, recreational facilities, public and civic, and compact traditional neighborhood supportive commercial. Development is limited to a residential density of two units per acre ("2du/acre"), but does not impose a cap on the intensity of commercial development.

10. The County's policy in establishing and maintaining RCs is best reflected in Goal FLU 3 and its implementing Objective and Policies, which read, as follows:

> **GOAL FLU 3 Rural Strategies**
>
> Escambia County will promote rural strategies, including protecting agriculture, silviculture, and related activities, protecting and preserving natural resources and guiding new development toward existing rural communities.

OBJ FLU 3.1 Rural Development

All new development within the rural areas, including commercial development, that is compatible with the protection and preservation of rural areas[,] will be directed to existing rural communities.

Policies

FLU 3.1.1 **Infrastructure Expenditures.** Escambia County will limit the expenditure of public funds for infrastructure improvements or extensions that would increase the capacity of those facilities beyond that necessary to support the densities and intensities of use established by this plan unless such expenditures are necessary to implement other policies of this plan.

FLU 3.1.2 **Water Facility Extensions.** Escambia County will coordinate with potable water providers on any extensions of potable water facilities in the rural area.

FLU 3.1.3 **FLUM Amendments.** During consideration of FLUM amendments, Escambia County will consider the impacts of increased residential densities to the agriculture and silviculture industries as well as public facility maintenance and operation expenditures (i.e., roads, water, sewer, schools) needed to serve the proposed development.

FLU 3.1.4 **Rezoning.** Escambia County will protect agriculture and the rural lifestyle of northern Escambia County by permitting re-zonings to districts, allowing for higher residential densities in the RC future land use category.

FLU 3.1.5 **New Rural Communities.** To protect silviculture, agriculture, and agriculture-related activities, Escambia

> County will not support the establishment of new rural communities.

Designated Sector Area Plan

11. The Designated Sector Area Plan ("DSAP") was created and adopted in the Plan in 2011, and comprises approximately 15,000 acres in the transitional area between the urban and suburban south County and rural and agricultural north County.

12. The DSAP plans for the location of traditional urban neighborhoods, new suburban and conservation neighborhoods, and regional employment districts, and includes the location of existing and planned public facilities to serve the new development.

13. As noted by the County's Development Director, Horace Jones, in August 2018, the primary purpose of the DSAP was to "prevent urban sprawl into the agrarian and rural communities . . . so that we can't continue to intrude upon those prime farmland areas, upon those large parcels of land in the AG category." At the final hearing, Mr. Jones several times confirmed that the purpose of the DSAP was to prevent urban sprawl into the agricultural areas of the County.

14. As noted by the County's Senior Urban Planner, Juan Lemos, in August 2018, "We haven't gotten to that point where we need those agricultural lands to build houses for people . . . or to develop businesses[.]" At final hearing,

Mr. Lemos confirmed that his opinion on that issue has not changed.[3/]

The Plan Amendment

15. The Plan Amendment, plainly and simply, deletes FLU 3.1.5 in its entirety.

16. The Plan Amendment represents a policy change by the County to allow consideration of plan amendments establishing new RCs in the County.

Petitioners' Challenges

17. Petitioners allege the Plan Amendment is not "in compliance" because it: (1) creates internal inconsistencies in the existing Plan; (2) is not based on relevant and appropriate data and an analysis by the local government; and (3) fails to discourage urban sprawl.

Internal Inconsistencies

18. Petitioners allege the Plan Amendment is inconsistent with FLU Goal 3, "Rural Strategies," and Objective 3.1, "Rural Development."

19. The Goal provides that, in rural areas, the County will "guide[] new development toward existing [RCs]," and the Objective provides that "[a]ll new development within rural areas . . . will be directed to existing [RCs]."

20. The language of both the Goal and Objective is clear and unambiguous.

21. Establishment of new RCs in the rural areas of the County will not guide new development to existing RCs, and will be contrary to both the Goal and the Objective.

22. However, the Plan Amendment neither establishes new RCs nor creates a policy supporting the establishment of new RCs. It merely deletes a policy expressing the County's intent not to support new RCs.

23. Absent an express policy in the County's existing Plan, the Plan Amendment is not internally inconsistent with FLU Goal 3 and Objective 3.1.[4/]

24. The preponderance of the evidence does not support a finding that the Plan Amendment creates internal inconsistencies in the existing Plan.

