Agenda Report

2725 Judge Fran Jamieson Way
Viera, FL 32940

Unfinished Business

I.1. 11/12/2019

Subject:
Wetlands Protection - Comprehensive Plan Amendments

Fiscal Impact:
No fiscal impact

Dept/Office:
Natural Resource Management Department

Requested Action:
Staff requests Board direction regarding Comprehensive Plan Amendments - Wetlands Protection - related to residential development and the 1.8% impact allowance.

Summary Explanation and Background:
On March 7, 2019, the Board directed staff to bring back potential modifications to the Brevard County Comprehensive Plan (Comp Plan) and Wetlands Protection ordinance for consistency with the minimum standards set forth by the Florida Department of Environmental Protection (FDEP) and St. Johns River Water Management District (SJRWMD). Of specific interest were the residential policies and the 1.8% threshold established for residential impacts to wetlands. For Board consideration, staff developed multiple options that may be considered individually or in combination.

Potential Modifications to Policies Related to Residential Development and 1.8%
FS 163.3177(6)(d) (attached) requires that land uses be distributed in a manner that minimizes the effect and impact on wetlands, and requires data and analysis to support requested policy modifications. An approach consistent with state statute is required.

Modifications to the Comp Plan can be submitted for the 2020 spring cycle transmittal (due December 31, 2019) for consideration by the Department of Economic Opportunity (DEO), distribution to other stakeholders, and county public hearings.

Option 1:
As discussed below, the 1.8% criteria arose from an application of the state's 4,000 SF stormwater threshold over the established one unit to five acre density.

Staff can conduct an analysis of Building Department and Property Appraiser data to determine if typical single -family home sizes have increased since 2011, and modify the 1.8% (4,000 SF per 5 acre parcel) allowance accordingly.

Option 2:
Recognizing the role of wetlands and their ability to improve water quality, Palm Bay has established residential densities based on the availability of centralized sewage service.

Brevard County could request to apply the 4,000 SF allowance to "1 unit per 3 acres where centralized sewage service is required and available," yielding a 3% impact allowance.

Option 3:
Recently, staff have encountered development proposed within wetlands on parcels less than five acres in platted subdivisions (approved by Brevard County). These wetlands may not have been delineated at the time of subdivision approval; either because they did not exist, or did not meet the state definition of wetlands at the time of approval. This was the case in 2018 with a parcel in Otter Trace, Merritt Island, and this year with a parcel in Eagle Pointe, Titusville. The proposed development on both parcels was permitted by applying the 1.8% retroactively over the entire subdivision, and a Consent Vested Rights action, respectively.

A better process is requested to adequately address development of the last remaining lots in platted subdivisions. For example, the Otter Trace parcel effectively depleted the allowable 1.8% of impacts for the subdivision, disallowing any further impacts in the subdivision for any remaining undeveloped lots. This will then require subsequent applicants to proceed to the Vested Rights process. While this could be an effective solution in most cases; it is an inconvenience to both the applicant and staff.

Staff requests to draft policy language that would permit impacts to wetlands not previously identified in existing platted subdivisions. The Comp Plan requires no-net-loss of wetlands, so staff requests that mitigation be provided for these permitted impacts.

Option 4:
Make no revisions to Wetland Protection Comprehensive Plan Policies.

Option 5:
Other Board direction.

Origin of 1.8% Threshold
In July 2007, a citizen request was made by The Viera Company related to a hearing of the Viera DRI Substantial Deviation #2 and proposed Comprehensive Plan Amendments. The Board directed staff to work directly with The Viera Company and their consulting planners/engineers/scientists, and the environmental community (Parties) to resolve issues specifically related to wetlands. During the following 2½ years, numerous public meetings were held, where the parties discussed various aspects of the text and map amendments.

The 1.8% threshold, adopted by the state in 1995, was based on the state-established stormwater standards for all projects developing 4,000 SF or more of impervious surfaces. During county wetland policy development, the Parties considered 4,000 SF adequate to construct a primary residence and associated impervious areas required for a single family home site. Therefore, the Parties agreed to apply the state's 4,000 SF stormwater threshold to the County's allowable wetland density of one unit per five acre - thus establishing the allowable wetland impact area of 1.8% of the residential property available for development: 523

4,000 SF = 0.09 acre
0.09 acres ÷ 5 acres = 1.8%

The 1.8% is applied to single family lots less than five acres established after the adoption of the Wetland Protection policies of the Brevard County Comprehensive Plan (September 9, 1988), new subdivisions and multi-family parcels greater than five acres, New Town Overlays, DRIs, PUDs, and if applicable, mixed-use land development activities. The 2007-C Comprehensive Plan amendments were unanimously adopted in December 2009. The Florida Department of Community Affairs subsequently approved the amendments in 2010. The corresponding land development regulations were adopted March 23, 2011.

County (Planning) vs. State Regulation (Permitting) Requirements for Wetlands
There are distinct wetland protection requirements assigned to the state for permitting, and to local governments for planning. SJRWMD (and in some cases, FDEP) issues permits in 18 Florida counties for wetland impacts and mitigation. **The Brevard County Comp Plan is currently consistent with the planning standards established by the state for county wetland protections**; for permitting, Brevard County defers to the state (typically SJRWMD) for the delineation of wetlands, the avoidance and minimization of wetland impacts, and the mitigation of impacts. For isolated wetlands less than one-half acre in size, the state defers wetland protection measures to local governments and their Comprehensive Plan policies.

The state permitting agencies do not consider wetland impacts relative to land uses or planning, or whether wetland impacts should be allowed; functions that are the responsibility of local jurisdictions. Florida Statute Chapter 163, Community Planning Act, requires local governments to adopt a Comprehensive Plan determining the allowable uses, densities, intensities, and development standards for all lands within their boundaries. Comp Plan policies must be based on relevant and appropriate data and analysis, and provide meaningful and predictable standards for the use and development of land. Comp Plans must include a Conservation Element addressing the conservation, use and protection of natural resources existing within the jurisdiction, including wetlands; and a Coastal Element, addressing plans and principles to be used to control development and redevelopment to eliminate or mitigate the adverse impacts on coastal wetlands. Section 163.3177(d)2.k., F.S., requires planning policies that direct "future land uses that are incompatible with the protection and conservation of wetlands and wetland functions away from wetlands."

Division of Administrative Hearings (DOAH) Case 96-2174GM
Wetland protection planning policies relative to residential development in Brevard have changed over the years in response to community input, Board direction, and legal challenges. Below are summarized two significant efforts:

A chronology of proposed Conservation Element Policy 5.2.F amendments in Division of Administrative Hearings (DOAH) Case 96-2174GM is attached. In April 1995, the Board directed staff to initiate a Comp Plan amendment to repeal Objective 5 of the Conservation Element pertaining to wetlands. The Board was concerned that the policies were duplicative of various state and federal permitting processes. The effort was challenged by the state and several intervenors as noncompliant with state law. After numerous language modifications; two stipulated settlements were reached in 1997 and 1999. In November 1999, the state approved Comp Plan amendments for Brevard. The chronology summary is attached; as is the 475-page appendix.

Additional Research

- DEO

  Staff recently consulted with the DEO regarding the submittal process, procedures, and review criteria for Comp Plan amendments. DEO outlined the submittal process, procedures and review criteria. DEO reiterated to staff the requirements of F.S. Chapter 163, specifically:

  - FS 163.3177(6)(d) - principles, guidelines, and standards for conservation that provide long-term goals and which protect and conserve wetlands and the natural functions of wetlands,
  - The requirement that land uses be distributed in a manner that minimizes the effect and impact on wetlands, and
  - The requirement for data and analysis to support proposed policy amendments.

- Other Jurisdictions' Regulation

  Staff examined wetland policies/ordinances of Palm Bay, Titusville, Miramar, and Volusia, Indian River, and Martin Counties. All have Future Land Use, Conservation, and/or Coastal Element policies protecting wetlands; some are more restrictive than Brevard County. Below is a brief summary of key element of each jurisdiction:

  Palm Bay
  - Residential density within wetlands is 1 unit per 5 acres for areas on septic; and 1 unit per 3 acres where centralized sewage service is required and available.
  - Vegetated buffers are required to be maintained or created between all developed areas and wetlands.
  - No more than ten percent of the wetland within the property boundary may be permitted to be filled.
  - Mitigation requirements are deferred to the state.

  Titusville
  - No net loss of functional wetlands.
  - Protection of wetlands determined by the functional value of the wetland.

  Miramar
  - Utilizes "Compatibility of Land Uses Relative to the Wetland Benefit Index."
  - Distribute land uses to avoid or minimize impacts to the greatest degree practicable.

  Volusia County
  - No-net-loss of wetland function.
  - Development within wetlands one-half acre or smaller is exempt.
  - A 25- to 50-foot buffer required adjacent to and surrounding all wetlands
  - In determining whether the proposed development is permissible, Volusia County takes into consideration 13 criteria, including:
    - The ability of the wetland to receive, store, and discharge surface water runoff so as to contribute to hydrological stability and control of flooding and erosion.

- The ability of the wetland to provide filtration and nutrient assimilation from surface water runoff.
- The cumulative impacts of the proposed development on the wetland system in combination with other developments which have been permitted or constructed in the same drainage basin.
- The technical feasibility of any proposed wetland mitigation plans and the likelihood of their success in restoring or replacing the environmental benefit altered by the development.
- Whether and the extent to which a proposed project must be located within a wetland or water body in order to perform the project's basic functions.

Indian River County

- No-net-loss of natural functions and values of wetlands and deepwater habitats through implementation of the Comprehensive Wetlands Management Program.
- A minimum of ten square feet of native buffer shall be provided for each linear foot of wetland or deepwater habitat perimeter that lies adjacent to uplands.
- A 1 unit per 40 acres density is established in all estuarine wetland systems & shallow water habitats, and contains density transfer standards.
- Prohibits impacts unless the activity is necessary to prevent/eliminate public hazard, or would provide direct public benefits which would exceed loss. Avoidance and minimization of impacts is always required.

Martin County

- No-net-loss applies to the functions and values of wetlands, the spatial extent of wetlands and wetland buffers, and secondary impacts to the functions of wetlands or wetland buffers.
- 75-foot buffers are required; reduction waivers are available.
- Martin County does not establish densities within wetlands, but does contain density transfer standards.
- Martin County has very robust policies, likely the most thorough and restrictive of counties near Brevard. They allow no negative impacts within wetlands or wetland buffers except in specific provisions. There are exceptions for pre-Comp Plan (April 1982) parcels, however; there are specific limitations. Allowable impacts for both residential and non-residential parcels are based on "reasonable uses." For example single family lots are limited to 3,000 sq. ft. of development footprint (excluding septic system). Non-residential developments must minimize fill for "reasonable use." Waivers are also available for access to uplands and water, public utilities, and shoreline stabilization. Other waivers may be granted by the Board of County Commissioners, with "clear, substantial competent evidence that the application of the regulations in this division preclude all reasonable economically viable use of the property." Comprehensive Preserve Area Management Plans (PAMPs) are required for all projects containing upland preserve areas, wetland preserve areas, wetland buffers, Shoreline Protection Zone, or hardened shorelines.

Clerk to the Board Instructions:

None

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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November 13, 2019

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item I.1., Wetlands Protection – Comprehensive Plan Amendments

The Board of County Commissioners, in regular session on November 12, 2019, tabled consideration regarding Comprehensive Plan Amendments – Wetlands Protection – related to residential development and the 1.8 percent impact allowance to a January 2020 Board meeting.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

cc: County Manager

CHRONOLOGY
CONSERVATION ELEMENT POLICY 5.2.F WETLAND POLICIES AMENDMENT 95B
DOAH CASE 96-2174GM

1. On April 18, 1995, the Board of County Commissioners (BOCC) directed staff to initiate a Comprehensive Land Use Plan (Comp Plan) amendment to repeal Objective 5 of the Conservation Element pertaining to wetlands. The BOCC concern was that the policies were duplicative of various state and federal permitting processes. (Appendix 1 – April 18, 1995 meeting minutes and agenda package)

2. On June 30, 1995, the BOCC approved the 1995B Comp Plan Amendment Package. The amendment package included amendments to several policies in addition to the repeal of Conservation Element Wetlands Policy Objective 5 in its entirety. (Appendix 2 - Proposed deletion of Conservation Element Objective 5)

3. The proposed amendments were then reviewed by both a Citizen Resource Group (CRG) and the Local Planning Agency (LPA). This review was required to occur before the transmittal of proposed amendments to the Florida Department of Community Affairs (DCA). (Appendix 3 - Staff memo)

   [*CRG review is longer part of the Comp Plan amendment process.*]

4. The advisory groups did not recommend repealing Objective 5 in its entirety and offered alternative amendments. (Appendix 4 - Summary of advisory group recommendations)

5. On September 19, 1995, the BOCC voted to approve the Objective 5 amendments proposed by the LPA and on October 18, 1995, BOCC transmitted the proposed amendments to the DCA for consistency review pursuant Ch. 163, F.S. and Ch 9J-5, Florida Administrative Code. (Appendix 5 - Revised amendment and meeting minutes)

   [*The Department of Economic Opportunity (DEO) is the current, successor agency to DCA.*]

   [*Ch 9J-5 was repealed in 2011, but many of the rule requirements were incorporated into Ch. 163.]*

6. On December 22, 1995, DCA issued an Objections, Comments, and Recommendations (ORC) Report finding the Conservation Element plan amendment to be in non-compliance for a variety of reasons. (Appendix 6 - ORC Report and agency comments)

   [*DCA's objections claimed the proposed amendment was inconsistent because:*

   1. It failed to directs future land uses which are incompatible with the protection of wetlands and wetland functions away from wetlands, deferred wetland protection to permitting agencies and

eliminated land use planning requirements for nonjurisdictional wetlands.

2. There was insufficient data and analysis to support the proposed amendment.

3. It was internally inconsistent with other polices regarding the protection of natural resources such as floodplains, wildlife and wildlife habitat, and ground and surface water quality.

4. It would allow increased development for residential, commercial and industrial uses above that currently provided for by the County's comprehensive plan and create urban sprawl.

The recommendation was to not adopt the proposed amendment. Comments from other objecting agencies are included for additional insight.]

7. On February 6, 1996, the BOCC discussed the proposed amendments and the objections from the state agencies. (Appendix 7 – Meeting minutes)

8. On February 16, 1996, the BOCC held a workshop attended by representatives from state agencies. (Appendix 8 – Meeting minutes)

9. On February 23, 1996, the BOCC adopted Ordinance 96-05. (Appendix – 9 Meeting minutes and ordinance)

10. On April 18, 1996, DCA issued a Notice of Intent to find the amendments in non-compliance. DCA subsequently filed a request for an administrative hearing with the state Division of Administrative Hearings (DOAH). (Appendix 10 – DCA Notice of Intent)

11. On May 9, 1996, the Florida Native Plant Society, Indian River Audubon Society, Conradina Chapter of the Florida Native Plant Society and the Sierra Club Turtle Coast Group petitioned for leave to intervene in the administrative hearing process. The Florida Audubon Society, 1000 Friends of Florida and Howard Wolf subsequently petitioned for leave to intervene (These parties are collectively referred to as the Intervenors.)

[*In addition to DCA's objections, the Intervenors claimed that the proposed amendment was inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as set forth in sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j)(1996).*]

12. On May 12, 1997, DCA entered into a stipulated settlement agreement with Brevard County resolving the non-compliance items. On July 1, 1997, the BOCC adopted Ordinance 97-22. (Appendix 11 – Stipulated settlement agreement, ordinance and meeting minutes)

13. On August 11, 1997, the Intervenors filed an amended administrative petition against the County and DCA to challenge Ordinance 97-22.

14. On April 27, 1999, the BOCC discussed proposed settlement language with the Intervenors at a regular board meeting. A stipulated settlement agreement was approved on August 24, 1999, and the Board adopted Ordinance 99-48. (Appendix 12 – Meeting minutes, correspondence, stipulated settlement agreement, Ordinance 99-48)

15. A subsequent remedial Ordinance 99-52 was adopted to replace a map included in Ordinance 99-48 to accurately reflect the acreage of forested wetlands subject to the new policy language. The 1997 amendment was rescinded as a condition of this second settlement agreement. (Appendix 13 – Meeting minutes, correspondence, Ordinance 99-52)

16. DCA found the amendments to be in compliance with Ch. 163, F.S and Rule 9J-5, FAC. and the new language went into effect on November 19, 1999. (Appendix 14 – Notice of Intent)

17. Chart showing the progression of amendment language to Conservation Element Policy 5.2.F (Appendix 15)

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Meeting Minutes

Chairman Higgs inquired, based on the revised Plan approved by St. Johns District, will the project provide adverse impact to adjoining properties; with Mr. Najda responding no, it will not, but at the same time this area has experienced extensive flooding in the past, and this project will not eliminate the flooding in the area, but it will reduce the flooding. Chairman Higgs inquired what is the function of Grant Road ditch; and is it to drain the entire basin or a roadway; with Mr. Najda responding it is a conveyance system for a certain basin area which does not only include Grant Road but surrounding lands that by nature slope toward that ditch. Chairman Higgs inquired if Grant Road system has capacity to handle what is proposed in this development; with Mr. Najda responding at this time it can because of the previous maintenance that was conducted by the County; so it will handle the additional water coming from this project. Chairman Higgs inquired if the indication is such from the Department of Environmental Protection that the County will be able to maintain what is happening at Trout Creek; with Assistant Public Works Director Ron Jones responding staff completed the initial survey and is in the process of preparing a site plan for submittal to the Department of Environmental Protection; he cannot give an absolute guarantee; however, the preliminary indications by Department of Environmental Protection are that they will allow the County to continue to maintain the cross section as it currently exists. Chairman Higgs inquired what will working with St. Johns on a master plan or basin study give the County; with Mr. Jones responding upon completion of that plan the County will have sufficient modeling on the main body of the Grant Road ditch system to make determinations as to which point and time inadequate capacity will exist for additional development without some type of additional requirements such as those which the Water Management District put forth on this particular project.

Commissioner Higgs inquired if staff believes by approving this today the County would limit its ability to work with that plan and come up with a plan that would be suitable for the entire area; with Mr. Jones responding no. Chairman Higgs stated she will support the motion based on the information she received and the plan that has been submitted.

Chairman Higgs called for a vote on the motion. Motion carried and ordered unanimously.

REVISED STAFF REPORT, RE: COMPREHENSIVE PLAN POLICIES FOR WETLANDS

Dick Thompson, 630 Heron Drive, Merritt Island, advised he is an engineer, concerned citizen and member and representative of Citizens for Constitutional Property Rights; he practiced engineering in Brevard County for almost 38 years; and he is an environmental engineer concerned about the definition of wetlands and how they are implemented. He stated the Board needs to take a look at what has been going on and what is going on today; DCA rules make wetlands a consideration in determining what land

uses people can make of their properties; and that is the wrong place to consider wetlands. He stated when a person comes forward with a plan to the County that is well worked out, that is when the consideration of wetlands should be taken up rather than as a growth control mechanism that is established by the DCA at the state level. Mr. Thompson advised he wants the Board to consider if there are too many agencies trying to control wetlands; there are a lot of questionable imposed restrictions on the use of wetlands; and the definition of wetlands is out of control to a large degree. He stated to get a permit in Brevard County they have to go through three agencies for practically identical permits--County Natural Resources, St. Johns River Water Management District and Corps of Engineers; and Fish and Wildlife gets concerned with elements of wetlands which is purely overkill and restricting taxpayers from using their lands which they have paid taxes on for a long time. He stated it is time to take a hard look at this and revise our thinking.

Micah Savell advised he reviewed the proposal on wetlands policy; they have outlined two options, to continue with the program and address whether or not there would be a fiscal impact; and inquired if Natural Resources is revisited, how much money would be saved. He stated they have to go through St. Johns River Water Management District, Corps of Engineers, and Department of Environmental Protection; there is one watchdog watching another; and it causes a tremendous amount of time and cost to work through it. Mr. Savell stated basically St. Johns District criteria supersedes the County's rules and regulations; and suggested the Board do away with its Natural Resources Management Division and allow them to work with St. Johns and Department of Environmental Protection or whatever state agency has control. He stated he is a developer, landowner, and Vice President of the Citizens for Constitutional Property Rights; they are tired of all the rules and regulations and added expense; and they need some relief, and would appreciate the Board's help.

Norma Savell stated people are fed up with strangling regulations; government is wasting hard-earned taxes; taxes are too high; and government is too big to be efficient, and needs to cut back.

She stated government seems to be about taxes, impact fees, permits for what should be none of government's business, regulations, scrub jays, turtles, and too much control over people's lives; and a good question asked by a local attorney is why would anyone want to come to Brevard County to do anything. Ms. Savell advised a report said income is not as high as it was 20 years ago; people are working harder today to make ends meet; the President said his Administration produced several hundred thousand new jobs; however, those jobs for the most part are low in pay and many people are working two of those jobs which still do not provide the income one job did in the past. She stated regulations that consume so much time, energy, and money are to blame for much of the problem; large and small companies have fallen, and the rest struggle with low productivity, higher costs, and deflated hopes; and requested the Board do away with the Natural Resources

Management Division. She stated that would be the best decision the Board could make; it would relieve the County of legal concerns; and since their work is redundant, it will cut fat from the budget which would please the taxpayers. She stated it would be one less agency for businesses to deal with making life more bearable for them; and it would be a step in the right direction which the voters will applaud.

Deanna Reiter, advised she attends the Citizens for Constitutional Property Rights group to get more information; government is too large and into too many areas of their lives; many elected officials have promised to downsize government; and it is time to keep those promises. She requested the Board remove the wetlands from the Land Use requirements, as state mandate under land use is wrong and results in over-regulating, and it can start by eliminating the Natural Resources Division.

Harry Fuller, 424 Dorsett Drive, Cocoa Beach, representing Space Coast Builders Association, advised they have dual permitting and multiple permitting in the wetlands area with the federal, state and local governments; there is nothing that kills business faster than a multitude of government agencies all doing the same function to preserve the same environment; and that kills business, not only in time but in money and permits. He requested the Board get them out of the multiple permitting business and give them one agency, whether it is the County, state or federal government. Mr. Fuller stated the Department of Environmental Protection has an inspection agency; the Water Management District has inspection agencies; and even the Game and Fish Commission has a group that inspects for the environmental pollution. He stated they are all doing the same thing; every time another government agency can get control of permitting or inspections of the environment, that is what they want to do and it does not matter if someone else is doing it, because their agency is growing; and that is what they come up with in the area of wetlands. He requested the Board eliminate some of the multiplicity in government and get them down to one agency if there has to be control, and it does not matter who it is.

Ray Smyth advised the wetlands definition is money; Arizona and New Mexico do not have wetlands; Georgia does not have water retention areas and all the rules and regulations Florida has; and Florida should be given to the environmentalists and all the people who like property rights should move to Georgia. He stated the only permit required to build a motel in Tennessee is a septic tank permit; the reason they have that one is because it involves health considerations; Brevard County is too sophisticated; and urged the Board to do away with government and start with the Natural Resources Division. Mr. Smyth advised Brevard County takes up two full pages and part of a third page in the phone book; that much bureaucracy is not necessary; and his concern for his country is that elected officials are no longer in charge and the bureaucrats are running everything. He stated anyone who has anything good to say about the St. Johns Water Management District has not dealt with them; the Governor said all he does is appoint the District Board; elected officials say they have no control

because the Governor appoints the Board; and the only solution is to dissolve it. He stated the Board can start dissolving departments in Brevard County and no one will know it; and requested the Board start some place; and take the country back from the bureaucrats and give it to the elected officials.

Commissioner Cook advised 48 counties defer to state and federal standards regarding wetlands; and inquired if that is correct; with Natural Resources Management Director Lisa Barr responding just for the permitting side, but there is a land use side. She stated 48 counties do not duplicate the permitting responsibilities of the state or federal government and Brevard County does not duplicate the permitting either. Commissioner Cook inquired what does the County do in addition to what St. Johns District does; with Ms. Barr responding the County makes sure the development is consistent with the land use restrictions and the no net loss policy; if St. Johns District or Department of Environmental Protection claims jurisdiction over the wetland for permitting, the County yields jurisdiction to the State as long as it meets the County's Land Use Policy of no more than one unit per five acres for residential development and commercial/industrial prohibitions. She stated as part of the site plan review, they review the permit to make sure there is no net loss, but they do not issue another permit; they have the St. Johns District conceptual permit or actual permit when they come in; and staff verifies they have met the land use criteria and the no net loss criteria. Commissioner Cook inquired if staff goes out to check the wetlands and see how much is there; with Ms. Barr responding they try and coordinate that with the Sstate as well; if the State goes out and does the jurisdictional line, staff does not do a jurisdictional determination on the site; and if staff does the jurisdictional determination, the State accepts the same jurisdictional line. She stated they use the same definition as the State does for wetlands. Commissioner Cook inquired if the County determines what are wetlands and inspects the site; with Ms. Barr responding yes, but not always. Commissioner Cook stated his concern is the duplication; the St. Johns District is about as thorough as it can get; he is not sure why the County is participating in any sort of review regarding wetlands; and inquired how much more thorough is staff going to get than the St. Johns River Water Management District.

Chairman Higgs inquired if Commissioner Cook is talking about permitting or the Comprehensive Plan issues; with Commissioner Cook responding the whole process. Ms. Barr advised the difference between what the County and St. Johns District does is the land use issues, defining what Brevard County believes is appropriate land uses for wetlands; the St. Johns District does not do anything on land use issues when it does its review, and just determines what the total wetland impact is and the most appropriate way to mitigate that; and the County defines what its land uses are. Commissioner Cook stated his concern is the Board can tinker with the Policy, change a few words, and not accomplish anything as far as reducing regulation.

Commissioner Ellis stated if 4.2.f.1 and 2 are deleted, those are the Comprehensive Plan issues that deal with land uses; and those two paragraphs are where the authority comes from over land uses. He stated the Plan addresses floodplain issues elsewhere; and he does not want to confuse wetlands with floodplains because they are different. He stated if a person has a 20-acre parcel with a 1/4-acre wetland in the center, he has to work around it and cannot go through site permitting process with St. Johns District because the County is not going to let him use that for commercial use; and if a person has GU property, he cannot get commercial zoning if he has wetlands present according to the letter of the Comprehensive Plan. Commissioner Ellis advised according to the letter of the Comprehensive Plan 5.2.f.2, "Commercial/industrial land uses shall be prohibited"; somewhere along the line some Commission may administratively review every piece of commercial and industrial property in Brevard County, determine if it has a wetland, undo the commercial/industrial land use, and put it back into a residential category because that is the letter of the Comprehensive Plan; and right now that is not done, but that does not preclude it from being done in the future.

Commissioner Cook inquired why the Board cannot defer all wetland policies to federal, state and regional jurisdictions and not be involved; with Commissioner Ellis responding the only thing the County is involved in is the land use issues; so if those two paragraphs are deleted, that removes the land use issues. Commissioner Cook inquired why the County cannot have a policy that it refers all of it to federal, state and regional agencies; with Chairman Higgs responding the Board can consider the County taking responsibility and negotiating with St. Johns District to apply those policies for the District if what the Board is trying to do is avoid duplication; and that would do it and maintain local control. She stated the County could negotiate with St. Johns District to become the responsible agency and delegated the responsibility of enforcing those items.

Commissioner Ellis advised paragraphs f.1 and f.2 are not dictated by the St. Johns District or Department of Environmental Protection; and those are strictly promulgated by Brevard County. Chairman Higgs stated she understands that, but what Commissioner Cook is saying is defer all issues to the state and federal governments, and she is saying if local government is what the Board wants and if local government has the greatest control, then the Board should negotiate to become the agency responsible. She stated she made that motion several weeks ago. Commissioner Ellis inquired if St. Johns District would pass that authority to the County and not overrule the County; with Chairman Higgs responding the Board could negotiate with St. Johns District to do that; the County would be delegated certain responsibilities and laws; and if the issue is duplication, then the Board has the opportunity to solve that part of the problem. Commissioner Ellis stated the District will still have veto powers over what the County does. Chairman Higgs stated they would negotiate a contract to do certain things; and there are other water management districts in other parts of the State that delegate responsibility with certain criteria to counties. Commissioner Ellis stated

that would be a separate issue from dealing with the land use issue; with Chairman Higgs stating it would be, but that was not the issue Commissioner Cook was talking about; he was talking about delegating all of those to state and federal governments; and she is saying the County should take control here.

Commissioner Cook stated his concern would be that the County would be encumbered to do so much; the St. Johns District would be happy to let the County do its job; but he would think it would maintain the ability to oversee whatever the County does. Chairman Higgs stated the County would have certain standards it has to live to, but if the Board wants to avoid duplication as Mr. Fuller said, it has the opportunity to enter into negotiations with St. Johns District to do that. Commissioner Cook stated instead of the County taking on the burden of doing that, it would be simpler to defer all wetlands policy to federal, state and regional authority and get out of it because the County does not need to be in it. Chairman Higgs stated then the Board would be giving away potential control that local government could have; local government is closest to the people; and that seems to be what people want; and the Board would be ignoring that possibility. Commissioner Cook stated he cannot see negotiating with the St. Johns District; the County would have to have additional staff and additional budget; and the St. Johns District budget would not decrease because the County took its responsibility. Chairman Higgs stated part of the negotiations could be that revenues would be passed on to the County. Commissioner Cook stated what he foresees is the County doing the District's job and it sitting back controlling the strings; the County would still have to meet all their standards and criteria; so instead of the County's budget ballooning to take care of that, the County could get out to it and just let the St. Johns District do what it does. Chairman Higgs inquired why would the Board not want to get local control when it has an opportunity; with Commissioner Cook responding it would not be local control because the St. Johns District would be controlling it and the County would be supplying the manpower.

Chairman Higgs stated the Board has the opportunity and does not want to take it; with Commissioner Ellis responding he would be glad to take it, but the Board should address assuming the roll of St. Johns District at another meeting. Chairman Higgs advised the Board would have to negotiate with St. Johns District to determine under what conditions and how it might work; with Commissioner Ellis responding he is not closing the door to that issue, but for now the issue is the County is driving land use based on wetlands and St. Johns District does not do that; the last clause in Policy 5.1 states, "Brevard County shall not be limited by threshold or connection requirement utilized by these agencies"; so since there are no threshold requirements, the County is not limited. He repeated a 20-acre parcel with 1/4-acre wetland in the center cannot have commercial use on that 1/4 acre and if they cannot draw a site plan around that, they would have to pack it up. Chairman Higgs inquired if only a small percentage of a commercial parcel is wetlands, does the County exclude that as a potential commercial

site; with Ms. Barr responding no, not under its current policy; the wetland is excluded from having commercial activities; and if it is in the center of the property, the applicant would have to design the site plan around the wetland to not permit commercial activity in the wetland itself, but the rest of the site, all the upland portions, are permitted to have commercial and industrial activity. Chairman Higgs stated off Dairy Road with the golf course driving range, staff recommended the Board waive the policy and allow the commercial use; and the Board passed it. Ms. Barr advised in order to get commercial use, they have to comply with the Comprehensive Plan policy which says commercial/industrial land uses are prohibited unless they meet certain criteria. Chairman Higgs inquired what criteria; with Ms. Barr responding they must have a special reason or need to locate within the wetland, there is an overriding public interest, the activity has no feasible alternative location, and the activity will result in minimum feasible alteration and will not impair the functionality of the wetland. Chairman Higgs inquired what percentage of a parcel has to be wetland in order for staff to recommend it not be commercial land use; with Ms. Barr responding there is no written policy on that; normally the Zoning staff notifies the applicant what percentage of the property is wetlands; and they have to address that during the site plan/subdivision review. She stated once staff recommended not changing the zoning to commercial/industrial because over 90% of the property was wetlands and they did not feel there was an opportunity to design around the wetlands. Chairman Higgs inquired if that is the only property Ms. Barr can recall being removed from consideration as a commercial site because of the presence of wetlands; with Ms. Barr responding that is the only one she can recall since she has been with the County.

Commissioner Ellis stated that is Ms. Barr's policy as she has implemented it and not as it is written in the Comprehensive Plan, because to the letter of the Comprehensive Plan, theoretically she could deny a commercial land use if it had 1% wetlands. Ms. Barr stated it would be a violation of the policy as it is written in the Comprehensive Plan, if even the smallest portion of the property is wetland and is given a commercial/industrial use; they would have to out parcel it or put a binding site plan on it; and perhaps the simplest resolution to that problem is to change the wording from "commercial/industrial land uses" to "commercial/industrial development activities" shall be prohibited in wetlands. She stated in that case the parcel could have any land use associated with it, but the activity could not occur in the wetlands; and that would be consistent with how they are implementing it now. Commissioner Ellis advised paragraph 4.2.f.2 has an "and" clause not an "or" clause which means they have to meet all of the criteria and not just one; with Ms. Barr responding that is correct. Commissioner Ellis stated that is the core of the problem as well as Policy 5.1 in conjunction with 5.2.f.1 and f.2; and just because the policy has not been to implement it as it is written does not mean the future policy may not be to implement it as it is written. He repeated his theory of being denied land use because of a small percentage of wetland on a parcel.

Commissioner Cook stated the Board can repeal the whole thing; it has a real opportunity, because right now in wetlands policy, there are the County, state, federal, and regional agencies; and it can eliminate one whole layer of government today which is the County. Commissioner Ellis stated that is fine with him.

Commissioner O'Brien advised the last time the Board talked about this there was a general admission that the wetland mitigation policies over the past ten to fifteen years have not worked or have not been successful; millions of dollars have been spent to mitigate the wetlands around Brevard County and they have failed; and developers had to repair them and spend more money, but it still did not work. He stated wetland banking is one way of doing it, but he concurs with Commissioner Cook that there are all those layers of government; however, there should not be commercial development in some of those areas. Commissioner O'Brien read, "Commercial/industrial developments sometimes require extensive parking areas, loading and off-loading structures and in some instances increased building needs (square footage). These circumstances would necessitate destroying more wetland habitat then would be required for a residential development at one unit per five acres." He stated that is a broad statement; it would depend on how much wetland is there to begin with; and construction policies could be added that say if there is going to be a large parking lot in the area where the soils are permeable, they could put French drains under the parking lot and put water back into the soil; so there are other ways of accomplishing the task if they are just talking about impervious surfaces.

Motion by Commissioner Cook, seconded by Commissioner O'Brien, to defer all wetland policies and issues to the federal, state and regional regulatory authorities.

Commissioner Ellis stated it needs to be put into language to make the Comprehensive Plan amendments; with Commissioner Cook responding it is to repeal this and defer everything. Commissioner Ellis inquired if the motion is to repeal Objective 5 in total; with Commissioner Cook responding yes.

County Attorney Scott Knox advised there are several things the Board needs to effectuate the motion; and perhaps it should instruct staff to evaluate what would be necessary to accomplish that particular goal. Commissioner Cook stated he wants to go ahead and take a vote; with Mr. Knox responding he understands Commissioner Cook wants to do that, but there are five or six steps the Board has to take to do what he wants to do. Commissioner Cook stated the Board can take a vote then staff can implement it or find out what they have to do.

Chairman Higgs advised the motion is to defer all wetlands issues to the state or federal government. Commissioner Cook stated or regional

regulatory agencies.

Commissioner Scarborough inquired if it would be part of the 1995B Comprehensive Plan amendment; with Mr. Knox responding the Board would probably need to amend the Comprehensive Plan, repeal the Ordinance, and do a lot of other things. Commissioner Scarborough inquired if the nature of the motion is for staff to analyze and come back with appropriate actions; with Commissioner Cook responding whatever it takes to implement it. Chairman Higgs inquired if the motion is to defer all wetlands issues and direct staff to bring back to the Board the appropriate documents to implement that direction; with Commissioner Cook responding the instruments to implement it. Ms. Barr indicated the motion should be to direct staff to amend the Comprehensive Plan to repeal Section 5 of the Conservation Element. Chairman Higgs stated that is not what they are asking; with Commissioner Cook responding he will include that in the motion. Chairman Higgs stated it would only be part of it, but the motion is talking about Comp Plan and other Ordinances; with Commissioner Cook responding what Ms. Barr said is part of the motion. Chairman Higgs inquired if the motion is to bring back the Comprehensive Plan recommendations as well as Ordinances; with Commissioner Cook responding to repeal that section. Chairman Higgs inquired if it is to bring that back to repeal that section; with Ms. Barr responding normally how the process works is the Board would amend the Comprehensive Plan, and as part of the recommendation to amend the Plan, staff would bring back the changes and request permission to advertise; it would go through the Building Construction Advisory Committee, Citizens Resource Group and Local Planning Agency; then it would be transmitted to Department of Community Affairs. She stated once the Comprehensive Plan change is adopted and the final adoption occurs through DCA, then the Board would amend the Ordinances. Commissioner Cook stated there has to be a way to expedite this; whatever it takes, just as long as the Board votes on it and it is the position of the Board and is implemented and not come back with recommendations; this is what the Board wants to accomplish; and that is what it wants to do; so whatever it takes to implement that, it is what the Board wants done. Chairman Higgs stated the changes to the Comp Plan have not been advertised so the Board cannot vote on changes to the Comp Plan today; and the actual amendment cannot be done unless it is advertised. Commissioner Cook stated the Board can take a motion on that.

Commissioner Scarborough stated he will vote for it; the County has run into problems with the St. Johns District and Corps of Engineers on its projects; so the County is on the other side when it develops roads, boat launch facilities, etc. and know s the problems. He stated he does not know if extracting the County from the process will make it easier, or if Chairman Higgs has a better solution, or if it is easier to deal with those agencies; but it gets terribly confusing sitting here all the time and going through the Comp Plan, Land Use Map, zoning, and permitting; and the Board did not decide to have a Comp Plan, the Legislature in its wisdom did that. Commissioner Cook stated the Board is making an impact by what he hopes it will do

today; with Commissioner Scarborough responding he wonders if it is going to be better or not. Commissioner Cook stated it cannot be any worse; with Chairman Higgs responding it can be.

Commissioner O'Brien stated probably in Brevard County they have had two decades of previous Boards adopting the state plan and adding a little bit more, depending on what platform various Commissioners had whether it was pro or con; so the County ends up with a pile of garbage that controls everyone's lives; and it is time to turn it back. Commissioner Cook stated it is significant to eliminate a whole level if the Board eliminates the County's participation in this issue.

Chairman Higgs stated the better solution to avoid duplication and render the layer of government would be for the County to take the responsibility; that is the arm of government that is closest to the people and most directly accessible to the people; so she will not support the motion. She stated the motion is to direct staff to bring back to the Board policies and changes in Ordinances and the Comp Plan so that all wetland issues would be deferred to the state, regional and federal governments. Commissioner O'Brien stated the Board wants to have home rule; and if the St. Johns River Water Management District would give up all of its authority and never come back in the County again, he would go along with that; but as long as it does not move out of the way, the County is getting out of the picture. Chairman Higgs stated until the Board talks to the St. Johns District and asks it what kinds of policies and what way it could be done, it will not know the answer to the problem.

Chairman Higgs called for a vote on the motion. Motion carried and ordered; Commissioner Higgs voted nay.

AGREEMENT WITH SUMMERS CREEK HOMEOWNERS ASSOCIATION, RE: UTILITY EASEMENT ENCROACHMENT BY MASONRY WALL

Commissioner O'Brien advised staff came up with a plan where the homeowners have set aside money and they have the authority through the Association to do this; so he will move the Agreement with those conditions.

Motion by Commissioner O'Brien, seconded by Commissioner Cook, to execute Agreement with Summers Creek Homeowners Association for encroachment of a masonry wall on a utility easement. Motion carried and ordered unanimously.

ACKNOWLEDGE, RE: 1994 ANNUAL REPORT FROM BREVARD COUNTY EDUCATIONAL FACILITIES AUTHORITY

Commissioner O'Brien advised he sent an E-mail to the County Manager because this is an Educational Facility Authority like TiCo Airport Authority

Meeting Date

4-18-95

AGENDA REPORT

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA

Section: Unfinished Business

Item No: I.E.

SUBJECT: REVISED STAFF REPORT: RE: COMPREHENSIVE PLAN POLICIES FOR WETLANDS

DEPT./OFFICE: NATURAL RESOURCES MANAGEMENT DIVISION

Requested Action:

It is requested that the Board of County Commissioners consider a revised staff report that reflects available information on wetland permits and mitigation success rates. The report also includes two additional options for the Board's consideration.

Summary Explanation & Background:

At the regularly scheduled Board Meeting on February 7, 1995, the Board directed NRMD staff to meet with Commissioner Ellis, District 5, to discuss the County's wetland policies as listed in the Conservation Element of the Comprehensive Plan. NRMD staff subsequently met with Commissioner Ellis on February 14, 1995 to discuss this issue. NRMD staff has also met with each commission office to review the County's wetland protection programs and obtain input from each commissioner on how to proceed with this issue.

During the Board meeting conducted on March 21, 1995, the Board reviewed staff's report on wetland policies and directed staff to furnish additional information regarding the number of state and regional wetland permits issued versus wetland mitigation success rates. Furthermore, the Board directed staff to include an additional option in the report. This option changes the point at which an Environmental Assessment (EA) is conducted on a project. Presently, the EA is conducted at the Zoning Stage. At the request of Commissioner Ellis, District 5, another option was added to the report. This option would remove land use designations based upon wetlands from the Comprehensive Plan.

To help the Board evaluate amending the Comprehensive Plan, staff has gathered available reports and other data associated with wetland permits issued by state and regional agencies, including information regarding wetland mitigation success rates. Staff has included two additional options for the Board's consideration.

Fiscal Impact: There will be no fiscal impact to the general fund should the Board decide to continue the ongoing wetland management process. If the board chooses to pursue amending the Comprehensive Plan, the fiscal impact for changes that the Department of Community Affairs (DCA) accepts could range from a low of $6,000 for minor Comprehensive Plan changes, to $19,000 for complex changes that require extended negotiations with DCA. IF the amendment(s) are rejected by DCA (found not in compliance), and the Board wishes to pursue an Administrative Hearing, the costs could range from $51,000 to >$100,000.

Exhibits Attached:

Revised Staff Report

County Administrator's Office

Stephen Pegg

Department

Lisa J. Barr

BCC-149 (Rev 1-93)

REVISED
STAFF REPORT

BREVARD COUNTY COMPREHENSIVE PLAN:

CONSERVATION ELEMENT

Proposed Changes to Policy 5.2

Presented to: The Brevard County Board of County Commissioners
April 18, 1995

Prepared By: Natural Resources Management Division

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I. INTRODUCTION

On February 2, the Board directed staff to work with Commissioner Ellis, District 5, to develop proposed language changes to amend the Comprehensive Plan, Conservation Element, Policy 5.2(F)(2). On February 14, staff met with Commissioner Ellis to discuss his proposed amendments. Staff subsequently met with each Commissioner to discuss wetland policy issues and staff's current efforts toward developing a comprehensive wetland management program.

During staff's discussion with Commissioner Ellis, and other Commissioners several key questions were asked that related specifically to Brevard's current wetland policies, and to issues that included the value and functions of wetlands, planning versus permitting, and how other counties were approaching wetland issues The following list summarizes questions raised during these meetings:

1. What is the basis for differing policies between residential and commercial/industrial developments in wetlands ?

2 What are the options for changing the wetland policies ?

3 What are the values and functions of wetlands ?

4. What are the differences between land use planning and permitting ?

5 What is the process involved in changing the current wetland policies ?

6. What are the expected costs of amending the Comprehensive Plan ?

7. How are other counties approaching wetland planning and permitting ?

In order to answer these questions succinctly, while still allowing sufficient information for the Board to make informed decisions, staff has elected to organize this report in the same order as the above questions.

II. RESIDENTIAL vs COMMERCIAL / INDUSTRIAL POLICIES

The wetland policies stipulated in Policy 5 2(F) of the Conservation Element were developed because of differences between residential and commercial/industrial developments in terms of impervious surfaces, stormwater infrastructure requirements, pollutant loadings and wetland acreage to be destroyed to fully develop a project.

Under most circumstances, residential developments at densities of one unit per five acres, Policy 5 2(F)(1), have less impervious surface and less need for stormwater infrastructure then do residential developments at higher densities. While residential developments typically have a need for roads and driveways (increased impervious surfaces), and are obligated to treat stormwater runoff (conveyance systems), there is generally more open space that can be planned for at these low densities (i e , there can be more flexibility in design at the beginning project development stage) As stated in the County's Wetland Protection Ordinance (No 89-14) D (d)5 , "Any

allowed filling of wetlands shall be limited to the structural building area requirements, on-site sewage disposal system requirements, the 100-year flood elevation requirement for first floor elevations, and to a single primary access to the on-site structures. The amount of fill and extent of the filled area shall be the minimum required to accomplish these purposes." The ordinance effectively minimizes the destruction to the surrounding wetland habitat.

Commercial/industrial developments sometimes require extensive parking areas, loading and offloading structures and in some instances increased building needs (square footage). These circumstances would necessitate destroying more wetland habitat then would be required for a residential development at one unit per five acres. Additionally, some commercial/industrial developments generate and then must dispose of toxic materials that are either generated or stored on site. Wetland areas are particularly sensitive to toxic pollutants.

III. COMPREHENSIVE PLAN AMENDMENTS - BOARD OPTIONS

Staff has included in this section of the report several options that could be used as a starting point for further Board discussion Staff has also included a discussion of the possible effects each option could have on wetlands, subsequent land use restrictions, and revenue streams from this sector of the economy

Option 1:

The Board elects to make no change to Comprehensive Plan, Conservation Element.

Under this option, the NRMD would continue its efforts toward developing and implementing a comprehensive wetlands management program. The current Comprehensive Plan policy (see Appendix C) alleviates some of the pressure to develop wetlands inside Brevard, and generally addresses the need to adequately preserve and conserve these critical habitats pursuant to 9J-5.013, F.A.C.

Policy 5.2(F)(2), however, also restricts those commercial and industrial land owners who want to develop sites which have wetlands, and has the effect of reducing taxes on those sites that have wetlands because of the land development prohibitions, which in turn reduces the County's revenue stream from this sector of the economy. Staff currently does not have the figures to determine whether this tax loss is offset by tax revenues from tourism, and businesses that support this industry.

Option 2:

The Board chooses to modify policy 5.2(F)(2) to read:

Policy 5 2

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5 2 are met

1 Residential land uses shall be limited to not more than one dwelling unit per five acres

2 (a) Commercial and industrial land uses shall be prohibited in wetland systems greater than or equal to five acres, unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, and the activity will result in the minimum feasible alteration, ~~and the activity does not impair the functionality of the wetland~~. (b) Commercial and industrial land use should be prohibited in wetlands less than five acres.

This option would allow limited commercial/industrial development in wetlands less than five (5) acres, most of which are isolated and sometimes ephemeral in nature Development in these areas would be expected to increase the amount of tax collected on these parcels, which would in turn increase the County's revenue stream from this sector of the economy. These changes, however, could effect water quality, quantity and flood storage capacity, and result in increased expenditures for the stormwater and drainage infrastructure needed to treat the increased runoff.

In addition, the continued piecemeal destruction of these smaller wetland areas could also have long term effects on several endangered species and negativity effect birds migrating along the Atlantic flyway during the colder months.

This option also includes both "shall" and "should" in the proposed language. The differences between these two words are listed in the Comprehensive Plan. "Shall expresses a command, must express what is mandatory, to be done at all times without deviation " "Should expresses obligation; mandatory action necessary unless it can be clearly demonstrated that: a. Strict application will be contrary to the public interest; b. The public values being protected are insignificant and strict application will result in an excessive hardship to the project; c. Strict application will place an excessive hardship on the project, and an alternative action is available which is equal to or superior than the original requirements in reaching the policy's objective, and; d. The activity is not financially feasible for the local government." (Brevard County Comprehensive Plan).

Option 3:

The Board chooses to repeal all wetland policies within the Conservation Element such that the County defers all wetland issues to the federal, state and regional regulatory authorities.

Chapter 9J-5.013(3)(a) and (b), F.A.C , specifically addresses the minimum requirements for protection and conservation of wetlands. All local comprehensive plans must address wetland issues in some form in order to be in compliance with 9J-5 The range of how local wetland policies are implemented extends from those counties who defer all wetland issues to the federal, state and regional permitting agencies, to those counties who prohibit all development in wetlands (please refer to Appendix B for a condensed listing of county polices throughout Florida)

This action would result in more development occurring in Brevard, which would result in short-term employment increases. The increased development would also increase the amount of taxes collected in the County, which as in Option 2, would result in an increased revenue stream

The negative outcomes from this action would be a loss of local land use control in these areas, increased expenditures for stormwater infrastructures needed to provide flood storage and

water quality treatment, a decrease in water quality within Brevard's major surface waters such as the Indian River lagoon, decreased groundwater recharge areas and finally, a loss of biodiversity including endangered and threatened species. Additionally, a negative impact on ecotourism would be expected as the density and intensity of land use inside the County increased.

Option 4:

The Board chooses to change its policy of conducting project Environmental Assessments during the Zoning Process to conducting project Environmental Assessments during the Site Plan Review Process.

Currently NRMD conducts Environmental Assessments on projects during the zoning process. The projects are evaluated for wetlands, floodplains, listed species, surface and coastal waters, fuel storage facilities, and solid or hazardous wastes Conducting EAs during the zoning process provides a developer with information that could affect the type, size and location of a project.

Conducting an EA during the site plan review stage could result in an applicant not receiving a permit for a project that had previously been granted a re-zoning request.

Option 5:

[Note: This option was included within the report at the request of County Commissioner Ellis]

The Board chooses to eliminate policy 5.2(F):

Policy 5.2

In 1991, Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

Criteria

A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D Mangroves shall be afforded special protection

E Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County

~~F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:~~

~~1. Residential land uses shall be limited to not more than one dwelling unit per five acres.~~

~~2. Commercial and industrial land uses on parcels greater than or equal to five acres should be prohibited.~~

~~3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on-site structures.~~

~~4. Dumping of solid or liquid wastes shall be prohibited.~~

~~5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.~~

F G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland should be included within the land development regulation.

This option would eliminate wetland land use stipulations from the Comprehensive Plan, and would require that the existing LDRs be changed to reflect the Comprehensive Plan changes. As stated in Option 2, development in wetland areas would be expected to increase the amount of tax collected on these parcels, which would in turn increase the County's revenue stream from this sector of the economy. If these changes result in a net loss of wetlands, however, water quality could be effected, as well as quantity and flood storage capacity. It could also result in increased expenditures for the stormwater and drainage infrastructure that would be needed to treat the increased runoff.

In addition, the continued piecemeal destruction of these smaller wetland areas could also have long term effects on several endangered species and negativity effect birds migrating along the Atlantic flyway during the colder months.

IV. WETLAND VALUES AND FUNCTIONS

Wetlands are defined as semi-aquatic lands that are either inundated or saturated by water for varying periods of time, have conditions that favor the growth of specially adapted plants (hydrophytes) and have hydric soil properties. These areas include swamps, hammocks, marshes, wet prairies, and other similar habitats.

Approximately one half (50%) of the original 221 million acres of wetlands in the lower 48 states have been destroyed, and an additional 290,000 acres continue to be lost each year (Dahl and Johnson, 1991). In Florida, only 20% of the original wetlands that were present 200 years ago, are left in their natural state Wetlands are continuing to be destroyed at the alarming rate of

about 1% per year, even in the presence of federal, state and regional rules designed to curb wetland loss

Wetland drainage and destruction were accepted practices in the U S , and in Florida until the mid-1970s. Marsh and swamp destruction were often encouraged by specific government policies that promoted drainage, development into agriculture areas, or residential and commercial developments by dredging and filling

Even though earlier settlers considered wetlands to be worthless, Florida's swamps, marshes and wet prairies provide economic, physical and biological benefits. Recognition of these wetland values by the U S. government began in 1934 with the sale of "Duck Stamps" to waterfowl hunters During the period between 1934 and 1984, over 3 5 million acres of wetlands were preserved (Mitsch and Gosselink, 1993). Wetlands provide the principal habitat for virtually all waterfowl, of which 75% breed only in wetlands

While the early focus on wet areas as valuable hunting areas was important in helping to change citizen attitudes towards marshes and swamps, these areas have recently been recognized as having even more important functions (see Appendix B for a summary of wetland functions). Wetlands provide physical benefits through the storage and release of flood waters, and can minimize erosion and sedimentation by reducing the velocity of flood waters as it moves along the main stream. These functions of flood water storage and release over a lengthy period can prevent damage to man-made structures downstream; floods cause as much as $4 billion worth of damage per year. The recent catastrophic damage suffered by many communities along the Mississippi River is an example of the cause and effect resulting from the loss of wetland functions. Wetlands can also function as recharge areas for groundwater aquifers, and assimilate, filter, and help decompose organic sediments, nutrients, and other natural man-made pollutants that would otherwise degrade surface and ground waters.

Swamps and marshes surrounding surface waters also support economically important commercial and recreational fishing by providing spawning habitats, essential nutrients at critical points during certain aquatic animal life stages, and for nurseries. Nearly all the fish and shellfish harvested commercially and half of the recreational catch depend on wetlands for food and habitat. Indian River anglers spent more than $346 million between 1991 and 1992, which was more than their counterparts anywhere else in the state. This region also had the second highest total expenditures for fishing equipment, (e g. boats, trailers, rods and reels), which was estimated to be $6.1 billion. The recreational fishing industry supported 6,924 jobs in 1992 (Univ. of FL, FL Sea Grant Program, May 1993). The east-central Florida estuarine wetlands were estimated to be worth $9,811 /acre/year for commercial and recreational fishery production in 1989 (Bell, 1989).

Wetlands also play an important role in Florida's hunting industry. The average hunter contributes $850 to the economy each year in the form of guns, ammunition, food and lodging, and leases. In addition, they spend $520 million annually on permits, licenses, duck stamps, and other governmental fees. Wetlands also provide other natural products, such as timber, furs and hides (Fish and Game Finder, 1995).

Passive activities within wetlands are increasingly attracting large numbers of people that include naturalists, landscape painters, and photographers Some 50 million people who observe and photograph birds in wetlands spend $10 billion a year on their hobby (Terrene Institute, 1993) Wetlands are also some of the last remaining wilderness areas that attract canoeists and kayakers Part of their attraction for passive activities is that wetlands provide habitat for rare and

endangered species as well as essential breeding and protective habitats for waterfowl, other birds, mammals, reptiles, amphibians, fish, and shellfish. Many wetlands are crucial habitats for 26% of the plants and 45% of the animals listed as threatened or endangered under the Endangered Species Act (Hammer, 1992)

V. LAND USE PLANNING AND PERMITTING

The criteria and objectives of jurisdictional wetland permitting by the U. S Army Corps of Engineers, SJRWMD and Florida DEP are separate from the goals and policies of comprehensive land use planning and land development regulations. The Growth Management Act of 1985 is specific in that local governments are required by Chapter 163 F S and Chapter 9J-5 F A C to prepare goals, objectives and policies to protect natural resources, including wetlands In addition, County governments are not preempted from prohibiting or regulating development of wetlands (section 373 414(1) (b) F S) or from imposing additional mitigation requirements when such development is permitted (Attorney General's Opinion 94-102, Appendix).

The Comprehensive Plan allows local governments to plan and direct future growth and development by assessing upland land uses linked to wetland systems. The Comprehensive Plan also allows local protection and conservation of regionally significant ecosystems, thereby avoiding the negative economic impacts caused by expensive rehabilitation projects. This may be accomplished through wetland overlays, buffer setbacks from wetlands, transfer of development rights, tax incentives and establishment of land (mitigation) banking at the local government level. Local land use planning and the Growth Management Act , Chapter 163 F. S., are land use policies and not permitting regulations, like Chapters 373 and 403, F.S.

Permitting of wetlands within agency jurisdictional boundaries is not planning because it does not consider future growth, or cumulative impacts of future land use. Land use planning decisions at the local level guide, control and direct future development into suitable areas, as well away from environmentally sensitive areas. Land use planning determines how much and where development can occur. In contrast, environmental permitting encompasses specific review criteria on a site-by-site basis. Permitting reviews the development designs to determine what impacts will occur and tries to mitigate natural resource damages. Regulatory agencies, however, do not have the authority within Chapters 373 and 403, F.S. to determine appropriate land uses including densities, and intensities of use.

Jurisdictional wetland permitting is only one part of what should be a comprehensive method to develop, conserve and preserve land. Both ecologically sound planning and permitting are needed to insure that the citizens of Brevard have the best environment available without the need to perform costly reclamation projects in the future

As examples of the costs associated with rehabilitating systems due to previous poor planning, the Lake Apopka Restoration Project will cost $ 26 5 million, the St Johns River Upper Basin Project $176 million, and the Kissimmee-Everglades Restoration Project $800. These are large regional wetland systems that have been degraded by piecemeal, site-specific permitting without proper regional and local land use decisions While the scope of these examples are beyond what is present in Brevard, they do illustrate the need for strategic planning.

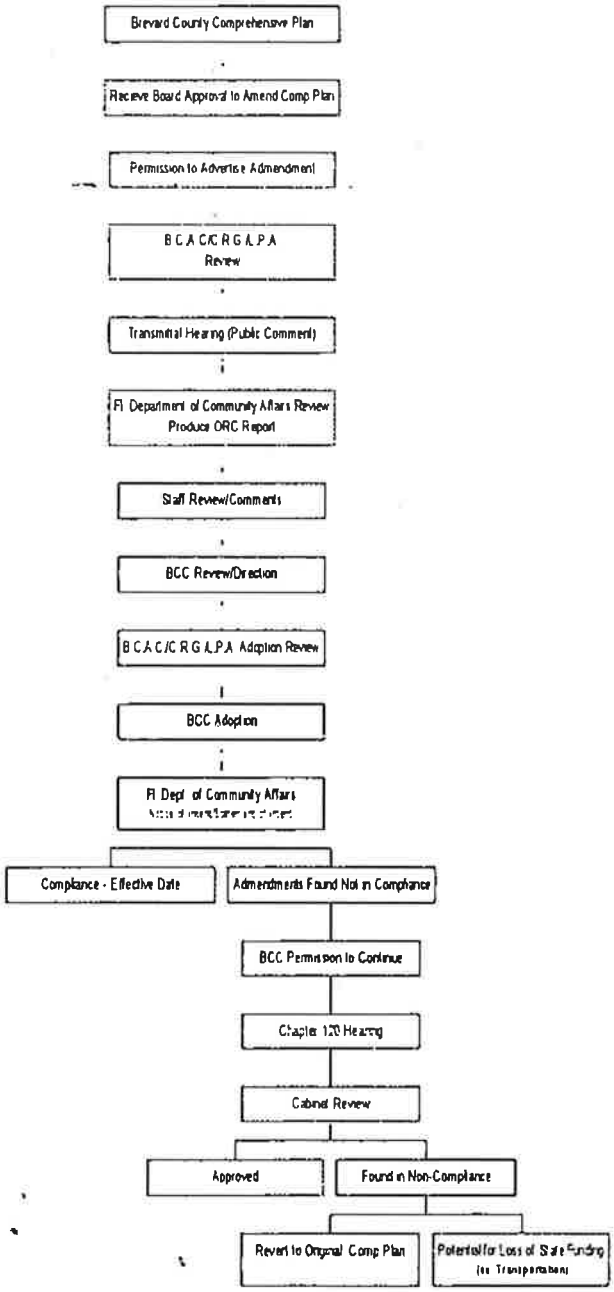
There are inherent limitations on relying on state and regional wetland permitting programs As an example of permitting lacking the ability to adequately protect critical habitat, of the 1,114 water resource management permits received and approved by SJRWMD between 1989 and

1995, not one permit was denied, and of those permits that required mitigation (334) only 53% of these wetland projects are expected to be successful (personal communication, Dr R Epting, SJRWMD, 1995) No net loss of wetlands at the state level is a misnomer.

VI. COMPREHENSIVE PLAN AMENDMENT PROCEDURES

Once adopted, the local plan may be amended twice per year with the Department of Community Affairs (DCA, sections 163 3184 and 1633186, F. S). The following flow chart depicts the standard amendment process that is required for any amendment to the Comprehensive Plan:

COMPREHENSIVE PLAN AMENDMENT PROCEDURES



VII. ECONOMIC IMPACTS

Staff has coordinated with the County Attorney and Planning Division staff in order to develop estimates of the economic impacts to Brevard County. The major costs are associated with allocations of staff time.

Option 1:

The Board elects to make no change to Comprehensive Plan Conservation Element.

There would be no fiscal impacts expected, outside the currently budgeted expenses, from this action The NRMD would continue its efforts toward developing and implementing a comprehensive wetlands management program

Option 2:

The Board chooses to modify policy 5.2(F)(2)

The costs associated with successfully amending the Comprehensive Plan (i.e., DCA rules the County in compliance) were calculated to range as follows

Successful change to Comprehensive Plan that requires minimal negotiations between Brevard County and the DCA $6,000

[Note: The majority of the costs at the lower end of the range are associated with staff ($3,000), and legal advertising ($3,000).]

Successful change to Comprehensive Plan that requires extensive negotiations between Brevard County and the DCA $19,000

The following costs were developed from ongoing and past experience should the Board elect to pursue changes to the Comprehensive Plan and is found not in compliance.

Brevard County found in non-compliance over minor change and elects to proceed with a Chapter 120 F S. hearing. $51,000

[Note: The cost were estimated to be $6,000 for advertising costs, $20,000 for NRMD/Planning Division staff time, and $25,000 for County Attorney staff time.]

Brevard County found in non-compliance over major change and elects to proceed with a Chapter 120 F S. hearing. > $100,000

[Note: These estimates include attorneys fees, expert fees, staff time, reproduction costs and advertisement costs. Should the hearing officer rule against the County, and the Board choose to pursue a cabinet level ruling, the fiscal impacts to the County would be much higher.]

In addition to the above costs, staff would have to be redirected away from existing projects during the hearing process to prepare and process these amendments, provide essential information, and expert testimony This would result in realignments of future management programs, staff priorities and event scheduling for on-going projects.

Option 3:

The Board chooses to repeal all wetland policies within the Conservation Element such that the County defers all wetland issues to the federal, state and regional regulatory authorities

Due to the nature of this change, the estimated fiscal impacts were similar to those listed above in Option 2 > $100,000

[Note: These estimates include attorneys fees, expert fees, staff time, reproduction costs and advertisement costs. Should the hearing officer rule against the County, and the Board choose to pursue a cabinet level ruling, the fiscal impacts to the County would be much higher]

In addition to the above costs, staff would have to be redirected away from existing projects during the hearing process to prepare and process these amendments, provide essential information, and expert testimony. This would result in realignments of future management programs, staff priorities and event scheduling for on-going projects.

Option 4:

The Board chooses to change its policy of conducting project Environmental Assessments during the Zoning Process to conducting project Environmental Assessments during the Site Plan Review Process.

No costs are anticipated by this option because no changes to the Comprehensive Plan are required.

Option 5:

The Board chooses to eliminate policy 5.2(F).

The changes to the Comprehensive Plan required by this option would be similar in nature to those estimated for Options 2 and 3 > $100,000

[Note: These estimates include attorneys fees, expert fees, staff time, reproduction costs and advertisement costs. Should the hearing officer rule against the County, and the Board choose to pursue a cabinet level ruling, the fiscal impacts to the County would be much higher.]

In addition to the above costs, staff would have to be redirected away from existing projects during the hearing process to prepare and process these amendments, provide essential information, and expert testimony. This would result in realignments of future management programs, staff priorities and event scheduling for on-going projects.

VIII. STATE and REGIONAL AUDITS

At the regularly scheduled Board Meeting on March 21, 1995, the Board directed staff to gather and analyze data associated with mitigation required on wetland permits issued by the state The NRMD staff has obtained copies of these wetland permitting audits and has provided a brief summary for the Boards consideration

A: Report on the Effectiveness of Permitted Mitigation
Department of Environmental Regulation
Report to the Florida Legislature
1990
985 pp

Study Period: January 01, 1985 through December 06, 1990

1262 Permits issued (including creation, enhancement, or preservation)
These permits authorized the following:

3,305.42 acres	Acres impacted
3,344.90 acres	Acres required to be created
7,300.90 acres	Acres to be enhanced
7,587 54 acres	Acres to be preserved

To evaluate the effectiveness of creating wetlands as mitigation, the Department examined 119 wetland creation sites required by 63 permits. The sites included freshwater herbaceous and forested wetlands, and tidal herbaceous and mangrove wetlands. Each was evaluated for compliance with the requirements of the permit and whether the wetland created at the site was ecologically successful (functional).

A high rate of noncompliance was found Only four of the sixty three permits were found to be in full compliance with the mitigation requirements of the permits. In addition, in separate reviews by the FDER District Offices and others, it was indicated in 34% of permits issued no mitigation had been attempted even though wetland losses have occurred.

At sites where mitigation was actually performed the ecological success rate in this study was 27%. Freshwater mitigation projects were less successful than tidal wetlands projects (12% and 45% respectively).

B: 1991-92 Report to the Legislature on Permitted Wetlands Projects
Prepared by the Department of Environmental Regulation
February 01, 1993
37 pp.

Study period: October 01, 1991-September 30, 1992

1639 Wetland resource permits issued
These permits authorized the following:

929 acres	Acres impacted
1325 acres	Acres to be disturbed(expected to return to wetland conditions)
2764 acres	Acres required to be created
5980 acres	Acres to be enhanced
1705 acres	Acres to be preserved

The report states "Since the passage of the Henderson Act in 1984, permanent wetland losses have been in the 600 acre to 1,300 acre range per reporting year.. "

C: Performance Audit of the Management and Storage of Surface Waters and Wetland Resource Management Programs Administered by the St. Johns River Water Management District
Under the General Supervision of the Department of Environmental Regulation
April 12, 1993
54 pp.

Because the statutes only require the reporting of permitted wetland losses and gains, the District's wetlands reports do not reflect the actual losses and gains resulting from MSSW and WRM permits. District monitoring of mitigation requirements, as well as its special study to assess wetlands creation as a form of mitigation, indicate a substantial level of noncompliance with mitigation requirements.

In addition, the District's special study revealed substantial variation in the percentage of completed mitigation projects that had met the success criteria established in permit conditions (8.8% for forested freshwater sites, 27.1% for herbaceous freshwater sites, and 66.7% for saltwater sites) Although the difference between actual and permitted losses and gains cannot be determined from available data, the currently identified rates of both success and compliance suggest that mitigation differences are substantial. As a result, the reported wetland losses and gains are of limited usefulness for determining how well the District is accomplishing its intent to preserve the functions of wetlands.

D: Management and Storage of Surface Waters Program Administered by the Water Management Districts Under the General Supervision of the Department of Environmental Protection
November 24, 1993
28 pp.

In a November 1992 report, the Water Management District's (WMDs) published the results of a special assessment of wetland creation efforts. The report indicates a substantial level of noncompliance (55%) with mitigation requirements. In addition, the assessment of the sites included in this study included projects that had been established long enough to determine if the success criteria defined by permit conditions had been met. Percentages of sites meeting the success criteria were 8.8% for forested freshwater sites, 27 1% for herbaceous freshwater sites, and 66.7% for saltwater sites. Freshwater forested sites accounted for 561 acres of the wetlands creation acreage in the study, herbaceous freshwater sites accounted for 349 acres, and saltwater sites accounted for 56 acres. Taking into account the proportion of each type of site in the overall acreage included in this study yields a success rate of approximately 19% for the 966 acres.

Wetland permitting helps assure that uncontrolled wetland losses do not occur, but permitting does not prevent the continuing loss of wetlands. As a result of permitted net losses, widespread noncompliance with mitigation requirements, and difficulty in successfully creating new wetlands, the permitting process has only been partially effective in preserving the function of wetlands. Because on-site wetlands creation sites have shown little success, approaches such as mitigation banking may have a better environmental result; however, such approaches will also allow continuing wetland losses.

IX. WETLAND LAND USE POLICIES IN OTHER FLORIDA COUNTIES

In order to furnish the Board a state-wide perspective on wetland use policies developed elsewhere, staff has contacted other county planning and natural resource divisions to obtain Comprehensive Plan information regarding wetlands. From this information, staff has developed a table that lists applicable data on wetland use restrictions. The table that is included in Appendix A is presently incomplete due to a lack of response from several counties, however, staff will continue its effort to gather a complete picture on land use restrictions in wetland areas, and will present the finalized table to the Board at a later date. The table is organized as follows:

1. The density-development restrictions column presents the basic restrictions or any prohibitions that have been adopted. If the county's Comprehensive Plan or Land Development Regulations do not have specific density restrictions, it is noted how they reduce impacts on wetlands.

2. The permitting requirement column details those counties that have additional permit applications required beyond those required by state and federal agencies. If a county requires additional information or additions to the agency permits, but do not have their own permit, this criteria is presented

3. The mitigation ratios column stipulates the mitigation the county requires for development of wetlands. Those counties that defer to state and federal permit requirements, but also require additional mitigation ratios for wetland development, are also noted in this column.

4. The buffer column details if a county imposes any additional setbacks from the wetlands edge.

5. The mitigation banks section shows if the county has established land banking as a means of mitigation for wetland development.

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APPENDICES

Local Land Development Policies

Number Of Counties	Density-Development Restrictions	Number of Counties	Permitting Requirements	Number of Counties	Mitigation Ratios	Number of Counties	Buffers
6	Wetland development prohibited	7	Require additional permit above the state/federal requirements	25	Mitigation ratios established	31	Buffer from wetlands
5	Wetland development prohibited unless special circumstances	48	Defer permitting to state/federal requirements	1	No mitigation since no development is allowed	22	No buffer requirements
9	Residential densities Commercial/Industrial prohibited	12	No information available at this time	26	Defer to state/federal permit requirements	14	No information available at this time
7	Residential densities Commercial/Industrial no densities			15	No information available at this time		
18	No density restrictions (5 of which require additional permits to the state/federal)						
9	Other restrictions						
13	No information available at this time						

COUNTY	DENSITY-DEVELOPMENT RESTRICTIONS	PERMITTING REQUIREMENTS	MITIGATION RATIOS	BUFFERS	MITIGATION BANKS	OTHER INFORMATION
ALACHUA	No density restrictions Reviewed on a case by case basis	Yes-use Corps of Engineers guidelines	Yes 1 5 1-herbaceous wetlands 2 0 1-forested wetlands	Yes 35' minimum from jurisdictional line (COE)	No	
BAKER	Residential-1 unit 5 acres Comm/Ind-No densities	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	Not enough staff to regulate
BAY	No density restrictions Reviewed on a case by case basis	No-State/federal permitting	No-Defer to state/federal requirements	Yes 30' from jurisdictional line	No	
BRADFORD	Promote cluster development, with prohibition of development w/in wetlands if cluster does not exist then Residential-1 unit 5 acres Comm/Ind-Prohibited	No-State/federal permitting	No-Defer to state/federal permit requirements	Yes 35' from jurisdictional line	No	No planner on staff
BREVARD	Residential-1 unit 5 acres Comm/Ind-Prohibited	No-State/federal permitting may require additional mitigation if state/federal does not meet no net loss	Yes 2 1	No	No	
BROWARD	Restrictions based on quality and type of wetland	Yes-license issued by Dept Of Natural Resources Protection	Yes 3 5 1-Forested wetlands 3 0 1-Tidal wetlands 2 0 1-Herbaceous wetlands	May be required with mitigation	Yes	
CALHOUN	Land development regulations not adopted Comp plan is broad statements with restrictions to be in place through land development regulations	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	Not enough staff to regulate
CHARLOTTE	Densities based on gross acreage Development restricted to upland portions of area	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	
CITRUS	No development shall be undertaken in a wetland area	No-State/federal permitting	Yes 3 1-Mangroves 2 5 1-Hardwood 1 5 1-Fresh/Saltwater Marsh	Yes 50'-all others 15'-minimum for isolated wetlands	No	
CLAY	Residential-1 100 acres Commercial is prohibited	No-State/federal permitting	No-Defer to state/federal requirements	No	No	
COLLIER	No densities in comp plan just a no net loss statement Require 25% native vegetation left on site	No-State(SFWMD on 07/93)	No net loss	Yes 25' from jurisdictional line 10'-for accessory use structures	No	Small staff Avoid duplication in permitting
COLUMBIA		No-State/federal permitting			No	

DADE	No development in pristine wetlands	Yes-Issued by the Department of Environmental Resources Management	Yes 1 5 1-exotic invaded wetlands	No	Yes-3 banks	$600,000/100 acre restoration project
DE SOTO	No density restrictions	No-State/federal permitting	No-Defer to state/federal permit requirements	Yes 50' from jurisdictional line	No	Small staff (1)
DIXIE					No	
DUVAL	Residential Saltmarsh 1 unit 5 acres Riverine/Estuarine 1 unit 5 acres No Comm/Ind development	No-State/federal permitting	No-Defer to state/federal permit guidelines	No	Yes-private	
ESCAMBIA	Residential-1 unit 5 acres Comm/Ind-No new development	No-State/federal permitting	Yes 1 5:1	Yes Estuarine-1 5' above mean sea level All others-30" or 2 5' above mean sea level	No	
FLAGLER	Must acquire state/federal permits to allow development	No-State/federal permitting	Yes 2 0 1	Yes 25' from jurisdictional line	No	
FRANKLIN	Critical Shoreline Ordinance (buffers) No development w/in buffers	No-State/federal permitting	Yes	Yes 150' from waterbodies or wetlands(environmentally sensitive lands) 50' from waterbodies or wetlands	No	
GADSDEN	Residential-New lots 1 unit 40 acres(After comp plan) Prior to comp plan 1 unit 1 acre No comm/ind unless mitigated	No-State/federal permitting	No Defer to state/federal permit requirements	Yes 50' from jurisdictional line	No	Small staff (4)
GILCHRIST		No-State/federal permitting		Yes 35' from wetlands 75' from Suwannee and Santa Fe Rivers	No	No staff to regulate
GLADE	No development in wetlands	No-State/federal permitting		No	No	No staff to regulate
GULF		No-State/federal permitting		No	No	No staff to regulate
HAMILTON					No	
HARDEE	No density restrictions Reviewed on a case by case basis	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	Small staff (3)
HENDRY	Residential - 1 unit 20 acres			Other restrictions on environmentally sensitive lands	No	

HERNANDO	Residential-1 unit 40 acres Comm/Ind-No densities	No-State/federal permitting	Yes 1 1	Yes 15'-platted prior to 1990 75'-platted after 1990	No	
HIGHLANDS					No	
HILLSBOROUGH	Development which destroys, reduces or impairs the wetland or their environmental benefits constitutes pollution and is prohibited	No-State/federal permitting	Yes 1 1	Yes 500' from Hillsborough, Alafia and Little Manatee River	No	
HOLMES					No	
INDIAN RIVER			Yes 2:1 type for type 3:1 SAV		Last alternative	
JACKSON		No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	
JEFFERSON	Conservation lands-No development 100 year floodplain-1 unit 5 acres 100 year floodplain-1 unit 40 acres No comm/ind zoned in wetlands	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	Wetlands are located in floodplains Outside of fldpln placed in conservation lands
LAFAYETTE	Residential 1unit 10 acres-Riverfront (Suwannee) 1 unit 40 acres-Ag 40 areas(65% of county w/in 100 year floodplain) Comm/Ind prohibited	No-State/federal permitting	No-defer to state/federal permit requirements	Yes 100' from jurisdictional line	No	Small staff (2)
LAKE	Residential-1unit 5 acres Comm/Ind-no densities	No-State/federal permitting	Yes 1 1	Yes 15'-Isolated wetlands 25'-Non-isolated wetlands	No	
LEE	Comm/Ind prohibited 10%-Resource Protection Areas 15%-Transitional Zone	No-State/federal permitting reviewed at site plan review for consistency with the counties wetland regulations	Yes	No Development within the transitional areas (buffers) is limited to 15%	No	
LEON	No development unless it is a degraded wetland (Altered-Unaltered)	No-State/federal permitting	No-Defer to state/federal permit requirements	Yes Variable due to soil types and slopes	No	
LEVY					No	
LIBERTY					No	
MADISON	Zoned Environmentally Sensitive lands	No-State/federal permitting	No-Defer to state/federal permit	No	No	Entire county

	Residential 1 unit 40 acres Comm/Ind use not allowed unless special consideration		requirements			densities at least 1 unit 10 acres
MANATEE	No density restrictions Development reviewed on a case by case basis	No-State/federal permitting	Yes 2 1-herbaceous wetlands 4 1-forested wetlands	Yes 50'-connected wetlands 30'-isolated wetlands	No	
MARION	2 1-aerobic OSDTS 1 1-anaerobic OSDTS encourage clustering				No	
MARTIN	All wetlands shall be protected No negative impacts shall be allowed	No-State/federal permitting	No No development is allowed therefore no mitigation is allowed	Yes 50' connected wetlands 25' isolated wetlands	No	
MONROE	Open space requirements due to habitat types/more than one habitat cluster in least sensitive				No	
NASSAU					No	
OKALOOSA	No density restrictions Development reviewed on a case by case basis	No-State/federal permitting	Yes 2 1	Yes 50'-tidal wetlands 25'-freshwater wetlands	No	Not enough staff to regulate restrictions
OKEECHOBEE	No density restrictions	No-State/federal permitting	Yes 1 1 on-site 2 1 off-site	Yes 25'-Residential 50'-all other development	Yes	
ORANGE	Class I-40 acres or connected/no development	Yes Class I-No development Class II-isolated 5-40 acres ClassIII-less than 5 acres	Yes 2 1-Class II 1 1-Class III		Yes-Split Oak-Orange and Osceola counties 3500 acres	
OSCEOLA	Reviewed on a case by case basis	No-State permitting with review of all permits at development review stage to ensure consistency with the counties wetland regulations	Yes	No	Yes-numerous banks existing and proposed	Ordinance allows for development denial or further review if state guidelines are not followed
PALM BEACH	No densities	Yes cosign w/DEP	Yes	Yes Minimum 15' with a 25' average	No	
PASCO	Encourage cluster development	No-State/federal permitting	Yes-compensatory		No	
PINELLAS	No density restrictions Reviewed on a case by case basis	Yes-Water and Navigation Control	Yes 1 5 1-herbaceous wetlands	Yes 15'-isolated wetlands, non-connected	Working on one for highway and	

		Environmental Management	2.5 f-wooded wetlands 4.0 f-wooded wetlands	ditches channels creeks 50'-all other wetlands	county projects	
POLK	Residential-1 unit 10 acres 1 unit 20 acres in Green Swamp Comm/Ind-on non-wetland portions	No-State/federal permitting	Yes	No	No	No parcel shall be created after 12-01-92 which consists entirely of wetlands
PUTNAM					No	
ST JOHNS	No density restrictions Reviewed on a case by case basis and try to prohibit development but rely on state/federal	No-State/federal permitting	No-Defer to state/federal permit requirements	Yes 25' from jurisdictional line	No	
ST LUCIE	Residential- 1 unit 5 acres Comm/Ind- No density restrictions	No-State/federal permitting	No-Defer to state/federal permit requirements	Yes 10' minimum 25' average	No	No biologist on staff
SANTA ROSA	No density restrictions Reviewed on a case by case basis	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	Not enough manpower or backing to warrant additional regulations
SARASOTA	Some alteration may be allowed where a wetland is no longer performing defined environmental functions	No-State/federal permitting	Yes Level I-1 1-herbaceous 2 1-wooded Level II-2 1 herbaceous 4 1-wooded	Yes 50'- if it consists of mesic flatwoods 30'-All other	No	
SEMINOLE	10% allowed for reasonable use Industrial use is a conflicting use	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	
SUMTER	Residential-(Urban Expansion Area-UEA) 1 10 outside UEA 1 5 within UEA without sewer or water 1 2.5 within UEA with sewer and water Comm/Ind prohibited	No-State/federal permitting	No-Defer to state/federal permit requirements	Yes 50' from jurisdictional line	No-looking in to establishing them	Not enough staff to regulate
SUWANNEE	Environmentally sensitive lands ESA I-1 unit 20 acres ESAII-1 unit 10 acres	No-State/federal permitting	No-Defer to state/federal permit requirements	Yes 35'-unaltered wetlands 50'-perennial rivers, streams, creeks 75'-perennial rivers, streams, creeks, w/in env sensitive lands	No	Residential, Comm/Ind prohibited w/in buffers
TAYLOR	Development prohibited unless mitigated	No-State/federal permitting	No-Defer to state/federal permit	Yes	No	

			requirements	35' from jurisdictional line		
UNION	Environmentally sensitive lands Residential Class I -1 unit 40 acres Class II -1 unit 10 acres Class III-1 unit 5 acres (Comm/Ind prohibited to be in LDR)	No-State/federal permitting	No-Defer to state/federal permit requirements	Yes 50' from jurisdictional line	No	No LDR in effect Small staff (2)
VOLUSIA	No density restrictions Reviewed on a case by case basis	Yes-Wetland Alteration Permit required-1/2 acre threshold	Yes At least 1 1 SFR-dock seawall, driveway impacts can pay 0 68 per sq ft	Yes 25' minimum 50'-OFW which can increase	Yes-informal bank county owned 1400 acres-should be a recognized bank 1-2 years	
WAKULLA	No density restrictions Reviewed on a case by case basis	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	Small staff (4) 65% of county located in National forest or wildlife mngt area
WALTON	Development is prohibited-Access through a wetland is allowed	No-State/federal permitting	Yes 1 1	Yes 50' from jurisdictional line	No	
WASHINGTON	Protection through zoning Conservation areas-No development allowed	No-State/federal permitting	No-Defer to state/federal permit requirements	No	No	

WETLANDS FUNCTIONS

Fish and Wildlife Habitat

Wetlands are critical to the survival of a wide variety of animals and plants. Most freshwater fish feed upon wetland-produced food and use wetlands as nursery grounds. Most of the recreational fish spawn in wetlands. A variety of bird life, ducks, geese, and a large number of songbirds feed, nest, and raise their young in wetlands. Moreover, a number of rare and endangered species depend on wetlands for survival.

Water Quality Improvement

One of the most important values of wetlands is their ability to help maintain and improve the water quality of our County's water bodies. Wetlands do this by removing and retaining nutrients; processing chemical and organic wastes; and reducing sediment loads to receiving water bodies.

Flood Control and Protection

Wetlands have often been referred to as natural sponges that absorb flood waters. Trees and other wetland vegetation help slow the speed of flood waters. This action, combined with water storage, can lower flood heights and reduce the water's erosive potential.

Shoreline Erosion Control

Wetland plants are important in protecting against erosion because they increase the durability of the sediment by binding soil with their roots, and they dampen wave action and reduce current velocity through friction.

Natural Products

A wealth of natural products are produced by wetlands. Those available for human use include timber, fish and shellfish, wildlife.

Recreation and Aesthetics

Wetlands provide endless opportunities for popular recreational activities, such as hiking, boating, fishing, and swimming. The observance and photography of wetland-dependent birds, alone, entice an estimated 50 million people to spend nearly $10 billion each year.

Educational Opportunities

Wetlands serve as educational sites for learning about the cycle of water, the food chain, identification and classification of plants, waterfowl, and wildlife, and in many cases as a link to our cultural past. Indian village and mound remains have been found in and near wetland areas, indicating how wetlands were used by man many years ago.

Brevard County Comprehensive Plan
Goals, Objectives, and Policies
Wetlands

Wetlands

Objective 5
Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September 1990.

Policy 5.1

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands, but shall not be limited by the threshold or connection requirements utilized by these agencies.

Policy 5.2

In 1991, Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

Criteria

A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:

1. Residential land uses shall be limited to not more than one dwelling unit per five acres.

2. Commercial and industrial land uses shall be prohibited unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the

minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.

Policy 5.3

Wetland regulations adopted by Brevard County shall avoid duplication of wetland regulation.

Criteria

A. Brevard County shall regulate activities which will result in the destruction and/or degradation of functional wetland wetlands except where the wetland degradation or destruction has been permitted by FDER or SJRWMD based on FDER and SJRWMD professional staff application of criteria and evaluation.

B. Any permitted wetland degradation or destruction shall provide for mitigation as designated in Policy 5.2, Criteria C.

Policy 5.4

By September 1991, Brevard County shall develop and adopt a Mangrove Protection Ordinance. The ordinance shall be consistent with the Florida Department of Environmental Regulation mangrove requirements and shall be enforced by Brevard County.

Policy 5.5

Brevard County shall assess the effectiveness of its Florida Department of Environmental Regulation local program on at least an annual basis.

Policy 5.6

Brevard County shall develop a mosquito impoundment management plan by 1994, which should address the following criteria, at a minimum:

Criteria

A. Acquisition of impoundments for maintenance and operation.

B. Appropriate water management system shall be utilized.

C. Impoundments shall be restored or reconnected with the Indian River Lagoon when a public benefit can be demonstrated.

D. Proposed alteration of an impoundment should be reviewed by Mosquito Control. Brevard County should compensate property owners for mosquito impoundments when this use precludes all use by the owner or when no alteration would be acceptable to Mosquito Control.

E. Nonpermitted alteration of an impoundment shall be enforced by the Brevard County Code Enforcement Division.

F. All mosquito impoudments should be evaluated and those found to be breached or non-functional should be returned to their natural condition by the appropriate mosquito control district. This would include, but not be limited to, removal of existing dikes and re-establishment of historical tidal channels.

G. Those fully functioning impoundments determined to be needed by the mosquito control district, should be placed under a rotational impoundment management plan as approved by the Florida Coordinating Council on Mosquito Control.

H. Any other "source reduction" mosquito control activities which also reduce the natural habitat required by freshwater or marine organisms should be prohibited.

Policy 5.7

Wetlands artificially created for wastewater treatment or disposal or for wetland stock nurseries shall not be subject to these regulations and shall not be used to fulfill the requirements of this objective (Objective 5).

Policy 5.8

Public facilities should not be located within wetland areas unless the following apply:

Criteria

A. The facilities are water-dependent, such as mosquito control facilities; or

B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or

C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or

D. The building structures are floodproofed and located above the 100-year flood elevation, or removed from the floodplain by appropriately constructed dikes or levees; or

E. The facilities are found to be in the public interest and there is no feasible alternative.

CONSERVATION ELEMENT AMENDMENT
PROPOSED PLAN AMENDMENT

Rationale:
Within Brevard County, wetland permitting is done through a variety of state, federal, and regional agencies; these agencies include the St. Johns River Water Management District, the Department of Environmental Protection, and the Army Corps of Engineers. Through the permitting process, development designs are reviewed to determine what impacts will occur and to mitigate natural resource damages. Brevard County does not issue any permits for wetland alteration or development.

Since Brevard County does not partake in wetland permitting procedures, all wetland issues should be deferred to the federal, state, and regional regulatory authorities. This action, by eliminating duplication, will help make the regulatory process more user-friendly and less confusing for Brevard County residents.

~~Wetlands~~

~~**Objective 5**~~
~~Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September 1990.~~

~~**Policy 5.1**~~
~~Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands, but shall not be limited by the threshold or connection requirements utilized by these agencies.~~

~~**Policy 5.2**~~
~~In 1991, Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:~~

~~**Criteria**~~
~~A. The basis for no net loss shall be established as of the effective date of the required ordinance.~~

~~B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.~~

~~C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation~~

can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:

1. Residential land uses shall be limited to not more than one dwelling unit per five acres.

2. Commercial and industrial land uses shall be prohibited unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.

Policy 5.3

Wetland regulations adopted by Brevard County shall avoid duplication of wetland regulation.

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A. Brevard County shall regulate activities which will result in the destruction and/or degradation of functional wetland wetlands except where the wetland degradation or destruction has been permitted by FDER or SJRWMD based on FDER and SJRWMD professional staff application of criteria and evaluation.

B. Any permitted wetland degradation or destruction shall provide for mitigation as designated in Policy 5.2, Criteria C.

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By September 1991, Brevard County shall develop and adopt a Mangrove Protection Ordinance. The ordinance shall be consistent with the Florida

Department of Environmental Regulation mangrove requirements and shall be enforced by Brevard County.

Policy 5.5

Brevard County shall assess the effectiveness of its Florida Department of Environmental Regulation local program on at least an annual basis.

Policy 5.6

Brevard County shall develop a mosquito impoundment management plan by 1994, which should address the following criteria, at a minimum:

Criteria

A. Acquisition of impoundments for maintenance and operation.

B. Appropriate water management system shall be utilized.

C. Impoundments shall be restored or reconnected with the Indian River Lagoon when a public benefit can be demonstrated.

D. Proposed alteration of an impoundment should be reviewed by Mosquito Control. Brevard County should compensate property owners for mosquito impoundments when this use precludes all use by the owner or when no alteration would be acceptable to Mosquito Control.

E. Nonpermitted alteration of an impoundment shall be enforced by the Brevard County Code Enforcement Division.

F. All mosquito impoudments should be evaluated and those found to be breached or non functional should be returned to their natural condition by the appropriate mosquito control district. This would include, but not be limited to, removal of existing dikes and re-establishment of historical tidal channels.

G. Those fully functioning impoundments determined to be needed by the mosquito control district, should be placed under a rotational impoundment management plan as approved by the Florida Coordinating Council on Mosquito Control.

H. Any other "source reduction" mosquito control activities which also reduce the natural habitat required by freshwater or marine organisms should be prohibited.

Policy 5.7

Wetlands artificially created for wastewater treatment or disposal or for wetland stock nurseries shall not be subject to these regulations and shall not be used to fulfill the requirements of this objective (Objective 5).

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Public facilities should not be located within wetland areas unless the following apply:

Criteria

A. The facilities are water dependent, such as mosquito control facilities; or

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~~E. The facilities are found to be in the public interest and there is no feasible alternative.~~

95D file

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INTER-OFFICE MEMORANDUM

TO: STEVE PEFFER, ACTING DIRECTOR
OFFICE OF NATURAL RESOURCES MANAGEMENT
KRIS DEXHEIMER, ENVIRONMENTAL SPECIALIST
OFFICE OF NATURAL RESOURCES MANAGEMENT

FROM: TODD CORWIN, PLANNER I TC
GROWTH MANAGEMENT DEPARTMENT

SUBJ: ENVIRONMENTAL CITIZEN RESOURCE GROUP MEETING FOR 1995B PLAN AMENDMENTS

DATE: MAY 26, 1995

Per board direction, the public hearing process for comprehensive plan amendments requires that all amendments be considered by Citizen Resource Groups (CRG) in a public meeting format. These meetings occur prior to the Local Planning Agency public hearing for the amendments. The proposed amendments to the Conservation Element, Objective 5 and Policies 5.1 - 5.8 (wetland policies), should be reviewed by the Environmental Citizen Resource Group. A meeting of the Environmental CRG needs to be held prior to August 9, 1995, so that the amendments can be reviewed by the Local Planning Agency at their August 21, 1995, meeting.

The Growth Management Department has set an August 9, 1995, meeting date for the Land Use Citizen Resource Group. The Infrastructure Citizen Resource Group meeting will be held on or before the August 9, 1995, date.

I have received the proposed amendment to the Conservation Element; however, the amendment does not contain a rationale for the proposed change. The rationale should contain the reasoning for the proposed change to Conservation Element, Objective 5 and Policies 5.1 - 5.8.

Please let me know if I can be of assistance regarding this meeting of the Environmental Citizen Resource Group. I have enclosed the names and addresses of the Environmental Citizen Resource Group members for your review.

If you have any questions or need additional information, please call me at X2069.

cc: Sue Hann, P.E., Director, Growth Management Department
Peggy Busacca, Assistant Director, Growth Management Department

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CITIZEN RESOURCE GROUP
ENVIRONMENTAL

Billy Kempfer
8053 Hwy. 192
West Melbourne, FL 32904
724-1934

Anne Marie Brush
180 E. MerrittAvenue
Merritt Island, FL 32952
452-3211

Lynn Hansel
4505 W. Cheney Hwy.
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269-5004

Walt Gilfilin
912 Jefferson Road
Rockledge, FL 32955
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Kim Hooper
P.O. Box 580
Cocoa, FL 32923-0580
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631-4667 (W)

Richard Gramling
5903 Stillwater Avenue
Cocoa, FL 32927
631-5055

Kim Zarillo
760 Cajeput Circle
Melbourne Village, FL 32904
727-1713

Susan Carlson
3422 Kent Drive
Melbourne, FL 32940
242-2687

Toni Arnold
203-E 6th Avenue
Melbourne Beach, FL 32951
952-4129

Bonnie Carter
7375 South Tropical Trail
Merritt Island, FL 32952
452-4606

Pat Blaha
280 Flamingo Drive
Melbourne Shores, FL 32951
725-9224

Tom Lawson
100 Sea Ray Drive
Merritt Island, FL 32953
453-6710

Richard Young
2460 North Courtenay Parkway
Suite 207
Merritt Island, FL 32953
453-0212

Jackie Gregory
1830 Robin Hood Avenue
Titusville, FL 32953
269-5855

***Note: Mike Miller would like to be notified of all CRG meetings. Send him a copy of meeting notice only and call him at SJRWMD - 984-4940.

