

STATE OF FLORIDA
BEFORE THE
ADMINISTRATION COMMISSION

DEPARTMENT OF COMMUNITY AFFAIRS,)

Petitioner)

vs.)

CHARLOTTE COUNTY and CITY OF PUNTA GORDA,)

Respondents)

and)

BABCOCK FLORIDA COMPANY, a Florida)
corporation, WILBUR H. COLE,)
FEBRUARY 24 TRUST, and PALM ISLAND RESORT,)

Intervenors)

CASE NO. AC89-5
(DOAH 89-0810GM)

FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Administration Commission (the "Commission") on March 13, 1990, in Tallahassee, Florida, pursuant to sections 163.3184(10) and 163.3184(11), Florida Statutes (F.S.), for consideration of a Recommended Order from the Division of Administrative Hearings, concerning Charlotte County's and the City of Punta Gorda's jointly adopted local government comprehensive plan. Based on review of the Recommended Order, a copy of which is attached as Exhibit A, consideration of a Joint Agreement on Remedial Actions and Sanctions ("Joint Agreement") between Charlotte County and the State of Florida Department of Community Affairs ("DCA"), a

copy of which is attached as Exhibit B, and consideration of the Addendum to Joint Agreement on Remedial Actions and Sanctions between Charlotte County and the DCA, a copy of which is attached as Exhibit C, the Commission issues its final order as follows.

Background

This case concerns the compliance of Charlotte County's ("County") and the City of Punta Gorda's ("City") jointly adopted comprehensive plan with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, F.S. ("Act"), and the DCA implementing rule, Chapter 9J-5, Florida Administrative Code (F.A.C.) ("Rule 9J-5"). In adopting its final order, the Commission acts in accordance with the Act and Chapter 28-39, F.A.C.

Pursuant to the process for comprehensive plan adoption or amendment established in section 163.3184, F.S., the County transmitted its proposed comprehensive plan to the DCA on June 28, 1988. The DCA reviewed the proposed plan for compliance with Rule 9J-5 and the Act. On October 14, 1988, the DCA transmitted its Objections, Recommendations and Comments Report to Charlotte County and the City of Punta Gorda.

The County adopted the "1988 Charlotte County/City of Punta Gorda Comprehensive Plan" ("Comprehensive Plan") by Ordinance Number 88-44 on December 16, 1988. During the review and adoption process, petitioners Babcock Company, William F. Cole,

Palm Island Resort, and the February 24 Trust raised objections to the County's proposed Comprehensive Plan to county officials.

The DCA issued a Notice of Intent to find the Comprehensive Plan "not in compliance" on February 9, 1989, and filed a petition for a formal administrative hearing with the Division of Administrative Hearings (DOAH) on February 16, 1989.

Section 163.3184(10)(a), F.S., establishes the following standards for a compliance determination following the DCA's notice of intent to find the Comprehensive Plan not in compliance with the Act and Rule 9J-5:

...The local government's determination shall be sustained unless it is shown by a preponderance of the evidence that the comprehensive plan or plan amendment is not in compliance. The local government's determination that elements of its plans are related to and consistent with each other shall be sustained if the determination is fairly debatable.

The DOAH hearing was held in Port Charlotte, Florida on June 19-23, 1989, before Hearing Officer Robert E. Meale. The City of Punta Gorda has stipulated with the DCA that the City would re-execute the Comprehensive Plan if it were amended as a result of the compliance determination. Pursuant to section 163.3184(10)(b), F.S., the Recommended Order was submitted to the Commission on November 21, 1989, for final agency action.

Findings of Fact

1. The Commission adopts the hearing officer's Findings of Fact Numbers 1 through 445, set out in pages 12 to 143 of the Recommended Order.

2. In reviewing Ultimate Findings Number 446 through 592, on pages 144 to 202 of the Recommended Order, the Commission is guided by the principle that ultimate findings are usually mixed with ideas of law and policy, and involve either conclusions of law or determinations of mixed questions of law and fact. See Helvering v. Tex-Penn Oil Company, 300 U.S. 481, 491 (1937). The Commission adopts Findings Number 446 through 592 to the extent that they represent findings of fact.

Conclusions of Law

3. The Commission adopts the legal conclusions stated within Ultimate Findings Numbers 446 through 470 on pages 144 through 154 of the Recommended Order, 472 through 473 on pages 154 through 155 of the Recommended Order, 475 through 487 on pages 156 through 161 of the Recommended Order, 489 through 530 on pages 162 through 177 of the Recommended Order, 531 through 537 on pages 178 through 180 of the Recommended Order, 540 through 548 on pages 181 through 186 of the Recommended Order, 550 through 551 on pages 186 through 187 of the Recommended Order, and 553 through 592 on pages 187 through 202 of the Recommended Order, particularly with respect to internal plan consistency and consistency of the Charlotte County/City of Punta

Gorda Comprehensive Plan with the State Comprehensive Plan,
Chapter 187, F.S.

4. The Commission does not adopt the Ultimate Findings listed below with respect to Future Land Use mapping requirements in the Act because the required mapping is incorporated by reference in the Future Land Use Map Series in the notation on page 77, Map 16, of the Future Land Use Element of the County's adopted Comprehensive Plan.

(a) The Commission does not adopt Ultimate Findings 471 on page 154 of the Recommended Order, 474 (insofar as it refers to an "unidentified potential wellfield") on pages 155 through 156 of the Recommended Order, 488 on pages 161 through 162 of the Recommended Order, 538 and 539 (to the extent they find that floodplains were omitted from the Future Land Use Map) on pages 180 through 181 of the Recommended Order, 549 on page 186 of the Recommended Order, and 552 on page 187 of the Recommended Order.

