

FINAL ORDER NO. AC-99-002

STATE OF FLORIDA  
ADMINISTRATION COMMISSION

DEPARTMENT OF COMMUNITY  
AFFAIRS,

Petitioner,

AT

and

COLLIER COUNTY AUDUBON  
SOCIETY, INC., and FLORIDA  
WILDLIFE FEDERATION,

Intervenors,

CASE NO. ACC-99-002  
DOAH CASE NO. 98-0324GM

v.

COLLIER COUNTY, a political  
subdivision of the State of Florida,

REM-Clos

Respondent,

and

COLLIER COUNTY SCHOOL  
BOARD,

Intervenor.

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**FINAL ORDER**

This cause came before the Governor and Cabinet sitting as the Administration Commission (Commission), on June 22, 1999, on the Recommended Order entered pursuant to Section 163.3184(10)(b), Florida Statutes, in Division of Administrative Hearings Case No. 98-0324GM.

### **Background and Introduction**

On April 6, 1996, Collier County (County) adopted an Evaluation and Appraisal Report (EAR) for its local comprehensive plan. On November 14, 1997, the County adopted EAR-based amendments to its plan. On December 24, 1997, the Department of Community Affairs (Department) issued its Notice and Statement of Intent to find the County's EAR-based amendments not "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes.

Pursuant to Section 163.3184(10)(a), Florida Statutes, the Department's petition for formal administrative hearing was forwarded to the Division of Administrative Hearings, and an Administrative Law Judge was assigned. A five day formal hearing was conducted in May 1998, in Naples, Florida. The Administrative Law Judge issued a Recommended Order on March 19, 1999, finding all challenged EAR-based amendments not "in compliance." No parties filed exceptions to the Recommended Order.

Upon our review of the record and the Recommended Order, this Commission hereby adopts all findings of fact and conclusions of law in the Recommended Order.

### **Compliance Determination**

Pursuant to Section 163.3184(11), Florida Statutes, the Commission is authorized to take final agency action regarding whether comprehensive plan amendments are "in compliance." The Commission finds that all of the County's EAR-based amendments at issue in this proceeding are not "in compliance," and should be rescinded and not made effective. The specific amendments are as follows:

1. Intergovernmental Coordination Element Policy 1.2.6 (Ordinance No. 97-56).

2. Public Facilities Element / Natural Groundwater Aquifer Recharge Subelement Objective 1.2 and Policies 1.2.1 through 1.2.4 (Ordinance No. 97-59).
3. Public Facilities Element / Drainage Subelement Policy 1.1.2 (Ordinance No. 97-61).
4. Housing Element (Ordinance No. 97-63).
5. Golden Gate Area Master Plan Policies 2.1.4 and 2.2.3 (Ordinance No. 97-64).
6. Conservation and Coastal Management Element Objectives 1.1 and 1.3, and Policies 1.1.1, 1.1.2, 1.1.3, 1.3.1; Objective 12.1 and Policy 12.1.2; Policy 12.2.5; Objective 6.3; Objective 7.3; Objective 9.4; Objective 9.5; and Objective 11.6 (Ordinance No. 97-66).
7. Future Land Use Element Policy 3.1.d and the Future Land Use Map depiction of the Coastal High Hazard Area (Ordinance 97-67).

Collier County should rescind these amendments not later than September 14, 1999, and should not make these amendments effective.

### **Remedial Actions**

Pursuant to Sections 163.3184(11) and 163.3189(2)(b), Florida Statutes, the Commission is authorized to specify remedial actions which would bring the plan amendments into compliance. The Commission directs the County to complete the following Remedial Amendments and Interim Amendments.

#### **I. Remedial Amendments**

The County shall develop and transmit the following remedial amendments to the Department in accordance with the schedule set forth in this order.

A. Adopt provisions into the Collier County Comprehensive Plan to guide school siting as follows:

1. Public schools and school facilities shall be an allowable use in all land use

categories in areas designated "Urban" on the Future Land Use Map.

