#000882 6/10/02

Submitted by Erin Wilcox

FOR THE RECORD

1. At the December 10, 2001 meeting, I reviewed with the Commissioners and others present my concerns over procedural irregularities with respect to the proposed amendments to the Comprehensive plan, and submitted a document entitled "LETTER OF OBJECTION Re: Lack of compliance with F.S. §163.3181, Public Participation in the Comprehensive Planning Process" [Attached]. I requested a written response both in person and at the conclusion of the document, which I have yet to receive, regarding the Commissioner's significant rewriting of portions of the Conservation element the preceding Sunday at while at home, with inadequate opportunity for public scrutiny. Other actions which have been taken were the appointment of a blue-ribbon ad hoc Committee on Wetlands and Creek Regulations by the same commissioner, with no opportunity for members of the public to apply and be considered.

   Note that F.S. §163.3181 states that "it is the intent of the legislature that the public participate in the comprehensive planning process to the fullest extent possible. To this end, … local governmental units are directed to adopt procedures designed to provide effective public participation in the comprehensive planning process". It goes on to require that "during consideration of the proposed plan or amendments thereto by the local governing body, the procedures shall provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings, provisions for open discussion, … and consideration of and response to public comments. **By virtue of not having responded to the letter of objection dated December 10, 2001, this local governing body is not in compliance with Florida Statutes.**

2. Rule 9J-5.002, F.A.C., requires a determination as to whether the local government is complying with the evaluation and appraisal requirements in subsection 163.3191(2), Florida Statutes. This subsection requires an assessment of whether the plan objectives within each element, as they relate to major issues, have been achieved, including an identification as to whether unforeseen circumstances have resulted in problems with respect to major issues identified in each element and the social, economic and environmental impacts of the issue. **I am unable to find any such detailed analysis for the Conservation, Open Space, and Groundwater Recharge Element of the proposed amended Comprehensive Plan.**

3. Rule 9J-5.013(3), F.A.C., stipulates that "Wetlands and the natural functions of wetlands shall be protected and conserved". The new Conservation Element, as proposed, virtually assures the eventual destruction and development of any of Gainesville's wetlands not within 35 feet of the break in slope of a creek or 75 feet of the landward extent of a lake. **The proposed Conservation Element, as amended, does not demonstrate compliance with the Florida Administrative Code.** One need only read the article in today's Sun to realize that governmental units may be held accountable by the citizenry for not adequately protecting our natural resources.

4. I wish also to note that one of the previous commissioners and the Chair of the ad hoc Committee on Wetlands and Creek Regulations appear to have a substantial undisclosed conflict of interest in approving and drafting, respectively, policies which may provide them personal benefit by virtue of their personal interest as officers of the Alachua Conservation Trust, Inc. which entity may be expected to participate in mitigation banking activities if and when these policies are enacted.

In summary, it appears that your approval for transmittal today will result in noncompliance with State statutory and administrative law as well as the Federal regulation provided to you last Monday.

Attachments

Submitted for the record this 10th day of June, 2002 at the regular meeting of the Gainesville City Commission by Everett Wilcox, 2911 NW 30th Terrace, Gainesville, FL 32605.

LETTER OF OBJECTION

TO: Honorable Mayor, City of Gainesville
City Commissioners
City Attorney

FROM: Everett Wilcox, 2911 NW 30th Terrace, Gainesville, FL 32605

SUBJECT: Lack of Compliance with F.S. §163.3181

DATE: December 10, 2001

Florida Statute §163.3181, "Public Participation in the Comprehensive Planning Process; Intent; ..." states that "It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible. Towards this end..., local governmental units are directed to adapt procedures designed to provide effective public participation in the public planning process [emphasis added].

I, and other members of the general public, have watched and participated in the city's proceedings regarding the wording and eventual transmittal of the 2001-2010 conservation element of the City of Gainesville's comprehensive plan, with great disbelief and to no effect. Numerous important wording changes proposed by myself and others have been ignored; the only changes which have been incorporated into the proposed final wording have been those sought by developers and others with a vested interest in destroying our natural wetlands, quality of life, water quality, and scenic beauty of Gainesville. I do not represent any special interest. I am merely a lifelong Gainesville resident who will suffer the effects of the actions being taken by a majority of our commission.

I am including examples of several events over the last few months in order to substantiate this Objection.