5. The Commission adopts Conclusions of Law Numbers 1 through 74 on pages 202 through 229 of the Recommended Order, 76 through 78 on pages 230 through 231 of the Recommended Order, 80 through 92 on pages 231 through 236 of the Recommended Order.

6. The Commission does not adopt the Conclusions of Law listed below with respect to Future Land Use mapping requirements in the Act because the required mapping is incorporated by reference in the Future Land Use Map Series in the notation on

page 77, Map 16, of the Future Land Use Element of the County's adopted Comprehensive Plan.

(a) The Commission does not adopt Conclusions of Law 75 on pages 229 through 230 of the Recommended Order, and 79 (to the extent it says the County did not include floodplains on its Future Land Use Map) on page 231 of the Recommended Order.

7. The Act clearly requires that local government comprehensive plan goals and policies be based on appropriate data. See sections 163.3177(8) and (10)(e), F.S. The Commission concludes that there is competent substantial evidence in the record that supports a determination that the Comprehensive Plan is internally inconsistent based on repeated failures to reconcile its future directives with the requisite factual basis and analysis provided.

8. The Commission concludes that the elements of the Charlotte County/City of Punta Gorda Comprehensive Plan are internally inconsistent with respect to efficiency of land use, protection of natural resources, protection of agricultural resources, efficiency of provision of public facilities, and coastal management. See sections 163.3177(2) and 163.3184(10)(a), F.S.

9. The Commission concludes that the Comprehensive Plan does not meet the minimum criteria required by the Act and Rule 9J-5, with respect to the following elements: Future Land Use; Sanitary Sewer, Solid Waste, Drainage, Potable Water and

Natural Groundwater Aquifer Recharge ("Infrastructure");
Conservation; Coastal Management; and Capital Improvements.

10. The Future Land Use Element, as well as the remainder of the Charlotte County/City of Punta Gorda Comprehensive Plan, is inconsistent with the requirements of the Act and Rule 9J-5 with respect to the following:

(a) The Commission concludes that the County's designation of densities for certain agricultural areas at one unit per acre on the Future Land Use Map is inconsistent with projected population demand established by data and analysis for the Comprehensive Plan.

(b) The Future Land Use Element does not contain required objectives coordinating future land uses with appropriate topography, soil conditions, and the availability of public facilities and services.

(c) The Future Land Use Element does not contain required objectives ensuring the protection of natural resources, coordinating coastal area population densities with applicable plans, and ensuring the availability of suitable land for utility facilities necessary to support proposed development.

(d) The Future Land Use Element does not contain required policies toward activities providing for compatibility of adjacent land uses; drainage, stormwater management and open space; protecting potable water wellfields and environmentally sensitive land; and

establishing standards for densities or intensities of use for each land use designation.

11. The Comprehensive Plan's Infrastructure Element is inconsistent with the requirements of the Act and Rule 9J-5.

(a) The Infrastructure Element is not correlated to the future land uses and does not indicate ways to provide for the County's sanitary sewer, drainage, potable water, and natural groundwater recharge needs.

(b) The Infrastructure Element, as well as the remainder of the Comprehensive Plan, does not contain required objectives addressing the correction of existing facility deficiencies, the coordination of the extension and increase of facilities to meet future needs, the maximization of the use of existing facilities, the conservation of potable water, and the protection of the function of natural groundwater recharge areas and natural drainage features.

(c) The Infrastructure Element does not contain required policies toward using potable water conservation strategies and techniques and toward regulating land use and development to protect the functions of natural drainage features and natural groundwater aquifer recharge areas.

12. The Conservation Element, as well as the remainder of the Comprehensive Plan, does not meet the following requirements of section 163.3177, F.S., and Rule 9J-5, F.A.C.

(a) The Conservation Element does not contain required objectives effectively conserving, appropriately using, and protecting: the quality and quantity of current and projected water sources and waters that flow into estuarine or oceanic waters; soils and native vegetative communities; and fisheries, wildlife, wildlife habitat, and marine habitat.

(b) The Conservation Element does not contain required policies toward protecting native vegetative communities from destruction by development activities and restricting activities known to adversely affect the survival of endangered and threatened wildlife.

(c) The Conservation Element does not contain required policies protecting and conserving the natural functions of existing soils, fisheries, wildlife habitats, rivers, bays, floodplains, harbors, wetlands, and marine habitats.

13. The Coastal Management Element, as well as the remainder of the Comprehensive Plan, does not contain objectives and policies required by the Act and Rule 9J-5:

(a) The Coastal Management Element does not contain objectives protecting, conserving, or enhancing remaining coastal wetlands; wildlife habitat; and coastal barriers; nor does the element contain objectives directing population concentrations away from known coastal high hazard areas, maintaining or reducing hurricane evacuation times, and preparing post-disaster redevelopment plans to reduce or

eliminate the exposure of human life and public and private property to natural hazards.

(b) The Coastal Management Element does not contain required policies limiting the impacts of development upon wetlands, water quality, water quantity, wildlife habitat, living marine resources, and beach and dune systems; restoring or enhancing disturbed or degraded natural resources including beaches and dunes, estuaries, wetlands, and drainage systems; mitigating future disruptions to disturbed or degraded natural resources; mitigating hazards by regulating floodplains, stormwater management, sanitary sewer and septic tanks, and land use to reduce the exposure of human life and public and private property to natural hazards; addressing hurricane evacuation; providing for post-disaster redevelopment; identifying areas in need of redevelopment; and limiting development in coastal high hazard areas and relocating or replacing infrastructure away from these areas.