2. Public schools and school facilities shall be an allowable land use in all land use categories in areas designated "Estates" north of Interstate 75 and all areas designated "Settlement District."
  3. Public schools and school facilities shall not be allowed in any area designated "Conservation," "Natural Resource Protection Area," "Agricultural/Rural," or the Big Cypress Area of Critical State Concern.
  4. As necessary, require the adoption of Land Development Regulations to implement these provisions.
- B. Coordinate with the South Florida Water Management District and adopt

provisions into the Collier County Comprehensive Plan to provide measurable and adequate levels of protection to be extended to groundwater resources and aquifer recharge areas as

follows:

1. Classify the aquifer recharge areas in the County by recharge amount per year. Identify all prime or high aquifer recharge areas adopted by the South Florida Water Management District Governing Board.
  2. Adopt Goals, Objectives, and Policies to protect the functions of all aquifer recharge areas. Prime or high recharge areas shall enjoy the most stringent protections.
  3. Adopt Goals, Objectives, and Policies applicable to all development regarding the protection of groundwater quality and quantity.
  4. As necessary, require the adoption of Land Development Regulations to implement these provisions.
- C. Adopt provisions into the Collier County Comprehensive Plan to establish

guidelines and criteria for discharge rates and adequate water management capacity to protect natural drainage features as follows:

1. Establish a drainage level of service for all development which is based on at least the following criteria:
  - a. rate and quantity;
  - b. quality; and
  - c. basin.
2. Require stormwater discharge to meet or exceed all State and Federal guidelines.
3. As necessary, require the adoption of Land Development Regulations to implement these provisions.
- D. Adopt provisions into the Collier County Comprehensive Plan regarding farmworker housing that would be based upon the best available data and that would contain guidelines and criteria for the location of such housing as follows:

1. Utilize the most recent data available from the Shimberg Center at the University of Florida, the 1999 "Study on Migrant Farmworker Housing" prepared by the University of Florida, Florida Department of State, and Southwest Florida Regional Planning Council, or other best available data.
2. Based on the data specified immediately above, adopt Goals, Objectives, and Policies to:
  - a. provide an adequate supply of farmworker housing, including measurable goals such as additional new units per year;
  - b. provide locational guidelines to ensure that the housing best suits the needs of the farmworkers by close location to transportation opportunities, shopping opportunities, health care, and the like; and
  - c. ensure maximum use of available funds to establish new housing units and to improve substandard farmworker housing.
3. Based on the data specified above, adopt Goals, Objectives, and Policies to eliminate substandard farmworker housing.
4. As necessary, require the adoption of Land Development Regulations to implement these provisions.

E. Amend the Collier County Comprehensive Plan to contain provisions to ensure hurricane evacuation times are maintained or reduced as follows:

1. Amend Objective 12.1 in the Coastal and Conservation Element to provide for the maintenance or reduction in hurricane evacuation times.
2. Eliminate the language in Objective 12.1 that merely requires the "continued encouragement" of certain undertakings.
3. Adopt policies to accomplish Objective 12.1 through specific programs and activities.
4. As necessary, require the adoption of Land Development Regulations to implement these provisions.

F. Amend Coastal and Conservation Element Policy 12.2.5 to define the coastal high hazard area as at least that area in the category 1 evacuation zone as defined in the *1996 Southwest Florida Regional Planning Council Hurricane Evacuation Study Update*.

G. Adopt into the Collier County Comprehensive Plan provisions to ensure storage tank regulations protect groundwater quality as follows:

1. Require implementation of a storage tank compliance program, which shall either be (a) incorporated into the Plan by reference, or (b) sufficiently described in the Plan so as to be enforceable and measurable.
2. Require coordination with the Department of Environmental Protection to ensure appropriate protection for storage tanks located in existing or planned water wellfields, as well as those located in high or prime groundwater recharge areas.
3. As necessary, require the adoption of Land Development Regulations to implement these provisions.

H. Adopt provisions into the Collier County Comprehensive Plan to implement the following industrial septic tank provisions:

1. Encourage heightened treatment standards for septic tanks located in existing or planned water wellfields, as well as those located in high or prime groundwater

recharge areas.

