



RENEE FRANCIS LEE  
COUNTY ATTORNEY

ORIGINAL #98-939  
**COUNTY OF CHARLOTTE**

**OFFICE OF THE COUNTY ATTORNEY**

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Phone: (941) 743-1330  
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November 6, 1998

**VIA FEDERAL EXPRESS**

Ms. Blanca S. Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No. 981288-WU  
Application of Town & Country Utility Company for an  
Original Water Certificate

Dear Ms. Bayo:

Enclosed are the original and seven (7) copies of Charlotte County's Objection to the Application of Town & Country Utility Company for an Original Water Certificate and Request for Formal Hearing.

Please acknowledge receipt of the foregoing by stamping the enclosed extra copy

ACK \_\_\_\_\_ of this letter and returning same to me at your convenience. Thank you for your assistance  
AFA \_\_\_\_\_ in this matter.

APP \_\_\_\_\_

CAF \_\_\_\_\_

CMU \_\_\_\_\_

CTR \_\_\_\_\_

EAG \_\_\_\_\_

LEG 2 MYB/am

LIN \_\_\_\_\_ Enclosures

OPC \_\_\_\_\_

RCH \_\_\_\_\_

SEC 1

WAS Walker

OTH \_\_\_\_\_

cc: Renee Francis Lee, County Attorney  
Pamela D. Brangaccio, Assistant County Administrator  
Elliot Kampert, Planning and Zoning Manager  
David Smith, Comprehensive Planning Supervisor

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898-511

Sincerely,

Martha Young Burton  
Assistant County Attorney

DOCUMENT NUMBER - DATE

11072 NOV-98

FPSC-RECORDS/REPORTING

**ORIGINAL**

**STATE OF FLORIDA  
BEFORE THE PUBLIC SERVICE COMMISSION**

In re: APPLICATION OF TOWN & COUNTRY  
UTILITY COMPANY FOR AN ORIGINAL  
WATER CERTIFICATE

Docket No. 981288-WU

**OBJECTION OF THE BOARD OF COUNTY COMMISSIONERS OF  
CHARLOTTE COUNTY, FLORIDA, TO THE APPLICATION OF  
TOWN & COUNTRY UTILITY COMPANY FOR AN ORIGINAL  
WATER CERTIFICATE AND REQUEST FOR FORMAL HEARING.**

The BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY,  
FLORIDA, (hereinafter referred to as the "Board"), hereby files this Objection to the  
Application of Town & Country Utility Company (hereinafter referred to as "Applicant"), for  
an Original Water Certificate and Request for Formal Hearing, and states that:

1. This objection relates to the Application of Town & Country Utility Company  
for an Original Water Certificate filed October 8, 1998 (hereinafter referred to as the  
"Application").
2. The Board is the governing body of Charlotte County, Florida, a county  
affected by the Application.
3. This Objection has been timely filed for purposes of the Board requesting a  
public hearing on the Application, pursuant to Section 367.045(4), Florida Statutes, in that  
30 days has not passed since the mailing of actual notice or publication of the Application  
to the Board.

4. The Board raises the following objections to the Application filed by

Applicant:

- a. The Board and the citizens of Charlotte County would be "substantially affected" by the requested certification, as defined by Section 367.045(4), Florida Statutes.
- b. In 1988, Charlotte County adopted a comprehensive plan which was subsequently found not in compliance with state planning requirements by the Florida Department of Community Affairs. As originally adopted, the comprehensive plan would have allowed for higher densities in agricultural lands than currently allowed. The comprehensive plan was amended to preclude such higher density development as a result of an administrative hearing and final order issued by the State of Florida Administration Commission (Governor and Cabinet) (a copy of the Final Order is attached hereto as Exhibit "A"). The Application is contrary to the intent of the Administration Commission.
- c. The application for water certification by Town & County Utility Company is inconsistent with the Charlotte County Comprehensive Plan, Chapter 163, Part II, *Florida Statutes*, and the State Comprehensive Plan (Chapter 187, *Florida Statutes*) and should not be granted. Granting of this application would weaken the effectiveness of Charlotte County's planning and guidelines for future development and growth consistent with the comprehensive plan adopted by the Board of County Commissioners.