14. The Capital Improvements Element, as well as the remainder of the Comprehensive Plan, does not include the following required objectives consistent with the Act and Rule 9J-5:

(a) The Capital Improvements Element does not address the County's needs for capital facilities, including land acquisitions, to meet existing deficiencies, accommodate desired future growth, and replace worn-out facilities;

(b) The Capital Improvements Element fails to demonstrate the County's ability to provide or require the provision of the items identified elsewhere in the Comprehensive Plan; and

(c) The Capital Improvements Element does not adequately relate to managing the land development process so that public facility needs created by previously issued land development orders or future development do not exceed the County's ability to ensure provision of needed capital improvements.

15. The Commission concludes that the Charlotte County/City of Punta Gorda Comprehensive Plan is inconsistent with the State Comprehensive Plan, Chapter 187, F.S., ("State Plan") construed as a whole. See section 163.3184(1)(b), F.S. This consistency determination requires the Commission to assess whether the local government comprehensive plan is compatible with and takes action in the direction of realizing goals or policies of the State Plan. Section 163.3177(10)(a), F.S.

(a) The Charlotte County/City of Punta Gorda Comprehensive Plan is inconsistent with the Water Resources goal of the State Plan to protect existing water supplies, floodplains, surface and groundwater quality and quantity; to consider alternative methods of wastewater treatment; and to reserve from use the water necessary to support essential nonwithdrawal demands.

(b) The Comprehensive Plan is inconsistent with the Coastal and Marine Resources goal of the State Plan; in particular, the Charlotte County/City of Punta Gorda Comprehensive Plan fails to encourage land uses that are compatible with the protection of sensitive coastal resources.

(c) The Comprehensive Plan is inconsistent with the State Plan's Natural Systems and Recreational Lands goal, which requires Florida to protect and acquire natural habitats and ecological systems and restore degraded systems to a functional condition.

(d) Comprehensive Plan provisions also conflict with the State Plan's Land Use goal, which requires that development shall be directed to areas that already have in place, or have agreements to provide, land and water resources, fiscal abilities, and service capacity to accommodate growth in an environmentally sensitive manner.

(e) The Comprehensive Plan is inconsistent with the State Plan's Downtown Revitalization goal, which encourages the centralization of commercial, governmental, retail, residential, and cultural activities within downtown areas.

(f) The Comprehensive Plan is inconsistent with the Public Facilities goal, which requires the planning and financing of new facilities to serve new residents in a timely, orderly, and efficient manner.

Rulings on Exceptions

The Commission notes that Charlotte County filed exceptions to the hearing officer's Recommended Order, which stipulated that in the event the Commission adopted the Agreement between the County and the DCA, the County would waive its right to file such exceptions. At a meeting with Cabinet Aides on March 7, 1990, Sandra Augustine, counsel to the County, stated that the County would not seek a ruling on the exceptions provided that the Commission adopted the remedial actions specified in the Joint Agreement as amended by the Addendum and the remedial actions specified in paragraph 21 of this order.

Determination of Compliance and Order

16. It is hereby concluded by the Administration Commission that the 1988 Charlotte County/City of Punta Gorda Comprehensive Plan, as adopted by the Charlotte County Commission on December 16, 1988, is not in compliance with Chapter 163, Part II, F.S., and with Chapter 9J-5, F.A.C., and is inconsistent with the State Comprehensive Plan, Chapter 187, F.S.

17. Pursuant to Chapter 28-39.005(1), F.A.C., the Commission has requested the DCA to provide a recommendation as to the remedial actions which would bring the County's Comprehensive Plan into compliance, as well as the type and extent of funds which should be withheld or other sanctions, as specified in section 163.3184(11), F.S. The DCA and Charlotte County have authorized a Joint Agreement on Remedial Actions and

Sanctions ("Joint Agreement"), which is attached as Exhibit B to this Order, and an Addendum to Joint Agreement on Remedial Actions and Sanctions ("Addendum"), which is attached as Exhibit C to this Order.

18. Having determined that the Charlotte County/City of Punta Gorda's Comprehensive Plan is not in compliance with the provisions of the Act and Rule 9J-5, F.A.C., the Commission orders that the remedial actions specified in Part I-A of the Joint Agreement, as amended by the Addendum, be implemented by the County in order to bring the plan, as adopted and submitted to the DCA, into compliance.

19. A plan amendment or amendments prepared pursuant to section 163.3187, F.S., and accomplishing the remedial actions specified in paragraph 18 of this order, with the exception of the remedial actions specified in Part I-A 4.a. of the Joint Agreement as amended by the Addendum, shall be prepared by the County and transmitted to the DCA no later than May 15, 1990. The plan amendment or amendments submitted pursuant to this paragraph shall include policies pertaining to the County's intent as it relates to Part I-A 4.a. of the Joint Agreement as amended by the Addendum.

(a) The DCA shall, by May 30, 1990, certify to the Commission that the County's plan amendment(s) pursuant to this paragraph has been received. In the event the plan amendment(s) pursuant to this paragraph has not been received by the DCA by May 15, 1990, the DCA shall notify

the Commission by May 30, 1990; and the Commission shall review the matter for implementation of sanctions pursuant to section 163.3184(11), F.S.

(b) The DCA shall report to the Commission on the progress of its review of the Charlotte County plan amendment or amendments submitted pursuant to this paragraph by September 30, 1990.

(c) The DCA shall forward a recommendation to the Commission regarding the County's conformance with the remedial actions specified in this paragraph no later than January 31, 1991. The Commission shall consider the DCA's recommendation in the Commission's determination of the County's conformance with the remedial actions specified in this paragraph.