1) During the July 26, 2001 workshop held at Westside Park, several workshop participants requested that the language allowing mitigation be stricken. Planning staff requested a standing vote of those who supported this wording deletion; 28 of 31 workshop participants (over 90%) stood in favor of disallowing mitigation in the conservation element of the City of Gainesville's 2001-2010 Comprehensive Plan. This dramatic expression of the will of the people has been given absolutely no effect and has been completely dropped.

2) Moreover, at a November 13, 2001 city commission meeting, the city commission approved by a 4-1 vote (Mayor Bussing dissenting) the insertion of substituted language drafted by Commissioner Nielsen the preceding Sunday and not promulgated to the public until the beginning of discussion of the item at this same meeting. Members of the public expressed concerns, asking them to slow down, pointing out that the public had not even had time to review beyond the

proposed wetlands language, etc. I objected to this protocol and lack of public participation when a commissioner drafts final language at home, then expecting the public to review wording changes during the course of the meeting itself. Not only did commissioner Nielsen's language continue to include the mitigation language previously objected to, it went even further to allow off-site and even outside-the-city mitigation. This is weakening, even sabotaging, our current level of wetlands protection. When the Mayor was addressing my complaints, three of the commissioners (Hanrahan, Nielsen, & Barrow) disrupted the meeting by walking out. THEREFORE, I HEREBY DEMAND THAT THE MOTION APPROVING COMMISSIONER NIELSEN'S SUBSTITUTED WORDING BE RESCINDED.

3) In a further display of contempt for public participation, at the November 27th continuation of the November 26th city commission meeting, commissioner Hanrahan called the question to transmit this element to the DCA in Tallahassee, even though the staff report from the previous day had not been finished and no final public comment had been taken in spite of the fact that members of the audience had been sitting for over nine (9) hours over two days awaiting public comment. Fortunately, our Mayor objected. Note that this was the first time that the final unified proposal had been received, including Planning Board Recommendations, staff recommendations, and final wetlands (and other) policy. The majority of our commission has become a handmaiden to developers and others who stand to profit while ignoring the majority of its electorate, in clear violation of the statutory intent of Florida law.

The majority of our commission has been oblivious to the repeated concerns expressed unequivocally by independent citizens. I would appreciate a responsive and complete acknowledgement of these concerns as well as the deletion of the mitigation language as overwhelmingly requested by the public.

Sincerely,

Everett Wilcox

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(c) Local governments may establish multimo
level-of-service standards that rely primarily
nonvehicular modes of transportation within the distri
when justified by an analysis demonstrating that
existing and planned community design will provide
adequate level of mobility within the district based upon
professionally accepted multimodal level-of-servic
methodologies. The analysis must take into consid
ation the impact on the Florida Intrastate Highway S
tem. The analysis must also demonstrate that the c
tal improvements required to promote commun
design are financially feasible over the development
redevelopment timeframe for the district and that com
munity design features within the district provide con
venient interconnection for a multimodal transportation
system. Local governments may issue development
permits in reliance upon all planned community design
capital improvements that are financially feasible over
the development or redevelopment timeframe for the
district without regard to the period of time between
development or redevelopment and the scheduled con
struction of the capital improvements. A determination
of financial feasibility shall be based upon currently
available funding or funding sources that could reason
ably be expected to become available over the plan
ning period.

(d) Local governments may reduce impact fees or
local access fees for development within multimodal
transportation districts based on the reduction of vehi
cle trips per household or vehicle miles of travel
expected from the development pattern planned for the
district.

History.—s. 8, ch. 93-206; s. 12, ch. 95-341; s. 3, ch. 96-416; s. 1, ch. 97-253; s. 5, ch. 98-176; s. 4, ch. 99-378.

163.3181 Public participation in the comprehensive planning process; intent; alternative dispute resolution.—

(1) It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible. Towards this end, local planning agencies and local governmental units are directed to adopt procedures designed to provide effective public participation in the comprehensive planning process and to provide real property owners with notice of all official actions which will regulate the use of their property. The provisions and procedures required in this act are set out as the minimum requirements towards this end.

(2) During consideration of the proposed plan or amendments thereto by the local planning agency or by the local governing body, the procedures shall provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings as provided herein, provisions for open discussion, communications programs, information services, and consideration of and response to public comments.