Charlotte County has adopted an Urban Service Area as its primary growth management tool. (A copy of the most recently adopted Urban Service Area is attached hereto as Exhibit "B"). Lands within the Urban Service Area currently have high levels of existing public infrastructure and services or are planned to receive higher levels in the future. Lands within the Urban Service Area also have higher densities than lands located outside of the Urban Service Area and, therefore, must be supported by the high levels of infrastructure and services. Lands outside of Charlotte County's Urban Service Area have been designated as Rural Service Area, and are rural in character with very limited growth potential. Lands within the Rural Service Area, and the subject of this application, are limited to extremely low density; the Future Land Use Map designates the overwhelming land which is the subject of this petition as either Agriculture/Conservation (maximum of 1 dwelling unit per 10 acres), Resource Conservation (maximum of 1 dwelling unit per

40 acres), or Agriculture outside the Urban Service Area (maximum of 1 dwelling unit per 10 acres). Very low density lands such as the subject of this application does not warrant central potable water service. A utility company would not be able to efficiently provide such service to a minimally sized population spread out over approximately 140 square miles. According to the 1990 US Census, only 62 persons resided within the 90,000 acres of the proposed certification area within Charlotte County.

Charlotte County has not planned for providing higher levels of infrastructure or service provision in the southeastern section of the county. By allowing a certification for central potable water service in this area of the county, the County may have to provide higher service levels at considerable cost. Such action disregards the growth management aspect of the County's comprehensive plan and would lead to the problems associated with urban sprawl. Within the Urban Service, Charlotte County has designated approximately 187 square miles which are appropriate for urban development and the provision of urban infrastructure such as central potable water service. The remaining 506 square miles within the county, including the subject area of this application, is inappropriate for such services.

- d. The proposed certification is inconsistent with certain specific goals, objectives, and policies from the Charlotte County 1988 comprehensive plan as amended (the specific goals, objectives, and policies are attached here to as Exhibit "C").
- e. The proposed certification is also inconsistent with certain specific goals, objectives, and policies from the 1997-2010 Comprehensive Plan adopted October 7, 1997, by the Board of County Commissioners and found in compliance by the Florida Department of Community Affairs. County is presently awaiting issuance of Final Order (the specific goals, objectives, and policies are attached hereto as Exhibit "D").
- f. Further, the proposed certification is inconsistent with the following provisions of Chapter 163, Part II, *Florida Statutes*:

*§163.3167 Scope of act.*

*(1) The several incorporated municipalities and counties shall have power and responsibility:*



- (a) *To plan for their future development and growth.*
- (b) *To adopt and amend comprehensive plans, or elements or portions thereof, to guide their future development and growth.*

*§163.3171 Areas of authority under this act.*

- (2) *A county shall exercise authority under this act for the total unincorporated area under its jurisdiction or in such unincorporated areas as are not included in any joint agreement with municipalities established under the provisions of subsection (1). In the case of chartered counties, the county may exercise such authority over municipalities or districts within its boundaries as is provided for in its charter.*

*...*

- (6) *In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:*
  - (a) *A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and private uses of land. The future land use plan shall include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives. Each land use category shall be defined in terms of the types of uses included and specific standards for the density or intensity of use. The future land use plan shall be based upon surveys, studies, and data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land; the availability of public services; and the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community.*

- g. *Section 163.3244(3)(a)1., Florida Statutes, further discourages inappropriate densities and intensities of development and discourages urban sprawl:*

*Encourage urban infill at appropriate densities and intensities, separate urban and rural uses, and discourage urban sprawl development patterns while preserving public open space and planning for buffer-type land uses and rural development consistent with their respective character along and outside of the urban boundary.*

- h. The Application is also inconsistent with the State Comprehensive Plan goals and policies (Chapter 187, *Florida Statutes*, at 187.201):

**(16) LAND USE.**

- (a) *Goal. In recognition of the importance of preserving the natural resources and enhancing the quality of life of the state, development shall be directed to those areas which have in place, or have agreements to provide, the land and water resources, fiscal abilities, and service capacity to accommodate growth in an environmentally acceptable manner.*
- (b) *Policies.*
1. *Promote state programs, investments, and development and redevelopment activities which encourage efficient development and occur in areas which will have the capacity to service new population and commerce.*
  6. *Consider, in land use planning and regulation, the impact of land use on water quality and quantity; the availability of land, water, and other natural resources to meet demands; and the potential for flooding.*

...