Data and Analysis

25. The County agenda items for transmittal and adoption hearings on the Plan Amendment were devoid of any supporting data or analysis.

26. The County's transmittal package to the Department and other reviewing agencies contained only the ordinance adopting the Plan Amendment accompanied by a cover letter.

27. The Plan Amendment reflects a policy change by the County to consider allowing establishment of new RCs.

28. The Plan Amendment does not change the land use of any particular parcel of land in the County, and does not change the

uses allowed, or the density or intensity of development allowed thereon.

29. The Plan Amendment does not, in and of itself, require the expenditure of public funds, nor does it immediately impact the provision of public services in the rural areas of the County.

30. Whether the County will establish any new RCs in the rural areas of the County depends on whether a property owner proposes one in the future, and whether the County approves said proposal, after consideration of all applicable Plan policies.

31. The agenda items for both the transmittal and adoption hearings on the Plan Amendment contain the following as background for the Plan Amendment:

> The Escambia County Board of County Commissioners finds that an amendment to its Comprehensive Plan is necessary and appropriate based on the changing needs within the County; and it is in the best interest of the health, safety, and welfare of the County to amend its Comprehensive Plan. (emphasis added).

32. At the final hearing, the County offered no data to establish the "changing needs within the County" referenced in the background statement.

33. In effect, the County offered no data or analysis at final hearing to support the Plan Amendment.

34. Mr. Jones testified that "there were some discussions [among Commissioners] on why they were adopting this and why they felt it was necessary." He stated, "the record reflects that they stated that basically it was to give someone an opportunity for them to make a request to make an application [for RC]."

35. Mr. Jones's hearsay testimony was not corroborated by any non-hearsay evidence.

36. In a series of leading questions, Mr. Jones affirmed that the County Commissioners "found that FLU 3.1.5 restricted the ability of landowners to even request a change to the rural community future land use category," and "found that the [Policy] restricted the ability of landowners to construct residences due to the density limitations of only one dwelling unit per 20 acres."

37. Mr. Jones's testimony was neither credible nor persuasive.

38. Mr. Jones's explanation of the reason for the Plan Amendment was undermined by his subsequent testimony that the Commission had the authority to approve a plan amendment, changing the designation of property from AG to RC, even without repealing Policy FLU 3.1.5. If that is true, there is absolutely no basis for the Plan Amendment.[5/]

39. In a series of leading questions from his counsel, Mr. Jones agreed that "this text amendment was necessary to allow . . . existing residential areas [within AG] to change to RC in order to come into the appropriate future land use category" and "determined that there were areas within the agricultural future land use designation which would benefit from the ability to change to a rural community future land use category."

40. However, Respondent offered no evidence of the location of any such residential areas outside of existing RC communities, or an explanation of why the assigned AG designation was inappropriate. Nor did Mr. Jones expound on the benefit the Plan Amendment would allegedly bestow on property in the agricultural areas. This testimony was conclusory and lacked foundation.

41. Mr. Jones's testimony was further undermined by his refusal to speak for the Commission when questioned by the Petitioners regarding the Commission's reasons for the Plan Amendment, contrasted with his eager agreement with leading statements from his counsel offering reasons for the Plan Amendment. On redirect, when Mr. Jones responded to Petitioner Rogers's question regarding the County's reasons for adopting the Plan Amendment, he referred generally to "economic reasons" and vaguely referred to "other public reasons as she previously

stated," deferring to his counsel's leading questions. (emphasis added).

42. Mr. Jones's testimony that the Commission's justification for the Plan Amendment is to allow property owners to apply for a change is unreliable hearsay evidence, later contradicted by his own testimony that the Commission could have approved a land use amendment to that effect prior to adoption of the instant Plan Amendment. Mr. Jones's testimony is rejected as unreliable and unpersuasive.

43. The preponderance of the evidence supports a finding that the Plan Amendment is not supported by any relevant data or an analysis thereof.

Urban Sprawl

44. Petitioners' final contention is that the Plan Amendment fails to discourage urban sprawl as required by section 163.3177(6)(a)9.

45. That section lists 13 "primary indicators" that a plan amendment does not discourage the proliferation of urban sprawl. Of those, Petitioners allege the Plan Amendment meets the following primary indicators:

> (II) Promotes, allows, or designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped lands that are suitable for development.

(III) Promotes, allows, or designated urban development in radial, strip, isolated, or ribbon patterns generally emanating from existing urban developments.

