



MEMORANDUM

Office of the City Attorney

Registrar No. 000882

Phone: 334-5011/Fax 334-2229

Box 46

TO: Mayor and City Commission

DATE: June 10, 2002

SECOND READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-01-18; Petition No. 175CPA-00PB

An ordinance of the City of Gainesville, Florida, amending the Conservation, Open Space and Groundwater Recharge Element of the City of Gainesville 1991-2001 Comprehensive Plan; revising policies on wetlands; adding provisions concerning the Alachua County Forever program; adding provisions concerning the Alachua County Murphree Wellfield Protection Code; adding provisions concerning Floridan aquifer recharge areas; providing for an Environmentally Significant Land and Resources map series within the Future Land Use Map Series; adding Tumblin Creek and Hogtown Creek to the priority list for improving water quality; removing outdated provisions; amending provisions concerning NPDES permitting; making minor amendments throughout; providing directions to the city manager; stating intent to adopt the amended element as part of the City of Gainesville 2000-2010 Comprehensive Plan; providing a severability clause; providing a repealing clause; and providing an effective date.

Recommendation: The City Commission adopt the proposed ordinance, as amended.

COMMUNITY DEVELOPMENT STAFF REPORT

The updated Conservation, Open Space and Groundwater Recharge Element of the proposed 2000-2010 Comprehensive Plan reflects recommendations from the Evaluation and Appraisal Report adopted in 1998 and subsequent public input. This element was the subject of City Plan Board workshops on September 28, 2000 and November 30, 2000. The City Plan Board held a public hearing on the proposed updated Element on January 31, 2001, and the Board recommended approval with modifications by a vote of 6-0. The Element was also presented at the February 12, 2001 meeting of the City Commission, and at comprehensive plan workshops on June 20, 2001 and July 26, 2001. The City Commission on December 10, 2001 adopted on first reading the ordinance amending the Element, which was subsequently transmitted to the Florida Department of Community Affairs (DCA) for review.

The Conservation, Open Space and Groundwater Recharge Element (Attachment A) includes a new policy requiring coordination with the County on the Alachua County Forever program for land acquisition for environmental and open space protection. Other new policies pertain to sedimentation problems in Hogtown Creek, water quality in Tumblin Creek, state requirements regarding lawn sprinkler systems, aquifer recharge maps, establishing a Green Building Program, coordinating with other governmental entities regarding potential pollution problems, protecting

heritage and champion trees, and creating basin management plans. Proposed policy revisions include changes to standards and guidelines for protection of key environmental resources, including wetlands. The existing 'no net loss of on-site wetland acreage and function' requirement has been stricken, and extensive requirements regarding wetland protection and mitigation are proposed.

On February 25, 2002 the City received the DCA's Objections, Recommendations and Comments (ORC) report (Composite Attachment B). The ORC report contained no formal objections, but it did provide comments from DCA. The City was advised that some of the proposed wetland policies might conflict with the statutory authority of the Florida Department of Environmental Protection (FDEP) and the water management districts. In response, City staff has worked with state agency staff and with the Ad Hoc Committee on Wetland and Creek Regulations to make appropriate changes to the proposed wetland policies and resolve the state's previous concerns. These changes have been made (Attachment C), have been reviewed and found generally acceptable by FDEP staff, and have been reviewed and recommended for approval by the Ad Hoc Committee. City staff has made other changes (Attachment D) based on the recommendations of the Ad Hoc Committee on Wetland and Creek Regulations that are not in response to the ORC Report from the Florida Department of Community Affairs.


Fiscal Note

The City will have to set aside \$300,000 per year for the purchase and/or management of environmentally significant open space and of active and passive recreation sites.

CITY ATTORNEY MEMORANDUM

The State of Florida Department of Community Affairs issued the Department's Objections, Recommendations and Comments (ORC) report dated February 22, 2002, that offered no objections, but provided comments to this element. Upon receipt of the letter, the City of Gainesville has 120 days in which to adopt, adopt with changes, or determine that the City will not adopt the proposed amendment. If the ordinance is adopted, the Plan amendment will not become effective until the State Department of Community Affairs issues a final order determining the adopted amendment to be in compliance in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act, or until the Administration Commission (Governor and Cabinet) issues a final order determining the adopted amendment to be in compliance.

Prepared by:


Walter Mathews, IV, Assistant City Attorney

Approved and
Submitted by:


Marion J. Radson, City Attorney

MJR:WM:sw

ORDINANCE NO. _____
0-01-18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

An ordinance of the City of Gainesville, Florida, amending the Conservation, Open Space and Groundwater Recharge Element of the City of Gainesville 1991-2001 Comprehensive Plan; revising policies on wetlands; adding provisions concerning the Alachua County Forever program; adding provisions concerning the Alachua County Murphree Wellfield Protection Code; adding provisions concerning Floridan aquifer recharge areas; providing for an Environmentally Significant Land and Resources map series within the Future Land Use Map Series; adding Tumblin Creek and Hogtown Creek to the priority list for improving water quality; removing outdated provisions; amending provisions concerning NPDES permitting; making minor amendments throughout; providing directions to the city manager; stating intent to adopt the amended element as part of the City of Gainesville 2000-2010 Comprehensive Plan; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the City of Gainesville 1991-2001 Comprehensive Plan be amended; and

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on January 31, 2001; and

WHEREAS, pursuant to law, an advertisement no less than two columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of this proposed ordinance and of the Public Hearing to be held at the transmittal stage, in the City Commission Auditorium, City Hall, City of Gainesville, at least 7 days after the day the first advertisement was published; and

WHEREAS, pursuant to law, after the public hearing at the transmittal stage the City of Gainesville transmitted copies of this proposed change to the State Land Planning

1 Agency; and

2 **WHEREAS**, a second advertisement no less than two columns wide by 10 inches
3 long was placed in the aforesaid newspaper notifying the public of the second Public
4 Hearing to be held at least 5 days after the day the second advertisement was published;
5 and

6 **WHEREAS**, Public Hearings were held pursuant to the published notices
7 described at which hearings the parties in interest and all others had an opportunity to be
8 and were, in fact, heard; and

9 **WHEREAS**, prior to adoption of this ordinance, the City Commission has
10 considered the comments, recommendation and objections, if any, of the State Land
11 Planning Agency;

12 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
13 **THE CITY OF GAINESVILLE, FLORIDA:**

14 **Section 1.** The Conservation, Open Space and Groundwater Recharge Element of the
15 City of Gainesville 1991-2001 Comprehensive Plan is amended as shown in Attachment
16 A.

17 **Section 2.** The City Manager is authorized and directed to make the necessary changes in
18 maps and other data in the City of Gainesville 1991-2001 Comprehensive Plan, or
19 element, or portion thereof in order to fully implement this ordinance.

20 **Section 3.** It is the intent of the City Commission that this amended element will become
21 part of the City of Gainesville 2000-2010 Comprehensive Plan upon adoption of a
22 resolution.

1 **Section 4.** If any section, sentence, clause or phrase of this ordinance is held to be invalid
2 or unconstitutional by any court of competent jurisdiction, then said holding shall in no
3 way affect the validity of the remaining portions of this ordinance.

4 **Section 5.** All ordinances or parts of ordinances in conflict herewith are to the extent of
5 such conflict hereby repealed.

6 **Section 6.** This ordinance shall become effective immediately upon final adoption;
7 however, the amendment to the 1991-2001 Comprehensive Plan shall not become
8 effective until the state land planning agency issues a final order determining the adopted
9 amendment to be in compliance in accordance with section 163.3184(9), or until the
10 Administration Commission issues a final order determining the adopted amendment to
11 be in compliance in accordance with section 163.3184(10).

12
13
14 **PASSED AND ADOPTED** this _____ day of _____, 2002.

15
16
17
18 _____
19 THOMAS D. BUSSING
20 MAYOR

21 ATTEST: Approved as to form and legality

22
23
24
25 _____
26 KURT M. LANNON
CLERK OF THE COMMISSION

25 _____
26 MARION J. RADSON
CITY ATTORNEY

27 This Ordinance passed on first reading this 10th day of December, 2001.

28 This Ordinance passed on second reading this _____ day of _____, 2002.

29
30 carter:ordinances:175CPA-00 PB

Index of Attachments

Attachment A	Conservation, Open Space and Groundwater Recharge Element—Goals, Objectives and Policies (GOPs)
Composite Attachment B	Letter from DCA ORC Report from DCA Letter from Division of Historical Resources Letter from North Central Florida Regional Planning Council Letter from Department of Environmental Protection
Attachment C	City Response to ORC Report from DCA
Attachment D	Post-transmittal changes to draft Conservation, Open Space and Groundwater Recharge Element GOPs

Attachment A

Conservation, Open Space and Groundwater Recharge Element

November 13, 2001, revised May 21, 2002.

Goal 1

Establish and maintain an integrated and urban-defining open space network that protects and conserves key environmental features.

Objective 1.1

Upon adoption of this Plan, the City shall protect all significant environmental lands and resources identified ~~on Map 2 in the~~ (Environmentally Significant Land and Resources) map series within the Future Land Use Map Series. The City shall continue to identify environmentally significant open space and recreation sites for acquisition.

Policies

1.1.1 At a minimum the following standards and guidelines shall be used to protect environmentally sensitive resources identified ~~on Map 2 in the~~ (Environmentally Significant Land and Resources) map series within of the Future Land Use Map Series. The City shall develop and adopt land development regulations that establish criteria for expansion of the minimum standards addressed below.

- a. Creeks: Between 35 and 150 feet from the break in slope at the top of the bank, there is a rebuttable presumption that development is detrimental to the regulated creek unless demonstrated otherwise. Developments must ~~be consistent with~~ conform to applicable provisions of the land development regulations the "Regulations of Development Near Creeks" Ordinance, which prohibits development within a minimum of 35 feet of the centerline break in slope at the top of the bank centerline of any regulated creek.
- b. Wetlands: Developments containing wetlands must ~~maintain the existing level of wetland acreage and function on the property.~~ avoid loss of function or degradation of wetland habitat and/or wetland hydrology as the highest priority. Degradation or loss of function that is unavoidable shall be minimized, and the applicant must demonstrate that the *cause of the degradation or loss of function project* is clearly in the public interest, with final administrative approval by the city commission on appeal, if necessary. The City shall develop and implement land development regulations that at a minimum:
 1. Establish criteria *that are at least consistent with the relevant criteria of Section 373.414(1), F.S.* for determining whether the *proposed development or activity project* is clearly in the public interest.

CODE: Throughout the document, underlines and ~~strike throughs~~ are changes from the adopted, 1991 Element. Post-transmittal changes are *shown in italics* (recommended by City staff) and changes in response to the ORC Report are *shown highlighted*.