1995B COMPREHENSIVE PLAN AMENDMENTS
SUMMARY SHEET

Conservation Element Amendment, Objective 5, Policies 5.1-5.8

Transmittal:

Environmental Citizen Resource Group Recommendation: Denial (6:0). The CRG members recommended retaining Conservation Element Objective 5 and Policies 5.1-5.8, with staff direction to review these items for any duplication of efforts with the St. Johns River Water Management District and eliminate those that are duplicative, and to follow the terms already set forth within Objective 5 and Policies 5.1-5.8 of the Comprehensive Plan (For Denial: Kempfer, Young, Gramling, Hooper, Wright, Blaha

LOCAL PLANNING AGENCY RECOMMENDATION: APPROVAL (8:1) OF DELETING THE WORDS "BUT SHALL NOT BE LIMITED BY THE THRESHOLD OR CONNECTION REQUIREMENTS UTILIZED BY THESE AGENCIES" FROM POLICY 5.1, DELETING PARTS 1,2, AND 3 OF CRITERION F IN POLICY 5.2, AND RETAINING OBJECTIVE 5 AND THE REMAINING PORTIONS OF POLICIES 5.1-5.8. (FOR: SIMON, OTT, SPRINGFIELD, DAIGNAULT, SMOLEN, HURLEY, MIXSON, PENCE; AGAINST: SELIG)

Building and Construction Advisory Committee: Approval (3:0) of deleting Objective 5 and Policies 5.1-5.8. (For: Wickham, Fuller, Bogenrief)

Board of County Commissioners: Approval (3:2) (For: Cook, Ellis, O'Brien; Denial: Higgs, Scarborough)

Adoption:

LOCAL PLANNING AGENCY RECOMMENDATION: DRAFT LANGUAGE WAS PRESENTED BY STAFF AND NO RECOMMENDATION WAS FORWARDED BY THE LPA

CONSERVATION ELEMENT AMENDMENT
PROPOSED PLAN AMENDMENT
(Local Planning Agency Recommendation)

Rationale:
Within Brevard County, wetland permitting is done through a variety of state, federal, and regional agencies; these agencies include the St. Johns River Water Management District, the Department of Environmental Protection, and the Army Corps of Engineers. Through the permitting process, development designs are reviewed to determine what impacts will occur and to mitigate natural resource damages. Brevard County does not issue any permits for wetland alteration or development.

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Brevard County, Florida - Clerk of the Court

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Meeting Minutes

Chairman Higgs called for a vote on the motion. Motion carried and ordered unanimously.

Mr. Hall thanked the Board on behalf of the Town of Malabar.

CONTRACT WITH FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, RE: FY 1995-96 COOPERATIVE AQUATIC PLANT CONTROL PROGRAM

Motion by Commissioner Ellis, seconded by Commissioner O'Brien, to execute Contract with the Florida Department of Environmental Protection for the Cooperative Aquatic Plant Control Program, providing for reimbursement to the County of $30.389.70 in FY 1995-96. Motion carried and ordered unanimously.

The meeting recessed at 6:23 p.m. and reconvened at 6:34 p.m.

PUBLIC HEARING, RE: APPROVING 1995B COMPREHENSIVE PLAN AMENDMENTS FOR TRANSMITTAL TO DEPARTMENT OF COMMUNITY AFFAIRS

Chairman Higgs called for the public hearing to consider the 1995B Comprehensive Plan amendments for transmittal to Department of Community Affairs. She stated most of the audience is here in interest of the Plan amendment dealing with the wetlands issues; they have been through a number of hearings; and the recommendations on those issues are coming before the Board tonight. She advised of the procedure and time constraints to address the Board.

Commissioner O'Brien stated everyone has a right to speak; but encouraged those speakers who agree with previous speakers to so state rather than making a lengthy presentation.

Carl Signorelli, 5780 Eagle Way, Merritt Island, stated in the People's Contract for America, the people voted for less government, less duplication of bureaucracy, less control, less regulation, and streamlining of government to make it more efficient and less costly. He stated he favors the County relinquishing any control over the wetland management; it results in knocking down another costly wall of rules and regulations that is being duplicated by other agencies; and it is not eliminating wetlands, but duplication of control.

Centi Thomson, 4330 Peppertree Street, Cocoa, stated she is against duplication of efforts; and she is for the elimination of the local work. She stated the State Departments will look out for the wetlands, and that is sufficient. Diana Milliken, 1040 West Highland Drive, Cocoa, stated she agrees with Mr. Signorelli and Ms. Thomson.

Jean Cantwell, 402 Rio Palma South, Indialantic, stated she does not agree with the first three speakers; there is a need for regulation of development; and without regulation, there will be another Palm Bay with overdevelopment, underfinancing, and breakdown of infrastructure service. She stated if the majority agrees with her opinion that development must be regulated, then it should be regulated on a local level with local input. She stated it should be regulated where local infrastructure needs are known and where concerns for quality of life can be voiced and discussed. She stated Brevard residents must have a say in what happens or does not happen in the County; and that forum should be local and easily accessible to residents. She inquired if developers would prefer to put distance between their activities and the local residents; and stated without Brevard resident knowledge and input, the County will suffer. She stated quality of life, both aesthetic and economic, quality of water, and quality of services are all interconnected and hinge on preservation and conservation of our remaining natural resources. She stated development can be good when coupled with foresight and planning; development will be bad if it is not regulated or if it is regulated from a distance by only one or two agencies; and maintaining local control of wetland policies demonstrates foresight and is crucial to future planning for Brevard County and its residents.

Donald Davis, 2625 Grant Road, Grant, advised recently an article in the newspaper stated that as recently as twenty-five years ago, this area was considered a stinking, mosquito infested area; and as far as the mosquitoes are concerned, he agrees there has been no change. He stated in 1989 he purchased property in Grant; in February, 1994, he hired a builder to build his home; he applied for and received all required permits including a clearing permit; and he proceeded to clear the property leaving as much vegetation as possible. He stated two months later, he received a phone call from an individual associated with the State Department of Environmental Protection, advising he had destroyed wetland property, and if he did not comply with the restoration request within 30 days, he would be fined $10,000 a day thereafter. He stated he was never advised by the County, the bank, title company, or realtor that a portion of the property was designated wetlands; and if he had known or had been advised of this fact, he would have sold the property and moved on. He stated the situation has depressed he and his wife, not to mention the financial burden it has placed on his retirement income. He stated if the County is going to be in the environmental protection business, it should protect the environment and the people who are purchasing property in these areas from such a devastating situation. He recommended the County not allow people to spend a portion of their life savings to buy property and then after the fact, advise the property is wetlands and they cannot build on it, or that the use of the property is severely restricted. He stated if the County is going to stay in the regulation business, it should do it right. He stated his builder applied for and received his building permits; he knew that his plans had been approved by County engineers, and he could proceed; when he applied for the clearing permit, he advised the County of the existing trees and vegetation; and the County approved the clearing request. He stated there was no mention that

the back half of his property could not be touched because it was wetlands. He stated if the County cannot issue permits to clear property with clear indications of possible restrictions, it should get out of the environmental protection business and let the State issue the permits. He noted he realizes it does not cover all the environmental problems, but to some degree it addresses individual property owners' problems in this area. He stated in Grant, the County is going to have a lot of problems when the people who own the property behind him find out they cannot do anything with their property, but the County is collecting taxes on the property.

Graydon Corn, 3690 Aurantia Road, Mims, expressed sympathy for Mr. Davis; and stated he agrees with the amendment for the County to take itself out of regulation of the wetlands. He stated it will lessen the potential for the Board and the staff to be involved in litigation for violations of citizens' property rights; those rights are protected by the U.S. Constitution; and one of these days someone like the previous speaker will have enough money to get a chunk out of each Commissioner individually. He stated remedies are available through civil and criminal court for violating protected rights; and there are two lawyers on the Board who should know that. He stated the Commissioners swore to uphold the Constitution of the United States when they took office; and this is a good time to start by getting out of the regulation of wetlands which is a duplication anyway. He stated the government's only legal alternative to someone's property is to exercise its authority through the procedures of eminent domain, condemnation and purchase of the property if it is for public benefit. He stated otherwise the County has no authority to do the things to the people that it is doing.

H. L. Clark, 3700 North Riverside Drive, Indialantic, stated he would like to see the amendment passed to streamline government. He stated he does not want to see that issue fogged by talk about losing the wetlands; there are other agencies that will protect them; and this is an attempt to get back to the basics. He stated it is time to get back to government of the people instead of government by the bureaucrats; and it is time to make government more user friendly. He stated there is a great groundswell for this; there is a lot of hostility as to what is known as greedy developers; the gentleman who just spoke is not a greedy developer; he is just a homeowner who wanted to have his own piece of Florida; and he has no problem with that. He inquired if the quality of life for human beings better now than it was 50 to 75 years ago. He stated a hospital or road is built habitat is lost; it is a trade off; and people come first. He stated the Board needs to get back to that premise; and the County can do well without duplicating the effort, which is not to say the County is going to throw the environmental movement in a cocked hat, because it is not.

Norma Savell, 3500 South Courtenay Parkway, Merritt Island, President of Citizens for Constitutional Property Rights, stated she is scheduled to speak at United We Stand tonight, but was given special dispensation to be here for this important vote, as United We Stands is also very concerned about the outcome. She stated she and her family are environmentalists; one of her

ancestors is James Fennimore Cooper; and she read that he is considered the first environmental author. She stated for generations they have cared for whatever patch of ground God has provided them with; they were there long before the Johnny and Julie Jump-ups of today who say only they are qualified to care for their property; and most members of CCPR have assured her that they also love nature. She stated they are a group of environmentalists, but they are not Socialists. Ms. Savell stated as environmentalists they draw the line at taking property belonging to others; first there was carjacking, then housejacking, and now propertyjacking, performed by government and environmentalists riding in tandem over Americans. She stated the local newspaper advises citizens advisory groups have disagreed with the Board's decision regarding wetlands and Brevard County's Department of Natural Resources; as usual they did not finish the story by telling that such groups are environmentally loaded; and then the newspaper added the threat of lawsuits. She stated CCPR's response is to use their tax dollars to fight the bullies who threaten, otherwise the threats will never end; and it is cheaper that way. She stated she knows the eco-groups are present and ready to give the worn out line about the bulldozers clearing the land; and she can smell the diesel fuel already. She stated it did happen years ago through the space buildup; she can remember reading about families living in large culverts and in their cars because there was no housing; but that was a different time and situation. She stated no one truly believes that bulldozers can do that today with the mindset that government has of no growth. She stated Brevard County's government is schizophrenic; supposedly it wants jobs and new business for the area; but it is unable to give up its true anti-growth attitudes. She inquired who would want to come here for this grief; and stated voters are weary of electing the best choices available only to find the same no-help situation after the newly elected get in office. She stated there are four Republicans on the Board; there should be a four to one vote on issues important to the conservatives who elected them; the Commissioners will differ occasionally; but the people have the right to expect relief from regulations, and excess government which the Commissioners know the citizens across the country have demanded. She stated since the two newest Commissioners have taken their seats, the freshman U.S. Congressman have enacted the Contract with America; and in the same time frame, Brevardians have had a few impact fees reduced, but there has been no relief from regulations or agency cut back. She stated the people do not want to hear the comments about how the Board feels the pain of the people before it votes against them again; and the Commissioners' votes are the only things which count.

F. N. Harris, 250 Park Avenue, stated he would like to address the real issue of dollars and cents; he is involved with environmental remediation; and he knows the state and federal government will not be able to attend to the manner and amount of environmental regulatory agreements and ordinances that will take place when there is no intermediary mediation agency like Natural Resources in place with Policy 5.2 taking into consideration, discharge, recharge areas, wildlife habitats, and a complete comprehensive oversight of small homeowners, etc. He stated there is a sensitive aquifer; he

sees any alternatives to the dissolution of options for wetland policies as covered under C in Policy 5.2; and the alternatives will be more mitigation, more wetland restoration, more wetland replacement, more wetland enhancement, and monetary compensation which will cost the County a tremendous amount of money. He stated it is not going to happen; the state and federal regulatory agencies are understaffed; and if the Board thinks there are enough people to come to the County to attend to these problems without an intermediary agency in place, he does not know who it is kidding. He stated they are all aware there is a problem; they are aware that the honorable thing to do is to have professionals consulting; and if there is a problem in the way professionals consult relative to redundancy, that problem needs to be addressed; but the Board will not solve the problem by sweeping it under the carpet, and getting rid of an agency that is in place to help. He stated that is what professional environmentalists do; the County should not get rid of them; and they constitute accountability. Mr. Harris stated if there is no accountability, the people are going to suffer in the long run; this is his profession; and he knows this for a fact. He stated many environmentalists are here, and are concerned; and the problem will not go away with a four to one vote against the current regulation. He stated it will come up again and again. He stated there are many people present who are more informed than he is.

Norma Zadams, 801 South Brevard Avenue, Cocoa Beach, inquired if the Board has considered the precedent it might be establishing by eliminating the wetland policies from the Comprehensive Plan. She stated in the future anyone who is not happy with the decision they get from the County could resort to some outlandish actions and have the Planning Department removed from the Comprehensive Plan. She stated people all over the country have wanted home rule; with this in the Comprehensive Plan, there is home rule; and there is an old saying, "Nobody handles your money like you do." She stated that can be converted to nobody can handle the wetlands like we can; and if there is a duplication in the Ordinances or laws, they should be rewritten so there are no duplications.

Harry Fuller, 424 Dorset Drive, Cocoa Beach, representing the Space Coast Builders Association, stated the Association has a position on this because it only wants to have to jump through one hoop instead of four; so it supports the elimination of the Wetlands Element. He stated he represents the people with all the bulldozers who go around cutting everything down, which is not what they do in this day and time. He stated he did not see anything in the data he received relative to how the BCAC voted; and he guesses they voted unanimously to eliminate the Element. He stated there are people who want it and people who do not want it; the people who want the Element obviously want another hoop to jump through because that is a detriment to any kind of taking of habitat or wetlands; and the people who vote to get rid of it are obviously the people that have to jump through the hoops, and are tired of doing it. He stated three hoops is enough; and four is not required. He stated people often ask why America cannot outproduce Japan; and suggested finding out if Japan requires industry to jump through four hoops

instead of just one. He stated America cannot compete with Japan because of things it is doing to itself in terms of more control than is needed. He stated California is losing its industrial base because it has so many hoops to jump through that it is hard to do business there; and if someone moves across the border to New Mexico, half of the requirements are dropped. He stated a state or county can kill the goose that laid the golden egg if it keeps loading up society with more and more requirements that are not necessary; and this is a case of that. He stated they wondered about turning the operation and overseeing of the wetlands over to the County; it was agreed that the letter would be written; but he does now know what happened to that letter or what the response was. He stated he is associated with the manatee and Citizens for Florida Waterways; they keep tabs on what is going on at that level involving the manatee; and the County should not believe if it gives up, that the issue will go away because right now in Tallahassee the people who concern themselves with manatees are really about to try to stretch their bureaucratic control further to save the manatee. He stated the State is looking at the possibility of permitting property that drains into the river because it is felt anything that is on the uplands and drains into the estuaries and rivers where manatees are also affects the health of the manatee. He stated the bureaucracy is not going away; if the Board gets rid of this, four more will come; and one will be the manatee permit. He requested the Board do something as far as eliminating multiple control of government in this area.

Chairman Higgs stated Mr. Jenkins did provide the Board with a memorandum on that subject; and when the speakers are finished, he will provide a synopsis.

Jackie White, 6 St. Johns Street, Titusville, stated when the well is dry, then people will know the worth of water; Benjamin Franklin quoted those prophetic words 250 years ago; and when the well is dry, the value of water will be apparent even to the landowner who is not yet wise enough to know that his wetland is a treasure. She stated the wetland is refilling the aquifer; this year the whole world is facing a critical shortage of clean, fresh water; it comes from the ocean in the form or rain, running back down creeks, rivers, etc., back into the ocean; but some of that previous rainfall gets caught in little pockets in low spots referred to as wetlands. She stated the fresh water percolates through the ground cleansing itself of impurities on its way to the aquifer; and if the aquifer is lost, she does not know what the County will do. She inquired if the County will beg Osceola County or Orange County for water, or will it clutter the beach with desalinization plants, and does the Board know how much a desalinization plant costs. She requested the Board not change the Wetlands Comprehensive Plan, but make it stronger; the people of Brevard County know that the wetlands replenish the aquifer; and they cannot live without fresh water.

Charles Goodrich, 1804 Pine Street, Melbourne Beach, stated he works at Kennedy Space Center with 25 engineers in robotics and computer science; most of them are constituents of Commissioner Scarborough and

Commissioner O'Brien; but all are concerned about jobs. He stated the issue before the Board is more than just wetlands; it is how to preserve and protect jobs within the County; and the number one way to do this is to create a favorable business climate. He stated the best way to do that is to eliminate duplicative and unnecessary red tape and regulations. He stated government likes to create regulations and red tape; but if a layer of regulations can be eliminated, some of the hassles that local business needs to go through to expand or move into the area can be eliminated. He stated it is almost impossible to overestimate the importance of this issue; the situation regarding jobs is going to get much worse over the next twelve months; NASA is planning to reduce its workforce at KSC from 2,500 to 1,000 within three years; and a lot of the people who work with him are concerned about what they are going to do for work. He stated he is also concerned about his children and what the future holds for jobs within the County; and the County needs to send a message to the rest of the country that this area does not want unnecessary red tape or duplicative regulations, and is willing to create a favorable business climate that will be able to provide jobs for ourselves and our children.

Priscilla Griffith, 6414 South Drive, Melbourne Village, representing the League of Women Voters, requested the Board reconsider its decision of April 18, 1995 regarding the elimination of the wetlands provisions in the Comprehensive Plan. She stated one of the lessons that should have been learned from Hurricane Erin is that the County has not managed its wetland resources so as to minimize damage from flood waters; too many wetlands have been filled in and drained in Brevard County; and this is a time to consider the County's future in terms of the safety of its citizens and their property, sustainable development, and environmental viability. She stated those three elements are interrelated; and the preservation of wetlands is essential to all three. She stated one of the prime reasons people move to the County is to enjoy a lifestyle that is sustained by the wetlands, which some interests want to manipulate and destroy; and recommended rather than collaborating with those who would destroy wetlands, the County needs to face up to its local control responsibilities and continue protection of wetlands from inappropriate development as spelled out in the Comprehensive Plan. Ms. Griffith stated if the right thing is not done, the present and future citizens will pay for this negligence; and recommended the Board exercise local control and act in the best interest of all Brevard County's present and future residents, keeping the current wetland provisions in the Conservation Element of the Comprehensive Plan.

Martin Lamb, 2034 Adams Avenue, Melbourne, stated "God bless America, the home of the free and the brave" is what has been said; and the people are no longer as free as they have been, but they are again becoming brave. He stated some people are here to see that there is not the duplication of the process of the wetlands protection; it is obviously being protected by other regulatory agencies other than the County; and as the County experienced a problem during Hurricane Erin because too many wetlands have been filled in, it has obviously not done that job that the people are paying to have done

by the County. He stated Brevard County is not doing the job; that is why there is the problem here; and the County needs to let the other persons do it that are being paid for it. He stated they need to get a break as taxpayers; and the issue is not wetlands or wetlands protection, it is duplication of regulatory agencies. He stated Mr. Harris advised he is a professional environmentalist; and if the change was made today, he might not have his job. He recommended the Board protect the people of Brevard County, and not a special interest group which would like to protect its jobs as professional environmentalists.

Carroll Holland, 253 Merritt Square, Merritt Island, stated only the County has control of land use; the other regulatory agencies do not control land use; they just control wetlands; and protection has to be done by the County and no one else. He stated wetlands do protect from flooding and as Hurricane Erin has shown, there are lots of flooding problems when there are bad rain conditions. He stated it is a known fact that global ocean currents are up a degree and a half centigrade and are expected to rise, which means there will be more storms and more flooding; if the Board does away with the Comprehensive Plan controlling wetlands, there will be serious flooding difficulties; there are a lot of places in the County today which have been built; and there are special operations which have to be done each time it rains heavily. He stated it is time to consider the fact that the wetlands will act as a reservoir for the flood waters. He stated there are only two main drainage areas in the County, both in South Brevard, the C-54 and Sottile Canals; and if there is to be a lot of overflow and runoff from wetlands areas because they have been filled in, there will be silt and erosion problems throughout the County.

Chairman Higgs advised Kim Zarillo left a letter; and read aloud as follow:

Let us consider the undoing of environmental protection in Brevard County for what it is, politics as usual. The good old boys never really left office. I say what about the rest of Brevard citizens? What kind of consumer protection will unknowing land buyers have? It is the Commissioners' job to protect the citizens of Brevard County. The citizens have a right to community vision through the Comprehensive Plan. Once that is removed, the community loses. Changing the Comprehensive Plan to eliminate wetland protection for any special group, residential or commercial, affects all of us. We lost local control. We suffer the pollution, storm water flooding, and poor water quality. I may be just a citizen with no political insight, but I ask that you stop caving into the good old boy demands and cater to the citizens. Rita Karpie, 310 First Avenue, Melbourne Beach, stated she is a professional professor, so her job is not in jeopardy at the moment. She stated the population has increased; she does not believe the County is in a non-growth mode; and there are distinct responsibilities inherent for local government in a Comprehensive Land Use Plan which she is not willing to see deferred to the State. She noted Tallahassee is a long way from Brevard; she lives in the County; she has property; she has property rights; and she pays taxes. She stated deferring the County's responsibility for proper

planning and usage to the State is not appropriate; the people need to use the land in a way that they feel is appropriate to life in Brevard County; and that includes all of the environmental, economic, and other considerations. She stated by deleting mentions of wetlands, the County is reneging on its responsibility, not just to wetlands, but to the community. She stated the State is busy dealing with things like more jails versus more schools; it does not have time for Brevard County wetlands, or the difference between stormwater runoff and aquifer recharging; this is in our back yard; and the County needs to take care of it. She stated the proposed amendment will not meet the needs of the County, immediately or in the future; the County needs to address a definition of density; and it has to address procedures, and the types of usage felt to be acceptable.

Valerie Scott, 3695 Grant Road, Grant, stated she is a professional environmentalist, but does not get paid; and she has suffered threats and intimidation tactics because of her beliefs. She stated she is wearing the color of the Roseate Spoonbills; and she hopes the Board will remember these birds in its decision tonight. She exhibited photographs; and stated they are of her property in Grant on what is considered by developers as insignificant, intermittent wetlands. She stated this year, as a result of encroaching development, only three of the birds have arrived where there were fifteen to twenty last year. She stated in spite of regulations now in existence, wildlife and the lagoon are being threatened by ongoing development, and wetlands violations are being perpetrated on a daily basis. She stated they are just beginning to make a dent in the lagoon pollution; they need more, not less regulation and tighter controls; and recommended the Board not let a rush to judgment set the County back forever in wildlife preservation and pollution control.

John Jerard, P. O. Box 541113, Merritt Island, stated he is against the duplication because it infringes on property rights. He advised of the experiences of his client whose family was destroyed in Nazi Germany and who escaped to the United States. He stated his client, with his partners, developed their property except for 120 acres which he left for his old age and his children's security; about seven years ago, his son and his wife died; and he decided to get into development again and use the 120 acres. He stated he was forced to put a culvert in to tie it into the St. Johns River overflow; it flooded 80 of his acres; and he could not use his property. He advised of problems in trying to sell the property. He stated he got involved with this five months ago; he was told when he went to St. Johns River Water Management District that it did not say the land could not be used, but that it could not be used for fish farms, etc. because it changes the character of the property; and it advised the owner could mitigate or pay cash. He stated the St. Johns River Water Management District advised the owner could go to Palatka and have the District buy the property; but the District determined the property was too cumbersome to manage and the owner should either give the property to the District or keep paying the taxes on it. Mr. Jerard stated the abuses are overwhelming. He stated he went to Senator Bronson who talked to Henry Dean; they checked the property; and they

advised out of the 80 acres, at least 60 or 70% could be used, not 20 or 30%. He stated the people in the same department cannot agree on what wetlands are; he attended a meeting in Palm Bay on wetlands; and nobody could define what a wetland is. He recommended the County define "wetland" and give the people back their property rights.

Bob Brown, 225 East Myles Drive, Melbourne, stated he is not in agreement with the last speaker; and no matter what anyone wants to do, there are regulations. He stated he is a businessman with several properties in Brevard County; he spends close to $20,000 a year in taxes; he has property rights as well; and so do the other environmental people who are present. He stated they do not see the County's strict involvement in the wetlands issue going in a different direction from their property rights because they want to be regulated on this important thing. He stated this is dollars and cents; when it is time to get the State or federal government to get involved in this, they are not going to be here; and people are needed in Brevard County who can look at things and analyze them for the County's citizens. He requested each Commissioner give consideration to what the people are talking about. He stated they want to regulate the wetlands; they do not want to give it to the federal or State government and beg them to come down to get issues resolved; and they want to do it locally. He stated Ms. Broussard advised the County deals with planning in wetlands, not permitting, and to take the planning process out is not to allow them to get into the middle of it; and the people want to be part of the planning and part of the permitting system on the local level.

Fred Robitschek, 560 Teakwood Avenue, Satellite Beach, speaking for the Board of Supervisors of the Brevard Soil and Water Conservation District, stated the Board of Supervisors tries to operate on a non-partisan basis; and it has avoided taking a record vote for or against this amendment. He stated they thought the most useful thing they could do for the Commission would be to make constructive suggestions about what the County should be doing in the area of balanced growth, management, and environmental protection. He read aloud a letter from the Board of Supervisors, as follows:

The Brevard Soil and Water Conservation District Board of Supervisors wishes to commend the Brevard County Commissioners for their recent interest in improved flood control. We believe that a reasonable balance can and must be struck between improving drainage and providing adequate protection for our citizens quality of life and for Brevard's natural resources. We offer the following ideas for your consideration. First idea, develop a scientific Countywide flooding potential rating code and mandate its application by public notice to all new construction. Second idea, review the adequacy of existing construction methods and building codes for all housing and septic tank designs and systems to handle hurricane and flood conditions. Where necessary, tighten up the requirements. Third idea, reassess the adequacy and impact of existing criteria used to plan and approve new construction and developments in flood prone areas. Fourth idea, request an assessment from the St. Johns River Water Management

District and the U.S. Army Corps of Engineers of the future need for a flood control project in Central Brevard, similar to the Upper St. Johns marsh restoration project. If construction codes and drainage system requirements, as well as approval criteria for housing developments in obviously flood prone areas were made more stringent, all Brevardians would be much better off. In addition to seeking to improve flood drainage, please consider new ways to plan more effectively for a better and safer County. The Brevard Soil and Water Conservation District's Board and the Natural Resources Conservation Service staff, these are federal biologists, stand ready to lend you their support through technical expertise in planning for tomorrow.

Mr. Robitschek stated he made his presentation as the Vice Chairman of the Soil and Water Conservation Board; and requested an additional three minutes to speak as a private citizen.

Hearing no objection, Chairman Higgs advised Mr. Robitschek has three additional minutes to speak.

Mr. Robitschek stated there are three reasons why the proposed amendment to the Comprehensive Plan is not a good idea; the first has to do with money; if the amendment goes through, there will be more development in flood prone areas; and when it rains, more people will get flooded out. He stated when that happens, there will be a giant sucking noise all over the County which will be money being sucked out of the people's wallets because it will be necessary to spend money on more roads, more road maintenance, and more flood control and drainage ditch improvement. He stated Joe Taxpayer will be spending more money for doctor bills, repairing his car, and taking care of his carpet in his flooded house because he could not afford insurance; and the proposal is going to cost the taxpayers dearly. He noted the new political buzzword is "local control"; local control does not mean abdicating responsibility to the U.S. Army Corps of Engineers; and local control does not mean saying to the St. Johns River Water Management District the County does not have time to protect the drinking water or the recreational water or the critters or the quality of life, so the District should do it. He stated this proposal has a nasty odor; it smells of the politics of special interest; and inquired who has been supporting this and who stands to benefit. He stated if this goes through, it will put the people of Brevard County at the mercy of those who could not care less about the future of Brevard County or the lives they ruin by selling sub-standard housing in places where houses never should have been built; and it will put them at the mercy of people who do not care what resources they destroy as long as they make a dollar and feed at the public trough through the Board subsidizing development. He stated developers do not have to pay for the infrastructure; and they do not care if the people get flooded out. He stated the proposal is government for the rich and privileged; it is not a government proposal for the little guy whose car and house are flooded out; it ignores him; and all it worries about are those with land to develop. He stated he owns a house; he is a land owner; and inquired about his property rights. He inquired what about the property rights of the people in Palm Bay whose houses are

flooded; and stated some balance is needed. He stated the Board has a duty to plan for the future; and it should not pass the buck to Jacksonville or Palatka because the buck stops here. He stated the Board works for the people; the people are asking the Board to protect them; and it should not throw the people out in the cold.

David Sheriff, 3090 Fishtail Palm Avenue, Cocoa, stated a few weeks ago, he saw all the water after Hurricane Erin; all of the streets were covered; and he wondered what would have happened if the three or four other hurricanes out there had come across instead of turning north. He stated if one or two more storms had come this way, the issue would be clearcut; control of the wetlands and all things associated with wetlands should be at the local level; and it should not be sent to Palatka. He stated the St. Johns River Water Management District Board members in Palatka are political appointees; they are not elected; and when his house starts going under water or his street floods and he cannot get to work, he wants to be able to call the Commissioners. He stated he wants the Board controlling his future locally; he wants to be able to call or go to the office of his Commissioner to tell of his problems; and he cannot do that in Palatka. He stated he does not know the people in Palatka; they have nineteen different counties they are trying to take care of; they are not local government; they are not there for him; and he likes the idea of the Board being accountable to him. He stated there are two different types of people in the County; there are people that can look at an acre of wetlands and see value of it; but there are other people who look at the acre and try to figure out how many truckloads of fill it will take; and he does not like that. He stated wetlands contribute to the quality of life in the County; he hates to see them go away; and he noticed that after Hurricane Erin some neighborhoods were under water for as long as one week. He stated one of the speakers commented about how many hoops developers have to go through; and he does not know how many hoops the developer had to go through, but he bets the people wish there had been one more. He stated he knows there are cost considerations; but the Board should keep this at the local level. He stated if it is going to be changed, it should be changed so there is more control over the wetlands, not less.

Pat Joslin, 602 Dianne Drive, Melbourne, stated she is a homeowner, mother, and grandmother, but she is an environmentalist in heart and spirit. She stated there has been a lot of talk about the flooding that was caused by the hurricane and the tropical depressions; people are desperate; and she wants to see the Board look the people in the face and tell them it was more worried about making things simpler for developers to develop the wetlands than trying to eliminate the reasons the houses are being flooded. She stated the wetlands that are left are needed; and if they are lost, the flooding will be even worse. She stated insurance companies are pulling out; they do not want to give homeowners insurance anymore; so now people will not only have flooded homes, but no insurance to replace them. She stated experts have said Florida was in a dry cycle; experts predicted the State would go into a natural wet cycle, which will last approximately 15 to 20 years; and she suspects the State has entered the wet cycle in the last two years. She

stated she has seen more rain in the last two years than any other year she has lived here; and if the State is in a wet cycle, there is a long road ahead of us with a lot of water, flooding, and angry taxpayers. She stated there is a move in Washington, D.C. to pull the teeth, if not eliminate the regulatory bodies; if the County eliminates its control over the wetlands, leaving it up to the state and federal government, the County will be left with no protection of the environment; and she does not think the people want that. She stated she hopes the Board will consider this because it is very important to a lot of people.

Mary Todd, 135 South Bel Aire Drive, Merritt Island, representing the Turtle Coast Group of the Sierra Club, stated the Board had quite a bit of time to consider its April 18, 1995 decision to go forth with the amendment process for the Comprehensive Plan; and she hopes by now, the Board may be in favor of some wetlands protection on the local level. She stated she hopes the Board realizes that the County land use policies do not duplicate the regulatory procedures of the state and federal government; she attended the public hearings of the CRG and LPA; she knows the Board has the recommendations from those hearings; and she is concerned about the difference in the two recommendations. She stated the LPA recommendation would take only part of the wetlands out of the Comprehensive Plan; and the part that the LPA would recommend taking out has to do with the residential densities and the commercial and industrial uses of wetlands. She stated she does not consider that to be just a small part as it is the essential part of the County land use protections that will make an effective local regulation of wetlands. She advised they submitted their position in writing.

Leroy Wright, 4045 Edgewood Place, Cocoa, speaking on behalf of the Save the St. Johns Group and Florida Wildlife Federation, stated a number of people have indicated they will not speak, but will leave it up to him to represent their voice. he stated this is the most serious situation he has addressed to the Board since 1989-1990, which is the era that involved the proposed Sabal Hammocks project; and he considers this to be the next most serious. he stated Commissioner Cook recently appointed him to the Environmental CRG; and the CRG voted six to nothing to retain all current Comprehensive Plan language on wetlands, and to review the existing roles of the County versus the St. Johns River Water Management District for any duplication of services. he stated he attended a meeting yesterday between staff and the St. Johns River Water Management District where some minimal duplication of services was identified; they involved roads, ditches, retention ponds, and stormwater; and in each area, the County places stronger emphasis on protective measures than the St. Johns River Water Management District did. he stated the county land use planning and zoning issues are the key to protecting the County?s wetlands; Chapter 163, Florida Statutes, and Rule 9J-5 of the Administrative Code, requires local governments to protect wetlands; and the Board has served the development and environmental communities with a great deal of balance in the past. he stated any changes to the Wetland Protection Elements of the Comprehensive Plan would unjustly tilt the balance; the St. Johns River

Water Management District understands wetland protection; and it also understands that with wetland protection removed from County control, the District cannot prevent development in the wetlands or override County zoning, and can only minimize the damage and impact to the wetlands. He stated any weakening of wetland policies will contribute to a continuing increase in flooding problems for the citizens and a decrease in the citizens? quality of life. he stated in the past they have offered not to file legal challenges against the Sabal Hammocks project if the developer would abandon placement of golf course behind dikes along the St. Johns River; they spoke in favor of compromise at the Manatee Protection Plan; and with the new City of Viera, they were granted reviewer status on the DRI but asked only for conditions to be included in the Development Order. He stated they cannot compromise on the wetlands issue; and to do so would be the beginning of the end for protecting wetlands that are so valuable for the quality of life for humans as well as the ability to sustain the wildlife as we know it today. he urged the Board to retain all the present language in the Conservation Element, Objective 5, including Wetlands Policy V.2.F(1) one unit per five acres, (2) prohibit commercial development, and (3) minimum utilization of fill. He requested those in the audience who share his viewpoint for local protection of wetlands to stand; with a group of people rising.

Jody Rosier, 460 Highway 436, Suite 200, Casselberry, representing the Florida Audubon Society, stated her position with the Society is to review permits for the entire State; she sees how the Army Corps of Engineers and the Water Management Districts work throughout the State; and it is an interesting concept. She stated they are too understaffed to have time to be concerned with every County?s issues on where people?s houses should go; budget cuts may happen in the future; and it is important for the County to keep an eye on what is happening in its area. She stated she originally lived in Brevard and Indian River Counties; now she is in Orange County, the land of concrete; and everyone in the Wekiva River Basin is suffering from flooding. She stated in Palm Beach, Broward, and Dade Counties where there was big growth before the regulations were in effect, there are major flooding problems; and those counties now have strong environmental Ordinances to protect the wetlands because they realize the role and importance of wetlands for water quality and wildlife. She state Brevard County is a very important tourist industry area; and if the County starts ruining that industry, it would be a big impact to Florida. She stated the Department of Community Affairs (DCA) has to approve the County?s proposed amendment to the Comprehensive Plan; and DCA explained the process whereby local citizen groups can file administrative hearings, can get standing, and can carry on long legal battles. She stated the County may have considered the Comprehensive Plan Amendment in its budget; but inquired if the Board considered the long legal battles that could be coming from Florida Audubon Society or other environmental groups. She urged the Board to think about what is right for the community and the future.

Don Garretson, 4975 Citrus Boulevard, Cocoa, stated an earlier speaker spoke about jobs; he can relate to that; he understands the need for jobs; he used to be a design engineer at the Kennedy Space Center; and now he juggles seven part-time jobs trying to hold things together until he can find another full-time, permanent, professional level job. He stated he is trying to hold on to his one acre; and it is difficult to come up with sympathy for someone who can afford to buy 120 acres and just let it sit until he can get around to doing something with it. He stated if the only way jobs can be provided is to destroy the ecosystems which sustain us, it is only delaying the inevitable. He stated local control must be maintained to maintain clean air and water, and a fit place for all citizens to live; much of the local regulation in the Comprehensive Plan does not duplicate services and oversight provided by more remote levels of government; every time there is a heavy dew, the Commissioners? phones light up with complaints from constituents who live in areas where unethical developers built by filling in swamps; and the former Commissioners failed in their responsibility to stay no to building in places where it makes no economic or environmental sense. He stated there are homes and businesses built in areas where water drains to; when people live in areas that are reclaimed wetlands, the last thing they want is for the ditches to be cleaned because that means the water fills yards and homes that much faster; and the problem is not confined to Brevard County. He stated it is the same in Georgia, the Mississippi floodplains, and every place in the country where local governments failed in their responsibilities to properly manage wetlands and floodplains. He noted there is a lot of hype about trying to move regulations closer to the people to get more local control; but here the County has local control, and wants to do away with it. He stated the County cannot afford to subsidize enriching the unethical with taxes by correcting their mistakes; the people cannot afford rising insurance rates because development has been allowed in places where it does not belong; and the County cannot waste money defending itself against lawsuits. He stated the DCA required the County to strengthen the wetland regulations before it would approve the Comprehensive Plan in its present form; and inquired why the County thinks the DCA will allow it to do away with it. He stated a lot has been heard about duplication of regulations; and if there are any in the Plan, they can be taken care of thoughtfully, without abdicating responsibility to all constituents. He stated some of the Commissioners owe their seats on the Board to their predecessors who served the special interests of a narrow group of wealthy constituents and forgot their duty to serve all of their constituents. He stated every time the Commissioners walk into the Government Center, it should remind them that the voters have had their fill of Good Ole Boy politics.

James Whitehead, 1705 Rockledge Drive, Rockledge, stated he was born in Rockledge, lived in Brevard County until he went to college, moved back in the last few years, and in the interim, he lives in a lot of different places; and the reason he is here now is the quality of life. He stated he lived in New York; the people there will tell you they would rather live in Florida; other places have more problems with the environment, crime, pollution, and other things coming from unregulated growth; and if the County abdicates its

responsibility on this important issue, it is not facing up to the things that matter to the residents. He stated anyone could live in Dade County if he wanted to; and if anyone wants to know why people do not want to live in Dade County, they should look at Dade County compared to Brevard County. He stated the difference is Dade County went through a long period of unregulated growth; the same is true for New York, Tokyo, etc.; and none of us want to live in that kind of environment. He stated there will be growth in Brevard County; in the 35 years, he has been alive, the property values have done nothing but go up; and the quality of the water and air has done nothing but go down; and he is not talking about improving things, but just slowing the growth and the deterioration of the environment we live in. He stated this purports to be an issue of duplication of effort, but there is a trend; and the people who favor local control and the extra hoop for developers to jump through are the ones who are against developing the wetlands. He stated this is an issue that everyone is concerned about on a local level, whether for the jobs that are at risk or the environment that would be affected; this is a matter that needs to be tended to at a local level; and it is the Board's responsibility.

Dick Thompson, 630 Heron Drive, Merritt Island, stated he is a professional environmental engineer who has practiced here for forty years; he makes his living off getting environmental permits from the various agencies; he has watched the evolution of the definition of wetlands and the controls over wetlands come about over the last 30 or 40 years; and he is upset at the direction this is going. He stated the wetlands do not prevent flooding; the wetlands absorb very little water and allow very little to percolate through the wetland material; and if there were no wetlands, the water would percolate through the sands much quicker into the shallow aquifer system. He stated wetlands do not recharge the drinking water supply in Brevard County; and none of the public water supply comes from the shallow aquifer system that is fed by wetlands. He advised the public water supply comes from the Floridan aquifer generated in the high country of Orlando; it comes deep underground; and the County pulls it out of the ground for drinking water. He stated the shallow aquifer in Brevard County is salty, and full of iron and manganese; and is unsuitable for drinking unless it is run through a reverse osmosis process or something similar. He stated the wetlands do filter some of the nutrients and materials out of the water that find their way through it; but so does sand; and sand has been the major medium for cleaning up water for hundreds of years, and is used for that purpose today. He stated the land in Brevard County is full of sand; and it is more porous and does a better job than the muck that is commonly called wetland material. He stated if someone has never applied for a permit to use lands that have some wetlands on it, he has a real experience coming; and he should not talk about it unless he has tried it, because it is a difficult task. He stated the major office of the St. Johns River Water Management District that controls Brevard County is in Melbourne, with a complete staff to service the area; and it has very stringent requirements. He noted he attended a course a week ago on the new regulations for getting permits to utilize wetlands; the new regulations are an inch and half thick and written by

Philadelphia lawyers; and it is time consuming, taxing and difficult to get a permit. He stated the staff at St. Johns River Water Management District is approximately 30 to 40 people, backed by the staff in Palatka; and there is no way the County can duplicate this, nor is it necessary. He stated they have a mandate given by the State Legislature to perform that function; that function is not designated to the County; and the only function of the Office of Natural Resources has been to review the wetlands areas and advise CRG's, which are made up of no-growth people. He stated that function is minor and completely unnecessary; and encouraged the Board to follow the direction it began in April, 1995.

The meeting recessed at 8:03 p.m. and reconvened at 8:21 p.m.

Glenda Busick, 3500 Harlock Road, Melbourne, stated this issue is dear to her heart; and she hopes the Board does not change this. She stated growth has been unregulated in that it does not pay for itself; there are problems with roads, schools, etc; and the Board wants to give up its ability and let commercial development occur on wetlands, where now it forbids that. Ms. Busick inquired if the Board wants commercial development on wetlands; with Commissioner Cook responding it is more complicated, and will be addressed. Ms. Busick stated that really concerns her; there is land that can be developed commercially; but the land that is wetlands tends to be less in price, and the other land that should be developed is higher in price. She stated wetlands property might be less in value and could be developed more easily if the Board takes away the ability to say no to commercial development; and she does not want that changed. She stated the other thing the Board wants to change is density; now there is one house per five acres; the change will mean someone can go to the Zoning Division and get whatever he can get approved; and she does not want density changed. She stated one speaker said wetlands do not stop flooding. She reiterated if a house is not built on the wetlands, it cannot be flooded; and therefore flood insurance would not be needed because it is not on the wetlands. Commissioner Ellis stated that is not correct; with Ms. Busick advising she does not agree. Ms. Busick stated there are subdivisions on Lake Washington and Parkway Drive where there is flooding; they wanted their ditches cleaned; taxpayer dollars go to clean the ditches; and she does not want her taxpayer dollars helping clean ditches for development in wetlands. She stated the St. Johns River Water Management District Board is politically appointed; and she is not comfortable with that because builders and developers are the ones that get their vote. She stated she is a business person; she wants to be regulated; and while she is the first one to say stop the regulation, this is wrong. Ms. Busick stated she wants this regulation; as a business person, she wants the County to tell her if she is affecting her neighbors; she wants to be neighbor-oriented; and she does not want to do whatever she wants with her property. She stated the world is not that way anymore; people cannot convince others they are not right if they think they are; they believe in their hearts they are not affecting their neighbor; and the neighbor is left with water coming on his property. She stated someone has to look out for the people; and she wants it locally. She stated she wants

Washington, D.C. to shut down a bunch of departments; she wants the State of Florida to shut down departments; but she does not want the County to shut this department down. She stated this is not the proper place to do it; and the Board is looking in the wrong place.

Albert Notary, 690 Timuquana Drive, Merritt Island, stated at the last election, the voters asked the Board to reduce taxes and government; that is enough to tell the Board to take the County government out of the many layers of government that now try to control the wetlands; and inquired does the Board think the St. Johns River Water Management District is going to let the County set the rules. He stated he doubts the St. Johns River Water Management District will do that or finance it for the County. He stated the Board is saying the water management districts do not know what they are doing, and the County does; and if that is the case, the Board should be trying to abolish the St. Johns River Water Management District and give the County the tax money the District is spending on water management and wetlands. He stated government has so much control over the people and their property that there is nothing new left for them to control; and government expands the bureaucracy by creating more government agencies to control the same subject. He stated there is an opportunity for the Board to do what the voters want, which is to reduce government by taking Brevard County out of the many layers of government controlling the wetlands; and over 70% of the Florida counties have already done that.

Erin LeClair, 2431 Oklahoma Street, Melbourne, stated she is a former wetland scientist with the Environmental Protection Agency, and former Army Corps of Engineers scientist; she does not think of herself as a bureaucrat; and for the six years she worked for those agencies, she was one of three people who handled the entire State of Florida. She stated she handled 22 counties; she reviewed almost 1,200 permits a year; and she did not have the time nor the money to come down to look at every project. She stated she could rely on counties which had a good wetland permitting division such as Pinellas and Hillsborough County; she was a federal regulator; the St. Johns River Water Management District was the lead state agency, and the first agency landowners would contact; and from there the application was duplicated. She explained the process, noting the Corps of Engineers was the lead federal agency. She stated even though it sounds like a lot of agencies involved, only seven people were involved in the permitting. She stated she feels for the local landowners because they do not understand the permitting process; and if they could come to a County Agency for information, it would stop a lot of development and confrontation. She stated a lot of people have been in the business for a long time with the federal agencies; there is a high turnover with the State agencies; and it is hard for people to get to know an area. She stated when she was in Atlanta, she got to travel once every three months to look at a site, and did not have an opportunity to look at sites that were one acre; and she had to rely on local scientists in the field and County planners and biologists. She stated Florida is sensitive; she came to Brevard County because it is a beautiful place; but after Hurricane Erin, she saw a lot of land

that was inundated by water, especially the trailer park in West Melbourne. Ms. LeClair stated that is not a swamp; wetlands are wet; and they may not have had the problem if the trailer park had not been built there. She requested the Board strengthen local control and increase the number of people reviewing permits locally.

Terry Stewart, 3391 Cabbage Palm Avenue, Melbourne, stated he is a member of the Florida Native Plant Society, but is not going to speak about plants tonight because he is going to speak about economics. He stated this is a proposal of long-term outlook versus short-term growth; the County can either take the long-term view which is to maintain some sort of planning capability or a short-term view and allow development to grow haphazardly; and while the short-term view will increase jobs in the short-term, the long-term outlook will be diminished. He stated development done in a haphazard fashion will create problems for homeowners in the future; it will degrade the water quality; and it may hurt the tourist industry. He stated the long-term solution is what the people prefer; some people have said there should not be regulation over personal property; but there is precedent where that is not the case. He stated if someone owns a Lamborghini, he would not be allowed to drive 200 miles per hour even though it had the capacity; and inquired if he should sue because he cannot develop the total capability of the property that he owns. He stated these are the kinds of things that are reviewed in considering individual property rights; this is a safety and society issue; and recommended the regulations and long-term outlook be maintained.

Jay Peacock, 1375 Plum Avenue, Merritt Island, stated he shares the Board's concern for government waste caused by the duplication of regulations; however, the Comprehensive Plan wetland regulations are not a duplication. He stated the County sets zoning policies which limit densities and restrict land uses in wetlands; the St. Johns River Water Management District grants permits to allow construction in wetland areas; and the District cannot regulate densities or land uses on wetlands. He stated without the County wetland regulations, there would be increased flooding of residential areas, a decline in fish and shellfish populations along with a decline in seagrass beds, and a degradation of drinking water quality resulting in higher costs to refine drinking water; and urged the Board to leave the wetland regulations in place and protect the County.

Don Simms, 411 Palm Springs Boulevard, Indian Harbour Beach, stated after taking the time to personally view over 30 subdivisions, all developed during the last seven years, he noted a marked increase in quality wetlands; between the U.S. Army Corps of Engineers and the St. Johns River Water Management District, developers are incorporating man-made lakes; and under the St. Johns River Water Management District, supervision and installation of littoral zones provide the best case scenario. He stated aquatic plants are installed in the littoral zones which give year-round wetland protection without the fear of drying out during droughts; the littoral zones provide a natural source of protection for fish, hatchlings and other wildlife;

and in most cases, they have proven to be more efficient as wetlands than many of the natural mud holes which fill in and dry with the seasons, and are too small to be of significant benefit to any species. He stated the U.S. Corps of Engineers and the St. Johns River Water Management District have several regulations and rules which more than safeguard wetlands, and in many instances, mandate creation of man-made wetlands; littoral zones and retention lakes have proven superior to some of the natural wetlands; and anyone doubting his facts, can view the new subdivisions in South Rockledge, Viera and North Melbourne.

Mr. Simms stated there are beautiful man-made wetlands and wetland enhancements with an abundance of wildlife prospering and reproducing; the County Environmental Department is composed of intelligent and knowledgeable people; and they can be utilized by other departments in the County. He stated triplication of effort is no longer tolerable in the marketplace in the private or public sector; and the more he listens to the views of people with an environmental agenda, the more he is convinced the old saying is true, "a builder is someone who wants to build a cabin in the woods; an environmentalist is someone who already has a cabin in the woods." He stated of 67 counties in the State, only 19 have resource departments, and 48 do not deem it necessary; and the vast majority of counties have deemed duplication and triplication of regulatory agencies unnecessary. He advised of his educational and employment background; requested the Board return to ordinary common sense; and stated in spite of varying views, America is a great country, and this meeting is proof.

Diane Stees, 21 Bougainvillea Drive, Cocoa Beach, representing the Indian River Audubon Society, stated they oppose the amendment to repeal all wetland policies within the Conservation Element of the Comprehensive Plan; the reason given for justifying the action is duplication; but after talking to the St. Johns River Water Management District and the County, they find it is not the case. She stated one entity deals with permitting projects on a case-by-case basis while the other deals with land use planning, taking into consideration the big picture, cumulative impacts, etc. She stated she finds it odd that those who talk about getting rid of big government and getting more local control would reverse themselves and give away local control of wetlands; and at the same time they hear that the State's water management districts will be up for review next year, and that there will be attempts to weaken regulations and authority of those agencies. She stated they also oppose the LPA recommendation to eliminate Policy 5.2.F from the Conservation Element of the Comprehensive Plan; they agree that eliminating duplication within the Comprehensive Plan makes sense as long as policy is not altered; and eliminating wetlands from the Future Land Use Element alone in order to prevent duplication with the Conservation Element makes sense, as long as policy is not altered. She stated the LPA recommendation does not stop there; it also wants to eliminate Policy 5.2.F in the Conservation Element; and that policy is the meat of the matter dealing with density restrictions and commercial/industrial land uses on wetlands. She stated the Board may call this streamlining government; but

they call it unregulated growth. She stated they recognize that allowing commercial and industrial development on wetlands produces an increase in taxes collected and short-term employment; but it does not offset the negative impacts such as loss of local land use control, increased expenditures for stormwater infrastructure, decrease in water quality, decrease groundwater recharge areas, loss of bio-diversity, and the effect on eco-tourism. She stated she does not know if the Board read the Status and Trend Summary of the Indian River Lagoon; there is an excerpt dealing with non-point versus point source loadings of nutrients into the Lagoon; and it says in order to reduce the Lagoonwide degree of increase of non-point source loadings, it will be necessary to employ additional management options in much of the watershed. She stated additional methods that may be considered include more restrictive regulations for additional retention and detention, land use zoning such as minimum lot size or cluster developments, or density restrictions that reduce the amount of impervious surface area in new developments within sub-basins; and the County is about to go in the opposite direction. She stated the County is growing rapidly; everyone should be working together to achieve sustainable development now before it is too late; restoration efforts are expensive; and mitigation efforts to create wetlands have failed. Ms. Stees requested the Board reconsider the proposals before it tonight; and stated the wetlands are needed to sustain everyone affordably and maintain the quality of life.

Ray Smyth, 2764 Hillcrest Avenue, Titusville, stated he does not belong to any group, and his only education is 61 years of hard labor. He stated the Board has been addressed by well-intended people who are so misinformed that it is alarming; wetlands do not recharge anything; if they did, they would not be wet; and wetlands do not prevent flooding. He stated the St. Johns River Water Management District in Melbourne flies over the County to make sure no one is doing anything they should not be doing; and anyone who tells the Board the St. Johns River Water Management District does not control has never tried to get a permit. He stated developers do everything they can to avoid wetlands; and inquired who wants to develop a wetland when it costs ten times as much. He stated what is being discussed tonight is not protecting the wetlands; the discussion is about duplication and layers of government that cost money; and 48 counties do not even have this kind of regulation. He stated taxes prove there is enough government; he likes local government; and he would recommend maintaining local control if it was possible to shoot all of St. Johns River Water Management District. He stated he intends to spend the rest of his life trying to get the federal government out of the State of Florida; no federal regulations are needed when it comes to land development; and he would like to get rid of the water management districts because they are not doing what the Florida Statutes chartered them to do. He stated the water management districts are a bureaucracy running rampant; they are totally out of control; and he hates to give any control to the St. Johns River Water Management District. He stated he made the comment that the St. Johns River Water Management District never used to get involved in anything less than 40 acres, then it was five acres, and it will not be long before it is down to one lot; and he was

told by Nancy Younger of the St. Johns River Water Management District that the District intends to control every shovelful. He stated if people want to continue control on their lives, soon it will affect those who think they want it. He stated he is saddened by the madness in his country, and what has happened to it during his lifetime; he grew up when the American flag was held with respect; but today money and greed play everything. He stated he has no confidence in his elected officials because they are not the ones in control and running the government; he wants the elected officials to run the government; he wants the Board to use its good judgment; and the people can elect good officials who will look past special private interests and the bureaucracy that keeps building. He stated for the past eight years, the County raise the taxes on his home nearly 6%; and suggested the Board could give him 5% reduction this year.

Dolores Kane, 5425 South Tropical Trail, Merritt Island, advised she is in agreement with Mr. Smyth because he made a lot of sense. She stated no one is against ecology and the environment, or wants to build in low lands where it is going to flood; and it would be better if there was only one local entity to go to for permitting. She stated Brevard County will not be another Miami with all the regulations it has in place; if it only takes one person to change a light bulb, there should only be one, not five; and recommended the Board not needlessly ruin dreams or bankrupt people with lengthy redundant permitting. He stated right permitting will take care of nature and man; and suggested taxpayer dollars be used for cleaning and flood control.

B. B. Nelson, 3535 Hammock Trail, Melbourne, stated the recent storm proved that the designs of the engineers from the St. Johns River Water Management District and the County are not working for wetlands and stormwater; homes can no longer be used for storage of water; and there were too many people flooded. He noted it was not necessarily because they built in wetlands, but because each subdivision produced an enormous amount of water; and each subdivision paid permit and impact fees, and was approved by the engineers of St. Johns River Water Management District and the County; but it did not work because it was not designed properly. He stated they have to put up with a system that collects all the water and puts it into a retention pond which was built for a one-inch rainfall; but God gave a nine-inch rainfall, not a one-inch rainfall; and very seldom does the County get just a one-inch rainfall. He stated there is no provision for the retention ponds to overflow down to the Eau Gallie River; in the 20 years, he has lived in the area, he knows of no additional pipes; and with all the impact fees and money paid for engineers, people still flooded because no provision was made for the collecting systems to collect the runoff and take it to the Eau Gallie River and Indian River. He stated that was dumb engineering by the St. Johns River Water Management District and the County; and it was not adequately planned. He stated engineers are forced to complete plans just to get a permit, although they are not what they would normally want to do or what they would professionally do; in order to get a permit from the St. Johns River Water Management District, they have to violate all their training; and he will continue to work to get rid of those people. He stated

the County's growth management program does not provide a drainage plan; St. Johns River Water Management District does provide a drainage plan; nineteen years ago, Chapter 373.036 said the Department shall proceed as rapidly as possibly to study existing water resources in the State for environmental protection, drainage, flood control, and water storage; and requested someone show him the plan from the St. Johns River Water Management District or the County. He stated for all the money that has been spend since 1988 for the Comprehensive Plan, there is still no drainage plan; and that is the reason all the people flooded. He stated it is not necessarily because they built in the low lands; and if that was the case. all of Merritt Island would be under water. He stated they should not build houses that low; his house is six courses of block above natural ground; during the storm he had four feet of water in his yard; and one of his neighbors called looking for his fish. He stated the Fifth Amendment of the U.S. Constitution says specifically, "nor shall private property be taken for public use without just compensation." He stated if the County is going to take his land and use it for public use, he should be paid; but it should not flood him and take the use of the land without compensation. He requested the County not continue to violate his constitutional rights.

County Manager Tom Jenkins stated the Board directed he meet with Mr. Dean of the St. Johns River Water Management District to determine if the District had an interest in delegating its regulatory and permitting responsibilities to the County; and Jim Swann, who is a member of the St. Johns River Water Management District Board, was also present at the meeting. He stated when he presented the concept of St. Johns River Water Management District delegating that responsibility to the County, Mr. Dean advised the St. Johns River Water Management District went through a significant effort to streamline its process; it is coming up with a one-stop permitting center and has a new set of streamlined regulations; and the District felt its direction and focus was in improving its permitting process. Mr. Jenkins stated Mr. Dean advised he was working to have the Corps of Engineers delegate some of its permitting responsibilities to the St. Johns River Water Management District to expand the one-stop permitting center concept. He stated Mr. Dean indicated approximately 20% of the cost of the permitting operation comes from the permit fees; the balance is funded through other dollars; and the District would not be giving the County any money. He stated it is legally allowable for the County to assume responsibility of allow development, but the County is prohibited from assuming any permitting responsibilities for any of its own public projects. He stated another cost consideration is the administrative hearing process; and any decisions are subject to challenge through the administrative hearing process. He stated Mr. Dean indicated the St. Johns River Water Management District staff would be opposed to it; the District would not be able to reduce staffing because it would continue to do permitting for other agencies; and it would not incur any savings. He stated Mr. Swann indicated he would be willing to allow the County to assume the responsibility, but wanted to make sure the County understood that it would cost a significant amount of money.

Chairman Higgs stated she talked to both Mr. Swann and Mr. Dean, and is disappointed with the outcome of the meeting; she understood from Mr. Dean that the change was a possibility; but Mr. Swann's response is consistent with what he indicated. She stated she is not surprised that the staff is not enthusiastic about it because of the changes that it would cause; she is not surprised that the District does not want to give up its money; and that indicates where the issue is at this point. She stated if the Board wishes to consider this further, it will need to go directly to the St. Johns River Water Management District Board. She stated the issue before the Board tonight is in regard to the Comprehensive Plan amendments to Policies 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7 and 5.8.

Commissioner Cook stated regardless of what the Board does tonight with the Comprehensive Plan, it has no effect on the Ordinances that are now in place in the County; Ordinance No. 89-12 establishes regulations for prime, Class 1 and secondary aquifer recharge areas; Ordinance No. 89-13 establishes standards for development in and adjacent to Class 1, Class 2, Class 3 waters and Outstanding Florida Waters and Aquatic Preserves; Ordinance No. 89-14 establishes standards for development in and adjacent to wetlands, establishing a severability clause, and wetlands protection standards; and Ordinance No. 89-15 establishes standards for development in floodplains and flood prone areas. He stated all four Ordinances have the force of law; and they will remain in effect regardless of what the Board does this evening.

Chairman Higgs stated the issue was raised about different counties having Natural Resources Departments or ordinances for wetland protection; all counties have Planning Departments; and she has not seen any sign that other counties have given up planning. She stated no one can develop a Comprehensive Plan for Brevard County; and the land use issues are properly the Board?s. She stated in the State, only 20% of the original wetlands remain; the State continues to lose 1% in spite of the fact there are the Corps of Engineers, the St. Johns River Water Management District and other entities; and the St. Johns River Water Management District has never turned down a permit. She stated the issue is planning, not permitting; the County is dealing with the sins of the past in regard to planning; the existing Comprehensive Plan was put in place in 1988; and it protects wetlands and talks about land use issues. Chairman Higgs stated wetlands will store water; they will decrease flooding; they will assist with sediment and erosion control as well as the overall quality of the surface water bodies; and surface water bodies provide a significant segment of the County with water. She stated the important issue is pollutant loads and what happens from land uses; there are studies that indicate commercial and industrial uses increase over residential uses and agricultural uses the number of pollutants that are available; and distributed a study documenting the facts. She stated the Board should also think about what people are looking for in their homes; the recent study in Money Magazine shows that a clean environment rated over every other issue; and the presence of people tonight is an indication that people want to maintain clean air and water. She stated there is scientific

evidence for protecting a wetland, maintaining the policies the County has, low density, and no net loss; and the policies in the Comprehensive Plan today should be maintained. She stated she will continue to support that position; there is scientific evidence that the pollutants can be decreased; and there is evidence that people care about clean water.

Commissioner Cook stated all the Commissioners appreciate the environment; he grew up in this area; and he feels strongly about maintaining the quality of life. He stated rationale for the proposed Plan amendment is within Brevard County, the wetlands permitting is done through a variety of State, federal and regional agencies; those agencies include the St. Johns River Water Management District, the Department of Environmental Protection, and the Army Corps of Engineers; through the permitting process, the development designs are reviewed to determine impacts and to mitigate natural resource damages; and the County issues permits for wetlands alteration or development. Commissioner Ellis stated the St. Johns River Water Management District has over 70 employees in the County which establishes a local presence; much of the flooding was due to the inability of the canal system to carry the water; most of the homes that were flooded were off the Crane Creek drainage system; and when the canals overflowed, his neighborhood was flooded. He noted his neighborhood was not a wetland; it used to be scrub, pine and palmetto; and he knows that because he lived there when the neighborhood was built 30 years ago. He stated it flooded because the water could not get out; and no wetland will hold a ten-inch rainfall. He stated he was on horseback the night of the storm in areas that were wetlands and the woods; and the whole area was overflowing. He stated there is no savings if the role of the St. Johns River Water Management District is delegated; once a bureaucracy is started, it is almost impossible to stop it; and he initiated this issue in January concerning two policies in the Comprehensive Plan, 5.2.F.1 and 5.2.F.2. He stated a few people have touched on this tonight, but he wonders how many have read the Comprehensive Plan and understand it. He stated the Comprehensive Plan does not address the value of specific types of wetlands; every wetland is treated the same in the Comprehensive Plan; there are no thresholds or connectivity to water bodies in the Comprehensive Plan; and all wetlands are equal, no matter the size or type. He stated Paragraph 5.2.F.2. prohibits commercial/industrial uses where there is a presence of a wetland; a lot of people interpret that to mean the entire site is wetlands; but that is not correct. He stated if he has a twenty-acre parcel with one-tenth of an acre wetland, that wetland cannot be used for the commercial or industrial use; and that is the way the Comprehensive Plan is written. He stated the difference between the Comprehensive Plan and the St. Johns River Water Management District is if someone goes to the District with a twenty-acre parcel and a quarter-acre wetland, they are allowed to mitigate out; but under the Comprehensive Plan, they are not allowed to mitigate, and there are no exceptions. He stated if someone?s wetland happens to be in the center of his parcel, he is out of luck; what people have to do is try and jigsaw their property around the wetland on the parcel; and it is unfortunate that people interpret the rule to mean that all the property has to be wetlands.

He stated since there is no threshold value for wetlands, the Board would have the authority to strip current land designations through an administrative rezoning; and in the three years he has been on the Board, he has seen a number of commercial properties administratively rezoned to residential. He stated he has seen the letter of the Comprehensive Plan enforced in different issues; and his concern is if the letter of this Comprehensive Plan is enforced, there will be problems with existing residential and commercial properties that are not developed. He stated if the letter of the Comprehensive Plan is enforced and there is vacant commercial property with any wetlands present, it would be administratively rezoned to residential; if someone had a residential property with any amount of wetlands present, and it was not five acres, he could not build a home. He stated he does not care how the Comprehensive Plan is interpreted by staff; that is the way the Comprehensive Plan is written; and that is the way it can be enforced. He stated the St. Johns River Water Management District currently looks at one-half acre or more of wetlands as the mitigation threshold; the County goes down to the smallest wetland; and inquired how does staff handle mitigation requirements for wetlands less than one-half acre. Environmental Section Supervisor Debbie Coles responded the Land Development Regulations require two-to-one mitigation ratio for those areas not addressed by a St. Johns River Water Management District permit. Commissioner Ellis inquired does staff handle that mitigation; with Ms. Coles responding yes. Commissioner Ellis inquired how would staff handle mitigating a tenth of an acre; with Ms. Coles responding the priorities are preservation with enhancement on-site with creation, off-site, in-basin, and then out-of-basin. Commissioner Ellis stated for a small fraction to be able to mitigate off-site would require some kind of mitigation bank; if he went off-site for a tenth of an acre, he would have a difficult time trying to find two tenths of an acre; if there was a mitigation bank, he could mitigate the small fractions; but the County does not have the bank. He stated the St. Johns River Water Management District requires the mitigation bank to be in the watershed; that was the rule; there are all kinds of watersheds within the County; and although there may be some areas that would be best for mitigation banking, if it is not within someone?s watershed, it is not an area he can use. He stated another issue is the density issue; density is already restricted by the floodplain; there seems to have been an effort to merge the two issues; but that is not the case in the Comprehensive Plan; and there are density restrictions for floodplain issues. He stated not all wetlands occur in a floodplain; and there are isolated wetlands throughout the County that are well out of the floodplain. He stated the five-acre issue on residential and commercial properties could result in administrative rezoning; and that is a problem when all there is to rely on is whether staff chooses to enforce it, even if it is the letter of the Comprehensive Plan. He reiterated there is no threshold of wetlands; if a commercial property has a wetland, no matter how small, it is as if the entire property was marsh on the St. Johns River; and that is wrong.

Chairman Higgs stated the policy has not been interpreted and applied in that way. Commissioner Ellis advised that is the way it is written. Chairman

Higgs stated she understands Commissioner Ellis?s concern with the way it is written; his proposal is not to try to improve or clarify; and while things can always be improved upon, it was not the approach that was taken. She stated the proposal is to strike all references to wetlands in the Comprehensive Plan, and take away all land use planning by the County in that regard. She stated she could support an approach that was to improve the way the Comprehensive Plan is written and clarify the way it is applied; and when there have been small wetlands as a part of a commercial parcel, the staff has not interpreted that to apply to the total property. She inquired if out-of-basin mitigation is possible within the County; with Ms. Coles advising that is correct. Commissioner Ellis stated the County has seen nothing in writing to verify that. Commissioner O'Brien noted Ms. Barr mentioned on three occasions that mitigation does not work and has been a failure. Chairman Higgs stated that is artificial mitigation, but it does not mean that mitigation where existing wetlands are purchased and preserved is a failure. Chairman Higgs inquired are out-of-basin mitigations accepted; with Michelle Reiber, representing the St. Johns River Water Management District, responding yes, they are. Ms. Reiber advised there are recommended areas for providing mitigation; in the County, there are three large drainage basins that are recommended; but from a mitigation banking standpoint, a service area can be implemented which would include a small or large drainage basin. Commissioner Ellis stated that was not the position last year, and he has not seen anything in writing; last year everything was based on the watershed; and you could only set up a bank in a watershed, and could only mitigate within that watershed. He stated it is not correct that the County has no control over land use; and the County sets the Comprehensive Plan and sets land use. He stated what is being said is if the Board strikes the two portions of the Comprehensive Plan, the County will have no control over land use, but that is not correct; and the County sets land uses on parcels that are completely high and dry. Chairman Higgs stated the Board would still determine land use; but it would not be able to say that the character of the land is the driving factor in what is done with the land use; and it would take away the ability to say there are residential land uses only in wetland areas, and that commercial is not acceptable. Commissioner Ellis stated generally every other land use in the County is based on surrounding properties; and that was the issue with the property on Eau Gallie Boulevard, on which staff recommended residential because of the presence of wetlands, but all the surrounding properties were industrial. He stated it is letting the land use be driven by the presence of wetlands when the County does not define how much wetlands have to be present. Chairman Higgs stated she understands the need for clarification, but the County needs to consider most importantly the character of the land in determining what the land uses should be. Commissioner Ellis stated it could still be used for residential; he could take five or ten acres and select wetlands much more easily on a residential than a commercial property; and he could build more impervious surface on ten acres with high density residential, after cutting out the quarter-acre wetland, than he may want to do on commercial property. Chairman Higgs stated the one to five ratio is essential on wetlands; but on commercial properties, there is a higher

pollutant loading; so the appropriateness of the land use based on pollution and destruction of wetlands is what is important. Commissioner Ellis stated even the pollutant loading figures are not the case for all pollutants; what is given for nitrogen and phosphates is higher from residential than from commercial; and if the concern is dropping excess fertilizer and nutrients into the water body, resulting in algae bloom, then residential puts more into the water than low intensity commercial.

Chairman Higgs stated with nitrogen, that would be true; it is close on phosphate; but the commercial and industrial properties are producing far more oxygen demands, suspended solids, zinc and lead than single-family residential land use.

Commissioner Cook stated there is a need to protect the environment; but on the other hand, the permitting, development designs, etc. are analyzed by agencies such as the St. Johns River Water Management District, Department of Environmental Protection and Army Corps of Engineers. He stated as far as giving up anything, those agencies are mandated to do certain jobs by the state and federal governments, and they will do those jobs regardless of what the County does tonight. He stated the Board cannot set the charter for the St. Johns River Water Management District; it cannot tell the Corps of Engineers what to do; it cannot tell DEP what to do; they are state and federal agencies which are mandated to do certain jobs; and there are 48 counties that do not even have a wetlands element in their comprehensive plans, much less four ordinances. He noted the Ordinances will remain in effect no matter what the Board does this evening. He stated he has looked over the process; he has done enormous study; he listened to comments; and the response has been heartening that so many people have taken an interest in this element. He stated the best recommendation came from the Local Planning Agency (LPA); and the same group sits as the Planning and Zoning Board. He stated they are not developers; they are five citizens who live in the Districts; they look at things and make recommendations to the Board; and they are not a special interest group. He stated the LPA did not delete the wetlands policy from the Comprehensive Plan, but it did make certain changes because there is duplicative language. Motion by Commissioner Cook, seconded by Commissioner O'Brien, to approve the LPA recommendation on Conservation Element, deleting the words ?but shall not be limited by the threshold or connection requirements utilized by these agencies? from Policy 5.1, deleting parts 1, 2 and 3 of Criterion F in Policy 5.2, and retaining Objective 5 and the remaining portions of Policies 5.1 through 5.8. Commissioner Ellis stated when this went to the CRG, many of the issues he brought up the first time were not discussed; and when he read the LPA minutes, it was the same. He inquired what was the point of sending the issue back to the LPA and CRG without some direction from staff about what the issues were with the Comprehensive Plan if threshold issues and criticality issues were not discussed. He stated as far as Policy 5.2.F.3, he does not know if that matters much one way or the other; and it is what is going to happen anyway as a cost factor. Chairman Higgs stated if the desire is to look at

commercial/industrial, thresholds, and those issues in terms of performance standards, that may be the more appropriate avenue for the Board to take rather than abandoning wetlands in the Comprehensive Plan. Commissioner Cook stated they are not being abandoned; and that is not his motion. Commissioner Ellis stated he went down that road before, and got a staff report with nothing but roadblocks; and it is frustrating. Commissioner Cook stated the Board owes the people a decision; the Board has talked this over; and the best resolution is the LPA recommendation which does not delete the wetlands protection, but it accomplishes what the Board set out to accomplish in terms of duplication and streamlining the Comprehensive Plan. He reiterated the Board does need to make a decision tonight; the citizens came out expecting the Board to make a decision; and the Board owes that to the people. Chairman Higgs stated the Board owes them the right decision, and not just a decision.

Commissioner Ellis stated he agrees. Commissioner Cook inquired if the right decision is the only decision Chairman Higgs wants. Chairman Higgs stated the Board owes everyone the right decision; if Commissioner Ellis does not believe staff can come up with a recommendation on performance standards for commercial or residential that would get to the heart of the issue, then the Board should hire a consultant to do that; and if Commissioner Ellis would be comfortable looking at the issue of performance standards particularly in regard to commercial and industrial, staff could be directed to come up with options. Commissioner Ellis stated it took ten months to get to where the Board is tonight; and he does not have another two years to go through the process again. He stated when this started, everyone dug in their heels and did not want to look at exactly what the Comprehensive Plan said word for word; it is very explicit; and he has given up working through that way because there was no success. Chairman Higgs stated the proposal was to remove the residential one to five, remove the commercial/industrial, and the utilization of fill, which are all contained in Policies 5.F.1, 2 and 3; and to do that out of frustration does not seem to be right. Commissioner Ellis stated he is not concerned about 5.F.3; Policy 5.F.1 and 5.F.2 are the core of the issue; and they are written such that they totally preclude people from using their property if there are any wetlands unless it is possible to jigsaw around it. Commissioner Cook inquired if Commissioner Ellis wishes him to delete Policy 5.F.3; and stated he would prefer to accept the whole recommendation from the LPA. Commissioner Ellis stated he could vote for Policies 5.F.1, 2 and 3 or just Policy 5.F.1 and 2. Commissioner O'Brien called the question. Chairman Higgs advised Commissioner Scarborough has not had an opportunity to speak. Commissioner Ellis stated the Board needs to finish the discussion. Discussion ensued on allowing all Commissioners to have the right to speak.

Commissioner Scarborough stated one of the most frustrating things is to try and do projects and run into permitting problems; and one of the unique roles Commissioners have is to see the permitting problems as developers do, but to also see the need to have some degree of honesty and credibility in how they deal. He stated the other big problem is there have been cases

where the County issued land clearing permits and one of the agencies stopped the projects; sometimes the County does not know what it is doing with the agencies; so the concept that the County and the agencies are one in the same is dangerous because it does not work that way. He stated no one wants to have duplication; the question becomes whether the planning process is duplication of permitting; and the County is going to be in the planning process with a myriad of other things. He stated he is closer to what Commissioner Ellis is saying; the Board has to be sure what it says is interpreted the way it should be said; and one of the reasons it has not become as big a problem is because the Comprehensive Plan has not been strictly interpreted. He stated he concurs with Chairman Higgs that he would prefer to see this done right; he is afraid if the Board wipes this out, it will be read that any time something is not read correctly, the whole thing will be erased; pretty soon, rather than fine tuning government, it will destroy government; and he is not ready to do that.

Commissioner Cook stated the Board can keep referring this, but it has already gone through three agencies; the CRG recommended leaving it the way it is; the Building and Construction Advisory Committee recommended taking it all out; and the LPA recommended maintaining the wetlands element in the Comprehensive Plan with changes, which is the motion he made tonight. He stated the LPA recommendation maintains the wetlands protection in the Comprehensive Plan, but makes needed changes. He reiterated there are four Ordinances that relate to this that will still be in effect; and the Board is not abandoning or giving up anything. He stated the other agencies will be out tomorrow morning, regardless of what the Board does, telling people whether they can use their property or not because that is their mandate.

Chairman Higgs called for a vote on the motion to approve the LPA recommendation. Motion carried and ordered. Commissioners O'Brien, Cook and Ellis voted nay; Commissioners Scarborough and Higgs voted nay.

The meeting recessed at 9:40 p.m. and reconvened at 9:50 p.m.

Chairman Higgs stated the recommendation of the LPA on Amendment 95.B.3 was approval; and the CRG did not have a quorum, but voted 2-0.

Commissioner Scarborough stated there were concerns and he asked staff if it could be capped at light industrial; and inquired if Mr. Moehle has a problem if it is approved with a cap of light industrial.

Charles Moehle, 65 Country Club Road, Cocoa Beach, stated the problem with light industrial is it does not allow a construction contractor?s operation because of the outdoor storage requirements. Commissioner Scarborough advised he is not saying keep it at PIP, but to go to industrial, but not heavy industrial. Mr. Moehle stated it is written as light/heavy industrial; but the

problem is in the light industrial, it is not possible to do the construction operation. He stated they do not wish to do anything heavy; they brought this on themselves because they objected to the incinerator operation; they do not want anything ugly there; the County is doing ugly enough things as it is; but they do want to be able to do reasonable things.

Assistant Growth Management Director Peggy Busacca stated as a permitted use in IU, a contractor?s office, plant and storage yard are permitted, with the storage yard to be enclosed with a six-foot wall, louvered fence, or chain link fence. Commissioner Scarborough inquired what would be the difference if it went to heavy industrial, and what else could be done with the construction yard. Ms. Busacca stated the additional permitted use in heavy industrial is the contractor?s offices and accessory storage yard including storage of general construction equipment and vehicles. Commissioner Scarborough inquired if the equipment cannot be stored under the light industrial; with Ms. Busacca indicating it could not.

Ken Crooks, 101 South Courtenay Parkway, Merritt Island, representing the applicant, stated this item resulted from litigation that occurred in regard to the original change to the land use designation from heavy/light industrial to PIP in 1993; they came to the Board eight months ago with some suggested changes; and the Board directed staff to go through the administrative process to take the property back to heavy/light industrial land use designation. He noted the LPA and CRG heard the matter, and there were no objections to the request. Mr. Crooks stated the purpose of the change is to allow use of the property, between the Solid Waste Transfer Station and the County?s Mulching Facility; and the proposed use would require more than the what the light industrial would allow. He stated Commissioner Scarborough?s idea is not bad as a means to change the ordinance; the changes that have been suggested should be done regardless of whether the property is involved; and it is also what the LPA originally suggested when this matter came up two years ago. He stated his client has not been able to use the property for the last two years; it will not be possible to use the property for the intended purpose for another five to six months; and the request is to have the heavy/light industrial placed back on the property the way it was two years ago. He stated staff?s recommendation, which is to approve the request, talks about two single-family residences located adjacent to the northeast side of the subject property; and that property is located in the City of Titusville and is commercially zoned, not residentially zoned. He requested the Board go with the CRG recommendation to approve the heavy/light industrial land use designation.

Chairman Higgs inquired if there is a staff recommendation; with Planner I Todd Corwin responding there is not a staff recommendation, but there are staff comments; and the amendment is per Board direction. Mr. Crooks noted at the CRG and LPA meetings, staff indicated a recommendation for approval.

Charles Moehle, President of Modern, Inc., stated Robi Roberts, a stockholder and one of the people who intends to use a portion of the property for a construction operation, is present. He stated Ms. Roberts employs a lot of people and runs a good operation; and there is nothing that is incompatible with the area for heavy/light industrial. He noted across the street it is mixed heavy and light industrial and heavy commercial uses and the two houses are among all the industrial and commercial. He stated he had a terrible hardship so far; and requested the Board approve the request. He stated they have other properties there, and have opposed dirty operations there; but they wish to be able to use the property in a reasonable manner. He stated they intend to police it themselves because it is economically to their advantage.

Robi Roberts, 1514 South Washington Avenue, Titusville, stated it has been two years; she needs to know whether she is moving or not; and requested it go back to the zoning that was originally on the property so she can place her construction company there. She stated she employs 135 people; she has a clean operation; and her lease will be up where she is, and she needs to make a decision.

Commissioner Scarborough stated when the Board originally looked at this, at I-95 and Highway 50, there were two motels and some restaurants; since then there has been the location of the new Wal-Mart Store nearby; and there have been rumors of other business type commercial activities. He stated Highway 405 is one of the main roads someone would take into downtown Titusville; it is an entrance corridor; but it does not fall within the landscape criteria. He stated similar concerns need to be addressed; the idea of it becoming heavy/light industrial is not appropriate for this particular entrance; and the idea that there is a mulching facility there needs to be refuted because the community wanted to have a heavily landscaped, park-like environment, so when people drive by, they will think they are driving by a County park as opposed to an industrial site. He stated he is not prepared to go for the heavy industrial because of those elements; someone else can make a motion; but he cannot support it.

Commissioner Ellis stated he is willing to make a motion to approve heavy/light industrial. He stated the way the land use designation works, the Board cannot differentiate between heavy and light industrial. Commissioner Scarborough stated he was told that the Board could cap it at light industrial. Mr. Corwin advised the Board could attach a directive to the amendment to limit the intensity at light industrial. Commissioner Ellis inquired if it is capped at light, can there also be an amendment to allow storage of equipment, or will that have to be addressed by ordinance. Mr. Corwin advised that is something that would have to be addressed in the Zoning Ordinance.

Chairman Higgs stated if the Plan Amendment is passed, it will still be necessary to do a zoning on the property. Mr. Corwin stated a portion of the

property already has heavy/light industrial, but a portion is also currently zoned general use. Chairman Higgs stated that part of the parcel would have to be rezoned; with Mr. Corwin responding that is correct. Chairman Higgs inquired what the 660-foot rule says about I-95 and S.R. 405. Mr. Corwin advised I-95 is one of the roadways listed in the policy; and as amended in 1995A, the 660-foot rule does not apply if the zoning has been in place for ten-plus years, if there is a natural vegetative buffer, and if it is part of an established industrial park. Chairman Higgs inquired if that applies to the parcel in question; with Mr. Corwin responding the transfer station is visible from I-95; there is no interpretation in the policy as to what an established park is; and the particular zoning has been in place as of September 16, 1995 for ten years for the portion that is zoned IU and IU-1. Commissioner Cook inquired what does that mean, and does it apply. Ms. Busacca stated the ten-year requirement does occur; the issue is the heavily buffered requirement; and it is staff?s opinion, that it is not necessarily a heavy buffer which would be consistent with this. Commissioner Scarborough stated if there is a heavy buffer, it is the same thing as the mulching facility; as soon as they buffer, the Board does not care what they do. Commissioner Cook stated he concurs and that is his concern. Commissioner Scarborough stated the 660-rule applies to I-95, but not S.R. 405; and S.R. 405 has more visual impact for someone entering Titusville than I-95. Commissioner Cook stated the buffering would not apply on S.R. 405; with Commissioner Scarborough responding S.R. 405 is not designated as a road where the buffering is required. Commissioner Cook stated that concerns him; and he sees Commissioner Scarborough?s point that it is a corridor. Commissioner Ellis stated every road is a corridor; the transfer station is sitting there; he cannot imagine not having industrial property next to the transfer station on Sarno Road; and he cannot think of a more intense use of property than a transfer station. Commissioner Cook inquired if there is any way to address the concerns. Commissioner Ellis inquired what is there for a landscape buffer in the front. Chairman Higgs stated the Board will not see this again because of the existing zoning on the property; and the Board does not have the option of a binding development plan as part of a rezoning. Ms. Busacca advised the option could be making a concurrent rezoning action as part of a binding development plan at the same time this is adopted. She stated this is only a transmittal hearing; and staff can prepare that and have simultaneous public hearings. Commissioner Cook inquired if that would be acceptable. Mr. Crooks inquired what is the proposal; with Chairman Higgs responding a concurrent rezoning which would include the consideration that the applicant might be able to discuss with the County some sort of binding development plan. Mr. Crooks stated in order to develop a commercial or industrial site, it is necessary to have a site plan. Chairman Higgs stated the Board is talking about a concurrent rezoning on the GU portion of the property, so it may be able to consider the issue of buffering as a part of it. Mr. Crooks stated if the applicant is going to develop the property, it will be necessary to rezone the GU property; and it is not his understanding that the GU property has to necessarily be utilized; but all those questions have to be resolved at the development stage and not as an issue regarding land use designation. Chairman Higgs stated the Board understands the applicant?s

position is no. Mr. Crooks advised he does not understand the request. Ms. Busacca stated the Board has some concerns about some types of land uses that are contained in heavy industrial but not in light industrial and some buffering; and through a binding development agreement, those limitations could be placed on the property voluntarily, at the same time the final adoption is made of the Comprehensive Plan Amendment. She stated the Board is saying the caps could address some of the issues it is trying to figure out how to solve. Chairman Higgs stated if the applicant does not want to solve this, the discussion can be stopped; but if he does, it may be possible. Mr. Crooks responded if the Board is asking whether his client is willing to enter into discussions to do a binding development agreement prior to the adoption hearing, that is fine; but if the buffering applies, when development plans are submitted, it would be necessary to comply. He stated if they wish to develop the GU property, it will be necessary to get a development plan approved; and all those things would have to occur. He stated what they do not want is to delay this matter any further based on those issues; and he would be more than happy to enter into discussions regarding the binding development agreement prior to final adoption. Commissioner Scarborough inquired if the area shown in white on the map is the area that is IU; with Mr. Moehle responding the map clarifies his ownership and location; they own approximately 105 acres; and they do not own the white area. Commissioner Scarborough inquired where is the IU; with Mr. Moehle and Ms. Busacca pointing out the area on the map. Mr. Moehle stated the idea of submitting a site plan concurrent with zoning is not a problem for those uses that are known; but they cannot submit a site plan when they submit zoning for uses for which they have not been able to market the property because the zoning was taken away. He stated the only plan they can develop is the one plan which will not take up the whole 40 to 50 acres or more; and inquired how can that be resolved. He suggested what might be more workable is to agree, if they are given this zoning, that they will not do certain ugly things. He stated they do want to have construction yards there; and if they cannot have construction yards, they need to keep on with their fight as they are in court now.

Commissioner Scarborough stated he likes the light industrial unless there is a visual buffer; and he is going to have to vote against the motion in its current format; but if the votes are there, it may be worthwhile to have additional discussions when this comes back from DCA. Chairman Higgs stated she will go with Commissioner Scarborough; she does not see any reason to go forward unless the applicant is interested in having some discussions about how it might be possible to deal with the buffer issues and site plan issues; and if the applicant is willing to enter into those discussions, she is willing to consider those, transmit at this time, and look at it in the final adoption. She stated if there is no interest in discussing that and coming up with something that might be acceptable in the corridor, she sees no reason to transmit. Mr. Moehle stated if he said something that counteracted what Mr. Crooks said, he did not mean to; he has no problem with entering into discussions, particularly discussions about extreme buffering for uses like the County?s; they do not intend to allow a use like that; and if they sell

to someone that intends to do that, it will not be with their knowledge, and they will fight it. He stated his concern is he does not know what the heavy buffering means with a construction company operation.

Commissioner Ellis stated the property is sitting next to a transfer station for solid waste; and he does not know how there can be anything but industrial land use there. He stated a transfer station is about as intense a land use as you can get.

Commissioner Cook stated he does not see what the problem is; Mr. Crooks said he was willing to enter into the discussions; and with that stipulation, he does not see why this cannot move forward as Ms. Busacca said. Commissioner Ellis stated he does not know what the big deal is. Commissioner Cook stated it is something that can be worked out; and it should resolve the problem. Mr. Crooks stated the applicant agrees to voluntarily enter into discussions about a binding development plan prior to it coming back for approval; and his only concern is that it depends on what scale the Board is talking about. Chairman Higgs stated if the applicant cannot come in with a site plan, there is no reason to go any further. Commissioner Ellis stated that is not so; and they could still come and indicate willingness to put in a ten-foot buffer along S.R. 405. Commissioner Cook stated the applicant can come in with a suggestion. Mr. Moehle advised the applicant might be coming back a parcel at a time.

Commissioner Scarborough stated the issue is the visual buffer; this was handled in the Cidco Park buffer; they were able to get a description of the visual buffer in order to get rid of the 660-foot usage setback for PIP; and that is what is being addressed rather than site plan. He stated when they look at the site plan, they will see they need so many feet of visual buffer. He stated this might be headed in the right direction, but he is not comfortable enough to vote for it at this juncture.

Commissioner Cook inquired if Commissioner Ellis is willing to incorporate in the motion what Ms. Busacca mentioned; with Commissioner Ellis responding that is fine. Commissioner Cook reaffirmed his second. He stated that may solve the problem. Chairman Higgs stated the applicant is indicating that might be possible, but she does not get the feeling from Mr. Crooks that it is possible. She stated she will support the transmittal, but will not support adoption if there are not some visual buffers and issues to take care of the 660 feet.

Chairman Higgs called for a vote on the motion. Motion carried and ordered. Commissioners O'Brien, Higgs, Cook and Ellis voted aye; Commissioner Scarborough voted nay.

Commissioner Ellis advised it will be necessary to get some tall trees to cover up the transfer station.

Chairman Higgs stated Mr. Nohrr is representing the applicant on Item 95.B.4.

Philip Nohrr, 1800 West Hibiscus Boulevard, Melbourne, representing the Buehler Trust, advised this request has been before the Board off and on for the last year; the Trust owns 90 to 100 acres at or around the Valkaria Airport; and the property in question today is the property located to the north and west of Valkaria Road. He stated it currently has a land use classification of Planned Industrial Park (PIP), and a zoning classification of Planned Business Park (PBP); the origin of the request goes back to the late 1980's when the property was given a Government Managed Land (GML) classification which does not apply, as it is private ownership; and it came to light at the time the County started talking about the Trust owning part of the runway as well as part of the clear zone. He stated at the same time the County was running into difficulties in developing the Habitat at Valkaria Golf Course; there were discussions; and the County resolved its environmental problems. He stated during the discussions, it was discovered the property was GML and changes had to be made; the discussions were concurrent with discussions with the County about acquiring land for the clear zone and the end of the runway; and the resolution was that the Trust voluntarily agreed to sell 15 to 16 acres, with the County proceeding with a land use change to PIP. He stated the sale went through; shortly after that, the County changed the land use on the property to PIP; and since that time, nothing has changed down there. He stated the Trust has complied with its end of the negotiations as far as the sale of the land; it was sold at a disadvantage to the Trust; and the property was separated and subdivided. He stated the County got the benefit of its bargain; one of the things the Trust negotiated for was the land use of PIP; and that is being taken away. He stated that is not fair to the Trust; and the Trust is being penalized for reasons he is not aware of. He stated if the County goes forward with this proposal, it will violate its own master plan for the Valkaria Airport; the County developed the plan; it is on file with the FAA; and it talks about the property being zoned for general commercial non-aviation, referring the Board to figure 17. He stated the master plan talks about the Buehler Trust outparcel as being future acquisition; on page 69, it talks about touch and go operations and the existing residences; and it then states the future land use allowed in the area should consider touch and go aircraft operations, especially in take off zones, and land use controls should be implemented now to protect the areas from any future non-compatible land use development. He noted non-compatible uses which are negatively impacted by aircraft uses include residential development, schools, churches, etc.; and it says they should be prohibited. He stated residential should not be by the airport; if it is changed to residential land use, it will ultimately be developed as residential; and it will create conflicts. He noted the number of complaints in the area has already increased from residential development further away from the airport to the west; the Trust has complied with its end; it has worked out a deal to sell the land to the County; and in turn the Trust should get the land use which is consistent with the master plan. He requested the Board not get the benefit of the bargain now, and then in a few years take it

away from the Trust. Frank Wichowski, 5151 Adamson Street, Orlando, representing Florida Department of Transportation, stated the Department continues its objection to the proposed zoning change to residential on property in such close proximity to the Valkaria Airport because of potential noise and safety concerns. He read aloud from the Airport Compatible Land Use Guide for Florida Communities, ?Incompatible development, particularly residential development near airports, will inevitably create a body of resident activists who are annoyed by the noise they are being subjected to from normal operation of the airport. The residents will create pressures on their elected officials and the airport to decrease, limit, or prevent aircraft operations.? Mr. Wichowski read, ?Compatible land use for public safety is required primarily to minimize the risk of injury to the general public in the event of an aviation accident.? He read aloud from Airport Land Use Compatibility Planning, written by the U.S. Department of Transportation, Federal Aviation Administration, ?New residential and noise sensitive developments seem to surround airports on all sides, and is the source of continual threat of lawsuits for noise damage. There are often other important conflicts such as protection of runway approaches and the safety of persons and property on the ground. The conflicts may be reduced, however, and new ones substantially avoided through the development and implementation of airport land use compatibility plans.? He stated there is a master plan of the airport which addresses those issues; and the information contained in the two documents from which he read is further reason why he is present representing FDOT in objection to the proposed zoning change.

Commissioner Ellis stated the existing zoning is Government Managed Lands. Mr. Nohrr stated that was correct; but the Board changed it to PBP. Commissioner Ellis stated it was changed on the south side of Valkaria Road, but not on the north side. Mr. Nohrr stated Chairman Higgs requested he withdraw that request because everyone knew the GML zoning could not stay; he did not withdraw the request; and the Board voted to change the classification to PBP on part of the property, and directed staff to start looking at it. Commissioner Ellis stated that is not the way he remembers it. Mr. Nohrr stated the existing zoning is PBP. Mr. Corwin advised the zoning is Planned Business Park and the land use is Planned Industrial Park. Commissioner Ellis inquired if that is on the north side of Valkaria Road; with Mr. Corwin responding that is correct. Commissioner Ellis stated that is not the way he remembers it; he remembers the north side being AU; he pulled the minutes from previous meetings where this issue was discussed in 1989; Barbara Ray was discussing it with Commissioner Senne at the time; and they talked about the uses on the inside of Valkaria Road, on the airport property. He stated before this property became GML, it was AU; and it was zoned GML in anticipation of purchase for a clear zone area, and then the deal fell through. He stated the airport does not zone property; and what is in the master plan is not a zoning guide for the Board. Mr. Nohrr stated the map shows the designation of PBP for the property; the Board was in a difficult position at that time; if it had not put some zoning on the property, it may have had some liability; and that is why zoning was put on it. Chairman Higgs stated the Board then directed staff to review the land use issues and

that is how it got to where it is today; with Mr. Nohrr advising he would agree with that interpretation. Ms. Busacca stated the Board directed staff to process this property as residential in a Comprehensive Plan Amendment; and it was included in the 1995A cycle, transmitted to DCA, brought back, and tabled to the 1995B cycle. Chairman Higgs stated the zoning went from GML to PBP; with Ms. Busacca advising that is correct. Commissioner Ellis stated prior to going GML, that property was AU.

Mr. Wichowski advised FDOT?s objection is to zoning the property residential from what it is currently zoned.

Commissioner Ellis stated he hopes FDOT understands there is not a long historic trail of commercial zoning there; it had agricultural use zoning; it became GML; when the deal fell through, it came back to the Board requesting a change to PBP; and its historic use is agricultural zoning.

Chairman Higgs stated the Planning and Zoning Board recommended the proposed residential land use designation; and that is the recommendation she would support. She stated it is surrounded by residential; it is consistent with the existing character of the Valkaria area; and the new plan for the airport is not the same master plan that is being discussed.

There being no further comments or objections, motion was made by Commissioner Scarborough, seconded by Commissioner Ellis, to approve Amendment 95.B.4 as residential. Motion carried and ordered unanimously.