* * *

(V) Fails to adequately protect adjacent agricultural areas and activities, including silviculture, active agricultural and silvicultural activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.

(VI) Fails to maximize use of existing public facilities and services.

* * *

(VIII) Allows for land use patterns or timing which disproportionately increase the cost in time, money, and energy of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health care, fire and emergency response, and general government.

* * *

(IX) Fails to provide a clear separation between rural and urban uses.

(X) Discourages or inhibits infill development or the redevelopment of existing neighborhoods and communities.

46. In support of this allegation, Petitioners presented the testimony of Christian Wagley, who was accepted as an expert in sustainable development and environmental planning.

47. Mr. Wagley testified that the Plan Amendment will allow a forty-fold increase in density of development allowed in

the largely rural, agricultural northern county area (i.e., the increase in density between that allowed in the Agricultural category: 1du/20 acres--and that allowed in RC: 2du/acre), and significantly diminish available Agricultural lands and increase demand for urban services outside the urban area.

48. Mr. Wagley's testimony is based on the assumption that the County will actually approve, in the future, new RCs in the largely agricultural northern portion of the County. That assumption is insufficient to form the basis of a finding of fact in the instant case.

49. The Plan Amendment does not convert any Agricultural lands to the RC category. It does not "promote, allow, or designate" urban development in the rural areas of the County; "promote, allow, or designate" development in a radial, strip, or isolated pattern; fail to maximize use of existing public facilities and services, or allow for land use patterns which disproportionately increase the cost of providing and maintaining public facilities and services; fail to provide a clear separation between rural and urban uses; or discourage or inhibit infill development or redevelopment.

50. Petitioners introduced a map depicting the United States Department of Agriculture prime soils overlayed on the Agriculturally-designated lands in the County. While this map demonstrates that prime farmland is plentiful in the northern

agricultural area of the County, it does not prove that the Plan Amendment fails to protect adjacent agricultural areas and activities, passive agricultural activities, and dormant, unique, and prime farmlands and soils.

51. The preponderance of the evidence does not support a finding that the Plan Amendment fails to discourage urban sprawl.

CONCLUSIONS OF LAW

52. The Division of Administrative Hearings has jurisdiction over the subject matter and parties hereto, pursuant to sections 120.569, 120.57(1), and 163.3184(5), Florida Statutes (2019).

53. To have standing to challenge or support 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.

54. "In compliance" means "consistent with the requirements of sections 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, with the appropriate strategic regional policy plan, and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable." § 163.3184(1)(b), Fla. Stat.

55. The County's determination that the Plan Amendment is "in compliance" is presumed correct and must be sustained if the

determination of compliance is "fairly debatable." See § 163.3184(5)(c), Fla. Stat.

56. The term "fairly debatable" is not defined in chapter 163, but the Florida Supreme Court held in Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997), that "[t]he fairly debatable standard is a highly deferential requiring approval of a planning action if reasonable persons could differ as to its propriety. In other words, . . . it is open to dispute or controversy on grounds that make sense or point to a logical deduction[.]" Id. at 1295.

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

Internal Inconsistencies

58. Section 163.3177(2) provides, "Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent."

59. Petitioners did not prove beyond fair debate that the Plan Amendment created any internal inconsistencies with the cited provisions of the Plan.

60. Petitioners did not prove beyond fair debate that the Plan Amendment violates section 163.3177(2).

Data and Analysis

61. Section 163.3177(1)(f) provides that "[a]ll . . . plan amendments shall be based upon relevant and appropriate data and an analysis by the local government." Further, the statute provides that data "may include . . . surveys, studies, community goals and vision, and other data available at the time of adoption" of the plan amendment.

62. Further, section 163.3177(6)(a)2. requires as follows:

> The future land use plan and plan amendments shall be based upon surveys, studies, and data regarding the area, as applicable, including:
>
> a. The amount of land required to accommodate anticipated growth.
>
> b. The projected permanent and seasonal population of the area.
>
> c. The character of undeveloped land.
>
> d. The availability of water supplies, public facilities, and services.
>
> e. The need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.
>
> f. The compatibility of uses on lands adjacent to or closely proximate to military installations.
>
> g. The compatibility of uses on lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.
>
> h. The discouragement of urban sprawl.

> i. The need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.
>
> j. The need to modify land uses and development patterns within antiquated subdivisions.(emphasis supplied).

