



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

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CHARLIE CRIIST
Governor

THOMAS G. PELHAM
Secretary

MEMORANDUM

TO: **Jim Quinn, DEP**
Susan Harp, DOS
Wendy Evans, AG
Mary Ann Poole, FWC
Susan Sadighi, FDOT 5
Phil Laurien, East Central Florida RPC
Jeff Cole, St Johns River WMD

Date: October 17, 2008

Subject: Proposed Comprehensive Plan Amendment Review Objections,
Recommendations and Comments Reports

Enclosed are the Departments Objection, Recommendations and Comments Reports on the proposed amendments to the comprehensive plan(s) from the following local government(s):

Volusia County 08-2

These reports are provided for your information and agency files. Following the adoption of the amendments by the local governments and subsequent compliance review to be conducted by this agency, we will forward copies of the Notices of Intent published by each local government plan.

If you have any questions, please contact Mr. Ray Eubanks at Suncom 278-4925 or (850) 488-4925.

RE/lp

Enclosure

2555 SUMMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦



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October 17, 2008

The Honorable Frank Bruno, Jr, Chair,
Volusia County
Board of County Commissioners
123 West Indiana Avenue
Deland, Florida 32720

Dear Chair Bruno:

The Department has completed its review of the proposed Comprehensive Plan Amendment for Volusia County (DCA 08-2), which was received on August 20, 2008. Based on Chapter 163, Florida Statutes, we have prepared the attached report, which outlines our findings concerning the amendment. It is particularly important that the County address the objections set forth in our review report so that these issues can be successfully resolved prior to adoption. We have also included a copy of local, regional and state agency comments for your consideration. Within the next 60 days, the County should act by choosing to adopt, adopt with changes or not adopt the proposed amendment. For your assistance, our report outlines procedures for final adoption and transmittal.

The Department is raising five objections and two comments to the amendment package. The objections relate to a lack of meaningful and predictable standards and inadequate data and analysis.

If you or your staff have any questions, or if we may be of further assistance as you formulate your response to this Report, please contact Matthew Muller, Planner II, at (850) 922-1760.

Sincerely,

Mike McDaniel, Chief
Office of Comprehensive Planning

MM/mm

Enclosures: Objections, Recommendations and Comments Report
Review Agency Comments

cc: Mr. Terry James, Planning Manager, Volusia County
Mr. Phil Laurien, Executive Director, East Central Florida Regional Planning Council

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DEPARTMENT OF COMMUNITY AFFAIRS
OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR
VOLUSIA COUNTY

Amendment 08-2

October 17, 2008
Division of Community Planning
Office of Comprehensive Planning
This report is prepared pursuant to Rule 9J-11.010

INTRODUCTION

The following objections, recommendations and comments are based upon the Department's review of Volusia County 08-2 proposed amendment to their comprehensive plan pursuant to s. 163.3184, Florida Statutes (F.S.).

The 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.

TRANSMITTAL PROCEDURES

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

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

Three copies of the adopted comprehensive plan amendment;

A copy of the adoption ordinance;

A listing of additional changes not previously reviewed;

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

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

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

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

Please be advised that Section 163.3184(8)(c), Florida Statutes, requires 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 law to furnish the names and addresses of the citizens requesting this information to the Department. **Please provide these required names and addresses to the Department when you transmit your adopted amendment package for compliance review. In the event no names, addresses are provided, please provide this information as well.** For efficiency, we encourage that the information sheet be provided in electronic format.

**OBJECTIONS RECOMMENDATIONS AND COMMENTS REPORT
VOLUSIA COUNTY 08-2 PROPOSED COMPREHENSIVE PLAN AMENDMENT**

Consistency with Rule 9J-5, F.A.C., and Chapter 163, Part II, F.S.

I. AMENDMENTS TO WHICH OBJECTIONS ARE RAISED

CPA-08-2-6

Objection: The County stated that the development potential for the amendment would be limited to 118,583 Average Daily Trips and submitted data and analysis examining the amendment's facility impacts based on this restriction. Rather than creating a text policy within the Comprehensive Plan to identify this limitation the amendment package noted that the restriction would instead be placed on the County's Future Land Use Map (FLUM). A FLUM exhibiting this limitation, however, was not submitted to the Department. Until this information is submitted the public facility impacts for this amendment must be based on the development potential allowed under the proposed land use category and not the restriction. This will require the County to submit new data and analysis projecting the impact of the amendment under the heightened development potential.

The proposed amendment is not consistent with the following requirement: Section 163.3194(1)(i); Rules 9J-5.005(2) and (6), F.A.C.

Recommendation: Submit data and analysis estimating the impact of the amendment based on the proposed future land use category's allowed development potential. Alternatively, submit a FLUM showing the placement of the density restriction on it.