(3) A local government considering undertaking a publicly financed capital improvement project may elect to use the procedures set forth in this subsection for the purpose of allowing public participation in the decision and resolution of disputes. For purposes of this subsection, a publicly financed capital improvement project is a physical structure or structures, the funding for construction, operation, and maintenance of which is financed entirely from public funds.

(a) Prior to the date of a public hearing on the decision on whether to proceed with the proposed project, the local government shall publish public notice of its intent to decide the issue according to the notice procedures described by s. 125.66(4)(b)2. for a county or s. 166.041(3)(c)2.b. for a municipality.

(b) If the local government chooses to use this process, an affected person may not institute or intervene in an administrative hearing objecting to the project as not consistent with the local comprehensive plan unless, and then only to the extent to which, the affected person raised, through written or oral comments, the same issues between the date of publication of the public notice and the conclusion of the public hearing. However, this limitation shall not apply to issues arising either from significant changes to the location, type, or use of the project, or to significant new information about the project site which becomes known after the public hearing as a result of subsequent site study and analysis, if required.

(c) If an affected person requests an administrative hearing pursuant to ss. 120.569 and 120.57, that person shall file the petition no later than 30 days after the public hearing or no later than 30 days after the change or new information is made available to the public, whichever is later. Affected local governments, the state land planning agency, or other affected persons may intervene. Following the initiation of an administrative hearing, the administrative law judge shall, by order issued within 15 days after receipt of the petition, establish a schedule for the proceedings, including discovery, which provides for a final hearing within 60 days of the issuance of the order. Proposed recommended orders must be submitted to the administrative law judge, if at all, within 10 days of the filing of the hearing transcript. Recommended orders shall be submitted to the state land planning agency within 30 days of the last day for the filing of the proposed recommended order. The state land planning agency shall issue its final order within 45 days of receipt of the recommended order.

(d) The doctrine of res judicata shall apply to all matters raised and disposed of in the final order issued pursuant to this subsection.

(4) If a local government denies an owner's request for an amendment to the comprehensive plan which is

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History.—s. 8
s. 9, ch. 93-2
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FLORIDA ADMINISTRATIVE CODE ANNOTATED

The Official Compilation of the Rules and Regulations of Florida Regulatory Agencies filed with the Department of State under the Provisions of Chapter 120, Florida Statutes

COMPILED BY
THE EDITORIAL STAFF OF THE PUBLISHER

VOLUME 3

Title 8 Department of Commerce
9 Department of Community Affairs
10 Department of Health and Rehabilitative Services
11 Department of Law Enforcement
12 Department of Revenue

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Atlanta, Georgia 30336

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basis than the latter. Cooper and Cooper et al. v. City of St. Petersburg Beach and State Department of Community Affairs, 14 FALR 3589 (1992).

Comprehensive plan

Local government comprehensive plan did not comply with Chapter 9J-5 as to future land use, infrastructure, conservation, coastal management, and capital improvement elements of that chapter. Department of Community Affairs v. Charlotte County and City of Punta Gorda, (DOAH 89-0810GM), 12 FALR 2760 (1990).

Department demonstrated that city's comprehensive plan for development failed to meet data and analysis requirements of both applicable statute and Chapter 9J-5, FAC. Department of Community Affairs v. City of Islandia, 12 FALR 3144-3151 (1990).

9J-5.002 Administration.

(1) Compliance Determination. The Department shall determine a comprehensive plan or plan amendment to be in compliance if the comprehensive plan or plan amendment is consistent with Sections 163.3177, 163.3178, and 163.3191, Florida Statutes, the appropriate comprehensive regional policy plan, the State Comprehensive Plan and this chapter.

(2) Application of Chapter 9J-5, F.A.C. Due to the varying complexities, sizes, growth rates and other factors associated with local governments in Florida, the Department shall consider the following factors as it provides assistance to local governments and applies this chapter in specific situations with regard to the detail of the data, analyses, and the content of the goals, objectives, policies, and other graphic or textual standards required:

(a) The local government's existing and projected population and rate of population growth.

(b) The geography and size of the local government's jurisdiction, and the extent or existence of undeveloped land.

(c) The existence of natural resource features such as groundwater recharge areas, waterwells, wetlands, wildlife habitat, coastal areas, areas subject to coastal flooding, and living marine resources.

(d) The scale of public services the local government provides or is projected to provide as it relates to the level of capital improvements planning required.

(e) The planning and implementation resources of the local government, and associated local and regional institutions.