20. A plan amendment or amendments prepared pursuant to section 163.3187, F.S., and accomplishing the remedial actions specified in Part I-A 4.a. of the Joint Agreement as amended by the Addendum shall be prepared by the County and transmitted to the DCA no later than June 1, 1992.

(a) The DCA shall, by June 15, 1992, certify to the Commission that the County's plan amendment(s) pursuant to this paragraph has been received. In the event the plan amendment(s) pursuant to this paragraph has not been received by the DCA by June 1, 1992, the DCA shall notify the Commission by June 15, 1992; and the Commission shall

review the matter for implementation of sanctions pursuant to section 163.3184(11), F.S.

(b) The DCA shall report to the Commission on the progress of its review of the Charlotte County plan amendment or amendments submitted pursuant to this paragraph by October 1, 1992.

(c) The DCA shall forward a recommendation to the Commission regarding the County's conformance with the remedial actions specified in this paragraph no later than January 31, 1993. The Commission shall consider the DCA's recommendation in the Commission's determination of the County's conformance with the remedial actions specified in this paragraph.

21. The Administration Commission further orders that the County:

(a) Adopt a Conservation Overlay as part of the Conservation Element and Future Land Use Map identifying natural resources and environmental features;

(b) Amend the goals, objectives and policies of the Conservation Element to provide protection to the identified natural resources and environmental features, in conformance with statutory and rule provisions and in furtherance of the State Comprehensive Plan; and

(c) Amend the goals, objectives and policies of the Future Land Use Element and other pertinent elements, to

ensure consistency with the revised Conservation Element and the Future Land Use Map.

22. A plan amendment or amendments prepared pursuant to section 163.3187, F.S., and accomplishing the remedial actions specified in paragraph 21 of this order shall be prepared by the County and transmitted to the DCA no later than June 1, 1991.

(a) The DCA shall, by June 15, 1991, certify to the Commission that the County's plan amendment(s) pursuant to this paragraph has been received. In the event the plan amendment(s) pursuant to this paragraph has not been received by the DCA by June 1, 1991, the DCA shall notify the Commission by June 15, 1991; and the Commission shall review the matter for implementation of sanctions pursuant to section 163.3184(11), F.S.

(b) The DCA shall report to the Commission on the progress of its review of the Charlotte County plan amendment or amendments submitted pursuant to this paragraph by October 1, 1991.

(c) The DCA shall forward a recommendation to the Commission regarding the County's conformance with the remedial actions specified in this paragraph no later than January 31, 1992. The Commission shall consider the DCA's recommendation in the Commission's determination of the County's conformance with the remedial actions specified in this paragraph.

23. Comprehensive Plan amendments outside the scope of this order shall be reviewed by the DCA in the same manner as any other plan amendment, pursuant to Chapter 163, Part II, F.S.

24. The fact that the Coastal Management Element is included in the Commission's finding of noncompliance in this order shall be a consideration if the Department of Natural Resources is asked to issue permits under section 161.053, F.S., or if the Board of Trustees of the Internal Improvement Trust Fund is requested to sell, convey any interest in, or lease any sovereignty lands or submerged lands at any time prior to the Commission's determination that the County has complied with the provisions of this order.

25. Since all issues raised in General Development Corporation and General Development Utilities, Incorporated's ("GDC/GDU") Petition to Intervene for Limited Purpose or, in the alternative, to Remand to DOAH for Evidentiary Hearing ("GDC/GDU Petition") are addressed by the Joint Agreement as amended by the Addendum, the GDC/GDU Petition is moot.

26. The Commission has considered the immediate imposition of sanctions, pursuant to section 163.3184(11), F.S., in this case. However, based upon the following mitigating factors, the Commission elects not to impose sanctions at this time, while retaining jurisdiction as noted below in paragraph 27 of this order.

(a) In this case, Charlotte County, pursuant to section 163.3184(10), F.S., proceeded with a DOAH hearing on disputed issues embodied within the adopted local plan. In particular, the definition of urban sprawl was an issue that had not been litigated, and the County, in good faith, litigated the issue in the DOAH forum. The hearing officer's Recommended Order, issued on November 20, 1989, upheld the DCA's original finding that the adopted local plan was not in compliance with Chapter 163, Part II, F.S., DCA Rule Chapter 9J-5, F. A. C., and Chapter 187, F.S., largely based upon the disputed urban sprawl issue, which is a component of several plan elements.

(b) During the pendency of the DOAH hearing process, the County exercised restraint in issuing development orders and permits in the area of the County subject to the disputed issues. This course of action by the County is evidence of the County's sensitivity to the need for protection of State resources while the urban sprawl issue underwent review.

(c) No precedent existed in law for the urban sprawl determination until the hearing officer's Recommended Order was published. Subsequent local governments have the advantage of the hearing officer's findings and conclusions as a guide in preparing local comprehensive plans that adequately discourage urban sprawl. Once the hearing

officer's ruling was known, the County proceeded rapidly, and in good faith, to reach a settlement with the DCA.

27. The Commission shall retain jurisdiction for purposes of enforcing the provisions in this order. If the Commission determines that the County has complied with the actions specified in this order, the Commission will conclude its jurisdiction over this action. If the Commission determines that the County has not complied with the remedial actions specified in this order, the Commission shall review the matter for implementation of sanctions pursuant to section 163.3184(11), F.S.

28. Any party to this order has the right to seek judicial review of the order pursuant to section 120.68, F.S., by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Commission, Patricia A. Woodworth, Office of Planning and Budgeting, Executive Office of the Governor, Room 415 Carlton Building, 501 South Gadsden Street, Tallahassee, Florida 32399-0001; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. Notice of Appeal must be filed within 30 days of the day this order is filed with the Clerk of the Commission.