CPA-08-2-10

Objection 1: The proposed amendment is not supported by an accurate transportation analysis and therefore cannot demonstrate that the adopted level of service standards will be achieved and maintained on the affected transportation facilities. More specifically, US 17 which falls within the site's impact radius, is assigned an LOS standard of "D" and "E" in the submitted analysis when actually the FDOT adopted LOS standard is "C." Additionally, the transportation impact analysis indicates that several state roadways would experience LOS deficiencies in both 2012 and/or 2025 – US17, US17/92, US92, SR11, SR15A, and SR44. The transportation analysis submitted alongside the amendment also appears to have used zoning categories rather than future land use categories for calculating the amendment's trip generation potential. Therefore, the amendment is not supported by a transportation analysis for the five year and long term planning timeframe addressing one or more of the following: (1) the number of peak hour vehicle trips generated by the maximum development potential allowed by the FLUM amendment; (2) the impact of the vehicle trips on the projected operating level of service of roadways; (3) the need for road improvements (scope, timing and cost of improvements) to maintain the adopted level of service standards for roadways; (4) coordination of the road improvements with the Transportation and Capital Improvements Elements, including implementation through the Five-Year Schedule of Capital Improvements; and (5) coordination of the road improvements with the plans of the Florida Department of Transportation.

The proposed amendment is not consistent with the following requirements: Sections 163.3177(2), (3), (6)(a); 163.3180 (10) F.S.; and Rules 9J-5.005(2) & (5)(a); Rule 9J-5.0055(2)(c); 9J-5.016(1)(a), (2), (3), & (4); and 9J-5.019(3)(f)-(h), F.A.C.

Recommendation: Provide traffic data and analysis pursuant to Rule 9J-5.019(3)(f)-(h), F.A.C. and that uses the correct LOS standard for US17. This analysis should include the data necessary to support the FLUM amendment and demonstrate coordination of the land use with the planning and provision of transportation facilities and coordination with the Capital Improvements Element. Revise the Transportation Capital Improvements, and Future Land Use Elements, as necessary, to be consistent with and supported by the data and analysis and to achieve internal consistency with the FLUM. The analysis should be based on the maximum development allowed by the FLUM amendment. The evaluation should identify mitigation for all facilities operating below adopted level of service standards. Any adverse impact to transportation facilities should be addressed in the County's financially feasible Five-Year Schedule of Capital Improvements.

Objection 2: This amendment increases the proposed development potential of the site. According to the data and analysis, this increased impacts to water and wastewater facilities are supposed to be met by onsite potable water supplies and an existing onsite wastewater treatment plant. No data and analysis was provided, however, to show that these facilities are capable of accommodating this increased demand. Moreover, Volusia County is located within the St. Johns River Water Management District (SJRWMD) Priority Water Caution Area. Pursuant to Section 163.3177(6)(c), F.S., the County was to adopt a 10-year water supply plan by August 7, 2007 that would address future potable water demand within its service area. The County has yet to do this. The County, therefore, has not demonstrated that water supply resources are available to serve any additional demand created by the amendment for the short term or long term planning horizons. The amendment has not demonstrated coordination of the Future Land Use Element, Public Facilities Element and Capital Improvements Element, including implementation through the Five-Year Schedule of Capital Improvements.

The proposed amendment is not consistent with the following requirements: Sections 163.3167(13) 163.3177(2),(3)(a), (6)(a) & (c) & (h),(8); 163.3180(2)(a) F.S.; Rules 9J-5.005(2)-(6); 9J-5.0055(1)(a) & (b); 9J-5.006(2)(a),(3)(b)1 & (3)(c)3; 9J-5.011(1)(a)-(f),(2)(b),(2)(c); 9J-5.016(1)(a), (?), (3)(b)1,3,4, & 5,(3)(c)1.e,1.f,1.g,6,8,(4)(a) and(b), F.A.C.

Recommendation: Adopt a 10-year water supply plan prior to the adoption of this amendment package, or revise the amendment package to provide adequate data and analysis that demonstrates that the County has sufficient water supplies and wastewater facilities to serve the amendment package as well as all other demands over the next ten years. If the County's analysis indicates that traditional water sources are not sufficient to meet the potable water demand over the next ten years, the County must identify alternative water supply sources capable of addressing the deficiency. If any improvements will be needed in the next five years, the five year schedule of capital improvements must be amended to include this improvement. If an improvement is needed in year six through ten, this improvement must be listed in the Public Facilities Element. Improvements placed in the five-year schedule of capital improvements must be financially feasible as defined in Section 163.3164(32), F.S. The same type of needs analysis and identification of facilities must also occur for wastewater facilities for a five year period.

Objection 3: The County stated that the development potential for the amendment would be limited to 823 Average Daily Trips and submitted data and analysis examining the amendments impacts to all public facilities based on this restriction. The amendment package noted that the restriction would be placed on the County's Future Land Use Map (FLUM). A FLUM exhibiting this limitation, however, was not submitted to the Department. Until this information is submitted the public facility impacts for this amendment must be based on the development potential allowed under the proposed land use category and not the restriction. This

will require the County to submit new data and analysis projecting the impact of the amendment under the heightened development potential.