**(18) PUBLIC FACILITIES.**

- (a) *Goal. Florida shall protect the substantial investments in public facilities that already exist and shall plan for and finance new facilities to serve residents in a timely, orderly, and efficient manner.*
- (b) *Policies.*
1. *Provide incentives for developing land in a way that maximizes the uses of existing public facilities.*
  2. *Promote rehabilitation and reuse of existing facilities, structures, and buildings as an alternative to new construction.*
  3. *Allocate the costs of new public facilities on the basis of the benefits received by existing and future residents.*

5. Wherefore, the Board requests the following relief:
- a. That the Public Service Commission deny the Application;
  - b. That a copy of the Application, and all supporting documents, be forwarded to the Board, c/o Jan Winters, Charlotte County Administrator, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094;
  - c. That pursuant to Rule 25-22.029, F.A.C., the Public Service Commission issue a Notice of Proposed Agency Action concerning the Application; and
  - d. If necessary, the Public Service Commission hold a public hearing on the Application in order that the Board may protect the citizens of Charlotte County, such public hearing to be in Charlotte County, Florida, pursuant to Section 367.045(4), Florida Statutes.

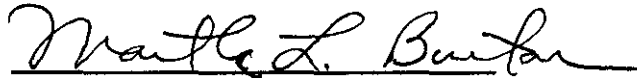
Respectfully submitted,



Martha Young Burton  
Assistant County Attorney  
Fla. Bar #398179  
Attorney for Charlotte County, Florida  
Charlotte County Attorney's Office  
18500 Murdock Circle  
Port Charlotte, FL 33948-1094  
(941) 743-1330

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the attached Service List by Overnight Federal Express Mail to Blanca S. Bayo and F. Marshall Deterding, Esq. and by U.S. Mail to Bobbie L. Reyes, Esq., Michael Haymans, Esq., and Bernard Piawah, Planner IV, Division of Community Planning, this 6th day of November, 1998.



Martha Young Burton

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LR98-511/November 6, 1998

SERVICE LIST

Ms. Blanca S. Bayo, Director  
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Bernard Piawah, Planner IV  
Division of Community Planning  
Florida Department of Community Affairs  
2555 Shumard Oak Blvd.  
Tallahassee, FL 32399-2100

5/29/90

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)

APR 10 1990  
STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

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 15<sup>th</sup> day of March, 1990, in  
Tallahassee, Florida.

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EXHIBIT A

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

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. )

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Office of Planning & Budgeting  
Office of Director

CASE NO. 89-0810GM

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RECOMMENDED ORDER

Pursuant to notice, final hearing in the above-styled case was held in Port Charlotte, Florida, on June 19-23, 1989, before Robert E. Meale, Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

The parties were represented as follows:

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STATEMENT OF THE ISSUES

The issue in the above-styled case is whether the comprehensive plan adopted by Charlotte County and the City of Punta Gorda is in compliance with Chapter 163, Part II, Florida Statutes, and Chapter 9J-5, Florida Administrative Code. Although the two local governments jointly adopted the plan, the only provisions under challenge are those pertinent to Charlotte County.

PRELIMINARY STATEMENT

On June 28, 1988, Charlotte County and the City of Punta Gorda transmitted a proposed comprehensive plan to the Department of Community Affairs. On October 14, 1988, the Department of Community Affairs transmitted its objections, recommendations, and comments with respect to the proposed plan to Charlotte County and the City of Punta Gorda. On December 16, 1988, Charlotte County concluded its review of the objections, recommendations, and comments and adopted the subject

comprehensive plan.

On February 9, 1989, the Department of Community Affairs issued a Notice of Intent to Find the Plan Not in Compliance. On February 16, 1989, the Department of Community Affairs filed with the Division of Administrative Hearings the Petition of the Florida Department of Community Affairs.

The Petition alleges that the plan is not in compliance for the reasons set forth in the accompanying Statement of Intent to Find Comprehensive Plan Not in Compliance. The Statement of Intent incorporates the objections, recommendations, and comments of the Department of Community Affairs.

The Statement of Intent makes three general assertions. First, the plan fails to discourage urban sprawl. The plan designates an Urban Service Area containing more vacant land than is needed to accommodate projected population growth through 2010. The plan also allows residential densities of one unit per acre (1:1) in the outlying agricultural areas. Second, the plan simultaneously supports and discourages further development of the barrier islands. Third, the plan fails to reduce pollution or improve surface water quality.

As a result, the Statement of Intent alleges that the plan is inconsistent with the State Comprehensive Plan, Section 187.201, Florida Statutes; Chapter 163, Part II, Florida Statutes; and Chapter 9J-5, Florida Administrative Code. However, the Statement of Intent alleges that the plan is consistent with the Southwest Florida Regional Policy Plan.