(f) The extent of county charter provisions, special or local acts, or intergovernmental agreements which affect the local government's planning activities.

(g) Whether the local government is complying with the evaluation and appraisal requirements in subsection 163.3191(2), Florida Statutes, at the same time that it is revising its plan pursuant to subsection 163.3167(2), Florida Statutes.

(3) Coastal Resource Plan Consistency. In administering these rules the Department shall also establish procedures for determining consistency of coastal management elements with coastal resource plans prepared and adopted pursuant to general or special law.

(4) Technical Assistance; Additional Aid for Rural Areas.

(a) The Department and all other appropriate state and regional agencies shall render technical assistance and commit any available resources to aiding local governments in their compliance with the provisions of these rules. To this end, the Department shall issue publications, hold conferences, workshops and seminars, and offer individualized technical assistance to each local government to aid its efforts to satisfy its obligations and desires at the transmittal and adoption stages for plans and plan amendments. Assistance shall also be made available to other interested persons. The Department shall exercise maximum flexibility and cooperation in rendering this assistance, while still carrying out its statutory responsibilities.

(b) The Department recognizes the need for wise economic development in rural jurisdictions. Accordingly, the Department shall endeavor to render a high degree of technical assistance to local governments with limited resources, including rural counties and municipalities which are attempting to implement one or more of the growth management strategies for rural areas in this chapter, including assistance with respect to cost and availability of infrastructure, economic development strategies, evaluation of effects on tax base, and efficient and effective handling of development applications.

(5) Federal Coordination with Comprehensive Plans. The Department shall assist in coordinating with federal agencies to encourage federal programs and regulatory activities to be consistent with local government comprehensive plans found to be in compliance with these rules. This assistance shall focus on areas where there are major federal land holdings such as military bases and national parks.

(6) Settlement of Conflicts Through Compliance Agreements. The Department shall attempt to resolve conflicts through informal dispute resolution processes in the administration of this chapter.

(a) Any memorandums, correspondence, notices of meeting and minutes of meetings related to the settlement negotiations shall be maintained by the local government and the Department in a file available to the public, excluding documents exempt from production under Chapter 119, F.S.

(b) The Department may choose to enter into partial compliance agreements which cover fewer than all of the issues raised in the statement of intent for plans or plan amendments. To participate in this method, a local government must stipulate that the settled parts of the plan are not in compliance, agree to the remedial actions set forth in the agreement, and adopt a remedial plan amendment delaying the effective date of the amendment if requested by the Department, or must otherwise provide assurance that the procedural and substantive rights of all parties are preserved. The Department shall also stipulate that it will recommend that no sanctions be imposed by the Administration Commission for the stipulated provisions if the remedial amendments are adopted in a timely fashion.

(c) No compliance agreement, or portion of a compliance agreement, is binding on the Department, a local government, or any other party until reduced to writing and executed by the proper representative of each party. Nothing in this paragraph shall be deemed to prevent any party from making any stipulations of law or fact by counsel or other authorized representative in any administrative proceeding.

(d) Nothing in this subsection shall be deemed to prohibit the use of other informal settlement methods, or the use of informal settlement methods as part of the compliance agreement process. Local governments and other parties are encouraged to investigate other techniques for the settlement of disputes under this chapter. Specifically, the Department endorses the conflict resolution opportunities made available by the regional planning councils and other state agencies or institutions, including the Florida Growth Management

(a) Plan amendments shall not become effective until the state land planning agency issues a final order determining the adopted amendment to be in compliance in accordance with s. 163.3184(9), or until the Administration Commission issues a final order determining the adopted amendment to be in compliance in accordance with s. 163.3184(10).

(b) If the Administration Commission, upon a hearing pursuant to s. 163.3184, finds that the adopted plan amendment is not in compliance, the commission shall specify actions that would bring the plan amendment into compliance, and may specify the sanctions provided in s. 163.3184(11) to which the local government will be subject if it elects to make the amendment effective notwithstanding the determination of noncompliance. However, after the final order of the commission, the local government, except in designated areas of critical state concern, may elect to make the amendment effective by resolution at a public meeting after public notice and be subject to sanctions pursuant to s. 163.3184(11). If the local government enacts the remedial actions specified in the commission's final order, the local government shall no longer be subject to sanctions.