2. As necessary, require the adoption of Land Development Regulations to implement these provisions.
- I. Adopt into the Collier County Comprehensive Plan the following provisions for

Coastal Barrier and Beach System Management:

1. Restrict densities on undeveloped coastal barriers to one unit per five acres. Include at least the following as undeveloped coastal barriers:
  - a. Wiggins Pass Unit FL-65P
  - b. Clam Pass Unit FI-64P
  - c. Keywaydin Island Unit P-16
  - d. Tigertail Unit FI-63-P
  - e. Cape Romano Unit P-15
2. Require beachfront development to protect and restore dune vegetation.
3. Require site alterations to concentrate impacts in previously disturbed areas.
4. Require boathouses, boat shelters, dock facilities, and other like facilities to avoid impacts to existing seagrass beds.
5. As necessary, adopt Land Development Regulations to implement these provisions.
- J. Adopt into the Collier County Comprehensive Plan provisions to protect

wellheads and wellfields as follows:

1. Require groundwater quality to meet all applicable State and Federal water quality standards not later than January 2002, and to maintain said quality thereafter.
2. Adopt maps depicting existing and planned future wellfields.
3. Adopt maps depicting existing wellheads and wellhead protection areas or wellfield risk management zones. These zones should be drawn as follows:

- a. W-1: The land immediately surrounding the wellhead and extending to the five percent ground water capture zone boundary line (which approximates the one year ground water travel time to the wellfield).
  - b. W-2: The land between the W-1 boundary and the ten percent ground water capture zone boundary line (which approximates the two year ground water travel time to the wellfield).
  - c. W-3: The land between the W-2 boundary and the twenty-five percent ground water capture zone boundary line (which approximates the five year ground water travel time to the wellfield).
  - d. W-4: The land between the W-3 boundary and the one hundred percent ground water capture zone boundary line (which approximates the twenty year ground water travel time to the wellfield).
4. Restrict land uses within the wellfield risk management zones as follows:
- a. Future solid waste disposal facilities: prohibited in all wellfield risk management zones.
  - b. Future solid waste transfer stations: prohibited in W-1, W-2, W-3.
  - c. Future solid waste storage, collection, and recycling storing hazardous products and hazardous wastes: prohibited in W-1, W-2, W-3.
  - d. Future non-residential uses involving hazardous products in quantities exceeding 250 liquid gallons or 1,000 pounds of solids: provide for absorption or secondary containment in W-1, W-2, W-3.
  - e. Future domestic wastewater treatment plants: prohibited in W-1.
  - f. Future land disposal systems: must meet high level disinfection standards as found in 40 CFR part 135.
  - g. Land application of domestic residuals: limit metal concentrations, nitrogen (based on uptake ability of vegetation), and require a conditional use.
  - h. Future petroleum exploration and production and expansions of existing: prohibited in W-1 & W-2, conditional use required in W-3 & W-4.
  - i. Conditional uses shall be granted only in extraordinary circumstances and



where impacts of the development will be isolated from the Surficial and Intermediate Aquifer.

5. As necessary, adopt Land Development Regulations to implement these provisions.

K. Amend the future land use map series to depict the coastal high hazard area as at least that area in the category 1 evacuation zone as defined in the *1996 Southwest Florida Regional Planning Council Hurricane Evacuation Study Update*.

Furthermore, the County is ordered to coordinate with the Department of Environmental Protection regarding storage tanks and with the Department of Environmental Protection and Department of Health regarding industrial septic tanks to avoid duplication of efforts, and the appropriate jurisdictional agencies to ensure compliance with wetland permitting requirements. The County shall cooperate with the Department of Environmental Protection in the determination, listing and restoration of impaired water bodies as may be required by the provisions of the Watershed Restoration Act of 1999.

In accordance with the schedule set forth in this order, the Department of Community Affairs shall review these proposed remedial amendments and issue its Objections, Comments, and Recommendations Report; the County shall thereafter proceed to adopt the remedial amendments; and the Department shall review these amendments and issue its Notice of Intent. A copy of the Notice shall be provided to the Commission.