In its answer, Charlotte County generally denies the allegations of the Department of Community Affairs and alleges that the Department lacks standing because it failed to "participate" at the adoption hearing, as required by Section 163.3184(8)(a), Florida Statutes.

The following petitions to intervene were filed: Babcock Florida Company and Wilbur H. Cole on March 22, 1989; Southwest Florida Regional Planning Council on May 3, 1989; Palm Island Resort on June 12, 1989; Radnor/Gasparilla Corporation on June 14, 1989; February 24 Trust on June 14, 1989; and P. Wallenberg Development Co., Inc. on June 21, 1989. The last petition was filed during the final hearing when the Acting County Attorney presented his copy to the Hearing Officer, who accepted it for filing. (The original was filed by mail with the Division of Administrative Hearings on June 25, 1989.)

By Order dated April 10, 1989, Babcock Florida Company and Wilbur H. Cole were granted leave to intervene. By Order dated June 7, 1989, Southwest Florida Regional Planning Council was granted leave to intervene, subject to the limitation that it could not raise new legal issues. By Order dated June 27, 1989, Palm Island Resort and February 24 Trust were granted leave to intervene, subject to the limitation that they could not raise new legal issues. In the same Order, Radnor/Gasparilla Corporation was denied leave to intervene on the grounds that it lacked standing. By Order announced at the final hearing, P. Wallenberg Development Co., Inc. was denied leave to intervene

on the grounds that it lacked standing and its petition was untimely.

No one appeared on behalf of Southwest Florida Regional Planning Council during the course of the final hearing. Palm Island Resort and February 24 Trust moved ore tenus to dismiss the Regional Planning Council because it had not presented any evidence to establish its standing. The motion was granted on the final day of the hearing.

The Department of Community Affairs and the City of Punta Gorda entered into a Stipulation, which was filed June 12, 1989. The parties agreed that, but for the issues involving Charlotte County, the Department of Community Affairs would have approved the comprehensive plan as to Punta Gorda. The parties also agreed that the City of Punta Gorda would not participate in the hearing, but would re-execute the comprehensive plan if it were amended as a result of the outcome of the hearing.

At the hearing, the Department of Community Affairs called eight witnesses and offered into evidence 14 exhibits. Charlotte County called nine witnesses and offered into evidence 14 exhibits. Babcock Florida Company and Wilbur H. Cole called 11 witnesses and offered into evidence 19 exhibits. February 24 Trust and Palm Beach Resorts called two witnesses and offered into evidence 18 exhibits.

All exhibits were admitted into evidence except Babcock and Cole's Exhibits 18 and 19. Ruling was reserved in part as to Petitioner's Exhibits 5-9, to which February 24 Trust and Palm

Island Resort objected as hearsay. These exhibits, which are letters from other agencies reviewing the plan, were admitted as the comments of the respective agencies, but ruling was reserved as to whether these exhibits were admissible for the truth of the statements of fact contained within them. At this time, it is ruled that the exhibits do not fall within the hearsay exception for public records or business records. Thus, these exhibits have not been admitted to prove the truth of the statements of fact contained within the letters, except to the extent that any such statements supplement or explain other admissible evidence, within the meaning of Section 120.58(1)(a), Florida Statutes.

At the close of the hearing, the Department of Community Affairs moved ore tenus to amend the pleadings to conform to the evidence that was received without objection. Ruling was reserved on the motion.

In its Memorandum in Lieu of Oral Argument filed by Charlotte County on August 30, 1989, the County argues that the six issues raised by the Department of Community Affairs in its unilateral prehearing stipulation were not timely raised in the pleadings. These issues are: 1) the comprehensive plan is not supported by the data and analysis; 2) the plan is not based on population estimates; 3) the maps in the plan fail to reflect the goals, objectives, and policies of the plan; 4) the plan is not based on an analysis of categories of land use and estimated acreage needs; 5) the plan fails to protect, conserve, or enhance coastal natural resources; and 6) the plan does not

maintain or reduce hurricane evacuation times.

These arguments are rejected because the Statement of Intent adequately raises all of these issues. The Statement of Intent incorporates the Department's objections, recommendations, and comments, which include the comments of the other reviewing agencies that reviewed the plan.

Even if all of these issues had not been adequately pled, the pleadings may be amended in the manner followed by the Department of Community Affairs in the present case. In general, such a motion is unnecessary unless the opposing party has timely objected to the evidence as not within the issues raised by the pleadings. Cf. Rule 1.190(b), Florida Rules of Civil Procedure.