(3)(a) At any time after the department has issued its notice of intent and the matter has been forwarded to the Division of Administrative Hearings, the local government proposing the amendment may demand formal mediation or the local government proposing the amendment or an affected person who is a party to the proceeding may demand informal mediation or expeditious resolution of the amendment proceedings by serving written notice on the state land planning agency, all other parties to the proceeding, and the administrative law judge.

(b) Upon receipt of a notice pursuant to paragraph (a), the administrative law judge shall set the matter for final hearing no more than 30 days after receipt of the notice. Once a final hearing pursuant to this paragraph has been set, no continuance in the hearing, and no additional time for post-hearing submittals, may be granted without the written agreement of the parties absent a finding by the administrative law judge of extraordinary circumstances. Extraordinary circumstances do not include matters relating to workload or need for additional time for preparation or negotiation.

(c) Absent a showing of extraordinary circumstances, the Administration Commission shall issue a final order, in a case proceeding under this subsection, within 45 days after the issuance of the recommended order, unless the parties agree in writing to a longer time.

History.—s. 9, ch. 92-129; s. 12, ch. 93-206; s. 28, ch. 96-410; s. 4, ch. 97-253.

[1]163.3191 Evaluation and appraisal of comprehensive plan.—

(1) The planning program shall be a continuous and ongoing process. Each local government shall adopt an evaluation and appraisal report once every 7 years assessing the progress in implementing the local government's comprehensive plan. Furthermore, it is the intent of this section that:

(a) Adopted comprehensive plans be reviewed through such evaluation process to respond to changes in state, regional, and local policies on planning and growth management and changing conditions and trends, to ensure effective intergovernmental coordination, and to identify major issues regarding the community's achievement of its goals.

(b) After completion of the initial evaluation and appraisal report and any supporting plan amendments, each subsequent evaluation and appraisal report must evaluate the comprehensive plan in effect at the time of the initiation of the evaluation and appraisal report process.

(c) Local governments identify the major issues, if applicable, with input from state agencies, regional agencies, adjacent local governments, and the public in the evaluation and appraisal report process. It is also the intent of this section to establish minimum requirements for information to ensure predictability, certainty, and integrity in the growth management process. The report is intended to serve as a summary audit of the actions that a local government has undertaken and identify changes that it may need to make. The report should be based on the local government's analysis of major issues to further the community's goals consistent with statewide minimum standards. The report is not intended to require a comprehensive rewrite of the elements within the local plan, unless a local government chooses to do so.

(2) The report shall present an evaluation and assessment of the comprehensive plan and shall contain appropriate statements to update the comprehensive plan, including, but not limited to, words, maps, illustrations, or other media, related to:

(a) Population growth and changes in land area, including annexation, since the adoption of the original plan or the most recent update amendments.

(b) The extent of vacant and developable land.

(c) The financial feasibility of implementing the comprehensive plan and of providing needed infrastructure to achieve and maintain adopted level-of-service standards and sustain concurrency management systems through the capital improvements element, as well as the ability to address infrastructure backlogs and meet the demands of growth on public services and facilities.

(d) The location of existing development in relation to the location of development as anticipated in the original plan, or in the plan as amended by the most recent evaluation and appraisal report update amendments, such as within areas designated for urban growth.

(e) An identification of the major issues for the jurisdiction and, where pertinent, the potential social, economic, and environmental impacts.

(f) Relevant changes to the state comprehensive plan, the requirements of this part, the minimum criteria contained in chapter 9J-5, Florida Administrative Code, and the appropriate strategic regional policy plan since the adoption of the original plan or the most recent evaluation and appraisal report update amendments.

(g) An assessment of whether the plan objectives within each element, as they relate to major issues,

have been achieved. The report shall include, as appropriate, an identification as to whether unforeseen or unanticipated changes in circumstances have resulted in problems or opportunities with respect to major issues identified in each element and the social, economic, and environmental impacts of the issue.

(h) A brief assessment of successes and shortcomings related to each element of the plan.

(i) The identification of any actions or corrective measures, including whether plan amendments are anticipated to address the major issues identified and analyzed in the report. Such identification shall include, as appropriate, new population projections, new revised planning timeframes, a revised future conditions map or map series, an updated capital improvements element, and any new and revised goals, objectives, and policies for major issues identified within each element. This paragraph shall not require the submittal of the plan amendments with the evaluation and appraisal report.

(j) A summary of the public participation program and activities undertaken by the local government in preparing the report.