2. Establish mitigation ratios for wetland preservation, enhancement, restoration and creation. Wetland creation is presumed to be the least desirable mitigation strategy. Creation strategies shall be subject to the highest levels of requirements, restrictions, and review as outlined in the land development codes. Establish The mitigation ratios of at shall be at least 5:1 (acreage of mitigation area to impacted area) for impacts to natural wetlands or wetlands created as part of a mitigation project; and shall be at least 1:1 for impacts to created wetlands (e.g., livestock watering ponds, borrow pits, drainage ditches, etc.) that were not created as part of a mitigation project. Should there be irreconcilable differences between the mitigation required by the City and that required by the state (water management district or FDEP), then the mitigation requirements of the state will prevail where there are irreconcilable differences.

~~2 3. Establish mitigation ratios for wetland preservation, restoration and creation. Wetland creation is presumed to be the least desirable mitigation strategy. Creation strategies shall be subject to the highest levels of requirements, restrictions, and review as outlined in the land development codes.~~

3 4. Establish bonding, long-term monitoring and enforceable long-term maintenance requirements for wetland mitigation projects to ensure that all the negative impacts have been mitigated. Monitoring should be reviewed by the Alachua County Environmental Protection Department, the appropriate water management district, the University of Florida, or other appropriate monitoring agency or reviewing entity, with regulatory fees paid by the permitted applicant. The mitigation plan must be approved prior to the initiation of the project.

~~4. Establish mitigation ratios of at least 5:1 (acreage of mitigation area to impacted area).~~

5. Require off-site mitigation to be performed within the same sub-basin and basin (the basins are depicted on the map entitled Wetland Mitigation Basins that is on file with the Community Development Department and is in the Data & Analysis section of this comprehensive plan element) in which the impact occurred, unless it is shown that mitigation outside the sub-basin is more appropriate. The order of preference for the location of the mitigated area(s) in relation

EP
1.5 DL
+ Commission
C. Mitigation
various of the
impact
District
having
regulatory
authority
- Permitting
- Phil Farnsworth
- Park Stevenson
- Forest Wilcox

EP 1 - 4 (NO)

to the impacted areas will be established in the land development regulations (LDRs).

~~a. In the same basin and sub-basin;~~

~~b. In an adjacent sub-basin within the basin;~~

~~c. In an adjacent sub-basin outside the basin; and~~

~~d. In an adjacent basin;~~

~~6. Require mitigation to be performed within the city limits of Gainesville or the adjacent sub-basin;~~

7 ~~6.~~ Require that development shall not cause hydrological or wetland impacts off-site;

8 ~~7.~~ A minimum buffer distance of 35 ft. and an average buffer distance of 50 feet shall be required between the landward extent of any wetland or surface water and the developed area. Larger buffers may be warranted. The criteria for buffer expansion will be developed in the land development regulations;

9 ~~8.~~ Specify that these protections for wetlands shall be extended to all wetlands delineated in accordance with Section 62-340, F.A.C., regardless of whether they are currently mapped by the City of Gainesville;

~~10~~ 9. Require review and approval of wetland mitigation projects by qualified professionals.

~~11~~ 10. Outstanding Florida Waters, as listed in ~~s.~~ Section 62-302.700, F.A.C., shall have a minimum buffer of 200 feet. The City shall develop and implement land development regulations that establish appropriate setbacks for wetlands containing listed plant or animal species. Where these distance requirements preclude all economic development of a parcel, exceptions can be made, as provided in the land development regulations, that require upon approval by a majority of the city commission and with appropriate mitigation of wetland loss at a minimum of a 5:1 ratio.

- ~~12~~ 11. Wetlands damaged on or subsequent to the effective date of this policy shall either be restored to their original function and condition prior to such damage, at the owner's expense or mitigated for, pursuant to the mitigation requirements of this comprehensive plan element except as may be provided in the land development regulations.
- c. Lakes: Developments containing or adjacent to a natural lake (or lakes) must not adversely impact the condition of the lake. Dredge and fill shall be prohibited. Development shall be prohibited within ~~35~~ 75 feet of the landward extent of a lake.
 - d. Wellfields: Developments must be consistent with Policyies 2.3.32 and 2.3.3 of this Element.
 - e. Major Natural Groundwater Recharge Areas: Developments within this area must be consistent with Policyies 2.3.43 and 2.3.5 of this Element.
 - f. Upland Areas: Developments within an area identified as Upland must submit an ecological inventory of the parcel. Based on the inventory, development may be allowed on up to the maximum of 75 percent of the parcel.
- 1.1.2 ~~The City shall adopt criteria for use the ranking~~ environmentally significant properties inventory/ranking report ~~the urban area, and use these criteria to develop an inventory of open space and natural reservations to be considered for acquisition. These criteria shall be designed to preserve~~ identify viable populations of native plant and animal species, environmentally significant areas, and unique geological or historic features that should be preserved, and show connectivity with other public lands and environmentally significant areas that should be maintained.
- 1.1.3 ~~By June 1992, The City shall adopt~~ keep in force land development regulations that require new developments to dedicate land and easements, within federal constitutional guidelines, particularly for the creation of buffers along and around surface waters and natural reservations and to facilitate the development of greenways and other open space.
- 1.1.4 The City shall allocate a minimum of \$300,000 ~~\$150,000~~ per year ~~toward the acquisition and preservation for the purchase and/or management of~~ environmentally significant open space and of active and passive recreation sites.

1.1.5 The City shall work with local and state environmental agencies to develop basin management plans, which shall identify wetlands of special concern, disturbed wetlands, and appropriate sites for mitigation. The plans shall also consider those factors affecting the structure and functions of wetlands.

Objective 1.2

The City shall coordinate with Alachua County on the Alachua County Forever program, and with other potential funding sources for land acquisition for environmental and open space protection.

Policies

1.2.1 The City shall seek to maximize the protection of environmentally sensitive lands through the nomination of properties for acquisition with Alachua County Forever and other relevant funds.

Goal 2

Mitigate the effects of growth and development on environmental resources.

Objective 2.1

Upon adoption of this Plan, existing **citywide** levels of wetland acreage and functions within ~~City limits~~ the listed basins (shown on the map entitled Wetland Mitigation Basins that is on file with the Community Development Department and is in the Data & Analysis section of this comprehensive plan element) shall be maintained to the extent feasible through the year ~~2004~~ 2010.

Policies

2.1.1 ~~By 1992,~~ The City shall develop and continue to update, augment and maintain an inventory of wetlands, and adopt land development regulations designed to preserve conserve existing wetland acreages and preserve natural functions within the Gainesville urban area listed basins (shown on the map entitled Wetland Mitigation Basins that is on file with the Community Development Department and is in the Data & Analysis section of this comprehensive plan element). When wetlands are unavoidably lost to development, mandatory mitigation shall be required to ensure no net loss of acreage and functions occurs. Mitigation location protocol shall follow Policy 1.1.1 b.5.

ww-151
cc-2002
Embodied
4-17B

2.1.2 Each basin management plan shall include consideration of the feasibility of creating one or more local mitigation banks or offsite regional mitigation areas in accordance with Section 373.4135, F.S.

if the... or...
possibility
justification
- EP -151
- WW-151
4-17B
call
only

Objective 2.2

The City shall improve the quality of stormwater entering City lakes and creeks by requiring development and redevelopment to meet the adopted water quality standards of this Element and the Stormwater Management Element.

Policies

2.2.1 The City shall ~~adopt land development regulations that continue to~~ require stormwater quality treatment facilities for redevelopment of non-residential sites and the Central City District, particularly within stream-to-sink basins.

2.2.2 ~~The City shall adopt land development regulations that reduce the amount of impervious parking surface allowed within any environmentally significant area, as compared to impervious allowances outside these areas. In these areas, reduction of impervious surface shall include reduction of required parking spaces, use of pervious surfaces, and/or use of multi-story parking structures to prevent damage to environmentally significant areas and transition zones.~~

2.2.32 The City shall ~~adopt~~ continue to have land development regulations that require meet or exceed state-of-the-art best management practices for stormwater management. ~~quality and hazardous materials management designs to prevent damage to environmentally significant areas and transition zones.~~

2.2.43 The City shall adopt land development regulations that require the handling of hazardous materials in such a way as to prevent degradation of the natural environment. At a minimum, this shall be achieved by complying with the Alachua County Hazardous Materials Management Code (Ord. 91-6, 1991) and the Alachua County Murphree Wellfield Protection Code, which:

- a. Prohibits certain new, ~~large scale~~ chemical businesses, hazardous materials facilities, and underground storage tank systems from siting within the unconfined zone of the Floridan aquifer;
- b. Prohibit new, hazardous materials facilities from siting within the primary and secondary wellfield protection zones of the Murphree wellfield, and establish requirements for siting of hazardous materials facilities within the tertiary protection zones of the Murphree wellfield. Within the

secondary zone, vehicular fuel storage subject to Florida Statutes 376.317 may be allowed.

- bc. Requires new, Class C and D large-scale chemical businesses hazardous materials facilities as identified in the Alachua County Hazardous Materials Management Code to maintain large setbacks from surface waters, wells, and floodplains; and
- d. Requires stringent ~~chemical~~ hazardous materials storage and containment designs, periodic monitoring, inspections, a management plan, fees, and penalties for non-compliance.

2.2.54 The City shall ~~adopt~~ continue to have land development regulations that supplement the standards of the applicable Water Management District to promote the natural cleansing of water in creeks. Such standards ~~shall~~ include:

- a. Limiting creek dredging;
- b. Prohibiting channelization;
- c. Requiring sedimentation controls during and after construction;
- d. Protecting creek banks and vegetation;
- e. Requiring treatment of the first "one inch" of runoff;
- f. Restoring previously channelized creeks identified for restoration by the City, when feasible.

2.2.65 The City shall maintain an inventory of altered creek segments suitable for restoration to a more natural condition.

Objective 2.3

~~By June 1992,~~ The City shall only permit activities that maintain drinking water resources to meet the demands of population projected for the year 2001 2010.

Policies

~~2.3.1 To protect drinking water resources, the City shall adopt criteria for the location of hazardous materials collection/transfer/treatment facilities.~~

2.3.21 The City shall continue to cooperate with the Alachua County Environmental Protection ~~Office~~ Department, the Florida Department of Environmental Regulation ~~Protection~~ (FDER)(FDEP), the Water Management Districts, and the Environmental Protection Agency (EPA) and shall support the appropriate agencies with efforts to accomplish the following:

- a. Identify areas of pollution to surface waters and groundwater;
- b. Establish a monitoring program that provides an annual report describing present environmental conditions and cleanup status;
- c. Identify parties responsible for polluted areas, and require such parties to mitigate pollution problems.