63. Petitioners fault the County for failing to conduct the types of analyses listed in the statute, and argue the lack of data collection and analysis render the Plan Amendment violative of the statute.

64. All plan amendments need not be supported by the same type or amount of data. See Zemel v. Lee Cnty., Case No. 90-7793 (Fla. DOAH Dec. 16, 1992; Fla. DCA June 22, 1993). "Some matters of policy are obviously not susceptible to numerical computation." Indian Trail Imp. Dist. v. Dep't of Cmty. Aff., 946 So. 2d 640, 642 (Fla. 4th DCA 2007). "If amendments merely represent a policy or directional change and depend on future activities and assessments (i.e., further analysis and decision-making by the local government), the Department does not require the degree of data and analyses that other amendments require." Id. at 641 (quoting West Palm Beach v. Dep't of Cmty. Aff., Case No. 04-4336 (Fla. DOAH July 18, 2005; Fla. DCA Oct. 21, 2005)). See also Bakker v. Town of Surfside, Case No. 14-1026 (Fla. DOAH June 17, 2014; DEO Aug. 27, 2014)(plan amendments which "simply add a religious use to limited properties within the Low Density

Residential land use category" do not implicate the provision of services or capital improvements, nor require the town to take any immediate action, and are thus aspirational in nature and can be based on less data and analysis); Collier Cnty. v. Dep't of Cmty. Aff., Case No. 04-1048 (Fla. DOAH Aug. 24, 2004; Fla. DCA Dec. 29, 2004)(plan amendment restricting roadway overpasses and flyovers in the City is "merely a policy choice by a local government which has a limited or cosmetic effect"); Dibbs v. Hillsborough Cnty., Case No. 12-1850 (Fla. DOAH Apr. 22, 2013; Fla. DEO Dec. 10, 2013); aff'd, 200 So. 3d 1273 (Fla. 2d DCA 2015)(amendment expressing community support for expansion of a highway to relieve traffic could be fairly characterized as aspirational); and Dunn Creek v. City of Jacksonville, Case No. 07-3539 (Fla. DOAH Dec. 28, 2009; Fla. DCA Apr. 1, 2010)(remedial FLUM amendment changing the land use back to its original classification can be based on less data and analysis than other types of amendments); cf. Palm Beach Cnty. v. Dep't of Cmty. Aff., Case No. 95-5930 (Fla. DOAH Jan. 24, 1997; Fla. AC Oct. 30, 1997)(rejecting characterization of local government's plan amendment, which expressed the County's desire to "discourage a connection between" two roadways through a neighborhood, as aspirational, thus requiring little, if any, supporting data and analysis, because the "policy choices directly reflect land use and development

activities as they relate to transportation," and, thus, require more data and analysis); Seminole Tribe of Fla. v. Hendry Cnty., Case No. 14-1441 (Fla. DOAH Feb. 12, 2015; Fla. AC May 4, 2015) (rejecting local government's characterization of plan amendment, which allowed large-scale commercial and industrial uses, as well as a broadly-defined new category of use, in all but three land use categories in the County, as "aspirational," thus requiring little supporting data and analysis).

65. The Plan Amendment at bar is one that represents a policy change and depends on further analysis and decision-making by the County. As such, it is "not susceptible to numerical computation." Indian Trail, 946 So. 2d at 642. The County is not required to undertake the types of data collection and analyses listed in section 163.3177(6)(a)2. Moreover, by employing the modifying phrase "if applicable," the statute indicates selective application of the listed analyses to any particular comprehensive plan amendments.

66. However, Indian Trail does not stand for the proposition that an aspirational amendment can be found "in compliance" without any supporting data or analysis, but rather that said amendments require less data and analysis.[6/]

67. In Indian Trail, appellant challenged the Department's determination that the local government's plan amendment, designating itself as the freshwater and wastewater service

provider to the unincorporated areas of the county, was adequately supported by data and analysis. In affirming the Department's compliance determination, the court highlighted the record evidence that:

> the failure of the County itself to be a provider had created a 'void' in long range utility planning resulting in duplicative service lines, inefficient services in the rural service area, overlapping utility jurisdictions, and an absence of written agreements defining service availability areas.

The County's judgment was grounded in an analysis of the impacts stemming from its absence as a service provider in the rural area.