(k) The coordination of the comprehensive plan with existing public schools and those identified in the applicable 5-year school district facilities work program adopted pursuant to s. 235.185. The assessment shall address, where relevant, the success or failure of the coordination of the future land use map and associated planned residential development with public schools and their capacities, as well as the joint decisionmaking processes engaged in by the local government and the school board in regard to establishing appropriate population projections and the planning and siting of public school facilities. If the issues are not relevant, the local government shall demonstrate that they are not relevant.

(3) Voluntary scoping meetings may be conducted by each local government or several local governments within the same county that agree to meet together. Joint meetings among all local governments in a county are encouraged. All scoping meetings shall be completed at least 1 year prior to the established adoption date of the report. The purpose of the meetings shall be to distribute data and resources available to assist in the preparation of the report, to provide input on major issues in each community that should be addressed in the report, and to advise on the extent of the effort for the components of subsection (2). If scoping meetings are held, the local government shall invite each state and regional reviewing agency, as well as adjacent and other affected local governments. A preliminary list of new data and major issues that have emerged since the adoption of the original plan, or the most recent evaluation and appraisal report-based update amendments, should be developed by state and regional entities and involved local governments for distribution at the scoping meeting. For purposes of this subsection, a "scoping meeting" is a meeting conducted to determine the scope of review of the evaluation and appraisal report by parties to which the report relates.

(4) The local planning agency shall prepare the evaluation and appraisal report and shall make recommendations to the governing body regarding adoption of the proposed report. The local planning agency shall prepare the report in conformity with its public participation procedures adopted as required by s. 163.3181. During the preparation of the proposed report and prior to making any recommendation to the governing body, the local planning agency shall hold at least one public hearing, with public notice, on the proposed report. At a minimum, the format and content of the proposed report shall include a table of contents; numbered pages; element headings; section headings within elements; a list of included tables, maps, and figures; a title and sources for all included tables; a preparation date; and the name of the preparer. Where applicable, maps shall include major natural and artificial geographic features; city, county, and state lines; and a legend indicating a north arrow, map scale, and the date.

(5) Ninety days prior to the scheduled adoption date, the local government may provide a proposed evaluation and appraisal report to the state land planning agency and distribute copies to state and regional commenting agencies as prescribed by rule, adjacent jurisdictions, and interested citizens for review. All review comments, including comments by the state land planning agency, shall be transmitted to the local government and state land planning agency within 30 days after receipt of the proposed report.

[2](6) The governing body, after considering the review comments and recommended changes, if any, shall adopt the evaluation and appraisal report by resolution or ordinance at a public hearing with public notice. The governing body shall adopt the report in conformity with its public participation procedures adopted as required by s. 163.3181. The local government shall submit to the state land planning agency three copies of the report, a transmittal letter indicating the dates of public hearings, and a copy of the adoption resolution or ordinance. The local government shall provide a copy of the report to the reviewing agencies which provided comments for the proposed report, or to all the reviewing agencies if a proposed report was not provided pursuant to subsection (5), including the adjacent local governments. Within 60 days after receipt, the state land planning agency shall review the adopted report and make a preliminary sufficiency determination that shall be forwarded by the agency to the local government for its consideration. The state land planning agency shall issue a final sufficiency determination within 90 days after receipt of the adopted evaluation and appraisal report.

(7) The intent of the evaluation and appraisal process is the preparation of a plan update that clearly and concisely achieves the purpose of this section. Toward this end, the sufficiency review of the state land planning agency shall concentrate on whether the evaluation and appraisal report sufficiently fulfills the components of subsection (2). If the state land planning agency determines that the report is insufficient, the governing body shall adopt a revision of the report and submit the revised report for review pursuant to subsection (6).

(8) The state land planning agency may delegate the review of evaluation and appraisal reports, including all state land planning agency duties under subsections (4)-(7), to the appropriate regional planning council. When the review has been delegated to a regional planning council, any local government in the region may elect to have its report reviewed by the regional planning council rather than the state land planning agency. The state land planning agency shall by agreement provide for uniform and adequate review of reports and shall retain oversight for any delegation of review to a regional planning council.