The County argues that the Department's motion should not be granted because Section 163.3184(10)(a), Florida Statutes, mandates that the Division of Administrative Hearings conduct a hearing regarding the local comprehensive plan on the "notice of intent . . . forwarded to [the Division]" by the Department of Community Affairs. In addition, Section 163.3184(8)(a), Florida Statutes, requires that the determination of compliance be based upon the objections, recommendations, and comments of the Department or any changes to the adopted plan made by the local government.

Nothing in Chapter 163, Part II, Florida Statutes, prevents the Department of Community Affairs from amending its initial pleadings in a proceeding under Section 163.3184(10), Florida Statutes. Section 163.3184(10) directs the Division of

Administrative Hearings to conduct a proceeding under Section 120.57, Florida Statutes. By rule, parties to such proceedings may be permitted to amend their pleadings. Rule 28-5.202, Florida Administrative Code.

For the reasons set forth above, the ore tenus motion is granted to any extent necessary to the issues covered in the Recommended Order.

Two additional exhibits, which were identified and admitted at the hearing, were filed by agreement following the conclusion of the hearing. The first is Hearing Officer Exhibit 1, which consists of several enlarged photographs of the Future Land Use Map. The second was not numbered at the hearing, but will be identified as Hearing Officer Exhibit 2, which is a copy of the minority report of the Governor's Task Force on Urban Growth Patterns. The final report of the Governor's Task Force is Petitioner's Exhibit 13.

The complete transcript of the final hearing was filed on July 31, 1989, except for the transcript of the direct testimony of Dr. Nelson, which was filed on September 11, 1989. Each party filed a proposed recommended order. Treatment accorded the proposed findings is detailed in Appendix "A."

#### FINDINGS OF FACT

##### I. Parties

##### A. The Department of Community Affairs

1. The Department of Community Affairs (DCA) is the state land-planning agency charged with the responsibility of

reviewing plans under Chapter 163, Part II, Florida Statutes (the Act).

B. Charlotte County

2. Charlotte County is a local government required to adopt a revised comprehensive plan under Sections 163.3164(12) and 163.3167, Florida Statutes. Charlotte County is located on the southwest coast of Florida and is bordered by Sarasota County and DeSoto County to the north, Lee County to the south, Glades County to the east, and the Gulf of Mexico to the west.

3. Charlotte County consists of 453,043 acres of land, consisting of three physiographic areas. To the west is the Gulf Barrier Chain, which comprises, from north to south, the southern end of Manasota Key, the Don Pedro Island chain, and the northern end of Gasparilla Island.

4. The Don Pedro Island chain comprises, from north to south, three major islands: Knight Island, Don Pedro Island, and Little Gasparilla Island. These "islands" are presently connected by narrow strips of land. The Don Pedro Island chain includes Thornton Key, which is east of Knight Island and connected by less than 500 feet of land. Additionally, the northern end of the Gulf side of Don Pedro Island is sometimes referred to as Bocilla Island, and the southeast corner of Knight Island is sometimes called Palm Island.

5. Most of the Don Pedro Island chain is separated from the mainland by the southern end of Lemon Bay, which ranges from 3000 feet wide at Knight Island to as little as 200 feet



wide at Don Pedro Island. Little Gasparilla Island is separated from the mainland by Placida Harbor, which is about a mile wide. Unlike the southern end of Manasota Key and the northern end of Gasparilla Island, the Don Pedro Island chain is not connected to the mainland by a bridge.

6. The second physiographic area is the Gulf Coast Lowlands. The Gulf Coast Lowlands covers the remainder of the County, except for the northeast corner.

7. A small area in the northeast corner constitutes the third physiographic area, which is the DeSoto Plain. In this area, the elevation reaches 74 feet above sea level, which is the highest elevation in the County. The elevation quickly decreases to the west and south, as elevations of 0-10 feet above sea level predominate west of the Peace River and in the vicinity of Punta Gorda.

8. Charlotte Harbor divides the Cape Haze Peninsula on the west from Punta Gorda on the east. At the northwest corner of the harbor lies the Myakka River, which enters the harbor from the northwest. At the northeast corner of the harbor lies the Peace River, which enters the harbor from the northeast.

9. Shell Creek joins the Peace River just east-northeast of the river's mouth. The river junction is formed by the Peace River coming from the north and Shell Creek coming from the east. A short distance upstream is the confluence of Shell Creek and Prairie Creek, which meets Shell Creek from the northeast. Near the confluence is a large reservoir or

impoundment, which is fed by both creeks.