## **II. Interim Amendments**

The above-cited remedial amendments do not address several amendments deemed to be not "in compliance." Specifically, issues regarding South Golden Gate Estates (Ordinance No. 97-64), Natural Resource Protection Areas (Ordinance No. 97-66), Wetland Protection

(Ordinance No. 97-66) and Wildlife Protection (Ordinance No. 97-66) are not resolved by the above remedial amendments.

These issues are to be addressed by "The Collier County Rural and Agricultural Area Assessment" (Assessment). The Assessment will allow Collier County the opportunity to devise a community-based approach to bring the EAR-based amendments into compliance by a community-created plan for the future. This plan will take the form of future amendments to the Collier County comprehensive plan. The Commission encourages the County to consider the appropriateness of undertaking this Assessment in phases designed to address short-term as well as long-term community needs and geographical differences. Any amendments resulting from a phased assessment must be coordinated with remedial amendments required herein as well as any future phased amendments.

The Assessment must be a collaborative, community-based effort with full and broad-based public participation. The Assessment must be undertaken with heightened cooperation and assistance from State and Regional agencies. These agencies are hereby directed to provide necessary information regarding natural resources, water quality and quantity, sustainable development patterns, and other issues as they may arise. The agencies are also directed to consider purchase of areas identified as sensitive or otherwise warranting permanent protection from the impacts of development.

The Geographic Scope of the Assessment Area ("Area") shall be as follows:

Includes:                   All lands designated Agricultural/Rural  
                                  Big Cypress Area of Critical State Concern  
                                  Conservation lands outside the Urban boundary  
                                  South Golden Gate Estates

Excludes: All Urban designated areas  
Northern Golden Gate Estates  
The Settlement District

Regarding lands in public or private ownership for conservation purposes such as the CREW Trust lands, Corkscrew Swamp Sanctuary, Picayune Strand State Forest, Collier-Seminole State Park, Rookery Bay National Estuarine Research Reserve, Cape Ramano-Ten Thousand Islands Aquatic Preserve, Florida Panther National Wildlife Refuge, Fakahatchee Strand State Preserve, Everglades National Park, and Big Cypress National Preserve, the Assessment will rely upon the information and management plans already in existence for these lands. The Assessment shall focus its data collection efforts on privately-owned lands. In coming forward with any comprehensive plan amendments based on the Assessment or any phase thereof, the County shall take the information from both the privately-held lands and the publicly-held lands into account, and shall ensure that any ensuing plan amendments are coordinated with the biological and hydrological needs of these conservation lands such as interconnected wetland systems and listed species habitat.

At a minimum, the Assessment must identify means to accomplish the following:

1. Identify and propose measures to protect prime agricultural areas. Such measures should prevent the premature conversion of agricultural lands to other uses.
2. Direct incompatible uses away from wetlands and upland habitat in order to protect water quality and quantity and maintain the natural water regime as well as to protect listed animal and plant species and their habitats.
3. Assess the growth potential of the Area by assessing the potential conversion of rural lands to other uses, in appropriate locations, while discouraging urban sprawl, directing incompatible land uses away from critical habitat and encouraging development that utilizes creative land use planning techniques including, but not limited to, public and private schools, urban villages, new

towns, satellite communities, area-based allocations, clustering and open space provisions and mixed use development. The Assessment shall recognize the substantial advantages of innovative approaches to development which may better serve to protect environmentally sensitive areas, maintain the economic viability of agricultural and other predominantly rural land uses, and provide for the cost-efficient delivery of public facilities and services.

Public participation will be the hallmark of this planning effort. The participation must be wide in scope with broad community input. State and Regional agencies are hereby directed to participate and assist in the effort. The County shall ensure community input through workshops, public opinion surveys, and committees as necessary to undertake various tasks in the study.

During the period in which this Assessment is being undertaken, it is necessary to establish interim development provisions for the Area. These interim development provisions are essential to respond to the deficiencies identified in the Recommended Order.

Residential and other uses in the Area for which completed applications<sup>1</sup> for development approval, rezonings, conditional uses, subdivision approval, site plan approval, or plats were filed with or approved by Collier County prior to June 22, 1999, shall be processed and considered under Collier County comprehensive plan as it existed and was in effect on June 22, 1999. All other development shall be subject to the following interim development provisions.