2.3.32 The City shall allow land uses and facility design ~~in that part of the City falling within wellfield management protection zones (and other "community water system" cones of influence as defined by Fla. Administrative Code Chapter Rule 17-550.200 62-550.200 (Drinking Water Standards, Monitoring, and Reporting, Definitions for Public Water Systems) and Chapter 9J-5.003(274) (Definitions, "cone of influence"); F.A.C.) and identified on Map 2 in the (Environmentally Significant Land and Resources) map series within~~ of the Future Land Use Map Series, that are in compliance with the Murphree Wellfield Management Code Ordinance 88-15, Protection Code, adopted July 26, 1988 by the Alachua County Board of County Commissioners. ~~New placement of septic tanks in the secondary zone for non-residential uses shall also be prohibited.~~

2.3.43 The City shall only allow new development ~~to place septic tanks in commercial, institutional, and industrial districts~~ to place septic tanks:

- a. ~~In compliance with areas of major groundwater recharge, if the development is in compliance with the Alachua County Hazardous Material Code Ordinance 91-6 and does not include activities handling hazardous materials as listed in EPA's extremely hazardous substances list promulgated by SARA Title III; and Division 3., Wellfield Protection Special Use Permit of the City's Land Development Code, and if the development is in compliance with the Alachua County Hazardous Materials Management Code.~~
- b. In areas not shown as regulated creek, lake, and wetland ~~, and upland areas identified on Map 2 (in the Environmentally Significant Land and Resources map series)~~ of the Future Land Use Map Series.

- 2.3.54 The City shall ~~adopt~~ continue to have a water conservation plan consistent with the Water Management Districts' plans (Sec. 373.175 & 373.246, F.S., and Chap. 40C-21, F.A.C.). The plan shall include strategies to deal with emergency conditions, implement public education campaigns regarding the nature of groundwater resources and the need to protect and conserve them, provide a public information program on water reuse systems, and develop potable water rate structures to encourage water conservation.
- 2.3.65 Pursuant to Section 373.0395, F.S., Water Management Districts ~~will~~ are to map "prime" groundwater recharge areas within the County. Should such areas be identified within City limits, the areas will be mapped and included in the adopted comprehensive plan, and City land development regulations shall be amended to protect such areas if they are not already protected by existing regulations and programs.
- 2.3.6 Until such time as prime recharge areas are mapped, the City shall use the Floridan Aquifer recharge maps prepared by the St. Johns River Water Management District and the Suwannee River Water Management District (see Environmentally Significant Land and Resources map series within the Future Land Use Map Series). City land development regulations shall be amended to protect such areas if existing regulations and programs do not already protect them.
- 2.3.7 Final development orders shall require compliance with septic tank rules (Chapter 10D-6, F.A.C. 64E-6, F.A.C. and ~~Section 381.272 (9)(a), F.S.~~)
- 2.3.8 The City shall inform the public of the requirements of Section 373.62, Florida Statutes, regarding automatic lawn sprinkler systems.

Objective 2.4

The City shall ~~adopt~~ amend its land development regulations, ~~based on performance standards keyed to the resources, that are~~ as necessary to conserve environmentally significant surface waters; major natural groundwater recharge areas; ~~development-constraining soils;~~ threatened or endangered or listed (or candidates for being listed) plants, animals and habitats; and prevent the spread of invasive vegetation. The adopted regulations shall be designed to maintain viable populations of these existing plant and animal species and allow development activities which are compatible with identified environmentally significant lands and resources. (See ~~Map 2 of~~ Environmentally Significant Land and Resources map series within the Future Land Use Map Series.).

Policies

- 2.4.1 ~~By 1993, The City shall~~ maintain an updated its inventory of identified environmentally significant resources identified ~~on Map 2 in the Environmentally Significant Land and Resources map series within~~ of the Future Land Use Map Series. If additional resources are identified, these properties shall be subject to ~~performance-based~~ regulations keyed to the resource present at the site. The Future Land Use Map Series shall be amended to include these properties.
- 2.4.2 The City shall adopt land development regulations that protect identified threatened or endangered or listed (or candidates for being listed) plants, animals or habitats. These regulations shall require developments of parcels within the environmentally significant areas to submit an ecological inventory of the parcel.
- 2.4.3 The City shall ~~develop~~ continue to have guidelines for the design of stormwater basins that require the use of native vegetation and basin slopes suitable for stormwater treatment that promote highly diverse plant and animal habitats, particularly within stream-to-sink basins, and that enhance the hydrological and ecological functions of related wetland areas.
- 2.4.4 ~~By 1994, the City shall identify road segments where large numbers of animals are killed ("road kills") and establish mitigation policies to be used in conjunction with future road improvements. Future road alignments shall avoid~~ minimize their impact on environmentally significant animal habitats.
- 2.4.5 The City shall ~~adopt land development regulations that~~ continue to require construction design consistent with existing terrain by discouraging contouring, cut and fill, or other practices where they might be shown to cause soil erosion.
- 2.4.6 The City shall ~~adopt~~ continue to have land development regulations for environmentally significant wetlands, lakes and regulated creeks that require:
- a. Setbacks from regulated creeks, lakes and wetlands;
 - b. Prohibition of development ~~which~~ that would cause erosion and sediment pollution to regulated creeks, lakes and wetlands;
 - c. No net increase in the rate of runoff from development sites adjacent to regulated creeks, lakes and wetlands;
 - d. Retention or detention of the first inch of runoff of developments adjacent to regulated creeks, lakes and wetlands, through on-site filtration;

- e. Retention of vegetation integral to the ecological value of regulated creeks, lakes and wetlands;
 - f. Compliance with the City's adopted criteria for controlling sediment and erosion;
 - g. Allowance of a transfer of development intensity and density from lower to higher elevations of a site; and
 - h. Prohibition on the installation of all septic tanks.
- 2.4.7 The City shall ~~annually~~ periodically conduct an inventory of environmentally significant plants, animals, and habitats within at least two city-owned parks or open space parcels; prepare a list of plants, animals, and habitats to protect; and prepare a plan for the maintenance of viable populations of these plants and animals.
- 2.4.8 ~~By 1992,~~ Chemical control efforts by the City to manage pest species shall only include use of chemicals ~~designated by the City to be~~ that are safe for wildlife and public health. Chemical control will be used only when non-chemical controls do not abate the pest problem.
- 2.4.9 The City shall coordinate with Alachua County, ~~FDNR~~ FDEP and the Water Management Districts to conserve environmentally significant ~~vegetative plant~~ plant communities ~~located within both the City and within the unincorporated area~~ by submitting relevant land development proposals for review to the Alachua County Environmental Protection ~~Office~~ Department, the applicable Water Management District, and ~~FDNR~~ FDEP for comment and recommendation.
- ~~2.4.10 By June 1992, the City shall adopt land development regulations that include (1) a definition of environmentally significant open space and other categories of open space; and (2) regulations to preserve such open space.~~
- 2.4.11~~10~~ The City shall protect floodplains through existing land development regulations ~~which~~ that at a minimum:
- a. Prohibit development within the flood channel or floodplain without a City permit;
 - b. Prohibit filling in the flood channel by junk, trash, garbage, or offal;

- c. Prohibit permanent structures in the flood channel, except for those necessary for flood control, streets, bridges, sanitary sewer lift stations, and utility lines;
- d. Prohibit the storage of buoyant, flammable, explosive, toxic or otherwise potentially harmful materials in the flood channel;
- e. Prohibit development within the floodplain ~~which~~ that would reduce the capacity of the floodplain;
- f. Prohibit development ~~which~~ that would cause or create harmful soil erosion, stagnant water, and irreversible harmful impacts on existing flora and fauna;
- g. Limit flood channel uses to agriculture, recreation, lawns, gardens, and parking areas; and
- h. Limit floodplain uses to launching areas for boats and structures at least one foot above the 100-year flood elevation, in addition to those allowed in the flood channel.

2.4.1211 The City's ~~shall amend its current~~ land development regulations shall to include ~~performance based standards to~~ protect environmentally significant lands and resources ~~that will at minimum~~ by:

- a. Controlling permissible uses through regulatory overlay districts;
- b. Providing opportunities for alternative and innovative site development;
- c. ~~Establish~~ Providing setback and parking standards;
- d. Providing mandatory mitigation to ensure no net loss of acreage and functions citywide when wetlands are unavoidably lost;
- e. Allowing for, or requireing the clustering of development away from environmentally significant resources; and
- f. Restricting on-site waste disposal systems.

2.4.1312 At a minimum, conservation strategies for significant ~~vegetative~~ natural communities shall include:

- a. Required ~~preservation~~ conservation of native upland ~~vegetative~~ natural communities;
- b. Installation of native vegetation landscaping and removal of invasive trees and shrubs; and
- c. ~~Surface water~~ Setbacks.

Objective 2.5

The City shall continue existing programs and institute new programs as necessary to maintain air quality levels which comply with county, state and national ambient air quality standards through the year ~~2001~~ 2010.

Policies

- 2.5.1 Adopt citywide regulations restricting or prohibiting the burning of plastics, particularly with regard to local government, institutional, or commercial incineration. (~~Refer to Solid Waste Element for additional incineration policies.~~)
- ~~2.5.2 By 1995 the City shall make available a general information brochure describing known radon hazards in the City.~~
- 2.5.32 The City shall encourage ~~non-auto~~ transportation choice by adopting new programs and strategies as may be needed to encourage public mass transit use, bicycling, walking, and higher urban development densities near neighborhood centers ~~activity centers, satellite parking lots, and mixed land uses.~~

Objective 2.6

The City shall continue to promote and practice energy natural resource conservation and pollution prevention ~~to reduce energy consumption and demand~~ in order to reduce negative impacts on the environment. To accomplish this, the City shall continue to incorporate energy saving natural resource-saving and pollution prevention policies in this Element and other elements of the Comprehensive Plan (such as Solid Waste, Future Land Use, and Traffic Circulation Transportation Mobility).

Policies

- ~~2.6.1 By 1992, after completion of the Local Energy Engineer Program (LEEP), the City shall amend the Comprehensive Plan to include an Energy Element unless it is deemed unnecessary.~~

2.6.1 The City shall continue to provide customers with education and incentive programs to encourage ~~reduced energy consumption~~ natural resource conservation and pollution prevention.

2.6.2 The City shall establish by 2003 a Green Building Program in order to encourage environmentally friendly and energy-efficient construction.

Goal 3

Improve urban spaces through preservation and enhancement of the urban forest. Maintain the City's commitment to preservation of the urban forest and street trees as a defining feature of our community.