Commissioner O'Brien stated on page 2, in the third paragraph, it says the Florida Scrub Jay is endangered, but that is not the case; and he would like that to be corrected in the document.

Motion by Commissioner O'Brien, seconded by Commissioner Cook, to direct staff to correct the verbiage that the Florida Scrub Jay is threatened, not endangered. Motion carried and ordered unanimously.

Commissioner Cook stated Amendment 95.B.1 is the agreement that was worked out with Suntree Park.

Motion by Commissioner Cook, seconded by Commissioner O'Brien, to approve Amendment 95.B.1 for transmittal.

Commissioner Ellis stated this may be the reason Mr. Von Riesen was here; and the land use needs to move forward; but the Board needs to be aware there is currently a boundary dispute on the property. He noted the boundary dispute would not affect this designation. Commissioner Cook stated he was not aware of that.

Chairman Higgs called for a vote on the motion. Motion carried and ordered unanimously.

Motion by Commissioner Cook, seconded by Commissioner O'Brien, to approve Amendment 95.B.2 for transmittal. Motion carried and ordered unanimously.

Motion by Commissioner Scarborough, seconded by Commissioner Cook, to approve Amendment 95.B.5 for transmittal. Motion carried and ordered unanimously.

Commissioner Cook stated 95.B.6 deals with the Pineda Causeway Extension; the LPA recommended approval by a 7-1 vote with the southernmost route; the CRG wanted to preserve some flexibility in the routing; and inquired if that is preserved would it be necessary to align this differently; with Ms. Busacca responding yes, this is a general outline to give people an idea that it is going south of the straight west route, and it is not intended to be site specific. Commissioner Cook stated this follows the Board?s action that it accepted the right-of-way; he does not have a problem with it as long as the flexibility is preserved and it looks toward the southern route; and if that can be addressed at a later time, he does not have a problem with it. He noted he has been in contact with the Pineda Church; and it is willing to work with the County on that. Mr. Jenkins stated that was going to be placed on the agenda to get permission to talk to representatives of the Church. Commissioner Cook stated staff has been in discussion with representatives of the Church; and they are happy to work with the County. Mr. Jenkins stated staff will proceed with that.

Chairman Higgs stated the preliminary plan for 2020 lists this project under preliminary substantially privately funded projects; it is listed under the Phase 2 of the 2020 Plan; and inquired if the Board puts this in the Comprehensive Plan, is it liable in any way for any issues around building this road. County Attorney Scott Knox responded no. She inquired if any property can claim devaluation or evaluation as a basis; with Mr. Knox responding people can claim anything they want to, but he does not think they have grounds to do that.

Motion by Commissioner Cook, seconded by Commissioner O'Brien, to approve Item 95.B.6 for transmittal with the southern route and with flexibility preserved. Motion carried and ordered unanimously.

Chairman Higgs stated the next item for discussion is the Future Land Use Element Amendment, Policies 2.7 and 2.8.

Commissioner Ellis stated Policies 2.7 and 2.8 seem to be a duplication; and he does not understand why they were ever put in the Plan. Ms. Busacca advised they were included for consistency; the changes the Board made on the Conservation Element will be duplicated throughout the Plan as

necessary, depending on what the Board does with duplicative policies; and suggested the Board go on to consider the Future Land Use Element text.

Chairman Higgs stated the Board needs to deal with the Future Land Element Amendment regarding light and heavy industrial; and when the Board deals with all of the duplications, it can deal with this. She stated the LPA recommendation was to table this to the 1996A cycle for staff to create a map showing which areas of the County would be designated light industrial and which areas would be designated as heavy industrial, and to notify the affected property owners.

Commissioner O'Brien stated he has a problem with doing this in the first place; if the Board separates heavy from light industrial, every time the Board wants to zone something heavy industrial, it will have a line of people, and the hue and cry would be so loud, the Board could not stand the noise; and at the same time, it would hurt the County?s future in growth management because companies like Harris Corporation could never get the zoning it needs. He stated he does not know where this began; but he does not like it.

Commissioner Scarborough stated there are different levels of industrial in his District; Cidco Park is heavy industrial; the County?s industrial park has a different intensity; there are land restrictions; and they are really different neighborhoods. He stated if there is a concrete plant in heavy industrial, that is one thing; but if there is something like Harris Corporation, it does not want to be next to a concrete plant. He stated his concern is when this came up previously, there were a lot of people who came out who had the heavy/light designation; if the Board proceeded, it would have to reclassify all the existing uses into either heavy or light; and some people were concerned with the volume of having to review everything. He stated there is a need in some areas to classify the difference between PIP, light and heavy industrial; and addressed the issue of compatibility. He stated he would like to see further division, but does not want to re-address everything the Board has previously done because it will bog down the Board.

Motion by Commissioner Cook, seconded by Commissioner Scarborough, to table the Future Land Use Element Amendment to the 1996A cycle, as recommended by the LPA. Motion carried and ordered unanimously.

Chairman Higgs stated the next item is the Recreation and Open Space Element, Policy 3.2.1. She knows staff is working on the PUD ordinance which will be coming back; but she will not support removal of the 25% of the total area or the PUD being removed from the restriction until she knows what will be in the ordinance.

Commissioner Ellis stated he would support removing the PUD, but does not understand the last paragraph being removed which says up to 50% may be devoted to passive recreation. Chairman Higgs stated she assumes it is

taking out any restrictions on the PUD?s use of open space. Ms. Busacca advised right now a PUD is required to have a minimum of 50% of its open space as active; that is forcing any PUD to have a golf course to meet the requirement; and staff is suggesting making the standard more flexible so the County does not end up with golf courses in every PUD. She stated staff is suggesting this be removed and the standard be limited to the zoning requirement. Commissioner Cook noted the PUD could build a stadium. Commissioner Ellis inquired if the way it has been interpreted is that the PUD could not devote more than 50%; with Ms. Busacca responding no. Ms. Busacca stated the way the Zoning Code is written, it is necessary to have at least 50% active open space. Commissioner Ellis stated he does not understand because he does not interpret the paragraph that way. Ms. Busacca stated that is the way the Zoning Code is written, and it is very specific. Mr. Jenkins suggested a minimum of 50%. Commissioner Ellis stated the Board should just get rid of it; and his question was whether he was forcing everyone to put active recreation by striking the paragraph. Ms. Busacca stated by having no reference in the Comprehensive Plan, it will be limited to what the PUD Ordinance states; the Board will see the PUD Ordinance in October, 1996; so some decision will be made before the Comprehensive Plan Amendments come back for adoption.

Motion by Commissioner Ellis, seconded by Commissioner Cook, to approve transmittal of the Recreation and Open Space Element Amendment. Motion carried and ordered. Commissioners Scarborough, O'Brien, Cook, and Ellis voted aye; Commissioner Higgs voted nay.

Chairman Higgs stated the next item is Traffic Circulation Element Amendment, Policy 4.1.1.

Motion by Commissioner Cook, seconded by Commissioner Scarborough, to approve transmittal of the Traffic Circulation Element Amendment.

Commissioner Scarborough inquired if this is the item where the hurricane evacuation routes were moved. Commissioner O'Brien advised it is Policy 4.2.4. He requested the word ?fatal? be inserted between ?numerous? and ? traffic.?

Motion by Commissioner O'Brien, seconded by Commissioner Ellis, to amend Policy 4.2.4 to insert the word ?fatal? between the words ?numerous? and ?traffic.? Motion carried and ordered unanimously.

Commissioner O'Brien stated another sentence would be appropriate to provide that since 1980 there have been a certain number of fatalities on those roadways directly attributable to growth, substantially increased tourism, and commuter traffic. Commissioner Ellis stated he does not agree with that; the road is just dangerous; and the growth has nothing to do with it. Commissioner O'Brien stated sometimes it is necessary to drive a point home. Commissioner Ellis stated his concern is that in the future someone

may decide that since the problem is growth, instead of four-laning the road, they will not let anyone build there. Commissioner O'Brien stated no one would do that; and it would be almost impossible to throw a moratorium on the County just because it used the word ?growth.? Commissioner Ellis advised it has been done on S.R. 520 and U.S. 192.

Motion by Commissioner O'Brien, seconded by Commissioner Cook, to amend the motion to add the following wording, "To date, since 1980, there have been a number (number to be specified) of fatalities on these roadways directly attributable to growth, substantially increased tourism, and commuter traffic.?

Commissioner O'Brien stated this delineates why it has become a such a serious problem. Chairman Higgs stated she has not seen the data that tells her that is true; she does not know that it is not attributable to a higher percentage of drunk drivers; and since she does not know, she cannot support the language.

Chairman Higgs called for a vote on the motion to amend. Motion did not carry. Commissioners O'Brien and Cook voted aye; Commissioners Scarborough, Higgs, and Ellis voted nay.

Chairman Higgs called for a vote on the motion to approve transmittal, as amended. Motion carried and ordered unanimously.

Motion by Commissioner Cook, seconded by Commissioner Ellis, to approve transmittal of the Historic Preservation Element.

Chairman Higgs stated the Land Use CRG recommended denial, but the LPA recommended approval by a 6 to 1 vote.

Commissioner Scarborough stated there has to be a classification of historic to obtain certain tax benefits for restorations; it would take one full-time person one and one-half staff-years to implement an ordinance as replacement for the Element; the tax exemptions for the historic preservation will be dependent on the ordinance or they will not be available; and he will have to vote against them. He stated people in Orlando and New Smyrna Beach will be able to get a tax benefit because they have an implementation tool. Commissioner Cook inquired who is this from; with Commissioner Scarborough responding Planner Todd Peetz. Mr. Jenkins stated this was first raised as an issue because there are a number of items the County is supposed to be doing that it has not begun to do, nor does it have the staff to do them; and if the Board is going to leave the Element in, it will need people to do the work. Commissioner Cook stated he would need to see documentation that there are people losing a deduction because of this; and if it is a useless element, he does not know why the Board should hang on to it. Chairman Higgs stated the Board may need to look at those items it cannot do with existing staff, and leave in those parts of the Element that do

make sense. Commissioner Scarborough advised if the motion fails, he intends to make a motion to defer it to the 1996A cycle. Chairman Higgs stated the element needs work and realistic expectations need to be included, but she does not think the Element should be eliminated. Commissioner O'Brien stated the Element keeps referring to how much money the County has to spend to accomplish the task; and it is such a special interest issue. Commissioner Cook stated the Board might as well have a music element.

Chairman Higgs called for a vote on the motion. Motion carried and ordered. Commissioners O'Brien, Cook, and Ellis voted aye; Commissioner Scarborough and Higgs voted nay.

Chairman Higgs stated the next issue is duplicative policies in all elements.

Motion by Commissioner Cook, seconded by Commissioner O'Brien, to eliminate duplicative policies in all elements of the Comprehensive Plan.

Chairman Higgs inquired how this differs from the other items relating to duplicative policies. Mr. Corwin advised different elements were reviewed by different CRG?s. Chairman Higgs inquired if the motion is to remove all duplicative policies, and can it be done in one motion; with Mr. Corwin responding yes.

Chairman Higgs called for a vote on the motion. Motion carried and ordered unanimously.

Mr. Corwin noted there is an ordinance for review; and it will be considered for adoption in approximately February, 1996.

Motion by Commissioner Cook, seconded by Commissioner Scarborough, to approve 1995B Comprehensive Plan Amendments for transmittal, as discussed and based upon thorough review of supporting data and analysis, careful consideration of the recommendations of staff, the Building and Construction Advisory Committee, Citizen Resource Groups, the Local Planning Agency, and written and oral public comments received, specifically Comprehensive Plan Amendments 95.B.1, 95.B.2, 95.B.3 as amended, 95.B.4, 95.B.5, 95.B.6, and amendments to the Future Land Use Element, Conservation Element, Traffic Circulation Element as amended, Recreation and Open Space Element, Historic Preservation Element, Surface Water Management Element, Housing Element, Potable Water Element, Sanitary Sewer Element, Solid Waste and Hazardous Materials Element, Mass Transit Element, Ports, Aviation and Related Facilities Element, Coastal Management Element, Intergovernmental Coordination Element, and Capital Improvement and Programs Element, and other amendments as necessary to maintain internal consistency. Motion carried and ordered unanimously.

APPROVAL, RE: BILLS AND BUDGET TRANSFERS

Commissioner O'Brien stated there is a bill from Robert G. Kirkland, M.D., P.A., for a 6.5-hour court appearance of $1,625 which is $250 an hour; and inquired if that is what psychiatrists charge; with Commissioner Scarborough responding he does not know. Commissioner O'Brien stated the best attorneys in the County only get $150 to $175 an hour. Commissioner Cook suggested the Board have this checked out. Chairman Higgs noted Stumpy Harris got $650. Commissioner Scarborough stated that was on a difficult eminent domain case. Commissioner O'Brien stated he cannot believe Judge Antoon would look at that as a fair and reasonable price for a County to pay. Commissioner Cook suggested the item be deleted so the Board can get an explanation and information on set rates for expert witnesses. Mr. Jenkins noted he provided the Board with a response to that question. Commissioner Cook inquired if the response include medical doctors.

Motion by Commissioner O'Brien, seconded by Commissioner Scarborough, to approve the Bills and Budget Transfers, except for the bill from Robert G. Kirkland, M.D., P.A., for $1,775; and direct staff to look into the $250 per hour charge and status of the request from the Board for set rates for expert witnesses. Motion carried and ordered unanimously. Upon motion and vote, the meeting adjourned at 11:02 p.m.

ATTEST:

SANDY CRAWFORD, CLERK

(S E A L)

MARK COOK, CHAIRMAN

BOARD OF COUNTY COMMISSIONERS

BREVARD COUNTY, FLORIDA

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STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

EMERGENCY MANAGEMENT • HOUSING AND COMMUNITY DEVELOPMENT • RESOURCE PLANNING AND MANAGEMENT

LAWTON CHILES
Governor

JAMES F. MURLEY
Secretary

December 22, 1995

The Honorable Nancy N. Higgs
Chairman, Brevard County Board
of County Commissioners
1311 East New Haven Avenue
Melbourne, Florida 32901

Dear Chairman Higgs:

The Department has completed its review of the proposed Comprehensive Plan Amendment for Brevard County (DCA No. 96-1), which was received by the Department on October 18, 1995. Copies of the proposed amendment have been distributed to appropriate state, regional and local agencies for their review and their comments are enclosed.

I am enclosing the Department's Objections, Recommendations and Comments (ORC) Report, issued pursuant to Rule 9J-11.010, Florida Administrative Code (F.A.C.). The issues identified in this Objections, Recommendations and Comments Report include protection of wetlands and wetland functional values, ensuring compatibility of land uses, protection of historic resources, and data and analysis to support proposed access roadways. It is very important that the adopted plan amendment address these issues, and the comments in the Department's ORC Report.

Upon receipt of this letter, the Brevard County has 60 days in which to adopt, adopt with changes, or determine that the County will not adopt the proposed amendment. The process for adoption of local government comprehensive plan amendments is outlined in s. 163.3184, Florida Statutes, and Rule 9J-11.011, F.A.C.

2740 CENTERVIEW DRIVE • TALLAHASSEE, FLORIDA 32399-2100

FLORIDA KEYS AREA OF CRITICAL STATE CONCERN
FIELD OFFICE
2796 Overseas Highway, Suite 212
Marathon, Florida 33050-2227

SOUTH FLORIDA RECOVERY OFFICE
P.O. Box 4022
8600 N.W. 36th Street
Miami, Florida 33159-4022

GREEN SWAMP AREA OF CRITICAL STATE CONCERN
FIELD OFFICE
155 East Summerlin
Bartow, Florida 33830-4641

Within ten working days of the date of adoption, the County must submit the following to the Department:

Five copies of the adopted comprehensive plan amendments;

A copy of the adoption ordinance;

A listing of additional changes not previously reviewed;

A listing of findings by the local governing body, if any, which were not included in the ordinance; and

A statement indicating the relationship of the additional changes to the Department's Objections, Recommendations and Comments Report.

The above amendment and documentation are required for the Department to conduct a compliance review, make a compliance determination and issue the appropriate notice of intent.

In order to expedite the regional planning council's review of the amendments, and pursuant to Rule 9J-11.011(5), F.A.C., please provide a copy of the adopted amendment directly to the Executive Director of the East Central Florida Regional Planning Council.

Please contact Charles Gauthier, AICP, Growth Management Administrator, John Healey, Community Program Administrator, or Dickson Ezeala, Planner II, at (904) 487-4545 if we can be of assistance as you formulate your response to this Report.

Sincerely,

J. Thomas Beck

J. Thomas Beck, Chief
Bureau of Local Planning

JTB/dej

Enclosures: Objections, Recommendations and Comments Report
Review Agency Comments

cc: Mr. Tod Corwin, Planning Department
Mr. Aaron M. Dowling, Executive Director, East Central Florida Regional Planning Council

DEPARTMENT OF COMMUNITY AFFAIRS

OBJECTIONS, RECOMMENDATIONS AND COMMENTS

FOR

BREVARD COUNTY

Amendment 96-1

December 22, 1995
Division of Resource Planning and Management
Bureau of Local Planning

This report is prepared pursuant to Rule 9J-11.010

INTRODUCTION

The following objections, recommendations and comments are based upon the Department's review of the Brevard County proposed amendment to their comprehensive plan pursuant to s. 163.3184, Florida Statutes (F.S.).

Objections relate to specific requirements of relevant portions of Chapter 9J-5, Florida Administrative Code (F.A.C.), and Chapter 163, Part II, F.S. Each objection includes a recommendation of one approach that might be taken to address the cited objection. Other approaches may be more suitable in specific situations. Some of these objections may have initially been raised by one of the other external review agencies. If there is a difference between the Department's objection and the external agency advisory objection or comment, the Department's objection would take precedence.

Each of these objections must be addressed by the local government and corrected when the amendment is resubmitted for our compliance review. Objections which are not addressed may result in a determination that the amendment is not in compliance. The Department may have raised an objection regarding missing data and analysis items which the local government considers not applicable to its amendment. If that is the case, a statement justifying its non-applicability pursuant to Rule 9J-5.002(2), F.A.C., must be submitted. The Department will make a determination on the non-applicability of the requirement, and if the justification is sufficient, the objection will be considered addressed.

The comments which follow the objections and recommendations section are advisory in nature. Comments will not form bases of a determination of non-compliance. They are included to call attention to items raised by our reviewers. The comments can be substantive, concerning planning principles, methodology or logic, as well as editorial in nature dealing with grammar, organization, mapping, and reader comprehension.

Appended to the back of the Department's report are the comment letters from the other state review agencies and other agencies, organizations and individuals. These comments are advisory to the Department and may not form bases of Departmental objections unless they appear under the "Objections" heading in this report.

OBJECTIONS, RECOMMENDATIONS AND COMMENTS REPORT
BREVARD COUNTY AMENDMENT 96-1

I. FUTURE LAND USE MAP AMENDMENT: REQUEST NO. 95B.4

1. Background

The County proposes to redesignate approximately 46 acres from existing Planned Industrial Park (PIP) to Residential.

2. Objections

Incompatible Land Uses and Internal Inconsistency:

The proposed amendment is not supported by an analysis demonstrating that the Residential land use is compatible with airport related activities, including noise, runway clear zones and planning activities for the airport. Introduction of Residential land uses in the subject area would establish incompatible land uses adjacent to the airport. Additionally, the proposed Residential land use is inconsistent with the Valkaria Airport Master Site Plan which designates the site as aviation related commercial.

The amendment is not supported by data and analysis demonstrating consistency with the Ports, Aviation and Related Facilities Element (PARFE) Policies 2.1 and 2.2, which provide for land uses adjacent to the airport and development of the airport to serve general aviation. The amendment is not supported by data and analysis demonstrating consistency with PARFE Objective 6, including, but not limited to Policies 6.12 and 6.13, regarding allowable noise compatible land uses. The proposed Residential use is not included among the land uses that may be allowed in the amendment area, based on the referenced PARFE policy. Also, no analysis has been submitted demonstrating consistency with PARFE Objective 7, regarding the protection of port, airport, and rail related facilities from the encroachment of incompatible land uses, and Policies 7.1, and 7.2, regarding the provisions for airport clear zones, and prohibiting obstructions to aircraft operations.

The amendment is not supported by data and analysis which demonstrates that the County has coordinated with the Florida Department of Transportation regarding the proposed amendment's impact upon Valkaria Airport, including its current and planned development activities.

The Department of Transportation indicates that the amendment area lies fully beneath the airport Visual Flight Rules (VFR) traffic pattern for both Runways (RWY) 09 and 32. In

addition, aircraft landing on RWY 09 and taking off on RWY 32 will overfly the north portion of the subject parcel at altitudes well bellow the normal pattern. The amendment area would be impacted by the noise from the overflying aircraft. Please see the enclosed comments of the Florida Department of Transportation.

Sections: 163.3177(2), 163.3177(6)(a), 163.3177(6)(j)(7), 163.3177(10)(l), Florida Statutes (F.S.)

Rules: 9J-5.005(5)(a) and (5)(b); 9J-5.006(3)(b)3., 9J-5.006(3)(c)2.; 9J-5.009(2)(b); 9J-5.009(3)(b)1.; 9J-5.009(3)(b)3.; 9J-5.009(3)(c)1.; 9J-5.009(3)(c)2.; 9J-5.009(3)(c)5.; and 9J-11.006(1)(b)5, Florida Administrative Code (F.A.C.)

3. Recommendation

Include additional data and analysis addressing the impact of the proposed Residential land use upon airport related activities. Include an analysis of the compatibility of the proposed Residential land use with airport related activities, including noise levels and clear zone requirements. Include an analysis of the County's intergovernmental coordination efforts with the Florida Department of Transportation in addressing land use compatibility and planning activities for the airport. Revise the amendment, as necessary, to be consistent with and supported by, this data and analysis.

Revise the amendment to be consistent with PARFE Objective 7, regarding the protection of port, airport, and rail related facilities from the encroachment of incompatible land uses, and Policies 7.1, 7.2, regarding the provisions for airport clear zone, and prohibiting obstructions to aircraft operations. Revise the amendment to be consistent with Rule 9J-5, F.A.C., requirements for land use compatibility. If the amendment cannot be revised to be consistent with the provisions of the Plan and the data and analysis cited above, the County should not adopt the amendment.

II. FUTURE LAND USE MAP AMENDMENTS (REQUEST NOs. 95B.5 and 95B.6 (Suitability Analysis)

1. Background

Request No. 95.5: The County is proposing to depict (i) a planned alignment of the proposed Port St. John/I-95 interchange, and (ii) a planned access road for the interchange, which will connect to Grissom Parkway; and

Request No. 95.6: The County is proposing to realign the Pineda Causeway Extension to a new location, and depict the realignment on the FLUM.

2. Objections

Data and Analysis: The proposed amendments are not supported with data and analysis demonstrating the suitability of the amendment areas, considering natural resources, for the realignment of the access roads connecting to I-95.

Sections: 163.3177(6)(b), 163.3177(8), F.S.

Rules: 9J-5.005(2), 9J-5.006(2)(b), 9J-5.006(3)(b)1., (b)3., (b)4., (b)5., and (b)6.; 9J-5.007(2), (3)(b)1. - 4., (3)(c)2; 9J-11.006(3), F.A.C.

3. Recommendations

Include an analysis addressing the suitability of the amendment areas for the realignments considering natural resources. At a minimum, include a discussion of the general characteristics of the areas identifying wetlands, floodplains, wildlife habitat and any unique features which will have to be addressed during the planning and permitting process for the access roads. Revise the amendments, as necessary, to be consistent with and supported by, the data and analysis.

III. FUTURE LAND USE ELEMENT (FLUE) POLICY 2.7, AND CONSERVATION ELEMENT (CE) POLICIES 5.1 AND 5.2 TEXT CHANGES

1. Background

The County proposes to delete FLUE Policy 2.7 Criteria F. 1, 2, and 3, and identical CE Policy 5.2 Criteria 1., 2., and 3., regarding "land use and density restrictions established as maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element Policy 5.2 are met" in wetlands.
Also proposed for deletion is the provision of CE Policy 5.1 which states that Brevard County shall not be limited by the threshold or connection requirements utilized by FDEP and the SJRWMD in delineating wetlands.

2. Objections

(a) Protection of Wetlands and Natural Functions of Wetlands:

The result of these amendments (should they be adopted) would be the deferral of wetland protection to the permitting

process and the elimination land use planning as a means to protect these natural resources. The proposed deletion of current limitations on development in wetlands, including (a) restricting land use in wetlands to residential use at one dwelling unit per five acres, (b) prohibition of commercial and industrial uses, and (c) minimization of fill, is inconsistent with Rule 9J-5, F.A.C., requirements to protect wetlands and their functional values (e.g., flood attenuation, wildlife habitat, protection of water quality) by utilizing a comprehensive planning process which directs future land uses which are incompatible with the protection of wetlands and wetland functions away from wetlands. Additionally, the proposed revision to CE Policy 5.1 further indicates that the County contemplates deferral of wetland protection to permitting agencies. This proposed revision would essentially limit, if not eliminate, the County's planning guidelines for non-jurisdictional wetlands. Wetland protection must not be limited to jurisdictional wetlands.

(b) Data and Analysis:

The amendments are not supported by any data and analysis which assesses the impacts of the proposed amendments on wetlands and their functional values. An analysis which considers the impact of the amendments on wetlands by type, value, function, size, condition and location has not been included. Absent this data and analysis, the amendment has not demonstrated consistency with Rule 9J-5, F.A.C., requirements that wetlands be protected by a comprehensive planning process which is based upon and consistent with the above cited analyses.

(c) Internal Consistency:

The amendment in not supported by an analysis of how the amendment is compatible with the goals, objectives and policies of the Brevard County comprehensive plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality. Absent this data and analysis, the proposed amendment has not demonstrated internal consistency with goals, objectives and policies of the County's comprehensive plan which provide for the protection of natural resources.

(d) Allocation of Land Uses Necessary to Accommodate the Projected Population (Urban Sprawl):

The proposed amendments would allow increased development for residential, commercial and industrial uses above that currently provided for by the County's comprehensive plan. However, no analysis has been submitted assessing the

amendment's impact upon the current inventory of lands available to accommodate the projected population thereby supporting the need for increased allocation of these uses.

Sections: 163.3177(2), 163.3177(6)(a), 163.3177(6)(d), and 163.3177(6)(g), F.S.

Rules: 9J-5.005(2); 9J-5.005(5); 9J-5.006(2)(b); 9J-5.006(3)(b)4.; 9J-5.006(3)(c)1., (3)(c)6.,; 9J-5.012(2)(b); 9J-5.012(3)(b)1., and (3)(b)2.; 9J-5.012(3)(c)1. (3)(c)2., and (3)(c)14.; 9J-5.013(1)(a); 9J-5.013(2)(b)2., (2)(b)3. and (2)(b)4.; 9J-5.013(2)(c)1., (2)(c)3., (2)(c)5., (2)(c)6., and (2)(c)8.; 9J-5.013(3), F.A.C.

3. Recommendation

Do not adopt the proposed amendments.

IV. Historic Preservation Element (HPE) Amendments

1. Background

This proposed amendment involves a complete deletion of the Historic Preservation Element in the County's Comprehensive Plan. The Element is comprised of the text introduction, inventory and analysis, historic preservation plan for Brevard County, historic preservation organizations, the goals, objectives, and policies, and implementation strategies.

2. Objections

The proposed amendment is not supported by data and analysis identifying the data and analyses and goals, objectives and policies in the Future Land Use, Housing and Coastal Management Elements which meet Rule 9J-5, F.A.C., requirements to inventory, analyze and provide protection, preservation and mitigation of development impacts on historic and archaeological resources.

Sections 163.3177(6)(a), and 163.3177(6)(g)(10), F.S.

Rule: 9J-5.006(1)(c)11.; 9J-5.006(3)(b)4.; 9J-5.006(3)(c)8.; 9J-5.010(1)(g); 9J-5.010(2)(c)5.; 9J-5.010(3)(b)5.; 9J-5.010(3)(c)3.; 9J-5.012(2)(c); 9J-5.012(3)(b)10.; 9J-5.012(3)(c)11. F.A.C.

3. Recommendations

Retain the Historic Preservation Element. Alternatively, include supporting data and analysis identifying those elements, and goals, objections and policies in the County,s Plan, where Rule 9J-5, F.A.C., requirements for data and

analyses and protection and preservation of historic resources are found. Revise the amendment, as necessary, to ensure and retain the protection and preservation provisions consistent with Rule requirements.

VI. STATE COMPREHENSIVE PLAN CONSISTENCY

A. Objection

1. The proposed amendments to the Comprehensive Plan are not consistent with s.187.201, F.S., State Comprehensive Plan, including the following goals and policies: **[Rule 9J-5.021(1), F.A.C.]**

   a. Goal 8, Water Resources, and Policies (b)4., (b)8., (b)10., and (b)12.;

   b. Goal 9, Coastal and Marine Resources, and Policies (b)4., (b)5., (b)6., and (b)8.;

   c. Goal 10, Natural Systems and Recreational Lands, and Policies (b)1., (b)3., (b)4., (b)7., and (b)8.;

   d. Goal 16, Land Use, and Policies (b)2., and (b)6.;

   e. Goal 20, Transportation, and Policies (b)2., (b)5., and (b)12; and

   f. Goal 19, Cultural and Historical Resources, and Policies (b)3., (b)4., and (b)6.

B. Recommendation

The City should revise the proposed amendments, as necessary, to be consistent with the above-referenced goals and policies of the State Comprehensive Plan. Specific recommendations can be found following the objections cited elsewhere in this report.

VIII. COMPREHENSIVE REGIONAL POLICY PLAN CONSISTENCY

A. Objection

1. The proposed amendments are not consistent with the Comprehensive Regional Policy Plan of the East Central Florida Regional Planning Council, including the following goals and policies: **[Rule 9J-5.021(1), F.A.C.]**

   a. Regional Issue 39, Protection of Natural Systems, and Policies 39.2, 39.5, 39.7, 39.8, and 39.10;

b. Regional Issue 40, Protection of Coastal Resources, and Policies 40.1, and 40.7;

c. Regional Issue 41, Protection of Marine Resources, and Policy 41.1;

d. Regional Issue 43, Protection of Natural Systems, and Policies 43.1, 43.2, 43.12, and 43.13;

e. Regional Issue 44, Protection of Endangered Species, and Policy 44.1;

f. Regional Issue 57, Balanced and Planned Development, and Policies 57.1, 57.16, and 57.17;

g. Regional Issue 58, Natural Resource Preservation, and Policies 58.1, and 58.2;

h. Regional Issue 61, Access to Cultural and Historical Resources, and Policies 61.1, 61.3, 61.4, 61.5, and 61.6;

i. Regional Issue 64, Transportation to Aid Growth Management, and 64.18, 64.23,

B. Recommendation

Revise the proposed amendments to be consistent with the above-referenced goals and policies of the East Central Florida Regional Comprehensive Regional Policy Plan. Specific recommendations can be found following the objections cited elsewhere in this report.

Department of
Environmental Protection

Lawton Chiles
Governor

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Virginia B. Wetherell
Secretary

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BUREAU OF STATE
PLANNING

November 21, 1995

(6) JH 11/29/95

Mr. D. Ray Eubanks
Department of Community Affairs
Bureau of Local Planning
2470 Centerview Drive
Tallahassee, Florida 32399

Re: Review of Proposed Amendments to the Brevard County Comprehensive Plan, 96-1

Dear Mr. Eubanks:

The Office of Intergovernmental Programs of the Department of Environmental Protection has performed a review of the proposed amendments under the required provisions of Chapter 163, Part II, Florida Statutes, and Chapter 9J-5 and 9J-11, Florida Administrative Code.

Recommended Objection

Proposed change: Policy 5.2.F.1-3 of the Conservation Element and Policy 2.7.F.1-3 of the Future Land Use Element. The County proposes to eliminate a portion of the noted policies which are directed at guiding development away from and/or reducing impacts to wetlands. The policy reads, " By September 1990, Brevard County shall adopt regulations which promote no net loss of functional wetlands." Specific criteria are provided under "Criteria" A through G. The language proposed for deletion is:

> " F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:
>
> 1. Residential land uses shall be limited to not more than one dwelling unit per five acres.
>
> 2. Commercial and industrial land uses shall be prohibited unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the

activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on site disposal system requirements, the 100 year flood elevation requirement for the first floor elevations, and to one primary access to the on site structures."

A primary rationale provided by the County regarding the deletion of these portions of the policy is that other agencies provide wetland permitting functions, and thus it is viewed as a duplication of effort.

The Department recommends an objection based on the direction provided 'n the following sections of Chapter 187, F.S., Chapter 163, F.S. and the corresponding portions of its implementing rule 9J-5, F.A.C.

* Sections 187.201(8)(b)4, 8 ; (10)(b)1, 7 and, (16)(b)6
* Sections 163.3167(1) a & b, F.S. (scope of the act)
* Sections 163.3177(1), (6)(a) & (d). F.S. (Future Land Use and Conservation Element descriptions and intent)
* 9J-5.006(3)(c)1, 6 & 7, F.A.C. (Future Land Use Element)
* 9J-5.013(3)(b), F.A.C. (Conservation Element)

Comment

The County proposes to eliminate important wetland protection planning guidance language based on an assumption that wetland permitting programs will handle these concerns. The Department does not consider land use planning to be equivalent to or duplicative of state and federal permitting programs. Permitting programs are reactionary, being triggered in response to a specific proposed development action such as the placement of fill in jurisdictional wetlands. On the other hand, local planning, as required under Chapter 163, F.S. is not reactionary, but is instead the tool by which anticipated growth and development (distribution, location and extent of land use types) can be wisely directed to those areas most suitable to accommodate it. Planning is anticipatory, relying on data and analysis regarding an area's natural characteristics to help direct development away from more sensitive and/or functional areas (such as wetlands) and towards more suitable areas. Individual permit regulatory decisions can fit into and complement broader ecosystem and land management plans, but are not designed to serve as plans.

In Brevard County, given its extensive coastal and river floodplain resources, wetlands are often the center of the land use suitability concerns. The planning policy being proposed for deletion is consistent with the direction of Chapter 163, F.S., in that it is clearly directed towards managing the

distribution of population densities and building structure intensities affecting wetlands. The policy is anticipatory (i.e., planning oriented) in that it provides guidance for expected future development to avoid and/or limit loss of wetlands, and direction regarding the way in which LDRs are to be used to achieve an identified goal (i.e., management of growth in the county consistent with natural capabilities).

Regarding the County's other stated rationale for the deletion of the policy language, i.e., that, "Setting land use restrictions and development standards at the Comprehensive Plan level unduly restricts the Board from exercising some discretion over how Brevard County Develops", Chapter 163, F.S. and corresponding Rule 9J-5 would appear to direct otherwise.

We suggest that the County maintain its role in guiding development away from environmentally sensitive areas. Locally based, comprehensive land planning should continue to be a prelude to the regulatory process in which site specific impacts and possibly mitigation are addressed. In this way, the comprehensive plan serves as the most effective foundation and blueprint for managing resources and making land use decisions.

Recommendation

The Department recommends that the County not delete the above mentioned wetland protection policy from the comprehensive plan.

Please call Mr. Dan Pennington at (904) 487-2231 if you have any questions about our response.

Cordially,

Lynn Griffin
Environmental Administrator
Office of Intergovernmental Programs

LG/dp

cc: Ruth Mclemore, CFDEP
Barbara Bess, CFDEP

ST. JOHNS RIVER
WATER MANAGEMENT DISTRICT

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December 6, 1995

Mr. Ray Eubanks, Planning Manager
Department of Community Affairs
2720 Centerview Drive
Tallahassee, Fl. 32399-2100

Dear Mr. Eubanks:

St. Johns River Water Management District staff has reviewed Brevard County's proposed comprehensive plan amendment 1995B and submit the following objections pursuant to Section 163.3184, F.S. The District objects to the proposed text changes in the Conservation Element and Future Land Use Element that reduce or eliminate local protection of wetlands. Specifically, the District objects to the deletion of Conservation Element policies 5.2.F.1, 5.2.F.2, and 5.2.F.3 and the identical policies in the Future Land Use Element (2.7.F.1,2,&3) which serve to remove limitations on residential densities in wetlands, the prohibition of commercial and industrial uses in wetlands, and restrictions on the filling of wetlands.

Much of the discussion at the County Commission level has focused on the need to eliminate these policies as a means to reduce duplication of effort with the SJRWMD and other agencies. Because only local governments are charged with the responsibility of developing comprehensive plans for their future development and growth, the District believes that these policies are not duplicative. Instead, the District views these land use policies as an important complement to the District's regulatory programs.

As you know, Section 9J-5.013, F.A.C., requires, among other things, that "wetlands and the natural functions of wetlands shall be protected and conserved" and that "future land uses which are incompatible with the protection and conservation of wetlands and wetland functions shall be directed away from wetlands". The District believes that the proposed amendments are not consistent with the wetland policies set forth in 9J-5.013, F.A.C., or the District's goal of protecting water resources.

District staff met with each Commissioner in April to discuss the District's concerns and to explain the importance of land use planning as a complement to the District's permitting programs.

William Segal, CHAIRMAN MAITLAND
Dan Roach, VICE CHAIRMAN FERNANDINA BEACH
James T. Swann, TREASURER COCOA
Otis Mason, SECRETARY ST. AUGUSTINE
Kathy Chinoy JACKSONVILLE
Griffin A. Greene VERO BEACH
James H. Williams OCALA
Patricia T. Harden SANFORD
Reid Hughes DAYTONA BEACH

In anticipation of these amendments, the SJRWMD Governing Board unanimously approved the attached policy paper in July which addresses the differences between permitting and planning. The paper was forwarded to each Commissioner as a courtesy and early notification as to how SJRWMD would comment to DCA on their pending amendments. In October, District staff initiated a meeting with County Planning staff to further discuss issues related to their submitted amendments and invited the County to address the SJRWMD Governing Board concerning the proposed changes. The Brevard County Planning Director spoke to the Governing Board in November. The Governing Board proceeded to direct staff to complete its comments consistent with the white paper and forward them to DCA.

Last week, SJRWMD Assistant Director of Planning and Acquisition spoke to each Commissioner to discuss possible alternatives to the proposed amendment that would be acceptable to both the County and the District. Subsequent to those discussions, the County Commission, at their November 21 Commission meeting, voted unanimously to begin discussions with SJRWMD on alternative language to submit to DCA. Although the District is confident that mutually acceptable alternative language can be developed in the near future, the District has strong objections to the proposed amendments as they currently stand. The bases for the District's objections to the current proposed amendments are set forth below.

Since the submittal of the plan amendments, District staff compiled the following data and analyses that support the retention of Brevard County comprehensive plan policies which provide local wetlands protection and meet the goals of 9J-5.013. The most recent wetlands maps are being forwarded to you under separate cover. Excerpts from supporting technical reports are enclosed.

Data and Analyses

1. Wetland Distribution in Brevard county

District GIS data indicate that almost half (84,156 acres) of the County wetlands are in private ownership and therefore subject to being impacted by County land use planning. This figure is based on 1989 land use/land cover data, which indicated a total of 175,351 acres of wetlands were present at that time.

Many of the privately-owned wetlands appear to be in riverine areas. In addition, there are concentrations of non-riverine wetlands west of Scotsmoor, in the Titusville, Palm Shores and Malabar areas, north of Cocoa, and in the southeastern portion of the County. Most of the saltwater marsh is in public ownership with the exception of areas in north Indian River Lagoon (east of Scotsmoor) and in south Merritt Island. The non-riverine wetlands and saltwater marsh are not covered by the County's floodplain policies.

Much of the privately-owned wetlands are still under an agricultural designation according to the original future land use map submitted with the comprehensive plan. The County was unable to provide the District calculations on the amount of increase in allowable units in the wetlands that would result from the proposed change in the residential density policy.

The District compared the recent flood problem event map with the wetlands maps to see if loss of these affected wetlands might add to future cumulative impacts in areas already identified as problem areas. The two areas that might be further impacted were areas along US1 in the Scotsmoor area and north of highway 528 near Merritt Island.

2. Land Use Impacts On Water Quality

Research indicates that impacts to water quality which will affect wetlands are related to land use. For example, research has shown the following water quality impacts associated with land use patterns:

- "...found that housing density accounted for almost 2/3 of the variation in nitrate levels..." Persky (1986)
- "Land uses do account for a significant portion of the variation in certain nonpoint-source...contaminants." Harper, Goetz & Willis (1992)
- "...policy decisions to protect groundwater from nonpoint-source pollutants that ignore land-use...may well be counterproductive." Harper, Goetz & Willis (1992)
- Commercial and industrial areas are known to contribute significantly greater amounts of heavy metals such as zinc and lead. Harper, H. (1992)
- Stormwater runoff and the associated potential for flooding and water quality problems significantly increase as land use changes from residential to commercial. A study in Broward County, Fl. documents the increase in runoff Mattraw and Miller (1981)

Intensifying residential densities or designated land uses can lead to the degradation of wetlands and therefore must be considered in the Comprehensive Management Plan. Removing these can lead to degradation of the extensive wetlands system in Brevard County.

3. Significance of Wetland Size

Research shows that large wetland systems are <u>not</u> inherently more valuable than isolated systems:

- Small wetlands are not merely subsets of larger wetlands. "In reality, small isolated wetlands are biologically unique systems. Because of their isolation and small size, they support a very different assemblage of species than that found in larger, more permanently wet systems. The ephemeral nature of many small wetlands makes them unsuitable for species which require permanent water." Moler & Franz (1987)

- "Because of their high productivity and fluctuating water levels, which result in seasonal concentration of prey organisms, isolated wetlands are important foraging areas for a variety of birds, especially wading birds." Moler & Franz

- "Size alone is not an adequate index of wildlife value of a wetland. Small wetlands support a diverse and unique biological community, quite different from that found in larger, permanent bodies of water. The values and functions of small wetlands are different from those of larger wetlands, but small wetlands can not be assumed to be of lesser value." Moler & Franz

- "Many wetlands functions and values derive from the location of wetlands in the watershed and the relationship of wetlands to other land and waters. Management policies must be tailored to local hydrologic and ecological conditions." National Governor's Association, Wetland Policy. (1992)

- Wetland values must apply to man's activities as well as that of the natural system. "Wetland "values" depend not only upon existing land uses but future land uses. The "value" of a particular wetland function to man (e.g., storage of one acre foot of flood water) depends on how this function affects the activities of man. For example, the value of an acre foot of flood storage may be relatively low for a wetland within a rural area with little downstream development susceptible to flooding, but high for an urban area with a large amount of downstream damage prone development." Kusler, J. 1994

These studies demonstrate that all wetlands in Brevard need to be considered when developing protection with the Comprehensive Management Plan.

4. Land Use Planning v. Permitting

Current SJRWMD wetlands permitting rules do not duplicate or substitute for sound land use planning:

- "...permitting activities cannot substitute for effective and conscientious land use planning in ensuring protection of natural resources." Correspondence from Secretary Shelley to Leroy Wright, July 1995

- "Local comprehensive land use planning efforts which identify wetlands and reflect the broader water regime, have important potential in regulating wetland areas (even if wetland protection is not now a major goal): they involve advance data gathering and mapping; they set forth relatively detailed policies for particular areas; they can regulate not only wetlands but adjacent buffers and land uses throughout a community." Kusler, J. (1994)

District rules are generally designed for large scale developments that are most likely to have the potential for regional water resource impacts on large regional systems such as the St. Johns River or Indian River Lagoon.

Policy Objections, Recommendations and Comments

After reviewing the data, analyses and other Brevard County policies related to floodplain protection, staff offer the following objections, recommendations and comments.

<u>Policies 2.7.F.3 and 5.2.F.3: Allowing for Fill in Wetlands</u>

Current SJRWMD rules generally do not require mitigation for the destruction of isolated wetlands less than 1/2 acre in size (provided the wetland is not used by threatened or endangered species, in an area or critical state concern, or otherwise of significant value). By removing this policy, the County would be allowing for the filling of these wetlands without regard to the values or functions provided by the wetlands.

Filling small isolated wetlands, without consideration of their value or function, can mean loss of important biological communities. Although the County has a no net loss policy, there is no assurance that mitigation would provide the same values and functions that the original wetland provided. Good land use planning should focus first on avoidance and minimization of impacts and consider mitigation only if absolutely necessary.

Moreover, allowing the filling of isolated wetland may exacerbate flooding problems. District regulations generally provide that the first floor of residences and public facilities be above the 100-year flood elevations. Yards, driveways and common areas in wetlands often are subject to flooding. In other counties, where flooding has been as prevalent as it has been in Brevard, loss of small isolated wetlands has exacerbated flooding. Brevard floodplain policies on compensatory storage relate to riverine floodplains only. The existing limitation on filling isolated wetlands can help to minimize the potential for flooding problems.

Recommended Action: SJRWMD objects to these policy changes and recommends that the existing policies be retained.

<u>Policies 5.2.F.1 and 2.7.F.1: Allowing Higher Residential Densities in Wetlands</u>

The proposed changes would increase the residential density located in wetlands from 1 unit/5 acres to 10 units/5 acres in areas outside the 25 year floodplain but within the 100 year floodplain. This proposed change represents a 10-fold increase in density in this area. Densities for wetlands located outside of the 100 year floodplain would be consistent with whatever the applicable zoning district permitted.

As mentioned above, research indicates that increased residential density does impact water quality, and the increased amount of impervious surface results in greater stormwater runoff. Higher densities also result in greater loss of natural vegetation and, in some cases, increased septic tank densities.

Recommended Action: SJRWMD objects to these policy changes and recommends that these existing policies be retained.

Policies 5.2.F.2 and 2.7.F.2: Allowances for Commercial and Industrial Uses in Wetlands

Commercial and industrial uses account for higher concentrations of zinc, lead, and suspended solids according to a study concerning Stormwater Loading Rate Parameters for Central and South Florida conducted by H. Harper in 1992.

It is the District's understanding that the desire of the Commission to allow commercial/industrial development in wetland areas is what formed the basis of the County's present proposal to amend the comprehensive plan relative to wetlands. The County appears to particularly desire to have the ability to authorize existing parcels with on-site isolated wetlands to be developed in commercial or industrial uses if such uses were permitted in close proximity to, or on parcels contiguous with, other commercial/industrial property. The District feels that such development may be appropriate if done in a manner that maintains the natural system functions and values within the watershed. Possible strategies include buffering of the wetlands from the more intensive uses and/or clustering development on the upland portions of such sites.

The District supports the continued prohibition of commercial and industrial uses along large expanses of contiguous wetlands or that are identified as having a high percentage of valuable functioning wetlands. However, alternative policies can be developed to address the situation described above.

Recommended Action: Staff objects to policies allowing commercial and industrial uses in and around all wetlands. Staff recommends retaining current restrictions on commercial and industrial uses with the exception of isolated wetlands that are surrounded by other commercial/industrial uses. Such areas need to be identified, mapped, acreage of potential impacts determined, and policies developed to address the County's concerns about inconsistent land uses while maintaining the integrity of high quality, functioning wetlands.

District staff looks forward to working with DCA and Brevard County to develop alternative amendments to the plan that will meet the goals of the Commission and provide necessary wetlands protection. If you need further clarification on our objections or the data and analysis, please feel free to contact me at (904) 329-4374 or Mike Miller, Intergovernmental Coordinator at (407) 984-4940.

Sincerely,

Margaret H. Spontak, Director
Division of Policy and Planning

MS:MM:ch

c: Peggy Busacca, Brevard County Planning

PARTNERSHIP FOR WETLANDS PROTECTION: THE NEED FOR LAND USE PLANNING AND PERMITTING

While there exist federal, state, and regional wetland regulatory permitting programs, each local government must provide the individual attention to their specific geographic areas and unique resource conditions to complement the protection afforded by regulatory efforts. The local government can use land use planning and zoning techniques to protect wetlands in partnership with regulatory efforts. To protect wetlands, the local government could use tools such as conservation future land use categories and compatible land uses in predominant wetland areas, promoting policies which identify acceptable activities in wetland areas, wetlands overlay zoning, set-backs from wetlands, upland buffer zones of native vegetation, performance standards for development near wetlands, transfer of development rights, and tax incentives. There are many techniques available and the local government has great flexibility to perfect its own system.

Question I:

Why must local governments address wetland protection when so many other state and federal regulatory agencies already do?

Permitting is not Planning. Federal, state, regional, and even local wetland regulation programs issue permits for development in wetlands. What these programs do not do is plan future land use, identify and implement long range goals, objectives, and policies based on a comprehensive assessment of natural resources and their wise use, conservation, and protection in light of future growth projections and community needs.

It is a losing proposition to attempt to achieve proper land use planning through a regulatory program. By the time a developer requests a permit application, it is too late for planning. All that can be done at this point is to minimize the negative impacts as best the regulatory agency can. The burden has been passed on to the regulatory permitting staff rather than dealt with as a land use policy and a natural resource protection policy in the comprehensive plan and implemented though local government land development regulations.

Local government planning is often the most effective tool in addressing cumulative impacts of development. Regulatory permitting programs are set up to permit development which has been identified by a local government to be appropriate for that specific area, and to allow development according to adopted guidelines. It is the responsibility of the local government to first decide which land uses and land activities are appropriate, in a comprehensive analysis, for specific geographic areas with their political boundaries.

The total or cumulative impact of these activities on a given area are usually debated at the local government level when the land use designations are determined for the local government comprehensive growth management plans.

Question II.

Why is land use important for wetland protection if state and federal permits are needed for wetland impacts?

Land use designations will dictate the type of activities allowed on a particular site on which a developer will request permits which in turn will determine the actual development impacts in wetlands. Land use designations adjacent to wetlands will have a significant influence over the long term viability and quality of the remaining wetland system. Many natural systems benefits and wildlife habitat values require the use of uplands adjacent to wetlands. While the permitting process may consider these issues, negative impacts can be avoided from the start with good planning.

We recognize that there is an entire spectrum of types and intensities of land development, ranging from very low density, low intensity uses to extremely dense, highly intensive uses. Certain physical types of land and certain geographic locations are more suitable for certain types of land uses and densities of development than other natural areas. Some lands are more valuable in their natural state than as developed land. In order to maximize development potential and minimize the detrimental impacts to the environment, it is necessary to plan our land development wisely and efficiently. Some of the most sensitive and valuable natural areas may not be appropriate for any type of land development activity while other natural areas may tolerate low density, low intensity land uses and still maintain their natural functions. Intensive land uses are best located in areas where the existing natural systems can best accommodate the development, and where the development impacts can be buffered from surrounding areas.

Each local government may have a range of land use types to meet future growth needs. It is the responsibility of the local government to encourage each type of use in the most appropriate area based on the natural features of the land.

Question III.

How can a local government address wetlands protection through Comprehensive Land Use Planning and Zoning?

Chapter 163 Florida Statutes and Chapter 9J-5 Florida Administrative Code specifically direct local governments towards the protection of wetlands, floodplains, water

bodies, and other natural resources. Future land uses must be compatible with soils and topography.

Many wetland and natural resource protection planning techniques are currently in practice in the State of Florida, across the nation, and in many other countries. Planning and zoning for wetlands protection is a discipline unto itself, with volumes written about different approaches and methodologies. A local government must select an approach which best meets its needs in light of the resource, growth pressures, staff capabilities, and the long range vision the community aspires towards. This approach does not, include the option to ignore designating land uses or activities based on geographic natural resources. This is an abdication of the local governments responsibility to protect wetlands at the local level through comprehensive planning.

East Central Florida Regional Planning Council
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December 12, 1995

Mr. Ray Eubanks, Planning Manager
Bureau of State Planning
Florida Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100

(6) JH 12/13/95

Re: Brevard County Plan Amendment
DCA No. 96-1

Dear Mr. Eubanks:

In response to your request, Council staff offer the following comments on proposed amendments to the Brevard County Comprehensive Plan.

A primary objective of the amendment package is to eliminate policy areas that are repeated in more than one element of the plan. The objective of making the plan more "user friendly" is a good one and we support measures that would remove unnecessary verbiage or possibly conflicting policies. We do have a couple of comments however where policy removal may leave voids in the plan or create conditions where county policy is no longer clear.

The proposed change to Conservation Element Policy 5.2F would remove guidance for locating residential, commercial and industrial uses in respect to wetlands and for the extent of filling that will be tolerated in wetlands. The same deletions are proposed where identical language appears in the policies of other elements of the plan. As Policy 5.2 provides the strongest reference to protection of existing wetlands in this element, any changes are important to consider.

As stated in paragraph 9J-5.013(3)(a), FAC, conservation element policies shall provide that "Wetlands and the natural functions of wetlands shall be protected and conserved...through a comprehensive planning process". Paragraph (3)(b) of that same rule states that "Future land uses which are incompatible with the protection and conservation of wetlands and wetland functions shall be directed away from wetlands." The rule goes on to say that setting land use density and intensity may be two of a number of appropriate ways for the comprehensive plan to accomplish this, as was done in the plan's current policies. The amendment will remove references to land uses which are to be directed away from wetlands through density and intensity restrictions, however, no replacement guidance is included nor is information on compatibility or incompatibility provided in the amendment package that would support this change.

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SECRETARY-TREASURER
COMMISSIONER EVELYN H. SMITH
CITY OF EUSTIS
EXECUTIVE DIRECTOR
MR. AARON M. DOWLING

We would agree with the amendment's rationale that local government should have some flexibility to accommodate differences in wetlands and their function and value, but would add that the guidelines for accomplishing this should be set forth in the comprehensive plan, as called for by 9J-5 and not determined at the time of ordinance adoption or amendment. Similarly, while repetitive or conflicting standards for wetlands protection from overlapping regulatory programs is a legitimate concern, the local government is the only place where development activity can be examined comprehensively. Possible losses to wetlands from activity should be balanced with other impacts, as well as with benefits which might be derived from the activity. As the county land use review process is the only means by which this can be decided, wetland policies should be included which clearly state the county's position on conserving its wetlands and help in this balancing process. Our concern is that the amendment removes the importance guidance that the plan had and fails to replace it with other guiding statements. This will make it difficult to prepare or administer related land development regulations and minimizes the basis for the county to determine that its regulations are compatible with or "further" the policies of the comprehensive plan.

In conclusion, we would recommend that guidance on how residential, commercial and industrial uses are to respond to functional wetlands remain in the plan, or, if it is desired that specific density standards be removed from the plan, then perhaps the other options for land use guidance found in 9J-5(3)(b) could be used to address the requirements of 9J-5.

I hope that these comments are of help to your review. If we can provide clarification or comment further, then please feel free to call me at 407/623-1075.

Sincerely,

Aaron M. Dowling
Executive Director

cc: Peggy Busacca, Brevard County
John Healey, DCA

due date of the local government's comprehensive plan established pursuant to law. This port master plan shall be incorporated as a part of the coastal management element, and be consistent with the goals, objectives, and policies of the coastal management element. The port master plan of a deepwater port, as it appears in the coastal management element, shall be reviewed for compliance with the criteria below. Failure of a deepwater port which is not a part of the local government to submit a deepwater port master plan shall not cause the local government to be subject to the sanctions in Sections 163.3184 or 163.3167, Florida Statutes, nor cause the regional planning council to prepare the missing port master plan. In this case the deepwater port shall not have its in-water facilities exempted from the provisions of Section 380.06, Florida Statutes, and the port shall be subject to the sanctions in Sections 163.3184 and 163.3167, Florida Statutes. The failure of a deepwater port which is an agency of a local government to prepare a deepwater port master plan may result in the sanctions in Section 163.3184, Florida Statutes, being applied and the missing deepwater port master plan being prepared by the regional planning council. Regardless of whether a deepwater port has prepared a port master plan, any port development shall be consistent with the goals, objectives and policies of the coastal management element of the jurisdiction in which the development occurs.

Section 9J-5.012 Coastal Management.

9 9J-5 9J-5.012

(b) Inventories and Analyses. The deepwater port shall prepare all applicable inventories and analyses listed in Subsection (2) for the areas they own or administer. Furthermore, the deepwater port shall inventory and analyze: landside transportation needed to support the deepwater port, in-water facilities, maintenance of in-water facilities, management of dredged material, hazardous material handling and cleanup, and handling and cleanup of petroleum products. In addition, the deepwater port shall prepare a map showing the location and boundaries of port owned or administered lands.

(c) Goals, Objectives, and Policies. The deepwater port shall develop goals, objectives, and policies to address the applicable issues listed in Subsection (3). The goals, objectives, and policies shall be consistent with the goals adopted in the remainder of the coastal management element.

(d) Port Maintenance and Expansion. The deepwater port shall set forth its plans for future port expansion for an initial five-year period and in-water facility maintenance for at least a ten-year period, and these plans shall show the economic assumptions used, the foreseeable changes in shipping technologies and port operations, the estimates of types and volumes of commodities to be handled, the needed expansions to in-water and on-land facilities, and the infrastructure required. The plan shall set forth requirements for maintaining in-water facilities and for the management of dredged material from both maintenance and expansion. The plan shall assess the impact of port expansion and maintenance on wetlands, beaches and dunes, submerged lands, floodplains, wildlife habitat, living marine resources, water quality, water quantity, public access, historic resources, and the land use and infrastructure of adjacent areas.

(e) Port Master Plan Integration into the Coastal Management Element. If a port master plan is prepared by a deepwater port, then the appropriate local government shall include the port master plan's goals, objectives, and policies and port maintenance and expansion sections in the coastal management element of its comprehensive plan. The data and analyses shall be summarized as required in Subsection 9J-5.012(2), and shall be submitted in support of the comprehensive plan.

Specific Authority 163.3177(9), (10) FS.
Law Implemented 163.3177(1), (5), (6)(g), (8), (9), (10), 163.3178 FS.
History--New 3-6-86, Amended 10-20-86, 3-23-94.

Section 9J-5.013 Conservation Element.

9 9J-5 9J-5.013

9J-5.013 Conservation Element. The purpose of the conservation element is to promote the conservation, use and protection of natural resources.

(1) Conservation Data and Analysis Requirements. The element shall be based upon the following data and analyses requirements pursuant to Subsection 9J-5.005(2).

(a) The following natural resources, where present within the local government's boundaries, shall be identified and analyzed:

1. Rivers, bays, lakes, wetlands including estuarine marshes, groundwaters and air, including information on quality of the resource available from and classified by the Florida Department of Environmental Regulation;

2. Floodplains;

3. Known sources of commercially valuable minerals;

4. Areas known by the local soil and water conservation district to have experienced soil erosion problems; and

5. Areas which are the location of recreationally and commercially important fish or shellfish,

wildlife, marine habitats, and vegetative communities including forests, indicating known dominant species present and species listed by federal, state, or local government agencies as endangered, threatened or species of special concern.

(b) For each of the above natural resources, existing commercial, recreational or conservation uses, known pollution problems including hazardous wastes and the potential for conservation, use or protection shall be identified.

(c) Current and projected water needs and sources for the next ten-year period based on the demands for industrial, agricultural, and potable water use and the quality and quantity of water available to meet these demands shall be analyzed. The analysis shall consider existing levels of water conservation, use and protection and applicable policies of the regional water management district.

(2) Requirements for Conservation Goals, Objectives and Policies.

(a) The element shall contain one or more goal statements which establish the long-term end toward which conservation programs and activities are ultimately directed.

(b) The element shall contain one or more specific objectives for each goal statement which address the requirements of Paragraph 163.3177(6)(d), Florida Statutes, and which:

1. Protect air quality;

2. Conserve, appropriately use and protect the quality and quantity of current and projected water sources and waters that flow into estuarine waters or oceanic waters;

3. Conserve, appropriately use and protect minerals, soils and native vegetative communities including forests; and

4. Conserve, appropriately use and protect fisheries, wildlife, wildlife habitat and marine habitat.

(c) The element shall contain one or more policies for each objective which address implementation activities for the:

1. Protection of water quality by restriction of activities and land uses known to affect adversely the quality and quantity of identified water sources, including natural groundwater recharge areas, wellhead protection areas and surface waters used as a source of public water supply;

2. Conservation, appropriate use and protection of areas suitable for extraction of minerals;

3. Protection of native vegetative communities from destruction by development activities;

4. Emergency conservation of water sources in accordance with the plans of the regional water management district;

5. Restriction of activities known to adversely affect the survival of endangered and threatened wildlife;

6. Protection and conservation of the natural functions of existing soils, fisheries, wildlife habitats, rivers, bays, lakes, floodplains, harbors, wetlands including estuarine marshes, freshwater beaches and shores, and marine habitats;

7. Protection of existing natural reservations identified in the recreation and open space element;

8. Continuing cooperation with adjacent local governments to conserve, appropriately use, or protect unique vegetative communities located within more than one local jurisdiction;

9. Designation of environmentally sensitive lands for protection based on locally determined criteria which further the goals and objectives of the conservation element; and

10. Management of hazardous wastes to protect natural resources.

(3) Policies Addressing the Protection and Conservation of Wetlands.

(a) Wetlands and the natural functions of wetlands shall be protected and conserved. The adequate and appropriate protection and conservation of wetlands shall be accomplished through a comprehensive planning process which includes consideration of the types, values, functions, sizes, conditions and locations of wetlands, and which is based on supporting data and analysis.

(b) Future land uses which are incompatible with the protection and conservation of wetlands and wetland functions shall be directed away from wetlands. The type, intensity or density, extent, distribution and location of allowable land uses and the types, values, functions, sizes, conditions and locations of wetlands are land use factors which shall be considered when directing incompatible land uses away from wetlands. Land uses shall be distributed in a manner that minimizes the effect and impact on wetlands. The protection and conservation of wetlands by the direction of incompatible land uses away from wetlands shall occur in combination with other goals, objectives and policies in the comprehensive plan. Where incompatible land uses are allowed to occur, mitigation shall be considered as one means to compensate for loss of wetlands functions.

Specific Authority 163.3177(9), (10) FS.
Law Implemented 163.3177, 163.3178 FS.
History--New 3-6-86, Amended 10-20-86, 5-18-94.

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and it is not discriminating if it is awarding the lowest and best bidder.

Commissioner O?Brien stated the newsletter is a very good idea; and it is reaching out and making sure businesses are involved in the process. Chairman Cook stated he concurs with Commissioner O?Brien; the County needs to make sure it is reaching out and giving individuals opportunities; it cannot guarantee results; the only reason to track something is to guarantee results; and that is not right.

Motion by Commissioner Higgs, seconded by Commissioner Scarborough, to approve staff responses to EEO/Minority Issues Task Force recommendations, including expanding provision in the Affirmative Action Plan to include the County Manager and Assistant County Managers on Page 3 in Goal 5. Motion carried and ordered unanimously.

DISCUSSION, RE: POLICY FOR USE OF MEETING ROOMS

Motion by Commissioner Ellis, seconded by Commissioner O?Brien, to approve request to change Policy BCC-17 to allow religious and partisan political activities the use of conference and meeting rooms outside normal working hours at the Government Center, including Option 2 at $10 per hour for large conference room and $20 per hour for large auditorium, charging personnel costs if a County employee is needed, and authorizing the County Manager to work out the scheduling; and authorize the Chairman to execute the revised Policy.

Motion by Commissioner O?Brien, seconded by Commissioner Ellis, to allow Janet Gaulin to speak on the issue. Motion carried and ordered unanimously.

Janet Gaulin inquired what happens if someone damages the facility; with County Manager Tom Jenkins responding there will be language included in the document which will hold the individual responsible and they would not be allowed to use the facility again. Chairman Cook stated in most cases, there will be a County employee present.

Chairman Cook called for a vote on the motion. Motion carried and ordered unanimously.

CONTRACT FOR SALE AND PURCHASE WITH JOHN M. AND JAMES A. BOVIS, RE: MALABAR ROAD WIDENING PROJECT

Motion by Commissioner Higgs, seconded by Commissioner Ellis, to authorize execution of Contract For Sale and Purchase and a Sign Easement with John M. and James A. Bovis for the Malabar Road Widening Project. Motion carried and ordered unanimously.

RESPONSE TO DEPARTMENT OF COMMUNITY AFFAIRS ORC REPORT, RE: 1995B CONSERVATION ELEMENT AMENDMENT

Fred Robitschek, 560 Teakwood Avenue, Satellite Beach, stated he was informed earlier today that there has been some agreement in principle between the St. Johns River Water Management District and the Board on the issue; that is good news; and the public wants rational compromises. He noted rational comprehensive planning which protects the environment sustains the quality of life and preserves property values; removal of wetland protections by reducing government regulation may result in the taxpayers subsidizing the piecemeal destruction of what our fathers passed down to us and what we pass on to our children; and there is room for compromise in areas involving the commercial activities on disturbed sites. He stated on the other areas like density and wetlands, he would have preferred to see the previously existing protections restored; it has been clear that the majority of people in Brevard County want continued, specific and adequate environmental protection; and they are asking for smart government, intelligent compromise, and decisions made on facts and not opinions.

Kim Zarillo, 760 Cajepat Circle, Melbourne Village, representing the Florida Native Plant Society, requested the proposed changes not be accepted. She inquired what Ordinances, if any, would need to be changed should this language be changed in the Comprehensive Plan and what the cost to the taxpayers would be.

Chairman Cook stated no ordinance has to be changed with this change in the Comprehensive Plan; and the ordinances cannot be in conflict with the Comprehensive Plan.

County Attorney Scott Knox responded the ordinances have to be consistent with the Comprehensive Plan and that may or may not require changes depending on what language is included in the existing ordinances.

Margaret Hames, 667 Acacia Avenue, Melbourne Village, member of the Board of Indian River Audubon Society, read a letter from the Society as follows: ?Dear Brevard County Commissioners. The following is our response to proposed alternative language regarding the Wetland Policy in the Brevard County Comprehensive Plan Conservation Element subsequent to the Department of Community Affairs? rejection of the County?s initial proposed amendments. 5.2 F1. We object to allowing residential development on parcels of less than five acres. The current density limit was established initially for a reason. There would be adverse cumulative impacts sustained by existing wetlands if this change is made. In addition, the transfer of development rights would increase density in upland habitat adjacent to wetlands. We could support this only if the buffers established by the wetlands were expanded adequately so that the existing buffers would not be overwhelmed by the increase in impervious surface area. Buffers containing natural native vegetation protect wetlands from development and

protect the increased density of new development from flooding. 5.2 F2 B. We object to automatically allowing commercial/industrial development in an existing industrial or commercial area. The wetland was there first and merits preservation or restoration, if only because of its importance to Brevard?s vowed diversity. Wetlands are vitally important habitat for a wide variety of plants, wildlife and birds, both resident and migratory species. Also, if development is allowed in these areas, who is going to handle the runoff? The taxpayers will bear the financial burden of this increased runoff. 5.2 F3. The current wording regarding utilization of fill is satisfactory. The proposed wording requires compliance with development requirements. Conservation policies should be based on their own merits. Development requirements should comply with the Comprehensive Plan?s Conservation Element, not the other way around. 5.2 H. We object to the addition of this section for it ties the County?s hands and prevents the County from taking action to protect the health, safety and welfare of the public, which is the overriding responsibility of our government. In response to objections that all wetlands are treated equally, we agree that there may be room for change. For instance, Ordinances could be changed to increase mitigation ratios for forested wetlands from 2:1 to 5:1 to account for the longer length of time required to replace this type of wetland. And contrary to statements made earlier, we understand that if wetland protection policies are removed from the Comp Plan, the Ordinances implementing them are required to be eliminated. We are concerned about the possibility of a costly and unnecessary administrative hearing. The environmental community did not precipitate the necessity for a possible hearing. We can only hope that you, our elected officials, will act in a responsible manner regarding the protection of our County?s remaining wetlands.?

Martin Lamb, 2034 Adams Avenue, Melbourne, stated he is not afraid of the federal, state, or County governments; he wishes all the Commissioners could do the same and do what they think is right in their heart and not necessarily be afraid of lawsuit and litigation; and Brevard County needs to stand up for what it believes is right. He noted the environmentalists come saying they are coming with the word of the environment to protect it; and they are going to end up owning all of the land.

Charles Moehle, 65 Country Club Road, Cocoa Beach, stated there needs to be some amendment and more fair play to the Conservation Element regarding development in commercial and industrial uses; and provided a map and information to the Board explaining his reasons for having such amendment.

Catherine Stanton, 1976 Tyler Avenue, Melbourne, advised she supports the Sierra Club and Audubon Society?s viewpoints on this issue.

Pat Poole, P. O. Box 854, Melbourne, stated the people have elected the Commissioners as their officials; they need for the Board to do what is best for the County; and she believes the Commissioners know what is best for

the future of Brevard County. She noted the developers want to make money; they criticize the environmentalists; the environmentalists do not get paid big salaries to tell the Board what they want; and they come to the meetings to let the Board know how much they care about Brevard County. She described the devastation that has taken place in the County, including the pastures at Viera; stated she hopes the Board realizes how important the environment is; and requested it not change the Plan as it is a good one.

William W. Kerr, 325 Fifth Avenue, Suite 208, Indialantic, stated the Board has a difficult decision in front of it; he finds himself again in the middle; there are some things that are good about the existing regulations; and there are some things that are restrictive. He noted the concept of ecosystem management is now in vogue which makes a lot of sense; it means areas are managed of large expanses that are basically uninhabited for the environment; and those areas that are intensively inhabited are managed for people. He stated it does not make any sense to have an isolated wetland in the middle of a high intensive residential development; it does not do anything but attract plastic cups and probably serves as a function for flooding; and it does not serve as a real viable habitat for offsite, well independent species. He stated to forbid commercial development in a wetland and put commercial development all around that wetland makes no sense; for the property rights people, it is taking a very valuable piece of property and road frontage and restricting their use; and for the environmental people, it is proposing to have a wetland in an area where it is really not serving a viable function. Mr. Kerr advised he is not present to object to the current changes; he wants to try and assist the County with his 10 years of experience in interpreting what impacts there are now to people who apply from a third person who is not economically involved in any piece of property in Brevard County; and he derives his living from working with environments and working out a compromise between the developer and agencies.

Rob Lee, 1275 S. Patrick Drive, Satellite Beach, stated he is a local civil engineer and uses the Ordinances and Comp Plan on a daily basis; and he is present to assist the Board in answering any questions and act as a sounding board for suggested language. He noted he is not here to represent any particular side; there are some unfair provisions in the current Code that need to be changed; and they do not satisfy a useful purpose. He stated there is no difference between a commercial impact and a residential impact; a wetland impact is a wetland impact; and the cost of resource replacement, mitigation, and preservation has a way of keeping unfeasible uses away.

Mary Todd, 135 S. Bel Aire Drive, Merritt Island, representing the Turtle Coast Group of the Sierra Club, stated the Club prefers the way the Comp Plan is at the present time and unamended; but if the Board chooses to amend it, the Club would like the County to consider some specific suggestions; and these are based on the language that she received as the County?s draft alternative language. She noted for Policy 5.1, the Club suggests that the County not eliminate the language derived in threshold or

connection requirements; in Policy 5.2.F.1, as a first choice, the Club prefers the original Comp Plan language; however, if the County is going to change the Policy which involves residential densities, the Club requests the language, ?provided buffer zones are established to insure no loss of wetland functions? be inserted. Ms. Todd stated in Policy 5.2.F.2.C, the Club strongly opposes this provision as it would lead to urban sprawl; and in Policy 5.2.F.3, the Club suggests the County keep the original Comp Plan language. She advised the Turtle Coast Sierra Club prefers the original Comp Plan language; and it sincerely hopes if the Board decides to approve alternative language, it will consider the Club?s suggestions which she will provide to the Board.

Richard Wallace, 560 Ruth Circle, W. Melbourne, stated he takes exception to the County?s actions to weaken the wetlands protection as they are now written; the Board should not favor any interest of groups or people who have secured or bought lands in Florida that should never have been developed; Florida has a lot of wetlands; and the County needs to leave the wetlands alone.

Priscilla Griffith, 6414 South Drive, Melbourne, Natural Resources Chair of the League of Women Voters of the Space Coast, stated since she has already submitted comments on the alternative wording proposed for the Conservation Element of the Comprehensive Plan and since such wording has apparently been superseded by further changes which she has not had a chance to study. she will not comment on specifics. She noted a letter dated February 4, 1996 in the Florida TODAY written by Commissioner Cook indicated, ?I am certain that reasonable people working together in a rational manner can find a solution to this very complicated issue?; and he was referring to the County?s wetlands policy. She noted this statement is an encouraging one for all people of good will who are concerned for the environmental and economic health of Brevard County; environmental and economic factors are interdependent and both are intimately related to the fate of the County?s remaining wetlands; and most people who acknowledge this relationship are intensely concerned about the non-jurisdictional wetlands and the prospect that increasing density of development in both non-jurisdictional and jurisdictional wetlands will increase pollution, stormwater runoff, wildlife destruction, flooding, and health and safety factors. Ms. Griffith stated if the political decision is made that the original wording in the Plan should not be retained, then whatever compromise is reached should be one that truly does no further damage to Brevard?s wetlands, while reasonably preserving legitimate private property rights as established by case law developed over almost 100 years.

Harry Fuller, 424 Dorset Drive, Cocoa Beach, representing Space Coast Builders Association, stated the Association also likes wetlands; many people in the community do not understand the difference between government regulation of property and government taking of property; there is a big difference; and what everyone does not understand is that in government, you cannot regulate property to non-use. He noted there is a lot

of very recent case law that says the Fifth Amendment of the Constitution still exists; it says you shall not confiscate people?s property without reasonable compensation; when reviewing this ordinance, it does a lot of that; and a lot of government agencies are doing that today. Mr. Fuller stated in the case of Lucas vs. the State of North Carolina, Mr. Lucas won his case; such case establishes government cannot take someone?s property or regulate it down to a non-use; when someone has a wetland and government says it cannot use it at all, that is not regulating the property but taking it; and if the County is going to do anything, it cannot deny the people the right of their property. He noted if an individual has wetlands and wants to use it, he or she has that right under the Constitution of the United States; government and agencies are being challenged in courts; and such courts are ruling in favor of the property owner.

Norma Adams, 801 S. Brevard Avenue #G, Cocoa Beach, stated she is a member of the Sierra Club and League of Women Voters; and she agrees with the Club and League presentations 100%. She requested in any revisions to the Ordinances that relate to wetlands or land use, that the verbs be reviewed; stated there are too many mays, coulds, and wills; and there needs to be more shalls as they are legal.

Commissioner Ellis stated he started working on this issue approximately two years ago; what he found in the Comprehensive Plan was a Plan that was very inflexible; however, the way it was being dealt with by the staff was to ignore the inflexibilities in the Plan and work around it. He noted if the Plan was enforced to the letter of how it was written there would be a great uproar in the County; that is true even today; and there is nothing in the Plan which specifies what type of wetland, how large a wetland, and how much it has to occupy on the parcel. He stated what has been going on for years since the Comprehensive Plan is everyone has not enforced it; the Plan has a conflict in it; and gave various examples of different issues that have taken place, including zoning. He advised the Future Land Use Element does not contain a wetlands overlay; and under the current Comprehensive Plan, there is no flexibility for commercial or residential land uses. He noted 35% of Brevard County is owned by government right now, 15% is developed, and the remaining 50% is undeveloped; and there needs to be some kind of flexibility in the Comprehensive Plan so staff can address things in a common sense manner. Commissioner Ellis stated it is the small land owner who gets clobbered by this; the big land owner can afford to get the attorneys, consultants, engineers and everything he needs to work his project; and the person with the one or two acres gets hit because he cannot afford everything.

Chairman Cook concurred with Commissioner Ellis? comments; stated it seems the bigger developer has an easier way of getting through the regulatory process; that is something that has disturbed him for a long time; and that includes the County. He stated the Comprehensive Plan needs to be made fair for everyone, regardless of who someone is; many of the concerns came from people trying to build their homes, not developers; there is no

flexibility in this Plan and no appeal process; and these are very important issues.

Commissioner Higgs stated the County has had people at the zoning and Commission levels who have run into wetland difficulties; it has been able to get that flexibility changed; and the motions made and passed were to remove all provisions referencing wetlands from the Comprehensive Plan and to amend those policies in the Future Land Use and Conservation Elements in 5.1 and 5.2. She inquired does Commissioner Ellis have specific language at this point to build in the flexibility.

Commissioner Ellis stated the original language from Assistant Growth Management Director Peggy Busacca on February 1, 1996 regarding Policy 5.2.F.1 on density use which says, ?unless strict application to the Policy renders a parcel less than five acres is unbuildable?, handles the issue of the smaller lots less than five acres and they meet the Future Land Use Element and every other aspect of the Comprehensive Plan and Zoning Code. He noted on Policy 5.2.F.2.B, he does not believe it is a good idea to tie the Comprehensive Plan down to specific roads; and that should be done in an ordinance and not the Plan. He stated he does not want to delete ?H?; it is a critical element; it is the portion of the Plan amendment that says you shall not go through administrative rezoning of the property; he has seen what has happened in other areas with administrative rezonings of commercial properties and all of a sudden they are administratively rezoned to residential; and that is the reason he supports this provision because one of his biggest fears is going through the entire County administratively rezoning.

Assistant Growth Management Director Peggy Busacca explained a map provided by Natural Resources based on information from the Property Appraiser and St. Johns River Water Management District showing wetlands in the area, and commercial and industrial zonings in Brevard County currently; and described the Future Land Use Map to the Board.

Commissioner Scarborough stated he received information on Friday and also today; this issue is important and there needs to be a workshop; he knows a lot of people came here today hoping the item could be disposed of; but it is going to take a number of hours to discuss; and there are people in the audience who have a vital interest in it and have not seen the current information.

Chairman Cook inquired has there been coordination with the St. Johns River Water Management District on the current language.

Carol Senne, representing the St. Johns River Water Management District, stated the yellow sheets in front of the Board were recently reviewed by the District; as compromised language has been developed, the District has been reviewing it and sending its comments back to County staff; and where staff

has felt comfortable, it has incorporated those comments. She noted the District and staff met again this afternoon on the language that the Board has in front of it; there are three major issues, including single-family lots, future changes to the County?s Future Land Use Map, and existing development within presently designated commercial or industrial areas; conceptually and on a policy level, the District and staff agree in concept; but the language that the Board eventually adopts and the way it adopts it is definitely its prerogative. She advised what the District is looking at is permitting to protect the wetlands in the existing designated Future Land Use Map for industrial and commercial, and allowing the County?s existing policies to protect the wetlands as they exist in the areas that have not been designated. She noted the District agrees if someone presently owns a lot, they have the right to build on that lot; but it does not support the proliferation of the subdivision of people who own land larger than five acres to, by metes and bounds, subdivide that thereby promoting increased densities in wetland areas; if someone owns a lot right now, they have the right to develop it; and the District will permit that lot. Ms. Senne stated there are some very serious constraints given to the amount of fill and mitigation in those particular scenarios; but the District supports the existing Policy for densities in wetland areas of one to five acres; and if someone has an existing situation, the District would support allowing that one building unit to go on that lot if it is an existing condition. She noted the District and staff has hit the three areas the County has had problems with; and right now conceptually that is where the District and County staff have come to an agreement. She advised the District?s staff will be present at the workshop whenever the Board decides to have it.

Chairman Cook stated the Board appreciates the efforts of the District and County staff who have worked very hard.

Motion by Commissioner Scarborough, seconded by Commissioner O? Brien, to direct staff to schedule a workshop to discuss alternative language developed for 1995B Amendments to the Conservation and Future Land Use Elements prior to the deadline. Motion carried and ordered unanimously.

The meeting recessed at 3:35 p.m.

The meeting reconvened at 3:55 p.m.

PUBLIC HEARING, RE: ORDINANCE AUTHORIZING TEMPORARY USE AGREEMENTS

Chairman Cook called for the public hearing to consider an ordinance authorizing temporary use agreements.

There being no objections heard, motion was made by Commissioner Scarborough, seconded by Commissioner Ellis, to adopt Ordinance amending Chapter 62, ?Land Development Regulations?, Code of

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MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA
February 16, 1996

The Board of County Commissioners of Brevard County, Florida, met in special session in a workshop format on February 16, 1996, at 11:05 a.m. in the Government Center Multipurpose Room, Building C, 2725 St. Johns Street, Melbourne, Florida. Present were: Chairman Mark Cook, Commissioners Truman Scarborough, Randy O?Brien, Nancy Higgs, and Scott Ellis, County Manager Tom Jenkins and County Attorney Scott Knox.

DISCUSSION, RE: PLAN AMENDMENT LANGUAGE RELATING TO WETLANDS

Chairman Mark Cook acknowledged the presence of former Commissioners Joe Wickham and Carol Senne.

Commissioner Higgs recommended the Board have its discussion and set aside time at the end for public comment, because the public needs to hear the issues. Chairman Cook stated that would be the best way to proceed with this meeting; and recommended the public have three minutes each to speak on the wetlands topic.

Assistant Growth Management Director Peggy Busacca advised Department of Community Affairs representative John Healy is present to answer any questions or advise of Department of Community Affairs? concerns; and Carol Senne and Mike Miller from St. Johns River Water Management District are also available to answer any questions. She stated the wetland policy dated February 8, 1996 includes proposed amendments to the Future Land Use and the Conservation Elements; there are planning issues and permitting issues; and they are trying to separate those issues. She stated the intent of the language is to have the permitting issues considered within the Conservation Element and the planning issues within the Future Land Use Element; Policy 1.6, Criterion A discusses the environmental constraints of wetlands on residential development; and it has some of the issues the Board discussed previously, that a legally established parcel made unbuildable by strict application of the policy, will be given a building permit if it meets all other requirements. Ms. Busacca advised there is new language about transfer of development rights; that is an incentive for people not to be in the wetlands; and those same incentives are also for floodplains. She stated Policy 2.7 talks about locational criteria for commercial/industrial land use based on wetland policies; and Criterion C addresses the issue about administrative rezoning. She stated it says, ?Existing commercial and industrial land uses, and vacant commercial and industrial land uses, which are consistent with the Future Land Use Map, are deemed to be consistent with this Policy.?

Chairman Cook inquired what would Policy 2.7 do; with Ms. Busacca responding there was a concern from some of the Commissioners that staff would administratively rezone existing commercial or industrial land based upon the existence of wetlands or what had once been a wetland.

Commissioner Ellis inquired if residential wetlands could be done that way; with Ms. Busacca advising yes it could, but it is not included here. She stated there is some protection for residential because of the legally established lot language. Commissioner Ellis inquired if a person can get a building permit if his lot is platted; with Ms. Busacca advising it says legally established, so it includes metes and bounds as well. She stated the language under Criterion B is that administrative rezoning would not necessarily go forward based upon the wetlands policies. Commissioner Ellis inquired why the old language was not used; with Ms. Busacca responding she was trying to find a compromise since there were two different opinions, and tried to come up with language the Board would find acceptable. Commissioner Ellis stated the old language was very precise and was not up for interpretation; and he does not understand the new language. Ms. Busacca stated she was trying to be very specific and give the Board another option.

Chairman Cook recommended Ms. Busacca give an overview before they start the discussions. Commissioner O?Brien stated there are four major topics of the plan--residential uses, commercial uses, whether wetlands can be filled or not, and whether the administrative rezoning could take place; and if they take the items one at a time, at least they will focus on the major plights. He stated there is also other language to look at for other parts of the Plan; residential density may be addressed in four different locations within the Land Use Element; and the Board can adjust according to that one item first, then take commercial and go through the entire item second.

Ms. Busacca advised the last change is on page 3 and the strike throughs in Criterion F; the rationale is that the criteria were utilized more as planning tools than as site design tools; and the criteria have been simplified so that the only thing that is contained within Conservation Policy 5.2 is site design criteria, rather than planning criteria. She stated the Water Management District and the Department of Community Affairs are suggesting that the Board consider putting back some additional site design criteria in the Plan; but the intent was to remove the planning language out of there. Ms. Busacca stated Future Land Use Element Policies 1.6 and 2.7 were intended to be planning tools; and if someone came in for plan amendment or rezoning, they could use those criteria to decide whether or not the request is a good idea, and not necessarily to decide a design. She stated if small portions of the project were wetlands, and it was still designed to put a commercial or industrial site on there, then the person should have the opportunity, if it is consistent with all the requirements of the Comp Plan, to have that shown on the Future Land Use Map as commercial/industrial, and then go into the permitting process.

Commissioner Higgs inquired if Department of Community Affairs or St. Johns River Water Management District have comments about the current proposals based on their original objections to the changes. Commissioner Scarborough stated the Department of Community Affairs and St. Johns River Water Management District representatives should comment so the Board does not go in one direction and then they want to add something. Commissioner Higgs stated the reason the Board is discussing this is to see if there is language the majority of the Board can feel comfortable with, would accept, and keep out of administrative hearings. Chairman Cook stated it would be a good idea for the Department of Community Affairs and St. Johns River Water Management District to come forward and make any comments they feel would help.

John Healy with the Florida Department of Community Affairs (DCA) stated the County Plan provided adequate protection to wetlands which is one of the reasons the Plan was found to be in compliance; the changes that were proposed were of such a nature that protective actions would be seriously diminished; and encouraged the Board to retain protective action, while discussing certain specific circumstances where the Plan had not functioned as intended to allow certain activities to occur. Mr. Healy stated there should be strong protection given to wetlands, such as directing land uses away from wetlands that are compatible with the protection of that natural resource. He stated DCA was trying to retain protective measures that were established in the Plan; and once the Board gets to the specifics, he would be happy to comment on those.

Commissioner Scarborough stated when they talk about the specifics, he would like to find out if that would be acceptable to the Department of Community Affairs; and if there are things that concern Mr. Healy, he could share it with the Board. Chairman Cook inquired if Mr. Healy saw the proposed language; with Mr. Healy responding yes, and he made some comments. He noted the St. Johns River Water Management District was the Department of Community Affairs? partner. Chairman Cook suggested Carol Senne come to the table with Mr. Healy.

Mr. Healy stated he was initially concerned with some of the language in Policy 1.6, Criterion A, which spoke to two residential lots; it would be appropriate to recognize that lots of record established at the time of the Plan adoption had certain development rights associated with those lots; however, the language should not apply to newly created lots. He stated there should not be lots created that do not have adequate developable areas to meet the density guidelines which were established per the Future Land Use Map; and if the density on the map is two units per acre, creating a lot should at least have a minimum half acre of uplands to develop on.

Commissioner Ellis inquired what if it was five acres per unit; with Mr. Healy responding the wetlands would still remain one dwelling unit per five acres, but they have to have enough developable land to meet the Future

Land Use density allowed under the category. Commissioner Ellis inquired if in that case the lot would be unbuildable; with Mr. Healy responding the hope is not to create the lot in the first place. Commissioner Ellis stated the County has some lots that are already created. Mr. Healy stated if those were lots of record, to be consistent with State law, they have development rights for family dwellings. Commissioner Ellis stated a circuit judge ruled the lot was unbuildable based on the County?s Comp Plan. He stated Department of Community Affairs approved the Future Land Use Element which is density based; and what the Board has here is a conflict between the wetland?s portion and Future Land Use Element, because if the lot meets the Future Land Use Element criterion of one unit per acre, but does not meet the wetland?s restrictions, then the two do not mesh. Mr. Healy stated he is not sure he would look at it in that manner; the Future Land Use Map provides general guidelines for developing those areas; and they do not look at the plans through individual components isolated from one another because they work together. He stated an area that is designated for a specific land use and density associated with that land use does not necessarily mean that the entire area is appropriate for that land use. He stated zoning categories are intended to further refine development that is allowed under future land use categories; and the Board would look at it as a whole condition to its local zoning regulations and local land development regulations. Commissioner Ellis inquired if that is the way the courts would view it; with Mr. Healy responding he would not pretend to speak for the courts. Commissioner Ellis stated the County is dealing with a lot more issues now; when it ends up in court over a zoning case, generally it is future land development; and inquired if Ms. Busacca agreed with him that what is brought before the court on a zoning case is future land development; with Ms. Busacca responding often that is the case.

Commissioner Higgs stated she does not understand the conflict, since the Board crafted the provisions; and it said the same thing under 1.C as it did under 2.7. Commissioner Ellis stated the conflict is if they have a one-acre lot and future land use is one unit per acre, zoned RR-1, the lot is declared unbuildable because it does not meet the five-acre requirement for wetlands. Commissioner Higgs stated if the Board takes Mr. Healy?s suggestion, that the time be the adoption of the Comp Plan in 1988, those lots would not be determined unbuildable based on the Plan. Commissioner Ellis stated he had two lots that were unbuildable. Commissioner Higgs inquired if the lots were unbuildable because of the Comp Plan; with Commissioner Ellis responding no, because the previous owner legally subdivided his property and a person bought the legal subdivision. He stated it was not a metes and bounds subdivision; it was a legal subdivision and all the zoning and future land use development requirements were met; it had frontage on a County road; and it had everything, except when a person wanted to build on the lot, it did not meet the Comp Plan requirement of one unit per five-acres. Commissioner Higgs inquired if the provision would take care of that; with Commissioner Ellis responding not if it goes back to 1988.

Carol Senne with St. Johns River Water Management District stated the District felt comfortable with the language because the Future Land Use Map had qualifications that said locations and densities were subject to specific policies delineated on the Map, and specifically communicated those policies may alter or take precedence over the density or whatever, that is on the Land Use Map. Commissioner Ellis stated the language would work for an isolated lot, but if it goes back to 1988, they will be right back where they started, and would not need any new language because it would be, if it was subdivided prior to 1988.

Commissioner Higgs inquired if there is a way to deal with this; with Mr. Knox responding the Comp Plan has a taking review provision, so if someone claims he had his property taken and cannot use his lot, he can come before the Board, and the Board can resolve that issue. Commissioner Ellis stated he would challenge that, because they have been to court and the judge declared the lot unbuildable. Mr. Knox stated the case that Commissioner Ellis is referring to did not involve the County. Commissioner Ellis inquired if they came to the County, would the Board then buy the lot; with Mr. Knox responding there is a choice of buying the lot or resolving the conflict by modifying regulations. Commissioner Ellis stated according to what the judge said, the Plan would have to be amended in order for Brevard County to consider a variance. He inquired if Mr. Knox thought the judge was incorrect; with Mr. Knox responding no, the judge probably was not aware of the taking provision in the Comp Plan; it probably was not the judge?s intention, but what he thought; so that was the reason the decision came down the way it did in that particular case. Commissioner Ellis stated the County has gone through this type of thing with the same judge on different issues, for example the Fountain case; and in that case the property they had came to the County first to try to resolve the taking issue before they went to court. Mr. Knox stated there is a mechanism in the Comp Plan to deal with the taking issue. Commissioner Ellis stated it should be coordinated with the Circuit Court Judges because what they are telling people coming to court now is that plaintiffs cannot get a variance from Brevard County. He stated that not everybody who has an acre of land has $20,000 or $30,000 for endless attorneys? fees; if he had land and went before a Circuit Judge and was told he was out of luck, he would hope that Circuit Judge would understand the issues and would be telling him the right thing. Mr. Knox stated the reason the County has the taking provision in the Comp Plan is so the property owner does not have to spend $20,000 for attorneys? fees to go into court and try to get the taking established, because it comes before the Board and the Board makes that decision. He stated in the case that is being discussed, it is very likely the attorneys did not know there was a taking clause. Commissioner Ellis inquired if the County employees know that; with Mr. Knox responding he was aware of it and so was Peggy Busacca. Commissioner Ellis inquired if the property owner is in the Zoning Department and is told the lot is unbuildable under the Comp Plan, would they notify the owner that he needs to appeal to the Board under a taking clause. He stated he did not think they did that; and it is a real problem if they are sending people to court when they do not need to go

there. Ms. Busacca stated her staff frequently advises people of their vested rights and hands them the vested rights Ordinance, but she cannot speak for what other staff does. Commissioner Ellis stated it should be standard policy that if there is a clause in the Comp Plan, they appeal the process with the Board, and anytime property owners come in and are denied based on Comprehensive Plan issues, they should be told that their next step is to appeal to the Board, not to the Courts. Commissioner Higgs stated she felt like that problem was settled. Commissioner Ellis stated he was not convinced that the problem was solved; he has never seen an appeal to the Board under the taking clause in the Comprehensive Plan; and that seems unusual. He stated if it is there, everyone should know about it, but it has never been before the Board in three years. He inquired if Mr. Knox found that unusual; with Mr. Knox responding there was one case, the Sadie James case. Ms. Busacca stated the County had numerous vested rights requests; and a couple of people provided information about a taking, but have not moved forward.

Chairman Cook inquired if a better term would be ?environmentally significant? instead of ?functional wetlands.? He stated functionality can be very vague; almost any term that is used could be subject to interpretation; but environmentally significant would be a more appropriate term.

Commissioner O?Brien stated he spoke to Ms. Busacca about functionality and tying it to mitigation, since that is where it really belongs; and the St. Johns River Water Management District rates functionality. He inquired if there are only two kinds of wetlands or three; with Ms. Busacca responding she was not sure, but Ms. Senne may know. Carol Senne advised there are three types of wetlands, high, medium, and low. Commissioner Ellis inquired if mitigation ratios are based on that. Commissioner O?Brien stated it says ?within functional wetlands as defined in Conservation Policy 5.2; and inquired if that is the County?s policy or St. Johns District?s policy; with Ms. Busacca responding it is the County?s policy. Commissioner O? Brien inquired if the Policy follows the definition of functional wetlands; with Ms. Busacca stating Policy 5.2, Criterion B talks about functionality; it says the wetlands will be considered functional unless the applicant demonstrates that the water regime has been permanently altered, but there may be other mechanisms, besides water regime, that the Water Management District may look at for functionality. Commissioner O?Brien stated he has seen functional wetlands that he would call functional, and he has seen dysfunctional wetlands behind Merritt Square Mall that had been declared a wetland by the District; the District allowed the applicants to mitigate on site to the rear of the property; but the County said they could not use it at all. He stated the functionality of that wetland was declared low by the District; he walked through it and found the ground to be dry and grassy; there was a small area that was wet and not draining where the drainage ditch was 50 feet away; and if the property owner had gotten a shovel and literally dug a ditch it would probably be dry. He stated it was isolated on all three sides plus a street; so functionality is an important part of this issue. Commissioner O?Brien stated Policy 5.2, Criterion B should

dictate superior quality, medium quality, low quality wetlands and define them somehow so there is a regiment that the County can follow with the St. Johns District; and he has no problem keeping functional.