Until the Assessment is complete and comprehensive plan amendments to implement the Assessment are in effect, the only land uses and development allowable in the Area shall be those set forth in the Collier County Comprehensive Plan (FLUE, LU-I-39-45) and Land

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<sup>1</sup> Completed applications shall meet all applicable requirements set forth in the Collier County Land Development Code.

Development Code (Section 2.2.2) in effect on June 22, 1999, for the Agricultural/Rural District, except the following uses are prohibited and shall not be allowed:

1. New golf courses or driving ranges.
2. Extension or new provision of central water and sewer service into the Area.
3. New package wastewater treatment plants.
4. Residential development except farmworker housing or housing directly related to support farming operations, or staff housing (12 du/acre) and other uses directly related to the management of publicly-owned land, or one single family dwelling unit per lot or parcel created prior to June 22, 1999.
5. Commercial or industrial development except gas and telephone facilities, electric transmission and distribution facilities, emergency power structures, fire and police stations, emergency medical stations.
6. Transient residential such as hotels, motels, and bed and breakfast facilities.
7. Zoo, aquarium, botanical garden, or other similar uses.
8. Public and Private schools.
9. Collection and transfer sites for resource recovery.
10. Landfills.
11. Social and fraternal organizations.
12. Group care facilities.
13. Sports instructional schools and camps.
14. Asphaltic and concrete batch making plants.
15. Recreational Vehicle Parks.

Agricultural activities shall be subject to permitting requirements of the South Florida Water Management District and other regulatory authorities, as currently required.

If the County elects to address a specific geographic portion of the Area as a phase of the Assessment, the above-listed interim land use controls shall be lifted from the specific geographic area upon completion of the applicable phase of the Assessment and the implementing comprehensive plan amendments for that phase becoming effective.

The Camp Keis Strand, CREW Lands, Okaloacoochee Slough, Belle Meade, and South Golden Gate Estates shall be mapped and identified as Natural Resource Protection Areas (NRPAs). The general location of these areas shall be identified in the proposed amendments setting forth the Assessment and establishing the Interim Development Provisions. These areas shall be refined as actual data and analysis is made available. Within these NRPAs, only agriculture and directly-related uses and one single family dwelling unit per parcel or lot created prior to June 22, 1999, shall be allowed.

The restriction on uses in the Area, including NRPAs, during the Assessment, or any phase thereof, shall not affect or limit the continuation of existing uses. "Existing uses" shall also include those uses for which all required permits have been issued, or uses for which completed applications have been received by the County prior to June 22, 1999. The continuation of existing uses shall include expansions of those uses if such expansions are consistent with or clearly ancillary to the existing use and do not require a rezoning or comprehensive plan amendment. Nothing in this order should be construed as an endorsement or rejection of any part of any particular development.

In accordance with the schedule set forth in this order, the County shall develop and transmit proposed Interim amendments to describe and initiate the Assessment and establish the Interim Development Provisions; the Department of Community Affairs shall review these

proposed remedial amendments and issue its Objections, Recommendations, and Comments Report; the County shall thereafter proceed to adopt these amendments; and the Department shall review these amendments and issue its Notice of Intent. A copy of the Notice shall be provided to the Commission.

The County shall also adopt Land Development Regulations to implement the Interim Development Provisions.

The Assessment shall be implemented through effective plan amendments three years from the date of this Final Order, or the parties shall either:

1. Request an extension of the three year requirement which may be authorized by the Administration Commission; or
2. Appear before the Administration Commission and present arguments as to sanctions or alternative remedial actions.

The County may present comprehensive plan amendments for the Area prior to the three year deadline if they effectuate and are consistent with the provisions of the Final Order.

The Department of Community Affairs shall confer with all parties and file with the Administration Commission a progress report two years after entry of this Final Order.