Objective 3.1

~~After January 1, 1992,~~ The total percentage of tree canopy coverage within the City shall not fall below the ~~19924~~ percentage of tree canopy, as estimated by the City Manager or his designee, ~~using methods developed by the Florida Division of Forestry,~~ except in the event of natural catastrophe (~~disease or insect epidemic, or storm~~).

Policies

3.1.1 ~~By 1992, establish a tree planting program whereby~~ The City shall continue to plants at least 400 trees (or 650 inch-diameters at chest height) within City limits annually, and encourage developers and citizens to plant at least 600 trees annually. At least 75 percent of the trees should be native to north Florida.

3.1.2 The City shall adopt land development regulations for new development that require the following:

- a. Use of native and drought-tolerant plants ("xeriscape") and a reduction in allowable turf area;
- b. Energy conservation through ~~a 5 percent increase in tree and shrub canopy over the 1990 Gainesville Landscape Ordinance canopy requirements in the Land Development Code that result in~~ to shade for buildings and pavements;
- c. ~~Use of pervious paving materials adjacent to landscape strips and islands to provide greater rooting volume for trees and shrubs;~~

- ~~c. d.~~— Species diversity in new plantings (no more than 50 ~~20~~ percent of any one genus ~~citywide~~, or on any site plan except those within airport flight paths, or except for street tree plantings, which, on a given street should be uniform with respect to genus, size and shape; however, street tree diversity is to be attained citywide, even though it *will may* not be attained on an individual street) to reduce the effect of loss of a tree species due to insect or disease outbreaks. ~~(This policy excludes parking lots and road medians, that may have up to 50 percent of one tree genus.)~~; and
- ~~d. e.~~ A plan for the removal of invasive trees and shrubs shall be submitted at the time of final development review.
- ~~3.1.3~~ By 1991, the City will have applied for a matching grant to conduct an inventory of city street trees to identify large trees and available planting locations. The information generated will be used as the basis for a comprehensive tree planting plan. If a grant is not awarded, then a study shall be conducted that will lead to the development of a comprehensive tree planting plan. By 1994, the City will conduct an independent study on the impact of trees on the infrastructure and shall submit a report, the information from which can be incorporated in the comprehensive tree planting plan so that appropriate trees can be planted in appropriate locations.
- 3.1.43 By 1992, ~~all~~ The City shall continue to require that removal of regulated trees (as identified by the Gainesville Landscape Ordinance) that are not subject to development plan approval shall be mitigated by on- or off-site tree planting (or an equivalent exaction of fees) of at least 10 percent for regulated trees and 100 percent for Heritage trees (other than regulated water oak, laurel oak, camphor and pine and tallow, which shall require 10% mitigation) of the total diameter inches removed measured at breast height.
- 3.1.54 By ~~1995~~ 2003, the City shall ~~adopt~~ prepare tree-lined streetscape guidelines which require the preservation and establishment of tree-lined streets and compatibility with existing infrastructure. In order to promote compatibility with infrastructure, strategies such as placing overhead utilities underground, using aerial (or tree) cabling, planting trees that are compatible with overhead utilities and reserving street right-of-way for trees shall be implemented, when economically feasible. All trimming within the public right-of-way shall use the National Arborist Association's approved tree-pruning practices to minimize the physical and aesthetic harm to trees that must be pruned.

~~3.1.6 In support of Policy 3.1.5, the City, shall, by June 1992, identify important street segments (to be known as "Gateway Streets") where a reduction in visual obtrusiveness of infrastructure would be desirable. Consideration of financial and physical obstacles associated with all existing infrastructure along suggested gateways will be made before official designation.~~

~~3.1.7 By 1992, the City shall prepare a plan for the establishment and preservation of tree-lined streets. This plan shall give priority to high visibility Gateway Streets and important activity center road segments, as well as segments included on the Metropolitan Transportation Planning Organization (MTPO) Transportation Improvement Plan.~~

3.1.85 The City shall continue to remove invasive trees and shrubs from its rights-of-way and property and to inform private property owners of the benefits of removing invasive vegetation.

3.1.96 The City shall continue amend the Land Development Code to exclude invasive vegetation from plant material permitted in landscape plans.

3.1.7 The City shall continue to have land development regulations that protect heritage and champion trees as an important community resource. The regulation at a minimum shall include:

- a. Variations from land development regulations to save and preserve trees;
- b. Levy of fines for the unlawful removal of trees as provided by the Code of Ordinances; and
- c. Setback requirements to protect trees before, during and after construction.

Goal 4

Provide ongoing monitoring of environmental resources and mitigate current pollution problems and potential point sources of pollution.

Objective 4.1

~~By June 1992,~~ The City shall ~~establish~~ participate in an environmental quality monitoring program designed to identify problems and trends in local air, surface water, groundwater, and plant and animal habitat quality. This program shall also be used to evaluate the effectiveness of protective regulations.

Policies

- 4.1.1 The City shall work with the Alachua County Environmental Protection Office ~~Department~~ and other appropriate agencies organizations to design and implement a comprehensive and ongoing monitoring program for Gainesville's environmental resources. This program should have at least an urban area scope and shall produce a "state of the environment" report ~~on~~ at least every five years ~~an annual basis~~.

Objective 4.2

~~By 1993,~~ The City shall identify pollution problems by and responsible parties responsible, and shall establish strategies to mitigate, remediate, or assist in the mitigation or remediation of; these problems in all watersheds within Gainesville's city limits. ~~One priority~~ In consideration of the importance of water quality of the creeks in our community, priority shall be given to improving the quality of water entering Sweetwater Branch, Tumblin Creek and Hogtown Creek ~~which transmits water directly to the Floridan Aquifer through Alachua Sink.~~

Policies

- 4.2.1 ~~By December 1992~~ 2003, the City shall submit a National Pollutant Discharge Elimination System (NPDES) permit application to FDEP in order to improve surface water quality work with FDNR, FDEP, St. Johns Water Management District and Alachua County to prepare a plan which at a minimum will be consistent with NPDES permitting to ensure that water discharged by Sweetwater Branch, into Paynes Prairie will be discharged in a manner that will support the management objectives of FDNR and City objectives regarding protection of the Floridan Aquifer System.
- ~~4.2.2 The City shall comply with State pollution control requirements at the former Gainesville Airport Landfill and Burn Site described in the Solid Waste Element.~~
- ~~4.2.3 By 1994, the City shall develop and implement a mitigation plan for identified point sources of air pollution from city-owned facilities.~~
- 4.2.2 The City shall continue to explore projects for improving water quality, including the study of sedimentation problems, in the Hogtown Creek watershed with the goal of reducing sediment accumulation in the vicinity of NW 34th Street by 2010.

- 4.2.3 The City shall continue to explore projects for improving water quality in Tumblin Creek that are identified in the City of Gainesville Master Stormwater Plan.
- 4.2.4 To enhance the quality of water entering Sweetwater Branch, the city will construct a master stormwater basin to treat flow from downtown Gainesville.
- 4.2.5 The City shall coordinate with the Alachua County Environmental Protection Department and other governmental entities in identifying pollution problems and providing documentation and other relevant assistance as appropriate and feasible towards the mitigation and remediation of pollution problems, including assistance as necessary in cases where sanctions may be imposed for violations of applicable environmental regulations.



**ATTACHMENT B
(COMPOSITE)**

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

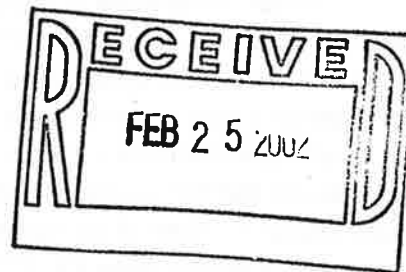
"Dedicated to making Florida a better place to call home"

JEB BUSH
Governor

STEVEN M. SEIBERT
Secretary

February 22, 2002

The Honorable Thomas Busing
Mayor, City of Gainesville
200 East University Avenue
Post Office Box 490, Station 6
Gainesville, Florida 32602-0490



Dear Mayor Busing:

The Department of Community Affairs has completed its review of the proposed Comprehensive Plan Amendment for the City of Gainesville (DCA No. 02-1ER), which was received on December 13, 2002. 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 ORC Report include comments related to wetlands policies, wildlife and habitat maps and plan consistency.

Upon receipt of this letter, the City of Gainesville has 120 days in which to adopt, adopt with changes, or determine that the City will not adopt the proposed amendment. The process for adoption of local government comprehensive plan amendments is outlined in s. 163.3184, Florida Statutes (F.S.), and Rule 9J-11.011, F.A.C. The City must ensure that all ordinances adopting comprehensive plan amendments are consistent with the provisions of Chapter 163.3189(2)(a), F.S.

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

Three copies of the adopted comprehensive plan amendments;

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.

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.dca.state.fl.us>

The Honorable Thomas Busing
February 22, 2002
Page Two

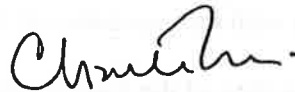
The above amendment and documentation are required for the Department to conduct a compliance review, make a compliance determination and issue the appropriate notice of intent.

Please be advised that the Florida Legislature amended Section 163.3184(8)(b), Florida Statutes, requiring the Department to provide a courtesy information statement regarding the Department's Notice of Intent to citizens who furnish their names and addresses at the local government's plan amendment transmittal (proposed) or adoption hearings. In order to provide this courtesy information statement, local governments are required by the law to furnish to the Department the names and addresses of the citizens requesting this information. This list is to be submitted at the time of transmittal of the adopted plan or plan amendment. As discussed in our letter sent to you on May 25, 2001, outlining the changes to Section 163.3184(8)(b) which are effective July 1, 2001, and providing a model sign-in information sheet, please provide these required names and addresses to the Department when you transmit your adopted amendment package for compliance review. For efficiency, we encourage that the information sheet be provided in electronic format.

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 North Central Florida Regional Planning Council.

Please contact Jim Crews, Planning Consultant or Jeff Bielling, Community Program Administrator, at (850) 922-1772 if we can be of assistance as you formulate your response to this Report.

Sincerely yours,



Charles Gauthier, AICP
Chief, Bureau of Local Planning

CG/jcs

Enclosures: Objections, Recommendations and Comments Report
Review Agency Comments

cc: Mr. Tom Saunders, Director of Community Development, City of Gainesville
Mr. Charles F. Justice, Executive Director, North Central Florida Regional Planning Council

INTRODUCTION

The following objections, recommendations and comments are based upon the Department's review of the City of Gainesville 02-1ER 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.