68. In contrast, Escambia County provided no data or analysis to support its policy change to allow consideration of new RCs in the Agriculturally-designated areas of the County. The background information for the agenda items include a generalized reference to "changing needs within the County," but the record is devoid of an explanation of said changed needs. For the reasons stated in the Findings of Fact, Mr. Jones's testimony regarding the Commissioners' "findings" in support of the Plan Amendment was rejected as unreliable and unpersuasive.

69. In Indian Trail, the Court explained that one of the reasons for administrative agency intervention in application of policy is to "allow for human perceptions." Id. at 642. This

means that some questions must be "informed by human judgement of elected officials." Id. However, the Court cautioned, "This does not mean that the rule of law gives way to a rule of individuals." Id. Intervention is appropriate where, as here, "there is a palpable misapplication of the governing law." Id.

70. Petitioners proved beyond fair debate that the Plan Amendment, although aspirational in nature, is not supported by data and analysis.

71. Petitioners proved beyond fair debate that the Plan Amendment contravenes section 163.3177(1)(f); but did not prove the Plan Amendment contravenes section 163.3177(6)(a)2.

Urban Sprawl

72. Section 163.3177(6)(a)9. provides that any amendment to the future land use element "shall discourage the proliferation of urban sprawl."

73. Based on the foregoing Findings of Fact, Petitioners did not prove the Plan Amendment fails to discourage urban sprawl.

74. Petitioners did not prove beyond fair debate that the Plan Amendment contravenes section 163.3177(6)(a)9.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Administration Commission enter a final order finding Escambia County Comprehensive Plan

Amendment CPA 2018-02, adopted by Ordinance No. 2019-09 on February 7, 2019, is not "in compliance," as that term is defined by section 163.3184(1)(b), Florida Statutes.

DONE AND ENTERED this 9th day of January, 2020, 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 9th day of January, 2020.

ENDNOTES

[1/] Except as otherwise provided herein, all references to the Florida Statutes are to the 2018 version, which was in effect when the Plan Amendment was adopted.

[2/] Pursuant to Florida Administrative Code Rule 28-106.216(2), the parties waived the requirement that this Recommended Order be issued within 30 days after the date on which the Transcript was filed.

[3/] Contrary to Respondent's representation in its Proposed Recommended Order, Mr. Lemos's testimony does not support a finding that the "County has reached a point where development north of the [DSAP] is necessary." In the following testimony, Mr. Lemos confirmed his opinion as expressed in August 2018:

> Q: So for the particular application when you said we haven't got to the point where

> we need those agricultural lands to build homes, are you saying that what you said in August of 2018, are you saying that's not true anymore?
>
> A: No.
>
> Q: No?
>
> A: No.
>
> Q: And you also said the sector plan . . . was needed to keep development where it needed to go. You said, that's why the sector plan was created, Line 6, so that we could keep the development where it needed to go and to protect the agrarian and rural lifestyle of those areas?
>
> A: And that's what was stated.
>
> Q. You still agree with that?
>
> A: Yes ma'am.

[4/] Rather, any future plan amendment to establish an RC will be subject to review for consistency with this Goal and Objective, as well as applicable policies.

[5/] Furthermore, this testimony is unreliable and unpersuasive. Approving such a change would require the County Commission to completely disregard the existing Plan.

[6/] Similarly, the cited administrative orders have required at least a modicum of data and analysis for aspirational plan amendments to meet the statutory requirement. For example, in Dunn Creek, the Administrative Law Judge ("ALJ") found that "the amount and type of data presented [to support the City's remedial plan amendment] are relevant and appropriate." Dunn Creek v. City of Jacksonville, DOAH Case No. 07-3539, RO at 29. In Bakker, the Town's aspirational plan amendment was supported by the findings from a community charrette process, the settlement agreement from prior litigation, and data supporting maps created by the town, among other data. Bakker v. Town of Surfside, DOAH Case No. 14-1026, RO at 17. In Collier County, the ALJ found the County's aspirational amendment to restrict overpasses and flyovers in the County, supported by data and

studies, available at the time the amendment was adopted, that "overpasses can cause traffic impacts by moving congestion from one intersection to another," that "improvements which improve long-term vehicle flow in the City will also impact the County," and "citizen concerns about the traffic impacts of intersections and their desire to seek alternatives to overpasses before authorizing one to be built." Collier Cnty. v. Dep't of Cmty. Aff., DOAH Case No. 04-1048, RO at 14.

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(eServed)

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.