#### **Schedule for Remedial and Interim Plan Amendments**

The County and the Department shall comply with the provisions of this order in accordance with the following schedule:

1. The County shall rescind the EAR-based amendments determined not "in compliance" no later than September 14, 1999.
2. The County shall develop and transmit to the Department the Interim Amendments

(Assessment and Interim Development Provisions) no later than September 14, 1999. The Department shall issue its Objections, Recommendations, and Comments Report (ORC) thirty (30) days from the date of the transmission. The County shall have thirty (30) days from the date on which the ORC is issued to adopt the Interim Amendments. The Department shall issue its Notice of Intent for the Interim Amendments not later than forty-five (45) days from the date on which those Amendments were adopted.

3. The County shall adopt land development regulations to implement the Interim Development Provisions no later than November 14, 1999.
4. The County shall develop and transmit to the Department the Remedial Amendments (Items A - K) no later than November 30, 1999. The schedule for Department review and County adoption shall be as set forth in Section 163.3184, Florida Statutes.
5. No later than June 22, 2002, all plan amendments necessary to implement the findings and results of the Assessment, or any phase thereof, shall be effective or the parties shall request further action by the Administration Commission as provided for in this order. No amendments resulting from the Assessment shall become effective prior to the effective date of the Remedial Amendments.

#### **Sanctions**

Pursuant to Section 163.3189(2)(b), Florida Statutes, Collier County may elect to make the above-listed plan amendments effective notwithstanding the determination of non-compliance in this Final Order. If Collier County rescinds the above-listed plan amendments by September 14, 1999, no sanctions shall be imposed for the determination of non-compliance. The Commission retains jurisdiction to impose sanctions if Collier County fails to rescind these



amendments and instead elects to make any of the above-listed amendments effective, or if the County fails to adopt the Remedial Amendments and Interim Amendments identified above.

The following are the potential sanctions to be imposed:

1. All state agencies will be directed not to provide funds to increase the capacity of roads, bridges, or water and sewer systems within the boundaries of Collier County.
2. Collier County will not be eligible for grants administered under the following programs:
  - a. Florida Small Cities Community Development Block Grant Program, as authorized by Sections 290.041-290.049, Florida Statutes.
  - b. Florida Recreation Development Assistance Program, as authorized by Chapter 375, Florida Statutes.
  - c. Revenue sharing pursuant to Sections 206.60, 210.20 and 218.61 and Chapter 212, Florida Statutes, to the extent not pledged to pay back bonds.

In the event the County elects to make the plan amendments effective, fails to rescind the not "in compliance" amendments, or fails to adopt the Remedial Amendments and Interim Amendments, the Department shall inform the Commission of the failure and shall recommend sanctions to be imposed.

#### **Notice of Rights**

Any party to this order has the right to seek judicial review of the order pursuant to Section 120.68, Florida Statutes, and Rules 9.030(b)(1)(c) and 9.110, Florida Rules of Appellate Procedure. To initiate an appeal of this order, a notice of appeal must be filed with the Clerk of the Commission, Office of Planning and Budgeting, Executive Office of the Governor, the Capitol, Room 2105, Tallahassee, Florida 32399-0001, and with the appropriate District Court of Appeal within 30 days of the day this order is filed with the Clerk of the Commission. The

notice of appeal filed with the District Court of Appeal must be accompanied by the filing fee specified in Section 35.22(3), Florida Statutes, and must be substantially in the form prescribed by Rule 9.900(a), Florida Rules of Appellate Procedure.

You waive your right to judicial review if the notice of appeal is not timely filed with the Clerk of the Commission and the appropriate District Court of Appeal.

Mediation under Section 120.573, Florida Statutes, is not available with respect to the issues resolved by this order.

DONE and ORDERED this 22nd day of June, 1999.

Teresa B. Sinker  
for Donna Arduin, Secretary  
Administration Commission

FILED with the Clerk of the Administration Commission this 22nd day of June, 1999.

Michelle A. Atty  
Clerk, Administration Commission

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing was delivered to the following persons by United States Mail or hand delivery this 2<sup>nd</sup> day of June, 1999.

Honorable Jeb Bush  
Governor  
The Capitol  
Tallahassee, Florida 32399

Honorable Robert Milligan  
Comptroller  
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Honorable Bob Butterworth  
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*for* *Terese B. Jinker*  
DONNA ARDUIN, Secretary  
Administration Commission