DEPARTMENT OF COMMUNITY AFFAIRS

3 **OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

FOR THE

CITY OF GAINESVILLE

AMENDMENT 02-1ER

February 22, 2002
Division of Community Planning
Bureau of Local Planning

This report is prepared pursuant to Rule 9J-11.010

OBJECTIONS, RECOMMENDATIONS AND COMMENTS

Gainesville No. 02-1ER Proposed Comprehensive Plan Amendment

I. CONSISTENCY WITH RULES 9J-5, F.A.C., AND CHAPTER 163, F.S.

Gainesville has submitted a proposed Local Government Comprehensive Plan (Plan) amendment (DCA No. 02-1) to the Department of Community Affairs for review. The amendment represents a major update to the Plan's *Transportation Mobility Element* and *Conservation, Open Space and Groundwater Recharge Element* and is generally consistent with recommendations in the community's adopted Evaluation and Appraisal Report.

The Department makes the following comments related to the proposed amendment:

A. Conservation, Open Space and Groundwater Recharge Element.

Comments:

1. The proposed amendment contains revised wetlands policies (Policy 1.1.1, Policies 1.1.1.b.1-6, Policy 1.1.1.b.9, Policy 1.1.1.b.11 & Policy 2.1.1) that may conflict with the statutory authority of the Florida Department of Environmental Protection (FDEP) and the five water management districts to establish statewide regulatory policy and guidance for wetland delineation, assessment and mitigation, including a soon-to-be-adopted uniform wetland mitigation assessment method. The Department commends the city's attempt to provide greater protection for its natural resources and notes FDEP's offer (please see attached letter) to assist the City in its development of wetland policies that both achieve local objectives and are consistent with state law.

2. Several wildlife and habitat maps are hard to read, and the congruence of significant flora, fauna, wetlands and significant ecological communities is not readily perceived when comparing maps. The city may wish to add to the Data and Analysis Section the "Bio-diversity Hot Spots" and "Priority Wetlands" maps prepared by the Florida Geographic Digital Laboratory at the University of Florida using data provided by the Florida Fish and Wildlife Commission in order to better show important biological features, particularly plant and animal habitats.

3. New Policy 1.1.1.(b)6, which requires wetland mitigation to be performed within the city limits "or the adjacent sub-basin," may be inconsistent with Future Land Use Objective 2.1, which states existing citywide levels of wetlands acreage and functions "within the city limits" shall be maintained through the planning period.

II. CONSISTENCY WITH THE STRATEGIC REGIONAL POLICY PLAN.

In Clearinghouse Item No. 20 dated January 15, 2002, the North Central Florida Regional Planning Council provided the following comment pursuant to Rule 29C-1.008(d)3., F.A.C.:

Comment:

1. Neither proposed Transportation Element Policy 1.2.1 nor Policy 1.2.2 discuss if the City proposes to evaluate currently designated activity centers to determine whether and how such centers conform to the Metropolitan Transportation Planning Organization's adopted vision statement. This evaluation process should identify which of these centers will primarily function as neighborhood commercial centers and which centers have the potential and should become highly-developed, mixed-use centers as addressed by the MTPO. It is recommended that the City planning staff and MTPO staff work together to review the number and location of both existing and proposed activity centers to insure consistency with the principals and concepts contained in the MTPO's *Livable Community Reinvestment Plan*.

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN.

The proposed Plan amendment adequately addresses and furthers the State Comprehensive Plan (Rule 9J-5.021, F.A.C.).

DIVISIONS OF FLORIDA DEPARTMENT OF STATE
Office of the Secretary
Office of International Relations
Division of Elections
Division of Corporations
Division of Cultural Affairs
Division of Historical Resources
Division of Library and Information Services
Division of Licensing
Division of Administrative Services



JAN 28 2002
RPM BSP
PLAN PROCESSING TEAM

MEMBER OF THE FLORIDA CABINET
State Board of Education
Trustees of the Internal Improvement Trust Fund
Administration Commission
Florida Land and Water Adjudicatory Commission
Siting Board
Division of Bond Finance
Department of Revenue
Department of Law Enforcement
Department of Highway Safety and Motor Vehicles
Department of Veterans' Affairs

895
1-28-02

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
DIVISION OF HISTORICAL RESOURCES

January 23, 2002

Mr. Ray Eubanks
Department of Community Affairs
Bureau of State Planning
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Re: Historic Preservation Review of the City of Gainesville (02-1ER) Comprehensive Plan Amendment Request (Received by DHR on 12/20/01)

Dear Mr. Eubanks:

According to this agency's responsibilities under sections 163.3177 and 163.3178, Florida Statutes, and Chapter 9J-5, Florida Administrative Code, we have reviewed the above document to decide if data regarding historic resources have been given sufficient consideration in the request to amend the Gainesville Comprehensive Plan.

We have reviewed proposed Evaluation and Appraisal Report based text changes to the Gainesville Comprehensive Plan to consider the potential effects of these actions on historic resources. While our cursory review suggests that the proposed changes may have no adverse effects on historic resources, it is the city's responsibility to ensure that the proposed revisions will not have an adverse effect on significant archaeological or historic resources in Gainesville.

For the Transportation Element, the city should take into account the effect such actions would have on known and potential historic resources—both structures and archaeological sites. If these concerns are addressed and appropriate actions are taken by the city to protect these resources, then any resulting changes should be acceptable.

In sum, it is our opinion that the amended comprehensive plan meets (although known and potential historic resources need to be carefully considered in the planning phases of proposed land use changes) the State of Florida's requirements as promulgated in sections 163.3177 and 163.3178, F.S., and Chapter 9J-5, F.A.C., regarding the identification of known historical resources within their specified area of jurisdiction, and for the establishment of policies, goals and objectives for addressing known and potentially significant historical resources in Gainesville.

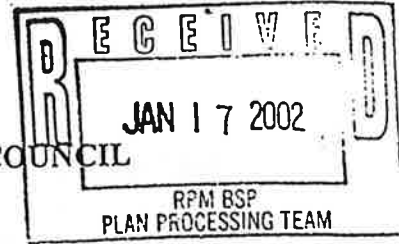
If you have any questions regarding our comments, please feel free to contact Susan M. Harp or Laura Kammerer of the Division's Compliance Review staff at (850) 245-6333.

Sincerely,

Janet Snyder Matthews, Ph.D., Director

R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250 • <http://www.flheritage.com>
 Director's Office (850) 245-6300 • FAX: 245-6435
 Archaeological Research (850) 245-6444 • FAX: 245-6436
 Historic Preservation (850) 245-6333 • FAX: 245-6437
 Historical Museums (850) 245-6400 • FAX: 245-6433
 Palm Beach Regional Office (561) 279-1475 • FAX: 279-1476
 St. Augustine Regional Office (904) 825-5045 • FAX: 825-5044
 Tampa Regional Office (813) 272-3843 • FAX: 272-2340

388
1-17-02



NORTH CENTRAL FLORIDA REGIONAL PLANNING COUNCIL

January 15, 2002

Clearinghouse Item #20 - City of Gainesville Comprehensive Plan Draft Amendments (DCA No. 02-1ER)

INTRODUCTION

Clearinghouse Item #20 consists of draft amendments to the Transportation Mobility Element as well as the Conservation, Open Space, and Groundwater Recharge Element of the City of Gainesville Comprehensive Plan. The amendments implement various recommendations contained in the City's evaluation and appraisal report (EAR).

Chapter 163.3191, F.S. requires local governments to conduct EARs of their local government comprehensive plans once every seven years. The purpose of the process is to require local governments to consider changes to their comprehensive plans which will reflect changes in state policy on planning and growth management which may have occurred since adoption of the local government plan. The draft amendments are summarized as follows:

Petition No.	Summary Description
146CPA-00 PB	Proposes to amend the Transportation Mobility Element by adding a goal and related objectives and policies to promote transportation choices, compact development, and a livable city; adding a goal and relate objectives and policies promoting walking; adding a goal and related objectives and policies to promote an accessible and comfortable community transit system; adding a goal and related objectives and policies to promote bicycling; adding a goal and related objectives and policies to develop a trails network; adding goals and related objectives and policies to create livable streets that promote safety and quality of life and minimize single-occupant vehicle travel; adding a goal and related objectives and policies to promote accessibility to people with disabilities; and making minor changes throughout (see attached).
175CPA-00 PB	Proposes to amend the Conservation, Open Space, and Groundwater Recharge Element by revising policies on wetlands; adding provisions concerning the Alachua County Forever program; adding provisions concerning the Alachua County Murphree Wellfield Protection Code; adding provisions concerning Floridan Aquifer recharge areas; providing for an Environmentally Significant Land and Resources map series within the Future Land Use Map Series; adding Tumblin Creek and Hogtown Creek to the priority list for improving water quality; removing out of date provisions; amending provisions concerning NPDES; and making minor amendments throughout (see attached).

BACKGROUND

The Council's review of draft EAR-based amendments is the same as its review of regular amendments. It is limited to the effects they may have on regional resources, regional facilities, and extrajurisdictional impacts. A written report containing any objections, recommendations for modification, and comments (as defined in Chapter 9J-11, F.A.C., is to be provided to the Florida Department of Community Affairs (DCA) within 30 calendar days of receipt of the amendments.

Under the provisions of Chapter 163, F.S., local government comprehensive plans will not be subject to the Objections, Recommendations, and Comments (ORC) report process unless: 1) specifically requested by the local government; 2) deemed necessary by the DCA; or 3) requested by the Council or an affected person. In its transmittal letter dated December 12, 2001, the City of Gainesville requested the DCA to prepare an ORC report for these amendments.

The Council reviewed Gainesville's draft EAR report in August, 1998. At that time, the Council forwarded four comments addressing the City's Conservation, Open Space, and Groundwater Recharge Element. These comments were:

Comment #1: Revise Conservation, Open Space, and Groundwater Recharge Element Policy 2.3.6 to address high aquifer recharge areas. Similarly, replace all other references in the city plan to "prime" aquifer recharge areas with "high" aquifer recharge areas as mapped in the regional plan. Include within this element a map of Areas of High Recharge Potential to the Floridan Aquifer as mapped in the regional plan. Alternatively, address within the EAR why the City has chosen not to use the regional plan's (or the water management district's) high aquifer recharge map(s) and not to address the protection of such areas.

Comment #2: Include within this element a map of known listed species locations within the city which is generally consistent with the map of listed species locations contained in the regional plan. Such a map can be obtained from the Florida Natural Areas Inventory. Also include a map of stream-to-sink watersheds which is generally consistent with the regional plan. Stream-to-sink watershed maps are obtainable from the water management districts.

Comment #3: The list of regional resources on page 6 of the chapter addressing the Conservation, Open Space, and Groundwater Recharge Element should be amended to include the Floridan Aquifer, Areas of High Aquifer Recharge Potential to the Floridan Aquifer, listed species and their habitat, and Devil's Millhopper State Geological Site.