Commissioner Higgs inquired if the term functional wetlands is consistent with what the Water Management District would use, or is there another term; with Ms. Senne responding to define functional wetland would be a difficult exercise; the approach they took was to consider the functionality of a wetland; it is definitely a permitting issue, not a planning issue; and issues that are considered under permitting can and often are different from issues considered in a planning discussion. She stated the Environmental Resources Department has weighed different criteria that are considered in determining the functionality of a wetland; it is not only used in determining mitigation, but there are times when they require avoidance of impacts on the wetlands; so they not only look at mitigation, but also avoidance. Ms. Senne stated mitigation is only considered when they cannot avoid or minimize; and how stringent they are in those areas depends upon the classification of a wetland.

Commissioner O?Brien stated mitigation has been allowed to take place on high land, rather than lowlands where wetlands would be functional, so over the years a lot of the mitigation has been unsuccessful; and the County has allowed mitigation to take place in areas where functioning wetlands could not continue to exist. Commissioner Ellis stated in most cases the mitigation itself is handled by the Water Management District.

Ms. Senne stated mitigation policies in the District have changed over the years; sometimes they favor acquisition and restoration of altered wetlands; and they are now looking at an eco-system approach. She stated several years ago they looked at a very strong policy on artificially-created wetlands; that was micro-management planning; and they do not want to get into site specific analysis. She stated once the decision is made that this is appropriate for the area, then they consider minimization of the impact. Commissioner Ellis inquired if the District does site specific analysis, why is it also included in the Comprehensive Plan; with Ms. Senne responding planning is the County?s primary screening tool, and if planning is done correctly, then very little that is difficult to permit should come to the environmental agency. She stated planning should direct inappropriate activities away from different resources; and the way to approach it is to look at certain activities that are more appropriate in certain areas than in others so that certain things may never have to come to the permitting stage. She stated that is a very broad analysis; they understand they are constrained by existing zoning; there are old platted subdivisions that have been grandfathered in; and if the Board had to make those decisions now, it probably would make different decisions. She stated they do not make site specific evaluations in the planning process.

Commissioner Ellis inquired if it makes sense to insert residential areas within existing commercial/ industrial areas. He stated the way the Comp

Plan reads, he can have an existing commercially- developed area with pockets in it that must be zoned residential, one unit to five acres; and that makes no sense.

Carol Senne stated she would like to talk about land use instead of zoning; staff sent her a copy of the Comp Plan which states, under Industrial Land Use, zonings that are compatible with the land uses; and in industrial, every zoning category is industrial except for EA. She stated she does not think the County has the ability to zone a parcel residential that is within an industrial land use. Commissioner Ellis stated the County has no choice under the Comp Plan but to do so. Ms. Senne stated the County Attorney needs to answer that. She inquired if the County can rezone property residential in an industrial land use; with Commissioner Higgs responding no, and Commissioner Ellis stating that is not correct because they can change the Land Use Element to residential and follow that with residential zoning. Ms. Senne stated she would prefer the discussion be about land use and not zoning. Commissioner Ellis stated in court the two are virtually the same because one of the factors in front of the judge is going to be what is the future land use and what is the zoning supposed to be to comply with the future land use.

Ms. Busacca stated there is an agreement among the three agencies that the existing land use, and perhaps maybe even existing zoning can be protected best by permitting; and the problem is trying to figure out where to put the new commercial/industrial areas.

Commissioner Ellis stated the way the new language says new industrial land use concerns him; it does not say areas, it says uses; therefore, vacant pieces of property will be new industrial land uses. Ms. Busacca stated that was not the intent; that is why it says existing commercial and industrial land uses; and vacant commercial/industrial lands which are consistent with the Future Land Use Map are deemed to be consistent with the Policy. She stated they were trying to come up with a mechanism to look at the existing differently than a future land use. Commissioner Ellis stated if someone came in looking for commercial land use in the middle of residential property, he would have problems getting that through, wetlands or not. Ms. Busacca stated that is correct. Commissioner Ellis stated there are a number of factors that are being ignored; and there are a number of other reasons why the County would probably not grant commercial land use off of a major highway corridor in a residential area. Ms. Busacca stated the language may be better in the policies that talk about locational criteria for commercial or industrial; and they can put language about the impacts of the uses and other compatibility issues including the wetland resources in those policies. She stated that may make it clear that the Board looks at the natural resources, compatibility, consistency, infrastructure, and all the other things that the County reviews. Commissioner Ellis stated the language they had at the last meeting was very clear; a number of things have changed between what they had in the last meeting and in this draft; and it has gone from being very specific to being very vague. He inquired if it means changing

the Future Land Use Element for commercial or the use of vacant commercially-zoned property that has been interpreted that they cannot fill, put a road in, or use a footprint. He stated when he reads that in there, it is different language; but the end result seems to be about the same as what the Board already has right now.

Ms. Busacca stated the Land Development Regulations are more site specific; that is what someone looks at when reviewing a site plan; and those need to be different because they may be able to put an industrial land use in the area and never impact the wetland on the site. Commissioner Higgs stated the Future Land Use Element and Conservation Element talk about ordinances that are to be developed; they are not talking about locational criteria; and this language sets forth the planning criteria.

Commissioner O?Brien stated a corridor or future land use could be commercial or industrial; and inquired how would a commercial parcel with a wetland on 25% of it be addressed; with Commissioner Higgs responding that is one of four issues Mr. Healy planned to respond to regarding residential density. Chairman Cook stated that is one of the major issues the Board needs to address. Commissioner Ellis stated the Water Management District would handle the issues at the permitting stage and will define what kind of wetland it is; it will then define what the mitigation will be; and the County defines what the land use should be.

Ms. Busacca stated the intent is that an existing commercial or industrial land use or zoning can go to permitting; and if it is consistent and not currently zoned, the zoning can be put on there, and it may go to permitting. She stated the wetland protection will be at the permitting stage through St. Johns District. She stated permitting should protect the existing future land use areas that are designated as commercial or industrial and the existing zoning; but they need direction on how to direct new commercial and industrial land uses away from the wetlands and new wetlands not currently shown on the Future Land Use Map. Commissioner Ellis repeated previous statements about the original language the Board had two weeks ago. Ms. Busacca stated the language changed to separate land development regulations and future land use designations; and staff tried to be positive rather than prohibitive. Commissioner Ellis stated the new language can be interpreted in many different ways, whereas the language he had two weeks ago was very clear; the way that has been interpreted by Brevard County for the last seven years is purely commercial use; however, commercial land use has nothing to do with the Future Land Use Element, but the actual use of the site. Ms. Busacca stated one way to do that is to say future land use designations. Chairman Cook inquired if that would accomplish the same thing; with Ms. Busacca responding yes. Commissioner Higgs recommended Mr. Healy and Ms. Senne share the perspectives of the objecting agency and the commenting agency; then the Board can go on with its discussion.

Mr. Healy advised one issue is the location of new industrial land uses on the Future Land Use Map; and the Department of Community Affairs would like the suitability of the site, which includes characteristics such as the presence of floodplains, the soils, and the existence of wetlands considered when contemplating a Future Land Use Map. He stated the Board should also consider the character of the surrounding areas that are predominantly commercial and whether it has a major transportation corridor and inevitable impacts to wetlands when it contemplates doing a future land use map. He stated the Board should also consider the character of the surrounding areas where there is already predominantly commercial, and whether it has a major transportation corridor and inevitable impacts to wetlands.

Commissioner O?Brien stated the present land uses are totally restricted because if there are three commercial lots already developed, and one has a functional wetland on it, the present policies of the Comp Plan would convert it to residential.

Chairman Cook advised Commissioner O?Brien?s statement is at the heart of the issue that brought the Board to where it is today; and inquired if Mr. Healy is saying the Board can address that; with Mr. Healy responding yes. Commissioner Scarborough inquired if the Board could take Commissioner O?Brien?s scenario, say it is coming in for a new industrial land use designation, and say it is predominantly non-functional wetlands; otherwise it will leave a hole in the Land Use Map and show as residential. He inquired if the Land Use Map essentially becomes a zoning map; with Commissioner Ellis responding it does. Commissioner O?Brien stated the County needs to research to find out where the wetlands are; and he has seen a map previously that showed where all wetlands were in the entire County. Commissioner Ellis stated that 600 acres out of 180,000 acres may be affected by this. Discussion ensued on the Comprehensive Plan, Future Land Use Policy, transportation corridors, and areas of potential commercial/industrial uses.

Commissioner Ellis stated the conflict is Policy 5.2.F.2, which says commercial and industrial land uses will be prohibited, and it was not interpreted as future land use by the County for the last seven years. Chairman Cook stated Department of Community Affairs said it could be addressed; and requested Mr. Healy proceed with any further comments he may have regarding separating future land uses. Mr. Healy stated he would be happy to work with Ms. Busacca to develop language to address the issues. He stated the second issue is new land uses which involve determining what a land is suitable for; to establish strict criteria to pre-judge future land use amendments may cause more work than is useful; and the County needs to address those things by individual amendments assessing resources on site, surrounding land use characteristics, and availability of facilities and services to decide whether or not what the Land Use Map imposes is suitable for the area. He stated there is appropriate direction in Policy 2.7.B of the Future Land Use Element giving an intent that there are certain circumstances where commercial and industrial land

uses should not be established; and it will make it easier for the applicant if the Board makes the initial determination where areas are appropriate or not appropriate for commercial or industrial uses so they do not have to go through an arduous permitting process. Chairman Cook inquired if Mr. Healy has a problem with the criterion; with Mr. Healy responding no.

Discussion ensued about the language in Criterion A which discusses industrial land uses and Criterion B which discusses commercial land uses, specific corridors, overwhelming public interest, and omitting Criterion B.

Ms. Busacca stated Criterion B discusses commercial land uses, but there are probably other issues because those tend to be more ubiquitous. Commissioner Higgs inquired if Criterion A could say new commercial/industrial land uses will be directed to areas which are not predominantly wetlands except if the activity has an overriding public interest and no feasible alternative; and other than the issue of a major transportation corridor, it will cover both at once. Commissioner Ellis stated nothing fits the criterion of overriding public interest and any feasible alternative location. Commissioner Higgs stated except a road or landfill.

Chairman Cook stated the language is good overall. Commissioner Ellis stated Criterion C needs to have residential; it has commercial and industrial land uses; and if the intent is not to come back for administrative rezoning, it should apply to residential as well. Commissioner Higgs stated Policy 1.6 talks about residential, so it should go in the residential section.

Carol Senne stated on that issue the County has probably taken a more conservative stand than the Department of Community Affairs; they recently went through an exercise where they overlaid the County?s Future Land Use Map, specifically those areas that are industrial or commercial in nature, with their land cover information that?s in their GIS system; and they used satellite photography and photo interpretation and digitized the land cover to show general patterns and natural resources areas. She stated they have a fairly tight degree of reliability in terms of positioning wetlands; but the Board cannot take a 100-acre site and use that method to plan, or design, or anything. She stated they did an overlay of anything industrial or commercial in nature with wetlands to see what the issue really was, because if there were not any wetlands, then a lot of their concern would go away. She stated if there were a lot of wetlands that were potentially to be impacted, then they would have a greater concern with the existing future land use designations; and it would help to shape their opinion of the Policy.

Ms. Senne stated the worse case scenario is a mixed use category that contains commercial uses and there is no way of breaking out a certain percentage. She noted there are somewhat more than 4,000 acres of potentially affected wetlands. Chairman Cook stated the information from staff stated there were 185,000 acres of wetlands; with Ms. Senne responding the map they were looking at was the best available wetlands

data they had; they are in the process of digitizing the wetlands and putting them into the system; and all the quads for Brevard County have not been completed; therefore, it has an incomplete data set for its wetlands base. She stated even though the map states the land uses, it is present zoning, not land use. Ms. Senne stated there are approximately 200,000 acres of wetlands in Brevard County; and a lot of them are not under development pressure because they are in the St. Johns River floodplain. Chairman Cook inquired if that includes federal lands; with Ms. Senne responding they include all government-owned lands. Chairman Cook stated the information is significantly different from the information the Board received from staff. Commissioner Ellis inquired if it is 4,000 acres of wetlands; with Ms. Senne responding it is 4,000 acres of wetlands currently in commercial and industrial land use designations as adopted and found in compliance by the Department of Community Affairs in 1988. Commissioner Ellis stated a vast majority of the wetlands is at SR 520 and SR 524, and south of Titusville. Ms. Senne advised the future land use information hides the finish on the disclaimers of the map; it does not include the land use changes the Board made from 1989 until now; and the District is in the process of putting that data in now. She stated the County Plan does not have to be site specific; and it is a tool to give the Board information. Ms. Senne stated the map, while it says commercial land uses, has zoning categories. Chairman Cook stated there has been a lot of distortion, and maybe the County could have done a better job of delineating exactly what it wanted to accomplish.

Carol Senne stated she was going to address two issues for the Commissioners; one is existing land uses as adopted and found in compliance by the Department of Community Affairs, and two is future land use changes. She stated the District has a lot of concern that at one time 4,000 acres were classified wetlands that could be potentially impacted by industrial uses; but the District understands it is not in the position to mandate that local governments change adopted and found in compliance land uses. She noted the District has a tremendous amount of concern for the 4,000 acres of wetlands; it is a large number in any county or community; and Brevard County has a lot of wetlands.

Chairman Cook stated the future land uses which Mr. Healy brought up should be addressed. Ms. Senne stated they are not in a position to go back and mandate that a local government change its existing land use designation. She stated 4,000 acres of wetlands that can potentially be impacted by industrial and commercial land uses concerns the District because of the possible proliferation of new industrial and commercial impacts to wetlands. She stated the County has a significant amount of wetlands that are adopted and found in compliance; and the District is going to be very careful about the language. She recommended the criteria developed be very strong and fairly exclusionary or inclusionary of wetlands. Ms. Senne suggested not using the term ?predominantly functional? because it is not a commonly used term, and they will have a hard time defining it.

Commissioner Ellis advised the District and the Department of Community Affairs turned down the County?s Plan Amendment and did not propose alternative language; and the Board needs to know the parameters of what the District wants.

Ms. Senne stated the District spent a lot of hours reviewing language and giving specific comments to staff; it is the Board?s prerogative to draft language, adopt it, and transmit it; and she is not here to give the Board specific language to be adopted. She stated there are three issues--residential, existing, and future land use changes; she was very specific at the public hearing about the District?s position on all three issues; and those positions have not changed. She stated she told the Board the District was concerned about any changes allowing industrial and commercial into wetland areas; and it is still very concerned about that. Commissioner Ellis stated Ms. Busacca has been working very closely with the District, and he thought today?s language was the result of that. Commissioner Higgs stated Ms. Busacca works for the Board and is trying to give it something to work with.

Chairman Cook stated it is a cheap shot to say this is a discussion about protecting the wetlands and not protecting them; that is not the issue; the Board is trying to have common sense regulatory reform; and judging from what he heard today, Ms. Busacca can work with Mr. Healy to come up with language that will address those issues. He stated the County has to draft language that is reasonable, will protect the wetlands, and will be acceptable to Department of Community Affairs.

Discussion ensued on draft language, the Local Planning Agency?s recommendation, established commercial and industrial areas, and the County?s interpretation.

The meeting recessed at 12:35 p.m. and reconvened at 1:00 p.m.

Chairman Cook advised the maps are based on the best available information; and of the 4,000 acres Ms. Senne mentioned, about 3,000 of that is The Great Outdoors Resort. Ms. Busacca advised The Great Outdoors mixed use district is 3,000 acres, and a large percentage of that is wetlands. Chairman Cook expressed appreciation to Ms. Senne, Mr. Healy, Ms. Busacca and staff for their efforts to work toward a resolution in everyone?s best interest.

Commissioner Ellis inquired how the District treated the Government Managed Land problem, and was it covered as commercial; with Ms. Senne responding government-owned lands are classified as such; there are two data sets; the District took industrial and classified it as industrial, mixed use as commercial, a PIP as industrial, heavy or light industrial as industrial, conservation as conservation, recreation as open land, and agriculture as agriculture. Commissioner Ellis stated the two biggest areas are the County

landfill site and The Great Outdoors. Ms. Senne stated the County will be going through its evaluation and appraisal process; it is mandated to utilize the best available information; and the blue map will be completed soon and will be the best available information on wetlands. She stated the District has a plain map it recently digitized; and any agency that has technical information will be given it to help it analyze wetlands. She stated if there are deficiencies, the County is required to identify how it is going to correct them; everything in the Comprehensive Plan is open during that process; and suggested the County take the new wetlands maps when they are completed and overlay them. Commissioner Ellis stated it is difficult to try and be site specific in the Comprehensive Plan.

Tuck Ferrell, 1 Stockton Drive, Merritt Island, stated Brevard County is a model county in the State of Florida for protection; there needs to be balance; the County needs jobs and industries; and the environment needs to be protected. He stated he does not know how he feels about wetlands and land ownership; the County could take the position that there will not be more industrial development, but the economy is not the greatest right now; the County needs to have industry; and another industry is tourism. He stated the Board needs to take an overall approach to determine what is good for Brevard County; he represents landowners and ranchers who are concerned about the criteria on wetlands and how wetlands are delineated; and inquired what is considered a wetland.

Norma Adams, 801 S. Brevard Ave., Cocoa Beach, stated this is her second reminder to have the Board review its verbs; there are too many ?shoulds, mays, and coulds? and not enough ?shalls.? She requested the overlays be made available to the citizens.

Mary Todd, 135 S. Bel Aire Dr., Merritt Island, stated the County has to deal fairly with owners of wetlands surrounded by commercial/industrial properties, but it should also place foremost in its mind the responsibility to future generations. She stated the Sierra Club has been represented at every meeting on the Conservation Element being deleted; they studied every draft, but are frustrated that they came out at such a rapid pace; and the information in the draft and on the overlays is too difficult to simulate in such a short time period. She requested the Board take its time on this issue so it will not make an unwise decision. Ms. Todd advised the Sierra Club is concerned about Policy 2.7.B, the last sentence, ?Limited commercial uses may be considered where the construction of major transportation corridors has altered the functionality and continued viability of the wetlands.? She stated it will open the door for future land use designations of commercial and industrial along highways which are not constructed; and the Sierra Club supports the language which will be presented by Kim Zarillo.

William Kerr, 325 Fifth Ave., Suite 208, Indialantic, stated it does not make sense to put industrial complexes and highrises in the middle of the St. Johns River muck; on the other hand, a small pocket pond within existing

commercial development should not prevent an individual from using his land. He stated there are two basic situations--(1) planning and zoning, and (2) permitting. He stated Brevard County should not get into the process of finding wetlands; the ERP Rule which the District and DER work under is a State rule; and while it may not please everyone, it is effective and in place. He stated it is not right not to allow commercial development on a six, seven or eight-acre parcel with a half-acre pond on it; and suggested the County allow the District to do its permitting and mitigation as it exists under the current ERP Rules. Mr. Kerr stated the County can do its planning and zoning and future land use maps to protect the environmentally-sensitive areas that need to be protected; it needs to balance that because if it makes property not usable it is going to have to face legal challenges; the County should protect the good of the public; and the good of the public should be keeping people where they should be developing and out of the areas where they should not be.

Dick Thompson, 630 Heron Drive, Merritt Island, stated the County is trying to solve problems of who can live and work within the area of wetlands; the County established a policy of no net loss of wetlands; right or wrong, that policy exists and that is what the County is striving for; and the District has moved effectively in the County and bought up tremendous amounts of land. He stated they bought a lot of land south of here and converted it by putting up dikes and so forth; big wetlands of 30 square miles are nothing like 4,000 acres; and the District has taken control of the entire St. Johns River basin and portions of the Indian River basin. He stated a lot of land is currently protected permanently; it was bought by the taxpayers; and inquired where are people going to live and work in the remaining property of Brevard County if it keeps taking every little pothole, identifying it as a wetland, and preventing the landowner from using it. Mr. Thompson stated 50% of the people are living on property that would not be allowed to be developed by today?s criteria; the criterion needs to be looked at carefully; the County is not trying to change the definitions of wetlands; but it has been taken advantage of by many people making claims that it is good for the water supply; however, it is not nearly effective as other means.

Charles Moehle, 65 Country Club, Cocoa Beach, encouraged the Board to resolve the problem in a manner that is fair to the property owners and protects unplatted lands for the areas of the County that have been desperately needed for some time. He stated the reason the County is addressing this issue is to clarify and revamp the present Ordinance to correct inequities and misrepresentations of what people thought they were going to be able to plan for; and the other things that need to be corrected are the multiple interpretations that can be made of the different portions of the Element and regulations. He stated people do not want to abuse the environment and develop industrial or commercial in wetlands if they know it should be protected and is a place they should stay out of before they get involved in the ownership and investment; and one of the bigger abusers of that situation is the County. He stated people want to know what direction they should go in before they get involved; they should be able to count on

that direction; there should be more detail to let them know exactly what they are getting into; and this correction needs to be made so the County avoids costly legal battles for inequities.

Jody Rosier, 460 Highway 436, Suite 200, Casselberry, representing Florida Audubon Society, stated she attended the transmittal hearing and has been following this issue closely; and read from an outline of the Florida Growth Management Act written by Richard Russo, Legal Director of Thousand Friends of Florida, as follows: ?Plans are required to include goals, objectives, and policies, which among other requirements protect, conserve, and appropriately use natural resources and other areas with development constraints.? She stated Florida Statutes, Chapter 163, says, it needs to be coordinated with land uses, topography, soils, and availability of infrastructure, and provide for the compatibility of adjacent land uses. Ms. Rosier advised those requirements reveal a determination that not all land is equally suitable for all uses, and that undeveloped lands cannot be assumed to be available for specific land uses, simply because it is vacant and previously zoned for it. She stated all Elements of the Comprehensive Plan, Goals, Objectives, and Standards must be based on relevant and appropriate data; the support data will be used in determining compliance and consistency; and this compliance review requires an evaluation of whether the data was collected in a professionally accepted manner. She stated a lot of the industrial uses were in place before permitting was allowed; some of them may be in bad places and need serious looking at; and someone needs to show what the existing land use is going to do to the water quality. Ms. Rosier stated there are several examples of wetlands being totally destroyed across the United States and ruining the water quality; the Indian River Lagoon is prime for commercial and tourist industry; if the County impacts it with existing uses and new uses, it may ruin the water quality; so there needs to be more analysis before the County jumps into this. She stated Florida Audubon Society is following this very closely; she hopes the County has some analysis to work with; she would hate to see what is going to happen in the future if all this goes through without being carefully studied; so the County needs to slow down and do it right.

Roy Pence, 4533 Caravel, Melbourne, advised this is a step in the right direction; and he appreciates the Board?s efforts in this regard. He stated he agrees with the approach in Policy 2.7.C, but would like the Board to consider existing property before the Comprehensive Plan was formulated in 1988. He stated there are a lot of property owners who have zoned commercial and industrial property which may not show that designation on the Future Land Use Map; and they could very well meet all the other locational criteria and be compatible with the neighborhood, but this Policy does not allow the flexibility to address those people. He stated those people need to be addressed as they have paid taxes based on commercial and industrial zoning ever since they have had the property; their taxes are high; the Board needs to consider their rights; and other than that, he and the Home Builders and Contractors Association of Brevard support what the Board is trying to do here. He stated it is a good middle approach of trying to

protect the environment and significant wetlands, while trying to protect property rights.

Rob Lee, 1275 S. Patrick Dr., Suite H, Satellite Beach, stated the Board removed the impact fees on commercial/industrial uses to stimulate the economy; and the original intent to cut back on some of the conservation provisions of the Comprehensive Plan was because people were beginning to realize what kind of strangling effect they have on the economy and jobs. He stated the Board is trying to establish a good common sense approach; and the wetland functions can be preserved as desired, but it should be done in a fair manner and not just stop growth beyond what is established in the existing Future Land Use Plan. He stated another problem has been interpretation of what has existed in the Plan; there is a big distinction between uses within wetlands and impacts to wetlands; and he agrees commercial uses in the middle of wetlands is not the best place.

Kim Zarillo, 760 Cajeput Circle, Melbourne Village, representing the Florida Native Plant Society, stated the Society has also had representatives at other meetings on these changes; the Society feels there is not due process; the changes are happening very quickly; and at the last regular Board meeting, a proposed amendment change was passed out after public comment. She stated this does not allow enough time for people to talk and gather information in order to make pertinent comments; there has been little if none scientific advice on the impacts of changing the Comprehensive Plan, biologically or physically, with relation to stormwater and other things that affect the people; and there needs to be more data analysis and impact of policy changes. She stated policy changes for the purpose of serving single-family residential areas or somebody?s commercial property is not good government; policy is a broader vision; and that is the purpose of the Comprehensive Plan. She stated she has some specific language changes she would like to submit to the Board; they are chief concerns; whenever she hears balance she thinks that is a problem; the Comprehensive Plan and Future Land Use Maps are in place; and they are worried about the future changes to the policy and what that would mean for the County. She inquired if the Cities were notified of what the County is doing and how it will affect them, if it affects them at all; stated at the last meeting she asked what Ordinances would need to be changed if the Comprehensive Plan changed because the attorney stated the Comprehensive Plan and Ordinances may be in conflict; and she has not heard yet what those are or what the changes will be. She requested a full public accounting of the cost of going through this; stated she would like to ask for a moratorium on Comprehensive Plan changes until the community visioning process is completed; the community is now revisiting what they would like to see Brevard County look like; and this is very valuable information and a community based effort. She stated it is very important to have that as part of the Comprehensive Plan amendment; and what the Comprehensive Plan is all about.

Martin Lamb, 2034 Adams Ave., Melbourne, stated he appreciates the Board?s efforts; whoever had the biggest club would own all the land; and Department of Community Affairs and the St. Johns River Water Management District have the bigger clubs. He stated he does not think anyone in their right mind wants to intentionally injure the environment; somewhere along the way there has to be a balancing act; and there are two extremes to this issue. He stated he is hoping his children and grandchildren will have a place to live; they will need a place to work; this is a very difficult issue; and there has been a mis-communication with the public of what the Board is doing.

Discussion ensued on misconceptions, differences of opinions, how the amendment got started, and distortions of the original issues.

Chairman Cook stated it was sent to all the Citizens Groups; and the Board accepted the Local Planning Agency?s recommendations which passed 8 to 1. He stated it retained no net loss; and Commissioner Ellis stated it retained a whole list of items.

Commissioner Ellis stated every time the Board tries to make changes to the Comprehensive Plan, the sky is falling. Chairman Cook stated he read inaccurate statements in the newspaper that people think is true. Commissioner Higgs stated there may have been distortions, but the motion was: ?Motion by Commissioner Cook, seconded by Commissioner O?Brien, to defer all wetlands policies and issues to the Federal, State and Regional Regulatory Agencies.? Commissioner Ellis stated it needs to be put to language as a Comp Plan amendment. Chairman Cook responded it is to repeal this and defer everything. Commissioner Ellis inquired if the motion is to repeal objective findings, with Chairman Cook responding yes. Discussion ensued on the newspaper article distortions.

Mr. Lamb stated he would like to see one agency, whether state, county or municipal, regulate this issue; there would not be passing back and forth from one agency to the other; and there would be someone who would be held accountable. Priscilla Griffith, 6414 South Dr., Melbourne, representing the League of Women Voters of the Space Coast, stated the League was involved with the revised wording that has been submitted to the Board by Kim Zarillo, and supports it.

Commissioner Scarborough stated Carol Senne is not happy with predominantly functional; there are some words that he has uneasy feelings about; and suggested a meeting Tuesday, and Ms. Busacca get some stuff together before Tuesday. He stated he is having difficulty being prepared with words and terminology. Commissioner O?Brien stated the Board is here today, and he will stay until midnight to solve the whole problem today so when they come back Friday, there will be little else to do but fine tune. He stated they have already spent three hours getting to this one point; and

inquired if they could take a break and let Ms. Busacca and her staff go back and redo something and bring it back to the Board.

Commissioner Higgs suggested the following language for Policy 2.7, Criterion A, ?New commercial and industrial land uses will be directed to areas that are not functional wetlands as defined in Conservation Policy 5.2, except if the activity has an overriding public interest and no feasible alternative, or is surrounded by existing commercial and industrial such that a less intensive use would be incompatible with the character of the area and the surrounding land uses.? She stated that might get to one problem.

Commissioner O?Brien stated what bothers him is the wording of predominantly functional wetlands. He stated Conservation Policy 5.2, states, ?mitigation can include, but not be limited to, wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation. Mitigation ratios should be tied to the functionality of the impacted wetlands.? He inquired who determines functionality, at what level, and what is the ratio. Commissioner O?Brien stated two problems with mitigation are swapping fresh water wetlands for salt water wetlands, and location of the mitigated site which should be within ten miles; and the Board should address that problem in writing to St. Johns District and say that the mitigation for this County has been a dismal failure. Commissioner Ellis stated it is not in the Comp Plan; Commissioner Higgs stated that is not a Comp Plan issue; and Commissioner O?Brien stated it was in there under 5.2.C.

Carol Senne stated if the Board is comfortable with the District?s determination of wetlands and mitigation, then it does not need to discuss it; if it is not comfortable with what is accomplished, then maybe after lunch she could share their methodology and what is accomplished, because what went before is not what is now. She stated the ERP was adopted and went into effect; there is a new criterion and new approaches with wetlands permitting; and if the Board wants to know about it, she will share it with the Board. Commissioner Scarborough inquired what should be put in place of predominantly functional; with Ms. Senne responding nothing, because wetlands are wetlands.

Commissioner Higgs stated page 3, item F, which defines on site disposal system, primary structure, 100 year flood elevation, and primary access is a definition that the Board needs to reconsider. Ms. Busacca stated the District wants the County to include the language ?the St. Johns River Water Management District and Florida Department of Environmental Protection requirements.? Ms. Senne stated very specific criteria are set forth that allow for a lot in a wetland if somebody owns it; up to 6,000 square feet can be cleared, and up to 4,000 square feet can be filled; and they can accommodate a house pad and septic tank. She stated all sites under five acres are permitted through the Department of Environmental Protection; they are general permits, which means they are issued from the office; the Board

cannot have lesser restrictions, but it can have greater restrictions; and suggested the Board look at its criteria to make sure it is comfortable.

Commissioner Higgs suggested adding ?current flood zone maps of St. Johns River Water Management District and FEMA? under Policy 1.6, Criterion H; with Commissioner Ellis responding it is already in the floodplain section. Ms. Busacca stated the floodplain section says most current data available. Commissioner Higgs inquired if it would be considered in the residential density guidelines; with Ms. Busacca responding yes, that is how it is done.

Ms. Busacca stated a site specific delineation is actually a site plan review of commercial or industrial areas; they do not have any specific requirements, because those have been deleted on page 3 under F. 1, 2 and 3; but the Department of Community Affairs would be comfortable with language that states all permits must be in place before a building permit is given, and with buffer requirements between the commercial or industrial development and the wetland. She inquired if the Board wanted them to go forward with that or just leave it the way it is. Commissioner Ellis stated there is no size threshold for that; the wetland could be 1/10 of 1 acre. Ms. Busacca inquired about the language ?all permits should be in place before the building permit is given.? Chairman Cook stated he has no problem with requiring permits prior to building. Ms. Busacca inquired if the Board would be comfortable with the Water Management District or Department of Environmental Protection?s permit; with Chairman Cook responding it should be specific. Ms. Busacca stated that would give the Department of Community Affairs a greater level of comfort. Commissioner Higgs stated they have not come up with language that addresses that. Commissioner Ellis inquired addresses what. Ms. Busacca inquired if they could describe what they think that is; with Commissioner Higgs responding the problem is with commercial/industrial sites; and unless the Board is willing to leave it to permitting with a percentage of wetlands, it has not addressed that. Commissioner Ellis inquired if it is existing or future; with Commissioner Higgs responding existing. Commissioner Ellis stated the point on existing was to leave it to permitting.

Ms. Busacca stated she has language about directing new industrial and commercial land use designations to areas which are determined to be appropriate based upon suitability analysis, character of the area, compatibility of the surrounding land uses, and public services and facilities. She stated those uses should be directed to sites where there are sufficient uplands for the use; and that may be where the Board does not have to consider thresholds, and simply talk about the fact that there is some upland on that site. Commissioner Ellis inquired what if they have a small isolated wetland; with Ms. Busacca responding it does not have to be on the uplands, but if it says there are sufficient uplands, the Board would know it is not looking at a large wetland area and very small upland area. Chairman Cook recommended a recess to allow Ms. Busacca to return with additional language.

The meeting recessed at 2:05 p.m. and reconvened at 2:45 p.m.

Ms. Busacca stated the new language has not been reviewed by the County Attorney for impacts to the property rights legislation; the changes are in bold; and Policy 2.7 has the language that was read to the Board just before the break to try and give a legislative intent. She stated it says, ?It is the intent of Brevard County in locating new industrial and commercial land use designations, that these uses will be directed to areas which are deemed to be appropriate based upon a compatibility analysis that includes environmental character of the area, compatibility of surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. The location of new commercial and industrial land uses should be based upon the criteria described below.? She stated under Criterion A, she added language that says, ?New industrial land use designations should be directed to areas which are not wetlands as defined in Conservation Policy 5.1.? She stated the final phrase is, ?or is located in an area such that a less intensive use would be incompatible with the character of the area and the surrounding land uses.? She indicated the Board may want that language in Criterion B as well. She stated in Policy 5.2 she recommended deleting the current criterion and replacing it with ? Wetland functionality and mitigation will be determined by either the St. Johns River Water Management District or Department of Environmental Protection.? She recommended deleting the existing Criterion C and adding, ?Prior to issuance of a building permit, appropriate permits from the St. Johns River Water Management District or Florida Department of Environmental Protection will be obtained for the proposed project.? Ms. Busacca stated the Board may like the other language better about administrative rezoning, but this language clarifies its intent about what is happening on existing and future land uses.

Commissioner Scarborough stated Criterion A still refers to 5.2, and it should be 5.1. Ms. Busacca stated that is correct. Commissioner Scarborough stated the last sentence in Policy 2.7 should be kept; with Ms. Busacca responding that is fine.

Commissioner Higgs inquired if this is just the change and adding to the existing language; with Ms. Busacca responding Policy 5.2, would be deleted and Criterion C would be deleted and replaced with the new language. Chairman Cook stated he had no problem with the yellow sheets as amended because they reflect what the Board had discussed. Ms. Busacca stated it did not address the DCA?s concern about putting a date of the legally established lots. She stated she just wanted the Commissioners to be aware of it, she was not saying to do it, but just wanted them to be aware of it. Commissioner Higgs inquired what problem is having it in there; with Commissioner Ellis responding he did not want it in there. Commissioner Higgs inquired what it did; with Commissioner Ellis responding it creates unbuildable lots. Commissioner Higgs stated unbuildable lots are not created by the Comp Plan because there is a process by which the Board can deal with it. Commissioner Ellis stated he has never seen that; the people he

talked to have never seen that; and Mr. Knox told the Board that today, but he has never seen it and is not confident that it exists. Chairman Cook stated in the future the County needs a mechanism to notify people that they have that option. Discussion ensued on unbuildable lots.

Ms. Busacca stated Section 62-507, is the Appeal Procedure Presentation of Plans of Regulatory Takings or Abrogation of Vested Rights; and it says the County Local Planning Agency and the Board of County Commissioners will hear appeals relating to any administrative decision or interpretation concerning the implementation of the 1998 County Comprehensive Plan as amended. She stated the Local Planning Agency will hear the appeal, take public comment and make a recommendation to the Board of County Commissioners as to the appropriateness of the interpretation of the Plan or decision implementing the Plan; and the Board of County Commissioners will hold a public hearing to make the final decision of approving or disapproving the administrative decision or interpretation. She stated the same procedure will be followed whether an individual or affected party believes vested rights have been abrogated or that a temporary or permanent taking of property has occurred.

Commissioner Scarborough inquired if that was what the Board did for Sadie James; with Ms. Busacca responding yes. Commissioner Scarborough stated that is an extremely important element. Discussion continued on the process for unbuildable lots.

Assistant County Attorney Katherine Harasz stated Chapter 163, Florida Statutes, requires all land development regulations and development orders be consistent with the Comprehensive Plan; and the Plan would have to be amended to allow some kind of building to take place and still have the Plan internally consistent.

Commissioner Higgs stated Mr. Knox told the Board that provisions in the Comprehensive Plan and in the Ordinance allow the Board, in a case where a parcel has been rendered unbuildable, to go through administrative procedure to determine what is going to happen with the lot. Ms. Harasz stated that is an exhaustion requirement to establish regulatory taking claim; they have to find out everything they can do with the land before it goes to court and tell the court how they have been damaged; and that is also an important step in exhausting local remedies.

Commissioner Ellis stated what the Board is talking about in the Comp Plan is not having to go to court. Ms. Busacca stated property owners alleging a taking of property, abrogation of vested rights, or appealing an administrative decision or interpretation, must affirmatively demonstrate the merits of their claims by exhausting the administrative action provided in this Section; and the Ordinance reiterates the language or intent of a Comprehensive Plan provision addressed by an appeal under this Section. She noted the decision of the Board relating to the Comprehensive Plan

provision will also apply to the ordinance; however, in no event will this Section be substituted or used to bypass the variance and appeals procedures. Ms. Harasz stated it sounds like if the Board can interpret its ordinance in a different way but still be consistent with the Comprehensive Plan, it can override the ordinance through this appeal procedure and allow development. Commissioner Ellis stated that is not site specific and not really what the Comp Plan means. Ms. Busacca stated it is either an interpretation or a decision implementing the Plan.

Commissioner O?Brien stated if the Board decided one parcel was not in compliance with the Comprehensive Plan, it could make that ruling; if Department of Community Affairs or the Water Management District wants to fight the County on that, they possibly could; but the overall meaning is that the County can say its Comprehensive Plan has been interpreted incorrectly for someone?s property and override the administrative decision. He stated the County should preclude the Future Land Use Element with the statement that it is creating this document and putting it back in the Comprehensive Plan under duress; and if it does not do that, the private property owners can sue the County. Commissioner Ellis stated the way the Comprehensive Plan is being interpreted, they can do that anyway. Commissioner O?Brien stated it is important if the County is to put the Future Land Use Element back into its Comprehensive Plan that it does it right now because the Department of Community Affairs and District said it better do it or they are going to tie it up in court; and it is going to be very costly litigation which the County is trying to avoid. Commissioner Higgs stated it was actually never taken out until it was approved and then adopted by the Board. Commissioner O?Brien noted it is a legal avenue the County can take to protect the citizens against those types of lawsuits. Ms. Senne stated the County would have to allow the people who own a lot smaller than five acres to develop or buy the property, unless there is something else that will work legally. She stated the reason it is a policy is so people do not start carving out little lots and compound the problem; and a five-acre parcel that impacts wetlands is less intense than several little lots. Discussion ensued on legally established parcels under five acres, residential density, strict application of the policy, and intent of the Board.

Commissioner Higgs inquired if the Board wants to insert a date. Commissioner Ellis stated his District has had legally established lots after 1988 that are now unbuildable.

Ms. Busacca inquired, when it says legally established, if someone comes in after the amendment becomes effective and subdivides a large parcel into lots which are smaller than five acres which have wetlands and no uplands, does that mean there have been illegally established lots because it is contrary to the Comprehensive Plan. She stated the property is consistent with the zoning; the only thing keeping it from getting a permit is this policy; and inquired what is the intent of the Board and how should staff handle that; with Commissioner Higgs responding one unit per five acres.

Discussion continued on legally established parcels, permitting, title problems, estates, and notifying people it is part of the rules.

Commissioner Higgs suggested leaving it like it is right now and doing more research on it. Chairman Cook stated the other question is do we add the date or not. Commissioner Ellis stated he does not want to add the date. Commissioner Higgs stated it needs a date.

Chairman Cook stated he does not have a problem with language as it is, with the changes that were made, leaving in the bottom of 2.7 that had been crossed out, and adding criteria if it is located in an area of less intensive use. He stated he could accept the language if those two things were changed. Commissioner O?Brien stated Policy 5.2, says in 1991 Brevard County will adopt regulations; and inquired if it should say in 1991 Brevard County adopted regulations; with Peggy Busacca responding they could change that or take the date out, as the Board has adopted Land Development Regulations. Commissioner Scarborough stated the Board should say in 1996 Brevard County will amend the existing regulations, as that would be a correct statement. Ms. Busacca stated she will work on the date, to try to be consistent with what is said.

Commissioner O?Brien inquired if there is any further conversation about having the Land Use Element being executed under duress. Commissioner Higgs stated it is unnecessary. Commissioner Scarborough stated the whole Comprehensive Plan is executed under duress. Commissioner O?Brien stated the Element is being created under duress; and the County should point to the Department of Community Affairs and District because they are forcing it to have those conversations. Chairman Cook stated mandates are put on local governments and they have to deal with it. Commissioner O? Brien stated the County is doing this because it was told it must do it.

Ms. Busacca inquired what would the Board like her to put on Tuesday?s agenda. Commissioner Scarborough responded to schedule it so the Board can discuss it if it needs to.

Chairman Cook stated it was brought to his attention that 75% of all wetlands are in private ownership in the United States. Commissioner Ellis stated 55% of Brevard County is owned by public entities.

Chairman Cook inquired if there was anything else; with Commissioner O? Brien responding the Board has a responsibility to protect its citizens from future lawsuits; if there is any route to do that, it should do so because in the future, it is going to cost the County millions of dollars. Commissioner Ellis stated his preference would be to get something passed and not upset DCA further. Chairman Cook stated it is just common sense regulatory reform which the Board owes the citizens of Brevard County. Commissioner Scarborough advised of his experience with wetlands while on the Titusville City Council.

Commissioner O?Brien inquired what will the Board do about a parcel on Merritt Island that is surrounded by commercial on three sides and one side by a road. He stated the St. Johns District said the individual can mitigate that parcel on site; it was about 20% wetlands; Brevard County said they could not build anything there because they have a wetland, not to even apply for a permit; and that is a total loss of any common sense whatsoever. He stated it is in a commercial area; Merritt Square Mall and the Chamber of Commerce are directly across the street; commercial building is going on down the street; and one parcel is sitting there. He inquired what can the Board do in the policy to correct that problem. He stated the St. Johns District, in this case, is very reasonable, but the County is totally unreasonable; the County Policy makes them totally unreasonable; and inquired how can they correct that problem. He stated it is very low grade and not a viable wetland, but the County says no, do not break ground, and do not even think about it, because that property is totally unbuildable. Commissioner O?Brien stated the Board talked about functionality and mitigation in particular; St. Johns District has its own rules and regulations, but the County does not want to address that in its Plan; and inquired if mitigation should be one and one or half of one, and the half acre that they buy some place else be within a given geographical area of the County because the wetlands being mitigated also serve a purpose. Commissioner Ellis stated the Board has to treat the St. Johns River basin as a whole.

Ms. Senne stated they are dealing with two concepts; if it is a site specific mitigation, they sit down in negotiation with the landowner; the District prefers the mitigation occur within the sub-basin; sometimes there are not mitigation opportunities in the sub-basin; and then it looks at the basin. She stated mitigation banking opportunities are starting to develop; the mitigation banking concept includes taking a large eco-system that is very diverse and has uplands, wetlands, and restoration potential; they come to get a permit, establish it as a bank, and determine how many credits the bank has; and what that allows for is two opportunities. She stated an individual can go through the sub-basin approach negotiation with the District or a service center established when the bank is established, which is much bigger than a basin or a sub-basin; and the person also has the option of buying into the bank. She stated the District is considering a policy that some mitigation should be in a banking situation as they are preserving large eco-systems and trying to come up with a natural area corridor; the County may be in conflict with the mitigation banking opportunities that some people in Brevard County may wish to exercise if it limits mitigation to a tightly defined geographic area; and it is something for the Board to consider. Commissioner Higgs stated she would like to take any mitigation issue to Ms. Senne after the meeting; and Commissioner Scarborough agreed.

Upon motion and vote, the meeting adjourned at 3:30 p.m.

ATTEST:

SANDY CRAWFORD, CLERK

(S E A L)

MARK COOK, CHAIRMAN

BOARD OF COUNTY COMMISSIONERS

COUNTY, FLORIDA

1995B COMPREHENSIVE PLAN AMENDMENTS
BREVARD COUNTY

ADOPTION PACKAGE

WETLAND POLICIES

CONSERVATION ELEMENT AMENDMENT
FUTURE LAND USE ELEMENT AMENDMENT

PROPOSED PLAN AMENDMENTS

Rationale:

Conservation Policy 5.2 contains criteria for standards to be contained within the Brevard County land development regulations relating to wetland protection. The policy, does not however, provide direction for planning decisions such as delineation of new commercial or industrial land uses on the Future Land Use Map series. The standards within Conservation Element Policy 5.2, which are duplicated in Future Land Use Element Policy 2.7, have been utilized in this way for lack of other policy language.

The intent of the amendments adopted by Brevard County was to clearly delineate long range planning policy from more specific review standards. Future Land Use Element Policies 2.6 and 2.7 provide guidance for the delineation of new commercial and industrial land use designations on the Future Land Use Map series.

Future Land Use Element Policy 2.6 keeps the one dwelling unit per five acre designation intact unless a strict application of this policy renders a legally established parcel (as of February 23, 1996) unbuildable. A parcel is considered legally established if it has been filed with the Clerk of the Court and meets applicable County requirements. The intent of this policy is to assist the land holders of smaller properties, who may have a legally established parcel of less than five (5) acres that is consistent with the current Residential Density Guidelines, to build a residence. Additionally, this policy will direct development to an upland portion of the site consistent with existing land development regulations.

Future Land Use Element Policy 2.7 does not permit commercial or industrial designations as of February 23, 1996, in wetlands unless the project can meet certain restrictive criteria. The intent of this policy is to permit planning flexibility in the areas that are designated commercial or industrial on the Future Land Use Map series and not to focus on a single planning issue.

Future Land Use Element Policies 2.6 and 2.7 pertain strictly to long range planning and Future Land Use Map designations. Policies pertaining to development activities (the site planning process) are located within Conservation Element Policy 5.2. Conservation Element Policy 5.2 pertains to applying development standards within the Brevard County Land Development regulations and not long range planning functions as referenced in Future Land Use Policies 2.6 and 2.7.

The amendments to Conservation Element Policy 5.2 do not eliminate the very restrictive standard of no net loss of wetlands. The amendments do permit the County more flexibility regarding development in existing residential, commercial, or industrial areas. Criterion (F)(1) of Conservation Element Policy 5.2 is designed to assist small area land owners to build a home on a legally established parcel (established as of February 23, 1996) if it does not meet the one unit per five acre threshold. The site will still have to be developed according to land development regulations that permit the no net loss of wetlands. The Brevard County Natural Resources Management Office can recall of only one instance where a single family building permit was denied because it was subdivided after 1988 and was contrary to the one unit per five acre wetland restriction.

Criterion (F)(2) of Conservation Element Policy 5.2 permits commercial and industrial development activities in areas designated commercial or industrial on the Future Land Use Map series (designated as of February 23, 1996). This criterion will provide flexibility pertaining to development activities in these areas. If a wetland exists in said area, then this wetland will be subject to criteria within the Brevard County land development regulations, which includes a no net loss of wetlands criterion. However, if a wetland is located in a commercial or industrial land use designation, the existence of the wetland will not cause the parcel to become unbuildable in a commercial or industrial manner. This is especially important since residential development activities may be incompatible in these commercial or industrial areas. Additionally, the isolated wetlands in these designations may already be adversely effected by the surrounding commercial or industrial development and may not be appropriate for a conservation designation. Currently, within Brevard County, approximately 635 acres of wetlands lie within commercial or industrial zoning classifications.

The Board also expressed its concern that the existing language in the Comprehensive Plan could be used as the basis for administrative rezoning of property containing wetlands, especially on properties which are already developed. Administrative rezoning can be requested when zoning classifications are inconsistent with the Future Land Use and Density Maps, the acceptable levels of service, and the Comprehensive Plan (Future Land Use Element, Policy 10.3). To ensure that this would not occur, the Board wishes to amend Conservation Element Policy 5.2 by adding criterion (H). Future Land Use Element Policies 2.6 and 2.7 both pertain to future land use designations and not land development regulations and therefore are not the appropriate location for such language.

WETLANDS
FUTURE LAND USE ELEMENT

PROPOSED PLAN AMENDMENT

Policy 2.6

Residential land use designations shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of February 23, 1996 which is less than five (5) acres as unbuildable. Density may be transferred to an upland portion of the site consistent with existing land development regulations, such as setback, minimum lot size, stormwater regulations, etc. Residential lots within wetland areas should be subdivided in such a way that buildable areas are contained within each lot.

Policy 2.7

Commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996 shall be prohibited unless the project has a special reason or need to locate within wetlands and there is an overriding planning interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

WETLANDS
CONSERVATION ELEMENT

PROPOSED PLAN AMENDMENT

Objective 5

Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990.

Policy 5.1

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the ~~FDER~~ FDEP and the SJRWMD in delineating wetlands~~, but shall not be limited by the threshold or connection requirements utilized by these agencies~~.

Policy 5.2

~~**In 1991,**~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations.

Criteria

A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. It is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation. In determining mitigation ratios, functionality of the impacted wetland should be considered.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:

1. Residential land development activities ~~uses~~ shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of February 23, 1996 which is less than five (5) acres as unbuildable. Density may be transferred to an upland portion of the site consistent with existing land development regulations, such as setback, minimum lot size, stormwater regulations, etc. Residential lots within wetland areas should be subdivided in such a way that buildable areas are contained within each lot.

2. Commercial and industrial land development activities ~~uses~~ shall be prohibited in commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996 unless the project has a special reason or need to locate within wetlands and there is an overriding planning ~~public~~ interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100-year flood elevation requirement for first floor elevations, and to one primary access to the on-site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.

H. Lands which are currently designated as commercial and industrial on the Future Land Use Map are deemed to be consistent with this policy.

Policy 5.3

Wetland regulations adopted by Brevard County shall avoid duplication of wetland regulation.

Criteria

A. Brevard County shall regulate activities which will result in the destruction and/or degradation of functional wetlands except where the wetland degradation or destruction has been permitted by ~~FDER~~ FDEP or SJRWMD based on ~~FDER~~ FDEP and SJRWMD professional staff application of criteria and evaluation.

B. Any permitted wetland degradation or destruction shall provide for mitigation as designated in Policy 5.2~~, Criterion C~~.

Policy 5.4

By September 1991, Brevard County shall develop and adopt a Mangrove Protection Ordinance. The ordinance shall be consistent with the Florida Department of Environmental ~~Regulation~~ Protection mangrove requirements and shall be enforced by Brevard County.

Policy 5.5

Brevard County shall assess the effectiveness of its Florida Department of Environmental Regulation local program on at least an annual basis.

Policy 5.6

Brevard County shall develop a mosquito impoundment management plan by 1994, which should address the following criteria, at a minimum:

Criteria

A. Acquisition of impoundments for maintenance and operation.

B. Appropriate water management system shall be utilized.

C. Impoundments shall be restored or reconnected with the Indian River Lagoon when a public benefit can be demonstrated.

D. Proposed alteration of an impoundment should be reviewed by Mosquito Control. Brevard County should compensate property owners for mosquito impoundments when they use precludes all use by the owner or when no alteration would be acceptable to Mosquito Control.

E. Nonpermitted alteration of an impoundment shall be enforced by ~~the~~ Brevard County Code Enforcement ~~Division~~.

F. All mosquito impoundments should be evaluated and those found to be breached or non-functional should be returned to their natural condition by the appropriate mosquito control district. This would include, but not be limited to, removal of existing dikes and re-establishment of historical tidal channels.

G. Those fully functioning impoundments determined to be needed by the mosquito control district, should be placed under a rotational impoundment management plan as approved by the Florida Coordinating Council on Mosquito Control.

H. Any other "source reduction" mosquito control activities which also reduce the natural habitat required by freshwater or marine organisms should be prohibited.

Policy 5.7

Wetlands artificially created for wastewater treatment or disposal or for wetland stock nurseries shall not be subject to these regulations and shall not be used to fulfill the requirements of this objective (Objective 5).

Policy 5.8

Public facilities should not be located within wetland areas unless the following apply:

Criteria

A. The facilities are water-dependent, such as mosquito control facilities; or

B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or

C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or

D. The building structures are floodproofed and located above the 100-year flood elevation, or removed from the floodplain by appropriately constructed dikes or levees; or

E. The facilities are found to be in the public interest and there is no feasible alternative.

Wetlands

Objective 5

Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990.

Policy 5.1

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the ~~FDER~~ FDEP and the SJRWMD in delineating wetlands~~, but shall not be limited by the threshold or connection requirements utilized by these agencies~~.

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~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations.

Criteria

A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. It is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation. In determining mitigation ratios, functionality of the impacted wetland should be considered.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

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2. Commercial and industrial land development activities ~~uses~~ shall be prohibited in commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996 unless the project has a special reason or need to locate within wetlands and there is an overriding planning ~~public~~ interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100-year flood elevation requirement for first floor elevations, and to one primary access to the on-site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.

H. Lands which are currently designated as commercial and industrial on the Future Land Use Map are deemed to be consistent with this policy.

Policy 5.3

Wetland regulations adopted by Brevard County shall avoid duplication of wetland regulation.

Criteria

A. Brevard County shall regulate activities which will result in the destruction and/or degradation of functional wetlands except where the wetland degradation or destruction has been permitted by ~~FDER~~ FDEP or SJRWMD based on ~~FDER~~ FDEP and SJRWMD professional staff application of criteria and evaluation.

B. Any permitted wetland degradation or destruction shall provide for mitigation as designated in Policy 5.2~~, Criterion C~~.

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By September 1991, Brevard County shall develop and adopt a Mangrove Protection Ordinance. The ordinance shall be consistent with the Florida Department of Environmental ~~Regulation~~ Protection mangrove requirements and shall be enforced by Brevard County.

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Criteria

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B. Appropriate water management system shall be utilized.

C. Impoundments shall be restored or reconnected with the Indian River Lagoon when a public benefit can be demonstrated.

D. Proposed alteration of an impoundment should be reviewed by Mosquito Control. Brevard County should compensate property owners for mosquito impoundments when they use precludes all use by the owner or when no alteration would be acceptable to Mosquito Control.

E. Nonpermitted alteration of an impoundment shall be enforced by ~~the~~ Brevard County Code Enforcement ~~Division~~.

F. All mosquito impoundments should be evaluated and those found to be breached or non-functional should be returned to their natural condition by the appropriate mosquito control district. This would include, but not be limited to, removal of existing dikes and re-establishment of historical tidal channels.

G. Those fully functioning impoundments determined to be needed by the mosquito control district, should be placed under a rotational impoundment management plan as approved by the Florida Coordinating Council on Mosquito Control.

H. Any other "source reduction" mosquito control activities which also reduce the natural habitat required by freshwater or marine organisms should be prohibited.

Policy 5.7

Wetlands artificially created for wastewater treatment or disposal or for wetland stock nurseries shall not be subject to these regulations and shall not be used to fulfill the requirements of this objective (Objective 5).

Policy 5.8

Public facilities should not be located within wetland areas unless the following apply:

Criteria

A. The facilities are water-dependent, such as mosquito control facilities; or

B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or

C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or

D. The building structures are floodproofed and located above the 100-year flood elevation, or removed from the floodplain by appropriately constructed dikes or levees; or

E. The facilities are found to be in the public interest and there is no feasible alternative.

1. Placing, depositing or dumping of solid waste.

2. Processing and storing of threshold amounts of hazardous materials.

3. Disposal of hazardous materials.

Policy 2.4

Brevard County shall develop regulations to protect the coastal floodplain. At a minimum, the following regulations shall be incorporated into the land development regulations:

Criteria:

A. Prohibit development within the annual coastal floodplain.

B. Limit development waterward of the Brevard County Coastal Construction Control Line to those structures necessary to protect the natural dune system and to provide beach access.

C. Brevard County shall develop construction standards for the development within the one hundred year storm surge zone as established by the Florida Department of Natural Resources.

Policy 2.5

Brevard County shall develop regulations to ensure that alterations of isolated one hundred year floodplains do not adversely impact the drainage of adjacent properties or public drainage facilities.

~~**Policy 2.6**~~

~~Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the Florida Department of Environmental Regulation and the St. Johns River Water Management District in delineating wetlands, but shall not be limited by the threshold or connection requirements utilized by these agencies.~~

~~**Policy 2.7**~~

~~By September 1990, Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:~~

~~**Criteria:**~~

~~A. The basis for no net loss shall be established as of the effective date of the required ordinance.~~

~~B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland function.~~

~~C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for~~

~~repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.~~

~~D. Mangroves shall be afforded special protection.~~

~~E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.~~

~~F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element Policy 5.2 are met.~~

~~1. Residential land uses shall be limited to not more than one dwelling unit per five acres.~~

~~2. Commercial and industrial land uses shall be prohibited unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.~~

~~3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.~~

~~4. Dumping of solid or liquid wastes shall be prohibited.~~

~~5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.~~

~~G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulations.~~

Policy 2.6

Residential land use designations shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of February 23, 1996 which is less than five (5) acres as unbuildable. Density may be transferred to an upland portion of the site consistent with existing land development regulations, such as setback, minimum lot size, stormwater regulations, etc. Residential lots within wetland areas should be subdivided in such a way that buildable areas are contained within each lot.

Policy 2.7

Commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996 shall be prohibited unless the project has a special reason or need to locate within wetlands and there is an overriding planning interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

Policy 2.8

Wetland regulations adopted by Brevard County shall avoid duplication of wetland regulation.

Criteria:

A. Brevard County shall regulate activities which will result in the destruction and/or degradation of functional wetlands except where the wetland degradation or destruction has been permitted by Florida Department of Environmental Regulation or the St. Johns River Water Management District based on Florida Department of Environmental

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Meeting Minutes

upheld in an appellate review. She stated there are a number of questions this issue has raised far beyond the project that is being proposed; so she will support the motion.

Commissioner Ellis stated another issue is when will the Board stop re-opening the case and say it is over. He stated if it is going through the appeal process, even to the point of re-opening the record, it needs to have strict limits that it will go that route once and not in perpetuity, because it is not fair to the taxpayers to spend funds on legal fees just because certain people do not like certain projects. He stated the Board needs to set a parameter that once is enough.

Mr. Knox advised Mr. Spielvogel raised the issue as to how the cases differ and why they should be treated differently; it is his recollection that the other case the Board is involved with had two choices of zoning classifications that would fit into the land use category; and the court found the one the Board chose to leave it in was not adequate, so it had only one other choice. He stated in this case, there may be three, four or five categories of zoning classifications that would fit into the land use designation that may be appropriate other than the ones the applicant already has. He stated the same issues are whether it has to rely on the existing record to pick one of those other categories, is stuck with the categories they asked for, or if it can re-open the record and see if there is other evidence it would like to take that would support a decision other than the one it did the last time. He stated the Board cannot leave the zoning the way it is, but Snyder does not say it cannot pick something that is consistent with the Comprehensive Plan other than what is currently there. Commissioner Scarborough advised he would never want to do this more than once.

Commissioner Higgs stated it is not this project or a like or dislike for a particular project, it is the issue of adequacy of infrastructure, health, and safety of people and what the Board will be allowed to consider in terms of evidence. She stated the Board tried to look at significant issues regarding this project and applied what were reasonable criteria.

Chairman Cook called for a vote on the motion. Motion carried and ordered unanimously.

PUBLIC HEARING, RE: ADOPTION OF 1995B COMPREHENSIVE PLAN AMENDMENTS

Chairman Cook called for the public hearing to consider adoption of the 1995B Comprehensive Plan Amendments.

Planner I Todd Corwin advised the first item is approval of staff?s response to Department of Community Affairs Objections, Recommendations, and Comments Report (ORC). He stated Department of Community Affairs raised objections to the amendments to the Conservation, Future Land Use,

and Historic Preservation Elements, and the Future Land Use Map Amendments 95B.4, B.5 and B.6; each item was considered for staff response; and the response is included in each Plan Amendment. He requested approval of staff?s response.

Commissioner Scarborough requested the Board start with the wetlands policy.

Conservation and Future Land Use Elements

Margaret Hames, 667 Acacia Avenue, Melbourne Village, indicated inadequate time for public input; and recommended the Board delay the revision which is not recommended by the Department of Community Affairs and St. Johns River Water Management District, since it is required to review the Plan next year. She advised the St. Johns River Water Management District will complete its GIS mapping which will provide greater detailed data pertaining to the character of the land; and recommended the Board take time to study it, and if it is found necessary, do a revision properly.

Charles Moehle, 65 Country Club Road, Cocoa Beach, supported the amendment and requested the Board clarify and make equitable the Future Land Use Element and interpretation of what is controlled and prohibited by the wetland policy. He advised of the process that led to adoption of the Plan in 1988, amendments to the Plan, and Ordinances setting out where the uses will be. He stated "based on FDEP and St. Johns River Water Management District professional staff application of criteria and evaluation" in Policy 5.3, Criteria A, should be eliminated, otherwise it will bring the County into the process at the end which would be an unnecessary expense.

Margaret Broussard, 3660 N. Riverside Drive, Indialantic, representing Friends of The Scrub, advised of mismanagement of Florida?s eco-system resulting in the Kissimmee Everglades problem and enormous costs; and indicated discussing changes to Brevard County?s wetlands and water systems may repeat similar mismanagement. She stated to allow more development in wetlands, dredging and filling, and more flooding, flies in the face of the Comprehensive Growth Management Plan; and if the Board does not care about quality of life, urban sprawl, increased pollution, traffic, crime and other ugliness of cities, or protection of historical structures and remains, and only cares about the economy, a lot of the economy depends on tourism; and the fastest growing kind of tourism is eco-tourism. She stated if the Board does not control growth as the Comprehensive Plan is designed to do and preserve its treasures of nature, it will be doomed to an ever-declining quality of life; and requested the Board not make ill-advised changes to the Comprehensive Plan.

Joe Yasecko, 125 E. Swanee, Cocoa Beach, advised population growth is the biggest cause of most of this discussion, and the Board is not doing anything

about population growth control. He stated there is too much discussion on the Comprehensive Plan and dictating what individuals want to do; people want to live close to the water or in stilt houses in the middle of wetlands; people are sometimes destructive, but the problem cannot be solved with rhetoric; and the Board should back off in trying to control things.

Elmer Dachota, 335 Park Avenue, Satellite Beach, advised population growth is a problem and Brevard County cannot stop it; and the population has doubled in 25 years. He suggested hiring a firm to define the wetlands more clearly; and stated he is for slow growth, and the Board is looking for trouble if it does not have regulations.

Terry Goewert, 102 Martesia Indian Harbour Beach, advised in the Presidential candidates? debate, Florida was cited as having poor wetland policies and regulations restricting landowners rights; the unanimous consent of that debate was that people have a right to their land and land use; and if government wants to restrict the land use, it must buy the land and pay market value. He encouraged the Board to agree on landowners rights.

Kim Zarillo, 760 Cajeput Circle, Melbourne Village, representing Florida Native Plant Society, advised they oppose the amendment; there is no need to change the existing Policy; and there is a problem in obtaining the amendments in a timely fashion because the libraries did not have the information.

Commissioner Ellis advised his office is always open for anyone who wants to get information; they also send it out; and there is no way the Board can force the newspapers to publish everything it is doing. Ms. Zarillo stated all the Commission Offices are open and they are very friendly about letting people come and look at anything; but the information is supposed to be available to the public in the libraries, and it is not there. Commissioner O? Brien recommended the County Manager solve the problem, and people who go to the libraries and do not find the information can call the County Manager who will fax it to the library.

Discussion ensued on getting information to the public, evolution of thoughts that resulted in different drafts, and the language changes to meet Department of Community Affairs and St. Johns River Water Management District requirements.

Commissioner Ellis stated the small changes in language have been driven by the agencies not the Board and County staff; and he does not want the implication to be that the Board and staff is issuing new drafts every two weeks.

B. B. Nelson, 3535 Hammock Trail, Melbourne, presented a copy of Webster?s definition of "wetlands"; and inquired if it is legal to use it in the document. He stated a considerable portion of the wetlands was caused by

government flooding lands, closing ditches, and making changes without consulting the property owners or doing studies; and inquired if the Board can stop the Federal and State Governments from flooding land and filling in ditches in violation of its Code. Mr. Nelson advised the Bill of Rights says, "Nor shall private property be taken for public use without just compensation"; and stated the real issues are growth versus no growth and a simple definition of wetlands or the agencies? definition.

Deanna Reiter, Indian Harbour Beach, spoke against the environmentalists and people who oppose changes or common sense modifications of the regulatory process; and inquired if Brevard County will be a good place for birds, bugs and snakes, but not for people who want to find good jobs. She stated she is thrilled that the Board is trying to get rid of some regulations and making it easier for them, because most people want smaller government. Ms. Reiter stated they need a County that is fair and provides incentives for industry and business to locate, expand, and grow here; and downsizing government at all levels is what their goals should be.

Micah Savell, 1370 Sarno Road, Melbourne, indicated there is mismanagement within the County, people violating rules they espouse and want others to follow, and lack of common sense application in the administration and review of wetlands and other regulations that control their daily lives. He stated wetlands were swamps where water came in and sustained wildlife, fish, and other things, but now it is interpreted to cover every ditch, indenture, hole, etc. which was not the intent. Mr. Savell encouraged the Board to review the amendment carefully and adopt it; and stated there is nothing substantive other than to avoid duplication. He noted information was available to the public.

The meeting recessed at 10:31 a.m. and reconvened at 10:51 a.m.

Diane Stees, 21 Bougainvillea Drive, Cocoa Beach, representing Indian River Audubon Society, advised they are disappointed that they were not given adequate time to thoroughly review the changes; and the Audubon Society does not support the proposed amendment because the County has an adequate Comprehensive Plan as written although some fine tuning would improve it. She requested the Board withdraw the amendment and wait until the Plan comes up for review next year. Ms. Stees stated they are sustainable growth advocates, not no growth advocates.

William Kerr, 325 Fifth Avenue, Indialantic, advised preserving isolated wetlands within totally developed areas is not environmentally correct; and suggested the Board allow the Future Land Use Element to govern future land use as it was intended, and allow permitting on areas zoned commercial and industrial with isolated wetlands and let land development regulations take care of those areas. He stated the permitting takes care of mitigation,

and mitigation takes care of no net loss; so the Board should let the existing language stand and apply to future land use because it has been approved by Department of Community Affairs. He stated it will afford future protection of wetlands and allow property owners to use their properties by mitigating wetlands and providing a more appropriate eco-system management.

Commissioner Scarborough inquired if Mr. Kerr finds any problems with the language; with Mr. Kerr responding he sees no problem with the proposed language or the existing language which was written for future land use; and recommended the Board leave the existing language and direct staff to interpret it for future land use and let existing industrial and commercial properties which are already zoned and have wetlands be controlled by the permitting process. He stated isolated wetlands in existing commercial and industrial properties could be mitigated; and it is not proper environmentally to keep isolated wetlands in an industrial complex because it collects cups, paper, oil and grease off parking lots. He stated the problem is interpretation of the language; and commented about future protection of wetlands, the permitting process of Department of Environmental Protection and St. Johns River Water Management District, mitigation, permitting pocket ponds in industrial and commercial areas, and protecting wetlands for the future.

Commissioner O?Brien stated the new language resolves the problem and spells out any new industrial and commercial zones created on the Future Land Use Map will be directed away from wetlands in the future.

Commissioner Ellis stated interpretation of the Comprehensive Plan precluded landowners from getting to State agencies because it says, "Commercial and industrial land uses shall be prohibited." He stated Mr. Kerr contends that meant future, and the way staff interpreted it caused the conflict.

Rob Lee, 1884 Gulf Court, Indialantic, advised the proposed language is a positive interim step, and encouraged the Board to include the mixed use districts in Policy 2.7.C., as it was designed for limited commercial expansion to serve residential areas. He stated without the ability to expand commercial within residential areas to serve the residents will force them to travel and increase traffic. Mr. Lee advised the Department of Community Affairs? February 22, 1996 letter views that it is the County?s position to allow commercial/industrial uses within wetlands; there is a difference between uses within wetlands and wetland impacts; isolated wetlands are distributed throughout all lands; and it is difficult to have a parcel that does not have a small pond on it. He stated impact should not be denied if mitigation is offered or required.

Pat Daly, 104 Lamplighter Drive, West Melbourne, stated she has provided the County with 37,000 trees; it is difficult to stop growth, but it has to be tripped up from time to time when it strips trees and impacts wetlands; and advised of problems in Lamplighter Village because of I-95 and Rodes

Boulevard being constructed. She noted changes in Eau Gallie Yacht basin; and stated wetland and environmental issues should not be lessened. Ms. Daly commented on an experiment she conducted on the temperature in her car, noting one tree in the right place would have changed that; and inquired how much money is saved by taking down a tree instead of going around it.

Don Simms stated the amendment is an attempt to remove a layer of redundant regulations; Brevard County has lost thousands of well-paid jobs in the past few years; and the State only contributed $2,000,000 to help McDonnell Douglas, but is spending $100,000,000 on scrub jays. Mr. Simms indicated 15 years ago the Board wanted to make things work for the benefit of all; the County flourished and the economy was strong; and there was a common sense approach to problem solving which provided an environment for good growth and business expansion. He stated now they are faced with road blocks, regulations, and environmental elitists who never stop trying to prevent economic expansion; and urged the Board to remove the redundant regulations and re-establish common sense by passing the amendment today.

Norma Adams, 801 S. Brevard, Cocoa Beach, advised the policies use "shall" but the criteria use "would, could, and may be"; and that may have caused the difficulty of interpretation. She stated it leaves too much open to interpretation; and recommended more "shalls" be used. She also urged the Board to get its information out quicker.

Mary Todd, 135 S. Bel-Aire Drive, Merritt Island, representing Turtle Coast Group of the Sierra Club, indicated insufficient time for citizen input; and stated the Board has not carefully studied the effects the proposed changes will have nor investigated what properties would be affected and how the contributions of existing wetlands would be impacted. She stated in order to have the amendment accepted by Department of Community Affairs, the Board has to satisfactorily address the four objections stated in the ORC Report, as follows: (1) protection of wetlands and natural functions of wetlands, (2) lack of supportive data and analysis assessing the impact of the proposed amendments on wetlands and their functional values, (3) omission of an analysis of how the amendments are compatible with the goals, objectives and policies of the Brevard County Comprehensive Plan addressing protection of natural resources and so on, and (4) prevent urban sprawl. Ms. Todd stated none of the Department of Community Affairs? concerns are satisfactorily addressed; and their study of the Florida Statutes indicate the amendments are not in compliance with the State?s Comprehensive Plan.

Commissioner Ellis advised there was no carefully detailed study done to implement the Comprehensive Plan; no mapping was done when the Plan was implemented; and that is why there are conflicts today.

Pat Poole, Box 854, Melbourne, stated the Board is playing with people?s lives and the lives of future generations; it should not rush into changing the policy; it will know if it is working for clean air, pure water and natural resources that it is doing the right things for the people and future generations; and if it devastates the environment, it will know it is not doing the right things. She advised people do not have the right to come here and do whatever they want and cause destruction of the environment; and if people come with the attitude of giving instead of taking, then they will have a good County to live in. She stated environmentalists are not elitists; they are here because they care and hope the Board will care too; and requested the Board not vote for the amendment.

Jody Rosier, 460 Highway 436, Casselberry, representing Florida Audubon Society, advised there is a place for permitting and a place for planning; correct interpretation of the existing language will solve the problems; and adding the date on single-family residences in Policy 1.6 will allow people to know the effective date. She stated Policy 2.7.F.2. covers everything; the Society supports keeping the existing language; if new language is added about roads, etc., Department of Community Affairs will require a data analysis; and the Board will have to figure out what is happening to the wetlands, how it will affect the Indian River Lagoon, and how it will affect the tourist and fishing economies. She stated the simplest thing that will work is to interpret the existing language correctly; she reviews permits and very few are ever denied; and recommended adding language to promote buffering and protection of rare wetland systems in the Conservation Element. She encouraged the Board to promote wise growth and not unwise growth.

Commissioner Ellis stated the Board is attempting to clarify the language so if a person has a parcel surrounded by commercial/industrial uses, he would not be prohibited from those uses and forced into residential use. He stated he does not know how the Board can direct staff on interpretation when it did not work before.

Assistant Growth Management Director Peggy Busacca advised the Board cannot simply deal with interpretation; there are some amendments that need to be made; the Future Land Use Map refers to Policy 5.2 as a limitation on the intensity or density of land use; and even though Policy 5.2 discusses Land Development Regulations, because it refers to standards within the Land Development Regulations, it has blurred the edge between planning and Land Development Regulations. She stated the same is true about Policy 1.6 where it talks about residential density guidelines, environmental constraints, more stringent density guidelines, and refers to Policy 5.2; so the Board should make some modifications so that it will be clear that planning and site design issues are separate.

County Attorney Scott Knox advised the issue of taking generated this discussion originally; Assistant County Attorney Katherine Harasz told the

Board there were two alternatives--(1) amend the Comprehensive Plan, and (2) pay compensation; however, there is a third alternative which is limiting interpretation of the Comprehensive Plan to prevent a taking. He stated how the Board would limit a particular Comprehensive Plan policy would depend upon what the circumstances were and how it was being applied to a particular piece of property; but the concept of applying a limited interpretation is valid. He noted staff could keep a record on exactly how they interpreted those policies, and go back to that record to use it as precedent for additional interpretations.

Commissioner Higgs inquired if Ms. Busacca has language to accomplish what the County Attorney said; with Ms. Busacca responding no, but it could be generated fairly quickly. Commissioner Higgs stated what she read from Department of Community Affairs indicates it does not find a whole lot acceptable; with Commissioner Ellis responding that is not what he read. Commissioner Higgs stated going back to the original language was suggested; and if there is some way to accomplish what has been discussed and getting it through Department of Community Affairs, she would like to know what that language is.

Carole Pope, 715 Rockledge Drive, Rockledge, advised she is here as a taxpayer and voter and to have standing before this issue because she supports the State and its scrutiny of the recommendations. She stated the amendments are ill-conceived and ill-prepared; it is probably the worst criticism she has ever seen from the agencies that reviewed the document; and the Board needs to delay this amendment. She advised the State said it was inconsistent with Rule 9J-5, many of the items proposed are contradictory, and a lot of it leads to overcrowding of lands adjacent to wetlands. She stated the Comprehensive Plan is the overall view of protection for individual property owners in Brevard County so they can be assured the property they buy is properly developed; the way the Board is trying to gut the Plan flies in the face of the property owners of Brevard County; they are consistently interested in one thing, and that is quality of life; and they are not saying no development, but they want quality development. Ms. Pope stated the top three issues of every poll

taken in Brevard County are education, crime, and quality of life; the thoughts shared at five public hearings painted a portrait of people struggling with rapid growth concerns; they are tired of paying the bills for flooding, overcrowded roads, inconsistencies, and officials they cannot trust; and that is why they voted against the school bond, not because they do not support education, but because they do not support officials who do not spend their money properly. She stated the three Commissioners who are trying to perpetrate gutting the Comprehensive Plan need to remember that the only reason they are sitting on the Board is because the people voted against their predecessors and not for their ideas; their predecessors were flagrantly ignoring the same regulations; and now the response to the people is to throw the regulations out. Ms. Pope stated people make fun of environmentalists and talk about them being in favor of birds and spending a

lot of money on birds; those people are quality control specialists who think about the quality of life and not how many people they can jam into Brevard County; and the more population, the more the salaries of elected officials increase. She requested someone show her in the Constitution where people are guaranteed a profit for land speculation and investment; and stated quality of life will do more to attract quality employers than swamp land development. She stated quality development allows a person to put a business here and know he can depend on his property not flooding; the regulations are for the benefit of everyone; and urged the Board to delay its vote and have more public comment and do more studies before making changes. She stated the Board is compromising good developers by the proposed amendment; and she hopes her statements will be on record to give her standing if the State does not pursue it.

Commissioner Ellis advised the Board is not gutting the Comprehensive Plan; the amendment affects less than 1% of the wetlands; Department of Community Affairs? letter states, "However, recognizing that the County undertook a land use planning effort to appropriately locate commercial and industrial uses during the development of the Comprehensive Plan, a policy could be established which allows, as an exception, the permitting processes of regulating agencies, St. Johns River Water Management District, Florida Department of Environmental Protection, and U.S. Army Corps of Engineers, to afford wetland protection for those areas currently designated for commercial and industrial uses. In our discussions with the St. Johns River Water Management District staff, this limited exception policy appears to be acceptable if applied only to areas currently designated for commercial and industrial uses." Commissioner Ellis stated Department of Community Affairs did not slam everything the Board did; and the Comprehensive Plan today has been interpreted to preclude a person from getting to the State agencies.

Commissioner Higgs advised Department of Community Affairs also wrote, "Given the representations of the County, the information given by St. Johns River Water Management District, we would consider a limited interim approach, and would allow as an exception the permitting process to address protection of wetlands on those areas currently designated for commercial/industrial uses. It would be difficult to support amendments which move beyond the limited issue." Commissioner Ellis inquired which part of the amendment moves beyond that issue; with Commissioner Higgs responding people have concerns about the lack of a date, transportation corridors, and definitions. Commissioner Ellis advised the comments are that the permitting process will address protection of wetlands in those areas currently designated for commercial/industrial uses; the maps depict how many acres the amendment works with; and Department of Community Affairs and St. Johns District feel people should be allowed to work through the State agencies and mitigate if they have a parcel surrounded by commercial and industrial uses. Commissioner Higgs suggested the Board go back to the original language to see what can be included that may address the issues and solve the problems.

Tim McWilliams, 492 E. Eau Gallie Boulevard, Indian Harbour Beach, stated the Board is trying to fix a problem in the existing regulations; if it was all up to interpretation, it would have been fixed a long time ago; so the Board needs to change the language to fix the problem. He stated if it can be done quickly through Department of Community Affairs, that would be great; but if the Board has to use the measured change, then it should get it done. Mr. McWilliams advised it is not destroying all wetlands or the St. Johns River; it is to fix the problem of property owners who have small isolated wetlands; and in the long run Brevard County will be better off because it will not have net loss and will have more wetlands with two to one mitigation. He stated he is a developer and environmentalist; it is important to save trees, wetlands and birds; but the change is common sense and gives landowners some flexibility, and at the same time saves the wetlands.

Carol Senne, Highway 100, Palatka, representing St. Johns River Water Management District, advised she wants to clarify the District?s position on permitting mentioned in Department of Community Affairs? letter; the District believes there are three levels; one is the land use decision that the local government makes; and once that land use decision is made, the local land development regulations and permitting are what protect the wetlands; and what is missing from the sentence in the letter is the concept that the local Land Development Regulations which the Board adopts and has in its Comprehensive Plan work hand-in-hand with the permitting. She stated they agree with Department of Community Affairs to add a date certain and refer to lots of record on single-family residential; they agree with Department of Community Affairs that Policy 2.7 needs to be tighter and that it is not clear what the definition of direct uplands and issues like that are; and on the Conservation Element Policy 5.2, they agree with C which is something a lot of local governments do. She stated the District does not have a problem with the County requiring permits be obtained; however, the language, "wetland functionality and mitigation shall be determined by the St. Johns" could become a situation where the District?s staff would be making determinations for zoning. Ms. Senne suggested using the District?s criteria rather than placing its staff in a position of making wetland determinations in areas such as zoning before it gets to the permitting stage. She advised they consider commercial and industrial land uses to be the land use designations on the Future Land Use Map; once a Future Land Use designation is made and found in compliance, that is the status of all future land use designations that are on the Future Land Use Map; compliance means they were found to be internally consistent; and once the land use designations are found in compliance, it is then that the Land Development Regulations adopted by the Board are considered. She stated as it gets to the site specific issues, the permitting that occurs determines the outcome of the wetlands on those sites; the District believes in that hierarchy of planning; but staff is interpreting land use to mean use of lands as commercial or industrial; she does not know how the

Board can solve that problem; but if there is a way to make a distinction that it is a policy that directs the future land use designation, she hopes it will retain the policy to help in the decision-making process for future land use designations because it has worked and it is language that has been adopted and found in compliance. She stated that would be the easiest way to solve the problem with lots that are in existing future land use designations and found in compliance but have problems in the zoning process and site plan process because there are wetlands on site.

Commissioner Ellis advised the new language for Policy 2.7.A. is very clear; it says, "New industrial land use designation should be directed to areas that are not wetlands"; and it will take the place of the language that is not clear and will not be an interpretation issue. Ms. Senne advised the Board could put that language in there, but it does not have a problem because the existing language has been found to comply; and requested an opportunity to review the language staff may come up with and comment. She stated if the Board is deleting Policy 2.7 and replacing it, Department of Community Affairs is communicating that the County will have to provide an analysis that goes along with it. Commissioner Ellis stated there was no analysis done when the Plan was done. Ms. Senne stated there was an analysis done based on the information available at that time. Commissioner Ellis stated the Board is being asked for an in-depth analysis that was never done; and had an analysis been done, staff would be able to reach in and get that data right now.

Commissioner Higgs thanked Ms. Senne for her efforts in trying to help Brevard County come up with a solution to the problem. She inquired if Ms. Senne feels the language the Audubon Society alluded to would address and solve the problem; with Ms. Senne responding it is up to County staff to counsel the Board as to whether or not they feel it will solve the problem, but conceptually they support it if that is the direction the Board chooses to go in.

Commissioner Scarborough requested Ms. Busacca comment on minimal language that could be used to resolve the problem.

Ms. Busacca advised the Legend of the Future Land Use Map has a footnote that says, "Locations and intensities are subject to Policies 5.1 through 5.5 for heavy or light industrial, and locations and intensities are subject to Policies 4.1 and 4.11 for mixed use districts"; embedded within those policies may be references to language contained in the Land Development Regulations; and that may be how staff managed to make Land Development Regulations language into planning language. She stated the intent was a disclaimer to explain to people they could not necessarily get the maximum density shown on the Future Land Use Map, because at the site specific review they may find out there are other policies such as concurrency and other things which would limit that; and that is how staff managed to get to the interpretation on land uses which are not permitted if

there is a wetland on the site. She stated they could probably use the existing language as direction for a site design review which is done by the Land Development Regulations, but it needs to change some language to make it clear that it is not specifically talking about a future land use designation, or have direction from the Board that it is not the legislative intent.

Commissioner Scarborough inquired if Ms. Busacca can suggest some language; with Ms. Busacca responding she can give the Board an example. She stated Policy 1.6 discusses residential density and says, "The residential density guidelines for each density area of this Comprehensive Plan represent a maximum threshold, and the allowable density shall be based upon the following maximum criteria." She stated the criteria includes environmental constraints and more stringent density guidelines established in the Conservation Element Policies 4.2, 4.3, 4.4 and 5.2; and if it is the Board?s intent that allowable density shall be reviewed at the site plan or subdivision review stage, then she is not certain any language needs to be changed.

Commissioner O?Brien advised Policy 1.6 says, "Residential density shall be limited to no more than one dwelling per five acres unless strict application of this Policy renders a legally established parcel which is less than five acres as unbuildable." He stated the previous policy did not have that sentence, so if they could not do it in five acres they could not do it; and that was a taking of land. He stated that language will resolve problems where there are two acres in residential areas that have already been built.

Ms. Senne advised the District concurs with the single-family residential language if a date certain is put in there so it tightens it up; the Board has a policy that directs future land use decision-making criteria in a policy that directs what belongs in the Land Development Regulations; Policy 2.7 delineates policy that needs to be addressed in the Land Development Regulation Ordinances; and one of those policies deals with land use designations. She indicated the problem can be solved as she pointed out; and if the Board can solve the dilemma, then the District would feel comfortable with that approach and solution.

Commissioner Higgs advised language could be inserted that clarifies if established before 1988, or the date the Board determines in proposed Policy 1.6.A; that would not be taking property and making it unbuildable; and the existing language could be used and clarifying language could be inserted in existing Policy 2.7.F.1.

Commissioner O?Brien stated the original language in Policy 1.6 did not include "unless"; and if that is added, and language to address density transfer to upland areas, it would be more specific and not use strict application. He stated the current Policy 2.7 is being deleted as a duplicative policy and being replaced with, "new industrial land use designations should be directed to areas which are not wetlands"; that is common sense, so

people in the future do not come looking for zoning in wetlands; and that is what the Board wants to accomplish. Commissioner O?Brien stated presently the maps have commercial zones with buildings; and parcels are filling up with oil, grease, garbage, etc. that perhaps were wetlands at one time. He stated mitigation has been a failure because of the lack of good planning; wetlands have increased in Brevard County because mosquito impoundment areas have been flushed out and made viable wetlands again; and 44,000 acres of saltwater marsh and 12,000 acres of freshwater wetlands have been gained that were not there 20 years ago. He stated he does not know if that is true, but that was told to him and deserves being looked into. He reiterated that new commercial/industrial development not in wetlands makes sense.

Commissioner Higgs stated the Board has the ability to deal with the problems by making small changes to the existing language. Commissioner O?Brien stated the new verbiage does not substantially change the old version, but it clears up the problem; and inquired why should the Board stick with the old language when it has better language now. Commissioner Higgs stated the ability to predict what the new language will do and how it will impact the land is what people are concerned about; and if the Board is concerned about solving the two problems that have been identified, it has the opportunity to do that with small changes to the existing language which has more potential of being accepted by Department of Community Affairs. She noted the fewer changes made, the better the chances are of solving the real problems that were identified. Discussion ensued between Commissioners O?Brien and Higgs on the old language versus the new language, strict application by staff, and making changes is not always bad.

Ms. Senne advised the St. Johns District does not recognize that all wetlands in present industrial and commercial land use designations have all become dysfunctional or trashed; that does happen in some instances, but there are still some functional wetlands; and those are evaluated during the permitting process at the St. Johns District. She stated there were thousands of acres of wetlands in the St. Johns River area; a lot of those were ditched and diked and turned into agricultural enterprises; since then, the District has undertaken an aggressive program in the Upper Basin and has restored thousands of acres of original wetlands; there is a tremendous effort going on which is not complete yet, and it may be larger than 12,000 acres. Commissioner O?Brien mentioned the marshes on Merritt Island, and Ms. Senne mentioned the restoration program up and down the Indian River Lagoon and in other counties to the south. Commissioner Ellis stated it is important to recognize that the wetlands are not disappearing in Brevard County. Ms. Senne stated it is a difficult decision to come up with something that is considered fair and reasonable; she has concerns with Policies 2.7.A and B as proposed, and about what was deleted with Policy 2.7.

Norma Savell, 3500 S. Courtenay Parkway, Merritt Island, advised the bottom line is no net loss of functional wetlands; constant reviews, tests, polls, analysis, or other stalls that continuously come up are tiresome; and

developers are property owners. She stated the proposed policy change is very small, so she cannot believe there is any resistance to it; and requested the Board support the change.

Roy Pence, 4533 Canard Road, Melbourne, advised of his problems with his property off Wickham Road that could not be developed because of an isolated wetland, and he resolved it by annexing into the City of Melbourne, went through permitting with the St. Johns District, and mitigated the wetland two to one. He stated the prohibition is unique to Brevard County and does not exist anywhere else in Florida; and he supports what the Board is trying to do to make it reasonable for a person to utilize his property. He stated there will be no net loss of wetlands; the requirement is still in the Comprehensive Plan; if someone has a dysfunctional wetland on his property he will be able to use it with mitigation; there is a stringent permitting process in place; and it will not impact the wetlands by going through that process because there are no loopholes to it. Mr. Pence advised there is confusion and lack of understanding of the permitting process; the language proposed is minimum language to address the issue; and requested the Board adopt the language.

Commissioner Scarborough inquired if the Board wants Ms. Busacca to provide language after lunch; with Commissioner Ellis responding every iteration is still trying to accomplish the same concept; he prefers to send language to Department of Community Affairs of what the Board is trying to accomplish; and if it does not like it, then it needs to be specific of what it wants.

Commissioner Higgs advised the Board did not get definitive answers from Department of Community Affairs at the workshop to bring it to where it needs to be; Mr. Patterson?s letter indicates it would be difficult to support amendments that move beyond the limited issue; the Board can have language that solves the problem, but if it is not accepted by Department of Community Affairs then those people who need assistance get nothing; so she would like to see language that would solve the problems and be accepted by Department of Community Affairs. Ms. Busacca indicated Department of Community Affairs would like to see a date on residential density in Policy 1.6; it believes Policy 2.7 does no harm; and it wants Policy 5.2.F.2 and 3 to remain so those could be used at the site design stage. She stated Department of Community Affairs could probably agree that the currently designated commercial and industrial lands on the Future Land Use Map can be utilized and allowed to go forward to the permitting stage, but it wants Policy 5.2.F.2 and 3 for new commercial and industrial designations design standards.

The meeting recessed at 12:32 p.m. and reconvened at 1:23 p.m.

Chairman Cook read a letter from Priscilla Griffith, Natural Resources Chairman of the League of Women Voters of the Space Coast, as follows: "The League of Women Voters of the Space Coast finds itself unable to support the current proposed wording for the Future Land Use Element and Conservation Element as regards wetlands. Our general reasons for this stance are that the County has not given data and analysis to support these changes from the 1988 Comprehensive Plan. It is not clear what the implications for the future are of these changes, and there appears to be some loopholes which would allow future unnecessary development for commercial and industrial purposes and residential. Furthermore, it appears that the County?s only protection of wetlands would be much diminished by this wording. There may be some planning, but there is very little protection proposed by the County, particularly of isolated non-jurisdictional wetlands. We hope that we are wrong in our conclusions. We intend to look over very carefully what finally goes from the County to Department of Community Affairs and comment vigorously. There?s an old saying that haste makes waste. Let?s hope that the haste with which these changes are being made do not waste our wetlands. Thank you."

Commissioner Higgs inquired if new language would be inserted in Policy 1.6, everything between Policies 1.6 and 2.7 would remain the same, and everything in Policy 2.7 would be deleted and replaced because the current language is duplicated in Policy 5.2 of the Conservation Element; with Ms. Busacca responding yes.

Commissioner Scarborough requested an explanation of the underlines, big print, small print, all caps, etc.; and Ms. Busacca explained the changes in the last hour are all bold caps, the underline is new language to the Comprehensive Plan, Policy 1.6 of the Future Land Use Element is the language the Board has seen before, after the words "legally established parcel," and "as of (date)" was added as Department of Community Affairs recommended. Commissioner Scarborough inquired why some language in all caps are underlined and others are not; with Ms. Busacca responding that language is currently in the Comprehensive Plan; her draft showed it stricken; and now she is suggesting it come back, so Policy 2.7 will not show any changes proposed. She stated Policy 5.2 has added language of "to be utilized for review of site specific development"; and that will direct staff that it is not for comprehensive planning terms. She stated B states, "Brevard County should utilize the same methodologies for determining functionality of wetlands," because the St. Johns District does not want to be solely responsible for determining functionality. Ms. Busacca advised C is the same as before; D all caps is language that exists in the Comprehensive Plan, and the underlined portion, "mitigation ratios should be tied to the functionality of the impacted wetlands," was suggested by Commissioner O? Brien at a previous meeting. She stated G was F, and the language is as currently exists in the Comprehensive Plan except as underlined where it talks about strict application of a legally established parcel; G.3, utilization

of fill, is the existing language that seems to be preferable from the Department of Community Affairs? standpoint; and she added, at the request of the St. Johns District, "the requirements of the St. Johns River Water Management District and Florida Department of Environmental Protection permit." She noted the intent is so that the County would not be inconsistent with the permit requirements regarding fill if someone has a permit. She stated G, H. and I should be H, I and J; "professional staff" has been deleted from Policy 5.3.A, as there was a comment that the County wants to depend on the final evaluation of Department of Environmental Protection and the St. Johns District whether it be staff or the governing boards; and those are all the changes shown in the green pages.

Commissioner O?Brien advised G.3 has "and to the requirements of the St. Johns River Water Management District and Florida Department of Environmental Protection"; and that is where it was duplicative because it is already being done by them. Ms. Busacca responded her rationale was that she did not want to see someone come in and go through all the trouble of getting a permit from the St. Johns District that specifically showed what they were allowed to fill and then Brevard County staff say they are not going to allow that person to fill no matter what is on the permit. She stated the policy as proposed would require the permit be obtained first; staff would then know what the information is; and she was trying to say the County will be consistent with that, and not make someone go back and alter the permit he or she already obtained. She noted she was trying to be consistent rather than duplicative. Commissioner O?Brien stated a lot of things in the policies are nothing more than a rubber stamp of other agencies? policies. Chairman Cook stated that was one area the Board looked at; and the agencies that have jurisdiction over wetlands are Department of Environmental Protection, Environmental Protection Agency, St. Johns River Water Management District, Corps of Engineers and the County.