(9) The state land planning agency may establish a phased schedule for adoption of reports. The schedule shall provide each local government at least 7 years from plan adoption or last established adoption date for a report and shall allot approximately one-seventh of the reports to any 1 year. In order to allow the municipalities to use data and analyses gathered by the counties, the state land planning agency shall schedule municipal report adoption dates between 1 year and 18 months later than the report adoption date for the county in which those municipalities are located. A local government may adopt its report no earlier than 90 days prior to the established adoption date. Small municipalities which were scheduled by chapter 9J-33, Florida Administrative Code, to adopt their evaluation and appraisal report after February 2, 1999, shall be rescheduled to adopt their report together with the other municipalities in their county as provided in this subsection.

(10) The governing body shall amend its comprehensive plan based on the recommendations in the report and shall update the comprehensive plan based on the components of subsection (2), pursuant to the provisions of ss. 163.3184, 163.3187, and 163.3189. Amendments to update a comprehensive plan based on the evaluation and appraisal report shall be adopted within 18 months after the report is determined to be sufficient by the state land planning agency, except the state land planning agency may grant an extension for adoption of a portion of such amendments. The state land planning agency may grant a 6-month extension for the adoption of such amendments if the request is justified by good and sufficient cause as determined by the agency. An additional extension may also be granted if the request will result in greater coordination between transportation and land use, for the purposes of improving Florida's transportation system, as determined by the agency in coordination with the Metropolitan Planning Organization program. The comprehensive plan as amended shall be in compliance as defined in s. 163.3184(1)(b).

(11) The Administration Commission may impose the sanctions provided by s. 163.3184(11) against any local government that fails to adopt and submit a report, or that fails to implement its report through timely and sufficient amendments to its local plan, except for reasons of excusable delay or valid planning reasons agreed to by the state land planning agency or found present by the Administration Commission. Sanctions for untimely or insufficient plan amendments shall be prospective only and shall begin after a final order has been issued by the Administration Commission and a reasonable period of time has been allowed for the local government to comply with an adverse determination by the Administration Commission through adoption of plan amendments that are in compliance. The state land planning agency may initiate, and an affected person may intervene in, such a proceeding by filing a petition with the Division of Administrative Hearings, which shall appoint an administrative law judge and conduct a hearing pursuant to ss. 120.569 and 120.57(1) and shall submit a recommended order to the Administration Commission. The affected local government shall be a party to any such proceeding. The commission may implement this subsection by rule.

(12) The state land planning agency shall not adopt rules to implement this section, other than procedural rules.

(13) The state land planning agency shall regularly review the evaluation and appraisal report process and submit a report to the Governor, the Administration Commission, the Speaker of the House of Representatives, the President of the Senate, and the respective community affairs committees of the Senate and the House of Representatives. The first report shall be submitted by December 31, 2004, and subsequent reports shall be submitted every 5 years thereafter. At least 9 months before the due date of each report, the Secretary of Community Affairs shall appoint a technical committee of at least 15 members to assist in the preparation of the report. The membership of the technical committee shall consist of representatives of local governments, regional planning councils, the private sector, and environmental organizations. The report shall assess the effectiveness of the evaluation and appraisal report process.

History.—s. 11, ch. 75-257; s. 10, ch. 85-55; s. 11, ch. 86-191; s. 10, ch. 92-129; s. 13, ch. 93-206; s. 6, ch. 95-322; s. 29, ch. 96-410; s. 5, ch. 96-416; s. 4, ch. 98-146; ss. 6, 14, ch. 98-176; s. 5, ch. 98-258; s. 17, ch. 2000-158.

[1]**Note.**—As amended and substantially reworded by s. 14, ch. 98-176. Former paragraph (12)(a) was also amended by s. 5, ch. 98-258, without reference to the substantial rewording of the section by s. 14, ch. 98-176. As amended by s. 5, ch. 98-258, only, paragraph (12)(a) reads:

(12)(a) The state land planning agency may enter into a written agreement with a municipality of fewer than 5,000 residents or a county with fewer than 75,000 residents so that such a jurisdiction may focus planning resources on selected issues or elements when updating its plan, if the local government includes such a request in its report and the agency approves the request. Approval of the request does not authorize the local government to repeal or render ineffective any existing portion or element of its local plan.