DONE and ordered this 15th day of March, 1990, in
Tallahassee, Florida.

Karen K. MacFarland
PATRICIA A. WOODWORTH
Secretary to the
Administration Commission

cc: Members of the Commission
Counsel of Record

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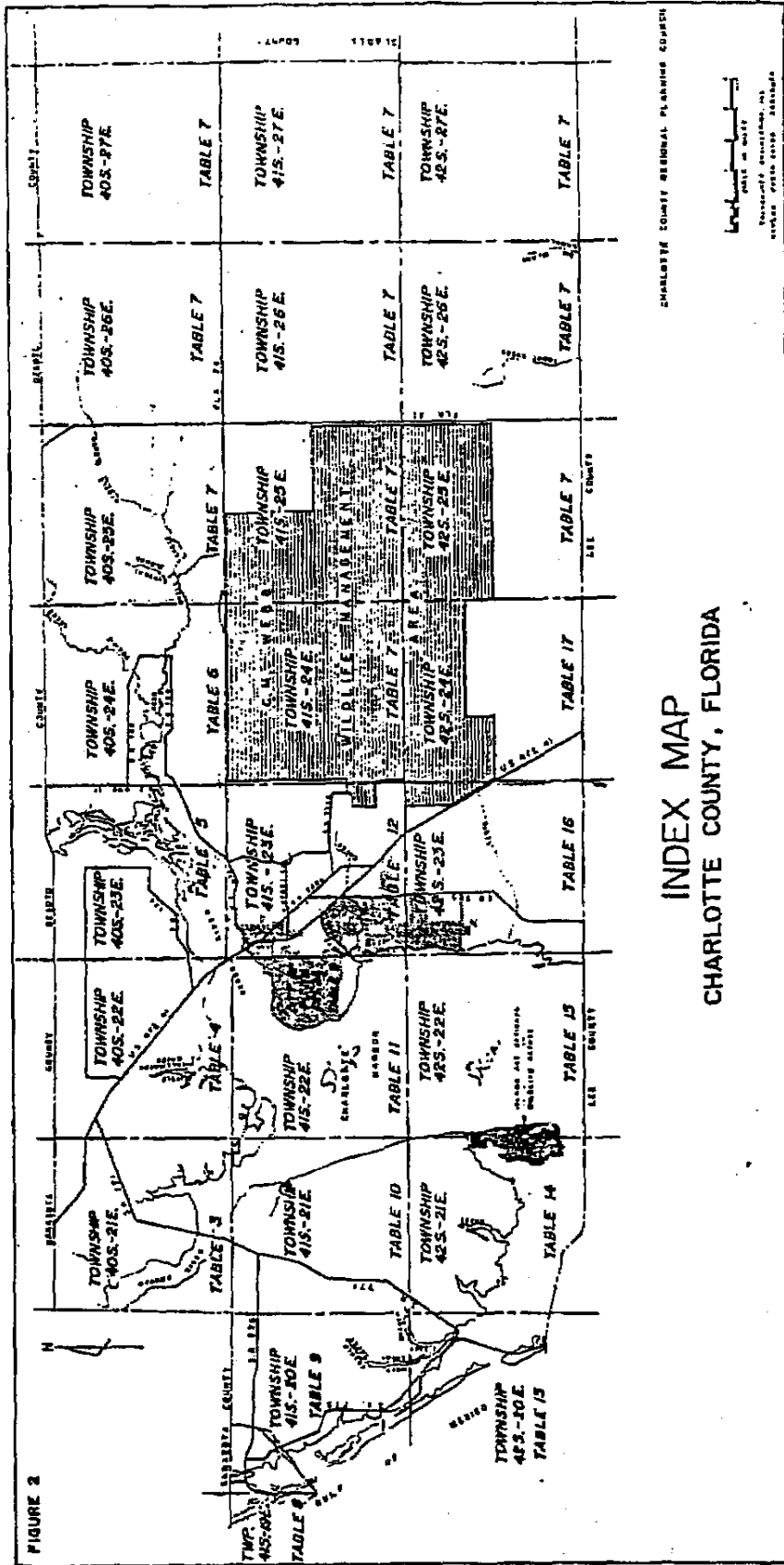
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INDEX MAP
CHARLOTTE COUNTY, FLORIDA

EXHIBIT "B"

313. Objective 6 of the Charlotte Harbor Management Plan involves wastewater. The plan finds: "The existing [wastewater] services have wastewater disposal problems, with a record of water quality violations for package and central sewage treatment systems and a record of failures of septic tank systems." In both types of systems, compliance inspections are "minimal" with one inspector for central and package systems in Southwest Florida and inspections of septic tank systems only in response to complaints. The plan also finds that the barrier islands are "not naturally suitable for septic tanks due to improper soils or high water tables." The objective recommends the improvement of the permitting and inspection processes for wastewater systems. Policy c. requires local governments to "address the needs of preplatted areas and . . . natural restrictions to specific treatment systems."

314. Objective 7 of the Charlotte Harbor Management Plan concerns wetlands. Policy a. directs local governments to discourage development that alters the natural functions of wetlands not adequately protected by existing state and federal law. Policy c. requires local governments to assess the cumulative impacts of small scattered projects.

315. Objective 8 of the Charlotte Harbor Management Plan involves the beaches and barrier islands. The plan finds that attempts to stabilize islands and passes have contributed to increased erosion outside the area of the project, alteration of water flow within the bays, and increased sedimentation of the estuaries. The objective states that the barrier islands should be "managed as a whole, recognizing that any developmental activity potentially affects the processes of the entire barrier beach, barrier island, and pass systems." Policy c. directs local governments to "discourage further development on barrier islands." Policy c. requires local governments to "prohibit construction of bridges and causeways capable of carrying motor vehicles, paved roads, and commercial marinas on or to undeveloped barrier islands."