Additionally, in its December review of draft EAR-based amendments to the City's Future Land Use Element, the Council forwarded the following objection, and subsequently requested the preparation of an ORC report:

Objection #1: The adopted City of Gainesville Future Land Use Element identifies 21 neighborhood centers. The proposed amendments in the Future Land Use Element - Data and Analysis Figure 3, show 18 neighborhood centers. Some of these centers do not seem to be consistent with the MTPOs vision statement that calls for connecting a limited number of highly developed mixed use centers. It is recommended that City of Gainesville planning staff and MTPO staff work together to review the number and location of proposed activity centers to insure consistency with the principals and concepts contained in the MTPOs Livable Community Reinvestment Plan.

EVALUATION

ADEQUACY OF INTERGOVERNMENTAL COORDINATION ELEMENTS

Amendments are not proposed to the City's Intergovernmental Coordination Element. However, the City is proposing the following new objective and policies to the City's Conservation, Open Space, and Groundwater Recharge Element which may enhance intergovernmental coordination with Alachua County:

Objective 1.2 The City shall coordinate with Alachua County on the Alachua County Forever program, and with other potential funding sources for land acquisition for environmental and open space protection.

Policy 1.2.1 The City shall seek to maximize protection of environmentally sensitive lands through the nomination of properties for acquisition with Alachua County Forever and other relevant funds.

Policy 4.2.5 The City shall coordinate with the Alachua County Environmental Protection Department and other governmental entities in identifying pollution problems and providing documentation and other relevant assistance as appropriate and feasible towards the mitigation and remediation of pollution problems, including assistance as necessary in cases where sanctions may be imposed for violations of applicable environmental regulations.

COMPATIBILITY AMONG LOCAL PLANS

The proposed amendments do not adversely impact compatibility between the City of Gainesville and the Alachua County comprehensive plans.

IMPACTS TO SIGNIFICANT REGIONAL FACILITIES, INCLUDING COMPATIBILITY WITH REGIONAL TRANSPORTATION CORRIDORS AND FACILITIES, INCLUDING SEAPORTS, AIRPORTS, PUBLIC TRANSPORTATION SYSTEMS, HIGH SPEED RAIL FACILITIES, AND INTERMODAL FACILITIES

The following comment is based on the attached review provided by the Council's transportation planning staff for this amendment, as well as a previous objection and recommendation raised by the Council during its review of draft EAR-based amendments to the City's Future Land Use Element. This objection was based on item #2, below, from the Metropolitan Transportation Planning Organization for the Gainesville Urbanized Area (MTPO) adopted Livable Communities Reinvestment Plan.

The adopted MTPO plan contains a vision statement which is summarized below. Also included are comments concerning consistency between the vision statement and the City's proposed Transportation Mobility Element Update (excerpts from the vision statement are in bold).

1. develop walkable downtown centers:

The proposed Transportation Mobility Element Update encourages a more walkable downtown Gainesville.

2. connect a limited number of highly developed mixed use centers:

Part of the MTPO's vision statement is to connect a limited number of highly developed mixed use centers (also referred to as "village centers"). According to page 3-40 of the adopted MTPO plan document, the purpose of these centers is to:

"Encourage shorter trip lengths and foster the development of premium type public transit service, including dedicated bus lanes, flexible bus rapid transit, light rail or people-mover systems. The intent of creating such centers is to discourage sprawl development and its associated travel patterns by clustering major nodes of activity within the existing neighborhood framework that can be efficiently served by transit and promote a "park once" environment for walking. A limited number of centers are needed so that adequate thresholds of mixed-use development occur to support premium transit service."

On page 3-44 of the adopted MTPO plan document, in a section entitled Process for Implementation, recommended steps are identified to address this issue. These include the following:

"The City and County should then undertake an evaluation process of all currently designated activity centers to determine whether and how such centers conform to the MTPO's adopted vision statement. Which of these will primarily function as neighborhood commercial centers? Which have the potential and should become highly developed, mixed-use centers as addressed by the MTPO?"

The adopted MTPO plan also identifies a number of recommended implementation strategies on page 3-49, including some for this portion of the vision statement. These include the following:

- A. Evaluate existing or planned activity centers to determine whether their standards allow for high enough density to be transit supportive.
- B. Conduct a market feasibility analysis to gauge the potential demand for these centers and determine the optimum number and best combination of activity center types.
- C. Zone all areas of desired future activity centers ahead of development applications in order to expedite the development process and provide more clarity and elaboration as to what types of development are desired in these areas.
- D. Apply Multi-modal Transportation District designation to selected major activity centers.”

Objective 1.2 and Policies 1.2.1 and 1.2.2 of the City Transportation Mobility Element Update are proposed to read as follows:

Objective 1.2 Ensure that future land use map designations promote transportation objectives by designating residential development of sufficient density in appropriate locations to support transportation choice.

Policy 1.2.1 By 2001, The City's shall adopt a future land use map that is shall remain consistent with transportation choice strategies such as: retaining higher residential densities and non-residential intensities near and within neighborhood (activity) centers and within transit choice corridors; car-oriented land use primarily outside of areas oriented toward transportation choice; more mixed use designations in appropriate locations; and centrally located community-serving facilities.

Policy 1.2.2 The City shall coordinate with the MTPO to increase public awareness of upcoming transportation projects in the approved Year 2000 Livable Communities Reinvestment Cost Feasible Plan.

Comment: Neither proposed Transportation Element Policy 1.2.1 nor Policy 1.2.2 discuss if the City proposes to evaluate currently designated activity centers to determine whether and how such centers conform to the MTPO's adopted vision statement. This evaluation process should identify which of these centers will primarily function as neighborhood commercial centers and which centers have the potential and should become highly developed, mixed-use centers as addressed by the MTPO. It is recommended that City of Gainesville planning staff and MTPO staff work together to review the number and location of both existing and proposed activity centers to insure consistency with the principals and concepts contained in the MTPO's Livable Community Reinvestment Plan.

3. provide a high level of premium transit service in a linear Archer Road corridor.

Only a small portion of the Archer Road corridor is located within the City of Gainesville. The portions that are shown in the proposed Generalized Future Land Use Map include the following categories: education, office, public facilities and residential medium (8-30 units per acre). Therefore, there are no significant opportunities to increase densities and intensities of development within this limited area.

ADEQUATE TREATMENT OF AFFORDABLE HOUSING ISSUES AND DESIGNATION OF ADEQUATE SITES FOR AFFORDABLE HOUSING

Adverse impacts to affordable housing are not anticipated as a result of the proposed amendments.

PROTECTION OF NATURAL RESOURCES OF REGIONAL SIGNIFICANCE

Adverse impacts to Natural Resources of Regional Significance are not anticipated as a result of the proposed amendments. The proposed amendments adequately address Council Comment #1 above. The City is proposing to include aquifer recharge maps prepared by the Suwannee and St. Johns River Water Management Districts in its Future Land Use Map Series. Proposed Conservation, Open Space, and Groundwater Recharge Element Policy 2.3.6 calls for the use of these maps until such time as prime aquifer recharge maps are prepared by the districts. The proposed policy also calls for the City to amend land development regulations if its existing regulations and programs do not already protect such areas. Proposed Policy 2.3.6 is as follows:

Policy 2.3.6 Until such time as prime recharge areas are mapped, the City shall use the Floridan Aquifer recharge maps prepared by the St. Johns River Water Management District and the Suwannee River Water Management District (see Environmentally Significant Land and Resources map series within the Future Land Use Map Series). City land development regulations shall be amended to protect such areas if existing regulations and programs do not already protect them.

The proposed amendments adequately address Council Comment #2 above. The data and analysis section includes a general location map of listed species (see attached). Additionally, the data and analysis section does include a map of environmentally significant lands and identifies, in the text, listed species found in these areas.

The proposed amendments adequately address Council Comment #3 above. Although the list of regional resources was deleted from the data and analysis section, the proposed amendments adequately identify regional resources within the Gainesville City limits.

EFFECTIVENESS AND ENHANCEMENT OF ECONOMIC DEVELOPMENT WITHIN THE REGION

The proposed amendments are not anticipated to adversely impact economic development within the region.

ADEQUACY AND COMPATIBILITY WITH EMERGENCY PREPAREDNESS PLANS

The proposed amendments are not anticipated to adversely affect local emergency preparedness plans.

EXTRAJURISDICTIONAL IMPACTS

The proposed amendments are not anticipated to result in significant adverse extrajurisdictional impacts.

OBJECTIONS, RECOMMENDATIONS FOR MODIFICATION, AND COMMENTS

Comment: Neither proposed Transportation Element Policy 1.2.1 nor Policy 1.2.2 discuss if the City proposes to evaluate currently designated activity centers to determine whether and how such centers conform to the MTPO's adopted vision statement. This evaluation process should identify which of these centers will primarily function as neighborhood commercial centers and which centers have the potential and should become highly developed, mixed-use centers as addressed by the MTPO. It is recommended that City of Gainesville planning staff and MTPO staff work together to review the number and location of both existing and proposed activity centers to insure consistency with the principals and concepts contained in the MTPO's Livable Community Reinvestment Plan.

COUNCIL REQUEST FOR AN ORC REPORT

The Council requests that the comment contained in this report be addressed in the City's ORC report.

RECOMMENDATION

It is recommended that these comments be forwarded to the City of Gainesville and the Florida Department of Community Affairs.

Clearinghouse Committee Action: At its January 15th meeting, the Committee voted to adopt this report as official Council comment as per Rule 29C-1.008(d)3, Florida Administrative Code.