The proposed amendment is not consistent with the following requirement: Section 163.3194(1)(a), F.S.; Rules 9J-5.005(2) and (6), F.A.C.

Recommendation: Submit a FLUM showing the placement of the density restriction on it or submit a text policy in the FLUE with the density restriction. Alternatively, submit data and analysis estimating the impact of the amendment based on the proposed future land use category's allowed development potential.

CPA-08-2-13 – Lack of Meaningful and Predictable Standards

Objection: It is essential that the operative term upon which all allowed conversions rest, "public use," be specifically defined. Under the proposed language the term is very broad and open ended. It seemingly places no limit on the intensity, frequency, or type of changes allowed and could allow anything from a hotel to a restaurant. Such institutions are technically public uses but are clearly not inline with the stated intent and may cause compatibility, suitability, or public facility issues. This ambiguity causes the policy not to fulfill Rule 9J-5.005(6), F.A.C., which states that "Goals, objectives, and policies shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations." Without additional clarity such a policy may seriously compromise the current character of the neighborhood.

The proposed amendment is not consistent with the following requirements: Rules 9J-5.005(2) and (6), F.A.C.

Recommendation: Revise the proposed amendment to ensure that the new policy provides a meaningful and predictable description of "public uses" as required by Rule 9J-5.005(6), F.A.C. This description should specifically state the range of potential uses from which single family residential homes can be converted to and also show such changes will not disrupt the neighborhood. Moreover, the term "conversion" should be put in context with the comprehensive plan or local zoning or land development approval.

CPA-08-2-14

Objection: The following Smart Growth policies fail to establish meaningful and predictable standards and therefore do not fulfill the legislative intent of Rule 9J-5.005(6), F.A.C.

- SG Policy 1.2.1(e): states that the County will adopt "heightened environmental standards" for the Environmental Core Overlay.
- SG Policy 1.1.1(f): states that the County will establish "procedures, standards, and incentives" that will simultaneously protect property rights while protecting the ecological systems in the Core.
- SG Policy 1.2.2: states that the County will establish "procedures, standards, and incentives for Conservation Developments."
- SG Policy 1.2.3: establishes a Transfer of Development Rights.

For each of the Policies listed above, the County fails to define or clarify the nature of the actions that will be taken to implement these policies or when implementation will begin. Therefore, as proposed it will be difficult to assess the policies to determine whether progress is being made in their implementation. Moreover, because of this lack of clarity it is impossible for property owners whose land falls within the Boundaries of the Overlay to determine what constraints may be placed on their land.

The proposed amendment is not consistent with the following requirements: Rules 9J-5.005(2) and (6), F.A.C

Recommendation: Revise the proposed amendment to ensure that the new policies are meaningful and predictable definition as required by Rule 9J-5.005(6), F.A.C. These policies should more specifically describe the “procedures, standards, and incentives” that will be taken by the County to implement the Overlay and any other measure that is listed in the Smart Growth policies.

II. AMENDMENTS TO WHICH COMMENTS ARE RAISED

CPA-08-2-06

DBIA is a DRI. The support data from the County states that:

“The DRI for the DBIA *may* need to be amended once the County determines the proposed uses and development plan for this property.”

The Airport Authority and the County have stated that the change will result in the need to amend the development order. Prior to any development occurring on the property the development order for the approved Daytona Beach International Airport development of regional impact must be amended to reflect the proposed development on the 226-acre site. At a minimum this will require the submittal of a notification of proposed change pursuant to Section 380.06(19), Florida Statutes.

CPA-08-2-13 - Clarifying Language

As stated above, Volusia County is amending policy 1.10.1.3 within their Wilbur by the Sea Local Area Plan to read as follows:

“Applications to convert a single residential family to non residential use or increase residential density shall not be allowed. Nothing in this policy shall be construed to prevent residential single family conversions to public uses.”

The word “conversion” is ambiguous because it gives no indication of the regulatory framework under which such acts will occur. The County should clarify the meaning of this word and explicitly define whether “conversions” require Future Land Use Map amendments.

IV. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

The proposed amendment is inconsistent with and does not further the following goals and policies of the State Comprehensive Plan set forth in Section 187.201, F.S.:

Goal (7) Policy (b) 5: Water Resources (CPA-08-2-10; Amendment Package)

Goal (15) Policy (b) 6: Land Use (CPA-08-2-10; Amendment Package)

Goal (19) Policy (b) 2, 3, 9, and 13: Transportation (CPA-08-2-10)

Goal (25) Policy (b) 5 and 7: Plan Implementation (CPA-08-2-13; CPA-08-2-14)

Recommendation: The amendment should be revised, to be consistent with the above referenced goals and policies of the State Comprehensive Plan, in accordance with the objections and recommendations contained in Section II of the report.