316. Objective 10 of the Charlotte Harbor Management Plan focuses upon land development and begins with the finding:

The process for developing lands in Southwest Florida has generally been without any planning framework. Lands have been prepared for development without any assurances that the services needed for successful development were going to be available. At this time the commitment has been made for the delivery to purchasers of hundreds of thousands of lots that have no assurances that the services will be available when the purchaser wants them.

317. Four policies accompany Objective 10. They state:

- a. Local Government: Require all development coincide with the ability of public and private sectors to provide community services and facilities as based on studies employing methods of reasonable predictability generally acceptable in the planning profession.
- b. Local Government/All Agencies: Encourage land use changes for platted but undeveloped

Objectives	Target	Conditions When Plan was Approved	Current Conditions	Comments
<p>Objective 11.1 of the Infrastructure Element: By October 1, 2000, Charlotte County and the Public Health unit will develop and begin implementing a septic system management program serving the entire county.</p>	<p>Ensure that on-site wastewater treatment systems are operating as designed and not contaminating surface or ground water resources.</p>	<p>The County had no such objective, and deferred entirely to the then-Department of Health and Rehabilitative Services.</p>	<p>A pilot program was undertaken immediately following the adoption of the Comprehensive Plan in 1997. However, the County has not yet funded a permanent program. The Department of Health has applied for an EPA grant to provide seed money for such an effort.</p>	<p>This is a good objective, but it needs to be addressed further. First, the monitoring program needs to be implemented; then, once the data can be analyzed, additional measure may be taken as appropriate. The date of implementation needs to be revised when the Comprehensive Plan is revised pursuant to this EAR.</p>
<p>Objective 11.2 of the Infrastructure Element: By December 31, 2000, Charlotte County will develop and begin implementation of an ambient water quality monitoring program to determine the impacts of pollution resulting from the use of sanitary wastewater treatment systems.</p>	<p>Ensure that appropriate data is being collected so that the County and other agencies can make the proper decisions regarding the installation and operation of on-site wastewater treatment systems.</p>	<p>The County had no such objective prior to the 1997 Comprehensive Plan.</p>	<p>Water quality is monitored by several state, Federal, and nonprofit organizations. Mandatory sewer hookups are required for land uses that could contaminate the groundwater</p>	<p>This is a good objective which should remain, with appropriate revision to the deadline, in the Comprehensive Plan. The County has not yet funded such a program due to budgetary considerations. As development outside of areas served by sanitary sewer systems will continue due to the County's platted lots problem, the need for such monitoring will increase over time.</p>
<p>Objective 1.4 of the Recreation and Open Space Element provides that the County will "protect and maintain open space and parkland that will conserve forests, wetlands, fish, marine life, and wildlife and in order to retain their environmental, economic, aesthetic, and recreational values."</p>	<p>Charlotte County shall protect the natural systems within its parks.</p>	<p>No such objective existed prior to the 1997 plan.</p>	<p>Staff works with the Parks & Recreational Department concerning viable and functioning systems which, when preserved, add to the overall value of the park itself.</p>	<p>This is a good objective. Additional land will be protected with the implementation of the Florida Scrub-Jay Habitat Conservation Plan.</p>

Summary

As discussed in the enumerated issues and as summarized in the above table, Charlotte County has met many of its Comprehensive Plan's objectives pertaining to the protection of natural resources. Through land acquisition efforts, more than 21,000 platted and

potential lots have been removed from the County's inventory, most of them from areas which are both environmentally sensitive as well as vulnerable to hurricanes and other tropical weather. With the development of the County-wide Florida Scrub-jay Habitat Conservation Plan, the County is taking a proactive approach to protecting this threatened species while at the same time expediting permits for capital projects which are vital to other County interests as expressed in the Comprehensive Plan. For example, the Tippecanoe II project pre-mitigates scrub-jay impacts associated with the extension and widening of Edgewater Drive up the Flamingo Boulevard corridor. The Edgewater/Flamingo project is in turn, vital to traffic circulation in the Mid-County planning district and will help conserve US 41's level of service, and will also help enable better hurricane evacuation.

Recommendations

The County must continue to move in this proactive direction on all natural resource fronts if it is to maintain the high quality of life which residents and visitors have come to expect. In order to do so, this EAR makes the following recommendations:

1. Continue to move forward with implementation of the County-wide scrub-jay Habitat Conservation Plan as mandated in the 1997 Comprehensive Plan.
2. Continue to support the acquisition of environmentally sensitive lands, particularly for those properties which provide habitat for listed plant and animal species, protect the Harbor and water supplies, reduce the platted lot inventory, or help the County maintain its positive flood insurance rating.
3. Re-visit the Marine Land and Water Use Siting Study as an integral component of protecting the County's marine resources while at the same time facilitating the siting and development of marine-dependent uses and facilities.
4. Make the changes recommended in Table H-2, above, during the EAR-based amendments to the 1997/2010 Comprehensive Plan.

EXHIBIT B

RECEIVED

JAN 22

STATE OF FLORIDA
ADMINISTRATIVE COMMISSION

FLORIDA LAND AND WATER
ADJUDICATORY COMMISSION

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

vs.

CHARLOTTE COUNTY and CITY OF
PUNTA GORDA,

Respondents.

CASE NO. 89-0810GM

NOTICE OF FILING JOINT AGREEMENT
ON REMEDIAL ACTIONS AND SANCTIONS

The undersigned hereby gives notice of filing the attached joint agreement on remedial actions and sanctions in this case.