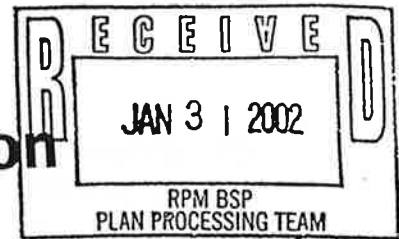


Jeb Bush
Governor

398
1-31-02

Department of Environmental Protection

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



David B. Struhs
Secretary

January 25, 2002

Mr. Ray Eubanks
Plan Review and DRI Processing Team
Florida Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

RE: City of Gainesville, 02-1ER
Plan Amendment ORC Review

Dear Mr. Eubanks:

The Office of Intergovernmental Programs has reviewed the proposed amendments under the procedures of Chapter 163, *Florida Statutes (F.S.)*, and Chapters 9J-5 and 9J-11, *Florida Administrative Code (F.A.C.)*, and offers the following comments and recommendations on Petition 175CPA-00 PB:

The *Draft Conservation, Open Space and Groundwater Recharge Element* dated November 13, 2001, contains a number of policies that potentially conflict with state law. Florida's statutory framework for water management provides the Department of Environmental Protection and five water management districts independent authority under Chapter 373, *F.S.*, to regulate surface water management systems, including activities in, on or over wetlands or other surface waters. The state's preemptive authority is described in the following statutory provisions:

- ◆ The Florida Water Resources Act of 1972, as amended, states that water is a public resource of benefit to the entire state, is subject to management on a state and regional basis, and subject to regulation under Chapter 373, unless otherwise specifically exempt. §§ 373.016(4)(a), .023(1), *F.S.*
- ◆ The Department of Environmental Protection and the five water management districts are responsible for the conservation, protection, management, and control of the waters of the state. § 373.016(5), *F.S.*
- ◆ Paragraph 373.414(1)(b)4., *F.S.*, specifically states, "If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part."
- ◆ Similarly, Paragraph 373.414(1)(c) states: "Where activities for a single project regulated under this part occur in more than one local government jurisdiction, and where permit conditions or

"More Protection, Less Process"

Printed on recycled paper.

regulatory requirements are imposed by a local government for these activities which cannot be reconciled with those imposed by a permit under this part for the same activities, the permit conditions or regulatory requirements shall be controlled by the permit issued under this part.”

- ◆ Subsection 373.414(18), F.S., directs the Department and each water management district responsible for implementation of the environmental resource permitting (ERP) program to develop and adopt by rule a statewide uniform wetland mitigation assessment method. Department and water management district staff are currently developing the uniform assessment methodology and anticipate adoption of the implementing administrative rule by year-end (2002).

In addition, that subsection provides as follows: “Once the department adopts the uniform wetland mitigation assessment method by rule, the uniform wetland mitigation assessment method shall be binding on the department, the water management districts, **local governments**, and any other governmental agencies **and shall be the sole means to determine mitigation needed to offset adverse impacts** and to award and deduct mitigation bank credits. A water management district and any other governmental agency subject to chapter 120 may apply the uniform wetland mitigation assessment method without the need to adopt it pursuant to s. 120.54.” [emphasis added]

- ◆ The existing environmental resource permit rules of the Department and water management districts will remain in full force and effect until adoption of the uniform, statewide methodology, and determinations made under those rules will govern issuance of an environmental resource permit. The City can adopt land development regulations (LDRs) more restrictive than requirements in the rules. To the extent the differences cannot be reconciled, however, the Department and water management district rules will govern issuance of the permit. Once the Department adopts the uniform assessment methodology, it will be “the sole means” by which mitigation is determined.

The following portions of Policy 1.1.1., on Pages 2 and 3 of the amendment package, may result in a determination that cannot be reconciled with existing statute and rule provisions or with those to be adopted in the uniform wetland mitigation assessment methodology [emphasis added]:

*1.1.1. * * * The City shall develop and adopt land development regulations that establish criteria for expansion of the minimum standards addressed below.*

The direction established by the foregoing language contains no specific criteria to guide the City in its development and adoption of LDRs related to wetlands. In addition, the new language does not instruct City officials on the extent to which it can “expand” the standards or acknowledge the preemptive regulatory authority of the Department and the water management districts.

- b. Wetlands: * * * The City shall develop and implement land development regulations that at a minimum:
1. Establish criteria for determining whether the proposed development or activity is clearly in the public interest.
 2. Establish mitigation ratios for wetland preservation, restoration and creation. Wetland creation is presumed to be the least desirable mitigation strategy. Creation strategies shall be subject to the highest levels of requirements, restrictions, and review as outlined in the land development codes.
 3. Establish bonding, long-term monitoring and enforceable long-term maintenance requirements for wetland mitigation projects to ensure that all the negative impacts have been mitigated. Monitoring should be reviewed by the Alachua County Environmental Protection Department, the appropriate water management district, the University of Florida, or other appropriate monitoring agency[.]
 4. Establish mitigation ratios of at least 5:1 (acreage of mitigation area to impacted area);

Policy 1.1.1.b.1 requires the establishment of criteria for the determination of activities that are "clearly in the public interest." Unless the City adopts – verbatim – the public interest test criteria reflected in the rules of the Department and water management districts, there may be many "irreconcilable" differences between the City's adopted LDRs and the preemptive rules of the Department and water management districts. The verbatim adoption of the rule criteria would duplicate the existing regulatory programs for no reason.

Policies 1.1.1.b.2 and 1.1.1.b.4 require the establishment of mitigation ratios, the application of which may conflict with the following provisions: Subsection 373.414(18), F.S., and Section 12.3.2 of the St. Johns River Water Management District's (SJRWMD) *Applicant's Handbook: Management and Storage of Surface Waters* and the Suwannee River Water Management District's (SRWMD) *ERP Applicant's Handbook* (both of which currently recommend a range of mitigation ratios for wetland preservation, enhancement, restoration and creation). The new language also purports to create a legal presumption not reflected in Department or water management district rules, and provides no definition or qualification of what "highest levels" means.

Policy 1.1.1.b.3 directs the City to establish financial, monitoring and long-term maintenance requirements that may conflict with Department and water management district rules, and suggests (but does not require) that monitoring responsibilities be reviewed by the county or other entities, including the Department and water management districts. In the case of review by DEP or the water management

districts, the financial responsibility requirements of Sections 40C-4.301(1)(j) (SJRWMD) and 40B-400.103(1)(j) (SRWMD), *F.A.C.*, and Sections 12.3:7 of the districts' respective handbooks will preempt any City requirements to the contrary.

5. Require off-site mitigation to be performed within the same sub-basin and basin in which the impact occurred, unless it is shown that mitigation outside the sub-basin is more appropriate. * * *
6. Require mitigation to be performed within the city limits of Gainesville or the adjacent sub-basin.

Policies 1.1.1.b.5 and 1.1.1.b.6 prioritize the location of mitigation in relation to sub-basins, basins and city boundaries. While the basin preference concept is not inherently inconsistent with the rules that govern the ERP program, the language lacks any guidance on when it is appropriate to go outside the sub-basin or basin. In addition, because the new provision does not address the potential for unacceptable cumulative impacts within the basin, it is inconsistent with Subsection 373.414(8), *F.S.*, and ERP program guidelines. The political boundary limitation is also inconsistent with ERP program requirements, since most geopolitical lines in Florida do not coincide with basin designations or ecological communities.

9. Specify that these protections shall be extended to all wetlands, regardless of whether they are currently mapped:

To ensure consistency throughout the state, wetlands must be identified in accordance with Rule 62-340, *F.A.C.* – the unified statewide methodology for delineating the extent of wetlands and surface waters. The rule implements Subsection 373.421(1), *F.S.*: “[T]he Legislature preempts the authority of any water management district, state or regional agency, or local government to define wetlands or develop a delineation methodology to implement the definition[.]” Policy 1.1.1.b.9 is vague and over-broad in that it purports to extend certain unnamed protections to “all wetlands” regardless of where or by whom they may be “mapped,” in derogation of the aforesaid statute and rule.

11. Outstanding Florida Waters, as listed in s. 62-302.700, *F.A.C.*, shall have a buffer of 200 feet. * * * [E]xceptions can be made, as provided in the land development regulations, that require approval by a majority of the city commission and with appropriate mitigation of wetland loss at a minimum of a 5:1 ratio.

See comments on Policy 1.1.1.b.4 above.

The following policy, on Page 4 of the amendment package, also conflicts with the statute and rule sections cited above:

2.1.1 ~~By 1992, The City shall develop and~~ continue to update, augment and maintain an inventory of wetlands, and adopt land development regulations designed to preserve conserve existing wetland acreages and preserve natural functions within the Gainesville urban area. When wetlands are unavoidably lost to development, mandatory mitigation shall be required to ensure no net loss of acreage and functions occurs. Mitigation location protocol shall follow policy 1.1.1.b.5.

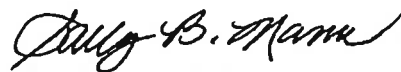
See comments on Policies 1.1.1.b.5, 1.1.1.b.6, and 1.1.1.b.9 above.

Objection to Proposed Amendments

The Department recognizes and commends the City of Gainesville's desire to provide greater protection for its natural resources. We further believe that city and state water management objectives can be complementary. Due to fundamental conflicts between the proposed provisions and current and proposed state law, however, the Department must object to the comprehensive plan modifications offered in City of Gainesville Amendment # 02-1ER, November 13, 2001, *Draft Conservation, Open Space and Groundwater Recharge Element*, Petition 175CPA-00 PB. Department staff would be pleased to assist the City in its development of wetland policies that are consistent with state law.

We look forward to working with the City of Gainesville Planning Division staff to draft amendment language that will satisfy the needs of the City yet preserve the statutory authority of the Department and water management districts to establish statewide regulatory policy and guidance for wetland delineation, assessment, and mitigation. If we can be of further assistance, please do not hesitate to contact Ms. Lauren Milligan, Environmental Specialist, at (850) 487-2231 or Ms. Connie Bersok, Environmental Administrator, Bureau of Beaches and Wetland Resources, at (850) 921-9858.

Yours sincerely,



Sally B. Mann, Director
Office of Intergovernmental Programs

/lpm

cc: Ms. Janet Llewellyn
Ms. Connie Bersok
Ms. Jodi Hopkins
Mr. Ralph Hilliard

ATTACHMENT C

**City of Gainesville Response
to
Florida Department of Community Affairs
regarding
OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

**City of Gainesville No. 02-1ER
Proposed Comprehensive Plan Amendment**

I. CONSISTENCY WITH RULES 9J-5, F.A.C., AND CHAPTER 163 F.S.

A. Conservation, Open Space and Groundwater Recharge Element.

DCA Comments

1. DCA Comment: The proposed amendment contains revised wetland policies (Policy 1.1.1, Policies 1.1.1 b.1-6, Policy 1.1.1 b.9, Policy 1.1.1 b.11 & Policy 2.1.1) that may conflict with the statutory authority of the Florida Department of Environmental Protection (FDEP) and the five water management districts to establish statewide regulatory policy and guidance for wetland delineation, assessment and mitigation, including a soon-to-be adopted uniform wetland mitigation assessment method. The Department commends the city's attempts to provide greater protection for its natural resources and notes FDEP's offer ... to assist the City in its development of wetland policies that both achieve local objectives and are consistent with state law.

City's Response to Comment No. 1

City staff and one member of the Ad Hoc Committee on Wetland and Creek Regulations met with staff from FDEP and DCA and discussed FDEP's concerns regarding possible conflicts between proposed wetland policies in the updated element and the statutory authority of FDEP and the water management districts to establish statewide regulatory policy and guidance. Substantial consensus was attained as to revisions to the proposed wetland policies that would address FDEP's concerns. Staff has since made the revisions to the updated Conservation, Open Space and Groundwater Recharge Element (hereinafter Conservation Element).