Commissioner Higgs advised page 2, Item B says, "limited commercial uses may be considered where the construction of major transportation corridors have altered the functionality and continued

viability of the wetlands"; and inquired if there is anything in that language that specifies what can be done. She stated the language is unnecessary because a future board could consider it anyway. Ms. Busacca stated if the language is located in an area such that a less intensive use would be compatible with the character of the area, that is true. Commissioner O? Brien stated it may be necessary to say lands which are designated as commercial and industrial on a date on the Future Land Use Map to lock it in place. Commissioner Ellis inquired if B should be changed to "new commercial land use designations"; with Ms. Busacca responding yes. She stated they have a mixed use district so that is problematic because they do not have a commercial land use designation; and inquired if they should say "new commercial land use within mixed use district," or is the Board comfortable with the idea that commercial land use designations will be

understood to include mixed use districts. Commissioner Ellis stated that is what a mixed use district is.

Commissioner Ellis stated he has concerns about G.2, page 3 which says, "commercial/industrial land uses shall be prohibited"; and inquired how is it supposed to be interpreted differently from the way it is interpreted now; with Ms. Busacca responding because Department of Community Affairs feels at the site plan review stage, commercial and industrial lands will not be placed on the site in such a way as to be built in the wetlands is something they would like to see; they also said they are willing to consider this as an interim policy with the intent that staff would come back and do other language which would protect the wetland and still give flexibility in development with more data and analysis.

Mr. Jenkins suggested "approved after the adoption of this policy or amendment" be inserted in G.2. Commissioner O?Brien stated it would then say, "Commercial and industrial land uses approved after the adoption of this policy on this date shall be prohibited." Commissioner Ellis inquired if G.2 is saying, if they came in and got a land use designation as commercial/industrial after this is adopted, they can still get the designation, but whatever they do on the site they would have to work around the wetlands; with Ms. Busacca responding that is correct; and if the Board wants to put wording like that into the Comprehensive Plan, staff would feel comfortable with that language.

The Board discussed mitigation ratios and overriding public interest. Commissioner Scarborough indicated an overriding public interest could be to have a large commercial activity at the Grissom Parkway/I-95 connector rather than having strip malls all along Grissom Parkway because of traffic safety, unity of a community, and other planning considerations. Commissioner Ellis stated he is concerned with a strict interpretation that it would be a government-owned facility.

Chairman Cook advised it is common sense regulatory reform; and to define the issue as protecting or not protecting the environment is a cheap shot. He stated every Commissioner is concerned about the wetlands and protecting the environment; and as elected officials they have to be concerned about what impacts their regulations have in the real world. He stated they can protect the environment and wetlands and have a common sense approach to the problem; there are numerous agencies that have jurisdiction over wetlands; and they are all trying to do what is best for the community.

Commissioner Higgs stated there was talk about limited changes to the existing language; and inquired if that is a possibility; with Ms. Busacca responding the changes suggested has to do with residential density and legally established parcels; even though it is a great deal of verbiage, it is a relatively easy concept to iterate; and the additional language separates planning and permitting. Commissioner Higgs inquired about Policy 2.7.B,

regarding transportation corridors and commercial uses; with Ms. Busacca responding the intent of the language is to direct new future land use designations, not to talk about what is on the map currently, and to give staff some ability to say that even though along some commercial corridors they do not have a commercial nature, it may be acceptable, as the area evolves, to put commercial in that area. Commissioner Higgs stated it does nothing positive or negative so she cannot support that language. She inquired if G.1 will have a date; with Chairman Cook responding it should be the date of adoption. Commissioner Higgs inquired if that date will be inserted on the legally established parcels also. Commissioner Ellis stated he does not want to go back to 1988, and if the Board does, it should be prepared to buy all the unbuildable parcels. Commissioner Higgs stated she does not have a problem going back to 1988; and it would not have to buy the unbuildable parcels because there is a mechanism for that.

Discussion ensued on taking property and paying owners, interpreting the policy so it is not a taking, the appropriate date, and a mechanism for resolving potential conflicts. Ms. Busacca stated Department of Community Affairs? preference would be 1988, but if the only problem they have is the date, they would not find the County in non-compliance based on the date alone.

Chairman Cook inquired what the Board should be considering in regard to the Harris Act and property rights legislation; with Mr. Knox responding anything the Board does that is different than what it already has is going to be a new regulation; once it has a new regulation in place, the potential for a Harris Act claim rears its head because anybody who can interpret that new regulation as adversely affecting their property values can make a claim under that Act. He stated whether or not some of the changes would have that effect is yet to be seen; but the fact that it is making changes that create new regulations could give rise to that possibility.

Commissioner Higgs requested the County Attorney advise the Board of minor changes that could be done to address the problem; with Mr. Knox responding from a legal standpoint, the only thing that is being changed through the original proposals made by the Board is that the land use regulations no longer have to have the three things that were stricken as minimum criteria; and that does not mean the Board does not have an ordinance that has those things in it or cannot put those things in it, it just means that the policies in the Future Land Use Element and Conservation Element no longer will require it. He stated if the Board wants to leave those policies in there, it could add a few words to make it clear that it applies to new land use designations, or except for existing land use designations. Mr. Knox advised the only reason it has become a problem is because the Legend of the Comprehensive Plan has a note on it that says land uses must be consistent with those polices; those policies do not have a regulatory effect; and all it says is the Land Development Regulations have to have those kinds of things in it. He stated the courts would have trouble applying Policy 2.7.F. as a regulatory item because it says the Land Development

Regulations have to have those in it, and does not say the policy governs how the property can be used.

Chairman Cook advised the Land Development Regulations and Ordinances still have restrictions that will not change by accepting the Local Planning Agency?s recommendation. Mr. Knox advised the Local Planning Agency?s recommendation is to eliminate minimum criteria that should be in the Land Development Regulations; and nothing has changed on how those regulations work. Commissioner Higgs inquired if the note on the Legend is eliminated, would that solve the problem; with Mr. Knox responding it would eliminate the problem that caused those regulations to be interpreted on a site-by-site basis. Commissioner Higgs inquired what else will the Board need to do; with Mr. Knox responding it could make the language clear that the regulations do not apply to existing situations, by adding, "New commercial and industrial land uses shall be prohibited unless the project has a special reason."

Commissioner Ellis stated the problem is not how it is written, but how staff has interpreted it for seven years; and he wants to clear that up by using straightforward and clear language. Mr. Knox advised Policy 5.2.F.2 could read, "New commercial and industrial land use designations shall be prohibited unless the proposed project has a special reason or need to locate within wetlands and there is an overriding public interest." He indicated public interest holds connotations of a public project as opposed to a private project; so maybe the better word would be "planning" interest. Chairman Cook stated he wants to add language that would leave interpretation out of the picture; with Commissioner Higgs responding the language says new commercial and industrial land use designations and gets away from the use of the land.

Mr. Knox stated if the Board is trying to eliminate the interpretation issue, it needs to eliminate the note on the Legend of the Land Use Map. He stated the Policy reads the way it supposed to read that the Land Development Regulations must have that kind of provisions in it instead of having staff interpret that Policy as part of the Land Use Plan. Commissioner Scarborough inquired if the note on the legend can be deleted today; with Mr. Knox responding no, it would require another plan amendment. Ms. Busacca advised Department of Community Affairs may not be comfortable with that because it gives no guidance how a site plan is to be reviewed for existing industrial land use designations. Mr. Knox stated if Department of Community Affairs? concern is current land use designations, and it is trying to use the Policy to give guidance, then all the discussion has been for nothing because it would create the same problem the Board has had for seven years. Ms. Busacca stated Department of Community Affairs sees the language as good language for reviewing site plans should a wetland occur on a parcel, the development itself will not be put in the wetland. Mr. Knox and Ms. Busacca discussed Department of Community Affairs? suggestions, appropriate language, interim policy, and additional data and analysis.

Commissioner Ellis supported the language on the green sheets with slight modifications, and prohibition applying only to new commercial and industrial land use designations in Policy G.2. Ms. Busacca inquired if it would be in Policy 2.7 also; with Commissioner Ellis responding it needs to be in there. Ms. Busacca inquired if staff would put the date approved in G.2. as February 23, 1996; with Commissioner Ellis responding they can put the date instead of new, and also put a date in G.1. Ms. Busacca noted Policy 1.6 will need a date also. Commissioner Ellis stated he prefers the date of adoption versus 1988.

Chairman Cook recommended a separate vote on the date; and indicated his impression that the Board would not get a 120 hearing if it approves the date of adoption. Ms. Busacca recommended reiterating Department of Community Affairs? concerns that it would be an interim policy and subject to re-evaluation during the County?s EAR process. Commissioner Ellis stated the entire Comprehensive Plan is subject to review in the EAR process, so they can put that language in there since it does not change anything.

Discussion ensued on Department of Community Affairs? orders, amendments to address the main issues, new language, and appeal to the Governor if denied without reasons.

Mr. Knox advised after adoption of the amendments, it will go back to Department of Community Affairs to make a finding of compliance or non-compliance; if it finds the County in non-compliance, it will send the County into a 120 hearing; and if it has specific language, it will let the County know at that point and work out a stipulation to settle the non-compliance issues. Commissioner Ellis inquired if Department of Community Affairs rejects the amendments, will it come back with language; with Mr. Knox responding in the context of a 120 proceeding, it will do that. Commissioner Ellis inquired if it will cost over $100,000; with Mr. Knox responding not to the County.

Chairman Cook stated his preference is to avoid a 120 hearing; with Mr. Knox responding the Board cannot avoid a 120 hearing unless it gives Department of Community Affairs exactly what it wants the first time; and the likelihood of that happening is not very good. Chairman Cook advised he likes the language in the green sheets which could avoid a 120 hearing and bring common sense to the Comprehensive Plan.

Commissioner O?Brien advised Policy 5.2, page 2, says, "to be utilized for review of site specific development"; and inquired if the Plan is for the entire County, how can it focus on site specific; with Ms. Busacca responding she was trying to make it clear that the Land Development Regulations were intended for site specific development and not used as a planning tool. She stated Policy 5.2 directs that the County will adopt Land Development Regulations; and she was being redundant to address the issue

of the Legend on the Future Land Use Map should there be any questions whether the Legend is directing staff back to those policies. Commissioner O?Brien and Ms. Busacca discussed the Comprehensive Plan being global in nature yet specific, land development regulations not used as criteria for planning, separation of planning and site specific review criteria, and regulations which promote no net loss of functional wetlands.

Motion by Commissioner Ellis, seconded by Commissioner O?Brien, to approve the date as the date of adoption of the 1995B Comprehensive Plan Amendments.

Discussion continued on the appropriate date, unbuildable parcels that are legally subdivided, and relief for people who have property zoned commercial or industrial prior to this date.

Ms. Senne advised Policy 5.2 states, "to be utilized for review of site specific development"; G appears to direct decisions about land use, yet it is also qualified as being site specific which the land use is not; and she is confused on what the intent is with the land use language being site specific. Ms. Busacca advised the intent was not land use designation, but the actual impact from building activities. Ms. Senne stated she spoke to Department of Community Affairs; it is her understanding that Department of Community Affairs assumed the restrictions were considerations made about land uses; and if the Policy was in the Land Use Section, Department of Community Affairs would interpret the existing land uses, as adopted, are in compliance with it, and that it was not to be applied to zoning. She stated if a five-acre parcel with an existing industrial or commercial land use designation found in compliance has a wetland, Department of Community Affairs would not consider it not to be rezoned; she asked them that specifically; and that is why they were concerned about retaining the restrictions. Ms. Senne stated rather than guessing what Department of Community Affairs wants, that one sentence the County Attorney recommended could be faxed to them to get their consideration. She stated her concern is having policies directing land use decisions in the regulation section being site specific; that appears to be problematic; and it could bring the Board back to the original problem.

Chairman Cook inquired if it is mandatory to be included; with Ms. Busacca responding when the next Future Land Use Map designation is sent to Department of Community Affairs for industrial, they will want the County to show that the industrial land use is good for a variety of reasons, such as it meets compatibility, concurrency, and all the usual review issues; they will also like to know that the actual development activity is placed on the site in such a way that the wetland is not impacted; and that is why they are suggesting it be an interim policy. Chairman Cook stated that is a large departure; with Ms. Busacca responding Department of Community Affairs

is saying the design approved by the St. Johns District is fine; however, should the County in the future decide to put a new industrial land use on the map, until it comes up with a better policy as part of its update, they anticipate the design of the new industrial use will not impact the wetland.

Commissioner Scarborough stated Policy 5.2 talks about specifics, and G.2. talks about general; it would be easier to go from general to specific; and it may not be possible at this late hour, but it makes more sense. Ms. Busacca advised Department of Community Affairs said for anything currently designated in the Future Land Use Map, the permitting will consider protection of the wetland at the site design stage; but if the County is looking at new land use designations, it will do an analysis based on suitability, which includes the environmental analysis, character of the area, compatibility, public facilities and services, and it will direct the uses to the sites where there are sufficient uplands. Commissioner O?Brien inquired what is St. Johns District going to do; with Ms. Busacca responding the St. Johns District does not look at planning; and once the property is purchased, zoned by local government, and comes in for specific uses, the way the building or parking is located around the wetland will become a permitting issue. She stated Policy 2.7 says when someone comes in and wants a new commercial land use designation, he will be directed to areas which are not wetlands, except if the activity has an overriding public interest, no feasible alternative location, or is located in an area where a less intensive land use would be incompatible with the character of the area. Chairman Cook stated he has no problem with that.

Mr. Knox advised the reason everyone is struggling with this is because what Department of Community Affairs wants and what the County has are two different things; it wants a regulatory plan; but the County?s plan says it will adopt Land Development Regulations to deal with the issue. He stated Department of Community Affairs wants the County to eliminate the first paragraph of Policy 5.2 which says it will adopt Land Development Regulations which will incorporate the criteria, and start with the criteria so the policies govern how the Board determines where it will put industrial and commercial land uses as opposed to the Land Development Regulations comporting with the criteria. Chairman Cook stated he does not have a problem taking commercial and industrial developments away from wetland areas as far as future land uses are concerned.

Commissioner Higgs advised a line could be inserted in the existing policies to take care of unbuildable lots; F.2 can be amended with three words; and a sentence could be added stating commercial and industrial land uses that have been adopted and found in compliance shall be governed by the permitting agencies and Land Development Regulations. She stated she cannot fully grasp all the implications of what the proposed language is going to do. Commissioner Ellis stated the language is specific, so he does not understand why Commissioner Higgs said she does not understand the implications. He stated there is language for new industrial designations and how they are to handle that property; how to handle unbuildable lots, and

what to do with existing commercial/industrial designations; so he does not know what is not clear in the language.

Chairman Cook called for a vote on the motion. Motion carried and ordered; Commissioner Higgs voted nay.

Motion by Commissioner Higgs, seconded by Commissioner Scarborough for discussion, that (1) Policy 2.7.F.2 of the Comprehensive Plan be amended as suggested by the County Attorney which would read essentially, "New commercial and industrial land use designations shall be prohibited unless the proposed project has a special reason or need to locate within wetlands, and there is an overriding public interest, the activity has no feasible alternative location, the activity will result in minimum feasible alteration, and the activity does not impair the functionality of the wetlands; (2) insert in Policy 2.7.F.2 "Once a commercial or industrial land use designation has been adopted and found in compliance, County Land Development Regulations and regulating agencies for wetlands shall afford those protections"; and (3) include on F.1, "Residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this Policy renders a legally-established parcel which is less than five acres as unbuildable."

Chairman Cook stated everything on the green sheets accomplishes that; with Commissioner Higgs responding it would accomplish that, but she is not certain what else it would accomplish.

Discussion ensued on the similarities of the motion and the language in the green sheets.

Mr. Knox advised either approach will be sufficient to take care of the initial problems; and it will take some action to clarify the Land Development Regulations so there will not be the same problem when it comes in for review under the Land Development Regulations. He stated if the Board changes all the policies on the green sheet it will create new regulations which may or may not come into play under the Harris Act; he does not know what the impact of that is going to be; and no one can predict that until it starts being applied.

Commissioner Ellis stated Policies 2.7.A and B are more restrictive and can be deleted if there is concern about them; they were done for Department of Community Affairs which requested that at the Workshop; and if Commissioner Higgs wants those taken out, he has no problem with that. He stated he does not want to get rid of 2.7.C because that is the issue of administrative rezoning, and he does not want the property eligible for administrative rezoning.

Chairman Cook stated the green sheets address all the things Commissioner Higgs brought up; it is palatable and will avoid administrative hearing and address the problems; and the language has been worked out by staff with Department of Community Affairs.

Ms. Busacca stated she disagrees with Commissioner Ellis that Policies 2.7.A and B. are more restrictive than the existing Policy; and the language that says, "or is located in an area that a less intensive use would be incompatible with the character of the area and surrounding land uses," gives the Board more flexibility in the location of new commercial and industrial land uses. She stated without that guidance, they would be strictly determined to use what is in Policy 5.2.F.2 that says, "Commercial and industrial land uses shall be prohibited"; and the criteria, "special reasons or need to locate, overriding planning benefit, no feasible alternative, minimum feasible alteration, or not impair functionality of the wetland," may not give as much flexibility to the Board as the idea of less intensive land uses.

Discussion continued on new commercial land use designations, Port St. John interchange, internal consistency with policies, criteria, intent of Policy 2.7, and Mr. Healy?s comments.

Motion by Commissioner Scarborough, to amend the motion and include Criteria A, B and C of Policy 2.7. Motion died for lack of a second.

Mr. Knox advised he does not see Policy 2.7 as being a regulatory policy that governs how the Board sets its land use designations; he sees it as a policy that requires the Board to adopt Land Development Regulations that conform to the policies; but when it comes to actually making a decision as to where it is going to put commercial or industrial land uses on the land use map, those policies do not have any relevance. He stated Criteria A, B and C on the green sheets are new criteria; Commissioner Ellis is correct in that sense it is more restrictive because there are no policies that tell the Board where to put commercial and industrial at this point; and Policy 2.7 does not require that. Commissioner Higgs stated Criteria C of Policy 2.7 says "lands which are currently designated as commercial/industrial in the Future Land Use Element are deemed consistent. . ." and inquired if so stated, is it simply stating again the obvious; with Mr. Knox responding it is a re-statement of an existing situation.

Commissioner Ellis stated if that is the case, he would prefer to go back to the original language where it said under no circumstances would it be administratively rezoned due to the presence of wetlands, because he understood C was to prevent the administrative rezoning. Commissioner Scarborough inquired if the County Attorney?s thoughts are that Policy 2.7 is to develop Land Development Regulations; with Mr. Knox responding yes, it says, "By September, 1990, Brevard County shall adopt regulations

which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the Land Development Regulations:" Ms. Busacca advised staff suggests deleting Policy 2.7 entirely and replacing it with the language about the intent of locating new industrial and commercial land uses. Commissioner Scarborough stated the Board is talking about the regulations, land use map, and administrative rezoning; and they are scattered in the same Policy causing confusion.

Mr. Knox advised the existing Policy 2.7 is being viewed by Department of Community Affairs as policies that govern where to locate commercial and industrial uses; it does not do that because the Board cannot use Land Development Regulations to tell it where to plan for commercial and industrial; the plan is done first then implemented with Land Development Regulations; and it does not use Land Development Regulations to tell it where to put industrial and commercial land uses. He stated the green sheets eliminate that contradiction by eliminating that provision; and when that happens, the Board will have created a new set of regulations for determining where its commercial and industrial will be.

Chairman Cook inquired if the concern is the Harris Act; with Mr. Knox responding yes. Commissioner Ellis stated he is not concerned about the Harris Act because if the Board adopts something that is less stringent than the current regulations, how could it be sued under the Harris Act. He stated every time the Board tries to lessen regulations, the Harris Act comes up; and he does not think it was to freeze all regulations; with Mr. Knox responding that is exactly the intent. Commissioner Ellis stated the Board cannot go with less regulation because of the threat of the Harris Act; with Mr. Knox responding it is a matter of how it views less regulation; but if there are no existing regulations and new regulations are adopted, then it has regulations it did not have before. He stated the Harris Act says whatever is existing is okay.

The meeting recessed at 2:57 p.m. and reconvened at 3:20 p.m.

Commissioner Cook stated he has a copy of the language Commissioner Higgs worked on with the County Attorney, but his concern is staff worked hard on the green sheets and they probably address most of the issues and are acceptable to Department of Community Affairs.

Mr. Knox advised he raised the Harris Act because it is his job to put the Board on notice when it has potential problems; the reality of the Harris Act and Property Rights Act being brought into play on this kind of land use amendment is not that great; and if it was brought into effect, they could defend it, but he had to let the Board know there are potential problems out

there. Commissioner Ellis stated if someone sued the County under the Harris Act because they experienced loss of value, the County would always have the option to go back to Department of Community Affairs and to what it has right now, but a lot of people are not going to be happy. Mr. Knox indicated part of the whole process of the Harris Act is to put the Board through a mediation situation to resolve the problem if it can before it is sued.

Commissioner Higgs advised part of the problem is the difficulty of separating planning issues from regulatory issues; inherent in problems with two Elements are the confusion around Policies 2.7 and 5.2; so if the Board pulls out F.1 and 2, put them into an appropriate future land use position, and add the language she suggested or Commissioner Ellis suggested of new commercial and industrial land uses, then it would put them into the planning category. She suggested adding once they have been designated commercial or industrial uses, then they are in compliance with the plan and go forward to permitting through the St. Johns River Water Management District and Florida Department of Environmental Protection, or in some cases Brevard County. She recommended adding under 5.2.F.1. dealing with one unit per five acres, the provision of, "unless strict application of the Policy renders a legally established lot as of (date) unbuildable"; and stated that would take care of the problem. She noted those three changes, plus moving F.1 and 2 into the Future Land Use, will take care of the problems. Commissioner Ellis stated it leaves out "designation"; with Commissioner Higgs responding it should be "new commercial and industrial land use designations shall be prohibited." Chairman Cook repeated his preference for the green sheets.

Discussion continued on Department of Community Affairs? interpretation, Harris Act, language in Policies 2.7 and 5.2.F.1 and 2, and interim policy.

Motion by Commissioner Ellis, seconded by Commissioner Scarborough, to amend the motion to include whatever changes are made to Policy 5.2.F.1 and 2, the exact same language be inserted in Policy 2.7 to avoid internal conflict in the Plan.

Commissioner Scarborough inquired if the amendment accomplishes what the Board is trying to do; with Ms. Busacca responding the intent is to have a specific policy in the Future Land Use Element stating that residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this Policy renders a legally established parcel, as of a date certain, which is less than five acres is unbuildable, then the additional language that commercial and industrial land use designations shall be prohibited unless the project has a special reason or need to locate. . .could be added to the Future Land Use Element and removed from the Conservation Element Policy 5.2, or duplicated. Commissioner O?Brien

recommended duplicating it, and Commissioner Ellis said either way does not matter.

Ms. Busacca advised staff would have the same standard for review at site plan as they do for planning, that new commercial and industrial land uses shall neither be designated that way in the future nor be permitted to be site planned in such a way that there is impact to wetlands if the language is moved to the Future Land Use Element. Commissioner Ellis stated it would leave the interchange at Port St. John in the cold; with Ms. Busacca responding that is her understanding of what the Board is discussing. Commissioner Ellis stated the Board has spent over a year on this issue; it needs to go to Department of Community Affairs and get something back because it will not respond unless the County submits a Comprehensive Plan amendment. Commissioner Higgs stated it would not exclude Port St. John interchange because it says prohibited unless there is a special reason or need to locate, or an overriding public interest; and those things would allow it to go forward. Ms. Busacca stated Commissioner Scarborough?s concern was the location of commercial in conjunction with the interchange being problematic in deciding if there was an overriding public interest; she understands the intent of overriding planning interest; however, site plan review and land use planning criteria would utilize the same criteria. Commissioner Higgs inquired what would happen if the criteria was deleted from Policy 5.2 and put into Policy 2.7; with Ms. Busacca responding in that case there will be no criteria at site plan review because the criteria would then only be within the land development regulations. She stated Department of Community Affairs has a concern with the County not regulating uses on location within the Comprehensive Plan even if it simply refers to minimum standards that the Land Development Regulations will meet.

Chairman Cook inquired what is objectionable in the green sheets which accomplishes what the Board wants to accomplish. Commissioner Scarborough stated the discussion has jumped around from site plan review, administrative rezoning, etc. and is not internally consistent; and he has difficulty knowing what he is talking about and whether it is a land use map, Land Development Regulations, administrative rezoning, etc. because the concepts are not isolated and are mixed. He stated he has a lot of problems with the way it is structured; and that is why Ms. Senne asked questions about it. Commissioner Ellis reiterated it is a simple problem the Board wishes to correct, and should forward the amendments to the agencies to get language back.

Discussion ensued on the original language, original problem, replacement of new Policy 2.7 with language in F.1 or F.2 or G.1 or G.2, Port St. John interchange situation, clarifying Policy 5.2 by changing land uses to activities, and less intensive uses.

Ms. Busacca advised when she talked to Department of Community Affairs about the language, the Department was not certain it felt comfortable with

that language being added to the proposed language staff had; however, if staff continues to keep F.1 and F.2 that may limit or address the Department of Community Affairs? concern because it was very clear to her it wanted the County to have some standards for Land Development Regulations in the Comprehensive Plan. She advised Department of Community Affairs said it does not review Land Development Regulations and if someone in the public has a concern that the County is not following its regulations, there is more standing if they are able to say the development order is not consistent with the Comprehensive Plan rather than not consistent with the Land Development Regulations.

Commissioner Scarborough inquired if Commissioner Ellis wants to make an amendment to the motion to include Ms. Busacca?s language; with Commissioner Ellis inquiring if Ms. Busacca wants to use development activities. Ms. Busacca advised development activities is suggested for G.2 which would address Ms. Senne?s concerns of when it talks about future land use and on the ground development. She suggested "commercial and industrial development activities" replace "commercial and industrial land uses" in G.2; and indicated it may not need "approved after adoption of this policy." Commissioner Ellis stated it said shall be prohibited in new commercial and industrial land use designations; and Chairman Cook responded "new" was dropped for "after adoption of this policy." Commissioner Ellis recommended changing "public interest" to "planning interest." Ms. Busacca noted the intent is to make it clear they are talking about land development regulations as implementation not a designation on the Future Land Use Map.

Motion by Commissioner Ellis, seconded by Commissioner Scarborough, to amend the motion to change "commercial and industrial land uses" to "commercial and industrial development activities," change "public interest" to "planning interest," and replace "new" with "date of adoption of this policy."

Commissioner Higgs accepted the amendment to the motion.

Commissioner Ellis read the amended Policy 5.2.F.2 as follows: "Commercial and industrial development activities shall be prohibited in commercial/industrial land use designation designated after date of adoption unless the project has a special reason or need to locate within wetlands and there is an overriding planning interest, the activity has no feasible alternative location, the activity will result in minimum feasible alteration, and the activity does not impair the functionality of the wetland."

Commissioner Higgs inquired what planning interest means; with Commissioner Ellis responding the actual site plan use of the wetland shall be prohibited unless there is an overriding planning interest on properties that are not yet designated commercial/industrial, but would be in the future. He stated it will solve the Port St. John interchange situation which will be a new designated commercial/industrial land use; and if there is an overriding planning interest, they would be permitted to work the wetland issues with St. Johns District and Department of Environmental Protection. Commissioner Higgs inquired if both cases will use planning interest; with Commissioner Ellis responding yes, it affects 5.2 and 2.7.

Chairman Cook called for a vote on the motion as amended. Motion carried and ordered unanimously.

Commissioner Ellis expressed concern with the administrative rezoning issue; and recommended language be added to the Comprehensive Plan to prohibit administrative rezoning solely because of the presence of wetlands.

Motion by Commissioner Ellis, seconded by Commissioner Scarborough, to add Section 5.2.H., "In no case shall an existing land use be administratively rezoned based solely upon the current historic presence of wetlands. This Policy is not intended to prohibit the restoration of historic floodplains or watersheds on publicly-owned lands."

Ms. Busacca advised under the previous scenario, that language was problematic for Department of Community Affairs, but she does not know what it will think about it as currently structured. Commissioner Ellis inquired if Department of Community Affairs has the option to challenge one portion of the amendments without challenging all of it; with Ms. Busacca responding yes.

Commissioner Scarborough stated administrative rezoning is based on Board action, so the Board has some control over it. Commissioner Ellis stated his concern is not only future boards, but litigation against the Board which could force the Board through a court decision into administrative rezoning. Chairman Cook recommended inserting "lands which are currently designated as commercial and industrial in the Future Land Use Map are deemed to be consistent with this Policy." He stated that would accomplish the same thing. Commissioner Ellis stated he will move that language if it accomplishes the same thing.

Motion by Commissioner Ellis, seconded by Commissioner Scarborough, to amend the motion to state, "Lands which are currently designated as

commercial and industrial in the Future land Use Map are deemed to be consistent with this Policy." Motion carried and ordered unanimously.

Motion by Commissioner O?Brien, seconded by Commissioner Scarborough, to add to Section 5.2.C., a sentence that says, "Mitigation ratios shall be tied to the functionality of the impacted wetlands."

Commissioner Scarborough inquired if the Board has control over mitigation; with Ms. Busacca responding staff has occasionally required mitigation which was different than the requirements of the St. Johns River Water Management District; and she talked to representatives from the District about that sentence who do not seem to have a problem with it. Commissioner Scarborough inquired what would staff have done differently if it was required; with Debbie Cole responding in the past staff has always accepted the District?s idea of what the mitigation ratio should be and relied on their expertise to determine what is appropriate.

Commissioner Higgs expressed concern that the motion would tie it only to functionality when there are other issues; and inquired what impact it will have on what staff does or what the District does; with Ms. Cole responding the District has a definition of functionality and base it on the quality of the wetland; and if functionality means quality, then it would not change much.

Ms. Senne advised the sentence would not impact what the District does; the way they look at it is (1) are the wetlands functioning, and rate them high, medium and low; and (2) use the concept of avoidance. She stated the new ERP requires that the first test of someone coming in is can they avoid the wetlands; if they cannot, then what is the minimum impact they can have to that wetland and how they can minimize the fill. She stated if they cannot avoid impact to the wetland, then they get to mitigation; mitigation is determined on site or off site; if it is off site, the appropriate ratio is determined by the District; and the ratios are tied to the type of wetland, whether pristine, impacted, etc. She noted the different types of wetlands have different ratios; some wetlands are very rare; and those are looked at differently. Commissioner Higgs stated so functionality would not be the only criterion; with Ms. Senne responding it is not the only criterion.

Commissioner Scarborough asked Ms. Senne to give an example of property that would not fall under the District?s jurisdiction; with Commissioner Ellis responding parcels that are less than half an acre. Ms. Senne advised local governments have the right to adopt regulations that are more stringent than the District?s regulations if it feels an additional level of protection needs to be afforded. She stated with the new ERP, they have permits that go to the governing board and general permits issued in Melbourne by staff; there are

circumstances for general permits, such as single-family residential homes are allowed to fill in wetlands up to 4,000 feet and can clear 6,000 feet without mitigation; so if the Board feels it wants mitigation for that impact, then it could have its own regulations.

Chairman Cook inquired if staff can think of an instance where the County required that; with Ms. Cole responding there have been a couple of site plans where staff asked that additional mitigation be added for smaller isolated wetlands that were not considered in the overall mitigation package presented to the District.

Commissioner Scarborough stated there is nothing wrong with the motion, as it will look at functionality and develop a policy; with Commissioner Higgs responding it is only basing ratio on functionality and that is only one of a number of reasonable criteria, so she cannot support it.

Chairman Cook stated he does not think that is the intent of the motion; and it would be related to the functionality, but not be the only criteria; with Commissioner Higgs responding it is okay if it is not solely tied to the functionality. Commissioner Scarborough recommended "in determining mitigation ratios, the functionality of the impacted wetlands should be considered." with Commissioner Higgs responding that is fine.

Commissioner O?Brien and Commissioner Scarborough accepted the amendment to the motion

Chairman Cook called for a vote on the motion. Motion carried and ordered unanimously.

The meeting recessed at 4:09 p.m. and reconvened at 4:23 p.m.

Amendment 95B.1

Mr. Corwin advised the applicant is Brevard County; the property is located in Section 11, Township 26S., Range 36E.; the existing land use designation is public facilities; and the proposed land use designation is residential.

Motion by Commissioner Ellis, seconded by Commissioner Higgs, to approve Amendment 95B.1 as recommended. Motion carried and ordered unanimously.

Amendment 95B.2

Mr. Corwin advised the applicant is Brevard County; the property is located in Section 11, Township 26S., Range 36E.; the existing land use designation is residential; and the proposed land use designation is public facilities.

Motion by Commissioner O?Brien, seconded by Commissioner Cook, to approve Amendment 95B.2 as recommended. Motion carried and ordered unanimously.

Amendment 95B.3

Mr. Corwin advised the applicant is Brevard County; the location of the property is Section 19, Township 22S., Range 35E.; the existing land use designation is PIP; and the proposed land use designation is heavy/light industrial. He stated there is also a Future Land Use Element directive developed for this item.

Attorney Ken Crooks, Dean and Mead Law firm, advised of the activities that have taken place over the past three years regarding the property; and noted they have no objections to the Local Planning Agency?s recommendation; however, it should read "or" public facilities rather than "and", because there is nothing that is heavy/light industrial and public facilities. He stated staff?s recommendation tried to solve the problem, but did not for several reasons--(1) the corridor is designated SR 405 Corridor, but only applies to the clients? property, and (2) it limits it solely to light industrial uses. Mr. Crooks advised they have no problem with the limit on most of the property; however, on portions of the property it would not seem appropriate, such as immediately adjacent to the Solid Waste Transfer Station and mulching facility. He noted the uses are not that different between heavy and light industrial; however, light industrial prohibits activities outside of an enclosed building; and that is too restrictive, depending on the type of uses proposed for the property. He stated at the rezoning and development stage, there may be some types of uses that would be appropriate, but they would not apply for a fish canary, coal yard, fertilizer plant, livestock yard, glue factory, nuclear power plant, or slaughter house, an abattoir. Mr. Crooks suggested the Board adopt the amendment as proposed by the Local Planning Agency directive that will allow the clients to solve the actual potential problems of uses and buffering at the rezoning and development stages. He stated the properties will have to be rezoned to be developed; so the Board will have a chance to satisfy its concerns at that time, and at the site plan stage which is required.

Charles Moehle, President of Modern, Inc., owner of the property, explained a map showing the location of the property between the Gheen site, which is a boat manufacturing facility, and Brevard County mulching facility and

hazardous waste site; advised of what transpired in January when the property was asked to be rezoned, including Mr. Gheen?s withdrawal of his property from the rezoning request; and stated they have heavy industrial on both sides of their property and across the street, and the rest is owned by them, so they will not affect anyone by trying to do something that is compatible with the area. He requested the Board resolve the problem of light industrial uses adjacent to the Transfer Station, Mulching Facility, and Gheen Boat Manufacturing.

Commissioner Scarborough advised during the lunch period he and Mr. Moehle visited on the annexation issue; Mr. Moehle gave him a map; he made copies of the local agreement; and inquired if Mr. Moehle said the annexation will not go forward; with Mr. Moehle responding there are two different properties; the annexation of property that is subject to the item before the Board will probably not go forward; but it is different than the other annexation. Discussion ensued on annexation, heavy industrial use concerns, and buffering. Commissioner Scarborough inquired what is the difference between the Local Planning Agency?s and staff?s recommendations; with Mr. Corwin responding when staff looked at the area, it addressed buffering not so much through the use of vegetation but through the de-intensification of uses; the Local Planning Agency took a different viewpoint to buffer SR 405 with landscaping; and its directive states, that in the SR 405 corridor, between SR 50 and Fox Lake Road, all properties designated heavy/light industrial or public facilities on the Future Land Use Map Series of the Comprehensive Plan shall provide visual buffering on SR 405.

Commissioner Scarborough advised there is a great deal of activity in the area; there is an emerging of tourist commercial at the corner of SR 405, SR 50 and I-95; Cracker Barrel, Wendy?s, Lowes, a car dealership, and other things may be going in there in conjunction with Wal-mart; there are three motels and some restaurants; so it is developing in other than a heavy/light industrial mode. He stated the County has a Transfer Station out there and is putting in a mulching facility; the transfer station has heavy trucks coming in and out, but it does not look bad; and the mulching facility design is to place it off the road, and it must look like a County park so people will not see anything from the road other than a park-like environment. He stated he does not have a problem approving the zoning, but he would like to see "opaque" vegetative buffer if that is acceptable. Mr. Moehle advised he assumes it would mean 100% of not being able to see through something, but nobody is doing that. Commissioner Scarborough stated if someone drives by the mulching facility, that person would not know it is back there because it will be landscaped in addition to being opaque.

Motion by Commissioner Scarborough, seconded by Commissioner Ellis, to approve Amendment 95B.3, including the Future Land Use Element SR 405 Directive, with an opaque vegetative buffer. Motion carried and ordered unanimously.

Amendment 95B.4

Mr. Corwin advised the applicant is Brevard County; the existing land use designation is PIP; the proposed land use designation is residential; and the location of the property is in Section 19, Township 29S., Range 38E., adjacent to Valkaria Airport. He stated staff received an objection from Department of Community Affairs which had to do with their perceived residential encroachment the amendment would cause upon Valkaria Airport; they also interpreted inconsistencies in the Comprehensive Plan on Policies within the Ports, Aviation and Related Facilities Element; and there is a representative from Florida Department of Transportation in the audience.

Commissioner Ellis advised Policy 2.7 does not match up with Policy 5.2.F.2; with Ms. Busacca responding that is correct; the intent is to have land use designations in the Future Land Use Element and development activities within Policy 5.2 of the Conservation Element, so the Future Land Use Element Policy 2.7 discusses how to designate the land use designations, and 5.2 states once the land use designations have been decided by the Board, development activities which occur shall be located on the site based on the criteria.

Chairman Cook inquired if Ms. Busacca is saying the intent is designation; with Ms. Busacca responding yes, that is why there was discussion about putting planning into the Future Land Use Element and site plan review criteria in the Conservation Element. Commissioner Ellis stated it is okay; and even though it is different, it is similar. He stated Policy 2.7 still leaves some flexibility based on overriding planning interest for large developments. He inquired if people who already have commercial land use designations would not be affected by Policy 2.7; with Ms. Busacca responding that is correct.

Motion by Commissioner Scarborough, seconded by Commissioner Ellis, to approve the Wetlands Policy as recommended by staff on the blue sheets. Motion carried and ordered unanimously.

Doug Potts, 140 Breakwater Street, S.E. Palm Bay, advised he has a signed Contract to purchase approximately 3.25 acres of property north of Graddick Drive and north of Henderson Drive if the zoning can be changed to rural residential so he can build a home on the property. He stated there are several homes to the north and west of the property, some of which are closer to the flight approaches of the Airport; and the reason he selected the property is because of its proximity to the Airport which will enhance his ability to participate in one of his hobbies which is flying. He stated the

property is not as near to the Airport and flight approaches as Pamello Ranch development; two other people have a similar interest in purchasing the land with residential zoning; they are all aware of the Airport and have no concerns with the noise caused by air traffic; and a vote to change the

zoning of approximately 13 acres north of Graddick Drive and west of Henderson Drive to rural residential will be greatly appreciated by his family.

Commissioner Ellis stated the Board has supported going to residential on the property, but it is getting challenged by the Department of Community Affairs, so he wants people to understand that any action today is not final.

Kim Zarillo, 760 Cajeput Circle, Melbourne Village, advised the area should not be changed to residential, one dwelling unit per acre; but she agrees with a more rural character of one unit per 2.5 acres as the projected water supply is approximately 20 years, and 46 houses will shorten the supply to less than the mortgage payments. She stated there is significant natural resource impacts opposite the area with Florida scrub jay habitat and wetlands; and there was administrative rezoning of the water body that runs through there that needs to be addressed to make sure that is in compliance.

Frank Wichawski, 5151 Adamson Street, Orlando, representing Florida Department of Transportation, read portions of the ORC Report from Department of Community Affairs as follows: "The proposed amendment is not supported by an analysis demonstrating that the residential land use is compatible with airport-related activities including noise, runway clear zones, and planning activities for the Airport. Introduction of residential land uses in the subject area would establish incompatible land uses adjacent to the Airport. The amendment is not supported by data analysis demonstrating consistency with your Comprehensive Plan Ports, Aviation, and Related Facilities Element. The amendment is not supported by data analysis which demonstrates that the County has coordinated with the Florida Department of Transportation regarding the proposed amendments impact upon Valkaria Airport. If the amendment cannot be revised to be consistent with the provisions of the Plan, and the data analysis cited above, the County should not adopt the amendment." He stated the Department?s formal objection to the amendment cited Chapter 93-206, Laws of Florida, which made specific amendments to Chapter 163 concerning land use compatibility around Airports. Mr. Wichawski advised Florida Statutes 163.3177(6)(j) adds the requirement for each unit of local government within an urbanized area to prepare a transportation element that addresses aviation, rail, and seaport facilities, access to those facilities, inter-motor terminals, availability of the facilities and services to serve existing land uses, and compatibility between future land uses and transportation elements, airports, projected airports, and aviation development and land use compatibility around airports. He stated Florida Statutes 163.3177(10)(l) says, "It amends the legislative intent statements for Rule 9J-5 adding that the State Land Planning Agency shall

consider land use compatibility issues in the vicinity of all airports in coordination with the Department of Transportation." Mr. Wichawski advised FDOT has stated its objections; Department of Community Affairs has said the land use change has not been justified and is inconsistent with the County?s Comprehensive Plan; the objection is to residential development at a general aviation airport underneath the traffic pattern; and from the handouts of the amendments it was hard to determine how far it is from the active runways, but the Property Appraiser?s maps show at most it could be 2,400 feet from an active runway. He stated whether they are one-acre lots or 2.5-acre lots, it will go from 2,400 feet to probably a house within a couple of thousand feet of an active runway. He stated it was said there is residential development around the Airport, and that is true; however, if they had the comprehensive planning knowledge back when that happened like they do now, that would not have happened. He stated DOT would have objected to the land use and the County may not have allowed it; the noise problem at Valkaria Airport is a real problem; it is the County?s problem; but DOT will keep objecting to the land use change and hopes the Board will take the knowledge of what causes that problem and not let it get any worse. He stated that is why DOT is asking the Board not to approve the land use change.

Motion by Commissioner Higgs, seconded by Commissioner Ellis, to approve the proposed residential land use designation which is consistent with the State?s policy against urban sprawl and consistent with the character of the area and natural resources.

Commissioner Ellis stated he lives a couple of thousand feet from the Melbourne Airport which handles larger aircraft than Valkaria Airport, and there is not a real problem with the Airport. He stated anyone moving into the area will know the Airport preceded their lot.

Commissioner O?Brien stated he cannot support the motion to allow residential at the end of a runway; just because there are a few houses there does not mean the Board has to compound the problem by rezoning to allow more homes; it already has a problem with VARIA which complains about the noise and everything else that airplanes cause; and to encroach upon the runway will compound the problem for the future. He stated there are too many things about an airport that would be totally incorrect to zone it for residential at the end of a runway; the problems inherent in the future will be incredible; and the Board will have more people screaming some day in the future than it has now.

Commissioner Scarborough stated there are people who do not want to live near airports, but there are some developments in Florida that occurred because of the proximity to airports; and there are people who have airplanes who want to live near airports. He stated every time there is an airport does

not mean it will be industrialization around it; there is a little airport in Titusville that has homes around it and has been accepted because there has not been tremendous industrialization; and if that had occurred, there would have been an outpour of objections.

Commissioner O?Brien stated VARIA has been before the Board complaining loudly and clearly for hours and hours about the operation of Valkaria Airport; and the Board will compound the problem by rezoning the end of that runway as residential. Commissioner Ellis stated the Airport was there before they built their homes. Chairman Cook stated he will vote against the motion because it compounds a problem that already exists.

Chairman Cook called for a vote on the motion. Motion carried and ordered; Commissioners O?Brien and Cook voted nay.

Amendment 95B.5

Mr. Corwin advised it is a Future Land Use Map Series amendment; the applicant is Brevard County; the location of the property is Sections 27 and 28, Township 23S., Range 37E.; and the amendment will show the proposed location for an interchange of I-95 in the Port St. John area and a proposed access road from that interchange to Grissom Parkway. He stated the Department of Community Affairs raised objections to this amendment; it wants a brief environmental analysis; and staff provided that under the environmental resources portion of the amendment.

Kim Zarillo, 760 Cajeput Circle, Melbourne Village, stated it is inappropriate to plan to develop service standards once something has already been built; there is not enough data analysis prior to the building or permitting process; and to establish level of service standards upon completion of the interchange and access road is ludicrous. She stated the County is funding future development without any standards or data analysis of what should exist there; the right-of-way will impact several wetlands, floodplain, and scrub jay habitat; and she is opposed to that. She recommended "small shifts could be made during the design and engineering process that will offset the impacts to the natural resources" be changed to "should be made. . ."; and if it is possible to make those shifts, then they should do it and not say it could be done. She stated there is not enough data analysis in order to move forward with this amendment.

Commissioner Ellis advised it is a connector road to the I-95 interchange and has near unanimous support in Port St. John.

Commissioner Scarborough advised the County hired a consultant; they met with the people; FDOT finished its land acquisition; construction funds will not come in for a few years; but because the County will get an interchange,

it has to connect to it. He stated there was a great deal of discussion on how to avoid wetlands as much as possible because it is cheaper as well as environmentally sensitive; and "could" should be changed to "should" or "shall" because that is the intent. He stated it is impossible not to go ahead and plan for it, because if the County did that, it would never get another dollar from FDOT.

Motion by Commissioner Scarborough, seconded by Commissioner Ellis, to approve Amendment No. 95B.5.

Chairman Cook advised Joseph Stadnik requested the name be changed to Canaveral Groves/Port St. John and the road not move south on Grissom Parkway.

Carole Pope, 715 Rockledge Drive, Rockledge, advised the amendment was sent forward and not supported with any data analysis as required by the State in 9J-5 of the Administrative Code; the State suggested specific recommendations regarding general characteristics of the area, identifying wetlands, floodplains, wildlife habitat and any unique features which will have to be addressed during the planning and permitting process of the access road, and revising the amendments to be consistent and supported by data analysis; and inquired if that has been done because she did not find a copy of that. Mr. Corwin advised the language has been added to the other environmental resources which now reads, "The access road will be located upon an existing right-of-way. This right-of-way impacts several floodplain areas, wetlands, and Florida scrub jay habitats. Small shifts should be made during the design and engineering process that will offset impacts to the previously mentioned natural resources." Chairman Cook inquired if Ms. Pope would like to have a copy of it; with Ms. Pope responding yes, and she wants to read into the record for official standing if necessary to have a 120 hearing.

Commissioner Scarborough advised as Bussen-Mayer gets involved, there will be a tremendous amount of data that the public will have to deal with on this issue; the community wants to do things environmentally sensitive; they talked about all kinds of shifts, where to put retention areas, etc.; but the data is going to be forthcoming as the engineering is done.

Ms. Pope stated she understands that and knows it is an important thing to take place in that area, but the majority of the Board will say the State is driving them to do this when it is not really so. She indicated they will use the State as a battering ram to put things through and say it is not them. Chairman Cook inquired on what Board; with Ms. Pope responding the County Commission. Chairman Cook inquired where is that in the record, because it is not factual; with Ms. Pope responding she heard it here today that the Board is sending it to the State so the State will tell it what it is

supposed to do. Chairman Cook stated that was one Commissioner not the majority, but it was a unanimous vote of five Commissioners. Ms. Pope stated that is what she just said.

Commissioner Ellis advised FDOT has already programmed the interchange at I-95, so he does not know how Ms. Pope expects the Board not to build a road to it because it does not make sense. Ms. Pope stated she said she did not see the analysis of some of the issues; and she wants standing so she can bring it up at a later date. She stated she is concerned about what is driving this Board and raised those issues before, so she will not raise them again for fear of being called uncivil.

Chairman Cook stated he thinks Ms. Pope is uncivil to an extent because he can understand disagreeing with his votes; he can see disagreeing with his issues; but he takes exception disagreeing with his motives and that bothers him. Ms. Pope stated she is sorry but she does disagree with his motives; it is her right; and that is exactly how she feels.

Jody Rosier, Florida Audubon Society, advised she reviewed FDOT?s 2020 Plan; and what is driving those are the population studies; however, she has seen several cases where FDOT?s numbers do not match up; so the Society wants standing to make sure the cumulative impacts were looked at on this proposed road. She stated just because it is in the studies does not mean it is going through all the way; they are going through the P.D. and E study where they are reviewing all that; and the Society is concerned with this and the cumulative impacts of the additional growth that is going to come out of it which sounds like commercial/industrial areas. Ms. Rosier advised her previous comments also relate to the next amendment for the Pineda Causeway. She inquired whether there is enough transportation needs for that, whether the Board is looking at mass transit and other alternative transportation modes to lower the transportation figures, and whether there is a need for a new road compared to the environmental problems that could occur from it.

Commissioner Scarborough advised FDOT has completed acquisition of land for its project; the County is in the process of connecting to Grissom Parkway; and it hired Bussen-Mayer Engineering, went to the community, had a great deal of discussion on wetland and environmental impacts, and got a lot of input. He stated FDOT is going to put in the interchange, and Brevard County better hook up to it if it ever wants to get any money in Brevard County again; he is not sure the Board can defer action on it; it can proceed with the A&E firm then change the Comprehensive Plan; and inquired if it is more constructive to deny the amendment. Ms. Rosier stated for FDOT?s project to be consistent, it has to be in the County Comprehensive Plan, so it cannot go through with the road unless the Board amends its Comprehensive Plan. Commissioner Scarborough stated they made their determinations where to acquire land already; the County has a road that is aligned and a point to hook up; there are a lot of options; it can

curve, etc. but it has to connect; if the Board sends a message to FDOT that it does not have plans to connect in the Comprehensive Plan, he does not know how FDOT would accept it; and inquired what should the Board do. Ms. Rosier stated the Board could continue through its Comprehensive Plan amendment; since she has spoken today, the Florida Audubon Society can be in the discussions of that part and make sure the cumulative impact of the project does not impact other areas that should be protected; and the same comments go for the Pineda Causeway project.

Motion by Commissioner Scarborough, seconded by Commissioner Ellis, to approve Amendment 95B.5. Motion carried and ordered unanimously.

Amendment 95B.6

Mr. Corwin advised the applicant is Brevard County; the location is Sections 22, 23, 24, 25, 26, 27, and 30, Township 26S., Range 36E.; and the amendment will put on the Future Land Use Map the proposed Pineda Causeway Extension per the right-of-way that is currently being acquired by the County. He stated the extension is a straight line across from the intersection of Wickham Road to I-95; the right-of-way that the County is currently under negotiations to acquire runs considerably farther south; and this Amendment will show that right-of-way. He stated there are two circles on the map which are for interchange intersections; they are there because negotiations with the property owners have not been completed; and the alignment is not yet finalized at those interchange intersections.

Chairman Cook advised Margaret Broussard left a message saying, "I object to this amendment. This is not a well-analyzed change"; and Jody Rosier advised her previous comments on Amendment 95B.5 are the same for this amendment.

Kim Zarillo, 760 Cajeput Circle, Melbourne Village, inquired if this is already in the FDOT Plan; with Commissioner Ellis responding no. Commissioner Higgs stated the 2020 Plan shows the Pineda project. Commissioner Ellis stated on FDOT?s Plan there is no interchange on I-95. Ms. Zarillo stated she has a problem proceeding with new development that is not in the FDOT Plan because of who will have to pay for it; and what it does is subsidize a development corridor. She stated if there are wetlands, and this and the other extension are approved, they would be dated as of today and would be included. Ms. Zarillo advised that area has not been fully resource evaluated; staff did a cursory review, but there is no access to the interior; they had to look at soils maps and aerials, but there has not been a full walk through and ground truthing. She stated the proposed roadway alignment seems to permit greater flexibility; and inquired why put it on a Future Land Use Map when the alignment has not been accepted and the road is not funded, and what does "seem" mean. She indicated it is another

way to subsidize future development out of the taxpayers money; and by putting forward the proposed amendments the taxpayers are already subsidizing development because they are paying for the amendments.

Commissioner Ellis advised there are numerous unfunded roads listed in the Comprehensive Plan; that is not unusual; there is already a Pineda Extension and existing right-of-way; and what the amendment does is move it further south. He stated the Pineda Extension has been talked about for many years; and it is bazaar to oppose it at the last minute.

Commissioner Scarborough inquired where does the land from The Viera Company for Pineda Extension stand; with County Manager Tom Jenkins responding it will come to the Board at the next meeting. Commissioner Scarborough inquired if environmental research will be done before acceptance of the land; with Bob Kamm responding DOT conducted a thorough environmental and engineering analyses on the alignment in 1989; it has been ground truthed, walked, and investigated; and it has been cleared through FDOT?s Environmental Office five or six years ago. Commissioner Scarborough requested that information be given to Ms. Zarillo and others who are interested.

Carole Pope, 715 Rockledge Drive, Rockledge, registered an objection to the amendment because of the re-alignment and not enough first discussion although it has been around for a year. She stated there are things the Board studied for a year, but still did not know what it is doing today; so they who have not known about some of those things have reason to doubt the substance of what is existing. She stated there has not been enough study done for this roadway, so she will register an objection for an issue of standing.

Chairman Cook inquired if the right-of-way being donated is part of the Viera DRI; with Mr. Kamm responding there is a condition in the Viera DRI dealing with the Pineda Causeway; and it needs to have additional road capacity before The Viera Company can proceed beyond a certain threshold.

Commissioner Ellis advised there are problems on Wickham Road now which will be compounded;

the reason the Pineda Extension was considered goes back before Wickham Road was widened; and it was to provide direct access from the beaches to I-95 and as a traffic reliever for North Wickham Road. He stated it was also discussed before the Viera DRI.

Commissioner Scarborough inquired if the Port St. John/I-95 interchange access road has the same status, or is it further along in defining where it will actually be; with Mr. Kamm responding in some

degree it is the opposite; in Port St. John they know where the end points are and are trying to figure out the middle; and with the Pineda Extension, they know where the middle is, but not the end points. Commissioner Scarborough inquired if the Board will get the environmental study as part of the Deed for the property; with Mr. Kamm responding he can provide that data. Commissioner Scarborough advised there are people in the audience who would like to have that information and notice before the Board accepts that property; and inquired if there is a way to word it in a manner that would give the Board latitude in accepting variations in the actual alignment, and that it will come before the Board. He stated in the Port St. John issue, it says, "small shifts could. . ."; and that should be changed to "should" to tell everybody the Board is going to look at it. Ms. Busacca stated they can change it. She stated after they found the best alignment for Grissom Parkway, they went back and changed the Future Land Use Map to be consistent with that alignment.

Motion by Commissioner Scarborough, seconded by Commissioner Ellis, to approve Amendment 95B.6, with the language "small shifts should. . ."

Commissioner Higgs advised if the Board adopts this amendment, it is still a very long way from any road being constructed; it does not have preliminary engineering; none of the public hearings have been held; and it does not have the money for the project.

Mr. Kamm advised there are other Policies in the Comprehensive Plan that talk about preservation of rights-of-way; that is a major focus of the Traffic Circulation Element; and this is acting more on those policies to preserve right-of-way far in advance so that it is available in the future when needed. He stated it will also allow private individuals to know where the right-of-way is located, but there is no funding now to build a road. Commissioner Higgs stated there is no dictate that the Board will build the road even though it has the right-of-way. Commissioner Ellis stated the Board has rights-of-way in other areas and has not built the roads. Ms. Busacca stated the DRI demands are such that if the State or County is not prepared to pay for this, it is Viera?s responsibility, or all development stops within the Viera DRI, but it does not obligate the County to construct the road.

Chairman Cook called for a vote on the motion. Motion carried and ordered unanimously.

Policy 3.2.1, Recreation and Open Space Element

Mr. Corwin advised the amendment will remove sections of Policy 3.2.1 and Criterion B in the Recreation and Open Space Element; and it was done in conjunction with a change to the Planning and Development Regulations requirements for open space.

Kim Zarillo, 760 Cajeput Circle, Melbourne Village, inquired what is the reason to delete 3B; with Commissioner Scarborough responding the Board had a limit of 50% passive recreation which was driving golf courses; and they can move to passive recreation to a greater extent with this change and not have to have so much active recreation. He stated it will allow larger portions of undisturbed areas for walking trails, etc. rather than create golf courses.

Motion by Commissioner Scarborough, seconded by Commissioner Cook, to approve amendment to Policy 3.2.1 of the Recreation and Open Space Element. Motion carried and ordered unanimously.

Policy 4.2.4., Traffic Circulation Element

Mr. Corwin advised the amendment will add more emphasis to the standing of SR 520 and I-95 in the Brevard County Comprehensive Plan; it is being done in case funding becomes available for those roadways; and the Local Planning Agency recommended a change to place No. 1 Priority in parenthesis after U.S. 192.

Chairman Cook inquired if the change by the Local Planning Agency will work to the detriment of other projects; with Mr. Kamm responding Susan Hann attended the Local Planning Agency meeting and made a statement that project priorities is a function of the MPO, but the Local Planning Agency chose to adopt the amended language anyway. Chairman Cook stated that may be the Board?s top priority, but it is not a function of the Board. Mr. Kamm advised DOT is doing preliminary engineering work on SR 520 and U.S. 192 in the event there are funds in the future for widening of those roadways; one of the checklist questions they have, when doing a PD&E study, is if it is clear in the Comprehensive Plan that the project is supported; and it was not clear in the Brevard County Comprehensive Plan that it explicitly supported widening of U.S. 192 and SR 520. He stated it was buried in an Appendix as a long-term need; and they were ask to bring it up more explicitly in the Plan so DOT would feel comfortable proceeding with the project. Chairman Cook stated he does not have a problem with the amendment, but cannot see adding the number one priority because it is not the Board?s function and SR 520 is also a high priority. Discussion ensued on whether or not to include No. 1 priority for U.S. 192 widening.

Motion by Commissioner Higgs, seconded by Commissioner O?Brien, to approve amendment to Policy 4.2.4. of the Traffic Circulation Element, as recommended by the Local Planning Agency.

Chairman Cook inquired if it will impact funding for SR 520; with Mr. Kamm responding it will not because prioritization of funding goes through the MPO, and all DOT is looking for in the Comprehensive Plan is support for the project.

Chairman Cook called for a vote on the motion. Motion carried and ordered unanimously.

Historic Preservation Element

Mr. Corwin advised the amendment is to delete the entire Historic Preservation Element which is an optional element per Florida Administrative Code Rule 9J-5. He stated staff received an objection from Department of Community Affairs regarding this amendment; it wants the Board to state where other historic resource preservation policies are located within the Plan; and they have done that and have compared the 9J-5 requirements.

Kim Zarillo, 760 Cajeput Circle, Melbourne Village, advised the purpose of the Element is to provide for the identification, protection, preservation, and appreciation of the historic resources of Brevard County; it defines historical periods, and provides for a County agent; and she understands there has not been an agent appointed, but staff helps with those activities. She stated there is a local database that has to be updated; she understands the Historical Commission will stay in place; so what the County has are volunteers who are appointed to be responsible for the local database. She noted Policy 2.12 says there is going to be an ordinance to provide protection for resources listed in several sources, including the local Register, so the County will maintain responsibility for updating that database. She stated Policy 2.13 says there is going to be designated historic resources; they are not defined in separate Elements, but are defined in the Historic Preservation Element; and inquired if it will still protect historic resources, what are they and how are they to be protected because the definition of what those are is in the Element proposed for deletion. Ms. Zarillo advised the Historic Preservation Element is referred to in several different Elements, so if the Board deletes it, it will have to delete the references in other Elements because it cannot fulfill the intent of an Element that is not there, as noted in Policy 2.17. She stated there are several things in the original Element that are important; it does not matter that it is not a requirement, it is already in place; and now the Board is spending money to delete it and to change the other Elements as well. She stated the Element has funding mechanisms that are not included in other Elements; and it has a TDR, and talks about zoning ordinances, easements, tax incentives, and donations for historic preservation that are not in other Elements. She indicated the Board is rushing through to make something smaller and in essence is making it ineffective and unavailable.

Commissioner Ellis requested staff explain the logic behind the amendment as it was not Board driven to subterfuge the Plan that it is being accused of on every Element. Ms. Busacca advised the amendment came about when staff had a workshop with the Board to explain that there were certain things in the Plan that were duplicative and were not required by Rule 9J-5; and staff suggested those be removed. Mr. Jenkins advised there is a very extensive list of tasks that obligated the County to do; and while it had a part-time staff person working on some of those, a budgetary commitment was never made to perform all the tasks included in the Element. He stated it was estimated to take two people full time to work on that Element; two people were not assigned to it, so it was not occurring; and the Board has to address the issue of either funding two positions or not being in compliance with its Comprehensive Plan.

Commissioner Scarborough inquired if the Historical Commission reviewed the amendment and gave input; with Mr. Corwin responding the Commission was informed on several occasions that the amendment was proposed and encouraged to attend the public hearings, but they did not attend. Commissioner Scarborough inquired if it was referred to the Commission for discussion as part of its agenda; with Mr. Corwin responding it was brought up at several of the Commission?s meetings and discussed.

Carole Pope, 715 Rockledge Drive, Rockledge, inquired if the record shows it was a 3 to 2 vote in favor of eliminating the Historic Preservation Element; with Mr. Corwin responding at the transmittal hearing it was a vote of 3 to 2. Ms. Pope stated it is obvious the majority of the Board, Commissioners O?Brien, Cook and Ellis, are totally opposed to historic preservation in Brevard County; with Commissioner Ellis responding that is false. Ms. Pope stated transferring the Element to other parts of the Comprehensive Plan does not accomplish what the current Element accomplishes; and recommended the Board keep the Historic Preservation Element the way it is because there is no necessity to delete it. She stated it is an element that recognizes the County has historic resources which are valuable resources; there are a certain type of tourists who are attracted to that type of resource; and the Board needs to encourage that type of development in Brevard County. She stated the Legislature recently enacted laws that said they can have tax write-offs for historic preservation, and the Board can enact certain incentives to help people preserve historic properties; so there are other ways to make properties more important and encourage people to preserve history. Ms. Pope stated eliminating the total Element sends a bad signal to the historic preservation community and the thousand members of the Heritage Council. She stated the Historical Commission mostly collects history not necessarily works to preserve it; there is a Heritage Council with a wide network of people who asked her to represent them in their total opposition to this amendment; and it will send a ripple through that community if the Board proceeds with this. She noted there is no driving force behind this amendment; and inquired if there is a driving necessity to eliminate it.

Mr. Jenkins advised the only issue is there are certain milestone dates involved with the tasks and the County has not been complying with those; they have to either eliminate the dates or change them because it is a commitment in the Plan that is not being fulfilled which puts the County in violation of its Plan; and staff was concerned about that. Ms. Pope recommended moving the dates forward, sending it to the State and asking for an extension then put people together who are interested in historic preservation. She stated the County could get a lot of volunteers because of the network of preservationists; and they can begin working on this Element. She stated the Board is truly gutting this Element; there is no necessity to do that; and requested a motion to take it off the recommendations.

Commissioner Higgs inquired if there are other Elements with dates that have not been met; with Mr. Jenkins responding yes, staff is making an effort to meet those dates or get amendments to the dates as part of the evaluation process. Ms. Busacca stated they do that as part of the annual monitoring report.

Chairman Cook stated nobody is anti-history; this amendment was brought to the Board by staff as an Element they were not complying with or meeting the obligations; the Board has an option to hire two people to implement the Element; or it could hire two police officers or social workers to help people who cannot help themselves; so there are a lot of issues at stake. He stated it is never easy, but in government, they have to prioritize services.

Motion by Commissioner Scarborough, seconded by Commissioner Higgs, to not eliminate the Historic Preservation Element, and direct staff to review it to make it economically and practically feasible for the County to proceed with it and remove the dates. Motion carried and ordered unanimously.

Amendments to Maintain Internal Consistency

Mr. Corwin advised the amendments were based on deletion of the Historic Preservation Element as there were other Elements where it was referred to; but since it was not eliminated, this amendment is not necessary.

The Board withdrew the amendments to maintain internal consistency.

Duplicative Policy Amendments

Mr. Corwin advised the duplicative policy amendments are areas in the Comprehensive Plan where staff is trying to put one policy and one element.

He stated the first is the Conservation Element and goes through to the Capital Improvements Element.

Commissioner O?Brien inquired if it eliminates policies that duplicate one another; with Ms. Busacca responding yes.

Jody Rosier, representing Florida Audubon Society, advised of her experience as an environmental planner in Indian River County; and disagreed with eliminating duplicative policies because it would cause people to have to search through several different Elements to find out what they have to do. She stated the whole idea of the amendments was to make things easier for people; a person could buy one policy and know what had to be done without having to search different policies; all the duplicative policies are in the back of the book and is quite huge; and right now it says, "This policy is duplicated in the Future Land Use Policy 2.1.4." She inquired, if those areas are lost, how will people know they are supposed to look in other policies. She repeated similar concerns with the Coastal Zone Element; and recommended the Board wait until the EAR process.

Mr. Jenkins advised one of the criticisms the County received on its Comprehensive Plan is that it is more bulky, cumbersome, and voluminous than other local government comprehensive plans; staff understood the direction to be clarify and make it easier to use; but Ms. Rosier has a different perspective. Ms. Rosier stated people do not want to buy five elements instead of one; the Future Land Use Element is supposed to be a summary of everything; and it would be difficult for the average citizen to figure out what he needs to do, considering how hard it was for the Board to understand the wetland issues today.

Commissioner Scarborough advised somebody originally thought there was some relevance to having duplicate policies; and inquired how would they know it is there if there is no reference. He stated because it is duplicated now, they can see the whole thing, but if it is not and yet relevant, how will staff refer them to other Elements.

Ms. Busacca advised right now wetland policies are duplicated in the Conservation Element and Future Land Use Element; if someone was interested in wetlands, he would pick up the Conservation Element because it makes sense; the Coastal Management Element is one place where that could be confusing because coastal management is a unique blend of land use and conservation issues in a coastal zone; and some people find it confusing to pick up the Recreation and Open Space Element and read about wetlands, historic preservation, etc. because to them the policies are disjointed. Ms. Busacca suggested staff prepare a cross reference which can be provided to people rather than adopt something within the Comprehensive Plan. She noted staff can maintain the cross reference fairly easily; most everything they sell are on computer disks which also makes it easy; and they will be happy to provide that to people.

Ms. Rosier advised the Open Space Element says, "An objective analysis associated with the wildlife corridor concept"; people think they can use their open space credits to help wildlife also; and it gives them other ideas; but if it is not in the Plan, it would not be in their ideas. She stated if it is made more like a code, people will not start thinking creatively in their planning process.

Motion by Commissioner Scarborough, seconded by Commissioner O? Brien, to approve the duplicative policy amendments as recommended; and direct staff to prepare a cross reference for the policies. Motion carried and ordered unanimously.

Ordinance Adopting the 1995B Amendments

Motion by Commissioner Scarborough, seconded by Commissioner O? Brien, to adopt an Ordinance amending Article III, Chapter 62, of the Brevard County Code, entitled "The 1988 Comprehensive Plan," setting forth Plan Amendment 95-B of the Comprehensive Plan; amending Section 62-501 entitled "Contacts of the Plan"; specifically amending the Future Land Use Map Series, Future Land Use Element, Conservation Element, Traffic Circulation Element, Recreation and Open Space Element, Historic Preservation Element, Surface Water Management Element, Housing Element, Potable Water Element, Sanitary Sewer Element, Solid Waste and Hazardous Materials Element, Mass Transit Element, Ports, Aviation, and Related Facilities Element, Coastal Management Element, Intergovernmental Coordination Element, and Capital Improvements and Programs Element; and provisions which require amendment to maintain internal consistency with these Amendments; providing legal status; providing a severability clause; and providing an effective date. Motion carried and ordered unanimously.

Final Motion

Mr. Corwin read the final motion, and requested approval of same.

Motion by Commissioner Scarborough, seconded by Commissioner Higgs, to adopt Comprehensive Plan Amendment 1995B as discussed and based upon thorough review of supporting data and analysis, careful consideration of the recommendations of staff, Building and Construction Advisory Committee, Citizens Resource Groups, Local Planning Agency, and written and oral public comments received, specifically Comprehensive Plan Amendments 95B.1, 95B.2, 95B.3 and related SR 405 Future Land Use Element Directive as amended, 95B.4, 95B.5, 95B.6, and amendments to the Future Land Use Element as amended, Conservation Element as amended,

Traffic Circulation Element, Recreation and Open Space Element, Historic Preservation Element, Surface Water Management Element, Housing Element, Potable Water Element, Sanitary Sewer Element, Solid Waste and Hazardous Materials Element, Mass Transit Element, Ports, Aviation and related Facilities Element, Coastal Management Element, Intergovernmental Coordination Element, and Capital Improvements and Programs Element, and other amendments necessary to maintain internal consistency. Motion carried and ordered unanimously.

DISCUSSION, RE: RESCHEDULING OF BOARD MEETINGS

County Manager Tom Jenkins advised the Board talked about rescheduling the March 12, 1996 meeting because Commissioner O?Brien has to serve on the Canvassing Board that evening; the first available date is March 20, 1996, but Sue Hann has an out of state commitment; so his office moved the Land Development Regulations to March 28, 1996, at 5:01 p.m. to keep it in compliance and the Palm Bay Beltway and Merit System Rules to April 23, 1996.

Commissioner Ellis inquired if it will be an evening meeting; with Mr. Jenkins responding it will start at 5:30 p.m. Commissioner Ellis agreed with the change in schedule; and no one else objected to Mr. Jenkins? recommendation.

Upon motion and vote, the meeting adjourned at 6:02 p.m.

ATTEST: _____

MARK COOK, CHAIRMAN

BOARD OF COUNTY COMMISSIONERS

BREVARD COUNTY, FLORIDA

_____

SANDY CRAWFORD, CLERK

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: COUNTY OF BREVARD COMPREHENSIVE PLAN AMENDMENT ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996	)	DOCKET NO. 96-1-NOI-0501-(N)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find Comprehensive Plan amendments by Brevard County, adopted by Ordinance No. 95-06 on February 23, 1996, Not In Compliance based upon the Objections, Recommendations and Comments Report (ORC Report) issued by the Department on December 22, 1995, which is hereby incorporated by reference. The Department finds that the plan amendments are not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (F.S.), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan, the East Central Florida Regional Planning Council Comprehensive Regional Policy Plan, and Chapter 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

I. FUTURE LAND USE MAP AMENDMENT NO. 95.B4

A. Inconsistent provisions. The inconsistent provision of the plan amendment under this subject heading follows:

1. The amendment is inconsistent because it establishes an incompatible land use (Residential) adjacent to Valkaria Airport. Designating the subject area with a Residential land use is internally inconsistent with the goal, objectives and policies of the Brevard County Comprehensive Plan which address compatibility of land uses with airport facilities, including, but not limited to, Ports and Aviation Related Facilities Element (PARFE) Policies 2.1 and 2.2, Objective 6 and Policies 6.12 and 6.13, Objective 7 and Policies 7.1 and 7.2.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(j)(7), 163.3177(10)(1), Florida Statutes (F.S.)

Rules 9J-5.005(5)(a); 9J-5.005(5)(b); 9J-5.006(3)(b)3.; 9J-5.006(3)(c)2.; 9J-5.009(2)(b); 9J-5.009(3)(b)1.; 9J-5.009(3)(b)3.; 9J-5.009(3)(c)1.; 9J-5.009(3)(c)2.; 9J-5.009(3)(c)5. Florida A Administrative Code (F.A.C.).

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Redesignate the subject parcel with a land use that is compatible with the operations and activities of the Valkaria Airport. The County may choose to return the site to its previous Planned Industrial Park future land use designation.

II. FUTURE LAND USE ELEMENT AMENDMENTS TO POLICIES 2.6 AND 2.7 AND CONSERVATION ELEMENT AMENDMENTS TO POLICIES 5.1 AND 5.2

A. Inconsistent provisions. The inconsistent provision of these plan amendments under this subject heading follows:

1. The amendments to Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1, are inconsistent because they exempt lots which were created as of February 23, 1996, from residential density limitations of one dwelling unit per five acres. Allowing this exemption fails to protect wetlands and their functional values by directing incompatible uses away from wetlands.

2. The amendments to Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2, are inconsistent because the term "public interest" has been replaced by the term "planning interest". The term "planning interest" is vague and no definition of the term has been adopted by the County as part of its comprehensive plan. By using the term "planning interests" as a factor which will be considered in locating commercial and industrial land uses within wetlands, the policies fail to protect wetlands and their functional values by directing incompatible land uses away from wetlands.

3. The amendment establishing Conservation Element Policy 5.2., criterion H., fails to ensure that land uses which are incompatible with the protection of wetlands and wetland functional values are directed away from wetlands. The criterion does not establish a date certain for commercial and industrial lands deemed to be consistent with Policy 5.2. Using the

word "currently" rather than a date certain, results in all properties, both existing and future, being deemed consistent with the policy upon their designation as commercial (Mixed Use) or industrial.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(d), 163.3177(6)(g), Florida Statutes (F.S.)

Rules: 9J-5.005(2); 9J-5.005(5); 9J-5.006(2)(b); 9J-5.006(3)(b)4.; 9J-5.006(3)(c)1., (3)(c)6.,; 9J-5.012(2)(b); 9J-5.012(3)(b)1., and (3)(b)2.; 9J-5.012(3)(c)1. (3)(c)2., and (3)(c)14.; 9J-5.013(1)(a); 9J-5.013(2)(b)2., (2)(b)3. and (2)(b)4.; 9J-5.013(2)(c)1., (2)(c)3., (2)(c)5., (2)(c)6., and (2)(c)8.; 9J-5.013(3), Florida Administrative Code (F.A.C.)

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Revise Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1., to limit exemptions to minimum residential density requirements to lots which were lots of record at the time of plan adoption.

2. Revise Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2. to replace the term "planning interest" with "public interest".

3. Revise Conservation Element Policy 5.2.H., to establish a date certain for commercial and industrial lots deemed to be consistent with the Policy. This date should be February 23, 1996.

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Rules 9J-5.021, F.A.C.):

a. Goal 8, Water Resources, and Policies (b)4., (b)8., (b)10., and (b)12.;

b. Goal 9, Coastal and Marine Resources, and Policies (b)4., (b)5., (b)6., and (b)8.;

c. Goal 10, Natural Systems and Recreational Lands, and Policies (b)1., (b)3., (b)4., (b)7., and (b)8.;

d. Goal 16, Land Use, and Policies (b)2., and (b)6.;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B. and II.B.

IV. CONSISTENCY WITH THE EAST CENTRAL FLORIDA COMPREHENSIVE REGIONAL POLICY PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading is as follows:

1. The comprehensive plan amendment is inconsistent with the East Central Florida Regional Policy Plan goals and policies, including the following provisions (Rule 9J-5.021, F.A.C.):

a. Regional Issue 39, Protection of Natural Systems, and Policies 39.2, 39.5, 39.7, 39.8, and 39.10;

b. Regional Issue 40, Protection of Coastal Resources, and Policies 40.1, and 40.7;

c. Regional Issue 41, Protection of Marine Resources, and Policy 41.1;

d. Regional Issue 43, Protection of Natural Systems, and Policies 43.1, 43.2, 43.12, and 43.13;

e. Regional Issue 44, Protection of Endangered Species, and Policy 44.1;

f. Regional Issue 57, Balanced and Planned Development, and Policies 57.1, 57.16, and 57.17;

g. Regional Issue 58, Natural Resource Preservation, and Policies 58.1, and 58.2;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B and II.B..

CONCLUSIONS

1. The plan amendment is not consistent with the East Central Florida Regional Policy Plan.
2. The plan amendment is not consistent with the State Comprehensive Plan.
3. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
4. The plan amendment is not consistent with the requirements of Section 163.3177, Florida Statutes.
5. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes.
6. In order to bring the plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 17th day of April, 1996, at Tallahassee, Florida.

Charles Pattison

Charles G. Pattison, Director
Division of Resource Planning
and Management
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND BREVARD COUNTY
COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT NO. 95B.4,
FUTURE LAND USE ELEMENT AMENDMENT POLICIES 2.6 AND 2.7 AND
CONSERVATION ELEMENT AMENDMENT POLICIES 5.1 AND 5.2
ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996,
NOT IN COMPLIANCE AND THE REMAINING AMENDMENTS
ADOPTED PURSUANT TO ORDINANCE 96-05
IN COMPLIANCE
DOCKET NO. 96-1-NOI-0501-(A)-(I)-(N)

The Department gives notice of its intent to find Brevard County Future Land Use Map Amendment No. 95B.4, Future Land Use Element Amendment Policies 2.6 and 2.7 and Conservation Element Amendment Policies 5.1 and 5.2 adopted by Ordinance No. 96-05 on February 23, 1996, NOT IN COMPLIANCE, and the remaining amendments adopted by Ordinance No. 96-05, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.33189, F.S.

The adopted Brevard County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at Brevard County Planning Department, 2725 St. Johns Street, Suite A-144, Melbourne, Florida 32940 and the following libraries: Central and Northern Brevard, Cocoa Beach, Melbourne, Merritt Island and S. Mainland/Micco.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the Brevard County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Rule 9J-11.012(7), F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendments found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Section 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 60Q-2.010, F.A.C. No new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Section 120.57, F.S., or to participate in the administrative hearing.

for J. Thomas Beck
Charles G. Pattison, Director
Department of Community Affairs
Division of Resource Planning
and Management
2740 Centerview Drive

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

vs. DOAH CASE NO. 96-2174GM

BREVARD COUNTY,

Respondent.

_____/

STIPULATED SETTLEMENT AGREEMENT

Petitioner, Department of Community Affairs (Department), and Respondent, Brevard County(County), hereby stipulate and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: The comprehensive plan amendment adopted by the County on February 23, 1996, by Ordinance No. 96-05.

d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: Consistent with Sections 163.3177, 163.3178 and 163.3191, Florida Statutes, Section 187.201, Florida Statutes, the applicable regional policy plan, and Chapter 9J-5, Florida Administrative Code.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the plan amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the plan amendment.

2. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

3. Approval by Governing Body. This agreement has been approved by the County's governing body at a public hearing advertised in an advertisement published at least 10 days prior to the hearing in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

4. Changes in Law. Nothing in this agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence.

5. Other Persons Unaffected. Nothing in this agreement shall be deemed to affect the rights of any other person under the law.

6. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees.

7. Effective Date. This agreement shall become effective upon the last date of signing by the Department or the County.

8. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the plan amendment. The acceptance of proposals for purposes of this agreement is part of a negotiated agreement affecting many

factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

9. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the plan amendment is in compliance.

10. Exhibits. Exhibits A and B are hereby incorporated by reference.

11. Negotiation of Agreement. The Department issued its notice and statement of intent to find the plan amendment not in compliance, and filed the petition in this case to that effect. ~~Subsequent to the filing of the petition the parties conferred and agreed to resolve the issues in the petition, notice and statement of intent through this agreement. It is the intent of this agreement to resolve fully all issues between the parties in this proceeding.~~

12. Dismissal. If the local government completes the remedial actions required by this agreement, including the rescission of the plan amendment as set forth herein, the Department shall issue a cumulative notice of intent. ~~addressing both the compliance agreement amendment and the initial plan amendment subject to these proceedings~~. The Department shall file the cumulative notice of intent with the DOAH, ~~along with a request to dismiss this proceeding~~.

13. Filing and Continuance. This agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this agreement, the administrative proceeding in this matter shall be stayed by the hearing officer in accordance with Section 163.3184(16)(b), Florida Statutes.

14. Retention of Right to Final Hearing. Both parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this agreement, and nothing in this agreement shall be deemed a waiver of such right. The Department or any other party to this agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this agreement is not proceeding in good faith to take that action.

15. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this agreement is a copy of the statement of intent, which identifies the provisions not in compliance. Exhibit B contains remedial actions needed for compliance. ~~This agreement constitutes a stipulation that if the remedial actions are accomplished, the plan amendment will be in compliance~~.

16. Remedial Actions to be Considered for Adoption. The County agrees to consider for adoption by formal action of its governing body all remedial actions described in Exhibit B no later than the time period provided for in this agreement.

17. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this agreement by the parties,

the County shall consider for adoption all remedial actions or plan amendments and amendments to the support documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the remedial plan amendment, the County shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The County also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the remedial plan amendment and a copy to any party granted intervenor status in this proceeding. The amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

18. Acknowledgement. All parties to this agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the remedial amendment.

19. Review of Remedial Amendments and Notice of Intent. Within 45 days after receipt of the adopted remedial plan amendments and support documents, the Department shall issue a notice of intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this agreement.

a. In Compliance: If the adopted remedial actions satisfy this agreement, the Department shall issue a cumulative notice of intent addressing ~~both the plan amendment and~~ the

compliance agreement amendment as being in compliance. The Department shall file this cumulative notice with DOAH, ~~and shall move to have this proceeding dismissed~~.

b. Not in Compliance: If the remedial actions are not adopted, or if they do not satisfy this agreement, the Department shall issue a notice of intent to find the plan amendment not in compliance and shall forward the notice to DOAH for a hearing as provided in Subsection 163.3184(10), Florida Statutes, and may request that the matter be consolidated with the pending proceeding for a single, final hearing. The parties hereby stipulate to that consolidation and to the setting of a single final hearing if the Department so requests.

20. Effect of Amendment. Adoption of any compliance agreement amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

This agreement contains all the terms and conditions agreed to by the parties.

In witness whereof, the parties hereto have caused this agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

Charles Pattison, Director
Division of Resource Planning
and Management

5/12/97
Date

Assistant General Counsel

BREVARD COUNTY

Title Randy O'Brien, Chairman

4-8-97
Date
Attest:

County Clerk Sandy Crawford

County Attorney Scott L. Knox

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: COUNTY OF BREVARD COMPREHENSIVE PLAN AMENDMENT ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996	)	DOCKET NO. 96-1-NOI-0501-(N)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find Comprehensive Plan amendments by Brevard County, adopted by Ordinance No. 95-06 on February 23, 1996, Not In Compliance based upon the Objections, Recommendations and Comments Report (ORC Report) issued by the Department on December 22, 1995, which is hereby incorporated by reference. The Department finds that the plan amendments are not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (F.S.), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan, the East Central Florida Regional Planning Council Comprehensive Regional Policy Plan, and Chapter 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

I. FUTURE LAND USE MAP AMENDMENT NO. 95.B4

A. Inconsistent provisions. The inconsistent provision of the plan amendment under this subject heading follows:

1. The amendment is inconsistent because it establishes an incompatible land use (Residential) adjacent to Valkaria Airport. Designating the subject area with a Residential land use is internally inconsistent with the goal, objectives and policies of the Brevard County Comprehensive Plan which address compatibility of land uses with airport facilities, including, but not limited to, Ports and Aviation Related Facilities Element (PARFE) Policies 2.1 and 2.2, Objective 6 and Policies 6.12 and 6.13, Objective 7 and Policies 7.1 and 7.2.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(j)(7), 163.3177(10)(1), Florida Statutes (F.S.)

Rules 9J-5.005(5)(a); 9J-5.005(5)(b); 9J-5.006(3)(b)3.; 9J-5.006(3)(c)2.; 9J-5.009(2)(b); 9J-5.009(3)(b)1.; 9J-5.009(3)(b)3.; 9J-5.009(3)(c)1.; 9J-5.009(3)(c)2.; 9J-5.009(3)(c)5. Florida A Administrative Code (F.A.C.).

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Redesignate the subject parcel with a land use that is compatible with the operations and activities of the Valkaria Airport. The County may choose to return the site to its previous Planned Industrial Park future land use designation.

II. FUTURE LAND USE ELEMENT AMENDMENTS TO POLICIES 2.6 AND 2.7 AND CONSERVATION ELEMENT AMENDMENTS TO POLICIES 5.1 AND 5.2

A. Inconsistent provisions. The inconsistent provision of these plan amendments under this subject heading follows:

1. The amendments to Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1, are inconsistent because they exempt lots which were created as of February 23, 1996, from residential density limitations of one dwelling unit per five acres. Allowing this exemption fails to protect wetlands and their functional values by directing incompatible uses away from wetlands.

2. The amendments to Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2, are inconsistent because the term "public interest" has been replaced by the term "planning interest". The term "planning interest" is vague and no definition of the term has been adopted by the County as part of its comprehensive plan. By using the term "planning interests" as a factor which will be considered in locating commercial and industrial land uses within wetlands, the policies fail to protect wetlands and their functional values by directing incompatible land uses away from wetlands.

3. The amendment establishing Conservation Element Policy 5.2., criterion H., fails to ensure that land uses which are incompatible with the protection of wetlands and wetland functional values are directed away from wetlands. The criterion does not establish a date certain for commercial and industrial lands deemed to be consistent with Policy 5.2. Using the

word "currently" rather than a date certain, results in all properties, both existing and future, being deemed consistent with the policy upon their designation as commercial (Mixed Use) or industrial.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(d), 163.3177(6)(g), Florida Statutes (F.S.)

Rules: 9J-5.005(2); 9J-5.005(5); 9J-5.006(2)(b); 9J-5.006(3)(b)4.; 9J-5.006(3)(c)1., (3)(c)6.,; 9J-5.012(2)(b); 9J-5.012(3)(b)1., and (3)(b)2.; 9J-5.012(3)(c)1. (3)(c)2., and (3)(c)14.; 9J-5.013(1)(a); 9J-5.013(2)(b)2., (2)(b)3. and (2)(b)4.; 9J-5.013(2)(c)1., (2)(c)3., (2)(c)5., (2)(c)6., and (2)(c)8.; 9J-5.013(3), Florida Administrative Code (F.A.C.)

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Revise Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1., to limit exemptions to minimum residential density requirements to lots which were lots of record at the time of plan adoption.

2. Revise Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2. to replace the term "planning interest" with "public interest".

3. Revise Conservation Element Policy 5.2.H., to establish a date certain for commercial and industrial lots deemed to be consistent with the Policy. This date should be February 23, 1996.

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Rules 9J-5.021, F.A.C.):

a. Goal 8, Water Resources, and Policies (b)4., (b)8., (b)10., and (b)12.;

b. Goal 9, Coastal and Marine Resources, and Policies (b)4., (b)5., (b)6., and (b)8.;

c. Goal 10, Natural Systems and Recreational Lands, and Policies (b)1., (b)3., (b)4., (b)7., and (b)8.;

d. Goal 16, Land Use, and Policies (b)2., and (b)6.;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B. and II.B.

IV. CONSISTENCY WITH THE EAST CENTRAL FLORIDA COMPREHENSIVE REGIONAL POLICY PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading is as follows:

1. The comprehensive plan amendment is inconsistent with the East Central Florida Regional Policy Plan goals and policies, including the following provisions (Rule 9J-5.021, F.A.C.):

a. Regional Issue 39, Protection of Natural Systems, and Policies 39.2, 39.5, 39.7, 39.8, and 39.10;

b. Regional Issue 40, Protection of Coastal Resources, and Policies 40.1, and 40.7;

c. Regional Issue 41, Protection of Marine Resources, and Policy 41.1;

d. Regional Issue 43, Protection of Natural Systems, and Policies 43.1, 43.2, 43.12, and 43.13;

e. Regional Issue 44, Protection of Endangered Species, and Policy 44.1;

f. Regional Issue 57, Balanced and Planned Development, and Policies 57.1, 57.16, and 57.17;

g. Regional Issue 58, Natural Resource Preservation, and Policies 58.1, and 58.2;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B and II.B..

CONCLUSIONS

1. The plan amendment is not consistent with the East Central Florida Regional Policy Plan.
2. The plan amendment is not consistent with the State Comprehensive Plan.
3. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
4. The plan amendment is not consistent with the requirements of Section 163.3177, Florida Statutes.
5. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes.
6. In order to bring the plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 17th day of April, 1996, at Tallahassee, Florida.

Charles Pattison

Charles G. Pattison, Director
Division of Resource Planning
and Management
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND BREVARD COUNTY
COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT NO. 95B.4,
FUTURE LAND USE ELEMENT AMENDMENT POLICIES 2.6 AND 2.7 AND
CONSERVATION ELEMENT AMENDMENT POLICIES 5.1 AND 5.2
ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996,
NOT IN COMPLIANCE AND THE REMAINING AMENDMENTS
ADOPTED PURSUANT TO ORDINANCE 96-05
IN COMPLIANCE
DOCKET NO. 96-1-NOI-0501-(A)-(I)-(N)

The Department gives notice of its intent to find Brevard County Future Land Use Map Amendment No. 95B.4, Future Land Use Element Amendment Policies 2.6 and 2.7 and Conservation Element Amendment Policies 5.1 and 5.2 adopted by Ordinance No. 96-05 on February 23, 1996, NOT IN COMPLIANCE, and the remaining amendments adopted by Ordinance No. 96-05, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.33189, F.S.

The adopted Brevard County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at Brevard County Planning Department, 2725 St. Johns Street, Suite A-144, Melbourne, Florida 32940 and the following libraries: Central and Northern Brevard, Cocoa Beach, Melbourne, Merritt Island and S. Mainland/Micco.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the Brevard County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Rule 9J-11.012(7), F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendments found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Section 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 60Q-2.010, F.A.C. No new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Section 120.57, F.S., or to participate in the administrative hearing.

J. Thomas Beck
for Charles G. Pattison, Director
Department of Community Affairs
Division of Resource Planning
and Management
2740 Centerview Drive

FUTURE LAND USE ELEMENT

PROPOSED AMENDMENT LANGUAGE

Objective 4

Brevard County shall provide for adequate and appropriate lands for the location of commercial land uses, through the Land Development Regulations, to serve the needs of the projected residents and visitors of the County. Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

A. Floodplain policies contained within Conservation Objective 4.

B. Aquifer protection policies contained within Conservation Objective 11.

C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as commercial on the future land use map as of February 23, 1996, are deemed to be consistent with this criterion.

FUTURE LAND USE ELEMENT

PROPOSED AMENDMENT LANGUAGE

Objective 5
Brevard County shall provide for adequate and appropriate lands for the locations of industrial land uses, through the Land Development Regulations, to support the role of these land uses in the County's economy. Brevard County shall direct new industrial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow industrial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

A. Floodplain policies contained within Conservation Objective 4.

B. Aquifer protection policies contained within Conservation Objective 11.

C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as heavy or light industrial or planned industrial park on the future land use map as of February 23, 1996 are deemed to be consistent with this criterion.

Post-it® Fax Note 7671	Date 2/24	# of pages ▶ 1
To John Healey-DCA	From Mel Scott	
Co./Dept. Bureau of Local Plng.	Co. Brevard County	
Phone # 904-488-3309	Phone # 407-633-2069	
Fax #	Fax #	

CONSERVATION ELEMENT

PROPOSED AMENDMENT LANGUAGE

Wetlands

Objective 5
Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

Policy 5.1
Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands~~, but shall not be limited by the threshold or connection requirements utilized by these agencies~~.

Policy 5.2
~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

Criteria
A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:

1. Residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with al

County land development regulations and compatible with adjacent uses. Residential property which includes wetland areas should be subdivided in such a way that buildable areas are included in each lot, where sufficient uplands exist and where compatible with adjacent uses..

2. Commercial and industrial land ~~uses~~ development activities shall be prohibited in wetlands contained within commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996, unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.

BREVARD COUNTY COMPREHENSIVE PLAN GLOSSARY

PROPOSED AMENDMENT LANGUAGE

Standard - a rule set up and established by authority for the measure of quantity, weight, extent, value or quality; a criterion on which a judgment or decision may be based.

Strive - to endeavor; to devote serious effort or energy.

Structure - anything constructed or erected, the use of which requires rigid location on the ground or attachment to something having a permanent location on the ground.

Substandard Housing Suitable for Rehabilitation - a housing unit which is suitable for human occupancy but which has some degree of hazardous conditions to the health or safety of the occupants. Also, a housing unit which is structurally sound but has visible degrees of deterioration and several housing code violations but all of which are economically feasible to correct.

Substandard Housing not Suitable for Rehabilitation - a housing unit which is structurally unsound and which possesses a serious and immediate threat to the health and safety of the occupants. Also, a housing unit which is not suitable for occupancy and the conditions or code violations are not economically feasible to correct. Would include units damaged by fire, storm, or other natural causes.

Suitability - means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development. (From 9J-5.003(134))

Support - to promote the interests or causes of; to uphold or defend as valid or right, advocate; to argue or vote for; to pay the costs of; to favor actively in the face of opposition.

Toxic Material - a type of hazardous waste that causes harm to humans or other organisms by entering the organism and interfering with normal life functions, as opposed to corrosive, ignitable, or reactive materials which cause damage by physical proximity or contact.

Transfer Station - a facility for the temporary collection of solid waste prior to transport to the processing facility.

Transitional Level of Service - a temporary acceptable level of service for a specific facility or service not to exceed 12 years, but which shall realistically reflect the minimum timeframe necessary to establish a funding source and/or remove affecting obstacles, and proceed with an appropriate improvement effort.

Tributary - a natural stream or other natural water body that flows, falls or empties into another water body. This definition is not to include non-point sources.

Type 1 Aquifer Recharge Areas - those areas which are within the City of Titusville's Area of Critical Concern, or are within five hundred (500) feet of a public water supply well or within the boundaries of a development that proposes a public water supply well provided that this area serves to recharge the aquifer from which the well draws and which have highly permeable soils.

Type 2 Aquifer Recharge Areas - those areas which are not classified as Type 1 aquifer recharge areas and are above 30 feet mean sea level and have highly permeable soils.

Type 3 Aquifer Recharge Areas - those areas which have highly permeable soils and are below 30 feet mean sea level.

Unique Farmlands - those lands which possess a special complement of location, soil characteristics, growing season and moisture supply that result in high productivity for specialty crops such as fruits, vegetables and vineyards.

Units Per Acre - the number of residential units allowed as a maximum per acre. This term may describe an aggregate density over a large tract or a building lot size.