Respectfully submitted,

RECEIVED

JAN 22 1990


Office of Planning & Budgeting
Office of Director



David J. Russ, Senior Attorney
Department of Community Affairs
2740 Centerview Drive
Tallahassee, Florida 32399-2100
(904) 488-0410

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Parties listed below this 22nd day of January, 1990.



David J. Russ
Senior Attorney

J. Michael Rooney, Esquire
City Attorney
P. O. Box 400
Punta Gorda, Florida 33950

Michael P. Haymans
P. O. Drawer 1447
Punta Gorda, Florida 33951-1447

Kenneth G. Oertel
2700 Blair Stone Road, Suite C
Tallahassee, Florida 32314-6507

Sandra J. Augustine, Esquire
County Attorney
18500 Murdock Circle
Port Charlotte, Florida 33948-1094

1/18/90

JOINT AGREEMENT ON REMEDIAL ACTIONS AND SANCTIONS
CHARLOTTE COUNTY COMPREHENSIVE PLAN

The parties to this proceeding do hereby enter into the following Joint Stipulation on Remedial Actions and Sanctions and request that the Administration Commission approve and include the terms of this Joint Stipulation as part of the final order in this matter:

I. REMEDIAL ACTIONS

A. The County of Charlotte (hereinafter "County") will amend its Comprehensive Plan to include the following:

1. The County shall amend its Future Land Use Map ("FLUM") to limit residential densities, in the areas located south and east of the Peace River and outside of the Urban Service Area ("USA"), in the following manner:

a. The areas currently identified as Agriculture/Conservation on the FLUM shall be limited to a density of one unit per 40 acres.

b. The C. M. Webb Wildlife Management Area will retain its designation of Preservation.

c. The areas previously identified as Agriculture I and Agriculture II on the FLUM shall be limited to a density of one unit per 10 acres, with the exception of existing (as of January 1, 1990), platted lands which are subdivided into individual lots of less than 10 acres in size, whereby one unit per subdivided lot is the maximum density allowed, except when vested rights, related to allowable densities, are determined to exist under the vested rights provisions of Charlotte County Ordinance 88-44. It is not the intent of this provision to exempt these areas from any applicable concurrency requirements.

- d. The areas shown on the FLUM with a designation other than those mentioned in a, b, or c above, shall retain their current designation.
2. The County shall amend its FLUM to limit residential densities on the bridgeless barrier islands in the following manner:
- a. All areas one acre or greater in size (as of January 1, 1990) shall be limited to a density of one unit per acre, except where vested rights, related to allowable densities, are determined to exist under the vested rights provisions of the Charlotte County Ordinance 88-44. It is not the intent of this provision to exempt these areas from any applicable concurrency requirements.
- b. All platted areas (as of January 1, 1990) less than one acre in size shall have an allowable density of one unit per subdivision lot, except where vested rights, related to allowable densities, are determined to exist under the vested rights provisions of the Charlotte County Ordinance 88-44. It is not the intent of this provision to exempt these areas from any applicable concurrency requirements.
3. The County shall amend its designated Urban Service Area boundaries to reflect the following:
- a. The inclusion of the area known as Charlotte Ranchettes, located near the northwest boundary of the C. M. Webb Wildlife Management area.
- b. The inclusion of the existing mobile home and commercial areas on Burnt Store Rd. just north of the Burnt Store Isles area.
- c. The exclusion of the bridgeless barrier islands (Knight Island, Don Pedro Island, and Little Gasparilla Island).
4. The County shall address orderly growth within the Urban Service Area in the following manner:
- a. Utilize the results of the Sewer and Water Study, currently being undertaken, to establish a series of districts or zones which will prioritize the areas within the USA for infrastructure expansion. The study is expected to be completed by January 1, 1992.

b. As an interim measure, the County shall amend the plan to include a policy which will prohibit the extension of water lines, within the unincorporated area of the County, without the simultaneous extension of sewer lines. This will have the effect of limiting the provision of utilities to areas that are built-out to a degree which would make expansion financially feasible, and directing growth to the areas that have existing infrastructure.

c. The County shall develop land use policies which will prevent sprawl from occurring within the USA. These policies should address such land use tools as replatting, redevelopment, utility regulation, and transfers of development rights (TDR's).

d. The County shall incorporate into its plan a policy which will prohibit the public provision of urban services outside of the urban service area, with the exception of police, fire, EMS, garbage, and certain road maintenance, where appropriate.

5. The County shall amend the FLUM to create a separate designation for RV parks, and shall develop goals, objectives, and policies which will assure that areas so designated will accommodate vehicles/structures on a temporary recreational basis.

6. The County shall amend the language of its goals, objectives, and policies in the drainage element, such that they will be consistent with the rules, regulations and policies of the applicable water management districts. It is the intent of this provision to prohibit post-development stormwater discharge at a greater rate than pre-development discharge, consistent with water management district rules.

7. The County shall incorporate the provisions of Ordinance 89-53 (Special Surface Water Protection Districts) into its Comprehensive Plan goals, objectives, and policies to assure the protection of those surface water resources.

8. The County shall amend all appropriate text and data to reflect the changes outlined herein.

B. Charlotte County agrees to discontinue its rule challenge regarding the urban sprawl issue.

II. PROCEDURES FOR ADOPTING, REVIEWING AND APPROVING THE ABOVE REQUIRED AMENDMENTS.

A. The Comprehensive Plan amendments required in Part I (with the exception of 4.a.) above shall be submitted to the Department of Community Affairs (hereinafter, "Department") within 90 days of the date of this agreement.