[2]**Note.**—As amended and substantially reworded by s. 14, ch. 98-176. Former subsection (9) was also amended by s. 4, ch. 98-146, without reference to the substantial rewording of the section by s. 14, ch. 98-176; material similar to that found in former subsection (9) is now located in subsection (6), as amended by s. 14, ch. 98-176. As amended by s. 4, ch. 98-146, only, subsection (9), redesignated as subsection (6) to conform to the placement of material by s. 14, ch. 98-176, reads:

(6) The state land planning agency shall conduct a sufficiency review of each report to determine whether it has been submitted in a timely fashion and contains the prescribed components. The agency shall complete the sufficiency determination within 60 days of receipt of the report. The agency shall not conduct a compliance review. However, a local government may request that the department provide substantive comments regarding the report or addendum during the department's sufficiency review to assist the local government in the adoption of its plan amendments based on the evaluation and appraisal report. Comments provided during the sufficiency review are not binding on the local government or the department and will not supplant or limit the department's consistency review of the amendments based on the adopted evaluation and appraisal report. A request for comments must be made in writing by the local government and must be submitted at the same time the adopted report is submitted for sufficiency review.

[3]**Note.**—As amended and substantially reworded by s. 14, ch. 98-176. Former subsection (10) was also amended by s. 4, ch. 98-146, without reference to the substantial rewording of the section by s. 14, ch. 98-176; material similar to that found in former subsection (10) is now located in subsection (8), as amended by s. 14, ch. 98-176. As amended by s. 4, ch. 98-146, only, subsection (10), redesignated as subsection (8) to conform to the placement of material by s. 14, ch. 98-176, reads:

(8) The state land planning agency may delegate the review of reports to the appropriate regional planning council. When the review has been delegated to a regional planning council, any local government in the region, except for areas of

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), F.A.C., 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.

ANNOTATIONS

Coastal planning

Commission's decision to limit scope of coastal management element required by Rule 9J-5.012 was permissible under Rule 9J-5.003(12). Sunshine Ranches Homeowner's Association, Inc. v. Broward County, et al., 12 FALR 3549, 3572-3573 (1990); Environmental Coalition of Florida, Inc. v. Broward County, et al., 12 FALR 3549, 3572-3573 (1990).

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), F.A.C.

(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

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Document Number	FEI Number	Date Filed
N28633	592919630	09/30/1988
State	**Status**	**Effective Date**
FL	ACTIVE	NONE

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HAMANN, RICHARD	FLORIDA DEFENDERS OF THE ENVIRONMENT, INC.	718592
HAMANN, RICHARD	FLAMINGO HAMMOCK COMMUNITY ASSOCIATION, INC.	N03238
HAMANN, RICHARD	ALACHUA CONSERVATION TRUST, INCORPORATED	N28633
HAMANN, RICHARD	FRIENDS OF THE HATCHINEHA, INC.	N36578
HAMANN, RICHARD	ENVIRONMENTAL AND LAND USE LAW CENTER, INC.	N42931
HAMANN, RICHARD	JUG CREEK CONSERVATION CLUB, INC.	N98000006283
HAMANN, RICHARD	RESOURCE ECONOMICS CONSULTANTS, INC.	P93000039315
HAMANN, RICHARD	RICK HAMANN & SON DEMOLITION, INC.	S13479
HAMANN, RICHARD	FLAMINGO HAMMOCK COMMUNITY ASSOCIATION, INC.	N03238
HAMANN, RICHARD	RICK HAMANN & SON DEMOLITION, INC.	S13479
HAMANN, RICHARD O	THE RIDGE LEAGUE OF CITIES, INC.	N18665
HAMANN,ROBERT L.	OLD SECURITY LIFE INSURANCE COMPANY	811052
HAMANN, RUTH	SANIBEL TRANSPORTATION, INC.	G00274
HAMANN, SHERELLE	MYRIAD FAMILY CORPORATION	P99000014641
HAMANN, TERRY W	PRO-GROUP INTERNATIONAL, INC.	F93000003117
HAMANN, THOMAS	HELIOS IMPORT EXPORT AND INTERNATIONAL BROKERAGE, INC.	J52374
HAMANN, THOMAS	HELIOS IMPORT EXPORT AND INTERNATIONAL BROKERAGE, INC.	J52374
HAMANN, THOMAS	HELIOS CANDLES, INC.	J52377
HAMANN, THOMAS	HELIOS CANDLES, INC.	J52377
HAMANN, THOMAS	CLASSIC AUTO UPHOLSTERY OF MIAMI, INC.	K45610
HAMANN, THOMAS	MILLEMIGLIA RESTORATIONS AND UPHOLSTERY, INC.	L43672
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