Urban Sprawl - a land development pattern characterized by the location of development in areas where public facilities and services cannot be provided efficiently.

Urban-District Park - generally contain 100 to 499 acres and serve several communities in the metropolitan area.

Utility Corridor - an inter-county corridor established for rail transportation of persons and/or cargo and one or more of the following: the location of lines for the transmission of water, electricity, communications, petroleum products, products of a public utility (including new technologies of a public utility nature), or materials.

Very Low Income Household - a household which possesses a household income of less than 50 percent of the median income.

Water Dependent Uses - activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for: waterborne transportation including ports and marinas; recreation; electrical generating facilities; or water supply.

Water Enhanced Uses - activities which are not water dependent but whose value is increased due to location along the water. This increased value is not related to the increased property values of water-front property. Water enhanced uses include restaurants, some upland recreational areas and tourist attractions.

Water Related Uses - activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses. These land uses include bait and tackle shops, and boat sales and rentals.

Water's Edge Wetlands - wetlands which are a transitional area between dry land and open water.

Wetlands - wetlands as defined by the Florida Department of Environmental Regulation (FDER) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types. ~~Threshold and connection requirements of FDER and SJRWMD shall not be used.~~

Wetland Functionality - is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland-dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table. (From Chapter 62-3691, Brevard County Code of Ordinances).

ORDINANCE NO. 97- 22

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE BREVARD COUNTY CODE, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH A REMEDIAL PLAN AMENDMENT TO THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING THE GLOSSARY, CONSERVATION AND FUTURE LAND USE ELEMENTS; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Community Affairs; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.3184 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments to the Comprehensive Plan on February 23, 1996, for adoption in calendar year 1996 as a single amendment, Plan Amendment 95B; and

WHEREAS, the Department of Community Affairs issued a notice and statement of intent to find the plan amendment not in compliance; and

WHEREAS, the Department of Community Affairs and Brevard County have stipulated a remedial action to bring the amendment into compliance; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

Officially filed with the
Secretary of State
July 11, 1997

WHEREAS, as developed, all data, information, documents and drafts relating to the remedial amendment were continually disseminated in a timely manner to the North Brevard, Central Brevard, Cocoa Beach, Franklin T. DeGroodt, Melbourne, and South Mainland (Micco) Public Libraries; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and

WHEREAS, on March 17th and June 16, 1997, the Brevard County Local Planning Agency held duly noticed public hearings on remedial amendment, and considered the findings and advice of all interested parties submitting comments, and recommended the submittal of the amendment to the Department of Community Affairs; and

WHEREAS, on February 4, 1997, the Brevard County Board of County Commissioners held a duly noticed public hearing considered the findings and recommendations of all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, executed a stipulated settlement agreement which articulated the remedial actions required to be adopted by the County prior to the Department of Community Affairs filing a cumulative notice of intent to find the remedial amendment in compliance; and

WHEREAS, on July 1, 1997, the Board of County Commissioners held a duly noticed public hearing and upon thorough and complete consideration and deliberation, adopted the remedial amendment; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to the remedial amendment to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended in the parts, policies, goals, maps and objectives as listed in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the remedial plan amendment, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The plan amendments shall become effective once the state land planning agency issues a final order determining the adopted amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(9), or until the Administration Commission issues a final order determining the amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(10).

DONE AND ADOPTED in regular session, this first day of July, 1997.

ATTEST:

Sandy Crawford, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____
Randy O'Brien, Chairman

Approved by the Board on July 1, 1997

Exhibit A

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: COUNTY OF BREVARD COMPREHENSIVE PLAN AMENDMENT ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996	)	DOCKET NO. 96-1-NOI-0501-(N)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

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I. FUTURE LAND USE MAP AMENDMENT NO. 95.B4

A. Inconsistent provisions. The inconsistent provision of the plan amendment under this subject heading follows:

1. The amendment is inconsistent because it establishes an incompatible land use (Residential) adjacent to Valkaria Airport. Designating the subject area with a Residential land use is internally inconsistent with the goal, objectives and policies of the Brevard County Comprehensive Plan which address compatibility of land uses with airport facilities, including, but not limited to, Ports and Aviation Related Facilities Element (PARFE) Policies 2.1 and 2.2, Objective 6 and Policies 6.12 and 6.13, Objective 7 and Policies 7.1 and 7.2.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(j)(7), 163.3177(10)(1), Florida Statutes (F.S.)

Rules 9J-5.005(5)(a); 9J-5.005(5)(b); 9J-5.006(3)(b)3.; 9J-5.006(3)(c)2.; 9J-5.009(2)(b); 9J-5.009(3)(b)1.; 9J-5.009(3)(b)3.; 9J-5.009(3)(c)1.; 9J-5.009(3)(c)2.; 9J-5.009(3)(c)5. Florida A Administrative Code (F.A.C.).

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Redesignate the subject parcel with a land use that is compatible with the operations and activities of the Valkaria Airport. The County may choose to return the site to its previous Planned Industrial Park future land use designation.

II. FUTURE LAND USE ELEMENT AMENDMENTS TO POLICIES 2.6 AND 2.7 AND CONSERVATION ELEMENT AMENDMENTS TO POLICIES 5.1 AND 5.2

A. Inconsistent provisions. The inconsistent provision of these plan amendments under this subject heading follows:

1. The amendments to Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1, are inconsistent because they exempt lots which were created as of February 23, 1996, from residential density limitations of one dwelling unit per five acres. Allowing this exemption fails to protect wetlands and their functional values by directing incompatible uses away from wetlands.

2. The amendments to Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2, are inconsistent because the term "public interest" has been replaced by the term "planning interest". The term "planning interest" is vague and no definition of the term has been adopted by the County as part of its comprehensive plan. By using the term "planning interests" as a factor which will be considered in locating commercial and industrial land uses within wetlands, the policies fail to protect wetlands and their functional values by directing incompatible land uses away from wetlands.

3. The amendment establishing Conservation Element Policy 5.2., criterion H., fails to ensure that land uses which are incompatible with the protection of wetlands and wetland functional values are directed away from wetlands. The criterion does not establish a date certain for commercial and industrial lands deemed to be consistent with Policy 5.2. Using the

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Rules 9J-5.021, F.A.C.):

a. Goal 8, Water Resources, and Policies (b)4., (b)8., (b)10., and (b)12.;

b. Goal 9, Coastal and Marine Resources, and Policies (b)4., (b)5., (b)6., and (b)8.;

c. Goal 10, Natural Systems and Recreational Lands, and Policies (b)1., (b)3., (b)4., (b)7., and (b)8.;

d. Goal 16, Land Use, and Policies (b)2., and (b)6.;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B. and II.B.

word "currently" rather than a date certain, results in all properties, both existing and future, being deemed consistent with the policy upon their designation as commercial (Mixed Use) or industrial.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(d), 163.3177(6)(g), Florida Statutes (F.S.)

Rules: 9J-5.005(2); 9J-5.005(5); 9J-5.006(2)(b); 9J-5.006(3)(b)4.; 9J-5.006(3)(c)1., (3)(c)6.,; 9J-5.012(2)(b); 9J-5.012(3)(b)1., and (3)(b)2.; 9J-5.012(3)(c)1. (3)(c)2., and (3)(c)14.; 9J-5.013(1)(a); 9J-5.013(2)(b)2., (2)(b)3. and (2)(b)4.; 9J-5.013(2)(c)1., (2)(c)3., (2)(c)5., (2)(c)6., and (2)(c)8.; 9J-5.013(3), Florida Administrative Code (F.A.C.)

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Revise Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1., to limit exemptions to minimum residential density requirements to lots which were lots of record at the time of plan adoption.

2. Revise Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2. to replace the term "planning interest" with "public interest".

3. Revise Conservation Element Policy 5.2.H., to establish a date certain for commercial and industrial lots deemed to be consistent with the Policy. This date should be February 23, 1996.

IV. CONSISTENCY WITH THE EAST CENTRAL FLORIDA COMPREHENSIVE REGIONAL POLICY PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading is as follows:

1. The comprehensive plan amendment is inconsistent with the East Central Florida Regional Policy Plan goals and policies, including the following provisions (Rule 9J-5.021, F.A.C.):

a. Regional Issue 39, Protection of Natural Systems, and Policies 39.2, 39.5, 39.7, 39.8, and 39.10;

b. Regional Issue 40, Protection of Coastal Resources, and Policies 40.1, and 40.7;

c. Regional Issue 41, Protection of Marine Resources, and Policy 41.1;

d. Regional Issue 43, Protection of Natural Systems, and Policies 43.1, 43.2, 43.12, and 43.13;

e. Regional Issue 44, Protection of Endangered Species, and Policy 44.1;

f. Regional Issue 57, Balanced and Planned Development, and Policies 57.1, 57.16, and 57.17;

g. Regional Issue 58, Natural Resource Preservation, and Policies 58.1, and 58.2;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B and II.B..

CONCLUSIONS

1. The plan amendment is not consistent with the East Central Florida Regional Policy Plan.
2. The plan amendment is not consistent with the State Comprehensive Plan.
3. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
4. The plan amendment is not consistent with the requirements of Section 163.3177, Florida Statutes.
5. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes.
6. In order to bring the plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 17th day of April, 1996, at Tallahassee, Florida.

Charles Pattison

Charles G. Pattison, Director
Division of Resource Planning
and Management
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND BREVARD COUNTY
COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT NO. 95B.4,
FUTURE LAND USE ELEMENT AMENDMENT POLICIES 2.6 AND 2.7 AND
CONSERVATION ELEMENT AMENDMENT POLICIES 5.1 AND 5.2
ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996,
NOT IN COMPLIANCE AND THE REMAINING AMENDMENTS
ADOPTED PURSUANT TO ORDINANCE 96-05
IN COMPLIANCE
DOCKET NO. 96-1-NOI-0501-(A)-(I)-(N)

The Department gives notice of its intent to find Brevard County Future Land Use Map Amendment No. 95B.4, Future Land Use Element Amendment Policies 2.6 and 2.7 and Conservation Element Amendment Policies 5.1 and 5.2 adopted by Ordinance No. 96-05 on February 23, 1996, NOT IN COMPLIANCE, and the remaining amendments adopted by Ordinance No. 96-05, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.33189, F.S.

The adopted Brevard County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at Brevard County Planning Department, 2725 St. Johns Street, Suite A-144, Melbourne, Florida 32940 and the following libraries: Central and Northern Brevard, Cocoa Beach, Melbourne, Merritt Island and S. Mainland/Micco.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the Brevard County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Rule 9J-11.012(7), F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendments found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Section 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 60Q-2.010, F.A.C. No new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Section 120.57, F.S., or to participate in the administrative hearing.

J. Thomas Beck
for Charles G. Pattison, Director
Department of Community Affairs
Division of Resource Planning
and Management
2740 Centerview Drive

FUTURE LAND USE ELEMENT

PROPOSED AMENDMENT LANGUAGE

Objective 4

Brevard County shall provide for adequate and appropriate lands for the location of commercial land uses, through the Land Development Regulations, to serve the needs of the projected residents and visitors of the County. Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

A. Floodplain policies contained within Conservation Objective 4.

B. Aquifer protection policies contained within Conservation Objective 11.

C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as commercial on the future land use map as of February 23, 1996, are deemed to be consistent with this criterion.

FUTURE LAND USE ELEMENT

PROPOSED AMENDMENT LANGUAGE

Objective 5

Brevard County shall provide for adequate and appropriate lands for the locations of industrial land uses, through the Land Development Regulations, to support the role of these land uses in the County's economy. Brevard County shall direct new industrial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow industrial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

A. Floodplain policies contained within Conservation Objective 4.

B. Aquifer protection policies contained within Conservation Objective 11.

C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as heavy or light industrial or planned industrial park on the future land use map as of February 23, 1996 are deemed to be consistent with this criterion.

Post-it® Fax Note 7671	Date 2/24	# of pages ▶ 1
To John Healey-DCA	From Mel Scott	
Co./Dept. Bureau of Local Plng.	Co. Brevard County	
Phone # 904-488-3309	Phone # 407-633-2069	
Fax #	Fax #	

CONSERVATION ELEMENT

PROPOSED AMENDMENT LANGUAGE

Wetlands

Objective 5
Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

Policy 5.1
Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands~~, but shall not be limited by the threshold or connection requirements utilized by these agencies~~.

Policy 5.2
~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

Criteria
A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that th water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:

1. Residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For development activities on property greater than five (5) acres density may be transferred to an upland portion of the site if consistent with a

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County land development regulations and compatible with adjacent uses. Residential property which includes wetland areas should be subdivided in such a way that buildable areas are included in each lot, where sufficient uplands exist and where compatible with adjacent uses..

2. Commercial and industrial land ~~uses~~ development activities shall be prohibited in wetlands contained within commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996, unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.

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BREVARD COUNTY COMPREHENSIVE PLAN GLOSSARY

PROPOSED AMENDMENT LANGUAGE

Standard - a rule set up and established by authority for the measure of quantity, weight, extent, value or quality; a criterion on which a judgment or decision may be based.

Strive - to endeavor; to devote serious effort or energy.

Structure - anything constructed or erected, the use of which requires rigid location on the ground or attachment to something having a permanent location on the ground.

Substandard Housing Suitable for Rehabilitation - a housing unit which is suitable for human occupancy but which has some degree of hazardous conditions to the health or safety of the occupants. Also, a housing unit which is structurally sound but has visible degrees of deterioration and several housing code violations but all of which are economically feasible to correct.

Substandard Housing not Suitable for Rehabilitation - a housing unit which is structurally unsound and which possesses a serious and immediate threat to the health and safety of the occupants. Also, a housing unit which is not suitable for occupancy and the conditions or code violations are not economically feasible to correct. Would include units damaged by fire, storm, or other natural causes.

Suitability - means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development. (From 9J-5.003(134))

Support - to promote the interests or causes of; to uphold or defend as valid or right; advocate; to argue or vote for; to pay the costs of; to favor actively in the face of opposition.

Toxic Material - a type of hazardous waste that causes harm to humans or other organisms by entering the organism and interfering with normal life functions, as opposed to corrosive, ignitable, or reactive materials which cause damage by physical proximity or contact.

Transfer Station - a facility for the temporary collection of solid waste prior to transport to the processing facility.

Transitional Level of Service - a temporary acceptable level of service for a specific facility or service not to exceed 12 years, but which shall realistically reflect the minimum timeframe necessary to establish a funding source and/or remove affecting obstacles, and proceed with an appropriate improvement effort.

Tributary - a natural stream or other natural water body that flows, falls or empties into another water body. This definition is not to include non-point sources.

Type 1 Aquifer Recharge Areas - those areas which are within the City of Titusville's Area of Critical Concern, or are within five hundred (500) feet of a public water supply well or within the boundaries of a development that proposes a public water supply well provided that this area serves to recharge the aquifer from which the well draws and which have highly permeable soils.

Type 2 Aquifer Recharge Areas - those areas which are not classified as Type 1 aquifer recharge areas and are above 30 feet mean sea level and have highly permeable soils.

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Type 3 Aquifer Recharge Areas - those areas which have highly permeable soils and are below 30 feet mean sea level.

Unique Farmlands - those lands which possess a special complement of location, soil characteristics, growing season and moisture supply that result in high productivity for specialty crops such as fruits, vegetables and vineyards.

Units Per Acre - the number of residential units allowed as a maximum per acre. This term may describe an aggregate density over a large tract or a building lot size.

Urban Sprawl - a land development pattern characterized by the location of development in areas where public facilities and services cannot be provided efficiently.

Urban-District Park - generally contain 100 to 499 acres and serve several communities in the metropolitan area.

Utility Corridor - an inter-county corridor established for rail transportation of persons and/or cargo and one or more of the following: the location of lines for the transmission of water, electricity, communications, petroleum products, products of a public utility (including new technologies of a public utility nature), or materials.

Very Low Income Household - a household which possesses a household income of less than 50 percent of the median income.

Water Dependent Uses - activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for: waterborne transportation including ports and marinas; recreation; electrical generating facilities; or water supply.

Water Enhanced Uses - activities which are not water dependent but whose value is increased due to location along the water. This increased value is not related to the increased property values of water-front property. Water enhanced uses include restaurants, some upland recreational areas and tourist attractions.

Water Related Uses - activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses. These land uses include bait and tackle shops, and boat sales and rentals.

Water's Edge Wetlands - wetlands which are a transitional area between dry land and open water.

Wetlands - wetlands as defined by the Florida Department of Environmental Regulation (FDER) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types. ~~Threshold and connection requirements of FDER and SJRWMD shall not be used.~~

Wetland Functionality - is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland-dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table. (From Chapter 62-3691, Brevard County Code of Ordinances).

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to MSI of Central Florida, Inc., 345 East Drive, Melbourne, Florida; specifying the items exempted; providing the expiration date of the exemption; finding that the business meets the requirements of F.S. 196.012(16); providing for proof of eligibility for exemption; providing for an annual report by MSI of Central Florida, Inc.; providing an effective date.

Commissioner Cook noted the item says up to 15 new employees, but the application says 10 to 15; and inquired if it would be 10 employees at a minimum; with Mr. Lugar responding that is correct, and is the requirement of the Florida Statutes.

Chairman O?Brien called for a vote on the motion. Motion carried and ordered unanimously.

PUBLIC HEARING, RE: ORDINANCE ADOPTING REMEDIAL AMENDMENTS TO SATISFY

STIPULATED SETTLEMENT AGREEMENT WITH DEPARTMENT OF COMMUNITY AFFAIRS

Chairman O?Brien called for the public hearing to consider an ordinance adopting remedial amendments to satisfy Stipulated Settlement Agreement with Department of Community Affairs.

Charles Moehle, representing Modern, Inc., advised the document the Board is considering is supposed to be the same as the one approved in March, 1997 with no changes; but there was a change on page 2 of 6. Planning Section Manager Mel Scott explained the change was the result of a typographical error. Mr. Moehle advised the Stipulated Settlement Agreement contains different wording; and inquired if there was a change of intent; with Mr. Scott responding the language reflects the DCA form with no substantive changes. Mr. Moehle expressed support for the amendments.

Margaret Hames read aloud a statement from Clay Henderson, President, Florida Audubon Society; Janice Broda, President, Florida Native Plant Society; Cameron Donaldson, President, Conradina Chapter of the Florida Native Plant Society; Mary Todd, Conservation Chair, Turtle Coast Sierra Club, and Diane Stees, Conservation Chair, Indian River Audubon Society expressing concern about the amendments.

Commissioner Cook advised the changes are minor; and explained his support. He noted if the impact to wetlands is greater than is foreseen, the

Board can readdress the issue. He expressed frustration at newspaper stories which are inaccurate.

Commissioner Higgs advised the initial motion took the County out of the wetlands business, and that is what caused concern. She explained her concerns about the way future land uses are addressed in the amendments.

Commissioner Cook advised the LPA passed the amendment 8 to 1; and the original intent was to provide for isolated areas such as that behind Merritt Square Mall. He stated the language which was added is stronger than what was existing. Commissioner Scarborough agreed with Commissioner Cook, and explained his support.

There being no further comments or objections heard, motion was made by Commissioner Voltz, seconded by Commissioner Cook, to adopt an Ordinance amending Article III, Chapter 62, of the Brevard County Code, entitled "The 1988 Comprehensive Plan", setting forth a remedial plan amendment to the Comprehensive Plan; amending Section 62-501 entitled contents of the plan; specifically amending the Glossary, Conservation and Future Land Use Elements, and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date; and to recognize that the data analysis and staff report which support the motion are based on the quad maps and the research contained in them. Motion carried and ordered; Commissioner Higgs voted nay.

PUBLIC HEARING, RE: TEMPORARY USE AGREEMENT WITH BETTY K. ZOTICH, CLARENCE

SPRADLING, ET AL, AND RANGER CONSTRUCTION INDUSTRIES, INC., RE: TEMPORARY

FIELD OFFICE DURING RECONSTRUCTION AND WIDENING OF DAIRY ROAD

Chairman O?Brien called for the public hearing to consider temporary use agreement with Betty K. Zotich, Clarence Spradling, et al, and Ranger Construction Industries, inc. for temporary field office during reconstruction and widening of Dairy Road.

Barbara Roberts and C.E. Spradling declined to comment.

Growth Management Director Susan Hann advised the Board previously received a letter of objection from an adjacent property owner, Judith Burke;

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Meeting Minutes

preference to those individuals who have applied for permits to be processed.

Commissioner Higgs inquired if the only difference is that it will not limit the antennas on existing structures to the height of the structure; with Ms. Busacca responding yes. Commissioner Higgs recommended the first page, third line of the last "Whereas" include towers and antennas.

Commissioner Cook amended the motion to include towers and antennas on the first page of the ordinance; and Commissioner Scarborough accepted the amendment.

Chairman O'Brien called for a vote on the motion as amended. Motion carried and ordered; Commissioner Voltz voted nay.

The meeting recessed at 10:14 a.m. and reconvened at 10:30 a.m.

STIPULATED SETTLEMENT AGREEMENT WITH DEPARTMENT OF COMMUNITY AFFAIRS RE: WETLANDS AMENDMENT LANGUAGE

Assistant to County Manager Peggy Busacca advised in February, 1996, the Board adopted amendments to the Future Land Use and Conservation Elements regarding its policies on wetlands; after review by the Department of Community Affairs, it was found in noncompliance; and the Board directed staff to meet with representatives of Department of Community Affairs, as well as the interveners, to try and resolve the outstanding finding of noncompliance. She stated staff met with those parties, and is providing the Board with a draft stipulated settlement agreement as well as language for proposed amendments to the Conservation and Future Land Use Elements of the Comprehensive Plan. Ms. Busacca advised the agreement outlines what actions the County will take to resolve the issue by putting forward the proposed amendments; and Department of Community Affairs will then agree to find the County in compliance if that language or similar language is adopted. She stated Charlie Gauthier from Department of Community Affairs is here today to answer any questions or give a brief presentation. Ms. Busacca advised signing of the agreement does not amend the Comprehensive Plan; those policies must still go through the Comprehensive Plan amendment process and public hearing process, and must be found in compliance by Department of Community Affairs; and after the statutory time limits, the policies would become effective. She introduced Charlie Gauthier from Department of Community Affairs.

Chairman O'Brien inquired what happens after that; with Ms. Busacca responding it has to go through the usual process of two public hearings, transmittal, the objections, recommendations and comments report, two public hearings, adoption, and the finding of compliance. Chairman O'Brien inquired if that has already been done; with Ms. Busacca responding yes, but

unavoidable; now there is clarification and restructuring; and that satisfies the three issues in their statement of intent. Mr. Gauthier advised the settlement agreement is between the County and Department of Community Affairs; and it would be desirable to add the interveners as a party to the settlement agreement, as they may have an issue beyond the statement of intent. He stated they cannot block the settlement, but if they are displeased with the remedial amendment, they could realign and continue the litigation process; however, the County and State would be on the same side defending it, and it would be much more difficult to overcome the in-compliance determination. He noted the three statement of intent issues they identified will be satisfied by the amendment; the Valkaria Airport issue is still pending; and there are other intervener issues; however, the settlement agreement only addresses the wetland aspect and not the Valkaria Airport aspect. Mr. Gauthier advised there is a difference between planning and permitting; and their direction, through the Comprehensive Plan, is do not put land use categories where it is not suitable for development and where impacts become unavoidable. He stated there are also permitting processes; there is nothing in the law that says the County has to duplicate what the St. Johns River Water Management District does or what the Army Corps of Engineers does; so they tried to maintain a distinction between planning and permitting. He stated they are trying to guide the County's future land uses so they know they can be developed; the conflicts with growth around the State are where land plans may allow something that is not permittable or is not easily permittable; they talked about streamlining; and the best way to streamline is to direct the County's land uses in appropriate directions, which is what they have tried to accomplish.

Howard Wolf advised he lives in the South Beaches adjacent to functional wetlands and is concerned about wetland preservation which is the most cost-effective means of performing various necessary functions. He stated some land uses by their nature are not compatible with wetland preservation; those uses should be prohibited in the public interest; and the Florida Supreme Court has ruled similarly in a case last year. He stated his quarrel with the amendment is its fundamental thrust; it mouths platitudes and homilies of wetland preservation while constructing elaborate loopholes to secure specific development opportunities, namely commercial and industrial; and the effect, however unintended, is to protect and preserve the opportunities for a few selected landowners. He stated whatever may be said in the final analysis, there are four things the Board needs to do today: (1) resolve and clear up ambiguous language; (2) preserve natural functional wetlands because it is in the public interest to do so; (3) recognize there are certain land uses that are not compatible with preserving natural functional wetlands; and (4) direct a comprehensive land use planning study with no preconditions to determine how much commercial and industrial land use is really required in this County. Mr. Wolf advised a sounder policy than torturing wetlands criteria to accommodate inappropriate land uses would be, "no commercial or industrial development will be allowed in wetlands or contain wetlands"; and if a site specific landowner finds he has no reasonable land use available to him, he has several avenues for relief, i.e.

it was done with language that was significantly different in content, if not intent, to that which the Board has today. Chairman O'Brien asked Mr. Gauthier to advise the Board of Department of Community Affairs' comments.

Charles Gauthier, Growth Management Administrator with Department of Community Affairs, advised this amendment started at the end of 1995; it was found not in compliance in April, 1996; so it took ten months to get back to the Board. He stated the amendment package included several aspects, not just wetlands; there were land plan changes in the area of Valkaria Airport; and that issue is still outstanding and waiting for a legal interpretation from the Florida Department of Transportation on how to view Chapter 333, Florida Statutes. He stated there were issues that the Department of Community Affairs found in compliance, but interveners challenged; those are still outstanding and relate to duplicative policies that were eliminated; and the mediation effort has focused on the Airport and wetlands, and he is here today on the wetland issue. Mr. Gauthier advised there are three intervening parties on the wetland issue; the Department has tried to create opportunities for mediation as a pilot program; it is doing it in Broward, Dade and Brevard Counties; and it has been fairly successful, but they have not reached a final conclusion. Mr. Gauthier advised the amendment adopted by the Board was very confusing to the State; it interchanged terminologies between the land plan and development proposals; and they were unable to find it in compliance. He stated the statement of intent is their basis for legal action and for negotiations through mediation; they included three issues in their statement of intent; and the first issue related to lots of record. He stated the Board established a new 1996 date for lots of record that might be in wetlands; the State wanted the date to remain the date of the original Comprehensive Plan adoption so new lots created since the original Plan until 1996 would not be consistent with the Plan; and through mediation, County staff agreed to move the date back to the original Plan date which satisfied their statement of intent on that issue. Mr. Gauthier advised Department of Community Affairs was also concerned with language used in the planning interest as opposed to the public interest; they found that terminology vague; there is no court history or definition; and through mediation, they reverted back to planning interest. He stated there was another lack of clarity in the amendment language; he understood from staff the amendment was drafted during the course of the hearings, so the language was less than clear; and what they tried to create was a system where they have suitability criteria in the Plan. He stated as the Board entertains new Comprehensive Plan amendments, there will be factors to consider to know whether it should approve an amendment or not for industrial or commercial use; and they separated and put in the Conservation Element Policies that would govern areas already designated industrial/commercial after 1996, and how those areas would be treated. He noted that is where wetland impacts potentially could be allowed if a series of factors are met, including the public interest; they tried to separate the screening criteria aspect for new plan amendments from development proposal considerations when wetland impact may be considered

the Zoning Board, Board of Adjustment, and Harris Act. He stated County staff is capable of articulating the words necessary to implement 1, 2 and 3 if they are given clear direction, such as eliminate all words in the amendment which do not support those issues; and if the Board would stop seeking this ill-conceived amendment and end the embarrassing commercial and industrial salvation, he will thank it, as will the Department of Community Affairs, the St. Johns River Water Management District, the interveners, and perhaps even staff.

Commissioner Cook inquired what specifically is in the amendment that Mr. Wolf considers to be loopholes; with Mr. Wolf responding the land use maps which include commercial and industrial uses that contain or are in wetlands. Mr. Wolf stated if the Board does a comprehensive study without any preconditions, and uses all the data available, it will find that it does not require commercial and industrial land uses to be in wetlands; and indicated the St. Johns River Water Management District agreed to do that for the County by 1996. He stated another is the Board changed the date that starts the clock on properties presently zoned commercial and industrial so they may retain their development rights commencing in February, 1996. Commissioner Cook stated the Board was flexible on the date, and when Department of Community Affairs objected, it changed that date; and requested Mr. Wolf be specific rather than give broad generalities. Mr. Wolf responded when the issue came up more than two years ago, he submitted to each Commissioner a recommendation on how the amendment should be phrased, in his opinion, so it would accomplish the overriding purpose which is to protect and preserve natural functioning wetlands; any language that does not support that view he would find objectionable because he has experienced that since 1971 in Brevard County; and if the Board wants to provide him with the time, he will address it issue-by- issue. He suggested delaying and consolidating the effort to change the Comprehensive Plan; and stated he objects to the effort to preserve commercial and industrial uses in the wetlands when it is not in the public interest to do so. Commissioner Cook suggested Mr. Wolf address specific amendments to justify his last statement. Mr. Wolf stated one amendment is advancing the clock to 1996 when commercial and industrial uses were prohibited in wetlands in 1988; and if the intent of the Board is to preserve natural functioning wetlands, that is the direction it should give to County staff. Commissioner Cook stated that is his objective; with Mr. Wolf suggesting Commissioner Cook make a motion to that effect so the Board will resolve to do it and give that direction to staff.

Margaret Hames explained a video taken after Hurricane Erin in 1995, of a neighborhood in Merritt Island between SR 520 and the Beeline west of SR 3 where homes have septic tanks to treat their wastewater which present health risks in flood situations; and stated the condition was prevalent throughout Brevard County. She stated the first-floor units of an apartment complex in West Melbourne near I-95 and Publix were flooded with ankle-deep water which ruined furniture and personal belongings in addition to affecting utilities; the intersection of Wickham and Sarno Roads was

dangerous for driving because of flooding; and in Melbourne Village, which is 26 feet in elevation, there were 15 homes flooded due to poor past land use planning decisions. She stated the Comprehensive Plan's Conservation and Future Land Use Elements will be impacted by the amendment being proposed today; and urged the Board to think seriously before it makes those changes which will be detrimental and not be in the public interest.

Norma Savell stated the video tape is typical of what they hear and see from the environmentalists; and what was shown was not wetlands but flooding after a storm and Ms. Hames' mantra. She stated what the Board just saw was misinformation; what it is discussing is wetlands; and this amendment is only a baby step and not what they want, but they are willing to compromise on it. Ms. Savell stated the issue has dragged on too long; and requested the Board approve the amendment as proposed. She stated Martin County voted to significantly weaken its wetlands requirements under its Comprehensive Plan by allowing the wetlands to be impacted by public interest; and requested the Board choose Option 1; and stated if not, there will be other interveners.

Lillian Banks, President of CCPR, advised it is a far cry from what they wanted, but they are willing to compromise; and if it is approved and appealed, CCPR wants to be involved as an intervener.

Geri Lindner advised until she became a facilitator for Project Wild, a program developed by the Florida Game and Freshwater Fish Commission, she did not know much about wetlands; and demonstrated what wetlands do other than being wet places in the middle of proposed development sites, including serving as sources of food, resting places for people and migrating birds, mixing places that take water from the Indian River Lagoon into the salt marshes of Merritt Island National Wildlife Refuge and exchange nutrients that support aquatic life and birds, acting as sieves removing things that are not food particles from the food chain, and cleaning the environment. She stated wetlands are important; there are not as many in Brevard County as they could profit from; Brevard County is one of the most environmentally aware counties in the State; and she hopes it stays that way. She stated she is for preservation of as many wetlands as the County can preserve; there is lot of room for development; and it does not have to be in the wetlands.

Jody Rosier, Florida Audubon Society, inquired if Department of Community Affairs' legal staff reviewed the amendments; with Mr. Gauthier responding the legal staff has been briefed and provided no objections; however, once the settlement agreement is received, they will put it through a formal review. Ms. Rosier advised she was present at some of the mediation, but due to improper notices and conflicts with previous schedules, she was not at all of them; however, one of her main points was with the letter D in the Future Land Use Element's Objectives 4 and 5, which says, "Lands which are designated as commercial on the Future Land Use

Map as of February 23, 1996, are deemed to be consistent with this Policy." She stated an analysis from their lawyer is if D is approved, it could preclude the County from denying commercial zoning on any parcel with a previous commercial designation, which defeats the purpose of Chapter 163. She stated since it is already on the map, and the Board is saying all those areas are okay, somebody can say it is commercial and it is his right to develop it. She noted that letter D is still there and could lead to future problems. Ms. Rosier advised Rule 9-J.5 says, "The basic format for the criteria for each element requires the identification of available data, analysis of such data, and preparation of goals, objectives, and policies supported by data and analysis to accomplish desired ends"; the data is still confusing; St. Johns River Water Management District is saying approximately 4,000 acres of wetlands will be impacted by this amendment, and the County had some other figures; and inquired how can they analyze the impacts of development if they do not have the accurate numbers. She stated if this amendment is approved, the Board will allow development in possibly 4,000 acres of wetlands and floodplain areas, so they need to see the data used to get the amendment approved and the analysis showing what it is going to do to the rest of the infrastructure in the area. She stated data and analysis is part of the Comprehensive Plan amendments, so that will be a good argument, from the interveners standpoint, to see whether that analysis is there and there are some facts to support those policies. Ms. Rosier stated the rains are coming, and the Board should do wise planning; permitting agencies are re-analyzing their rules because of all the flooding; there was a lot of development that happened before stormwater ponds were required; and the people now have to make up for that. She suggested the Board be consistent where it puts commercial uses, especially if it will impact 4,000 acres, and determine how it will impact people already living in Brevard County, not future developers who are going to come in, develop, and not suffer the consequences. She requested the Board be wise, get the data analysis so it will know what it is looking at, and do not rush into it.

Commissioner Cook inquired who in the Water Management District told Ms. Rosier the amendment will affect 4,000 acres of wetlands; with Ms. Rosier responding the analysis from Margaret Spontak's data which they discussed with Mel Scott. She stated it was 4,800 acres, but a few hundred acres were taken out for the landfill and Great Outdoors. Commissioner Cook stated he is not aware of any objections from the Water Management District; with Ms. Busacca responding the Board saw that information originally at the Workshop on wetlands; Carol Senne brought a map that the District used based upon their generalized land use map; and it did include numerous areas that staff feels were not completely fine tuned. She stated the Great Outdoors showed 2,000 acres of wetlands within a mixed use district which are under their development order and not permitted to be developed; so they are currently shown as wetlands, but are already left in the preserved state under the development order. She stated the Map also showed the entire County landfill as approximately 245 acres of wetlands. Commissioner Cook inquired if anyone said the amendment will impact all those wetlands; with Ms. Busacca responding no, staff provided the Board

with how many acres it felt would go to permitting; that number was about 635 acres; and the way that was done is staff took the Property Appraiser's database, used existing commercial/industrial zoning and the wetlands inventory, and put those together, but that was not necessarily an impact, it was simply the acreage that is open for review by the permitting agencies. Commissioner Cook told Ms. Rosier he read her quote in the newspaper which did not square with the information he got; he discussed it with Ms. Senne and others at the District; and he feels she needs to correct that. Ms. Rosier stated it is the Board's responsibility to have accurate data and analysis when it goes through Comprehensive Plan amendments; and inquired if staff went through the whole County when it did its analysis; with Ms. Busacca responding they did it on the GIS System and utilized the entire County. Ms. Rosier stated that data has to be part of the packet submitted; in the contract it says the County provided the supporting documents for the amendment; and they want to be sure that data is open to the public and the District, and everybody agrees with it. She stated it should be clarified before the final amendment packet is sent to the State, because some of the questions that will be asked will be what is part of the amendment process, and what did the Board receive in its data and analysis.

Commissioner Higgs advised the County data shows 635 acres, and the District's data shows approximately 4,000 acres, but the District shows certain properties that need to be taken off; and inquired what is the number when those acres are taken off. Ms. Busacca advised the District brought very rough data, and used land designations which are different than the County's; they used an aggregate, and did it for a regional basis; and they tried to make the County's land use categories fit into a larger regional system to get a comparison between the different counties that they utilize. She stated when the number was brought forward, it was 4,820 acres shown on the Future Land Use Map of the St. Johns River Water Management District, but the County lands were delineated as industrial, high-intensity commercial, and low-intensity commercial. Ms. Busacca stated Margaret Spontak, who is the Planning and Policy Division Director of the District, provided a letter in November, 1996, which talked about the factors that could show the difference in the numbers; it stated, "We're using the latest land cover data which were translational aerial photographs taken in 1989; therefore, wetlands lost since 1989 would still appear on the map. In addition to that, the Water Management District's Future Land Use Map was based on map submitted to Department of Community Affairs by Brevard County during Comprehensive Plan adoption. Adjustments since then do not appear. Industrial designated as mixed use on the County Map was considered to be commercial although residential land uses are permitted. Due to a coding error, the proposed County landfill was indicated as commercial rather than public use. This landfill contains approximately 245 acres of wetlands. The largest acre difference relates to the DRI for the Great Outdoors approved in 1990 by Department of Community Affairs. It contains 2,924 acres." Ms. Busacca stated because the District used different databases and made different assumptions, the numbers are different.

Commissioner Cook stated the bottom line is the amendment in no way impacts that large an area; the impact is relatively small; and it can only be approved under specific conditions. Ms. Busacca stated if staff's estimate is incorrect by order of magnitude, and instead of being 635 acres it is double that, it is still less than 1% of all the wetlands within Brevard County that would be subject to permitting.

Commissioner Higgs inquired if the 635 acres are currently commercial/industrial and do not include future potential acres that could go forward to permitting; with Ms. Busacca responding that is correct. Commissioner Higgs stated the amendment redefines what is on the Future Land Use Map as commercial/industrial designations; it talks about those issues that would go forward to permitting; but it also defines the area where commercial/industrial could go in the future as the Board looks at new land use map changes. She stated the agreement establishes new criteria in the Comprehensive Plan, so it is inaccurate to say the only thing it does is send 635 acres forward to permitting. Commissioner Cook stated it is inaccurate to overstate the impact on future land use; and it was originally sent with a 5/0 vote to the Department of Community Affairs. Commissioner Higgs stated she did support it and was part of the effort to draft some language that future commercial/industrial land uses shall be prohibited in wetlands; but the language in the proposed draft amendment is different. She stated although some things should go forward to permitting, the future land use effort concerns her.

Chairman O'Brien inquired if Ms. Busacca said the District discussed the loss of wetlands and that acreage is about 600 acres; with Ms. Busacca responding to the best of staff's ability that is the number of acres currently within commercial or industrial zoning in the unincorporated area of Brevard County. Chairman O'Brien inquired if that is the number of acres that have wetlands on them; with Ms. Busacca responding no, that is the number of wetland acres. Chairman O'Brien stated the District said that Brevard County had a wetlands net gain since 1988 of approximately 28,000 acres of salt water wetlands and 14,000 acres of fresh water wetlands according to Ms. Senne who brought that to the Workshop. Commissioner Cook stated that was based on all the properties being acquired under EEL and Beach and Riverfront Programs which will be in preservation for perpetuity. Chairman O'Brien advised the County bought properties on North Merritt Island along the Barge Canal; the District put pipes through the seawall and started flushing it out for a net gain of salt water wetlands of about 1,000 acres; and other areas have done the same thing. He stated where wetlands were no longer viable, the County and District restored those wetlands; therefore, the County has a net gain and not a net loss of wetlands. Commissioner Cook stated the Policy always retained, even after the modification, that there will be no net loss of wetlands; and nothing the County submitted deleted that part. He stated they cannot develop anything with a net loss of wetlands; and it has been the Policy since 1988.

Kim Zarillo, representing Florida Native Plant Society, stated it may give a comfort level to say the acreage is very small and the District's data is incorrect, but the 4,000 acres is not 2,000 acres of wetlands in the Great Outdoors; and the letter from Margaret Spontak clarified that. She stated the 2,000 acres include the second phase which is now going through the DRI process and does not have 1,000 acres; so the Board is not talking about 635 acres. She stated they want to know exactly where the County Natural Resources' data came from and how it was collected, because they did not see that in the support documents when the Comprehensive Plan amendment went through. She stated the background information had 600 plus acres, but they understood that was incomplete data; the Property Appraiser's office has 21 of 32 quads matched for wetlands; the District has all but 7 quads matched for wetlands; so the Board is making a decision on incomplete information, but in a short time it will have that information. Ms. Zarillo stated increase in net wetlands is not possible unless the County is going to transform the land, because the basis for determining the acreage of wetlands is a combination of things; and if the soils map is used as the basis, it could be restored, but that would be in the original count; so the 4,000 acres is the amount that could be impacted. She stated there is a question on the data collection methods; the County's EAR brings into focus several questions about the data; the stipulated agreement cites some Statutes; and the requirements of those Statutes are in the EAR that the Board adopted, so it must believe it to be true. She noted one of the things the County is supposed to do and has never done is project the need and allocate areas for commercial; page 17 of the Future Land Use Element says that commercial acreage or allocation the Board comes to an agreement on with Department of Community Affairs has to have the raw data to complete an analysis of Brevard County's commercial allocation; that has not yet been submitted to the Growth Management Department by the Property Appraiser's Office; but that information will be brought to the Board and inserted into the EAR as an addendum. She stated the information necessary to complete an analysis of Brevard County's existing land use changes has not yet been submitted to the Growth Management Department by the Property Appraiser's Office, and will be inserted later. Ms. Zarillo advised the raw data received from the Property Appraiser's Office was produced from a spreadsheet program used to tie multiple abutting properties under common ownership to a key parcel; the key parcel became the billing address for tax purposes; the problem is the key parcel's land use designation is applied to all abutting properties under common ownership; and it is a big problem in trying to plan, determining how those properties are designated, and applying resource data. She stated the District has the most up-to-date and best data available and the ability to give that to the County in digitized form; and when she went to the Property Appraiser's Office to ask about the GIS data, they told her to go to the District because that is where they get their data from. She stated Natural Resources has a separate GIS system; they can use the District's data if they have a person who can use it; but the Board cut staff in Natural Resources and it is almost like shooting itself in the foot, because it could have planned and assessed the natural resources and avoided this complication. Ms. Zarillo stated they need to know if aerial photographs

were used; they were told aerial photographs were used with Florida Natural Areas Inventory data; Ms. Busacca said they used the Property Appraiser's Office data, but the Property Appraiser's Office designates lands according to one ownership and then makes the adjacent properties the same; and inquired if it is by zoning, or was it done with aerial photographs, and why is the County not using the District's data taking the wetlands overlay with the Future Land Use map. She stated Conservation Element Policy 5.1deleted, "but shall not be limited by the threshold or connection requirements utilized by these agencies"; it is talking about the methodologies to be used by Florida DER and the Water Management District; but the definition of wetlands functionality in the settlement agreement is not a definition of wetlands. She advised the Comprehensive Plan says, "Wetlands as defined by FDER and St. Johns," then the second sentence says, "Threshold and connection requirements of FDER and St. Johns River Water Management District shall be used"; so in one area the County says it is going to follow how they delineated what is a wetland, and in another part it says that it shall not be; and they should be consistent.

Commissioner Cook asked Ms. Busacca to address if there is a conflict in the language; with Ms. Busacca responding that was an oversight which was pointed out by a gentleman who called her; and the change should be made to the Glossary to be consistent with the amendment in Policy 5.1. She stated at the time the Comprehensive Plan was adopted in 1988, the permitting agencies had thresholds, such as 40 acres, and would not look at a wetland that was in a project of less than 40 acres; and the Board wanted to come down to any size parcel to allow staff to be more rigorous in review. She noted at this time those thresholds do not exist for review, and that is why it was recommended by the Local Planning Agency. Commissioner Cook inquired why does Natural Resources have a GIS system separate from the Property Appraiser; with Assistant County Manager Stephen Peffer responding Natural Resources uses data from the Property Appraiser and uses information from the Water Management District; and they exist as a separate entity for a number of reasons. He stated they support the petroleum cleanup program; the equipment was funded through that program; and they are able to do projects in Natural Resources on the Board's schedule which they do not get when they go to the Property Appraiser. He stated a recent example is the work done on the scrub jays to supply information to the Board; and they were able to take that data and provide the maps, which the Board recently saw, on a relatively quick schedule rather than having to go to the Property Appraiser for that information.

Ms. Zarillo stated she would like to have her questions answered about where the number 635 acres came from; if it was the digitized data from the Property Appraiser's Office of the wetlands and zoning classifications or whatever; how do they reconcile that the whole County has not been mapped according to the Property Appraiser's Office and to the Water Management District; and if aerials were used.

Chairman O'Brien inquired if the 1988 Comprehensive Plan was a decision based upon incomplete information; with Ms. Zarillo responding the Statutes do not require the County to go out and collect data, but allow the use of the best data available; the County has the best and most up-to-date data available; but she received conflicting stories that they were not used. She stated instead of accepting the fact that it may impact 4,000 acres and not 635 acres, and instead of saying 4,000 acres out of 120,000 acres and trying to minimize it, if they used aerial photographs, the error margin in the data collection could actually be a magnitude of ten meaning 6,500 or 650. Chairman O'Brien advised the Board is looking at making changes to the Comprehensive Plan; it is close to eight and a half years later; and Ms. Zarillo is espousing that it should not make this decision based on incomplete information; however, the Plan may have been created with incomplete information, so the County has a Plan governing people's properties derived from lack of information. He stated the Board is considering a reasonable change to the Plan; and inquired why is it written in gold at the first writing where it can never be changed in the future to fit the times as the times change.

Ms. Zarillo stated she does not believe the Plan is written in stone or that it is golden; she does not disagree that improvements can be made; but she is suggesting that there are better data collection methods available today, and they should use them to make decisions. She stated she does not disagree that the Comprehensive Plan in general should not stay the same because things change and the County changes, but there is a difference in the information that can be used to consider those changes.

Commissioner Higgs inquired if staff used the Property Appraiser's records to get the 635 acres; with Ms. Busacca responding they asked the Property Appraiser to generate a map showing every commercial and industrial zoning in the County, and they overlaid that map with the map of the wetlands and delineated where those overlaps were. Commissioner Higgs inquired if the problem Ms. Zarillo referenced about the key parcel and surrounding parcels could occur; with Ms. Busacca responding she believes that is a different database; they did not ask for the land use or zoning designations as Ms. Zarillo was suggesting because that was not available at the time they asked those questions and is just now becoming available; so yes, they have that information in that form, but they used the actual database by which the Property Appraiser assesses value of properties. Ms. Busacca stated the Property Appraiser generates tax bills on a certain piece of property based on its zoning; and that is the information staff used; every parcel is encoded; if it is assessed as commercial, it has a certain code; and staff asked for those specific codes, and overlaid that with maps of the wetlands to come up with the acreage. Commissioner Cook stated that is a valid way to do it; and Department of Community Affairs would not buy off on the amendment if it was impacting 4,000 acres. He stated it is not having that sort of impact, and the information and what staff said substantiate that.

Charles Moehle, President of Modern, Inc., advised Modern Inc. manages and/or owns almost 5,000 acres in Brevard County, and of that almost 200 acres is commercial or industrial; and the real issue is to correct an injustice that was done by interpretation of the original Ordinance in 1988 by staff. He stated almost all the acreage Modern is involved with had zoning back in the early 1960's, and was properly designated on the land use map in 1988 as commercial/industrial; those people were assured they would not be prohibited from developing their lands; and it has since been interpreted by staff that they cannot do a thing with the land if there is a small wetland on it. He stated the people Modern represents have been waiting patiently and have lost substantial funds from the loss of use of their lands; they are waiting for this correction; and if the correction is not done, there will be lawsuits of over $30,000,000 for taking because it is an injustice that needs to be corrected for lands that were in place with proper use. Mr. Moehle advised Brevard County has been in the forefront of planning since planning was conceived; the land use map was developed with extensive studies and with the best available data; and the lands he represents had concurrency then and have it now. He stated they are on highways and have water and sewer available; and it is an injustice because it is being interpreted by staff as wetlands.

Rodney Honeycutt advised he is in favor of the changes to the Comprehensive Plan amendment; he believes in preserving wetlands, but also providing rights for people; and he does not want to see the County pay for property because it did not treat people fairly. He stated there are some mis-informed people and people who are NIMBYS (not in my backyard) who are using the wetlands issue; the County and District look after the wetlands and do a good job making sure they are protected; and on a recent project he worked on they actually restored acres of wetlands. Mr. Honeycutt advised they gave the State lands that were wetlands so they would not be developed in the future; and they included uplands which provide a buffer to the wetlands. He stated there may be changes in the future that could be considered depending on the situation and where the land is located. He advised he called Ms. Busacca and noted the wetland definition was inconsistent with the Comprehensive Plan; and the last sentence on page 6 of 6 should be deleted to be consistent with page 3 of 6.

Hank Hurley advised the amendment is very favorable, takes care of many issues, and helps industry which he strongly supports; the County needs industry; industry brings in wealth and new people, and helps with the tax base; and there is a lot of good information that needs to be considered. He stated the County needs to work with people who have property that is suitable for development; and with guidance and help from County staff, it can be accomplished and be a plus for the County. Mr. Hurley advised information from the Property Appraiser's Office indicates 53% of 800,000 acres is off the tax roll and only 19% of the County is developed. he stated there is not a wetland database that substantiates the County needs a certain amount of wetlands; he supports the amendment; and requested the Board use good sense and wisdom.

B. B. Nelson stated he supports the amendment and thinks other amendments should be looked into; he has suffered because of permits that were issued by the District and County that flooded his land which is now called wetlands and unusable; and his permit for property in CidCo Park is being held up because it has about 1/4th of an acre of marginal wetlands. He stated there is a complete study by the County of CidCo Park and the drainage problems he has pointed out for years; and they are finally doing something about it. Mr. Nelson advised he received Senate Bill 851 from Senator Connie Mack which has 82 pages redefining wetlands; and people are faced with federal, State and local governments dictating how they can use their property but they must pay taxes or lose it. He advised of a letter to Representative Randy Ball from the Water Management District regarding mitigation, and read, "The figures from DOT for mitigation costs is approximately $75,000 an acre"; so if they four lane 192 or SR 50 and disturb one acre, it will cost $75,000. He stated the Northwest Florida Water Management District has extorted from people; they call it mitigation, but it is extortion; and the St. Johns River Water Management District has extorted in excess of 4,000 acres for permits. He noted there are five Districts in the State, and the data he is collecting shows the difference in the way they are administered. Mr. Nelson advised they have problems and need help; this amendment is one small step forward; and mentioned the District issued permits to cause flooding and at the same time issued citations for wetland areas. He requested the Board adopt the amendment and spend time collecting factual data.

Martin Lamb advised everyone wants to see the environment protected because in the year 2050 the population will double; and they need to protect the environment for clean air, clean water and other things. He stated the people who work with the wetland policies have misconstrued the definition of wetlands to mean wetland plants, life and species; so if a person sees a maple tree on property to be permitted he can deem the property wetland because it is a wetland species. He stated he has seen those areas determined to be wetlands but were not functional wetlands; and the amendment is common sense, will not punish people to benefit others, but will allow people to develop. He stated clean industry will provide jobs for the area. Mr. Lamb stated he used the term "environmental imperialist" the last time; and explained why and how he derived the term. He stated the American people have been duped into doing restrictive things to landowners for what they say is to protect the environment.

Priscilla Griffith, League of Women Voters of the Space Coast Natural Resources Chair, asked two questions: (1) is the Board satisfied that the wording changes will preserve the natural resource base essential to providing a sustainable future for the development of Brevard County; and (2) is it satisfied that with the changes it will be insuring that Brevard County will be a truly livable place ten, twenty, thirty, and even more years in the future.

Diane Stees, representing Indian River Audubon Society, an intervener in the Comprehensive Plan amendment process, stated they oppose the post-mediation draft of the Comprehensive Plan amendment affecting development in wetlands because the Future Land Use Objectives 4 and 5 Criterion D allows all lands currently designated as commercial or industrial on the Future Land Use Map to go straight to the appropriate permitting agency. She stated the County will give up local control; it is local land use planning authority in favor of piecemeal permitting; and permitting of wetlands does not consider future growth or cumulative impacts. She stated a letter from Department of Community Affairs to Commissioner Cook dated February 22, 1996, states, "The Department views commercial and industrial uses as uses which are inappropriate for wetland areas. Allowing such uses within wetland areas is clearly inconsistent with requirements to protect wetlands and their natural functions by directing incompatible land uses away from wetlands. If these changes are to be adopted, a finding of noncompliance would be highly likely." Ms. Stees stated those comments come straight from Florida Administrative Code 9-J.5.2; the latest version of the amendment appears to have expanded the scope of the original amendment by exempting currently designated commercial/ industrial lands on the Future Land Use Map from the criteria in the Comprehensive Plan meaning they will go straight to permitting; and it includes floodplain and aquifer recharge areas in addition to wetlands. She stated they do not believe that was intended by the Department of Community Affairs and believe that only a thorough legal review and not just County legal review will give the true answers. Ms. Stees advised they have not seen adequate data and analysis to justify the policy change; they asked for it at past Board meetings and in mediation; the number of acres affected is not the only concern; and other concerns are what is adjacent to those areas, and will surrounding residential and other properties be affected by increased stormwater runoff. She stated they have a right to ask those questions and deserve clear answers; the government should be held accountable to all citizens on this issue; and the above objections are in addition to past oral and written objections stated by them on the record, and in addition to objections of the remaining interveners. Ms. Stees stated the Board has a duty under State law to protect the health, safety and welfare of the public and the public's natural resources; and Indian River Audubon Society is concerned not only about the effect that filling in more wetlands will have on residents and neo-tropical migratory bird species and impacts on the health of the Indian River Lagoon, but also about the financial burden to private property owners from poorly planned development, as the public will ultimately pay for increased stormwater runoff and flood control exacerbated by commercial and industrial development in wetlands. Ms. Stees stated the argument that the County is maintaining a no net loss of wetlands regarding commercial and industrial development of wetlands as stated in the Comprehensive Plan does not hold water; if there are 100 acres of wetlands and 50 acres are filled and mitigated by buying 50 acres elsewhere, the real net loss is 50 acres of wetlands; and State and regional audits indicate the mitigation efforts to create wetlands have failed miserably as documented in DER reports to the Florida Legislature in 1990 and 1992, and in a Water Management District's

report dated 1993. She inquired if the policy change will move Brevard County in the direction of sustainable development, and is it a growth management decision that will enable the County to grow wisely and in a common sense balanced manner that protects the public, private property, and vital natural resources. She recommended the amendment be tabled until a thorough meaningful review of all available data is completed so that a better solution will become apparent.

Commissioner Cook stated Department of Community Affairs disagrees with Ms. Stees because they accepted the amendment. Ms. Stees stated they disagree with Department of Community Affairs.

Mary Todd, representing the Sierra Club Turtle Coast Group, advised the wording they do not want changed applies to wetland properties that will be given commercial or industrial land use designations in the future; Conservation Element Policy 5.2.f.2 gives restrictions on commercial and industrial development activities in wetlands; and they do not want the word "shall" to change to "should" as was suggested at the Board meeting of December 10, 1996. She stated Policy 5.2.f.2 makes some allowances for commercial and industrial development activities in wetlands; in the future they anticipate substantial pressure from development interests to grant exceptions; so the Board needs strong wording to protect wetlands. She stated the language they would like changed in D of the Future Land Use Objectives 4 and 5 is to make it apply only to wetland properties; the amendment was originally proposed only for wetlands and did not explicitly grandfather in all commercial and industrial lands on the Future Land Use Map as being consistent with site suitability criteria for environmental features; however, due to the placement of Criterion D, the new language does just that. She requested the Board answer the questions: (1) how does the acreage that will be grandfathered in by D compare to the acreage that will be affected if D were restricted to wetland properties; and (2) will the Board have a Comprehensive Plan inconsistency if it grandfathers in land with regard to aquifer protection. She stated page 02/21/95-I-35 of the Comprehensive Plan states, "The 1991 Comprehensive Plan contains standards for the protection of Type I and Type III, including Type II aquifer recharge areas, and including maximum impervious surface and density recommendations; however, these recommendations were utilized only in rezoning reviews, thus parcels which did not require rezoning were not reviewed against aquifer protection criteria." Ms. Todd advised Mr. Gauthier of the Department of Community Affairs questioned the broadening of the scope of D to include floodplain and aquifer protection policies in a letter to Ms. Busacca dated December 16, 1996; he said, "We agree that those areas designated on the Future Land Use Map as commercial or industrial as of February 23, 1996 would be deemed consistent with wetland protection policies. The concern is that by virtue of the policy structure, it appears that the consistency declaration would be extended to floodplain and aquifer protection policies as well. As I recall during the mediation, I suggested that the suitability considerations be broadened to encompass floodplain and aquifers. I do not recall any discussion to the effect that commercial or

is satisfactory to the Department, and he has all the authorization he needs to make that statement. He stated the Board has interveners concerned about how existing designated industrial and commercial properties will be treated where there are wetlands; and those interveners can perpetuate a hearing process.

Commissioner Cook inquired if the opinion of Department of Community Affairs is that the amendment does not do violence to wetlands protection; with Mr. Gauthier responding there will be a certain amount of wetlands subjected to a permitting process instead of a land planning process; and that would be the Corps of Engineers and Water Management District's permits. Commissioner Cook inquired if development is sustainable in regard to protection of the environment; with Mr. Gauthier responding yes, they try to take a balanced approach; and economic development is a very important part of that approach. He stated the original Plan is imperfect in some regards; it allows commercial and industrial where there are wetlands because there was not good enough information at the time; so Department of Community Affairs is trying to take a balanced approach and be more flexible where the County currently has commercial and industrial, knowing it is not a huge amount of wetlands, and to strengthen the approach and how things are done from now on.

Commissioner Higgs advised Dade and Broward Counties fall under the regulations of Department of Community Affairs; and if they are good examples of land planning and good growth management, that is not her criteria. She stated the focus should be on the future land use and what the Board will do in the future; and she thought the Board did that when it agreed 5/0 to go forward with those commercial and industrial uses that were on the map for permitting and drafted language to protect the future. She stated her concern is with the future; she does not agree that the language is good planning for the future; and it opens the door as opposed to tightening it for commercial/industrial designations in the future. Commissioner Cook stated the problems in Dade and Broward Counties happened well in advance of Department of Community Affairs being established.

The meeting recessed at 12:19 p.m. and reconvened at 12:33 p.m.

Mr. Knox advised "shall" expresses a command and what is mandatory to be done at all times without deviation; and "should" expresses an obligation, and mandatory action is necessary unless it can be clearly demonstrated that: (a) strict application will be contrary to the public interest; (b) public values being protected are insignificant and strict application will result in an excessive hardship to the project; (c) strict application will place an excessive hardship on the project and an alternative action is available which is equal to or superior to the original requirements in reaching the Policy's objective; and (d) the activity is not financially feasible for a local government.

industrial future land use designations adopted prior to February 23, 1996 would receive revised treatment relative to Conservation Objectives 4 and 11. It appears that minor changes to the language would overcome this problem." Ms. Todd stated they want to know if the Board received a definite answer from Mr. Gauthier on the specific matter. She stated the Sierra Club requests the Board not change "shall" to "should" in Conservation Element Policy 5.2.f.2, and restrict Criterion D to wetland properties.

Chairman O'Brien stated the last time the Board discussed "shall" and "should" he was told "shall" means "should"; with Ms. Busacca responding Brevard County's definition of "should" is the same definition that the Department of Community Affairs uses for "shall"; and it allows exceptions in its definition of "shall" which are the same exceptions the County allows in its definition of "should". She stated "shall" says it is mandatory and then excepts and gives provisions of what is contained in the County's definition of the word "should"; so with the word "shall" plus those provisions, it is essentially equal to the definition of "should" found in the Glossary. Commissioner Higgs recommended the County Attorney clarify the legal meaning of "shall" and "should"; with County Attorney Scott Knox responding he does not have it in front of him so he would not be able to define what is set out in the definition; however, if someone would provide him copies, he will do that.

Commissioner Cook inquired if D is supposed to only apply to wetlands; with Ms. Busacca responding no, during mediation the Department of Community Affairs brought up the issue that suitability analysis was greater than an issue about wetlands; and it also included floodplain and aquifer recharge areas, as well as other environmental issues. She stated all lands which are currently designated on the Future Land Use Map or were designated as of February 23, 1996 have been found in compliance; that means they are automatically considered to be consistent with the Floodplain Policies and the Aquifer Protection Policies as they relate to land use; so that is a statement that repeats the current status. She stated the confusion comes because the Policies contained in those Objectives are not going to be applied to any development at the site plan stage; the Land Development Regulations are still in place and will be required to be met; and this amendment does not exempt anyone from going through any of the land development regulations. Mr. Gauthier advised their negotiation was based on their statement of intent which was limited to three issues; early on and before the ORC Report, they coordinated with Carol Senne of the Water Management District their objections and statement of intent that would allow the County to treat areas already designated commercial or industrial under a permitting approach; and they had a lot of discussion about exactly how many acres those are. He stated the amendment will do an excellent job of guiding future amendments that the Board considers; and should the amendment be approved, the Conservation Element Policies will do a good job of ensuring protection of wetlands for those areas that did get approved, and will allow impacts under very limited exceptions. He stated the language

Chairman O'Brien stated there is a striking difference between "should" and "shall"; and inquired if Ms. Busacca has changed her opinion; with Ms. Busacca responding the criteria under Conservation Policy 5.2 is significantly different, but (a) the special need or reason to locate within a wetland, (b) overriding public interest, (c) no feasible alternative location, (d) minimum feasible wetland alteration, and (e) activity does not impair functionality of the wetland are similar in that there are mandatory actions required unless certain criteria are met.

Commissioner Cook advised the whole issue came up because of a technical modification to the interpretation of the amendment; the threshold issue was like the issue that came up behind Merritt Square Mall on a vacant parcel with a small nonfunctional wetland squeezed between very heavy commercial uses already developed; and under strict application of the Policy, the owner was told by the County he could not use the property. He stated the attempt here is not to lower wetland protection, but to make a technical modification to the Comprehensive Plan that would allow development in some circumstances. He stated they still have to go through the permitting process with environmental agencies if any portion of the property has wetlands; and the idea was to address the rare circumstances but not reduce standards or allow unrestrained growth and commercialization. Commissioner Cook advised the Board is compelled to address it; the Bird-Harris Act is the property rights legislation that the Florida Legislature passed which essentially says if someone is denied total use of his property, the government could be liable; and that is one of the issues the Board was trying to address with the amendment. He stated the confusion erupted because there were newspaper articles and editorials which did not understand the point; the fact is the Board is going to protect wetlands in the County; no net loss has always been in the Plan; it is trying to come to a resolution and address those issues that are very rare but occasionally come up; and County staff needs clarification on what the intent was of the Comprehensive Plan and this amendment. He stated the Board can modify the language to make it better, but there is no justification to indicate the Board is trying to open up the County to increased commercialization or development. He thanked staff and Department of Community Affairs for their efforts to address the original intent of the Board and at the same time protect the wetlands and environment, and allow a technical correction to the Comprehensive Plan. He stated Department of Community Affairs supports it, but there will always be people who will be skeptical of motives.

Commissioner Higgs advised the intent of the Board was to do several things, but the language before the Board does not do that; and the new language kicks into effect the Bird-Harris Act, but if the Board did nothing to the language, the Bird-Harris Act would not apply because it only applies to new laws. She stated the changes started in February were to address technical issues, but there were also broader issues in terms of the Comprehensive Plan addressing more permitting issues than planning issues in the future land use; the Board tried to separate those; and what it has done

with the language in the Future Land Use Element is make it less clear that it is protecting wetlands from future commercial and industrial designations. Commissioner Higgs advised the language allows those properties that are currently designated commercial/industrial to rightfully go forward to permitting; she was willing to go forward with that as long as she could keep reasonable protections regarding future commercial and industrial development in wetlands; and she does not feel that is part of the amendment. She stated Objectives 4 and 5 of the Future Land Use Element need to be restructured to include language that was in the original Comprehensive Plan which clearly stated that "new commercial and industrial land use designations shall be prohibited. . ."; and under Objectives 4 and 5 D in the original draft was to allow lands designated commercial/industrial to go forward to permitting. She stated she is uncomfortable with the placement of D under Objectives 4 and 5 and the way that sentence is structured. Commissioner Higgs stated the Board started out to clarify technical issues and has gone beyond that; most of the Conservation Element changes are acceptable; but the Future Land Use Element Objectives 4 and 5 have language that does not give her a comfortable feeling that the Board is protecting wetlands from commercial and industrial development, so she cannot support it.

Commissioner Scarborough advised there will always be places in the Comprehensive Plan that are inadequate; it is impossible to paint every parcel and have everything work for it; so the Board is dealing with imperfection; and there are a lot of people who will argue that the Comprehensive Plan process is a failure because of its incapacity to deal with property on a one-to-one basis. He explained several situations that were brought to the Board involving wetlands that made properties unusable; and advised the Board considered withdrawing from the process and leaving it up to the permitting agencies, but it would be a mistake to remove itself from the planning process. He stated there is language he feels comfortable with that says, "These uses shall be directed to sites where there are sufficient uplands for the intended use"; it is mandatory with the word "shall"; so if there is not sufficient upland, then there is a failure to move forward. He stated it also says, "Brevard County shall ensure the site is suitable for the proposed use with regard to environmental features"; so the Board has to ensure there are no adverse environmental problems.

Commissioner Cook stated his concern is to make sure that future land use is directed away from wetlands; that is addressed because it says, "Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services"; and it also says "shall be directed to sites where there are sufficient uplands for the intended use." He stated that addresses the concerns; it directs future land use away from wetlands; and the amendment accomplishes that and answers Ms. Griffith's two questions.

Chairman O'Brien inquired if the Board wants to insert "should" in Policy 5.2.f.2. Commissioner Voltz advised it does not make sense to have "shall" and "should"; "shall" with all the stipulations is like "should"; so the Board would be saying one thing and meaning another if it is not changed to "should". Commissioner Cook suggested leaving "shall".

Motion by Commissioner Voltz, seconded by Commissioner O'Brien, to approve changing "shall" to "should" in Policy 5.2.f.2.

Commissioner Cook stated if the Board makes changes in the language that Department of Community Affairs and staff worked hard on, it could start the whole process again; and recommended the amendment be approved as is. Ms. Busacca stated Mr. Gauthier may want to react to how he feels Department of Community Affairs will accept it since the intent is to move forward and try to settle the noncompliance.

Commissioner Scarborough stated there was an item that needed to be deleted also. Commissioner Voltz amended the motion to include the deletion.

Chairman O'Brien stated the motion is to change Policy 5.2.f.2 to "should," and correct the Glossary by deleting the last sentence on page 6 of 6.

Mr. Gauthier advised he does not have a reaction to "should" or "shall", but something during the public comments focused on Objectives 4 and 5; there is a screening criteria for new Future Land Use Map amendments; there was correspondence between the interveners, him, and Ms. Busacca on the subject; but the interveners remain concerned. He stated there is A, B, C and D; D modifies C, but as it is written, it seems to modify everything; and he is curious about Ms. Busacca's reaction. Mr. Gauthier stated when the stipulated settlement agreement is forwarded to Department of Community Affairs they will look at it and wonder about it; so his reaction is it would be better to have D actually be C-1 as it modifies only C; and it would say, "Areas already designated commercial as of that date are consistent with this Policy." He stated they are talking only about the wetland policy and not the aquifer or floodplain policies, and that issue applies to Objectives 4 and 5 on pages 1 and 2 of 6. Mel Scott stated it can be made as the second sentence under C. Mr. Gauthier advised it is a qualifier that only applies to the wetland issue and not to the floodplain or aquifer policies.

Motion by Commissioner Voltz, seconded by Commissioner O'Brien, to amend the motion to eliminate D in Objectives 4 and 5, and add it to C.

Commissioner Higgs advised she can support the Conservation Element proposed language and agree to sending that forward to Department of Community Affairs, but there is more work that needs to be done on Objectives 4 and 5. She stated the language suggested makes it better, but it still needs some enhancement, so she cannot support the motion.

County Attorney Knox advised the Board changing "shall" to "should" where it is proposing to do it makes it more restrictive than what it currently reads because the definition of "should" has one criteria that is not included in the criteria specified in Subparagraph 2 where the change will be made. He stated "should" includes, "The activity is not financially feasible for local government," that is not one of the criteria that is in the Policy; so if a person comes in with a piece of property, the staff would have to look at whether or not it is financially feasible to local government in order to release it for development; and that may not be an issue as far as that property is concerned.

Commissioner Cook stated it should stay as "shall"; and Commissioner Voltz stated she has no problem leaving it as "shall".

Commissioner Voltz amended the motion to leave "shall" in Policy 5.2.f.2, delete D in Future Land Use Element Objectives 4 and 5 and make it a second sentence of C, delete the last sentence in the definition of wetlands, and execute the stipulated settlement agreement with those minor changes.

Commissioner Higgs recommended the Board pull out the Future Land Use changes, go back to mediation on the planning issue, and allow the other part to go forward to take care of the problems in addressing those people who have current commercial and industrial land use designations. Commissioner Cook stated the language addresses that; and since Department of Community Affairs is a player in this, he wants to know if Mr. Gauthier is comfortable with the agreement as proposed with a few changes. Mr. Gauthier responded yes.

Chairman O'Brien called for a vote on the motion as amended. Motion carried and ordered; Commissioner Higgs voted nay.

PERMISSION TO ADVERTISE REQUEST FOR PROPOSALS, RE: GROUP DENTAL INSURANCE

Commissioner O'Brien advised the item is about reviewing the make up of the Employees Benefits Advisory Committee and authorizing the Committee to publish a request for proposals for group and dental insurance and recommend a vendor or vendors to the Board.

Human Resources Director Frank Abbate advised the Board discussed the Dental Program and what it was looking for in an RFP; this is a request to the Board to approve issuance of that RFP utilizing the Employees Benefits Advisory Committee to develop the RFP, review it, and come back with a recommendation to the Board. He stated the Board should review the make-up of the Committee to see if it wants to make any adjustments, as there was a recommendation that the IAFF Local 6769 have the opportunity to appoint someone to the Committee to have some input into the process.

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advised the Board would not want to do it without having the language before it.

Chairman Scarborough stated the Board will continue with this item later in the meeting.

Commissioner Higgs inquired if Mr. Kerr has dealt with any entity which has a bonding requirement; with Mr. Kerr responding there is a possibility there may be a monetary penalty until it is corrected; and he will bring that information back after lunch.

PUBLIC HEARING, RE: APPEAL TO CONSERVATION ELEMENT'S POLICY 5.2.F.2 OF THE COMPREHENSIVE PLAN, AND SECTIONS 62-4396(B)(2)B AND 62-4399(A)(2)B OF BREVARD COUNTY CODE, RE: JOHN W. BUTTREY OF BISHOP AND BUTTREY, INC.

Chairman Scarborough called for the public hearing to consider an appeal to Conservation Element's Policy 5.2.F.2 of the Comprehensive Plan, and Sections 62-4396(B)(2)B and 62-4399(A)(2)B of Brevard County Code, by John W. Buttrey of Bishop and Buttrey, Inc.

Mr. Chesney, representing Bishop and Buttrey, Inc., stated this is a separate issue from the previous one.

Commissioner Higgs stated she has problems with the Board approving commercial/industrial in wetlands, and will not vote for this. Chairman Scarborough stated staff had minimal negative comment.

There being no further comments heard, motion was made by Commissioner Voltz, seconded by Commissioner Carlson, to approve appeal of John W. Buttrey of Bishop and Buttrey, Inc. to allow a Land Alteration Permit for property located north of Cidco Road and east of Grissom Parkway. Motion carried and ordered. Commissioners Scarborough, Carlson, and Voltz voted aye; Commissioner Higgs voted nay.

ADMINISTRATIVE APPEAL TO COMPREHENSIVE PLAN AMENDMENTS, RE: WETLANDS

Chairman Scarborough stated staff has put some ideas together; and distributed paperwork. Mary Todd, representing Sierra Club, Turtle Coast Group, stated two weeks ago it appeared that acceptable settlement language for the Comprehensive Plan wetlands amendment was within their grasp; but today she is worried that the opportunity to do what is best for Brevard County will slip away. She stated the language has been revised with all good intention; changes were made to encourage commercial development at future interstate highway interchanges with unrealized capital

investments; and changes were also made to attempt to contain sprawl. She stated they are good considerations, but this is the wrong time and place for the new language. She stated changes have been suggested at the last minute without the chance to properly assess the impacts; and changes were made just at the time when the County was about to implement environmental performance standards. She stated the Board should learn from its consultant, Lane Kendig, before it attempts to place such detailed specifications affecting interstate vicinities in the Conservation Element. She stated the interchange wording has been placed in Conservation Element Policy 5.2.f.2 which deals with future designations; a look at future I-95 interchange sites reveals that jurisdictional wetlands do not need to be impacted by commercial development; and the language is unnecessary for future designations. She stated they would not like to see the exception for interchanges serving as a wedge for other exceptions; and if new language is decided on, it would be more appropriate as a condition in Policy 5.2.f.3.a which deals with existing designations. She stated the new language is somewhat ambiguous; and suggested rather than agree on hastily drawn up wording, the Board consider returning to the language contained in the Agenda package two weeks ago or something very similar. She recommended adding the word "only" in Policy 5.2.f.3 before "if all of the following criteria are met." She stated their preference is to omit the new interchange wording for the moment and get educated by Mr. Kendig before attempting to articulate such specifications. She stated their second choice is to correct the ambiguities in the new interstate interchange language and place the new section in 3.a as a condition; and 3.a would then say "the property is substantially surrounded by land developed as commercial and industrial as of the date or meets the new I-95 interchange criteria. She requested the Board seriously consider their recommendations.

Charles Moehle, representing Modern, Inc., stated over 125 acres of commercial/industrial land would be affected by the ordinance; he was given language that was prepared this morning that has blanks in it; and he is not sure what the Board is dealing with now.

Chairman Scarborough stated he expressed concern that sometimes there is an old development of infrastructure; when they looked at the language "overriding public interest", it was in the public interest to use an investment in infrastructure and not abandon it; and explained why there are blanks in the new language.

Mr. Moehle stated Policy 5.2.f seems to be in the right direction for the future; and the handout seems to be replacing that language while not directly talking about I-95 interchanges with major highways. He stated he heard the comment that major intersections can be somewhere else; he does not disagree with that; however, it seems to indicate in the language that it is talking about interchanges with I-95. He stated 2.b is totally overburdening to any intersection because it talks about projecting the roadway capacity within four miles, and the intersection will be no more than 80% of capacity after development of an unspecified amount of commercial space. He stated

the language does not talk about the roadway capacity of the intersecting roads, but any roadway; that would be almost impossible to qualify; and commercial space is not mentioned. He stated further on it says, "a maximum of 40 acres of commercial uses shall be allocated in proximity to the interchange, counting both sides"; and inquired who is going to allocate them, and what is proximity. He stated although it might be in a good direction, he does not know how the public can comment on that until those things are cleared up. He stated the mediation language gets to be complicated; and the Board has taken out the verbiage that qualified that lands which are designated as commercial or industrial on the land use map as of a certain date are consistent with the criteria. He stated lands that had infrastructure and commercial/industrial land use on the 1988 Land Use Map should have that kind of qualifier; the qualifier got put to another date which is reasonable; but one of the main problems is the Board has lost what it started out to do which was to take the unreasonable burden off of the initial determination by staff that there is a wetland, and nothing can be done in it if it is commercial or industrial use without going to horrendous expense. He noted essentially it is necessary to bring legal action to get any attention; and commented on the cost. He stated he does not know what the language that was added about the Bert Harris Act means; and the Board has not done right by the citizens, because it has not made clear the original Ordinance and intent. He stated the comments he made last time about the proposed mediation language hold true today; the language does not include a date; Objective 4 adds language that there shall be uses directed to sites where there is sufficient uplands for the intended use and all other measures; and recommended removing the word "all." He voiced objections about the identifiers of types of wetlands. He stated at the very least the Board needs to put in a time when the commercial, industrial, and residential uses were deemed consistent with the criteria, at the very least in 1988. He recommended the Board not take any action, but go forward to the administrative hearing.

Kim Zarillo, representing the Florida Native Plant Society, stated she wants to be sure which version the Board is working from; and inquired if it is the April 13, 24, or 26 version.

Commissioner Carlson stated it is confusing; and she does not know if the Board is doing any justice today, since everyone just got another version; and so much is being put in, that it will take an attorney to figure out what is what.

Chairman Scarborough stated the current Comprehensive Plan and Stipulated Settlement use the words "overriding public interest"; and that is a weak point in the discussion. He stated there has been talk about areas that are surrounded with commercial or industrial; one place the Board should look are areas where there is a tremendous investment in capital infrastructure; and the County should not walk away from those areas and create commercial sprawl. He stated while it is clearly an overriding public interest, it is such that there are probably not that many occasions where it

will come up in reality. He stated the question is how to deal with it; and the Board may find there are other overriding public interests because it could mean it is detrimental to the County to allow commercial sprawl rather than concentrating commercial development He stated the intention of all that has been presented today has been for the purpose of defining; Ms. Zarillo and Ms. Todd were faxed copies of the new language yesterday; and they have been involved in knowing where his thoughts were going.

Commissioner Carlson stated her concern is placement of the language; she understands the intent; and suggested referring to an interchange commercial zone under a land use.

Chairman Scarborough stated the Board is restricting the building in wetlands, but there could be overriding public interests; and commented on the need to define when tens of millions of dollars have already been spent. He stated there are a lot of good objectives in the Comprehensive Plan, but sometimes they conflict; the Board wants to cluster and not have commercial sprawl, as well as protect the wetlands; and his attempt is to integrate the two concepts. He stated he does not mind walking away from it today if it is going to bog everyone down; but there is a need to see one as a part of the other.

Commissioner Carlson stated this is a big issue that needs to be addressed; and she is worried that the Board is diluting the work that has been done over the past three years.

Commissioner Higgs stated she does not have a problem defining it without interchanges on I-95; but it is getting too definitive when it gets into curb cuts.

Chairman Scarborough stated if the Board lets commercial development blossom out, it is defeating its purpose; and commented on each aspect, including size, road capacity, wetland mitigation, connection from the off-ramp to the development, and limiting curb cuts. He stated when the County allows something in the wetlands, it wants to extract something, and does not want to end up having to four lane a road because of what it allowed in the wetlands. Commissioner Higgs inquired if Chairman Scarborough is talking only about I-95; with Chairman Scarborough responding they started talking about all intersections and ended up with the concept that I-95 is probably the big one that needs to be addressed. Commissioner Higgs stated if the Board limited the language to I-95, she does not have any strong opposition to it. Chairman Scarborough stated the purpose was to define "overriding public interest"; and he could find only two. Commissioner Higgs stated this is a better position than where the Board was with a term like "overriding public interest." She stated the Board needs to define it in terms of I-95; and things can be defined, and the blanks filled in, then the Board should try to complete this today.

Kim Zarillo stated she concurs with Commissioner Higgs; and what the Board is trying to do is good, but this is not the right place or time. She inquired if the Board is going to use the new edition of subparagraph 2, would it be inserted in the other editions. Chairman Scarborough stated there were a number of drafts going back and forth; and he would like to talk about the most recent draft rather than any of the prior drafts. Discussion ensued on which edition to use. Planning and Zoning Director Mel Scott provided a copy of the most recent draft to Ms. Zarillo.

Ms. Zarillo stated if the Board is going to include the new language under Section 2 or 3, it needs to specifically reference I-95 interchanges where it talks about the exception; and b should talk in terms of congestion ratios, which is the terminology of the MPO, rather than overcapacity. Chairman Scarborough stated Transportation Planning Director Bob Kamm wrote that language. Ms. Zarillo stated no more than 80% of capacity after development will probably be mall size. Chairman Scarborough advised it will be on both sides. Ms. Zarillo stated she does not have a suggestion for this blank. Mr. Scott stated the Merritt Square Mall takes up 80 acres of land, and has 992,000 square feet of leasable area; and the way it is now is 40 for the entire interchange on both sides. Chairman Scarborough stated it will be cut in half, so that would be approximately 500,000 square feet.

Discussion ensued on amount of traffic at buildout, what if only one corner has wetlands, excess capacity on the roadway, development of the wetland, massive development on corners without wetlands, example of buildout used to run numbers, "buildout" being ambiguous, impact on roadways, different scenarios, what 500,000 square feet looks like, and over 40 acres being a DRI. Ms. Zarillo stated under d, it says the development is located one-half mile of the intersection of the off-ramp with the connecting roadway; and off-ramps on the interstate are at a specified distance. Ms. Zarillo stated it may actually be approximately three-fourths of a mile. Chairman Scarborough stated when it intersects, then it goes the half-mile because there cannot be connections on the off-ramp. Ms. Zarillo stated d is expanding the sphere of development. Chairman Scarborough stated that is the only place it can develop because there is no way to use the land with the connections off the off-ramp; only when it hits the off-ramp does it become an issue; and lights on the off-ramp create problems. Ms. Zarillo stated under E, it should be a maximum of 40 acres; and inquired if that is 40 acres of land. Chairman Scarborough stated it is land used for commercial. Ms. Zarillo advised that should be clarified. She stated if the Board is going to keep the language in the draft provided today, she agrees with Ms. Todd's suggestion to add "only." She stated 3.a was supposed to have language address the interchange situation; in the Conservation Element, 3.a is still "has sufficient infrastructure in place to serve the commercial or industrial use"; she does not know why that language would still be necessary because the infrastructure would have to be defined; and it should end at the date.

Chairman Scarborough stated the next issue is curb cuts; and while the Board is willing to compromise, it does not want to end up with so many

curb cuts that it will be necessary to four-lane because traffic moves so slow. He stated Mr. Thompson said once there is a connection coming in from the off-ramp, it is necessary to go a quarter mile for safety so people can merge before getting to the entrance; with Dick Thompson advising that is a recommended distance for signalization. Chairman Scarborough stated the next issue is whether another cut is needed at a half mile; with Mr. Thompson responded assuming a median situation, there could be a right-in, right-out entrance at a 440-foot minimum from the ramps, and then another at 440 feet or 600 feet after that. Chairman Scarborough advised of the problem in Titusville which can never be straightened out. Mr. Thompson stated ideally there should be as few intersections as possible for the specified distance. Chairman Scarborough inquired if one is enough in one-half mile. Mr. Thompson responded for major signalization, it should go a half-mile total; a quarter-mile is the recommended minimum on signalization; and if it develops well, there will be signalization. He stated there could be right-in, right-out driveways, but they would not be signalized; and that would be to go in, come out, and go in the same direction. He stated it is difficult to limit it to a half mile. Chairman Scarborough stated once there is a connection, it has to go a half mile before there is signalization; so it would be one major entrance into a shopping area; and suggested the wording, "no more than one curb cut on each side, after the intersection of the off-ramp of the connecting. . . ."

Discussion ensued on a quarter-mile being necessary for traffic to merge, full signalization at one-half mile; capacity to move traffic and direct it to the shopping areas, what limiting to one curb cut will mean, limiting people going into the area, whether it has anything to do with the wetlands issue, one curb cut per project, multiple curb cuts destroying the objective, looking at individual projects, reference to standards, and acres per quadrant.

Commissioner Carlson expressed frustration at trying to define what will be developing around an I-95 interchange; and requested recommendations from staff on how to address this. She stated she is not comfortable approving language she does not completely understand. Assistant County Manager Peggy Busacca stated staff could be more help if it understood the policy direction of the Board; and that is still evolving. Mr. Knox stated there is a generic way to handle this which is to address the issue of an exception tied to the commercial development activities in the vicinity of the I-95 interchanges as established by implementing land development regulations which can be specific. Commissioner Higgs stated that was what she was suggesting, but what the Plan has done in many places is reference development of an ordinance by 1992, and that never evolved. She stated Chairman Scarborough is trying to use this opportunity to provide for working intersections. Mr. Knox stated no matter what the Board decides, the DCA has to be dealt with.

Chairman Scarborough suggested in lieu of F, put "there will be no more than two curb cuts on each side of the interchange, within one-half mile of the connection with the off-ramp." He stated the Board can talk about

designing the interchange, but if it is not included in this language, then the wetland policy will restrict it, and the Board will have to address it later; and recommended doing it now.

Commissioner Carlson inquired what is the deadline; with Assistant County Attorney Christine Lepore responding the hearing officer needs to hear it before May 15, 1999. Commissioner Carlson stated the Board has some time to make it understandable.

Commissioner Higgs stated she is comfortable with the language in the Agenda Package with the addition to number 2, including the definition that it is at I-95, and including that all of the following criteria apply.

Commissioner Carlson suggested getting more feedback from staff during lunch to better understand what the Board is voting on.

The Board postponed discussion on the appeal to Comprehensive Plan Amendments concerning wetlands until later in the meeting.

Bill Kerr stated in the St. Johns River Water Management District permit there is a limiting condition that says, "legal uses of water existing at the time of the permit application may not significantly adversely be impacted by the consumptive use. If unanticipated significant adverse impacts occur, the District shall revoke the permit in whole or in part to curtail or abate the adverse impacts unless the impacts can be mitigated by the permittee." He stated it also says that the permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate; and there is a law in effect that says the District, for violations of the permit, can fine the applicant $10,000 a day until it is fixed. He stated County staff suggested that the ordinance include the wording, "the permittee shall notify the District or the County in writing if any previously submitted information is later discovered to be inaccurate; and if unanticipated significant adverse impacts occur to resources of particular concern, which is defined in County regulations, the County shall revoke the permit in whole or in part to curtail or abate the adverse impacts unless the impacts can be mitigated by the permittee; and it shall be the financial responsibility of the application to curtail or abate any adverse impacts."

Motion by Commissioner Higgs, seconded by Commissioner Voltz, to adopt an Ordinance amending Article XIII Division 4, Brevard County Code, entitled, "Land Alteration Regulations"; establishing criteria for a depth modification procedure; providing for severability; and providing for an effective date, amended to include the language suggested by staff.

Commissioner Higgs inquired if there is any problem with the advertisement; with Mr. Knox responding no, that is not a problem. Mr. Knox advised he did have bonding language and thoughts about the adequacy of 6 and 7.

Chairman Scarborough recommended bringing the issue back after lunch. Mr. Kerr advised he will be unable to be here, but Mr. Chesney will be present.

Commissioner Carlson stated on 2.b.2 the Board was in some agreement on the ten versus the five feet; and requested Mr. Peffer address that. Mr. Peffer inquired if Commissioner Carlson wants a brief description of what is being done there; with Commissioner Carlson responding no, she wants what the Board talked about last time. Commissioner Higgs stated everyone is okay with that.

The meeting recessed at 1:09 p.m. and reconvened at 2:15 p.m.

Mr. Knox stated the new conditions are 6, 7 and 8; advised of the modification to 7, adding "if the adverse impact is caused by a breach of permit condition;" and stated the rest is okay.

There being no further comments or objections, motion was made by Commissioner Voltz, seconded by Commissioner Carlson, to adopt an Ordinance amending Article XIII Division 4, Brevard County Code, entitled, "Land Alteration Regulations"; establishing criteria for a depth modification procedure; providing for severability; and providing for an effective date, amended to include the language suggested by staff and the County Attorney. Motion carried and ordered unanimously.

Commissioner Higgs inquired about the square footage; and stated she is not sure that 100,000 square feet can go on five-acres. Chairman Scarborough stated acreage is not the issue; and the five-acre minimum is not needed, if there is the 100,000 square feet. Commissioner Voltz stated that will dictate the size of the project. Chairman Scarborough stated the 40-acre concept is also absent; and it is the lineal distance on the connecting road that is at issue, and not whether they expand more than 40 acres into the side property. Commissioner Higgs inquired why that was eliminated. Chairman Scarborough responded this is talking about within the confines of a half-mile from the connecting road and off-ramp, but the 40 acres is arbitrary. Commissioner Higgs stated it would minimize the potential impacts to wetlands which is the issue the Board is dealing with; and it is being expanded.

Discussion ensued on scenario where the wetland would not be impacted as much if expanded, position of the 40 acres at the interchange, size of the wetland, conditions to allow a wetland to be impacted, size of acreage with exception policy, development description, area of wetland as ratio of property, ways to deal with small wetland areas, and going to 120 hearing.

Charles Moehle stated the five-acre minimum project size with no less than 100,000 square feet precludes things like stand-alone restaurants; and inquired if that is the Board's intent. Chairman Scarborough stated they can

be there, but need to be in a manner that will not burden the road system; and advised the Outback Steakhouse at Merritt Square Mall is an example. Mr. Moehle stated the confusion is the definition of project; most people think a project could be just the restaurant, and the next project could be the building next to it; and the Board is talking about a project like a PUD. Commissioner Higgs stated the planning is what the amendment is trying to achieve; and these kinds of criteria would have to be met. Mr. Moehle inquired if a restaurant would have to have five acres, and generate another 80,000 square feet in building; and stated that is not good planning. Chairman Scarborough stated the idea is if you take each quadrangle with a level of development, limited curb cuts and under utilization of infrastructure, it will not foul up the infrastructure by allowing the development; and advised of the problems at SR 50. Mr. Moehle stated the problem at SR 50 and I-95 is addressed in d and e; there are existing crossovers less than a quarter of a mile and a lot of curb cuts on SR 50; and that is the problem there, not the size of the projects.

Commissioner Voltz stated if there were six or seven businesses all coming in one driveway, they would have to have one owner; with Chairman Scarborough disagreeing. Commissioner Higgs stated people would have to cooperate.

Discussion ensued on multiple owners with businesses on one driveway, keeping infrastructure intact, who will pull the projects together, leaving the wetland alone being preferable to multiple businesses with multiple curb cuts, mall concept, and commercial PUD.

Mr. Moehle inquired if there is a definition of project in the Comprehensive Plan; with Assistant County Manager Peggy Busacca responding no, although the term is used in talking about planned industrial park having a minimum ten acres for a project. Mr. Moehle stated if someone called something a project, it would be a project because there is no definition.

Chairman Scarborough stated someone could put a 7-Eleven on five acres; but it requires no less than 100,000 square feet of commercial building within a project; so the acreage issue is dropped because there is a certain degree of mass. He stated his concern is one person putting in a 7-Eleven on five acres with one curb cut because he will destroy the whole thing; and the Board wants to be sure this moves in the right direction.

Mr. Moehle stated there is some planning for curb cuts; two in one-half mile may be a little tight, but at least it makes people do what the Board wants; but it is talking about future planning, not retrofit. He stated the biggest thing that is missing is that it has not solved the problem it started to solve and that is the existing conditions on February 23, 1996, or at least when the Comprehensive Plan came into law. He stated the Board is providing for things that can happen after this time; but the people that had the properties are not able to have the same opportunities. He stated the proposed

mitigation language only goes back to impossible situations to accomplish; and the problem of the abuse that started out the whole thing is not solved. He recommended retaining the stipulated language about the lands that were designated as commercial on the Future Land Use map as of February 23, 1996 or no earlier than when the Comprehensive Plan was done, which deems them consistent with the criteria as being the only fair thing.

Mary Todd stated grandfathering all the properties which had the designation on the Future Land Use map as of February 23 1996 brings around the problem concerning the flawed data analysis. She stated in September, 1995 the transmittal came with the rationale that 635 acres of wetlands were impacted; but it was not supported by adequate data as noted by the Department of Community Affairs in its ORC Report, which cited the County for inadequate data analysis. She stated after the Stipulated Settlement Agreement was adopted by the Board on July 1, 1997, the Board received a memorandum from staff indicating that as many as 2,148 acres could be affected by the new language; and this data analysis was completed after the adoption procedure. She stated the Sierra Club had a problem with the data analysis all along; they are having a big problem today; and requested legal staff advise how the County is or is not falling into line with the requirements of Rule 9J-5, Florida Administrative Code. She stated when the Sierra Club was given its interrogatory, one of the questions was what data analysis should the County have relied on and did not; and advised Rule 9J-5 states that data analysis for Comprehensive Plan amendments should form the basis for the amendment, and should not be an after-the-fact justification. She stated the data should be available to the public during the amendment formulation process; the best available data should be used; and the amendment should be based on that data which should be collected by an accepted procedure. She stated with all the changes she has seen in the past few days, there is a good possibility that the County's data collection methods may jeopardize its legal basis for the Comprehensive Plan amendment; and suggested not including any language that the County does not have data for. She suggested waiting to learn from Mr. Kendig; and agreed with Chairman Scarborough that the Board should not run into this.

Mr. Knox stated the data issue is not an issue as far as what the Board is considering today which is a proposed stipulation; if everybody agrees with it, it will go forward; but if the Sierra Club as an intervenor does not agree, it will go to the hearing. Chairman Scarborough suggested tabling the item.

Kim Zarillo stated Mr. Moehle means well, but does not understand that those properties were already designated on the map as of 1988 are already part of this; and the data analysis was done. She stated now there are 2,000 acres; they have a handle on what has been designated; and that would go forward except for approximately 190 acres which would fall under the forested wetlands or wet prairies. She noted even those could go forward if they put a buffer around them, but not go forward to building on them.

Chairman Scarborough inquired if Ms. Zarillo thinks this will be resolved today or should it be tabled; with Ms. Zarillo responding the organization she represents thinks this is acceptable. Chairman Scarborough stated he is happy with the status quo; but if people think the Board is pushing something, he would prefer to table it; stated he does not know where the wetlands are going to be impacted; the number of interchanges and acres that will be addressed are a minute area of the County in a total sense; but if scientific data is needed of what those areas are or could be, it should be deferred to get a staff report.