B. The procedures for reviewing the above referenced amendments shall be as outlined in Chapter 163. F.S.

C. The Comprehensive plan amendments required in 4.a. of Part I above shall be transmitted to the Department in the County's Spring, 1992 submission period. However, the amendments to be included in the submission outlined in part A above, will include policies pertaining to the County's intent as it relates to 4.a. Upon receipt of the amendments, the Department shall review them in the same manner as any other plan amendment, pursuant to Chapter 163, Part II, Florida Statutes.

III. SANCTIONS

A. The County of Charlotte shall prepare and transmit Comprehensive Plan amendments, in accordance with Chapter 163, Part II, Florida Statutes, and Chapter 9J-5, Florida Statutes, in accordance with the requirements set forth above.

B. In the event that County does not submit the required amendments in a timely fashion or does not amend the Comprehensive plan in a manner which is in conformance with the Final Order, the County may be subject to sanctions, the nature and extent to which will be determined by the Administration Commission in a manner consistent with the extent to which the failure to comply with the Final Order warrants.

IV. ENFORCEMENT AND OTHER MATTERS

A. Sanctions approved under the terms of the Final Order shall be of no force and effect unless the Department of Community Affairs affirmatively notifies the appropriate state agencies that such sanctions have attached.

B. Jurisdiction over these proceedings and parties is retained for the purpose of enforcing the Final Order.

V. AUTHORITY TO ENTER INTO AGREEMENT

The representatives of the parties hereto have full authority of their principals to enter into this agreement.

DEPARTMENT OF COMMUNITY AFFAIRS

BY: Randall Kelley for
Secretary
Thomas G. Pelham

DATE: January 22, 1990

COUNTY OF CHARLOTTE

BY: [Signature]
Chairman, Board of County
Commissioners

DATE: 1/18/90

ATTEST:

Barbara T. Scott
Clerk of the Circuit Court

BY: [Signature]
Deputy Clerk

Approved as to Form and Legal
Sufficiency

[Signature]
Sandra J. Augustine,
County Attorney

EXHIBIT C

STATE OF FLORIDA
ADMINISTRATION COMMISSION

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

vs.

CHARLOTTE COUNTY and CITY OF
PUNTA GORDA,

Respondents,

and


BABCOCK FLORIDA COMPANY, a Florida
corporation, WILBUR H. COLE,
FEBRUARY TRUST, and PALM ISLAND
RESORT,

Intervenors.

RECEIVED
JAN 2 1991
Growth Management &
Planning Policy Unit

NOTICE OF FILING ADDENDUM TO JOINT AGREEMENT
ON REMEDIAL ACTIONS AND SANCTIONS
CHARLOTTE COUNTY COMPREHENSIVE PLAN

The undersigned hereby gives notice of filing the
attached Addendum to the Joint Agreement on Remedial Actions and
Sanctions previously filed in this case.



David J. Russ
Senior Attorney
Department of Community Affairs
2740 Centerview Drive
Tallahassee, FL 32399-2100
(904) 488-0410

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this 28th day of February, 1990, to the parties listed below.



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Senior Attorney

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Sandra J. Augustine, Esquire
County Attorney
18500 Murdock Circle
Port Charlotte, Florida 33948-1094

Alan S. Gold, Esquire
1221 Brickell Avenue
Miami, Florida 33131

ADDENDUM TO JOINT AGREEMENT ON REMEDIAL
ACTIONS AND SANCTIONS
CHARLOTTE COUNTY COMPREHENSIVE PLAN

The Department of Community Affairs and Charlotte County, Florida, hereby enter into this Addendum to the Joint Agreement on Remedial Actions and Sanctions/Charlotte County Comprehensive Plan (hereafter "the Settlement Agreement") previously entered into by the parties on January 22, 1990.

1. The parties agree to amendment of Section I.A.4 of the Settlement Agreement, to provide as follows:

4. The County shall address orderly growth within the Urban Service Area in the following manner:

a. Utilize the results of the Sewer and Water Study, currently being undertaken, to establish a series of districts or zones which will prioritize the areas within the USA for infrastructure expansion. The study is expected to be completed by January 1, 1992.

~~b. As an interim measure, the County shall amend the plan to include a policy which will prohibit the extension of water lines, within the unincorporated area of the County, without the simultaneous extension of sewer lines. This will have the effect of limiting the provision of utilities to areas that are built-out to a degree which would make expansion financially feasible, and directing growth to the areas that have existing infrastructure.~~

~~c.~~ b. The County shall develop land use policies which will prevent sprawl from occurring within the USA. These policies should address such land use tools as replatting, redevelopment, utility regulation, and transfers of development rights (TDR's).

d. c. The County shall incorporate into its plan a policy which will prohibit the public provision of urban services outside of the urban service area, with the exception of police, fire, EMS, garbage, and certain road maintenance, where appropriate.

2. In all other respects, the Settlement Agreement entered into between the parties on January 22, 1990, shall remain in full force and effect.

3. The parties hereby request that the Administration Commission approve and include the terms of this Addendum to the Joint Agreement on Remedial Actions and Sanctions as part of the final order in Case No. 89-0810 GM (DOAH).

4. The representatives of the parties hereto have full authority of their principals to enter into this agreement.

DEPARTMENT OF COMMUNITY AFFAIRS

BY Thomas G. Pelham
Thomas G. Pelham, Secretary

DATE: 2-26-90

COUNTY OF CHARLOTTE

BY Jack Lotz
Jack Lotz, Chairman,
Board of County Commissioners

DATE: 2-22-90

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-officio
Clerk to the Board of County
Commissioners

BY Candice W. Lounsbury
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Sandra J. Augustine
Sandra J. Augustine
County Attorney