Policies

1.1.1 At a minimum the following standards and guidelines shall be used to protect environmentally sensitive resources identified ~~on Map 2 in the~~ (Environmentally Significant Land and Resources) map series within of the Future Land Use Map Series.:

CODE: Pertinent revisions recommended by staff to the transmitted Conservation Element are shown in *italics* (underlines indicate additions and ~~strike-throughs~~ indicate deletions).

The City shall develop and adopt land development regulations that establish criteria for expansion of the minimum standards addressed below.

b. Wetlands: Developments containing wetlands must ~~maintain the existing level of wetland acreage and function on the property.~~ avoid loss of function or degradation of wetland habitat and/or wetland hydrology as the highest priority. Degradation or loss of function that is unavoidable shall be minimized, and the applicant must demonstrate that the *cause of the degradation or loss of function project* is clearly in the public interest, with final administrative approval by the city commission on appeal, if necessary. The City shall develop and implement land development regulations that at a minimum:

1. Establish criteria *that are at least consistent with the relevant criteria of Section 373.414(1), F.S.* for determining whether the *proposed development or activity project* is clearly in the public interest.
2. Establish mitigation ratios for wetland preservation, *enhancement*, restoration and creation. ~~Wetland creation is presumed to be the least desirable mitigation strategy. Creation strategies shall be subject to the highest levels of requirements, restrictions, and review as outlined in the land development codes. Establish~~ *The mitigation ratios of at* shall be at least 5:1 (acreage of mitigation area to impacted area) *for impacts to natural wetlands or wetlands created as part of a mitigation project; and shall be at least 1:1 for impacts to created wetlands (e.g., livestock watering ponds, borrow pits, drainage ditches, etc.) that were not created as part of a mitigation project. Should there be irreconcilable differences between the mitigation required by the City and that required by the state (water management district or FDEP), then the mitigation requirements of the state will prevail where there are irreconcilable differences.*
- 2.3. ~~Establish mitigation ratios for wetland preservation, restoration and creation. Wetland creation is presumed to be the least desirable mitigation strategy. Creation strategies shall be subject to the highest levels of requirements, restrictions, and review as outlined in the land development codes.~~
4. ~~Establish mitigation ratios of at least 5:1 (acreage of mitigation area to impacted area).~~
5. Require off-site mitigation to be performed within the same sub-basin and basin *(the basins are depicted on the map entitled Wetland Mitigation Basins that is on file with the Community Development Department and is in the Data & Analysis section of this comprehensive plan element)* in which the impact occurred, unless it is shown that mitigation outside the sub-basin is more appropriate. The order of preference for the location of the mitigated

area(s) in relation to the impacted areas will be established in the land development regulations (LDRs).

a. In the same basin and sub-basin;

b. In an adjacent sub-basin within the basin;

c. In an adjacent sub-basin outside the basin; and

d. In an adjacent basin;

6. Require mitigation to be performed within the city limits of Gainesville or the adjacent sub-basin;

9 8. Specify that these protections for wetlands shall be extended to all wetlands delineated in accordance with Section 62-340, F.A.C., regardless of whether they are currently mapped by the City of Gainesville;

11 10. Outstanding Florida Waters, as listed in ~~s.~~ Section 62-302.700, F.A.C., shall have a minimum buffer of 200 feet. The City shall develop and implement land development regulations that establish appropriate setbacks for wetlands containing listed plant or animal species. Where these distance requirements preclude all economic development of a parcel, exceptions can be made, as provided in the land development regulations, that require upon approval by a majority of the city commission and with appropriate mitigation of wetland loss at a minimum of a 5:1 ratio.

2.1.1 By 1992, The City shall develop and continue to update, augment and maintain an inventory of wetlands, and adopt land development regulations designed to preserve conserve existing wetland acreages and preserve natural functions within the Gainesville urban area listed basins (shown on the map entitled Wetland Mitigation Basins that is on file with the Community Development Department and is in the Data & Analysis section of this comprehensive plan element). When wetlands are unavoidably lost to development, mandatory mitigation shall be required to ensure no net loss of acreage and functions occurs. Mitigation location protocol shall follow Policy 1.1.1 b.5.

2. DCA Comment: Several wildlife and habitat maps are hard to read, and the congruence of significant flora, fauna, wetlands and significant ecological communities is not readily perceived when comparing maps. The city may wish to add to the Data and Analysis Section the "Bio-diversity Hot Spots" and "Priority Wetlands" maps prepared by the Florida Geographic Digital Laboratory at the University of Florida using data provided by the Florida Fish and Wildlife Commission in order to better show important biological features, particularly plant and animal habitats.

City's Response to Comment No. 2

Staff has examined the "Biodiversity Hot Spots" and "Priority Wetlands" maps mentioned above, and concluded that they are not suitable for the Data and Analysis Section. The resolution and scale of these maps are such that they are best suited for state- and regional-level inventory and analysis.

3. DCA Comment: New Policy 1.1.1 b.6, which requires wetland mitigation to be performed within city limits "or the adjacent sub-basin", may be inconsistent with Future Land Use Objective 2.1, which states that existing citywide levels of wetlands acreage and functions "within the city limits" shall be maintained through the planning period.

City's Response to Comment No. 3

Previously proposed Policy 1.1.1 b.6 ("Require mitigation to be performed within the city limits of Gainesville or the adjacent sub-basin") has been deleted, as shown in City's Response to Comment No. 1.

Objective 2.1 (see below) has been revised to encompass a substantially enlarged area within which required mitigation can occur. The enlarged area for mitigation (see attached map, from updated Data & Analysis, entitled "Wetland Mitigation Basins") provides for additional mitigation opportunities beyond the city limits of Gainesville.

Objective 2.1

Upon adoption of this Plan, existing citywide levels of wetland acreage and functions within City limits the listed basins (shown on the map entitled Wetland Mitigation Basins that is on file with the Community Development Department and is in the Data & Analysis section of this comprehensive plan element) shall be maintained to the extent feasible through the year ~~2001~~ 2010.

Revisions to associated Policy 2.1.1 are shown in the City's Response to Comment No. 1, above.

ATTACHMENT D

Post-transmittal changes to *draft* Conservation, Open Space and Aquifer Recharge Element

These changes are recommended by City staff and are based on the recommendations of the Ad Hoc Committee on Wetland and Creek Regulations, and are not in response to the ORC Report from the Florida Department of Community Affairs.

Policy

1.1.1 At a minimum the following standards and guidelines shall be used to protect environmentally sensitive resources identified ~~on Map 2 in the~~ (Environmentally Significant Land and Resources) map series within of the Future Land Use Map Series. The City shall develop and adopt land development regulations that establish criteria for expansion of the minimum standards addressed below.

b. Wetlands: Developments containing wetlands must ~~maintain the existing level of wetland acreage and function on the property. avoid loss of function or degradation of wetland habitat and/or wetland hydrology as the highest priority.~~ Degradation or loss of function that is unavoidable shall be minimized, and the applicant must demonstrate that the *cause of the degradation or loss of function project* [NOTE from Attachment C - response to ORC Report.] is clearly in the public interest, with final administrative approval by the city commission on appeal, if necessary. The City shall develop and implement land development regulations that at a minimum:

§ 7. A minimum buffer distance of 35 ft. *and an average buffer distance of 50 feet* shall be required between the landward extent of any wetland or surface water and the developed area. Larger buffers may be warranted. The criteria for buffer expansion will be developed in the land development regulations;

12 11. Wetlands damaged on or subsequent to the effective date of this policy shall *either* be restored to their original function and condition prior to such damage, at the owner's expense *or mitigated for, pursuant to the mitigation requirements of this comprehensive plan element except as may be provided in the land development regulations.*

Explanation

The proposed revision to Policy 1.1.1 b.7 increases the required buffer area between wetlands or surface water by establishing an average buffer distance of 50 feet. The

CODE: Proposed changes are in *italics* (underlines indicate additions and ~~strike throughs~~ indicate deletions).

transmitted policy proposed a minimum buffer distance of 35 feet with no average buffer distance requirement. The proposed increase in required buffer area will provide additional protection for wetlands and surface waters.

The proposed revision to Policy 1.1.1 b.11 provides for a more comprehensive approach to remedying wetland damage occurring after adoption of the updated wetland mitigation policies. The transmitted policy allowed only for restoration to the condition prior to damage. The proposed revision allows also for mitigation pursuant to the substantial mitigation requirements of this updated Element.

Policies

1.1.5 The City shall work with local and state environmental agencies to develop basin management plans, which shall identify wetlands of special concern, disturbed wetlands, and appropriate sites for mitigation. The plans shall also consider those factors affecting the structure and functions of wetlands.

2.1.2 Each basin management plan shall include consideration of the feasibility of creating one or more local mitigation banks or offsite regional mitigation areas in accordance with Section 373.4135, F.S.

Explanation

Proposed Policy 1.1.5 requires the City to work with other governmental entities (e.g., Alachua County and the St. Johns River and Suwannee River Water Management Districts) to develop basin management plans for wetland mitigation purposes. Such plans could identify wetlands of high value that should be preserved or enhanced, wetlands that have been degraded but which may merit restoration or enhancement, and wetlands of low value that could be developed with appropriate mitigation. The four proposed wetland mitigation basins (Hogtown Creek, Blues Creek, Newnans Lake, and Paynes Prairie Basins) extend well beyond the city limits of Gainesville, so working with Alachua County and the jurisdictional water management districts in developing management plans for the basins is essential. Implementation of the resultant plans should result in overall improvement of wetland and surface water systems within the greater area bounded by the four basins.

Proposed Policy 2.1.2 requires the consideration of mitigation banking or offsite regional mitigation areas in each basin management plan. There presently are none within any of the proposed basins, but they are allowed and encouraged by Florida law, and they merit consideration as possible wetland mitigation components in a basin management plan.

Policy

3.1.2 The City shall adopt land development regulations for new development that require the following:

~~c. d.~~— Species diversity in new plantings (no more than ~~50~~ 20 percent of any one genus ~~citywide, or on any site plan except those within airport flight paths, or except for street tree plantings, which, on a given street should be uniform with respect to genus, size and shape; however, street tree diversity is to be attained citywide, even though it ~~will~~ may not be attained on an individual street~~) to reduce the effect of loss of a tree species due to insect or disease outbreaks. ~~(This policy excludes parking lots and road medians, that may have up to 50 percent of one tree genus.)~~; and

Explanation

The recommended change from “will” to “may” allows, rather than prohibits, the possibility of street tree diversity for new plantings along a given street.