Commissioner Higgs stated Ms. Zarillo indicates what the Board has will be acceptable; suggested trying to come up with agreeable language; and stated then it is up to the intervenors to respond. She stated if the response is that it is unacceptable, the Board is back where it was, but at least it had the discussion. Chairman Scarborough stated the Board worked hard with the intervenors; he does not want people to say they did not have enough time to think; and he never wants to push an item. Commissioner Higgs stated if the Board says this is where it is, that gives the Sierra Club a place to look as opposed to just tabling it; and suggested making additional comments and a determination.

Ms. Zarillo stated this problem started in 1995 with the data analysis issue; the language was changed at the meeting; there were many different versions; and she is not sure she even had the last one or that anyone left the room knowing exactly what was said. She stated if the language is changed during a meeting, the impact is changed; but if wording is added to Section 2, everything else is left, and 3a is adjusted, it is fine. She stated the Board has addressed Mr. Moehle and property owners that have the designations; it allows them to proceed forward; and that is acceptable to her organization.

Commissioner Higgs stated the 40 acres is an important thing that should be in the language. Ms. Zarillo stated she has that as a note to be added; there was not an overwhelming objection to adding it, and she does not have a problem with the clarifications. She stated she sees what the Board is trying to do and the actual impact; two interchanges are proposed now; and there are other things that have to be done, so that is why it is acceptable.

Margaret Hames urged the Board, if it is going to make changes, to make them at such time as they can be considered by the intervenors, public and all Commissioners; and reminded the Board of the deadline. She stated if the deadline is not met either by the Board or the intervenors, it goes back to square 1, to start where former County Commissioner Scott Ellis put the County when he tried to do away with control of the wetlands.

Chairman Scarborough stated the Board wants to make sure the people in the audience are comfortable with what it does today; some people have commented the Board is going too fast, while others would like to see it over; he could vote on something and be comfortable; but if there is

somebody in the audience who would like it to be deferred, he has no problem with that. He stated Ms. Todd has indicated she would like to see more data presented. Ms. Hames stated she had a problem with the data from the beginning. Chairman Scarborough inquired if Ms. Hames wants to see a motion to table; with Ms. Hames responding she wants the Board to get on with it.

Chairman Scarborough stated the discussion is whether the Board should take more time before voting this afternoon; there was a feeling that the intervenors would like more time; but then a couple of people encouraged the Board to go ahead and take action. Ms. Hames stated if all the Commissioners are satisfied that he or she knows where the Board is going, that is fine; but every time new language is introduced, everyone goes back over all this again; and recommended deciding on something and letting everyone hassle it out. She advised she does not want to get caught by the pressure of the deadline.

Charles Moehle stated he does not see language that protects the uses as they were in 1988 or 1996; and inquired if he is wrong, what is the big objection against leaving the words in that are part of the stipulated settlement agreement, that lands designated as commercial on the Future Land Use map as of February 23, 1996 are deemed to be consistent with the criterion. Planning and Zoning Director Mel Scott stated he will meet with Mr. Moehle to show him the map because wetlands have been identified that would be forced to be preserved no matter what the Future Land Use designation is prior to or after the 1996 date; that has been quantified; and if they have an opportunity to share that information with Mr. Moehle, he may have a higher degree of comfort. Mr. Moehle stated that could be right; but people he represents have gone to the County on some of the parcels, and said there are wetlands, and the County will not give a permit no matter what. Assistant County Manager Peggy Busacca stated under the new language of subparagraph 3 of the Conservation Element, it says "commercial and industrial development may be permitted in wetlands contained in properties designated on the Future Land Use map as commercial and industrial prior to 1996"; but there are stipulations which include that certain kinds of land uses have to be surrounding that property or a certain number of wetlands are to be preserved. She stated they have estimated the amount of forested or wet prairie wetlands as approximately 191 acres throughout the entire County. Mr. Moehle suggested the map be made part of it. He stated the forested wetlands include bottomland forest, basin swamp, floodplain swamp, tidal swamp and hydric hammock; but some hydric hammocks are palm tree groups or pines growing in hydric soil; and 85% of the County is hydric soil. Commissioner Higgs suggested Mr. Moehle meet with staff to look at the maps; and stated while Mr. Moehle may never agree with the language, he would find some useful information. Chairman Scarborough advised the key issue is whether the Board wants to table this item today. Commissioner Higgs stated with a few changes, the Board has acceptable language; and it should adopt the proposed settlement language and forward it to the intervenors for consideration. Chairman

Scarborough stated what he would like to do with the five-acre minimum project site is say there will be no less than 100,000 square feet of commercial building within the project. Commissioner Higgs indicated she is not concerned about the five acres. Commissioner Voltz stated she thought the Board took that out; with Chairman Scarborough and Commissioner Higgs advising that is fine. Commissioner Higgs stated f, which was previously shown as e, would be added; with Chairman Scarborough advising f is a maximum of 40 acres of commercial uses shall be allocated in proximity to the interchange, counting both sides.

Motion by Commissioner Higgs, seconded by Commissioner Carlson, to approve mediation language as shown on the handout dated April 27, 1999, 2:08 p.m., amended as follows: A. Five (5) acre minimum project size with no less than 100,000 square feet of commercial building within a project and F. a maximum of 40 acres of commercial use shall be allocated in proximity to the interchange, counting both sides. Motion carried and ordered. Commissioners Scarborough, Higgs, and Carlson voted aye; Commissioner Voltz voted nay.

Commissioner Higgs stated staff will type this up and forward it to the intervenors for response.

CONTRACT WITH SPEEGLE CONSTRUCTION, AND LAND TRANSFER FROM WATER RESOURCES DEPARTMENT TO SURFACE WATER IMPROVEMENT, RE: FISKE AREA- PHASE 4 DETENTION POND

Motion by Commissioner Higgs, seconded by Commissioner Carlson, to execute Construction Contract No. 31070-99-001 with Speegle Construction for construction of the Fiske Area-Phase 4 Detention Pond; and authorize the transfer of the property from the Water Resources Department to Surface Water Improvement. Motion carried and ordered unanimously.

APPROVAL OF APPLICATION TO FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, AND EXECUTION OF AGREEMENTS, AMENDMENTS, RENEWALS, REVISIONS, AND ADDENDA, RE: FOSTER AND SHELTER CARE BEDS AT COUNTRY ACRES PARENTAL HOME

Motion by Commissioner Higgs, seconded by Commissioner Voltz, to execute Application to Florida Department of Children and Families for foster and shelter care beds at Country Acres Parental Home from July 1, 1999 through June 30, 2002; and authorize the Chairman to sign any and all amendments, renewals revisions and addenda related to this Agreement upon approval of the County Attorney and Risk Management. Motion carried and ordered unanimously.

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

OFFICE OF THE COUNTY ATTORNEY, 2725 Judge Fran Jamieson Way, Viera, Florida 32940

(407) 633-2090
FAX (407) 633-2096

April 29, 1999

David A. Theriaque, Esq.
837 East Park Avenue
Tallahassee, Florida 32301

VIA FACSIMILE (850) 224-7662

Re: Wetlands Appeal

Dear David,

Attached is the proposed settlement language approved by the Board of County Commissioners of April 27, 1999. There are two (2) changes from the previous version, both are to Conservation Element 5.2.F. The first is the addition of Paragraph Four (4) containing the "Bert Harris/takings" language, which your client has agreed to. The second addition is found in Paragraph Two (2) and it pertains to the development of wetlands in commercial areas surrounding I-95 interchanges. The latter issue was discussed at the last public meeting. This language was revised at that public meeting and planning staff will distribute a copy of the attached to Kim Zarillo and Mary Todd.

Please contact me at your earliest convenience to discuss whether your clients approve of the new language or have an alternate proposal.

Sincerely,

Christine M. Lepore
Assistant County Attorney

Attachments

CML/amv

Future Land Use Objective 4

Brevard County shall provide for adequate and appropriate lands for the location of commercial land uses, through the Land Development Regulations, to serve the needs of the projected residents and visitors to the County. Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use and for all other measures to ensure wetland function. During the review of proposed amendments to the future land use map, which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria:

Criteria:

A. Floodplain policies contained within Conservation Objective 4.
B. Aquifer protection policies contained within Conservation Objective 11.
C. Types, values, conditions, functions, and locations of wetlands, and wetlands protection policies contained in Conservation Objective 5.

Future Land Use Objective 5

Brevard County shall provide for adequate and appropriate lands for the location of industrial land uses, through the Land Development Regulations, to support the role the role of these uses in the County's economy. Brevard County shall direct new industrial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use and for all other measures to ensure wetland function. During the review of proposed amendments to the future land use map, which would allow industrial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria:

Criteria:

D. Floodplain policies contained within Conservation Objective 4.
E. Aquifer protection policies contained within Conservation Objective 11.
F. Types, values, conditions, functions, and locations of wetlands, and wetlands protection policies contained in Conservation Objective 5.

Conservation Element Policy 5.2.F
The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if other criteria established in Conservation Element Policy 5.2 are met:

1. Residential land uses shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses. Residential property which includes wetland areas shall be subdivided in such a way that buildable areas are included in each lot. Subdivided lots shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.

2. Commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial after February 23, 1996, and in surrounding buffers with specifications based on the *Buffer Zones for Water, Wetlands, and Wildlife in the East Central Florida Region*, (1990, Brown, M.T., Schaefer, and K. Brandt, published by the Center for Wetlands, University of Florida), except for certain commercial development at I-95 interchanges that are consistent with the following criteria:

a. There will be no less than 100,000 square feet of commercial building within a project;
b. There is current overcapacity on the adjacent roadways, and it is projected that roadway capacity within four (4) miles of the intersection will be no more than 80% of the congestion ratio (the ratio of projected volume to maximum allowable volume) after 500,000 square feet of commercial space has been developed within one half mile of the intersection of the off-ramp with the connecting roadway;
c. Wetland mitigation shall equal or exceed 125% of the mitigation which is otherwise required;

d. The development is located within one half mile of the intersection of the off-ramp with the connecting roadway;
e. There will be no more than two curb cuts on each quadrangle of the interchange within one-half mile of the connection of the off-ramp and the connecting roadway; and
f. A maximum of 40 (forty) acres shall be allotted in proximity to the interchange, counting both sides.

3. Commercial and industrial land development activities may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial prior to February 23, 1996, if all of the following criteria are met:

a. The property is substantially surrounded by land(s) developed as commercial or industrial as of February 23, 1996, and has sufficient infrastructure in place to serve the commercial or industrial use.
b. The proposed land development activity will not result in increased flooding problems on adjacent properties.
c. The wetland is not a forested wetland (Bottomland Forest, Basin Swamp, Floodplain Swamp, Tidal Swamp, or Hydric Hammock).
d. The wetland is not either a wet flatwood or wet prairie greater than one (1) acre in size.

For wetlands specified in 5.2.F.3(c) and (d), the wetland functionality shall be maintained and protected by a 15 foot natural, native vegetative buffer for isolated wetlands and by a 50 foot natural, native vegetative buffer for other wetlands.

The Florida Land Use Cover System includes the following types of forested wetlands. It suggested the following may be inserted into 5.2.F.3(c), above, to be consistent with this inventory.

615 – Stream and Lake Swamps
621 – Cypress
623 – Atlantic White Cedar
630 – Wetland Forested Mixed
643 – Wet Prairies

4. In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the Board of County Commissioners in the manner provided in Section 62-507(b)(2), Code of Ordinances of Brevard County, Florida.

ORDINANCE NO. 99- 48

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH REMEDIAL PLAN AMENDMENTS AS SPECIFIED WITHIN A STIPULATED SETTLEMENT AGREEMENT BETWEEN BREVARD COUNTY, THE DEPARTMENT OF COMMUNITY AFFAIRS, THE SIERRA CLUB TURTLE COAST GROUP, THE FLORIDA AUDUBON SOCIETY, THE INDIAN RIVER AUDUBON SOCIETY, THE FLORIDA NATIVE PLAN SOCIETY, THE CONRADINA CHAPTER OF THE FLORIDA NATIVE PLANT SOCIETY, 1000 FRIENDS OF FLORIDA, AND HOWARD WOLF RELATING TO SECTION 62-501, PART I, ENTITLED THE CONSERVATION ELEMENT, SECTION 62-501, PART XIII, ENTITLED THE FUTURE LAND USE ELEMENT; PREVIOUSLY DIRECTED AMENDMENTS BY THE BOARD TO ELIMINATE DUPLICATIVE POLICIES WITHIN SECTION 62-501, PART I, ENTITLED THE CONSERVATION ELEMENT, SECTION 62-501, PART II, ENTITLED THE SURFACE WATER MANAGEMENT ELEMENT, SECTION 62-501, PART III, ENTITLED THE RECREATION AND OPEN SPACE ELEMENT, SECTION 62-501, PART IV, ENTITLED THE HISTORIC PRESERVATION ELEMENT, SECTION 62-501, PART V, ENTITLED THE HOUSING ELEMENT, SECTION 62-501, PART VI, ENTITLED THE POTABLE WATER ELEMENT, SECTION 62-501, PART VII, ENTITLED THE SANITARY SEWER ELEMENT, SECTION 62-501, PART VIII, ENTITLED THE SOLID WASTE AND HAZARDOUS MATERIALS ELEMENT, SECTION 62-501, PART IX, ENTITLED THE TRAFFIC CIRCULATION ELEMENT, SECTION 62-501, PART X, ENTITLED THE MASS TRANSIT ELEMENT, SECTION 62-501, PART XI, ENTITLED THE PORTS, AVIATION, AND RELATED FACILITIES ELEMENT, SECTION 62-501, PART XII, ENTITLED THE COASTAL MANAGEMENT ELEMENT, SECTION 62-501, PART XIII, ENTITLED THE FUTURE LAND USE ELEMENT, SECTION 62-501, PART XIV, ENTITLED THE INTERGOVERNMENTAL COORDINATION ELEMENT, AND SECTION 62-501, PART XV, ENTITLED THE CAPITAL IMPROVEMENTS AND PROGRAMS ELEMENT; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Community Affairs; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.3184 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for amendments to the Comprehensive Plan on June 30, 1995, for adoption in calendar year 1996 as a single amendment, Plan Amendment 95-B; and

WHEREAS, Plan Amendment 95B.4 and previously directed amendments to eliminate duplicative policies, adopted on February 23, 1996, were the subject of an administrative hearing action; and

WHEREAS, the Brevard County Board of County Commissioners voted to accept a Stipulated Settlement Agreement on ıly 13, 1999; and

WHEREAS, the Brevard County Board of County Commissioners wishes to clarify its records;

Officially filed with
The Secretary of State
August 30, 1999

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Remedial Comprehensive Plan Amendments. Pursuant to a Stipulated Settlement Agreement between Brevard County, the Department of Community Affairs, the Sierra Club Turtle Coast Group, the Florida Audubon Society, the Indian River Audubon Society, the Florida Native Plan Society, The Conradina Chapter of the Florida Native Plant Society, 1000 Friends of Florida, and Howard Wolf, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The plan amendments shall become effective once the state land planning agency issues a final order determining the adopted amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(9), or until the Administration Commission issues a final order determining the amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(10). A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this 24 day of August, 1999.

ATTEST:

Sandy Crawford, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____
Truman G. Scarborough Jr., Chairman

Approved by the Board on August 24, 1999

EXHIBIT A

Listing of Contents

1. **Adoption Ordinance**

3. **Stipulated Settlement Agreement**

EXHIBIT B

STIPULATED SETTLEMENT AGREEMENT

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA AUDUBON SOCIETY;
FLORIDA NATIVE PLANT SOCIETY;
INDIAN RIVER AUDUBON SOCIETY;
CONRADINA CHAPTER OF THE FLORIDA
NATIVE PLANT SOCIETY;
SIERRA CLUB TURTLE COAST GROUP;
1000 FRIENDS OF FLORIDA, INC.; and
HOWARD WOLF,

Petitioners,

vs. DOAH CASE NO. 96-2174GM

DEPARTMENT OF COMMUNITY AFFAIRS
AND BREVARD COUNTY,

Respondents.

_____/

STIPULATED SETTLEMENT AGREEMENT

Petitioners, Florida Audubon Society; Florida Native Plant Society; Indian River Audubon Society; Conradina Chapter of the Florida Native Plant Society; Sierra Club Turtle Coast Group; 1000 Friends of Florida, Inc.; and Howard Wolf (Intervenors), and Respondents, Department of Community Affairs (Department) and Brevard County (County), hereby stipulate and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: The comprehensive plan amendment adopted by the County on February 23, 1996, by Ordinance No. 96-05.

d. DOAH: The Florida Division of Administrative Hearings.

e. In Compliance or Into Compliance: Consistent with Sections 163.3177, 163.3178 and 163.3191, Florida Statutes, Section 187.201, Florida Statutes, the applicable regional policy plan, and Chapter 9J-5, Florida Administrative Code.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action, which must be completed to bring the plan amendment into compliance.

i. Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Plan amendments adopted pursuant to this agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the plan amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the plan amendment.

2. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

3. Approval by Governing Body. This agreement has been approved by the County's governing body at a public hearing advertised in an advertisement published at least ten (10) days prior to the hearing in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

4. Changes in law. Nothing in this agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence.

5. Other Persons Unaffected. Nothing in this agreement shall be deemed to affect the rights of any other person under the law.

6. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees.

7. Effective Data. This agreement shall become effective upon the last date of signing by the Intervenors, the Department or the County.

8. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the plan amendment. The acceptance of proposals for

purposes of this agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

9. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the plan amendment is in compliance.

10. Exhibits. Exhibits A, B and C are hereby incorporated by reference.

11. Negotiation of Agreement. The Department issued its notice and statement of intent to find the plan amendment not in compliance, and filed the petition in this case to that effect. Subsequent to the filing of the petition the Respondents conferred and agreed to resolve the issues in the petition, notice and statement of intent, with the exception of Future Land Use Map Amendment 95.B4 though a Stipulated Settlement Agreement filed May 21, 1997. The Intervenors subsequently filed a challenge to that Stipulated Settlement Agreement. The County has since rescinded Future Land Use Map Amendment 95.B4 and the Department has dismissed its challenge to same. The Intervenors have dismissed their challenge to the designation of the I-95/Grissom Road Interchange in Port St. John. It is the intent of this agreement to resolve fully all remaining issues between the parties in this proceeding.

12. Dismissal. If the local government completes the actions required by this agreement, including the rescission of the 1997 Stipulated Settlement Agreement, the Department shall issue a cumulative notice of intent addressing both this agreement and the initial plan amendment subject to these proceedings. The Department shall file the cumulative notice of intent with DOAH. The Intervenors shall then file a request to dismiss this proceeding.

13. Filing and Continuance. This agreement shall be filed with DOAH by the Intervenors after execution by the parties. Upon the filing of this agreement, the administrative proceeding in this matter shall be stayed by the hearing officer in accordance with Section 163.3184(16)(b), Florida Statutes.

14. Retention of Right to Final Hearing. All parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this agreement, and nothing in this agreement shall be deemed a waiver of such right. The Department or any other party to this agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this agreement is not proceeding in good faith to take that action.

15. Description of Provisions Challenged and Remedial Actions; Legal Effect of Agreement. Exhibit A to this agreement is a copy of the 1997 Stipulated Settlement Agreement, which contains the provisions challenged by the Intervenors. Exhibit B is the Intervenors' Petition challenging the 1997 Stipulated Settlement Agreement. Exhibit C contains actions agreed upon by the parties. This agreement constitutes a stipulation that if the actions are accomplished, the Intervenors will dismiss its Petition.

16. Actions to be Considered for Adoption. The County agrees to consider for adoption by formal action of its governing body all actions described in Exhibit C no later than the time period provided for in this agreement.

17. Adoption or Approval of Plan Amendments. Within sixty (60) days after execution of this agreement by the parties, the County shall consider for adoption all actions or plan amendments and amendments to the support documents. This may be done at a single

adoption hearing. Within ten (10) working days after adoption of the plan amendment, the County shall transmit five (5) copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The County also shall submit one copy to the Intervenors, the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the plan amendment. The amendment shall be transmitted to the Department along with a letter which describes the action adopted for each part of the plan amended, including references to specific portions and pages.

18. Acknowledgment. All parties to this agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the amendment.

19. Review of Amendments and Notice of Intent. Within forty-five (45) days after receipt of the adopted plan amendments and support documents, the Department shall issue a notice of intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this agreement.

a. In Compliance: If the adopted actions satisfy this agreement, the Department shall issue a cumulative notice of intent addressing both the plan amendment and the compliance agreement amendment as being in compliance. The Department shall file this cumulative notice with DOAH. The Intervenors shall then move to have this proceeding dismissed.

b. Not in Compliance: If the actions are not adopted, or if they do not satisfy this agreement, the Intervenors shall forward a notice to DOAH for a hearing as provided in Subsection 163.3184(10), Florida Statutes, and may request that the matter be consolidated with the pending proceeding for a single, final hearing. The parties hereby stipulate to that

consolidation and to the setting of a single final hearing if the Department so requests.

20. Effect of Amendment. Adoption of any compliance agreement amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(l), Florida Statutes.

This agreement contains all the terms and conditions agreed to by the parties.

In witness whereof, the parties hereto have caused this agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS	BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA
Charles Pattison, Director Division of Resource Planning and Management	Truman G. Scarborough, Jr., Chairman As approved by the Board on July 13, 1999.
Date	7-13-99 Date
	Attest:
	Sandy Crawford County Clerk Sandy Crawford

Assistant General Counsel

County Attorney, Scott L. Knox

INTERVENORS

David A. Theriaque, Esquire
Attorney for: FLORIDA AUDUBON SOCIETY;
FLORIDA NATIVE PLANT SOCIETY;
INDIAN RIVER AUDUBON SOCIETY;
CONRADINA CHAPTER OF THE FLORIDA
NATIVE PLANT SOCIETY;
SIERRA CLUB TURTLE COAST GROUP;
1000 FRIENDS OF FLORIDA, INC.;
and HOWARD WOLF

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

vs. DOAH CASE NO. 96-2174GM

BREVARD COUNTY,

Respondent.

_____/

STIPULATED SETTLEMENT AGREEMENT

Petitioner, Department of Community Affairs (Department), and Respondent, Brevard County(County), hereby stipulate and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: The comprehensive plan amendment adopted by the County on February 23, 1996, by Ordinance No. 96-05.

d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: Consistent with Sections 163.3177, 163.3178 and 163.3191, Florida Statutes, Section 187.201, Florida Statutes, the applicable regional policy plan, and Chapter 9J-5, Florida Administrative Code.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the plan amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the plan amendment.

2. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

3. Approval by Governing Body. This agreement has been approved by the County's governing body at a public hearing advertised in an advertisement published at least 10 days prior to the hearing in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

4. Changes in Law. Nothing in this agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence.

5. Other Persons Unaffected. Nothing in this agreement shall be deemed to affect the rights of any other person under the law.

6. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees.

7. Effective Date. This agreement shall become effective upon the last date of signing by the Department or the County.

8. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the plan amendment. The acceptance of proposals for purposes of this agreement is part of a negotiated agreement affecting many

factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

9. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the plan amendment is in compliance.

10. Exhibits. Exhibits A and B are hereby incorporated by reference.

11. Negotiation of Agreement. The Department issued its notice and statement of intent to find the plan amendment not in compliance, and filed the petition in this case to that effect. ~~Subsequent to the filing of the petition the parties conferred and agreed to resolve the issues in the petition, notice and statement of intent through this agreement. It is the intent of this agreement to resolve fully all issues between the parties in this proceeding.~~

12. Dismissal. If the local government completes the remedial actions required by this agreement, including the rescission of the plan amendment as set forth herein, the Department shall issue a cumulative notice of intent. ~~addressing both the compliance agreement amendment and the initial plan amendment subject to these proceedings~~. The Department shall file the cumulative notice of intent with the DOAH, ~~along with a request to dismiss this proceeding~~.

13. Filing and Continuance. This agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this agreement, the administrative proceeding in this matter shall be stayed by the hearing officer in accordance with Section 163.3184(16)(b), Florida Statutes.

14. Retention of Right to Final Hearing. Both parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this agreement, and nothing in this agreement shall be deemed a waiver of such right. The Department or any other party to this agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this agreement is not proceeding in good faith to take that action.

15. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this agreement is a copy of the statement of intent, which identifies the provisions not in compliance. Exhibit B contains remedial actions needed for compliance. ~~This agreement constitutes a stipulation that if the remedial actions are accomplished, the plan amendment will be in compliance~~.

16. Remedial Actions to be Considered for Adoption. The County agrees to consider for adoption by formal action of its governing body all remedial actions described in Exhibit B no later than the time period provided for in this agreement.

17. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this agreement by the parties,

the County shall consider for adoption all remedial actions or plan amendments and amendments to the support documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the remedial plan amendment, the County shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The County also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the remedial plan amendment and a copy to any party granted intervenor status in this proceeding. The amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

18. Acknowledgement. All parties to this agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the remedial amendment.

19. Review of Remedial Amendments and Notice of Intent. Within 45 days after receipt of the adopted remedial plan amendments and support documents, the Department shall issue a notice of intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this agreement.

a. In Compliance: If the adopted remedial actions satisfy this agreement, the Department shall issue a cumulative notice of intent addressing ~~both the plan amendment and~~ the

compliance agreement amendment as being in compliance. The Department shall file this cumulative notice with DOAH, ~~and shall move to have this proceeding dismissed.~~

b. Not in Compliance: If the remedial actions are not adopted, or if they do not satisfy this agreement, the Department shall issue a notice of intent to find the plan amendment not in compliance and shall forward the notice to DOAH for a hearing as provided in Subsection 163.3184(10), Florida Statutes, and may request that the matter be consolidated with the pending proceeding for a single, final hearing. The parties hereby stipulate to that consolidation and to the setting of a single final hearing if the Department so requests.

20. Effect of Amendment. Adoption of any compliance agreement amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

This agreement contains all the terms and conditions agreed to by the parties.

In witness whereof, the parties hereto have caused this agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

Charles Pattison, Director
Division of Resource Planning
and Management

5/12/97
Date

Assistant General Counsel

BREVARD COUNTY

Title Randy O'Brien, Chairman

4-8-97
Date

Attest:

County Clerk Sandy Crawford

County Attorney Scott L. Knox

Exhibit A

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: COUNTY OF BREVARD COMPREHENSIVE PLAN AMENDMENT ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996	)	DOCKET NO. 96-1-NOI-0501-(N)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find Comprehensive Plan amendments by Brevard County, adopted by Ordinance No. 95-06 on February 23, 1996, Not In Compliance based upon the Objections, Recommendations and Comments Report (ORC Report) issued by the Department on December 22, 1995, which is hereby incorporated by reference. The Department finds that the plan amendments are not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (F.S.), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan, the East Central Florida Regional Planning Council Comprehensive Regional Policy Plan, and Chapter 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

I. FUTURE LAND USE MAP AMENDMENT NO. 95.B4

A. Inconsistent provisions. The inconsistent provision of the plan amendment under this subject heading follows:

1. The amendment is inconsistent because it establishes an incompatible land use (Residential) adjacent to Valkaria Airport. Designating the subject area with a Residential land use is internally inconsistent with the goal, objectives and policies of the Brevard County Comprehensive Plan which address compatibility of land uses with airport facilities, including, but not limited to, Ports and Aviation Related Facilities Element (PARFE) Policies 2.1 and 2.2; Objective 6 and Policies 6.12 and 6.13, Objective 7 and Policies 7.1 and 7.2.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(j)(7), 163.3177(10)(1), Florida Statutes (F.S.)

Rules 9J-5.005(5)(a); 9J-5.005(5)(b); 9J-5.006(3)(b)3.; 9J-5.006(3)(c)2.; 9J-5.009(2)(b); 9J-5.009(3)(b)1.; 9J-5.009(3)(b)3.; 9J-5.009(3)(c)1.; 9J-5.009(3)(c)2.; 9J-5.009(3)(c)5. Florida A Administrative Code (F.A.C.).

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Redesignate the subject parcel with a land use that is compatible with the operations and activities of the Valkaria Airport. The County may choose to return the site to its previous Planned Industrial Park future land use designation.

II. FUTURE LAND USE ELEMENT AMENDMENTS TO POLICIES 2.6 AND 2.7 AND CONSERVATION ELEMENT AMENDMENTS TO POLICIES 5.1 AND 5.2

A. Inconsistent provisions. The inconsistent provision of these plan amendments under this subject heading follows:

1. The amendments to Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1, are inconsistent because they exempt lots which were created as of February 23, 1996, from residential density limitations of one dwelling unit per five acres. Allowing this exemption fails to protect wetlands and their functional values by directing incompatible uses away from wetlands.

2. The amendments to Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2, are inconsistent because the term "public interest" has been replaced by the term "planning interest". The term "planning interest" is vague and no definition of the term has been adopted by the County as part of its comprehensive plan. By using the term "planning interests" as a factor which will be considered in locating commercial and industrial land uses within wetlands, the policies fail to protect wetlands and their functional values by directing incompatible land uses away from wetlands.

3. The amendment establishing Conservation Element Policy 5.2., criterion H., fails to ensure that land uses which are incompatible with the protection of wetlands and wetland functional values are directed away from wetlands. The criterion does not establish a date certain for commercial and industrial lands deemed to be consistent with Policy 5.2. Using the

word "currently" rather than a date certain, results in all properties, both existing and future, being deemed consistent with the policy upon their designation as commercial (Mixed Use) or industrial.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(d), 163.3177(6)(g), Florida Statutes (F.S.)

Rules: 9J-5.005(2); 9J-5.005(5); 9J-5.006(2)(b); 9J-5.006(3)(b)4.; 9J-5.006(3)(c)1., (3)(c)6.,; 9J-5.012(2)(b); 9J-5.012(3)(b)1., and (3)(b)2.; 9J-5.012(3)(c)1. (3)(c)2., and (3)(c)14.; 9J-5.013(1)(a); 9J-5.013(2)(b)2., (2)(b)3. and (2)(b)4.; 9J-5.013(2)(c)1., (2)(c)3., (2)(c)5., (2)(c)6., and (2)(c)8.; 9J-5.013(3), Florida Administrative Code (F.A.C.)

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Revise Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1., to limit exemptions to minimum residential density requirements to lots which were lots of record at the time of plan adoption.

2. Revise Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2. to replace the term "planning interest" with "public interest".

3. Revise Conservation Element Policy 5.2.H., to establish a date certain for commercial and industrial lots deemed to be consistent with the Policy. This date should be February 23, 1996.

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Rules 9J-5.021, F.A.C.):

a. Goal 8, Water Resources, and Policies (b)4., (b)8., (b)10., and (b)12.;

b. Goal 9, Coastal and Marine Resources, and Policies (b)4., (b)5., (b)6., and (b)8.;

c. Goal 10, Natural Systems and Recreational Lands, and Policies (b)1., (b)3., (b)4., (b)7., and (b)8.;

d. Goal 16, Land Use, and Policies (b)2., and (b)6.;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B. and II.B.

IV. CONSISTENCY WITH THE EAST CENTRAL FLORIDA COMPREHENSIVE REGIONAL POLICY PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading is as follows:

1. The comprehensive plan amendment is inconsistent with the East Central Florida Regional Policy Plan goals and policies, including the following provisions (Rule 9J-5.021, F.A.C.):

a. Regional Issue 39, Protection of Natural Systems, and Policies 39.2, 39.5, 39.7, 39.8, and 39.10;

b. Regional Issue 40, Protection of Coastal Resources, and Policies 40.1, and 40.7;

c. Regional Issue 41, Protection of Marine Resources, and Policy 41.1;

d. Regional Issue 43, Protection of Natural Systems, and Policies 43.1, 43.2, 43.12, and 43.13;

e. Regional Issue 44, Protection of Endangered Species, and Policy 44.1;

f. Regional Issue 57, Balanced and Planned Development, and Policies 57.1, 57.16, and 57.17;

g. Regional Issue 58, Natural Resource Preservation, and Policies 58.1, and 58.2;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B and II.B..

CONCLUSIONS

1. The plan amendment is not consistent with the East Central Florida Regional Policy Plan.
2. The plan amendment is not consistent with the State Comprehensive Plan.
3. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
4. The plan amendment is not consistent with the requirements of Section 163.3177, Florida Statutes.
5. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes.
6. In order to bring the plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 17th day of April, 1996, at Tallahassee, Florida.

Charles Pattison

Charles G. Pattison, Director
Division of Resource Planning
and Management
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND BREVARD COUNTY
COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT NO. 95B.4,
FUTURE LAND USE ELEMENT AMENDMENT POLICIES 2.6 AND 2.7 AND
CONSERVATION ELEMENT AMENDMENT POLICIES 5.1 AND 5.2
ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996,
NOT IN COMPLIANCE AND THE REMAINING AMENDMENTS
ADOPTED PURSUANT TO ORDINANCE 96-05
IN COMPLIANCE
DOCKET NO. 96-1-NOI-0501-(A)-(I)-(N)

The Department gives notice of its intent to find Brevard County Future Land Use Map Amendment No. 95B.4, Future Land Use Element Amendment Policies 2.6 and 2.7 and Conservation Element Amendment Policies 5.1 and 5.2 adopted by Ordinance No. 96-05 on February 23, 1996, NOT IN COMPLIANCE, and the remaining amendments adopted by Ordinance No. 96-05, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.33189, F.S.

The adopted Brevard County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at Brevard County Planning Department, 2725 St. Johns Street, Suite A-144, Melbourne, Florida 32940 and the following libraries: Central and Northern Brevard, Cocoa Beach, Melbourne, Merritt Island and S. Mainland/Micco.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the Brevard County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Rule 9J-11.012(7), F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendments found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Section 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 60Q-2.010, F.A.C. No new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Section 120.57, F.S., or to participate in the administrative hearing.

J. Thomas Beck
for Charles G. Pattison, Director
Department of Community Affairs
Division of Resource Planning
and Management

FUTURE LAND USE ELEMENT

PROPOSED AMENDMENT LANGUAGE

Objective 4
Brevard County shall provide for adequate and appropriate lands for the location of commercial land uses, through the Land Development Regulations, to serve the needs of the projected residents and visitors of the County. Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

A. Floodplain policies contained within Conservation Objective 4.

B. Aquifer protection policies contained within Conservation Objective 11.

C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as commercial on the future land use map as of February 23, 1996, are deemed to be consistent with this criterion.

FUTURE LAND USE ELEMENT

PROPOSED AMENDMENT LANGUAGE

Objective 5

Brevard County shall provide for adequate and appropriate lands for the locations of industrial land uses, through the Land Development Regulations, to support the role of these land uses in the County's economy. Brevard County shall direct new industrial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow industrial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

A. Floodplain policies contained within Conservation Objective 4.

B. Aquifer protection policies contained within Conservation Objective 11.

C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as heavy or light industrial or planned industrial park on the future land use map as of February 23, 1996 are deemed to be consistent with this criterion.

Post-it® Fax Note 7671	Date 2/24	# of pages ▶ 1
To John Healey-DCA	From Mel Scott	
Co./Dept. Bureau of Local Plng.	Co. Brevard County	
Phone # 904-488-5309	Phone # 407-633-2069	
Fax #	Fax #	

Wetlands

Objective 5
Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

Policy 5.1
Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands~~, but shall not be limited by the threshold or connection requirements utilized by these agencies~~.

Policy 5.2
~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

Criteria
A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:

1. Residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, unbuildable. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all

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County land development regulations and compatible with adjacent uses. Residential property which includes wetland areas should be subdivided in such a way that buildable areas are included in each lot, where sufficient uplands exist and where compatible with adjacent uses..

2. Commercial and industrial land ~~uses~~ development activities shall be prohibited In wetlands contained within commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996, unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.

Standard - a rule set up and established by authority for the measure of quantity, weight, extent, value or quality; a criterion on which a judgment or decision may be based.

Strive - to endeavor; to devote serious effort or energy.

Structure - anything constructed or erected, the use of which requires rigid location on the ground or attachment to something having a permanent location on the ground.

Substandard Housing Suitable for Rehabilitation - a housing unit which is suitable for human occupancy but which has some degree of hazardous conditions to the health or safety of the occupants. Also, a housing unit which is structurally sound but has visible degrees of deterioration and several housing code violations but all of which are economically feasible to correct.

Substandard Housing not Suitable for Rehabilitation - a housing unit which is structurally unsound and which possesses a serious and immediate threat to the health and safety of the occupants. Also, a housing unit which is not suitable for occupancy and the conditions or code violations are not economically feasible to correct. Would include units damaged by fire, storm, or other natural causes.

Suitability - means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development. (From 9J-5.003(134))

Support - to promote the interests or causes of; to uphold or defend as valid or right, advocate; to argue or vote for; to pay the costs of; to favor actively in the face of opposition.

Toxic Material - a type of hazardous waste that causes harm to humans or other organisms by entering the organism and interfering with normal life functions, as opposed to corrosive, ignitable, or reactive materials which cause damage by physical proximity or contact.

Transfer Station - a facility for the temporary collection of solid waste prior to transport to the processing facility.

Transitional Level of Service - a temporary acceptable level of service for a specific facility or service not to exceed 12 years, but which shall realistically reflect the minimum timeframe necessary to establish a funding source and/or remove affecting obstacles, and proceed with an appropriate improvement effort.

Tributary - a natural stream or other natural water body that flows, falls or empties into another water body. This definition is not to include non-point sources.

Type 1 Aquifer Recharge Areas - those areas which are within the City of Titusville's Area of Critical Concern, or are within five hundred (500) feet of a public water supply well or within the boundaries of a development that proposes a public water supply well provided that this area serves to recharge the aquifer from which the well draws and which have highly permeable soils.

Type 2 Aquifer Recharge Areas - those areas which are not classified as Type 1 aquife recharge areas and are above 30 feet mean sea level and have highly permeable soils.

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Type 3 Aquifer Recharge Areas - those areas which have highly permeable soils and are below 30 feet mean sea level.

Unique Farmlands - those lands which possess a special complement of location, soil characteristics, growing season and moisture supply that result in high productivity for specialty crops such as fruits, vegetables and vineyards.

Units Per Acre - the number of residential units allowed as a maximum per acre. This term may describe an aggregate density over a large tract or a building lot size.

Urban Sprawl - a land development pattern characterized by the location of development in areas where public facilities and services cannot be provided efficiently.

Urban-District Park - generally contain 100 to 499 acres and serve several communities in the metropolitan area.

Utility Corridor - an inter-county corridor established for rail transportation of persons and/or cargo and one or more of the following: the location of lines for the transmission of water, electricity, communications, petroleum products, products of a public utility (including new technologies of a public utility nature), or materials.

Very Low Income Household - a household which possesses a household income of less than 50 percent of the median income.

Water Dependent Uses - activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for: waterborne transportation including ports and marinas; recreation; electrical generating facilities; or water supply.

Water Enhanced Uses - activities which are not water dependent but whose value is increased due to location along the water. This increased value is not related to the increased property values of water-front property. Water enhanced uses include restaurants, some upland recreational areas and tourist attractions.

Water Related Uses - activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses. These land uses include bait and tackle shops, and boat sales and rentals.

Water's Edge Wetlands - wetlands which are a transitional area between dry land and open water.

Wetlands - wetlands as defined by the Florida Department of Environmental Regulation (FDER) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types. ~~Threshold and connection requirements of FDER and SJRWMD shall not be used.~~

Wetland Functionality - is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland-dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table. (From Chapter 62-3691, Brevard County Code of Ordinances).

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA NATIVE PLANT SOCIETY;
INDIAN RIVER AUDUBON SOCIETY;
and SIERRA CLUB TURTLE COAST GROUP,

Petitioners,

vs. DOAH Case No. 96-2174GM

DEPARTMENT OF COMMUNITY
AFFAIRS; and BREVARD BOARD OF
COUNTY COMMISSIONERS,

Respondents.
_____/

AMENDED PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioners FLORIDA NATIVE PLANT SOCIETY, INDIAN RIVER AUDUBON SOCIETY, and SIERRA CLUB TURTLE COAST GROUP, by and through their undersigned counsel, pursuant to section 163.3184(16), Florida Statutes (Supp. 1996), hereby challenge the DEPARTMENT OF COMMUNITY AFFAIRS' determination that certain amendments to the Brevard County Comprehensive Plan are "in compliance," with the requirements of the Local Government Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, and as grounds therefor, allege as follows:

INTRODUCTION

1. On February 23, 1996, and July 1, 1997, Brevard County adopted amendments to the Brevard County Comprehensive Plan. These amendments included changes to the Future Land Use Element and Conservation Element of the Comprehensive Plan, which fail to protect and

conserve wetlands within Brevard County, as required by the Local Government Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes ("Growth Management Act"). Accordingly, the Petitioners contend that the amendments to Future Land Use Element Objectives 4 and 5, and Conservation Element Policy 5.2 of the Brevard County Comprehensive Plan, adopted by Ordinance Nos. 96-05 and 97-22, are not "in compliance" as defined in section 163.3184(1)(b), Florida Statutes (Supp. 1996).

PROCEDURAL HISTORY

2. On or about October 18, 1995, Brevard County submitted to the DCA proposed amendments to the Brevard County Comprehensive Plan.

3. On December 22, 1995, the DCA issued an Objections, Recommendations and Comments Report ("ORC Report") to the County, finding such plan amendments to be not "in compliance," as defined in section 163.3184(1)(b), Florida Statutes, because the plan amendments were inconsistent with sections 163.3177 and 187.201, Florida Statutes; the East Central Florida Regional Planning Council Comprehensive Regional Policy Plan; and Chapter 9J-5, Florida Administrative Code.

4. On February 23, 1996, Brevard County adopted Ordinance No. 96-05. This ordinance amended the Brevard County Comprehensive Plan. The amendments include changes to the Future Land Use Element and Conservation Element, changes which the Petitioners contend fail to protect and conserve wetlands within Brevard County.

5. On April 18, 1996, the DCA issued a Notice of Intent to find the amendments adopted by Ordinance No. 96-05 not "in compliance." The DCA subsequently filed a request for an administrative hearing with the Division of Administrative Hearings.

6. On May 9, 1996, Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group filed a Petition for Leave to Intervene in that administrative proceeding. The Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group alleged that the amendments to the Brevard County Comprehensive Plan, as adopted in Ordinance No. 96-05, were not "in compliance."

7. On May 12, 1997, the DCA entered into a Stipulated Settlement Agreement with Brevard County regarding Ordinance No. 96-05 and its amendments to the Brevard County Comprehensive Plan. The Stipulated Settlement Agreement that had been negotiated by the County and the DCA, required the County to adopt remedial amendments to Ordinance No. 96-05. Once these negotiated remedial amendments had been adopted, the DCA agreed to change its determination regarding the amendments to the Brevard County Comprehensive Plan from "not in compliance" to "in compliance."

8. On July 1, 1997, Brevard County adopted Ordinance No. 97-22. This ordinance adopted the negotiated remedial amendments to Ordinance No. 96-05 as specified by the Stipulated Settlement Agreement.

A. Name and Address of Each Agency Affected

9. Respondent DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), whose mailing address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, is the state

2. Amended Future Land Use Element Objective 5

57. Amended Future Land Use Element Objective 5 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

58. Amended Future Land Use Element Objective 5 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

59. Amended Future Land Use Element Objective 5 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

60. The factors listed in Amended Future Land Use Element Objective 5 for determining the suitability of locating industrial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

61. Amended Future Land Use Element Objective 5 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

62. The exception set forth in Amended Future Land Use Element Objective 5 for "lands which are designated as industrial on the future land use map as of February 23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

agency responsible for enforcing the requirements of the Growth Management Act. The DCA's docket number for this case is 97R1-NOI-0501-(A)-(I). The DCA is the designated State Land Planning Agency.

10. Respondent BREVARD COUNTY ("County"), whose mailing address is 2575 North Courtenay Parkway, Suite 200, Merritt Island, Florida 32953, is a "Local Government" and a "Governmental Agency" as defined in section 163.3164, Florida Statutes (1995). The County, through its Board of County Commissioners, is responsible for implementing the requirements of the Growth Management Act.

B. Petitioners' Substantial Interests

11. Petitioner FLORIDA NATIVE PLANT SOCIETY ("Plant Society"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 6116, Spring Hill, Florida 34606. The Plant Society is a public interest organization dedicated to the preservation, conservation, and restoration of the native plants and native plant communities of Florida.

12. The members of the Plant Society reside, own property, and operate businesses in Brevard County, and participate in plant identification, inventories of plant communities, and other educational and recreational activities in the natural systems of Brevard County. The Plant Society submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the Plant Society is an "affected person" as defined in section 163.3184(1), Florida Statutes (Supp. 1996).

13. Petitioner INDIAN RIVER AUDUBON SOCIETY ("IRAS"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 1741, Cocoa, Florida 32923. The IRAS is a public interest organization dedicated to the preservation of irreplaceable natural resources, protection of birds, wildlife and their habitats, and the restoration of Earth's ecosystems.

14. The members of the IRAS reside, own property, and operate businesses in Brevard County, and participate in local habitat restoration projects, bird counts, and other conservation, educational, and recreational activities in the natural system of Brevard County. The IRAS submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the IRAS is an "affected person" as defined in section 163.3184(1).

15. Petitioner SIERRA CLUB TURTLE COAST GROUP ("SCTCG"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 061887, Palm Bay, Florida 32906. The SCTCG is the local chapter of the national Sierra Club, a not-for-profit public interest corporation. Like the national Sierra Club, the SCTCG's purpose is to explore, enjoy, and protect the wild places of the Earth and to practice and promote the responsible use of the environment.

16. The members of the SCTCG reside, own property, and operate businesses in Brevard County, and participate in local conservation efforts, service outings, and recreational activities to preserve and enjoy Brevard County's natural areas including wetlands. The SCTCG submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the SCTCG is an "affected person" as defined in section 163.3184(1).

C. Petitioners' Receipt of DCA's Notice of Intent

17. On August 11, 1997, the Petitioners were informed of the DCA's intention to find portions of the amended Brevard County Comprehensive Plan adopted by Ordinance No. 96-05, as revised by the remedial amendment adopted by Ordinance No. 97-22, "in compliance" through the publication of the DCA's Notice of Intent in the *Florida Today*.

D. Disputed Issues of Material Fact

1. Amended Future Land Use Element Objective 4

18. Whether Amended Future Land Use Element Objective 4 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

19. Whether Amended Future Land Use Element Objective 4 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

20. Whether Amended Future Land Use Element Objective 4 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

21. Whether the factors listed in Amended Future Land Use Element Objective 4 for determining the suitability of locating commercial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

22. Whether Amended Future Land Use Element Objective 4 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections

163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

23. Whether the exception set forth in Amended Future Land Use Element Objective 4 for "lands which are designated as commercial on the future land use map as of February 23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

24. Whether Amended Future Land Use Element Objective 4 is supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

25. Whether absent such data and analysis for Amended Future Land Use Objective 4, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

26. Whether Amended Future Land Use Element Objective 4 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

27. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Future Land Use Element Objective 4 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

2. Amended Future Land Use Element Objective 5

28. Whether Amended Future Land Use Element Objective 5 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

29. Whether Amended Future Land Use Element Objective 5 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

30. Whether Amended Future Land Use Element Objective 5 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

31. Whether the factors listed in Future Land Use Element Objective 5 for determining the suitability of locating industrial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

32. Whether the Amended Future Land Use Element Objective 5 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

33. Whether the exception set forth in Amended Future Land Use Element Objective 5 for "lands which are designated as industrial on the future land use map as of February 23, 1996," results in such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

34. Whether Amended Future Land Use Element Objective 5 is supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

35. Whether absent such data and analysis for Amended Future Land Use Objective 5, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

36. Whether Amended Future Land Use Element Objective 5 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including but not limited to floodplains, wildlife and wildlife habitat, and ground and surface water quality.

37. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Future Land Use Element Objective 5 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

3. <u>Amended Conservation Element Policy 5.2</u>

38. Whether Amended Conservation Element Policy 5.2 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

39. Whether Amended Conservation Element Policy 5.2 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

40. Whether Amended Conservation Element Policy 5.2 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

41. Whether Amended Conservation Element Policy 5.2 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

42. Whether the exemptions contained in Amended Conservation Element Policy 5.2 are inconsistent with conserving and protecting the natural environment, including wetlands.

43. Whether Amended Conservation Element Policy 5.2 is supported by data and analysis which assesses the impact of this Policy on wetlands by type, value, function, size, condition, and location.

44. Whether absent such data and analysis for Amended Conservation Element Policy 5.2, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

45. Whether Amended Conservation Element Policy 5.2 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of

the Brevard County Comprehensive Plan addressing protection of natural resources, including but not limited to floodplains, wildlife and wildlife habitat, and ground and surface water quality.

46. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Conservation Element Policy 5.2 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

E. Statement of Ultimate Facts

1. Amended Future Land Use Element Objective 4

47. Amended Future Land Use Element Objective 4 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C, because it does not provide for the protection of wetlands as required by law.

48. Amended Future Land Use Element Objective 4 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

49. The factors listed in Amended Future Land Use Element Objective 4 for determining the suitability of locating commercial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

50. Amended Future Land Use Element Objective 4 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

51. Amended Future Land Use Element Objective 4 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1)

and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

52. The exception set forth in Amended Future Land Use Element Objective 4 for "lands which are designated as commercial on the future land use map as of February 23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

53. Amended Future Land Use Element Objective 4 is not supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

54. Absent such data and analysis for Amended Future Land Use Element Objective 4, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

55. Amended Future Land Use Element Objective 4 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

56. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Future Land Use Element Objective 4 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

63. Amended Future Land Use Element Objective 5 is not supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

64. Absent such data and analysis for Amended Future Land Use Element Objective 5, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

65. Amended Future Land Use Element Objective 5 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

66. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Future Land Use Element Objective 5 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

3. Amended Conservation Element Policy 5.2

67. Amended Conservation Element Policy 5.2 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

68. Amended Conservation Element Policy 5.2 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

69. Amended Conservation Element Policy 5.2 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

70. Amended Conservation Element Policy 5.2 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

71. The exemptions contained in Amended Conservation Element Policy 5.2 are inconsistent with conserving and protecting the natural environment, including wetlands.

72. Amended Conservation Element Policy 5.2 is not supported by data and analysis which assesses the impact of this Policy on wetlands by type, value, function, size, condition, and location.

73. Absent such data and analysis for Amended Conservation Element Policy 5.2, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

74. Amended Conservation Element Policy 5.2 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

75. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Conservation Element Policy 5.2 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

F. Petitioners' Demand for Relief

WHEREFORE, Petitioners Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group request that the following relief be granted:

A. That the Administrative Law Judge enter a Recommended Order finding that the Department of Community Affairs erroneously determined that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, were "in compliance."

B. That the Department of Community Affairs determine that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, are not "in compliance," and forward the matter to the Administration Commission.

C. That the Administration Commission enter a Final Order finding that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, are not "in compliance," and imposing sanctions if the County fails to rescind the Ordinances.

David A. Theriaque
DAVID A. THERIAQUE, ESQUIRE
Florida Bar No. 0832332
KENNETH B. HAYMAN, ESQUIRE
Florida Bar No. 0094250
David A. Theriaque, P.A.
909 East Park Avenue
Tallahassee, Florida 32301
Telephone: (904) 224-7332
Telecopier: (904) 224-7662

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished to the Department of Administrative Hearings for filing by hand-delivery, and that a true and correct copy of the foregoing has been furnished by United States Mail to Scott L. Knox, Esquire, Brevard County Attorney, 2725 St. Johns Street, Melbourne, Florida 32940; and Shaw P. Stiller, Esquire, Assistant General Counsel, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, FL 32399-2100, this 2nd day of September, 1997.

David A. Theriaque

DAVID A. THERIAQUE, ESQUIRE

STIPULATED SETTLEMENT AGREEMENT

DUPLICATIVE POLICY AMENDMENTS

The words **in bold** represents language that was added to the following policies as part of the duplicative amendment process in 1995.

1) CONSERVATION ELEMENT

Policy 4.6

New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible. ~~Brevard County shall encourage the re-establishment of the natural drainage basins and end the diversion of floodwaters from the historic St. John's drainage basin to the Indian River Lagoon system.~~

SURFACE WATER ELEMENT

Policy 4.1

New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible. ~~**New surface water interbasin diversions shall be prohibited. The reduction or elimination of existing interbasin diversions to re-establish the historic St. John's River drainage basin shall be encouraged.** (State policies 9.4, 9.7)~~

CONSERVATION ELEMENT

~~Policy 3.6~~

~~New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible.~~

2) SURFACE WATER ELEMENT

Policy 4.10

Public facilities should not be located within the 100-year floodplain or wetland areas unless the following apply:

Criteria:

A. The facilities are water-dependent, such as mosquito control facilities excluding their chemical storage areas; or

B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or

C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or

D. The building structures are floodproofed and located above the 100-year flood elevation or removed from the floodplain by appropriately constructed dikes or levees; or

E. The facilities are found to be in the public interest and there is no feasible alternative.

3) HISTORIC PRESERVATION ELEMENT

Policy 2.9

Historic resources and their environments should be included in public acquisition programs for recreation, open space, and conservation areas.

Criteria:

A. Any development or activities planned for these sites shall be passive in nature and shall not endanger the integrity and character of the resource.

B. Exact locations of known archaeological sites purchased shall not be publicized to protect these resources from vandalism, unless proper security can be provided.

4) FUTURE LAND USE ELEMENT

Policy 2.13

All public and private development and redevelopment proposals, including those for infrastructure, should be reviewed for the impact upon designated historic resources.

D. Inventories of historic resources identified by the Historic Preservation element shall be utilized in locating future roadways and in expanding existing roadways. If a determination is made that there will be a potentially negative impact to a historic resource, the County shall notify the Florida Division of Historical Resources and the County preservation agent.

TRAFFIC CIRCULATION ELEMENT

Policy 2.1.3

Brevard County shall avoid negative impacts on significant historic resources during the construction or maintenance of roadways **as described below and in the Future Land Use Element**. (SCP 19.6)

Criteria:

~~A. Inventories of historic resources identified by the Historic Preservation element shall be utilized in locating future roadways and in expanding existing roadways. If a determination is made that there will be a potentially negative impact to a historic resource, the County shall notify the Florida Division of Historical Resources and the County preservation agent.~~

~~B. In the event of the discovery of artifacts of historic or archaeological significance during project construction, the construction shall immediately stop in the area of the discovery. The Florida Division of Historical Resources and the County Preservation agent shall be notified. From the date of notification, construction shall be suspended for a period of up to 30 days to allow for an initial evaluation of the sit within 20 feet of the discovery. If the resource is found to be potentially significant, activities shall be further suspended for up to 30 days to allow for further evaluation.~~

~~C.~~ A. Review all the FDOT cultural resource surveys and assessments to identify historical properties or archaeological resources. Give consideration to those projects which minimize or avoid negative impacts on the resources. (SCP 19.6; FTP 62. 1)

5) MASS TRANSIT ELEMENT

Policy 3.2

Mass transit facilities and services shall be commensurate with and properly timed with projected needs. (SCP 16.1; CRPP 63.5)

Criteria

A. Brevard County shall ~~should~~ support the Metropolitan Planning Organization in the updating of the Brevard County Transit Development Plan.

B. Once the Brevard County Transit Development Plan is prepared, Brevard County should implement those portions for which the County is responsible.

6) TRAFFIC CIRCULATION ELEMENT

Policy 1.2.1

Support programs which encourage the sharing and use of high occupancy vehicles. (CRPP 64.14)

Criteria:

A. Incentives, such as priority parking, shall ~~should~~ be adopted to promote the use of vanpools or carpools in the urban and urbanizing service sectors. (SCP 20.9; FTP 63.2)

B. Support the designation of high occupancy vehicle lanes where deemed feasible and increase peak hour user ridership for transit and other high occupancy vehicles. (SCP 20.9; FTP 63.3)

C. Participate with employers in implementing. demand management programs to reduce traffic impacts specifically on US 1, I-95, SR AIA, SR 520, SR 528 and Patrick Drive. (SCP 16.57; SCP 19.63; FTP 42.3.2; FTP 63.8; FTP 63/9; FTP 64.11; FTP 65.1; FTP 74.1)

D. Ridesharing and staggered work hours for employee intensive businesses and industries shall be an optional program made available with participation resulting in relief to the operating LOS allowing utilization as available capacity. As a minimum, the following requirements shall be met by a participating entity:

1. Basic information such as the total number of original and required parking spaces, the total number of employees per workshift the total number of workshifts, the beginning and ending hours of each workshift, and the distribution of the work trips by affected roadways shall be submitted.

2. Configuration or reconfiguration of the parking facilities shall reflect that a minimum of 10 percent of the required parking spaces are devoted only to registered car pool and van pool employees, and that said spaces be more conveniently located to the work building(s) than non-pool vehicle spaces.

3. New construction or expansion of a business or industry existing floor area shall have parking space requirements commensurate with Criterion B, assuming an average of 5 persons per car or van pool vehicle. Sample calculation: A single shift 250,000 industrial square foot operation would require a minimum of 500 spaces; if the owner provided 15 percent or 75 spaces for car or van pool vehicles, these spaces could accommodate 375 employees and reduce the needed single occupancy spaces to 125; the total number of trips (parking spaces) could be reduced by 300 per workshift

4. Use of car pool or van pools or non-traditional peak hours for workshifts shall result in an impact fee credit, provided an agreement is signed that provides for proper documentation of trip impact reduction, a ridesharing and/or staggered work hour plan and implementation program, and penalties for non-performance.

5. Other provisions as may be necessary to establish a comprehensive program, including strict enforcement procedures, may supplement those herein as regulations are developed and approved to implement this program.

7) PORTS, AVIATION, AND RELATED FACILITIES ELEMENT

Policy 8.3

Brevard County shall support and encourage the development of alternative sources for water use for space related industrial purposes rather than industries relying on public potable water supplies for industrial use.

Future Land Use Objective 4

Brevard County shall provide for adequate and appropriate lands for the location of commercial land uses, through the Land Development Regulations, to serve the needs of the projected residents and visitors to the County. Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use and for all other measures to ensure wetland function. During the review of proposed amendments to the future land use map, which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria:

Criteria:

A. Floodplain policies contained within Conservation Objective 4.
B. Aquifer protection policies contained within Conservation Objective 11.
C. Types, values, conditions, functions, and locations of wetlands, and wetlands protection policies contained in Conservation Objective 5.

Future Land Use Objective 5

Brevard County shall provide for adequate and appropriate lands for the location of industrial land uses, through the Land Development Regulations, to support the role of these uses in the County's economy. Brevard County shall direct new industrial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use and for all other measures to ensure wetland function. During the review of proposed amendments to the future land use map, which would allow industrial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria:

A. Floodplain policies contained within Conservation Objective 4.
B. Aquifer protection policies contained within Conservation Objective 11.
C. Types, values, conditions, functions, and locations of wetlands, and wetland protection policies contained in Conservation Objective 5.

Conservation Element Objective 5

Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

Conservation Element Policy 5. 1

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands ~~but shall not be limited by threshold or connection requirements utilized by these agencies~~.

Conservation Element Policy 5.2

~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

Conservation Element Policy 5.2.F
The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if other criteria established in Conservation Element Policy 5.2 are met:

1. Residential land uses shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses. Residential property which includes wetland areas shall be subdivided in such a way that buildable areas are included in each lot. Subdivided lots shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.

2. Commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial after February 23, 1996, and in surrounding buffers for such wetlands, with specifications based on the *Buffer Zones for Water, Wetlands, and Wildlife in the East Central Florida Region,* (1990, Brown, M.T., Schaefer, and K. Brandt, published by the Center for Wetlands, University of Florida), except for certain commercial development at 1-95 interchanges that are consistent with the following criteria:

a. There will be no less than 100,000 square feet of commercial building within a project;
b. There is current overcapacity on the adjacent roadways, and it is projected that roadway capacity within four (4) miles of the intersection will be no more than 80% of the congestion ratio (the ratio of projected volume to maximum allowable volume) after 500,000 square feet of commercial space has been developed within one half mile of the intersection of the off-ramp with the connecting roadway;
c. Wetland mitigation shall equal or exceed 125% of the mitigation which is otherwise required;
d. The development is located within one half mile of the intersection of the off-ramp with the connecting roadway;
e. There will be no more than two curb cuts on each quadrangle of the interchange within one-half mile of the connection of the off-ramp and the connecting roadway; and
f. A maximum of 40 (forty) acres shall be allotted in proximity to the interchange, counting both sides.

3. Commercial and industrial land development activities may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial prior to February 23, 1996, only if all of the following criteria are met:

a. The property is substantially surrounded by land(s) developed as commercial or industrial as of February 23, 1996, and has sufficient infrastructure in place to serve the commercial or industrial use.
b. The proposed land development activity will not result in increased flooding problems on adjacent properties.
c. The wetland is not classified by the Florida Land Use, cover and Forms classification system (1985) as a Stream and Lake Swamp (FLUCS 615), Cypress (FLUCS 621), Atlantic White Cedar (FLUCS 623), Wetland Forested Mixed (FLUCS 630), or Wet Prairies (FLUCS 643).

For wetlands specified in 5.2.F.3(c), the wetland functionality shall be maintained and protected by a 15 foot natural, native vegetative buffer for isolated wetlands and by a 50 foot natural, native vegetative buffer for other wetlands.

The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCS 615, 621, 623, 630 and 643), which also possess commercial or industrial zoning classifications and Future Land Use Map designations as of February 23, 1996, and is incorporated herein by this reference.

4. In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the Board of County Commissioners in the manner provided in Section 62-507(b)(2), Code of Ordinances of Brevard County, Florida.

Proposed Glossary Definitions

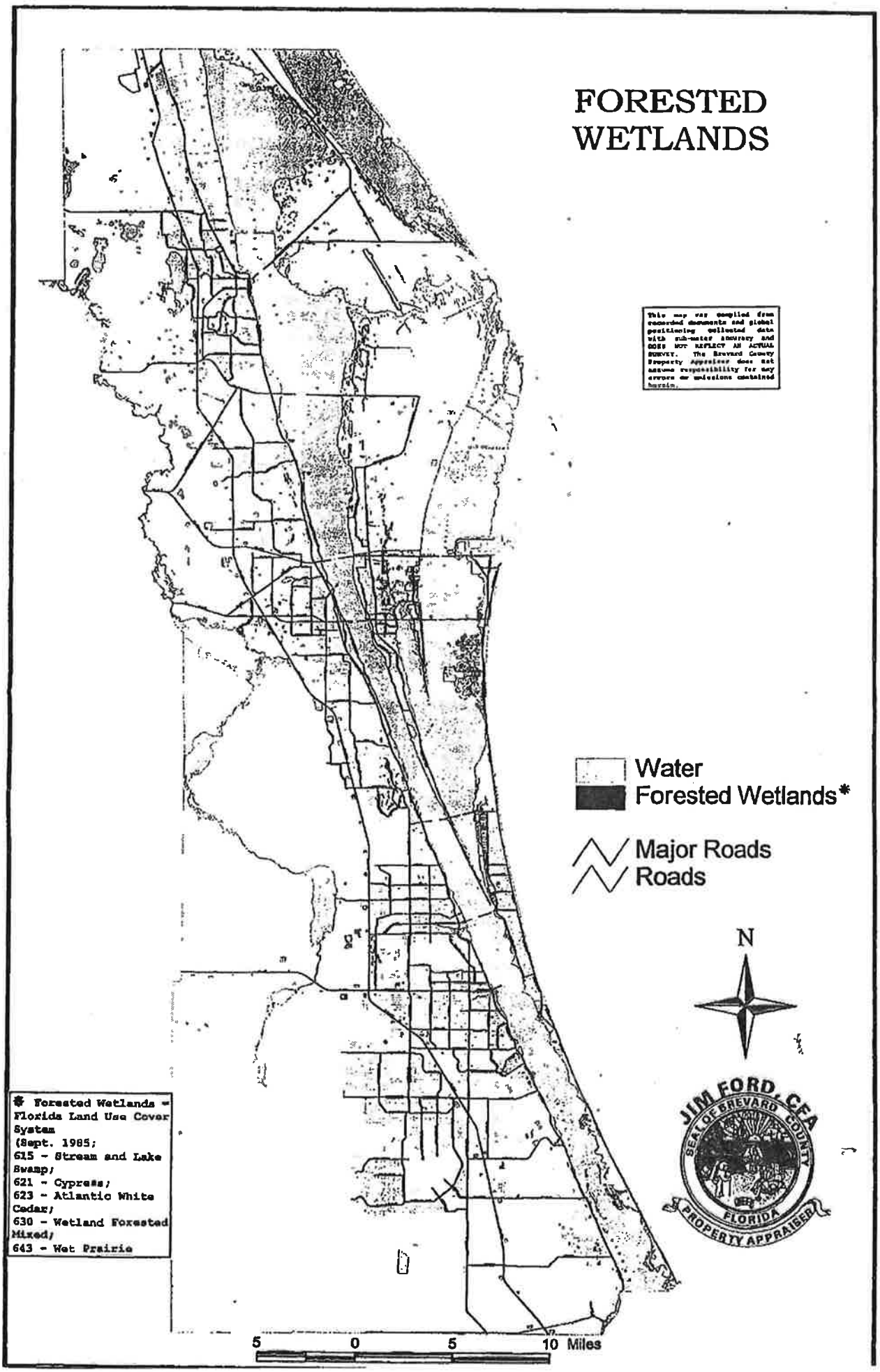
Substantially Surrounded - when a parcel of land is bordered on two sides by land developed as commercial or industrial. Such commercial or industrial development should abut the subject land.

Suitability - Means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development. (From 9J-5.003(134))

Wetland Functionality - is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table. (from Chapter 62-3691, Brevard County Code of Ordinances)

Modification to Existing Glossary Definition

Wetlands - wetlands as defined by the Florida Department of Environmental Regulation (FDER) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types. ~~Threshold and connection requirements of FDER and SJRWMD shall not be used.~~


FORESTED WETLANDS
This map was compiled from recorded documents and global positioning collected data with sub-meter accuracy and DOES NOT REFLECT AN ACTUAL SURVEY. The Brevard County Property Appraiser does not assume responsibility for any errors or omissions contained herein.
Water
Forested Wetlands*
Major Roads
Roads
N
* Forested Wetlands = Florida Land Use Cover System
(Sept. 1985;
615 - Stream and Lake Swamp;
621 - Cypress;
623 - Atlantic White Cedar;
630 - Wetland Forested Mixed;
643 - Wet Prairie
5 0 5 10 Miles
JIM FORD, CFA
SEAL OF BREVARD COUNTY
FLORIDA
PROPERTY APPRAISER

Brevard County, Florida - Clerk of the Court

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Meeting Minutes

PUBLIC HEARING, RE: ORDINANCE AMENDING FIRE CONTROL AND PROTECTION MSTU MILLAGE

This ordinance amending the Fire Control and Protection Municipal Service Taxing Unit millage, was withdrawn earlier in the meeting.

PUBLIC HEARING, RE: ORDINANCE ADOPTING REMEDIAL COMPREHENSIVE PLAN AMENDMENTS AMENDING THE FUTURE LAND USE MAP IN THE VICINITY OF I-95 AND PORT ST. JOHN INTERCHANGE

Chairman Scarborough called for the public hearing to consider an ordinance adopting remedial Comprehensive Plan amendments amending the Future Land Use Map in the vicinity of I-95 and Port St. John interchange.

There being no objections heard, motion was made by Commissioner Voltz, seconded by Commissioner Carlson, to adopt Ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "the 1988 Comprehensive Plan," setting forth remedial plan amendments as specified within a stipulated settlement agreement between Brevard County and the Department of Community Affairs specifically relating to Section 62-501, Part XVIII, entitled "The Future Land Use Map Appendix" and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. Motion carried and ordered unanimously.

PUBLIC HEARING, RE: ORDINANCE ADOPTING REMEDIAL COMPREHENSIVE PLAN AMENDMENTS RELATING TO WETLANDS AND DUPLICATIVE POLICIES

Chairman Scarborough called for the public hearing to consider an ordinance adopting remedial Comprehensive Plan amendments relating to wetlands and duplicative policies.

Charlie Moehle advised Planning and Zoning Director Mel Scott said he would send him a letter on the interpretation of zoning boundaries.

There being no further comments or objections heard, motion was made by Commissioner Carlson, seconded by Commissioner Voltz, to adopt Ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "the 1988 Comprehensive Plan," setting forth remedial plan amendments as specified within a stipulated settlement agreement between Brevard County, the Department of Community Affairs, the Sierra Club Turtle Coast Group, the Florida Audubon Society, the Indian River Audubon Society, the Florida Native Plant Society, the Conradina Chapter of the Florida Native Plant Society, 1000 Friends of Florida, and Howard Wolf relating to Section 62-501, Part I, entitled the Conservation

Element, Section 62-501, Part XIII, entitled the Future Land Use Element; previously directed amendments by the Board to eliminate duplicative policies within Section 62-501, Part I, entitled the Conservation Element, Section 62-501, Part II, entitled the Surface Water Management Element, Section 62-501, Part III, entitled the Recreation and Open Space Element, Section 62-501, Part IV, entitled the Historic Preservation Element, Section 62-501, Part V, entitled the Housing Element, Section 62-501, Part VI, entitled the Potable Water Element, Section 62-501, Part VII, entitled the Sanitary Sewer Element, Section 62-501, Part VIII, entitled the Solid Waste and Hazardous Materials Element, Section 62-501, Part IX, entitled the Traffic Circulation Element, Section 62-501, Part X, entitled the Mass Transit Element, Section 62-501, Part XI, entitled the Ports, Aviation, and related Facilities Element, Section 62-501, Part XII, entitled the Coastal Management Element, Section 62-501, Part XIII, entitled the Future Land Use Element, Section 62-501, Part XIV, entitled the Intergovernmental Coordination Element, and Section 62-501, Part XV, entitled the Capital Improvements and Programs Element, and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. Motion carried and ordered unanimously.

PUBLIC HEARING, RE: ZONING RECOMMENDATION OF JULY 6, 1999, ITEM 1, CAPE CANAVERAL COMMERCIAL CORPORATION

Chairman Scarborough called for the public hearing to consider the recommendation of the Planning and Zoning (P&Z) Board, made at its public hearing on July 6, 1999, as follows:

Item 1. (Z9907401) Cape Canaveral Commercial Corporation's request for change from AU to BU-2 on 16.49? acres located on the southeast corner of the intersection of SR 524 and SR 520, which was recommended for approval by the P&Z Board.

Commissioner Carlson advised she spoke with the applicant and did not feel comfortable with the zoning; and they agreed to BU-1 on the entire parcel.

Iris Perrette, representing the applicant stated BU-1 is fine. Chairman Scarborough inquired if Gerry Laschober accepted the BU-1; with Mr. Laschober responding affirmatively.

There being no further comments or objections heard, motion was made by Commissioner Carlson, seconded by Commissioner Voltz, to approve Item 1 as BU-1 on the entire parcel, as accepted by the applicant. Motion carried and ordered unanimously.

PUBLIC HEARING, RE: RESOLUTION VACATING RIGHT-OF-WAY IN PLAT OF JUNE PARK - CATHY B. RHODEN

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

OFFICE OF THE COUNTY ATTORNEY, 2725 Judge Fran Jamieson Way, Viera, Florida 32940

(407) 633-2090
FAX (407) 633-2096

September 2, 1999

Andrew Grayson, Esq.
Assistant General Counsel
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

David Theriaque, Esq.
909 East Park Avenue
Tallahassee, FL 32301

Re: Florida Audubon, et.al., v. DCA and Brevard County, Case No.: 96-2174GM, Stipulated Settlement Agreement

Dear Messrs,

As I have advised you both, the county has learned that the map incorporated in the comprehensive plan amendment enacted pursuant to the settlement is not accurate. Shortly after the ordinance was adopted staff realized that properties with split zoning (i.e. BU-1 commercial and RU-1-11 residential) were not included in the original map. Staff has recalculated the acreage of forested wetlands affected and that number has changed from ~ 192 to 418.8. This means that more than twice the acreage previously thought would be undevelopable under to the provisions of Conservation Element Policy 5.2.F.3., which reads:

> Commercial and industrial land development activities may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial prior to February 23, 1996, only if all of the following criteria are met:
>
> a. The property is substantially surrounded by land(s) developed as commercial or industrial as of February 23, 1996, and has sufficient infrastructure in place to serve the commercial or industrial use.
>
> b. The proposed land development activity will not result in increased flooding problems on adjacent properties.
>
> c. The wetland is not classified by the Florida Land Use, cover and Forms classification system (1985) as a Stream and Lake Swamp (FLUCS 615), Cypress (FLUCS 621), Atlantic White Cedar (FLUCS 623), Wetland Forested Mixed (FLUCS 630), or Wet Prairies (FLUCS 643).

For wetlands specified in 5.2.F.3(c), the wetland functionality shall be maintained and protected by a 15 foot natural, native vegetative buffer for isolated wetlands and by a 50 foot natural, native vegetative buffer for other wetlands.

The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCS 615, 621, 623, 630 and 643), which also possess commercial or industrial zoning classifications and Future Land Use Map designations as of February 23, 1996, and is incorporated herein by this reference.

Considering this language gives the impression that the map reflects the number affected wetlands, the County wishes to amend the map and/or the language to clarify the discrepancy. Also, since the map was a focal point of the amendment and relied upon by interested parties to determine the amendments effect upon them, an amendment is the appropriate way to resolve the problem.

It is anticipated that this amendment could be processed under the stipulated settlement agreement as opposed to the normal amendment cycle. A draft amendment will be provided to you for review within the next few weeks.

Should you have any further questions, please contact me at (407) 633-2090.

Sincerely,

Christine Lepore
Assistant County Attorney

BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

SANDY CRAWFORD, Clerk to the Board, 400 South Street, P.O. Box H, Titusville Florida 32781
BERNADETTE S. TALBERT, Deputy Clerk (407) 264-6970

October 8, 1999

Liz Cloud, Chief
Department of State
Bureau of Administrative Code
The Elliott Building
401 South Monroe Street
Tallahassee, Florida 32399-0250

Dear Ms. Cloud:

Re: Ordinance No. 99-52, Amending Article III, Chapter 62, to Adopt Remedial Comprehensive Plan Amendments Relating to Wetlands

The Board of County Commissioners, in regular session on October 7, 1999, adopted Ordinance No. 99-52, amending Article III, Chapter 62, to adopt Remedial Comprehensive Plan Amendments relating to wetlands. Enclosed are certified copy of the Ordinance and the Coding Form.

Please file same and advise this office of the official filing date.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SANDY CRAWFORD, CLERK

Bernadette Talbert, Deputy Clerk

/tjr

Encls. (2)

RECEIVED

ORDINANCE NO. 99- 52

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH REMEDIAL PLAN AMENDMENTS AS SPECIFIED WITHIN A STIPULATED SETTLEMENT AGREEMENT BETWEEN BREVARD COUNTY, THE DEPARTMENT OF COMMUNITY AFFAIRS, THE SIERRA CLUB TURTLE COAST GROUP, THE FLORIDA AUDUBON SOCIETY, THE INDIAN RIVER AUDUBON SOCIETY, THE FLORIDA NATIVE PLAN SOCIETY, THE CONRADINA CHAPTER OF THE FLORIDA NATIVE PLANT SOCIETY, 1000 FRIENDS OF FLORIDA, AND HOWARD WOLF RELATING TO SECTION 62-501, PART I, ENTITLED THE CONSERVATION ELEMENT; SECTION 62-501, PART XIII, ENTITLED THE FUTURE LAND USE ELEMENT; SECTION 62-501, PART XVI, ENTITLED THE COMPREHENSIVE PLAN GLOSSARY; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Community Affairs; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.3184 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for amendments to the Comprehensive Plan on June 30, 1995, for adoption in calendar year 1996 as a single amendment, Plan Amendment 95-B; and

WHEREAS, Plan Amendment 95B.4 and previously directed amendments to eliminate duplicative policies adopted on February 23, 1996, were found in noncompliance by the Department and the subject of an administrative hearing action, Case No. 96-2174GM; and

WHEREAS, the Brevard County Board of County Commissioners voted to accept a Stipulated Settlement Agreement on July 13, 1999, and enacted Ordinance No. 99-48 to amend the 1988 Plan as provided in the Stipulated Settlement Agreement; and

WHEREAS, the Brevard County Board of County Commissioners wishes to clarify its records.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section I. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187,

Florida Statutes.

Section 2. **Purpose and Intent.** It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of Ordinance 98-48, amending the 1988 Plan, and adopted pursuant to a Stipulated Settlement Agreement.

Section 3. **Adoption of Remedial Comprehensive Plan Amendments.** Pursuant to a Stipulated Settlement Agreement between Brevard County, the Department of Community Affairs, the Sierra Club Turtle Coast Group, the Florida Audubon Society, the Indian River Audubon Society, the Florida Native Plan Society, The Conradina Chapter of the Florida Native Plant Society, 1000 Friends of Florida, and Howard Wolf, the 1988 Brevard County Comprehensive Plan is hereby amended to adopt the revised Forested Wetlands Location Map as shown in Exhibit A. Said map is referenced in Conservation Element 5.2.F.3 as amended by Ordinance 99-48 according to the Stipulated Settlement Agreement. A copy of the Stipulated Settlement Agreement is attached as Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. **Severability.** If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. **Effective Date.** The plan amendments shall become effective once the state land planning agency issues a final order determining the adopted amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(9), or until the Administration Commission issues a final order determining the amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(10). A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this 7th day of October, 1999.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Sandy Crawford, Clerk

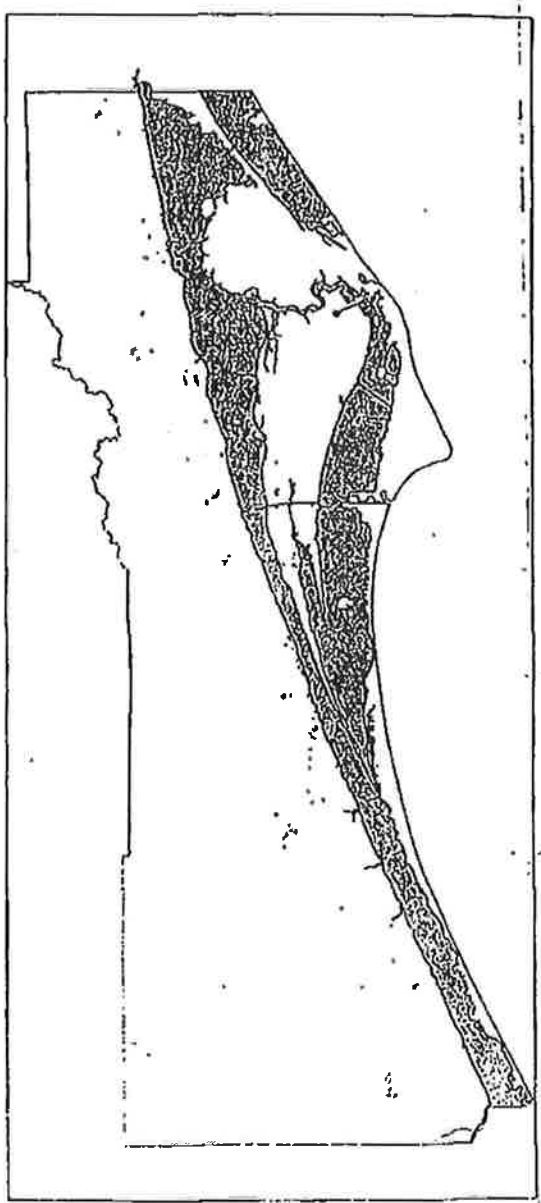
By: _____
Truman G. Scarborough Jr., Chairman

Approved by the Board on October 7, 1999

FORESTED WETLANDS LOCATION MAP

Acreage Totals

Sum: 418.8119
Count: 245
Mean: 1.7094
Maximum: 34.1336
Minimum: 0.0002
Range: 34.1334
Variance: 10.5663
Standard Deviation: 3.2506



8 0 8 16 Miles

This map displays general county information and is not appropriate for site-specific uses. More detailed maps are available from the Brevard County Planning & Zoning Office.

Type, count, and acreage of Land Use Polygons

6120	5	2.4047
6150	90	156.3874
6210	4	14.5344
6230	19	9.5593
6300	57	144.8301
6430	70	91.0960

Type, count, and acreage of Zoning Polygons

BU-1	76	85.1833
BU-1-A	4	9.7902
BU-2	30	32.8428
IU	48	159.8918
IU-1	26	48.2187
PBD	6	10.9097
PIP	27	39.3599
TU-2	8	33.0155

Type, count, and acreage of Future Land Use Polygons

CNC	56	152.1300
MIX	107	152.3465
MUC	3	1.8347
PIP	78	111.5007

EXHIBIT A

[redacted]

Listing of Contents

1. **Adoption Ordinance**

3. **Stipulated Settlement Agreement**

EXHIBIT B

ORDINANCE NO. 99- 48

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH REMEDIAL PLAN AMENDMENTS AS SPECIFIED WITHIN A STIPULATED SETTLEMENT AGREEMENT BETWEEN BREVARD COUNTY, THE DEPARTMENT OF COMMUNITY AFFAIRS, THE SIERRA CLUB TURTLE COAST GROUP, THE FLORIDA AUDUBON SOCIETY, THE INDIAN RIVER AUDUBON SOCIETY, THE FLORIDA NATIVE PLAN SOCIETY, THE CONRADINA CHAPTER OF THE FLORIDA NATIVE PLANT SOCIETY, 1000 FRIENDS OF FLORIDA, AND HOWARD WOLF RELATING TO SECTION 62-501, PART I, ENTITLED THE CONSERVATION ELEMENT, SECTION 62-501, PART XIII, ENTITLED THE FUTURE LAND USE ELEMENT; PREVIOUSLY DIRECTED AMENDMENTS BY THE BOARD TO ELIMINATE DUPLICATIVE POLICIES WITHIN SECTION 62-501, PART I, ENTITLED THE CONSERVATION ELEMENT, SECTION 62-501, PART II, ENTITLED THE SURFACE WATER MANAGEMENT ELEMENT, SECTION 62-501, PART III, ENTITLED THE RECREATION AND OPEN SPACE ELEMENT, SECTION 62-501, PART IV, ENTITLED THE HISTORIC PRESERVATION ELEMENT, SECTION 62-501, PART V, ENTITLED THE HOUSING ELEMENT, SECTION 62-501, PART VI, ENTITLED THE POTABLE WATER ELEMENT, SECTION 62-501, PART VII, ENTITLED THE SANITARY SEWER ELEMENT, SECTION 62-501, PART VIII, ENTITLED THE SOLID WASTE AND HAZARDOUS MATERIALS ELEMENT, SECTION 62-501, PART IX, ENTITLED THE TRAFFIC CIRCULATION ELEMENT, SECTION 62-501, PART X, ENTITLED THE MASS TRANSIT ELEMENT, SECTION 62-501, PART XI, ENTITLED THE PORTS, AVIATION, AND RELATED FACILITIES ELEMENT, SECTION 62-501, PART XII, ENTITLED THE COASTAL MANAGEMENT ELEMENT, SECTION 62-501, PART XIII, ENTITLED THE FUTURE LAND USE ELEMENT, SECTION 62-501, PART XIV, ENTITLED THE INTERGOVERNMENTAL COORDINATION ELEMENT, AND SECTION 62-501, PART XV, ENTITLED THE CAPITAL IMPROVEMENTS AND PROGRAMS ELEMENT; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Community Affairs; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.3184 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for amendments to the Comprehensive Plan on June 30, 1995, for adoption in calendar year 1996 as a single amendment, Plan Amendment 95-B; and

WHEREAS, Plan Amendment 95B.4 and previously directed amendments to eliminate duplicative policies, adopted on February 23, 1996, were the subject of an administrative hearing action; and

WHEREAS, the Brevard County Board of County Commissioners voted to accept a Stipulated Settlement Agreement on July 13, 1999; and

WHEREAS, the Brevard County Board of County Commissioners wishes to clarify its records;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Remedial Comprehensive Plan Amendments. Pursuant to a Stipulated Settlement Agreement between Brevard County, the Department of Community Affairs, the Sierra Club Turtle Coast Group, the Florida Audubon Society, the Indian River Audubon Society, the Florida Native Plan Society, The Conradina Chapter of the Florida Native Plant Society, 1000 Friends of Florida, and Howard Wolf, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The plan amendments shall become effective once the state land planning agency issues a final order determining the adopted amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(9), or until the Administration Commission issues a final order determining the amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(10). A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this 24 day of August, 1999.

ATTEST:

Sandy Crawford, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: _____
Truman G. Scarborough Jr., Chairman

Approved by the Board on August 24, 1999

EXHIBIT B

STIPULATED SETTLEMENT AGREEMENT

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA AUDUBON SOCIETY;
FLORIDA NATIVE PLANT SOCIETY;
INDIAN RIVER AUDUBON SOCIETY;
CONRADINA CHAPTER OF THE FLORIDA
NATIVE PLANT SOCIETY;
SIERRA CLUB TURTLE COAST GROUP;
1000 FRIENDS OF FLORIDA, INC.; and
HOWARD WOLF,

Petitioners,

vs.

DOAH CASE NO. 96-2174GM

DEPARTMENT OF COMMUNITY AFFAIRS
AND BREVARD COUNTY,

Respondents.

_____/

STIPULATED SETTLEMENT AGREEMENT

Petitioners, Florida Audubon Society; Florida Native Plant Society; Indian River Audubon Society; Conradina Chapter of the Florida Native Plant Society; Sierra Club Turtle Coast Group; 1000 Friends of Florida, Inc.; and Howard Wolf (Intervenors), and Respondents, Department of Community Affairs (Department) and Brevard County (County), hereby stipulate and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: The comprehensive plan amendment adopted by the County on February 23, 1996, by Ordinance No. 96-05.

d. DOAH: The Florida Division of Administrative Hearings.

e. In Compliance or Into Compliance: Consistent with Sections 163.3177, 163.3178 and 163.3191, Florida Statutes, Section 187.201, Florida Statutes, the applicable regional policy plan, and Chapter 9J-5, Florida Administrative Code.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action, which must be completed to bring the plan amendment into compliance.

i. Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Plan amendments adopted pursuant to this agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the plan amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the plan amendment.

2. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

3. Approval by Governing Body. This agreement has been approved by the County's governing body at a public hearing advertised in an advertisement published at least ten (10) days prior to the hearing in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

4. Changes in law. Nothing in this agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement; the statute or regulation shall take precedence.

5. Other Persons Unaffected. Nothing in this agreement shall be deemed to affect the rights of any other person under the law.

6. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees.

7. Effective Data. This agreement shall become effective upon the last date of signing by the Intervenors, the Department or the County.

8. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the plan amendment. The acceptance of proposals for

purposes of this agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

9. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the plan amendment is in compliance.

10. Exhibits. Exhibits A, B and C are hereby incorporated by reference.

11. Negotiation of Agreement. The Department issued its notice and statement of intent to find the plan amendment not in compliance, and filed the petition in this case to that effect. Subsequent to the filing of the petition the Respondents conferred and agreed to resolve the issues in the petition, notice and statement of intent, with the exception of Future Land Use Map Amendment 95.B4 though a Stipulated Settlement Agreement filed May 21, 1997. The Intervenors subsequently filed a challenge to that Stipulated Settlement Agreement. The County has since rescinded Future Land Use Map Amendment 95.B4 and the Department has dismissed its challenge to same. The Intervenors have dismissed their challenge to the designation of the I-95/Grissom Road Interchange in Port St. John. It is the intent of this agreement to resolve fully all remaining issues between the parties in this proceeding.

12. Dismissal. If the local government completes the actions required by this agreement, including the rescission of the 1997 Stipulated Settlement Agreement, the Department shall issue a cumulative notice of intent addressing both this agreement and the initial plan amendment subject to these proceedings. The Department shall file the cumulative notice of intent with DOAH. The Intervenors shall then file a request to dismiss this proceeding.

13. Filing and Continuance. This agreement shall be filed with DOAH by the Intervenors after execution by the parties. Upon the filing of this agreement, the administrative proceeding in this matter shall be stayed by the hearing officer in accordance with Section 163.3184(16)(b), Florida Statutes.

14. Retention of Right to Final Hearing. All parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this agreement, and nothing in this agreement shall be deemed a waiver of such right. The Department or any other party to this agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this agreement is not proceeding in good faith to take that action.

15. Description of Provisions Challenged and Remedial Actions; Legal Effect of Agreement. Exhibit A to this agreement is a copy of the 1997 Stipulated Settlement Agreement, which contains the provisions challenged by the Intervenors. Exhibit B is the Intervenors' Petition challenging the 1997 Stipulated Settlement Agreement. Exhibit C contains actions agreed upon by the parties. This agreement constitutes a stipulation that if the actions are accomplished, the Intervenors will dismiss its Petition.

16. Actions to be Considered for Adoption. The County agrees to consider for adoption by formal action of its governing body all actions described in Exhibit C no later than the time period provided for in this agreement.

17. Adoption or Approval of Plan Amendments. Within sixty (60) days after execution of this agreement by the parties, the County shall consider for adoption all actions or plan amendments and amendments to the support documents. This may be done at a single

adoption hearing. Within ten (10) working days after adoption of the plan amendment, the County shall transmit five (5) copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The County also shall submit one copy to the Intervenors, the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the plan amendment. The amendment shall be transmitted to the Department along with a letter which describes the action adopted for each part of the plan amended, including references to specific portions and pages.

18. Acknowledgment. All parties to this agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the amendment.

19. Review of Amendments and Notice of Intent. Within forty-five (45) days after receipt of the adopted plan amendments and support documents, the Department shall issue a notice of intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this agreement.

a. In Compliance: If the adopted actions satisfy this agreement, the Department shall issue a cumulative notice of intent addressing both the plan amendment and the compliance agreement amendment as being in compliance. The Department shall file this cumulative notice with DOAH. The Intervenors shall then move to have this proceeding dismissed.

b. Not in Compliance: If the actions are not adopted, or if they do not satisfy this agreement, the Intervenors shall forward a notice to DOAH for a hearing as provided in Subsection 163.3184(10), Florida Statutes, and may request that the matter be consolidated with the pending proceeding for a single, final hearing. The parties hereby stipulate to that

consolidation and to the setting of a single final hearing if the Department so requests.

20. Effect of Amendment. Adoption of any compliance agreement amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

This agreement contains all the terms and conditions agreed to by the parties.

In witness whereof, the parties hereto have caused this agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

Charles Pattison, Director
Division of Resource Planning and Management

Date

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Truman G. Scarborough, Jr., Chairman
As approved by the Board on July 13, 1999.

7-13-99
Date

Attest:

Sandy Crawford
County Clerk Sandy Crawford

Assistant General Counsel

County Attorney, Scott L. Knox

INTERVENORS

David A. Theriaque, Esquire
Attorney for: FLORIDA AUDUBON SOCIETY;
FLORIDA NATIVE PLANT SOCIETY;
INDIAN RIVER AUDUBON SOCIETY;
CONRADINA CHAPTER OF THE FLORIDA
NATIVE PLANT SOCIETY;
SIERRA CLUB TURTLE COAST GROUP;
1000 FRIENDS OF FLORIDA, INC.;
and HOWARD WOLF

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

vs. DOAH CASE NO. 96-2174GM

BREVARD COUNTY,

Respondent.

_____/

STIPULATED SETTLEMENT AGREEMENT

Petitioner, Department of Community Affairs (Department), and Respondent, Brevard County(County), hereby stipulate and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: The comprehensive plan amendment adopted by the County on February 23, 1996, by Ordinance No: 96-05.

d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: Consistent with Sections 163.3177, 163.3178 and 163.3191, Florida Statutes, Section 187.201, Florida Statutes, the applicable regional policy plan, and Chapter 9J-5, Florida Administrative Code.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the plan amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the plan amendment.

2. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

3. Approval by Governing Body. This agreement has been approved by the County's governing body at a public hearing advertised in an advertisement published at least 10 days prior to the hearing in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

4. Changes in Law. Nothing in this agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence.

5. Other Persons Unaffected. Nothing in this agreement shall be deemed to affect the rights of any other person under the law.

6. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees.

7. Effective Date. This agreement shall become effective upon the last date of signing by the Department or the County.

8. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the plan amendment. The acceptance of proposals for purposes of this agreement is part of a negotiated agreement affecting many

factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

9. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the plan amendment is in compliance.

10. Exhibits. Exhibits A and B are hereby incorporated by reference.

11. Negotiation of Agreement. The Department issued its notice and statement of intent to find the plan amendment not in compliance, and filed the petition in this case to that effect. ~~Subsequent to the filing of the petition the parties conferred and agreed to resolve the issues in the petition, notice and statement of intent through this agreement. It is the intent of this agreement to resolve fully all issues between the parties in this proceeding.~~

12. Dismissal. If the local government completes the remedial actions required by this agreement, including the rescission of the plan amendment as set forth herein, the Department shall issue a cumulative notice of intent. ~~addressing both the compliance agreement amendment and the initial plan amendment subject to these proceedings.~~ The Department shall file the cumulative notice of intent with the DOAH, ~~along with a request to dismiss this proceeding.~~

13. Filing and Continuance. This agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this agreement, the administrative proceeding in this matter shall be stayed by the hearing officer in accordance with Section 163.3184(16)(b), Florida Statutes.

14. Retention of Right to Final Hearing. Both parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this agreement, and nothing in this agreement shall be deemed a waiver of such right. The Department or any other party to this agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this agreement is not proceeding in good faith to take that action.

15. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this agreement is a copy of the statement of intent, which identifies the provisions not in compliance. Exhibit B contains remedial actions needed for compliance. ~~This agreement constitutes a stipulation that if the remedial actions are accomplished, the plan amendment will be in compliance.~~

16. Remedial Actions to be Considered for Adoption. The County agrees to consider for adoption by formal action of its governing body all remedial actions described in Exhibit B no later than the time period provided for in this agreement.

17. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this agreement by the parties,

the County shall consider for adoption all remedial actions or plan amendments and amendments to the support documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the remedial plan amendment, the County shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The County also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the remedial plan amendment and a copy to any party granted intervenor status in this proceeding. The amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

18. Acknowledgement. All parties to this agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the remedial amendment.

19. Review of Remedial Amendments and Notice of Intent. Within 45 days after receipt of the adopted remedial plan amendments and support documents, the Department shall issue a notice of intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this agreement.

a. In Compliance: If the adopted remedial actions satisfy this agreement, the Department shall issue a cumulative notice of intent addressing ~~both the plan amendment and~~ the

compliance agreement amendment as being in compliance. The Department shall file this cumulative notice with DOAH, ~~and shall move to have this proceeding dismissed.~~

b. Not in Compliance: If the remedial actions are not adopted, or if they do not satisfy this agreement, the Department shall issue a notice of intent to find the plan amendment not in compliance and shall forward the notice to DOAH for a hearing as provided in Subsection 163.3184(10), Florida Statutes, and may request that the matter be consolidated with the pending proceeding for a single, final hearing. The parties hereby stipulate to that consolidation and to the setting of a single final hearing if the Department so requests.

20. Effect of Amendment. Adoption of any compliance agreement amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

This agreement contains all the terms and conditions agreed to by the parties.

In witness whereof, the parties hereto have caused this agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

Charles Pattison, Director
Division of Resource Planning
and Management

5/12/97
Date

Assistant General Counsel

BREVARD COUNTY

Title Randy O'Brien, Chairman

4-8-97
Date

Attest:

County Clerk Sandy Crawford

County Attorney Scott L. Knox

Exhibit A

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: COUNTY OF BREVARD COMPREHENSIVE PLAN AMENDMENT ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996	)	DOCKET NO. 96-1-NOI-0501-(N)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find Comprehensive Plan amendments by Brevard County, adopted by Ordinance No. 95-06 on February 23, 1996, Not In Compliance based upon the Objections, Recommendations and Comments Report (ORC Report) issued by the Department on December 22, 1995, which is hereby incorporated by reference. The Department finds that the plan amendments are not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (F.S.), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan, the East Central Florida Regional Planning Council Comprehensive Regional Policy Plan, and Chapter 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

I. FUTURE LAND USE MAP AMENDMENT NO. 95.B4

A. Inconsistent provisions. The inconsistent provision of the plan amendment under this subject heading follows:

1. The amendment is inconsistent because it establishes an incompatible land use (Residential) adjacent to Valkaria Airport. Designating the subject area with a Residential land use is internally inconsistent with the goal, objectives and policies of the Brevard County Comprehensive Plan which address compatibility of land uses with airport facilities, including, but not limited to, Ports and Aviation Related Facilities Element (PARFE) Policies 2.1 and 2.2; Objective 6 and Policies 6.12 and 6.13, Objective 7 and Policies 7.1 and 7.2.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(j)(7), 163.3177(10)(1), Florida Statutes (F.S.)

Rules 9J-5.005(5)(a); 9J-5.005(5)(b); 9J-5.006(3)(b)3.; 9J-5.006(3)(c)2.; 9J-5.009(2)(b); 9J-5.009(3)(b)1.; 9J-5.009(3)(b)3.; 9J-5.009(3)(c)1.; 9J-5.009(3)(c)2.; 9J-5.009(3)(c)5. Florida Administrative Code (F.A.C.).

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Redesignate the subject parcel with a land use that is compatible with the operations and activities of the Valkaria Airport. The County may choose to return the site to its previous Planned Industrial Park future land use designation.

II. FUTURE LAND USE ELEMENT AMENDMENTS TO POLICIES 2.6 AND 2.7 AND CONSERVATION ELEMENT AMENDMENTS TO POLICIES 5.1 AND 5.2

A. Inconsistent provisions. The inconsistent provision of these plan amendments under this subject heading follows:

1. The amendments to Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1, are inconsistent because they exempt lots which were created as of February 23, 1996, from residential density limitations of one dwelling unit per five acres. Allowing this exemption fails to protect wetlands and their functional values by directing incompatible uses away from wetlands.

2. The amendments to Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2, are inconsistent because the term "public interest" has been replaced by the term "planning interest". The term "planning interest" is vague and no definition of the term has been adopted by the County as part of its comprehensive plan. By using the term "planning interests" as a factor which will be considered in locating commercial and industrial land uses within wetlands, the policies fail to protect wetlands and their functional values by directing incompatible land uses away from wetlands.

3. The amendment establishing Conservation Element Policy 5.2., criterion H., fails to ensure that land uses which are incompatible with the protection of wetlands and wetland functional values are directed away from wetlands. The criterion does not establish a date certain for commercial and industrial lands deemed to be consistent with Policy 5.2. Using the

word "currently" rather than a date certain, results in all properties, both existing and future, being deemed consistent with the policy upon their designation as commercial (Mixed Use) or industrial.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(d), 163.3177(6)(g), Florida Statutes (F.S.)

Rules: 9J-5.005(2); 9J-5.005(5); 9J-5.006(2)(b); 9J-5.006(3)(b)4.; 9J-5.006(3)(c)1., (3)(c)6.,; 9J-5.012(2)(b); 9J-5.012(3)(b)1., and (3)(b)2.; 9J-5.012(3)(c)1. (3)(c)2., and (3)(c)14.; 9J-5.013(1)(a); 9J-5.013(2)(b)2., (2)(b)3. and (2)(b)4.; 9J-5.013(2)(c)1., (2)(c)3., (2)(c)5., (2)(c)6., and (2)(c)8.; 9J-5.013(3), Florida Administrative Code (F.A.C.)

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Revise Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1., to limit exemptions to minimum residential density requirements to lots which were lots of record at the time of plan adoption.

2. Revise Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2. to replace the term "planning interest" with "public interest".

3. Revise Conservation Element Policy 5.2.H., to establish a date certain for commercial and industrial lots deemed to be consistent with the Policy. This date should be February 23, 1996.

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Rules 9J-5.021, F.A.C.):

a. Goal 8, Water Resources, and Policies (b)4., (b)8., (b)10., and (b)12.;

b. Goal 9, Coastal and Marine Resources, and Policies (b)4., (b)5., (b)6., and (b)8.;

c. Goal 10, Natural Systems and Recreational Lands, and Policies (b)1., (b)3., (b)4., (b)7., and (b)8.;

d. Goal 16, Land Use, and Policies (b)2., and (b)6.;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B. and II.B.

IV. CONSISTENCY WITH THE EAST CENTRAL FLORIDA COMPREHENSIVE REGIONAL POLICY PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading is as follows:

1. The comprehensive plan amendment is inconsistent with the East Central Florida Regional Policy Plan goals and policies, including the following provisions (Rule 9J-5.021, F.A.C.):

a. Regional Issue 39, Protection of Natural Systems, and Policies 39.2, 39.5, 39.7, 39.8, and 39.10;

b. Regional Issue 40, Protection of Coastal Resources, and Policies 40.1, and 40.7;

c. Regional Issue 41, Protection of Marine Resources, and Policy 41.1;

d. Regional Issue 43, Protection of Natural Systems; and Policies 43.1, 43.2, 43.12, and 43.13;

e. Regional Issue 44, Protection of Endangered Species, and Policy 44.1;

f. Regional Issue 57, Balanced and Planned Development, and Policies 57.1, 57.16, and 57.17;

g. Regional Issue 58, Natural Resource Preservation, and Policies 58.1, and 58.2;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B and II.B..

CONCLUSIONS

1. The plan amendment is not consistent with the East Central Florida Regional Policy Plan.
2. The plan amendment is not consistent with the State Comprehensive Plan.
3. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
4. The plan amendment is not consistent with the requirements of Section 163.3177, Florida Statutes.
5. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes.
6. In order to bring the plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 17th day of April, 1996, at Tallahassee, Florida.

Charles Pattison

Charles G. Pattison, Director
Division of Resource Planning
and Management
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND BREVARD COUNTY
COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT NO. 95B.4,
FUTURE LAND USE ELEMENT AMENDMENT POLICIES 2.6 AND 2.7 AND
CONSERVATION ELEMENT AMENDMENT POLICIES 5.1 AND 5.2
ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996,
NOT IN COMPLIANCE AND THE REMAINING AMENDMENTS
ADOPTED PURSUANT TO ORDINANCE 96-05
IN COMPLIANCE
DOCKET NO. 96-1-NOI-0501-(A)-(I)-(N)

The Department gives notice of its intent to find Brevard County Future Land Use Map Amendment No. 95B.4, Future Land Use Element Amendment Policies 2.6 and 2.7 and Conservation Element Amendment Policies 5.1 and 5.2 adopted by Ordinance No. 96-05 on February 23, 1996, NOT IN COMPLIANCE, and the remaining amendments adopted by Ordinance No. 96-05, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.33189, F.S.

The adopted Brevard County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at Brevard County Planning Department, 2725 St. Johns Street, Suite A-144, Melbourne, Florida 32940 and the following libraries: Central and Northern Brevard, Cocoa Beach, Melbourne, Merritt Island and S. Mainland/Micco.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the Brevard County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Rule 9J-11.012(7), F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendments found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Section 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 60Q-2.010, F.A.C. No new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Section 120.57, F.S., or to participate in the administrative hearing.

for J. Thomas Beck
Charles G. Pattison, Director
Department of Community Affairs
Division of Resource Planning
and Management

FUTURE LAND USE ELEMENT

PROPOSED AMENDMENT LANGUAGE

)bjective 4

;revard County shall provide for adequate and appropriate lands for the location of :ommercial land uses, through the Land Development Regulations, to serve the needs of the ıroJected residents and visitors of the County. Brevard County shall direct new commercial and use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

A. Floodplain policies contained within Conservation Objective 4.

B. Aquifer protection policies contained within Conservation Objective 11.

C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as commercial on the future land use map as of February 23, 1996, are deemed to be consistent with this criterion.

FUTURE LAND USE ELEMENT

PROPOSED AMENDMENT LANGUAGE

Objective 5
Brevard County shall provide for adequate and appropriate lands for the locations of industrial land uses, through the Land Development Regulations, to support the role of these land uses in the County's economy. Brevard County shall direct new industrial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow industrial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

A. Floodplain policies contained within Conservation Objective 4.

B. Aquifer protection policies contained within Conservation Objective 11.

C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as heavy or light industrial or planned industrial park on the future land use map as of February 23, 1996 are deemed to be consistent with this criterion.

Post-it® Fax Note 7671	Date 2/24	# of pages 1
To John Healey-DCA	From Mel Scott	
Co./Dept. Bureau of Local Plng.	Co. Brevard County	
Phone # 904-488-5309	Phone # 407-633-2069	
Fax #	Fax #	

CONSERVATION ELEMENT

PROPOSED AMENDMENT LANGUAGE

Wetlands

Objective 5
Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

Policy 5.1
Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands, ~~but shall not be limited by the threshold or connection requirements utilized by these agencies.~~

Policy 5.2
~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

Criteria
A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:

1. Residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all

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County land development regulations and compatible with adjacent uses. Residential property which includes wetland areas should be subdivided in such a way that buildable areas are included in each lot, where sufficient uplands exist and where compatible with adjacent uses..

2. Commercial and industrial land ~~uses~~ development activities shall be prohibited in wetlands contained within commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996, unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.

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BREVARD COUNTY COMPREHENSIVE PLAN GLOSSARY

PROPOSED AMENDMENT LANGUAGE

Standard - a rule set up and established by authority for the measure of quantity, weight, extent, value or quality; a criterion on which a judgment or decision may be based.

Strive - to endeavor; to devote serious effort or energy.

Structure - anything constructed or erected, the use of which requires rigid location on the ground or attachment to something having a permanent location on the ground.

Substandard Housing Suitable for Rehabilitation - a housing unit which is suitable for human occupancy but which has some degree of hazardous conditions to the health or safety of the occupants. Also, a housing unit which is structurally sound but has visible degrees of deterioration and several housing code violations but all of which are economically feasible to correct.

Substandard Housing not Suitable for Rehabilitation - a housing unit which is structurally unsound and which possesses a serious and immediate threat to the health and safety of the occupants. Also, a housing unit which is not suitable for occupancy and the conditions or code violations are not economically feasible to correct. Would include units damaged by fire, storm, or other natural causes.

Suitability - means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development. (From 9J-5.003(134))

Support - to promote the interests or causes of; to uphold or defend as valid or right, advocate; to argue or vote for; to pay the costs of; to favor actively in the face of opposition.

Toxic Material - a type of hazardous waste that causes harm to humans or other organisms by entering the organism and interfering with normal life functions, as opposed to corrosive, ignitable, or reactive materials which cause damage by physical proximity or contact.

Transfer Station - a facility for the temporary collection of solid waste prior to transport to the processing facility.

Transitional Level of Service - a temporary acceptable level of service for a specific facility or service not to exceed 12 years, but which shall realistically reflect the minimum timeframe necessary to establish a funding source and/or remove affecting obstacles, and proceed with an appropriate improvement effort.

Tributary - a natural stream or other natural water body that flows, falls or empties into another water body. This definition is not to include non-point sources.

Type 1 Aquifer Recharge Areas - those areas which are within the City of Titusville's Area of Critical Concern, or are within five hundred (500) feet of a public water supply well or within the boundaries of a development that proposes a public water supply well provided that this area serves to recharge the aquifer from which the well draws and which have highly permeable soils.

Type 2 Aquifer Recharge Areas - those areas which are not classified as Type 1 aquifer recharge areas and are above 30 feet mean sea level and have highly permeable soils.

Type 3 Aquifer Recharge Areas - those areas which have highly permeable soils and are below 30 feet mean sea level.

Unique Farmlands - those lands which possess a special complement of location, soil characteristics, growing season and moisture supply that result in high productivity for specialty crops such as fruits, vegetables and vineyards.

Units Per Acre - the number of residential units allowed as a maximum per acre. This term may describe an aggregate density over a large tract or a building lot size.

Urban Sprawl - a land development pattern characterized by the location of development in areas where public facilities and services cannot be provided efficiently.

Urban-District Park - generally contain 100 to 499 acres and serve several communities in the metropolitan area.

Utility Corridor - an inter-county corridor established for rail transportation of persons and/or cargo and one or more of the following: the location of lines for the transmission of water, electricity, communications, petroleum products, products of a public utility (including new technologies of a public utility nature), or materials.

Very Low Income Household - a household which possesses a household income of less than 50 percent of the median income.

Water-Dependent Uses - activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for: waterborne transportation including ports and marinas; recreation; electrical generating facilities; or water supply.

Water Enhanced Uses - activities which are not water dependent but whose value is increased due to location along the water. This increased value is not related to the increased property values of water-front property. Water enhanced uses include restaurants, some upland recreational areas and tourist attractions.

Water Related Uses - activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses. These land uses include bait and tackle shops, and boat sales and rentals.

Water's Edge Wetlands - wetlands which are a transitional area between dry land and open water.

Wetlands - wetlands as defined by the Florida Department of Environmental Regulation (FDER) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types. ~~Threshold and connection requirements of FDER and SJRWMD shall not be used.~~

Wetland Functionality - is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland-dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table. (From Chapter 62-3691, Brevard County Code of Ordinances).

conserve wetlands within Brevard County, as required by the Local Government Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes ("Growth Management Act"). Accordingly, the Petitioners contend that the amendments to Future Land Use Element Objectives 4 and 5, and Conservation Element Policy 5.2 of the Brevard County Comprehensive Plan, adopted by Ordinance Nos. 96-05 and 97-22, are not "in compliance" as defined in section 163.3184(1)(b), Florida Statutes (Supp. 1996).

PROCEDURAL HISTORY

2. On or about October 18, 1995, Brevard County submitted to the DCA proposed amendments to the Brevard County Comprehensive Plan.

3. On December 22, 1995, the DCA issued an Objections, Recommendations and Comments Report ("ORC Report") to the County, finding such plan amendments to be not "in compliance," as defined in section 163.3184(1)(b), Florida Statutes, because the plan amendments were inconsistent with sections 163.3177 and 187.201, Florida Statutes; the East Central Florida Regional Planning Council Comprehensive Regional Policy Plan; and Chapter 9J-5, Florida Administrative Code.

4. On February 23, 1996, Brevard County adopted Ordinance No. 96-05. This ordinance amended the Brevard County Comprehensive Plan. The amendments include changes to the Future Land Use Element and Conservation Element, changes which the Petitioners contend fail to protect and conserve wetlands within Brevard County.

5. On April 18, 1996, the DCA issued a Notice of Intent to find the amendments adopted by Ordinance No. 96-05 not "in compliance." The DCA subsequently filed a request for an administrative hearing with the Division of Administrative Hearings.

6. On May 9, 1996, Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group filed a Petition for Leave to Intervene in that administrative proceeding. The Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group alleged that the amendments to the Brevard County Comprehensive Plan, as adopted in Ordinance No. 96-05, were not "in compliance."

7. On May 12, 1997, the DCA entered into a Stipulated Settlement Agreement with Brevard County regarding Ordinance No. 96-05 and its amendments to the Brevard County Comprehensive Plan. The Stipulated Settlement Agreement that had been negotiated by the County and the DCA, required the County to adopt remedial amendments to Ordinance No. 96-05. Once these negotiated remedial amendments had been adopted, the DCA agreed to change its determination regarding the amendments to the Brevard County Comprehensive Plan from "not in compliance" to "in compliance."

8. On July 1, 1997, Brevard County adopted Ordinance No. 97-22. This ordinance adopted the negotiated remedial amendments to Ordinance No. 96-05 as specified by the Stipulated Settlement Agreement.

A. Name and Address of Each Agency Affected

9. Respondent DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), whose mailing address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, is the state

agency responsible for enforcing the requirements of the Growth Management Act. The DCA's docket number for this case is 97R1-NOI-0501-(A)-(I). The DCA is the designated State Land Planning Agency.

10. Respondent BREVARD COUNTY ("County"), whose mailing address is 2575 North Courtenay Parkway, Suite 200, Merritt Island, Florida 32953, is a "Local Government" and a "Governmental Agency" as defined in section 163.3164, Florida Statutes (1995). The County, through its Board of County Commissioners, is responsible for implementing the requirements of the Growth Management Act.

B. Petitioners' Substantial Interests

11. Petitioner FLORIDA NATIVE PLANT SOCIETY ("Plant Society"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 6116, Spring Hill, Florida 34606. The Plant Society is a public interest organization dedicated to the preservation, conservation, and restoration of the native plants and native plant communities of Florida.

12. The members of the Plant Society reside, own property, and operate businesses in Brevard County, and participate in plant identification, inventories of plant communities, and other educational and recreational activities in the natural systems of Brevard County. The Plant Society submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the Plant Society is an "affected person" as defined in section 163.3184(1), Florida Statutes (Supp. 1996).

13. Petitioner INDIAN RIVER AUDUBON SOCIETY ("IRAS"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 1741, Cocoa, Florida 32923. The IRAS is a public interest organization dedicated to the preservation of irreplaceable natural resources, protection of birds, wildlife and their habitats, and the restoration of Earth's ecosystems.

14. The members of the IRAS reside, own property, and operate businesses in Brevard County, and participate in local habitat restoration projects, bird counts, and other conservation, educational, and recreational activities in the natural system of Brevard County. The IRAS submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the IRAS is an "affected person" as defined in section 163.3184(1).

15. Petitioner SIERRA CLUB TURTLE COAST GROUP ("SCTCG"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 061887, Palm Bay, Florida 32906. The SCTCG is the local chapter of the national Sierra Club, a not-for-profit public interest corporation. Like the national Sierra Club, the SCTCG's purpose is to explore, enjoy, and protect the wild places of the Earth and to practice and promote the responsible use of the environment.

16. The members of the SCTCG reside, own property, and operate businesses in Brevard County, and participate in local conservation efforts, service outings, and recreational activities to preserve and enjoy Brevard County's natural areas including wetlands. The SCTCG submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the SCTCG is an "affected person" as defined in section 163.3184(1).

C. Petitioners' Receipt of DCA's Notice of Intent

17. On August 11, 1997, the Petitioners were informed of the DCA's intention to find portions of the amended Brevard County Comprehensive Plan adopted by Ordinance No. 96-05, as revised by the remedial amendment adopted by Ordinance No. 97-22, "in compliance" through the publication of the DCA's Notice of Intent in the *Florida Today*.

D. Disputed Issues of Material Fact

1. Amended Future Land Use Element Objective 4

18. Whether Amended Future Land Use Element Objective 4 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

19. Whether Amended Future Land Use Element Objective 4 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

20. Whether Amended Future Land Use Element Objective 4 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

21. Whether the factors listed in Amended Future Land Use Element Objective 4 for determining the suitability of locating commercial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

22. Whether Amended Future Land Use Element Objective 4 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections

163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

23. Whether the exception set forth in Amended Future Land Use Element Objective 4 for "lands which are designated as commercial on the future land use map as of February 23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

24. Whether Amended Future Land Use Element Objective 4 is supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

25. Whether absent such data and analysis for Amended Future Land Use Objective 4, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

26. Whether Amended Future Land Use Element Objective 4 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

27. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Future Land Use Element Objective 4 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

2. Amended Future Land Use Element Objective 5

28. Whether Amended Future Land Use Element Objective 5 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

29. Whether Amended Future Land Use Element Objective 5 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

30. Whether Amended Future Land Use Element Objective 5 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

31. Whether the factors listed in Future Land Use Element Objective 5 for determining the suitability of locating industrial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

32. Whether the Amended Future Land Use Element Objective 5 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

33. Whether the exception set forth in Amended Future Land Use Element Objective 5 for "lands which are designated as industrial on the future land use map as of February 23, 1996," results in such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

34. Whether Amended Future Land Use Element Objective 5 is supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

35. Whether absent such data and analysis for Amended Future Land Use Objective 5, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

36. Whether Amended Future Land Use Element Objective 5 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including but not limited to floodplains, wildlife and wildlife habitat, and ground and surface water quality.

37. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Future Land Use Element Objective 5 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

3. Amended Conservation Element Policy 5.2

38. Whether Amended Conservation Element Policy 5.2 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

39. Whether Amended Conservation Element Policy 5.2 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

40. Whether Amended Conservation Element Policy 5.2 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

41. Whether Amended Conservation Element Policy 5.2 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

42. Whether the exemptions contained in Amended Conservation Element Policy 5.2 are inconsistent with conserving and protecting the natural environment, including wetlands.

43. Whether Amended Conservation Element Policy 5.2 is supported by data and analysis which assesses the impact of this Policy on wetlands by type, value, function, size, condition, and location.

44. Whether absent such data and analysis for Amended Conservation Element Policy 5.2, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

45. Whether Amended Conservation Element Policy 5.2 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of

the Brevard County Comprehensive Plan addressing protection of natural resources, including but not limited to floodplains, wildlife and wildlife habitat, and ground and surface water quality.

46. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Conservation Element Policy 5.2 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

E. Statement of Ultimate Facts

1. Amended Future Land Use Element Objective 4

47. Amended Future Land Use Element Objective 4 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C, because it does not provide for the protection of wetlands as required by law.

48. Amended Future Land Use Element Objective 4 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

49. The factors listed in Amended Future Land Use Element Objective 4 for determining the suitability of locating commercial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

50. Amended Future Land Use Element Objective 4 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

51. Amended Future Land Use Element Objective 4 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1)

and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

52. The exception set forth in Amended Future Land Use Element Objective 4 for "lands which are designated as commercial on the future land use map as of February 23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

53. Amended Future Land Use Element Objective 4 is not supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

54. Absent such data and analysis for Amended Future Land Use Element Objective 4, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

55. Amended Future Land Use Element Objective 4 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

56. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Future Land Use Element Objective 4 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

2. Amended Future Land Use Element Objective 5

57. Amended Future Land Use Element Objective 5 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

58. Amended Future Land Use Element Objective 5 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

59. Amended Future Land Use Element Objective 5 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

60. The factors listed in Amended Future Land Use Element Objective 5 for determining the suitability of locating industrial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

61. Amended Future Land Use Element Objective 5 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

62. The exception set forth in Amended Future Land Use Element Objective 5 for "lands which are designated as industrial on the future land use map as of February 23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

63. Amended Future Land Use Element Objective 5 is not supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

64. Absent such data and analysis for Amended Future Land Use Element Objective 5, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

65. Amended Future Land Use Element Objective 5 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

66. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Future Land Use Element Objective 5 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

3. Amended Conservation Element Policy 5.2

67. Amended Conservation Element Policy 5.2 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

68. Amended Conservation Element Policy 5.2 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

69. Amended Conservation Element Policy 5.2 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

70. Amended Conservation Element Policy 5.2 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

71. The exemptions contained in Amended Conservation Element Policy 5.2 are inconsistent with conserving and protecting the natural environment, including wetlands.

72. Amended Conservation Element Policy 5.2 is not supported by data and analysis which assesses the impact of this Policy on wetlands by type, value, function, size, condition, and location.

73. Absent such data and analysis for Amended Conservation Element Policy 5.2, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

74. Amended Conservation Element Policy 5.2 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

75. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Conservation Element Policy 5.2 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

F. Petitioners' Demand for Relief

WHEREFORE, Petitioners Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group request that the following relief be granted:

A. That the Administrative Law Judge enter a Recommended Order finding that the Department of Community Affairs erroneously determined that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, were "in compliance."

B. That the Department of Community Affairs determine that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, are not "in compliance," and forward the matter to the Administration Commission.

C. That the Administration Commission enter a Final Order finding that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, are not "in compliance," and imposing sanctions if the County fails to rescind the Ordinances.

David A. Theriaque
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KENNETH B. HAYMAN, ESQUIRE
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Tallahassee, Florida 32301
Telephone: (904) 224-7332
Telecopier: (904) 224-7662

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished to the Department of Administrative Hearings for filing by hand-delivery, and that a true and correct copy of the foregoing has been furnished by United States Mail to Scott L. Knox, Esquire, Brevard County Attorney, 2725 St. Johns Street, Melbourne, Florida 32940; and Shaw P. Stiller, Esquire, Assistant General Counsel, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, FL 32399-2100, this 2nd day of September, 1997.

David A. Theriaque

DAVID A. THERIAQUE, ESQUIRE

STIPULATED SETTLEMENT AGREEMENT

DUPLICATIVE POLICY AMENDMENTS

The words in bold represents language that was added to the following policies as part of the duplicative amendment process in 1995.

1) CONSERVATION ELEMENT

Policy 4.6

New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible. ~~Brevard County shall encourage the re-establishment of the natural drainage basins and end the diversion of floodwaters from the historic St. John's drainage basin to the Indian River Lagoon system.~~

SURFACE WATER ELEMENT

Policy 4.1

New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible. ~~New surface water interbasin diversions shall be prohibited. The reduction or elimination of existing interbasin diversions to re-establish the historic St. John's River drainage basin shall be encouraged. (State policies 9.4, 9.7)~~

CONSERVATION ELEMENT

~~Policy 3.6~~

~~New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible.~~

2) SURFACE WATER ELEMENT

Policy 4.10

Public facilities should not be located within the 100-year floodplain or wetland areas unless the following apply:

Criteria:

A. The facilities are water-dependent, such as mosquito control facilities excluding their chemical storage areas; or

B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or

C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or

D. The building structures are floodproofed and located above the 100-year flood elevation or removed from the floodplain by appropriately constructed dikes or levees; or

E. The facilities are found to be in the public interest and there is no feasible alternative.

EXHIBIT C

3) HISTORIC PRESERVATION ELEMENT

Policy 2.9

Historic resources and their environments should be included in public acquisition programs for recreation, open space, and conservation areas.

Criteria:

A. Any development or activities planned for these sites shall be passive in nature and shall not endanger the integrity and character of the resource.

B. Exact locations of known archaeological sites purchased shall not be publicized to protect these resources from vandalism, unless proper security can be provided.

4) FUTURE LAND USE ELEMENT

Policy 2.13

All public and private development and redevelopment proposals, including those for infrastructure, should be reviewed for the impact upon designated historic resources.

D. Inventories of historic resources identified by the Historic Preservation element shall be utilized in locating future roadways and in expanding existing roadways. If a determination is made that there will be a potentially negative impact to a historic resource, the County shall notify the Florida Division of Historical Resources and the County preservation agent.

TRAFFIC CIRCULATION ELEMENT

Policy 2.1.3

Brevard County shall avoid negative impacts on significant historic resources during the construction or maintenance of roadways as described below and in the Future Land Use Element. (SCP 19.6)

Criteria:

~~A. Inventories of historic resources identified by the Historic Preservation element shall be utilized in locating future roadways and in expanding existing roadways. If a determination is made that there will be a potentially negative impact to a historic resource, the County shall notify the Florida Division of Historical Resources and the County preservation agent.~~

~~B. In the event of the discovery of artifacts of historic or archaeological significance during project construction, the construction shall immediately stop in the area of the discovery. The Florida Division of Historical Resources and the County Preservation agent shall be notified. From the date of notification, construction shall be suspended for a period of up to 30 days to allow for an initial evaluation of the sit within 20 feet of the discovery. If the resource is found to be potentially significant, activities shall be further suspended for up to 30 days to allow for further evaluation.~~

~~C.~~ A. Review all the FDOT cultural resource surveys and assessments to identify historical properties or archaeological resources. Give consideration to those projects which minimize or avoid negative impacts on the resources. (SCP 19.6; FTP 62. 1)

5) MASS TRANSIT ELEMENT

Policy 3.2

Mass transit facilities and services shall be commensurate with and properly timed with projected needs. (SCP 16.1; CRPP 63.5)

Criteria

A. Brevard County shall ~~should~~ support the Metropolitan Planning Organization in the updating of the Brevard County Transit Development Plan.

B. Once the Brevard County Transit Development Plan is prepared, Brevard County should implement those portions for which the County is responsible.

6) TRAFFIC CIRCULATION ELEMENT

Policy 1.2.1

Support programs which encourage the sharing and use of high occupancy vehicles. (CRPP 64.14)

Criteria:

A. Incentives, such as priority parking, shall ~~should~~ be adopted to promote the use of vanpools or carpools in the urban and urbanizing service sectors. (SCP 20.9; FTP 63.2)

B. Support the designation of high occupancy vehicle lanes where deemed feasible and increase peak hour user ridership for transit and other high occupancy vehicles. (SCP 20.9; FTP 63.3)

C. Participate with employers in implementing. demand management programs to reduce traffic impacts specifically on US 1, I-95, SR AIA, SR 520, SR 528 and Patrick Drive. (SCP 16.57; SCP 19.63; FTP 42.3.2; FTP 63.8; FTP 63/9; FTP 64.11; FTP 65.1; FTP 74.1)

D. Ridesharing and staggered work hours for employee intensive businesses and industries shall be an optional program made available with participation resulting in relief to the operating LOS allowing utilization as available capacity. As a minimum, the following requirements shall be met by a participating entity:

1. Basic information such as the total number of original and required parking spaces, the total number of employees per workshift the total number of workshifts, the beginning and ending hours of each workshift, and the distribution of the work trips by affected roadways shall be submitted.

2. Configuration or reconfiguration of the parking facilities shall reflect that a minimum of 10 percent of the required parking spaces are devoted only to registered car pool and van pool employees, and that said spaces be more conveniently located to the work building(s) than non-pool vehicle spaces.

3. New construction or expansion of a business or industry existing floor area shall have parking space requirements commensurate with Criterion B, assuming an average of 5 persons per car or van pool vehicle. Sample calculation: A single shift 250,000 industrial square foot operation would require a minimum of 500 spaces; if the owner provided 15 percent or 75 spaces for car or van pool vehicles, these spaces could accommodate 375 employees and reduce the needed single occupancy spaces to 125; the total number of trips (parking spaces) could be reduced by 300 per workshift

4. Use of car pool or van pools or non-traditional peak hours for workshifts shall result in an impact fee credit, provided an agreement is signed that provides for proper documentation of trip impact reduction, a ridesharing and/or staggered work hour plan and implementation program, and penalties for non-performance.

5. Other provisions as may be necessary to establish a comprehensive program, including strict enforcement procedures, may supplement those herein as regulations are developed and approved to implement this program.

7) PORTS, AVIATION, AND RELATED FACILITIES ELEMENT

Policy 8.3

Brevard County shall support and encourage the development of alternative sources for water use for space related industrial purposes rather than industries relying on public potable water supplies for industrial use.

Future Land Use Objective 4

Brevard County shall provide for adequate and appropriate lands for the location of commercial land uses, through the Land Development Regulations, to serve the needs of the projected residents and visitors to the County. Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use and for all other measures to ensure wetland function. During the review of proposed amendments to the future land use map, which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria:

Criteria:

A. Floodplain policies contained within Conservation Objective 4.
B. Aquifer protection policies contained within Conservation Objective 11.
C. Types, values, conditions, functions, and locations of wetlands, and wetlands protection policies contained in Conservation Objective 5.

Future Land Use Objective 5

Brevard County shall provide for adequate and appropriate lands for the location of industrial land uses, through the Land Development Regulations, to support the role of these uses in the County's economy. Brevard County shall direct new industrial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use and for all other measures to ensure wetland function. During the review of proposed amendments to the future land use map, which would allow industrial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria:

A. Floodplain policies contained within Conservation Objective 4.
B. Aquifer protection policies contained within Conservation Objective 11.
C. Types, values, conditions, functions, and locations of wetlands, and wetland protection policies contained in Conservation Objective 5.

Conservation Element Objective 5

Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

Conservation Element Policy 5. 1

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands ~~but shall not be limited by threshold or connection requirements utilized by these agencies.~~

Conservation Element Policy 5.2

~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

Conservation Element Policy 5.2.F
The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if other criteria established in Conservation Element Policy 5.2 are met:

1. Residential land uses shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses. Residential property which includes wetland areas shall be subdivided in such a way that buildable areas are included in each lot. Subdivided lots shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.

2. Commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial after February 23, 1996, and in surrounding buffers for such wetlands, with specifications based on the *Buffer Zones for Water, Wetlands, and Wildlife in the East Central Florida Region,* (1990, Brown, M.T., Schaefer, and K. Brandt, published by the Center for Wetlands, University of Florida), except for certain commercial development at I-95 interchanges that are consistent with the following criteria:

a. There will be no less than 100,000 square feet of commercial building within a project;
b. There is current overcapacity on the adjacent roadways, and it is projected that roadway capacity within four (4) miles of the intersection will be no more than 80% of the congestion ratio (the ratio of projected volume to maximum allowable volume) after 500,000 square feet of commercial space has been developed within one half mile of the intersection of the off-ramp with the connecting roadway;
c. Wetland mitigation shall equal or exceed 125% of the mitigation which is otherwise required;
d. The development is located within one half mile of the intersection of the off-ramp with the connecting roadway;
e. There will be no more than two curb cuts on each quadrangle of the interchange within one-half mile of the connection of the off-ramp and the connecting roadway; and
f. A maximum of 40 (forty) acres shall be allotted in proximity to the interchange, counting both sides.

3. Commercial and industrial land development activities may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial prior to February 23, 1996, only if all of the following criteria are met:

a. The property is substantially surrounded by land(s) developed as commercial or industrial as of February 23, 1996, and has sufficient infrastructure in place to serve the commercial or industrial use.
b. The proposed land development activity will not result in increased flooding problems on adjacent properties.
c. The wetland is not classified by the Florida Land Use, cover and Forms classification system (1985) as a Stream and Lake Swamp (FLUCS 615), Cypress (FLUCS 621), Atlantic White Cedar (FLUCS 623), Wetland Forested Mixed (FLUCS 630), or Wet Prairies (FLUCS 643).

For wetlands specified in 5.2.F.3(c), the wetland functionality shall be maintained and protected by a 15 foot natural, native vegetative buffer for isolated wetlands and by a 50 foot natural, native vegetative buffer for other wetlands.

The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCS 615, 621, 623, 630 and 643), which also possess commercial or industrial zoning classifications and Future Land Use Map designations as of February 23, 1996, and is incorporated herein by this reference.

4. In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the Board of County Commissioners in the manner provided in Section 62-507(b)(2), Code of Ordinances of Brevard County, Florida.

Proposed Glossary Definitions

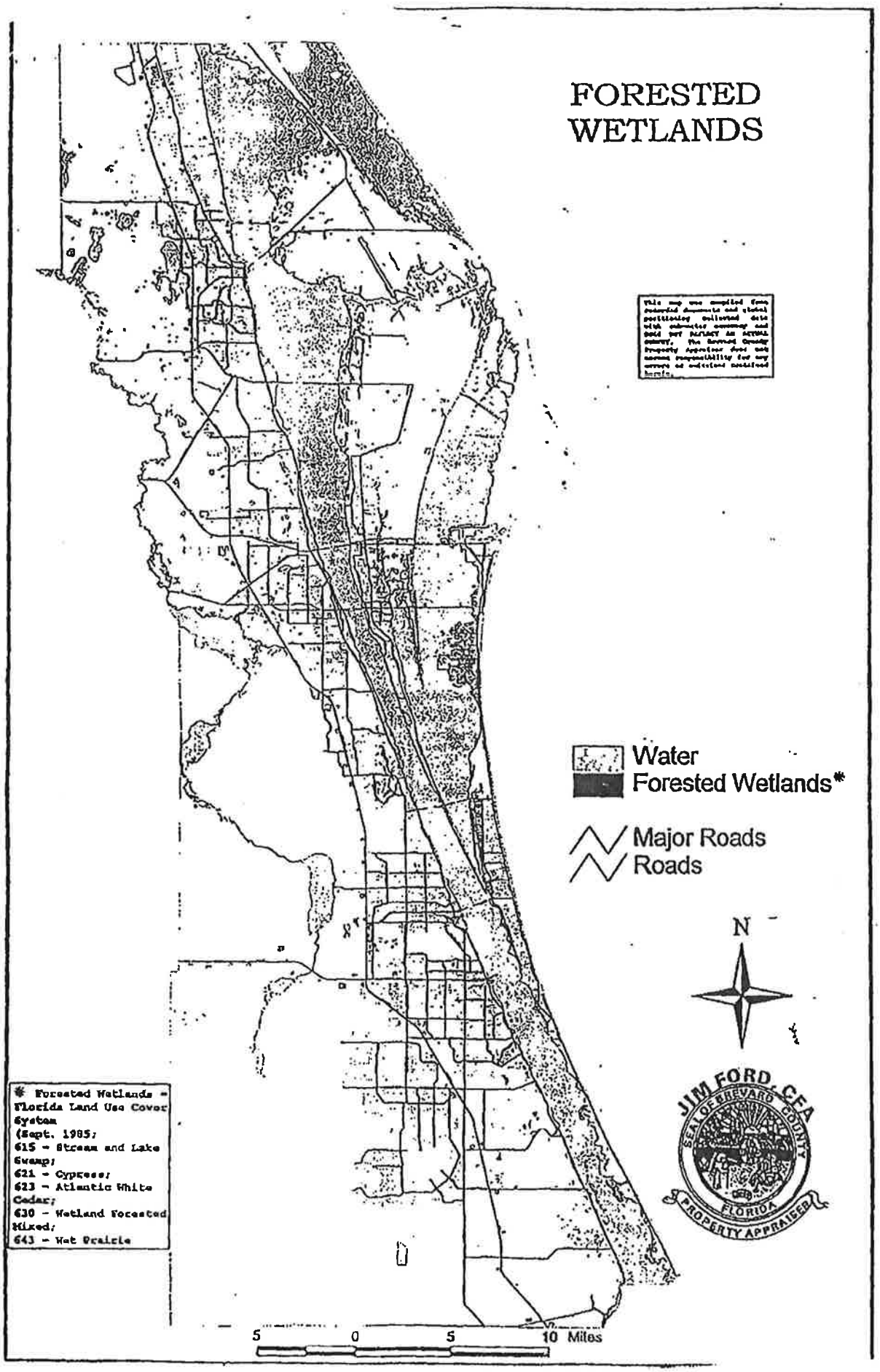
Substantially Surrounded - when a parcel of land is bordered on two sides by land developed as commercial or industrial. Such commercial or industrial development should abut the subject land.

Suitability - Means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development. (From 9J-5.003(134))

Wetland Functionality - is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table. (from Chapter 62-3691, Brevard County Code of Ordinances)

Modification to Existing Glossary Definition

Wetlands - wetlands as defined by the Florida Department of Environmental Regulation (FDER) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types. ~~Threshold and connection requirements of FDER and SJRWMD shall not be used.~~


FORESTED WETLANDS
Water
Forested Wetlands*
Major Roads
Roads
N
JIM FORD, CFA
SEAL OF BREVARD COUNTY
FLORIDA
PROPERTY APPRAISER
* Forested Wetlands - Florida Land Use Cover System (Sept. 1985; 615 - Stream and Lake Swamp; 621 - Cypress; 623 - Atlantic White Cedar; 630 - Wetland Forested Mixed; 643 - Wet Prairie
5 0 5 10 Miles

Brevard County, Florida - Clerk of the Court

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Meeting Minutes

PUBLIC HEARING, RE: RESOLUTION REVISING FEE SCHEDULE FOR TABLING AND WAIVER OF REAPPLICATION FEES

Chairman Scarborough called for the public hearing to consider a resolution revising fee schedule for tabling and waiver of reapplication fees.

There being no comments or objections, motion was made by Commissioner Higgs, seconded by Commissioner Voltz, to adopt Resolution revising the fee schedule for tabling and waiver of reapplication fees. Motion carried and ordered unanimously.

Zoning Official Rick Enos stated there is one remaining issue; the new conditional use permit section says if someone is altering the original floor area by 50% or greater, or the seating capacity of a structure, a full reproducible site plan signed by a registered engineer, land surveyor or architect is required; Mr. Hester submitted a sketch plan; and the problem is that the existing structure is not going to be added to, but will be changed from single family to a church, so the question of the seating capacity comes up. Mr. Enos inquired if the floor area is being changed; with Mr. Hester responding the floor area is not being changed, but they will be taking out one seven-foot wall within the facility which will allow enough seating for approximately 75, although only 25 to 35 meet there. Mr. Enos stated Mr. Hester is not really altering the seating capacity because he is changing uses. Chairman Scarborough inquired as a substantive matter, does staff have a problem with it; with Mr. Enos responding as a substantive matter, there is no problem. Chairman Scarborough inquired if the County Attorney has any problem with being lenient. Assistant County Attorney Eden Bentley responded if it is within the parameters and is simply a more flexible interpretation, she does not have a problem with it.

Motion by Commissioner Voltz, seconded by Commissioner O'Brien, to approve Item 9 as recommended. Motion carried and ordered unanimously.

PUBLIC HEARING, RE: ORDINANCE AMENDING ARTICLE III, CHAPTER 62, TO ADOPT REMEDIAL COMPREHENSIVE PLAN AMENDMENTS RELATING TO WETLANDS

Chairman Scarborough called for the public hearing to consider an ordinance amending Article III, Chapter 62, to adopt remedial Comprehensive Plan Amendments relating to wetlands.

Charles Moehle, representing Modern, Inc., commented on last minute changes to the maps.

Commissioner Voltz stated the Board submitted the amendment to the Department of Community Affairs with 192 acres; now it is 419 acres; and the only reason she voted for it was because it was only 192 acres, and now

it is more than double that. She inquired if there is anything the Board can do about it since it has already been submitted to DCA. Assistant County Attorney Eden Bentley responded there is a discrepancy between the policy and the map; and the policy is what controls. She stated the discrepancy could create confusions; this is attempting to correct what is basically a scrivener's error; and it is not a change from what the Board did. Commissioner Voltz expressed objection because it is more than double the acreage the Board originally talked about; stated her support was because it was only 192 acres; and she is concerned because no one is present and this meeting is not televised.

Commissioner O'Brien stated this could be moved to a Tuesday meeting which would be televised. Commissioner Voltz commented on getting the word out and the numbers. She inquired how this affects the new pieces of property which are doubled; with Ms. Bentley responding it does not affect them because the policy always included all of the area now included in the map.

There being no further objections or comments, motion was made by Commissioner Carlson, seconded by Commissioner Higgs, to adopt an Ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The 1988 Comprehensive Plan", setting forth remedial plan amendments as specified within a stipulated settlement agreement between Brevard County, The Department of Community Affairs, the Sierra Club Turtle Coast Group, the Florida Audubon Society, the Indian River Audubon Society, the Florida Native Plant Society, the Conradina Chapter of the Florida Native Plant Society, 1000 Friends of Florida, and Howard Wolf relating to Section 62-501, Part I, entitled The Conservation Element; Section 62-501, Part XIII, entitled The Future Land Use Element; Section 62-501, Part XVI, entitled the Comprehensive Plan Glossary; and provisions which require amendment to maintain internal consistency with the amendments; providing legal status; providing a severability clause; and providing an effective date. Motion carried and ordered. Commissioners Scarborough, O'Brien, Higgs, and Carlson voted aye; and Commissioner Voltz voted nay.

DIRECTION, RE: PUBLIC HEARINGS ON ORDINANCES

Chairman Scarborough stated ordinances which are of general interest need to be discussed where people can view it.

Chairman Scarborough passed the gavel to Vice Chairman Higgs.

Motion by Commissioner Scarborough, seconded by Commissioner Voltz, to direct that public hearings for ordinances of a general nature be considered only at televised meetings. Motion carried and ordered unanimously.

Vice Chairman Higgs passed the gavel to Chairman Scarborough.

STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Helping Floridians create safe, vibrant, sustainable communities"

JEB BUSH
Governor

STEVEN M. SEIBERT
Secretary

October 28, 1999

The Honorable Truman Scarborough, Chairman
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Dear Chairman Scarborough:

The Department has completed its review of the Compliance Agreement Amendment for Brevard County DCA. No. 99-R2 adopted by Ordinance Nos.99-48 on August 24, 1999, and 99-52 on October 7, 1999, and determined that it meets the requirements of Chapter 163, Part II, Florida Statutes (F.S.), for compliance, as defined in Subsection 163.3184(1)(b). The Department is issuing a Cumulative Notice of Intent to find the plan amendment 96-1 adopted by Ordinance No.96-05 on February 23, 1996, as well as the remedial amendment adopted by Ordinance Nos. 99-48 on August 24, 1999, and 99-52 on October 7, 1999, In Compliance. The Cumulative Notice of Intent has been sent to the Florida Today for publication on October 29, 1999.

Please note that a copy of the adopted Brevard County Comprehensive Plan Amendments, and the Notice of Intent must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Brevard County Growth Management Department, Building A, 2725 Judge Fran Jamison Way, Viera, Florida 32940 and the following public libraries: Central Brevard, Cocoa Beach, Melbourne, Franklin T. DeGroot, Merritt Island, Pt. St. John, Titusville and South Mainland/Micco.

Within five days of the publication of the Cumulative Notice of Intent, the Department will file a motion to dismiss the pending administrative hearing on your plan. The Department will also request that the administrative law judge relinquish jurisdiction over your plan so that the Administration Commission can enter an order finding the plan, as amended, "In Compliance."

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
Phone: (850) 488-8466/Suncom 278-8466 FAX: (850) 921-0781/Suncom 291-0781
Internet address: http://www.state.fl.us/comaff/

FLORIDA KEYS
Area of Critical State Concern Field Office
2796 Overseas Highway, Suite 212
Marathon, Florida 33050-2227

GREEN SWAMP
Area of Critical State Concern Field Office
205 East Main Street, Suite 104
Bartow, Florida 33830-4641

However, you should be aware that "affected parties" will have 21 days from the date of publication of the Notice of Intent to challenge the Department's compliance determination.

If you have any questions, please contact James Stansbury, Community Program Administrator at (850) 487-4545.

Sincerely,

Bob Cambric, AICP
Growth Management Administrator
Bureau of Local Planning

BC/js

Enclosure: Cumulative Notice of Intent

cc: Ms. Christine Lepore, Assistant County Attorney
Ms. Sandra Glenn, Executive Director, East Central Florida Regional Planning Council

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
AMENDED CUMULATIVE NOTICE OF INTENT TO FIND THE
BREVARD COUNTY COMPREHENSIVE PLAN AMENDMENTS
AND REMEDIAL COMPREHENSIVE PLAN AMENDMENT
IN COMPLIANCE
DOCKET NO. 99R2-NOI-0501-(A)-(I)

The Department issues this Amended Cumulative Notice of Intent to find the remaining portion of Brevard County Comprehensive Plan Amendment 96-1 adopted by Ordinance No. 96-05 on February 23, 1996, and the remedial amendments adopted by Ordinance 99-48 on August 24, 1999, and Ordinance No. 99-52 on October 7, 1999, IN COMPLIANCE, pursuant to Section 163.3184, 163.3187 and 163.3189, F.S. Ordinance No. 99-52 corrects and adopts a revised Forested Wetlands Location Map that was previously adopted by Ordinance No. 99-48. This Cumulative Notice has no effect on any other Amendment to Brevard County's Comprehensive Plan adopted by ordinance other than Ordinance No. 99-52.

The adopted Brevard County Comprehensive Plan Amendments and the Department's Objections, Recommendations, and Comments Report, (if any), are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Brevard County Growth Management Department, Building A, 2725 Judge Fran Jamison Way, Viera, Florida 32940 and the following public libraries: Central Brevard, Cocoa Beach, Melbourne, Franklin T. DeGroot, Merritt Island, Pt. St. John, Titusville and South Mainland/Micco.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the original Comprehensive Plan Amendments and Remedial Amendment are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100 and a copy mailed or delivered to the local government. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If a petition is filed, other affected persons may petition for leave to intervene in the proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Administration, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing under Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.

for Charles Gauthier, AICP
Chief, Bureau of Local Planning
Department of Community Affairs
Division of Community Planning
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

I. FUTURE LAND USE MAP AMENDMENT NO. 95.B4

A. Inconsistent provisions. The inconsistent provision of the plan amendment under this subject heading follows:

1. The amendment is inconsistent because it establishes an incompatible land use (Residential) adjacent to Valkaria Airport. Designating the subject area with a Residential land use is internally inconsistent with the goal, objectives and policies of the Brevard County Comprehensive Plan which address compatibility of land uses with airport facilities, including, but not limited to, Ports and Aviation Related Facilities Element (PARFE) Policies 2.1 and 2.2, Objective 6 and Policies 6.12 and 6.13, Objective 7 and Policies 7.1 and 7.2.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(j)(7), 163.3177(10)(1), Florida Statutes (F.S.)

Rules 9J-5.005(5)(a); 9J-5.005(5)(b); 9J-5.006(3)(b)3.; 9J-5.006(3)(c)2.; 9J-5.009(2)(b); 9J-5.009(3)(b)1.; 9J-5.009(3)(b)3.; 9J-5.009(3)(c)1.; 9J-5.009(3)(c)2.; 9J-5.009(3)(c)5. Florida A Administrative Code (F.A.C.).

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Redesignate the subject parcel with a land use that is compatible with the operations and activities of the Valkaria Airport. The County may choose to return the site to its previous Planned Industrial Park future land use designation.

II. FUTURE LAND USE ELEMENT AMENDMENTS TO POLICIES 2.6 AND 2.7 AND CONSERVATION ELEMENT AMENDMENTS TO POLICIES 5.1 AND 5.2

A. Inconsistent provisions. The inconsistent provision of these plan amendments under this subject heading follows:

1. The amendments to Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1, are inconsistent because they exempt lots which were created as of February 23, 1996, from residential density limitations of one dwelling unit per five acres. Allowing this exemption fails to protect wetlands and their functional values by directing incompatible uses away from wetlands.

2. The amendments to Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2, are inconsistent because the term "public interest" has been replaced by the term "planning interest". The term "planning interest" is vague and no definition of the term has been adopted by the County as part of its comprehensive plan. By using the term "planning interests" as a factor which will be considered in locating commercial and industrial land uses within wetlands, the policies fail to protect wetlands and their functional values by directing incompatible land uses away from wetlands.

3. The amendment establishing Conservation Element Policy 5.2., criterion H., fails to ensure that land uses which are incompatible with the protection of wetlands and wetland functional values are directed away from wetlands. The criterion does not establish a date certain for commercial and industrial lands deemed to be consistent with Policy 5.2. Using the

word "currently" rather than a date certain, results in all properties, both existing and future, being deemed consistent with the policy upon their designation as commercial (Mixed Use) or industrial.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(d), 163.3177(6)(g), Florida Statutes (F.S.)

Rules: 9J-5.005(2); 9J-5.005(5); 9J-5.006(2)(b); 9J-5.006(3)(b)4.; 9J-5.006(3)(c)1., (3)(c)6.,; 9J-5.012(2)(b); 9J-5.012(3)(b)1., and (3)(b)2.; 9J-5.012(3)(c)1. (3)(c)2., and (3)(c)14.; 9J-5.013(1)(a); 9J-5.013(2)(b)2., (2)(b)3. and (2)(b)4.; 9J-5.013(2)(c)1., (2)(c)3., (2)(c)5., (2)(c)6., and (2)(c)8.; 9J-5.013(3), Florida Administrative Code (F.A.C.)

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Revise Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1., to limit exemptions to minimum residential density requirements to lots which were lots of record at the time of plan adoption.

2. Revise Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2. to replace the term "planning interest" with "public interest".

3. Revise Conservation Element Policy 5.2.H., to establish a date certain for commercial and industrial lots deemed to be consistent with the Policy. This date should be February 23, 1996.

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Rules 9J-5.021, F.A.C.):

a. Goal 8, Water Resources, and Policies (b)4., (b)8., (b)10., and (b)12.;

b. Goal 9, Coastal and Marine Resources, and Policies (b)4., (b)5., (b)6., and (b)8.;

c. Goal 10, Natural Systems and Recreational Lands, and Policies (b)1., (b)3., (b)4., (b)7., and (b)8.;

d. Goal 16, Land Use, and Policies (b)2., and (b)6.;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B. and II.B.

IV. CONSISTENCY WITH THE EAST CENTRAL FLORIDA COMPREHENSIVE REGIONAL POLICY PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading is as follows:

1. The comprehensive plan amendment is inconsistent with the East Central Florida Regional Policy Plan goals and policies, including the following provisions (Rule 9J-5.021, F.A.C.):

a. Regional Issue 39, Protection of Natural Systems, and Policies 39.2, 39.5, 39.7, 39.8, and 39.10;

b. Regional Issue 40, Protection of Coastal Resources, and Policies 40.1, and 40.7;

c. Regional Issue 41, Protection of Marine Resources, and Policy 41.1;

d. Regional Issue 43, Protection of Natural Systems, and Policies 43.1, 43.2, 43.12, and 43.13;

e. Regional Issue 44, Protection of Endangered Species, and Policy 44.1;

f. Regional Issue 57, Balanced and Planned Development, and Policies 57.1, 57.16, and 57.17;

g. Regional Issue 58, Natural Resource Preservation, and Policies 58.1, and 58.2;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Sections I.B and II.B..

CONCLUSIONS

1. The plan amendment is not consistent with the East Central Florida Regional Policy Plan.
2. The plan amendment is not consistent with the State Comprehensive Plan.
3. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
4. The plan amendment is not consistent with the requirements of Section 163.3177, Florida Statutes.
5. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes.
6. In order to bring the plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 17th day of April, 1996, at Tallahassee, Florida.

Charles Pattison

Charles G. Pattison, Director
Division of Resource Planning
and Management
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND BREVARD COUNTY
COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT NO. 95B.4,
FUTURE LAND USE ELEMENT AMENDMENT POLICIES 2.6 AND 2.7 AND
CONSERVATION ELEMENT AMENDMENT POLICIES 5.1 AND 5.2
ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996,
NOT IN COMPLIANCE AND THE REMAINING AMENDMENTS
ADOPTED PURSUANT TO ORDINANCE 96-05
IN COMPLIANCE
DOCKET NO. 96-1-NOI-0501-(A)-(I)-(N)

The Department gives notice of its intent to find Brevard County Future Land Use Map Amendment No. 95B.4, Future Land Use Element Amendment Policies 2.6 and 2.7 and Conservation Element Amendment Policies 5.1 and 5.2 adopted by Ordinance No. 96-05 on February 23, 1996, NOT IN COMPLIANCE, and the remaining amendments adopted by Ordinance No. 96-05, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.33189, F.S.

The adopted Brevard County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at Brevard County Planning Department, 2725 St. Johns Street, Suite A-144, Melbourne, Florida 32940 and the following libraries: Central and Northern Brevard, Cocoa Beach, Melbourne, Merritt Island and S. Mainland/Micco.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the Brevard County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Rule 9J-11.012(7), F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendments found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Section 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 60Q-2.010, F.A.C. No new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Section 120.57, F.S., or to participate in the administrative hearing.

J. Thomas Beck

for Charles G. Pattison, Director
Department of Community Affairs
Division of Resource Planning
and Management
2740 Centerview Drive

HISTORY OF COMP PLAN CONSERVATION ELEMENT POLICY 5.2.F AMENDMENTS IN DOAH CASE 96-2174GM

1995 BOCC-DIRECTED COMP PLAN AMENDMENT (The Board originally directed that all of Wetlands Policy 5 be deleted)	1995 AMENDMENT TRANSMITTED TO DCA FOR CONSISTENCY REVIEW September 1995	1996 AMENDMENT ADOPTED AND FOUND NOT CONSISTENT BY DCA February 1996	1997 STIPULATED SETTLEMENT AGREEMENT W/ DCA	1999 STIPULATED SETTLEMENT AGREEMENT W/INTERVENORS – FOUND IN COMPLIANCE BY DCA
~~F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in the Conservation Element 5.2 are met:~~ ~~1. Residential land uses shall be limited to not more than one dwelling unit per five acres.~~ ~~2. Commercial and industrial land uses shall be prohibited unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.~~ ~~3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100-year flood elevation requirement for the first floor elevations, and to one primary access to the site structures.~~ ~~4. Dumping of solid or liquid wastes shall be prohibited.~~ ~~5. Applying or storing pesticides and herbicides should be prohibited~~	F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in the Conservation Element 5.2 are met: ~~1. Residential land uses shall be limited to not more than one dwelling unit per five acres.~~ ~~2. Commercial and industrial land uses shall be prohibited unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.~~ ~~3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100-year flood elevation requirement for the first floor elevations, and to one primary access to the site structures.~~ 4. Dumping of solid or liquid wastes shall be prohibited. 5. Applying or storing pesticides and herbicides should be prohibited	F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if other criteria established in Conservation Element 5.2 are met: 1. Residential land ~~uses~~ development activities shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of February 23, 1996, which is less than five (5) acres, as unbuildable. Density may be transferred to an upland portion of the site consistent with existing land development regulations, such as setback, minimum lot size, stormwater regulations, etc. Residential lots within wetland areas should be subdivided in such a way that buildable areas are contained within each lot. 2. Commercial and industrial land development ~~uses~~ activities shall be prohibited in commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996, unless the project has a special reason or need to locate within wetlands and there is overriding ~~public~~ interest, the activity has no feasible alternative location, the activity will result in the minimum feasible	F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if other criteria established in Conservation Element 5.2 are met: 1. Residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For development activities on property greater than (5) acres, density may be transferred to an upland portion of the site if consistent with all County land development regulations and compatible with adjacent uses. Residential property which includes wetland areas should be subdivided in such a way that buildable areas are included in each lot, where sufficient uplands exist and where compatible with adjacent uses. 2. Commercial and industrial land development activities shall be prohibited in wetlands contained within commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996, unless the project has a special reason or need to locate within wetlands and	F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if other criteria established in conservation Element 5.2 are met: 1. Residential land uses shall be limited to not more than one dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses. Residential property which includes wetland areas ~~should~~ shall be subdivided in such a way that buildable areas are included in each lot~~, where sufficient uplands exist and where compatible with adjacent uses~~. Subdivided lots shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses. 2. Commercial and industrial land development activities shall be

~~unless such application is required for protection of the public health.~~	unless such application is required for protection of the public health.	alteration, and the activity does not impair the functionality of the wetland. 3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100-year flood elevation requirement for the first floor elevations, and to one primary access to the site structures. 4. Dumping of solid or liquid wastes shall be prohibited. 5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.	there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland. 3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100-year flood elevation requirement for the first floor elevations, and to one primary access to the site structures. 4. Dumping of solid or liquid wastes shall be prohibited. 5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.	prohibited in wetlands contained in properties designed on the Future Land Use Map as commercial and industrial after February 23, 1996, ~~unless the project has a special~~ ~~reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland~~ and in surrounding buffers with specifications based on the Buffer Zones for Water, Wetlands, and Wildlife in the East Central Florida Region (1990, Brown, M.T., Schaefer, and K. Brandt, published by the Center for Wetlands, University of Florida), except for certain commercial development at I-95 interchanges that are consistent with the following criteria: a. There will be no less than 100,000 square feet of commercial building within a project; b. There is current overcapacity on the adjacent roadways, and it is projected that roadway capacity within four (4) miles of the intersection will be no more than 80% of the congestion ratio (the ratio of projected volume to maximum allowable volume) after 500,000 square feet of commercial space has been developed within one half mile of the intersection of the off-ramp with the connecting roadway; c. Wetland mitigation shall equal or exceed 125% of the mitigation which is otherwise required;

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				d. The development is located within one half mile of the intersection of the off-ramp with the connecting roadway; e. There will be no more than two curb cuts on each quadrangle of the interchange within one-half mile of the connection of the off-ramp and the connecting roadway; and f. A maximum of 40 (forty) acres shall be allotted in proximity to the interchange, counting both sides. 3. Commercial and industrial land development activities may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial prior to February 23, 1996, only if all of the following criteria are met: a) The property is substantially surrounded by land(s) developed as commercial or industrial as of February 23, 1996 and has sufficient infrastructure in place to serve the commercial or industrial use. b) The proposed land development activity will not result in increased flooding problems on adjacent properties. c) The wetland is not classified by the Florida Land Use, cover and forms classification system (1985) as a Stream and Lake Swamp (FLUCS 615), Cypress (FLUCS 621),

				Atlantic White Cedar (FLUCS 623), Wetland Forested Mixed (FLUCS 630), or Wet Prairies (FLUCS 643). For wetlands specified in 5.2F.3 (c), the wetland functionality shall be maintained and protected by a 15' natural, native vegetative buffer for isolated wetlands and by a 50' natural, native vegetative buffer for other wetlands. The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCS 615, 621, 623, 630 and 643), which also possess commercial or industrial zoning classifications and Future Land Use Map designations as of February 23, 1996, and is incorporated herein by this reference. ~~The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100-year flood elevation requirement for the first floor elevations, and to one primary access to the site structures.~~ 4. In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the Board of County Commissioners in the manner provided in Section 62-507(b)(2), Code of Ordinances of Brevard County, Florida.

				~~Dumping of solid or liquid wastes shall be prohibited.~~ ~~5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.~~

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(1) The comprehensive plan shall provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. These principles and strategies shall guide future decisions in a consistent manner and shall contain programs and activities to ensure comprehensive plans are implemented. The sections of the comprehensive plan containing the principles and strategies, generally provided as goals, objectives, and policies, shall describe how the local government's programs, activities, and land development regulations will be initiated, modified, or continued to implement the comprehensive plan in a consistent manner. It is not the intent of this part to require the inclusion of implementing regulations in the comprehensive plan but rather to require identification of those programs, activities, and land development regulations that will be part of the strategy for implementing the comprehensive plan and the principles that describe how the programs, activities, and land development regulations will be carried out. The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

(a) The comprehensive plan shall consist of elements as described in this section, and may include optional elements.

(b) A local government may include, as part of its adopted plan, documents adopted by reference but not incorporated verbatim into the plan. The adoption by reference must identify the title and author of the document and indicate clearly what provisions and edition of the document is being adopted.

(c) The format of these principles and guidelines is at the discretion of the local government, but typically is expressed in goals, objectives, policies, and strategies.

(d) The comprehensive plan shall identify procedures for monitoring, evaluating, and appraising implementation of the plan.

(e) When a federal, state, or regional agency has implemented a regulatory program, a local government is not required to duplicate or exceed that regulatory program in its local comprehensive plan.

(f) All mandatory and optional elements of the comprehensive plan and plan amendments shall be based upon relevant and appropriate data and an analysis by the local government that may include, but not be limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment. To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.

1. Surveys, studies, and data utilized in the preparation of the comprehensive plan may not be deemed a part of the comprehensive plan unless adopted as a part of it. Copies of such studies, surveys, data, and supporting documents for proposed plans and plan amendments shall be made available for public inspection, and copies of such plans shall be made available to the public upon payment of reasonable charges for reproduction. Support data or summaries are not subject to the compliance review process, but the comprehensive plan must be clearly

based on appropriate data. Support data or summaries may be used to aid in the determination of compliance and consistency.

2. Data must be taken from professionally accepted sources. The application of a methodology utilized in data collection or whether a particular methodology is professionally accepted may be evaluated. However, the evaluation may not include whether one accepted methodology is better than another. Original data collection by local governments is not required. However, local governments may use original data so long as methodologies are professionally accepted.

3. The comprehensive plan shall be based upon permanent and seasonal population estimates and projections, which shall either be those published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology. The plan must be based on at least the minimum amount of land required to accommodate the medium projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period unless otherwise limited under s. 380.05, including related rules of the Administration Commission. Absent physical limitations on population growth, population projections for each municipality, and the unincorporated area within a county must, at a minimum, be reflective of each area's proportional share of the total county population and the total county population growth.

(2) 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. Where data is relevant to several elements, consistent data shall be used, including population estimates and projections unless alternative data can be justified for a plan amendment through new supporting data and analysis. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements, and each such map must be contained within the comprehensive plan.

(3)(a) The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient use of such facilities and set forth:

1. A component that outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components shall cover at least a 5-year period.

2. Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.

3. Standards to ensure the availability of public facilities and the adequacy of those facilities to meet established acceptable levels of service.

4. A schedule of capital improvements which includes any publicly funded projects of federal, state, or local government, and which may include privately funded projects for which the local government has no fiscal responsibility. Projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5-year period must be identified as either funded or unfunded and given a level of priority for funding.

5. The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(8) to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. The schedule must be coordinated with the applicable metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(7).

(b) The capital improvements element must be reviewed by the local government on an annual basis. Modifications to update the 5-year capital improvement schedule may be accomplished by ordinance and may not be deemed to be amendments to the local comprehensive plan.

(4)(a) Coordination of the local comprehensive plan with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region; with the appropriate water management district's regional water supply plans approved pursuant to s. 373.709; and with adopted rules pertaining to designated areas of critical state concern shall be a major objective of the local comprehensive planning process. To that end, in the preparation of a comprehensive plan or element thereof, and in the comprehensive plan or element as adopted, the governing body shall include a specific policy statement indicating the relationship of the proposed

development of the area to the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region, as the case may require and as such adopted plans or plans in preparation may exist.

(b) When all or a portion of the land in a local government jurisdiction is or becomes part of a designated area of critical state concern, the local government shall clearly identify those portions of the local comprehensive plan that shall be applicable to the critical area and shall indicate the relationship of the proposed development of the area to the rules for the area of critical state concern.

(5)(a) Each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period. Additional planning periods for specific components, elements, land use amendments, or projects shall be permissible and accepted as part of the planning process.

(b) The comprehensive plan and its elements shall contain guidelines or policies for the implementation of the plan and its elements.

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public facilities, and other categories of the public and private uses of land. The approximate acreage and the general range of density or intensity of use shall be provided for the gross land area included in each existing land use category. The element shall establish the long-term end toward which land use programs and activities are ultimately directed.

1. Each future land use category must be defined in terms of uses included, and must include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives.

2. 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.

3. The future land use plan element shall include criteria to be used to:

a. Achieve the compatibility of lands adjacent or closely proximate to military installations, considering factors identified in s. 163.3175(5).

b. Achieve the compatibility of lands adjacent to an airport as defined in s. 330.35 and consistent with s. 333.02.

c. Encourage preservation of recreational and commercial working waterfronts for water-dependent uses in coastal communities.

d. Encourage the location of schools proximate to urban residential areas to the extent possible.

e. Coordinate future land uses with the topography and soil conditions, and the availability of facilities and services.

f. Ensure the protection of natural and historic resources.

g. Provide for the compatibility of adjacent land uses.

h. Provide guidelines for the implementation of mixed-use development including the types of uses allowed, the percentage distribution among the mix of uses, or other standards, and the density and intensity of each use.

4. The amount of land designated for future planned uses shall provide a balance of uses that foster vibrant, viable communities and economic development opportunities and address outdated development patterns, such as antiquated subdivisions. The amount of land designated for future land uses should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and business and may not be limited solely by the projected population. The element shall accommodate at least the minimum amount of land required to accommodate the medium projections as published by the Office of Economic and Demographic Research for at least a 10-year planning period unless otherwise limited under s. 380.05, including related rules of the Administration Commission.

5. The future land use plan of a county may designate areas for possible future municipal incorporation.

6. The land use maps or map series shall generally identify and depict historic district boundaries and shall designate historically significant properties meriting protection.

7. The future land use element must clearly identify the land use categories in which public schools are an allowable use. When delineating the land use categories in which public schools are an allowable use, a local government shall include in the categories sufficient land proximate to residential development to meet the projected needs for schools in coordination with public school boards and may establish differing criteria for schools of different type or size. Each local government shall include lands contiguous to existing school sites, to the maximum extent possible, within the land use categories in which public schools are an allowable use.

8. Future land use map amendments shall be based upon the following analyses:

a. An analysis of the availability of facilities and services.

b. 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.

c. An analysis of the minimum amount of land needed to achieve the goals and requirements of this section.

9. The future land use element and any amendment to the future land use element shall discourage the proliferation of urban sprawl.

a. The primary indicators that a plan or plan amendment does not discourage the proliferation of urban sprawl are listed below. The evaluation of the presence of these indicators shall consist of an analysis of the plan or plan amendment within the context of features and characteristics unique to each locality in order to determine whether the plan or plan amendment:

(I) Promotes, allows, or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses.

(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 available and suitable for development.

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

(IV) Fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems.

(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.

(VII) Fails to maximize use of future 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.

(XI) Fails to encourage a functional mix of uses.

(XII) Results in poor accessibility among linked or related land uses.

(XIII) Results in the loss of significant amounts of functional open space.

b. The future land use element or plan amendment shall be determined to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that achieves four or more of the following:

(I) Directs or locates economic growth and associated land development to geographic areas of the community in a manner that does not have an adverse impact on and protects natural resources and ecosystems.

(II) Promotes the efficient and cost-effective provision or extension of public infrastructure and services.

(III) Promotes walkable and connected communities and provides for compact development and a mix of uses at densities and intensities that will support a range of housing choices and a multimodal transportation system, including pedestrian, bicycle, and transit, if available.

(IV) Promotes conservation of water and energy.

(V) Preserves agricultural areas and activities, including silviculture, and dormant, unique, and prime farmlands and soils.

(VI) Preserves open space and natural lands and provides for public open space and recreation needs.

(VII) Creates a balance of land uses based upon demands of the residential population for the nonresidential needs of an area.

(VIII) Provides uses, densities, and intensities of use and urban form that would remediate an existing or planned development pattern in the vicinity that constitutes sprawl or if it provides for an innovative development pattern such as transit-oriented developments or new towns as defined in s. 163.3164.

10. The future land use element shall include a future land use map or map series.

a. The proposed distribution, extent, and location of the following uses shall be shown on the future land use map or map series:

(I) Residential.

(II) Commercial.

(III) Industrial.

(IV) Agricultural.

(V) Recreational.

(VI) Conservation.

(VII) Educational.

(VIII) Public.

b. The following areas shall also be shown on the future land use map or map series, if applicable:

(I) Historic district boundaries and designated historically significant properties.

(II) Transportation concurrency management area boundaries or transportation concurrency exception area boundaries.

(III) Multimodal transportation district boundaries.

(IV) Mixed-use categories.

c. The following natural resources or conditions shall be shown on the future land use map or map series, if applicable:

(I) Existing and planned public potable waterwells, cones of influence, and wellhead protection areas.

(II) Beaches and shores, including estuarine systems.

(III) Rivers, bays, lakes, floodplains, and harbors.

(IV) Wetlands.

(V) Minerals and soils.

(VI) Coastal high hazard areas.

(b) A transportation element addressing mobility issues in relationship to the size and character of the local government. The purpose of the transportation element shall be to plan for a multimodal transportation system that places emphasis on public transportation systems, where feasible. The element shall provide for a safe, convenient multimodal transportation system, coordinated with the future land use map or map series and designed to support all elements of the comprehensive plan. A local government that has all or part of its jurisdiction included within the metropolitan planning area of a metropolitan planning organization (M.P.O.) pursuant to s. 339.175 shall prepare and adopt a transportation element consistent with this subsection. Local governments that are not located within the metropolitan planning area of an M.P.O. shall address traffic circulation, mass transit, and ports, and aviation and related facilities consistent with this subsection, except that local governments with a population of 50,000 or less shall only be required to address transportation circulation. The element shall be coordinated with the plans and programs of any applicable metropolitan planning organization, transportation authority, Florida Transportation Plan, and Department of Transportation adopted work program.

1. Each local government's transportation element shall address traffic circulation, including the types, locations, and extent of existing and proposed major thoroughfares and transportation routes, including bicycle and pedestrian ways. Transportation corridors, as defined in s. 334.03, may be designated in the transportation element pursuant to s. 337.273. If the transportation corridors are designated, the local government may adopt a transportation corridor management ordinance. The element shall include a map or map series showing the general location of the existing and proposed transportation system features and shall be coordinated with the future land use map or map series. The element shall reflect the data, analysis, and associated principles and strategies relating to:

a. The existing transportation system levels of service and system needs and the availability of transportation facilities and services.

b. The growth trends and travel patterns and interactions between land use and transportation.

c. Existing and projected intermodal deficiencies and needs.

d. The projected transportation system levels of service and system needs based upon the future land use map and the projected integrated transportation system.

e. How the local government will correct existing facility deficiencies, meet the identified needs of the projected transportation system, and advance the purpose of this paragraph and the other elements of the comprehensive plan.

2. Local governments within a metropolitan planning area designated as an M.P.O. pursuant to s. 339.175 shall also address:

a. All alternative modes of travel, such as public transportation, pedestrian, and bicycle travel.

b. Aviation, rail, seaport facilities, access to those facilities, and intermodal terminals.

c. The capability to evacuate the coastal population before an impending natural disaster.

d. Airports, projected airport and aviation development, and land use compatibility around airports, which includes areas defined in ss. 333.01 and 333.02.

e. An identification of land use densities, building intensities, and transportation management programs to promote public transportation systems in designated public transportation corridors so as to encourage population densities sufficient to support such systems.

3. Municipalities having populations greater than 50,000, and counties having populations greater than 75,000, shall include mass-transit provisions showing proposed methods for the moving of people, rights-of-way, terminals, and related facilities and shall address:

a. The provision of efficient public transit services based upon existing and proposed major trip generators and attractors, safe and convenient public transit terminals, land uses, and accommodation of the special needs of the transportation disadvantaged.

b. Plans for port, aviation, and related facilities coordinated with the general circulation and transportation element.

c. Plans for the circulation of recreational traffic, including bicycle facilities, exercise trails, riding facilities, and such other matters as may be related to the improvement and safety of movement of all types of recreational traffic.

4. At the option of a local government, an airport master plan, and any subsequent amendments to the airport master plan, prepared by a licensed publicly owned and operated airport under s. 333.06 may be incorporated into the local government comprehensive plan by the local government having jurisdiction under this act for the area in which the airport or projected airport development is located by the adoption of a comprehensive plan amendment. In the amendment to the local comprehensive plan that integrates the airport master plan, the comprehensive plan amendment shall address land use compatibility consistent with chapter 333 regarding airport zoning; the provision of regional transportation facilities for the efficient use and operation of the transportation system and airport; consistency with the local government transportation circulation element and applicable M.P.O. long-range transportation plans; the execution of any necessary interlocal agreements for the purposes of the provision of public facilities and services to maintain the adopted level-of-service standards for facilities subject to concurrency; and may address airport-related or aviation-related development. Development or expansion of an airport consistent with the adopted airport master plan that has been incorporated into the local comprehensive plan in compliance with this part, and airport-related or aviation-related development that has been addressed in the comprehensive plan amendment that incorporates the airport master plan, do not constitute a development of regional impact. Notwithstanding any other general law, an airport that has received a development-of-regional-impact development order pursuant to s. 380.06, but which is no longer required to undergo development-of-regional-impact review pursuant to this subsection, may rescind its development-of-regional-impact order upon written notification to the applicable local government. Upon receipt by the local government, the development-of-regional-impact development order shall be deemed rescinded.

(c) A general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use, indicating ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area. The element may be a detailed engineering plan including a topographic map depicting areas of prime groundwater recharge.

1. Each local government shall address in the data and analyses required by this section those facilities that provide service within the local government's jurisdiction. Local governments that provide facilities to serve areas within other local government jurisdictions shall also address those facilities in the data and analyses required by this section, using data from the comprehensive plan for those areas for the purpose of projecting facility needs as required in this subsection. For shared facilities, each local government shall indicate the proportional capacity of the systems allocated to serve its jurisdiction.

2. The element shall describe the problems and needs and the general facilities that will be required for solution of the problems and needs, including correcting existing facility deficiencies. The element shall address coordinating the extension of, or increase in the capacity of, facilities to meet future needs while maximizing the use of existing facilities and discouraging urban sprawl; conserving potable water resources; and protecting the functions of natural groundwater recharge areas and natural drainage features.

3. Within 18 months after the governing board approves an updated regional water supply plan, the element must incorporate the alternative water supply project or projects selected by the local government from those identified in the regional water supply plan pursuant to s. 373.709(2)(a) or proposed by the local government under s. 373.709(8)(b). If a local government is located within two water management districts, the local government shall adopt its comprehensive plan amendment within 18 months after the later updated regional water supply plan. The element must identify such alternative water supply projects and traditional water supply projects and conservation and reuse necessary to meet the water needs identified in s. 373.709(2)(a) within the local government's jurisdiction and include a work plan, covering at least a 10-year planning period, for building public, private, and regional water supply facilities, including development of alternative water supplies, which are identified in the element as necessary to serve existing and new development. The work plan shall be updated, at a minimum, every 5 years within 18 months after the governing board of a water management district approves an

updated regional water supply plan. Local governments, public and private utilities, regional water supply authorities, special districts, and water management districts are encouraged to cooperatively plan for the development of multijurisdictional water supply facilities that are sufficient to meet projected demands for established planning periods, including the development of alternative water sources to supplement traditional sources of groundwater and surface water supplies.

4. A local government that does not own, operate, or maintain its own water supply facilities, including, but not limited to, wells, treatment facilities, and distribution infrastructure, and is served by a public water utility with a permitted allocation of greater than 300 million gallons per day is not required to amend its comprehensive plan in response to an updated regional water supply plan or to maintain a work plan if any such local government's usage of water constitutes less than 1 percent of the public water utility's total permitted allocation. However, any such local government is required to cooperate with, and provide relevant data to, any local government or utility provider that provides service within its jurisdiction, and to keep its general sanitary sewer, solid waste, potable water, and natural groundwater aquifer recharge element updated in accordance with s. 163.3191.

(d) A conservation element for the conservation, use, and protection of natural resources in the area, including air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources, including factors that affect energy conservation.

1. The following natural resources, where present within the local government's boundaries, shall be identified and analyzed and existing recreational or conservation uses, known pollution problems, including hazardous wastes, and the potential for conservation, recreation, use, or protection shall also be identified:

a. Rivers, bays, lakes, wetlands including estuarine marshes, groundwaters, and springs, including information on quality of the resource available.

b. Floodplains.

c. Known sources of commercially valuable minerals.

d. Areas known to have experienced soil erosion problems.

e. Areas that are the location of recreationally and commercially important fish or shellfish, wildlife, marine habitats, and vegetative communities, including forests, indicating known dominant species present and species listed by federal, state, or local government agencies as endangered, threatened, or species of special concern.

2. The element must contain principles, guidelines, and standards for conservation that provide long-term goals and which:

a. Protects air quality.

b. Conserves, appropriately uses, and protects the quality and quantity of current and projected water sources and waters that flow into estuarine waters or oceanic waters and protect from activities and land uses known to affect adversely the quality and quantity of identified water sources, including natural groundwater recharge areas, wellhead protection areas, and surface waters used as a source of public water supply.

c. Provides for the emergency conservation of water sources in accordance with the plans of the regional water management district.

d. Conserves, appropriately uses, and protects minerals, soils, and native vegetative communities, including forests, from destruction by development activities.

e. Conserves, appropriately uses, and protects fisheries, wildlife, wildlife habitat, and marine habitat and restricts activities known to adversely affect the survival of endangered and threatened wildlife.

f. Protects existing natural reservations identified in the recreation and open space element.

g. Maintains cooperation with adjacent local governments to conserve, appropriately use, or protect unique vegetative communities located within more than one local jurisdiction.

h. Designates environmentally sensitive lands for protection based on locally determined criteria which further the goals and objectives of the conservation element.

i. Manages hazardous waste to protect natural resources.

j. Protects and conserves wetlands and the natural functions of wetlands.

k. Directs future land uses that are incompatible with the protection and conservation of wetlands and wetland functions away from wetlands. The type, intensity or density, extent, distribution, and location of allowable land uses and the types, values, functions, sizes, conditions, and locations of wetlands are land use factors that shall be considered when directing incompatible land uses away from wetlands. Land uses shall be distributed in a manner that minimizes the effect and impact on wetlands. The protection and conservation of wetlands by the direction of incompatible land uses away from wetlands shall occur in combination with other principles, guidelines, standards, and strategies in the comprehensive plan. Where incompatible land uses are allowed to occur, mitigation shall be considered as one means to compensate for loss of wetlands functions.

3. Current and projected needs and sources for at least a 10-year period based on the demands for industrial, agricultural, and potable water use and the quality and quantity of water available to meet these demands shall be analyzed. The analysis shall consider the existing levels of water conservation, use, and protection and applicable policies of the regional water management district and further must consider the appropriate regional water supply plan approved pursuant to s. 373.709, or, in the absence of an approved regional water supply plan, the district water management plan approved pursuant to s. 373.036(2). This information shall be submitted to the appropriate agencies.

(e) A recreation and open space element indicating a comprehensive system of public and private sites for recreation, including, but not limited to, natural reservations, parks and playgrounds, parkways, beaches and public access to beaches, open spaces, waterways, and other recreational facilities.

(f)1. A housing element consisting of principles, guidelines, standards, and strategies to be followed in:

a. The provision of housing for all current and anticipated future residents of the jurisdiction.

b. The elimination of substandard dwelling conditions.

c. The structural and aesthetic improvement of existing housing.

d. The provision of adequate sites for future housing, including affordable workforce housing as defined in s. 380.0651(1)(h), housing for low-income, very low-income, and moderate-income families, mobile homes, and group home facilities and foster care facilities, with supporting infrastructure and public facilities. The element may include provisions that specifically address affordable housing for persons 60 years of age or older. Real property that is conveyed to a local government for affordable housing under this sub-subparagraph shall be disposed of by the local government pursuant to s. 125.379 or s. 166.0451.

e. Provision for relocation housing and identification of historically significant and other housing for purposes of conservation, rehabilitation, or replacement.

f. The formulation of housing implementation programs.

g. The creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction.

2. The principles, guidelines, standards, and strategies of the housing element must be based on data and analysis prepared on housing needs, which shall include the number and distribution of dwelling units by type, tenure, age, rent, value, monthly cost of owner-occupied units, and rent or cost to income ratio, and shall show the number of dwelling units that are substandard. The data and analysis shall also include the methodology used to estimate the condition of housing, a projection of the anticipated number of households by size, income range, and age of residents derived from the population projections, and the minimum housing need of the current and anticipated future residents of the jurisdiction.

3. The housing element must express principles, guidelines, standards, and strategies that reflect, as needed, the creation and preservation of affordable housing for all current and anticipated future residents of the jurisdiction, elimination of substandard housing conditions, adequate sites, and distribution of housing for a range of incomes and types, including mobile and manufactured homes. The element must provide for specific programs and actions to partner with private and nonprofit sectors to address housing needs in the jurisdiction, streamline the permitting process, and minimize costs and delays for affordable housing, establish standards to address the quality of housing, stabilization of neighborhoods, and identification and improvement of historically significant housing.

4. State and federal housing plans prepared on behalf of the local government must be consistent with the goals, objectives, and policies of the housing element. Local governments are encouraged to use job training, job creation, and economic solutions to address a portion of their affordable housing concerns.

(g) For those units of local government identified in s. 380.24, a coastal management element, appropriately related to the particular requirements of paragraphs (d) and (e) and meeting the requirements of s. 163.3178(2) and (3). The coastal management element shall set forth the principles, guidelines, standards, and strategies that shall guide the local government's decisions and program implementation with respect to the following objectives:

1. Maintain, restore, and enhance the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

2. Preserve the continued existence of viable populations of all species of wildlife and marine life.

3. Protect the orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

4. Avoid irreversible and irretrievable loss of coastal zone resources.

5. Use ecological planning principles and assumptions in the determination of the suitability of permitted development.

6. Limit public expenditures that subsidize development in coastal high-hazard areas.

7. Protect human life against the effects of natural disasters.

8. Direct the orderly development, maintenance, and use of ports identified in s. 403.021(9) to facilitate deepwater commercial navigation and other related activities.

9. Preserve historic and archaeological resources, which include the sensitive adaptive use of these resources.

10. At the option of the local government, develop an adaptation action area designation for those low-lying coastal zones that are experiencing coastal flooding due to extreme high tides and storm surge and are vulnerable to the impacts of rising sea level. Local governments that adopt an adaptation action area may consider policies within the coastal management element to improve resilience to coastal flooding resulting from high-tide events, storm surge, flash floods, stormwater runoff, and related impacts of sea-level rise. Criteria for the adaptation action area may include, but need not be limited to, areas for which the land elevations are below, at, or near mean higher high water, which have a hydrologic connection to coastal waters, or which are designated as evacuation zones for storm surge.

(h)1. An intergovernmental coordination element showing relationships and stating principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards, regional water supply authorities, and other units of local government providing services but not having regulatory authority over the use of land, with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region, with the state comprehensive plan and with the applicable regional water supply plan approved pursuant to s. 373.709, as the case may require and as such adopted plans or plans in preparation may exist. This element of the local comprehensive plan must demonstrate consideration of the particular effects of the local plan, when adopted, upon the development of adjacent municipalities, the county, adjacent counties, or the region, or upon the state comprehensive plan, as the case may require.

a. The intergovernmental coordination element must provide procedures for identifying and implementing joint planning areas, especially for the purpose of annexation, municipal incorporation, and joint infrastructure service areas.

b. The intergovernmental coordination element shall provide for a dispute resolution process, as established pursuant to s. 186.509, for bringing intergovernmental disputes to closure in a timely manner.

c. The intergovernmental coordination element shall provide for interlocal agreements as established pursuant to s. 333.03(1)(b).

2. The intergovernmental coordination element shall also state principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards and other units of local government providing facilities and services but not having regulatory authority over the use of land. In addition, the intergovernmental coordination element must describe joint processes for collaborative planning and decisionmaking on population projections and public school siting, the location and extension of public facilities

subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses whose nature and identity are established in an agreement.

3. Within 1 year after adopting their intergovernmental coordination elements, each county, all the municipalities within that county, the district school board, and any unit of local government service providers that county shall establish by interlocal or other formal agreement executed by all affected entities, the joint processes described in this subparagraph consistent with their adopted intergovernmental coordination element. The agreement must:

a. Ensure that the local government addresses through coordination mechanisms the impacts of development proposed in the local comprehensive plan upon development in adjacent municipalities, the county, adjacent counties, the region, and the state. The area of concern for municipalities shall include adjacent municipalities, the county, and counties adjacent to the municipality. The area of concern for counties shall include all municipalities within the county, adjacent counties, and adjacent municipalities.

b. Ensure coordination in establishing level of service standards for public facilities with any state, regional, or local entity having operational and maintenance responsibility for such facilities.

(7)(a) The Legislature finds that:

1. There are a number of rural agricultural industrial centers in the state that process, produce, or aid in the production or distribution of a variety of agriculturally based products, including, but not limited to, fruits, vegetables, timber, and other crops, and juices, paper, and building materials. Rural agricultural industrial centers have a significant amount of existing associated infrastructure that is used for processing, producing, or distributing agricultural products.

2. Such rural agricultural industrial centers are often located within or near communities in which the economy is largely dependent upon agriculture and agriculturally based products. The centers significantly enhance the economy of such communities. However, these agriculturally based communities are often socioeconomically challenged and designated as rural areas of opportunity. If such rural agricultural industrial centers are lost and not replaced with other job-creating enterprises, the agriculturally based communities will lose a substantial amount of their economies.

3. The state has a compelling interest in preserving the viability of agriculture and protecting rural agricultural communities and the state from the economic upheaval that would result from short-term or long-term adverse changes in the agricultural economy. To protect these communities and promote viable agriculture for the long term, it is essential to encourage and permit diversification of existing rural agricultural industrial centers by providing for jobs that are not solely dependent upon, but are compatible with and complement, existing agricultural industrial operations and to encourage the creation and expansion of industries that use agricultural products in innovative ways. However, the expansion and diversification of these existing centers must be accomplished in a manner that does not promote urban sprawl into surrounding agricultural and rural areas.

(b) As used in this subsection, the term "rural agricultural industrial center" means a developed parcel of land in an unincorporated area on which there exists an operating agricultural industrial facility or facilities that employ at least 200 full-time employees in the aggregate and process and prepare for transport a farm product, as defined in s. 163.3162, or any biomass material that could be used, directly or indirectly, for the production of fuel, renewable energy, bioenergy, or alternative fuel as defined by law. The center may also include land contiguous to the facility site which is not used for the cultivation of crops, but on which other existing activities essential to the operation of such facility or facilities are located or conducted. The parcel of land must be located within, or within 10 miles of, a rural area of opportunity.

(c)1. A landowner whose land is located within a rural agricultural industrial center may apply for an amendment to the local government comprehensive plan for the purpose of designating and expanding the existing agricultural industrial uses of facilities located within the center or expanding the existing center to include industrial uses or facilities that are not dependent upon but are compatible with agriculture and the existing uses and facilities. A local government comprehensive plan amendment under this paragraph must:

a. Not increase the physical area of the existing rural agricultural industrial center by more than 50 percent or 320 acres, whichever is greater.

b. Propose a project that would, upon completion, create at least 50 new full-time jobs.

c. Demonstrate that sufficient infrastructure capacity exists or will be provided to support the expanded center at the level-of-service standards adopted in the local government comprehensive plan.

d. Contain goals, objectives, and policies that will ensure that any adverse environmental impacts of the expanded center will be adequately addressed and mitigation implemented or demonstrate that the local government comprehensive plan contains such provisions.

2. Within 6 months after receiving an application as provided in this paragraph, the local government shall transmit the application to the state land planning agency for review pursuant to this chapter together with any needed amendments to the applicable sections of its comprehensive plan to include goals, objectives, and policies that provide for the expansion of rural agricultural industrial centers and discourage urban sprawl in the surrounding areas. Such goals, objectives, and policies must promote and be consistent with the findings in this subsection. An amendment that meets the requirements of this subsection is presumed not to be urban sprawl as defined in s. 163.3164 and shall be considered within 90 days after any review required by the state land planning agency if required by s. 163.3184. This presumption may be rebutted by a preponderance of the evidence.

(d) This subsection does not apply to an optional sector plan adopted pursuant to s. 163.3245, a rural land stewardship area designated pursuant to s. 163.3248, or any comprehensive plan amendment that includes an inland port terminal or affiliated port development.

(e) This subsection does not confer the status of rural area of opportunity, or any of the rights or benefits derived from such status, on any land area not otherwise designated as such pursuant to s. 288.0656(7).

History.—s. 7, ch. 75-257; s. 1, ch. 77-174; s. 1, ch. 80-154; s. 6, ch. 83-308; s. 1, ch. 85-42; s. 6, ch. 85-55; s. 1, ch. 85-309; s. 7, ch. 86-191; s. 5, ch. 92-129; s. 6, ch. 93-206; s. 898, ch. 95-147; s. 3, ch. 95-257; s. 4, ch. 95-322; s. 10, ch. 95-341; s. 10, ch. 96-320; s. 24, ch. 96-410; s. 2, ch. 96-416; s. 2, ch. 98-146; s. 4, ch. 98-176; s. 4, ch. 98-258; s. 90, ch. 99-251; s. 3, ch. 99-378; s. 40, ch. 2001-201; s. 64, ch. 2001-279; s. 24, ch. 2002-1; s. 58, ch. 2002-20; s. 70, ch. 2002-295; s. 2, ch. 2002-296; s. 904, ch. 2002-387; s. 61, ch. 2003-286; s. 2, ch. 2004-230; s. 4, ch. 2004-372; s. 2, ch. 2004-381; s. 2, ch. 2005-36; s. 1, ch. 2005-157; s. 2, ch. 2005-290; s. 10, ch. 2005-291; s. 2, ch. 2006-220; s. 57, ch. 2007-196; s. 1, ch. 2007-198; s. 2, ch. 2007-204; s. 2, ch. 2008-191; s. 10, ch. 2009-21; s. 3, ch. 2009-85; s. 3, ch. 2009-96; s. 1, ch. 2009-154; s. 43, ch. 2010-102; s. 2, ch. 2010-182; s. 4, ch. 2010-205; s. 3, ch. 2011-14; s. 12, ch. 2011-139; s. 3, ch. 2011-189; s. 4, ch. 2012-99; s. 24, ch. 2014-218; s. 2, ch. 2015-30; s. 13, ch. 2016-10; s. 31, ch. 2019-3.

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