10. Almost all of the roads in the County are west of the convergence of the Peace River and Shell Creek. From the north, Interstate 75 enters Charlotte County where Sarasota and DeSoto Counties join. Travelling in a south-southeasterly direction, Interstate 75, which is a four-lane highway, crosses the Peace River a short distance west of its junction with Shell Creek. Passing between Punta Gorda and the County Airport to the east, Interstate 75 crosses the southwest tip of the Cecil M. Webb Wildlife Management Area (Webb Wildlife Management Area) and enters Lee County.

11. U.S Route 41, which is largely four lanes, runs west of and roughly parallel to Interstate 75 and links Port Charlotte and Punta Gorda. U.S. Route 41 connects these communities with Venice to the northwest and Ft. Myers to the south.

12. U.S. Route 17 runs from Punta Gorda along the south bank of the Peace River. Two-laned except for the portion between Punta Gorda and County Road 74, U.S. Route 19 turns north with the Peace River. The first town it reaches is Arcadia in DeSoto County.

13. Washington Loop Road (County Road 764) forms a loop east of U.S. Route 17, where U.S. Route 17 turns north, and encircles much of Shell Creek and Prairie Creek, including the reservoir.

14. Burnt Store Road (County Road 765) runs south from

downtown Punta Gorda to Cape Coral in Lee County. It runs just west of U.S. Route 41 and Interstate 75 after leaving downtown Punta Gorda.

15. County Road 74 runs due east from U.S. Route 17 between Interstate 75 and Washington Loop Road. It travels along the north boundary of the Webb Wildlife Management Area and then the north boundary of the property of Babcock Florida Company. County Road 74 terminates about 15 miles west of Lake Okeechobee in Glades County.

16. State Road 31 runs from Arcadia on the north due south through Charlotte County along the boundary between the Webb Wildlife Management Area and the Babcock land before terminating in Lee County a few miles northeast of Fort Myers. State Road 31 and County Road 74 are the only roads of any significance east of Washington Loop Road and are both lightly travelled.

17. All the major roads west of U.S. Route 41 and Interstate 75 are two-laned, except State Road 776, which is primarily two lanes. State Road 776 runs southwest from the Port Charlotte/Murdock area, turning south-southwest when it reaches the El Jobean area on the north side of the mouth of the Myakka River. After crossing the river to the Cape Haze Peninsula, State Road 776 runs due west until it crosses Lemon Bay to Manasota Key, where it runs northwest along the island.

18. County Road 771 begins at State Road 776 on the Cape Haze Peninsula and proceeds south-southwest through the

center of the peninsula to Placida. Placida lies on the mainland across from Little Gasparilla Island. The town is separated from the lower end of the Don Pedro Island chain by Placida Harbor on the north and Gasparilla Sound on the south. County Road 771 then crosses the water to Gasparilla Island, where it runs the length of the island.

19. County Road 775 begins at County Road 771 in Placida and runs northwest along Placida Harbor and then Lemon Bay. County Road 775 intersects with State Road 776 and continues along the coast through Englewood, which is in Sarasota County, just a short distance north of the county line.

20. Including water, Charlotte County consists of three east-west rows of seven townships. The barrier islands and the western portion of the Cape Haze Peninsula occupy the greater part of another township and the lesser parts of two other townships. Appendix "B" is a map of Charlotte County identifying by township and range number each of the townships. A township, which is divided into 36 sections, consists of 23,040 acres and forms a square with each side measuring six miles. A section consists of 640 acres and forms a square with each side measuring one mile.

21. References to the eastern portion of Charlotte County are to the 12 easternmost townships in the County. This area, which consists of 276,480 acres measuring 24 miles east-west and 18 miles north-south, encompasses nearly all of the Webb Wildlife Management Area and Shell Creek, but not Punta Gorda.

(By number, the eastern portion of the County comprises Townships 40 South, Ranges 24 East through 27 East; Townships 41 South, Ranges 24 East through 27 East; and Townships 42 South, Ranges 24 East through 27 East.)

C. The City of Punta Gorda

22. The City of Punta Gorda is the county seat of Charlotte County and the only municipality in the County. It joined Charlotte County in the adoption of the comprehensive plan that is the subject of the above-styled proceeding. Punta Gorda is a nominal Respondent because DCA has not challenged any of the plan provisions pertaining to Punta Gorda, which has agreed to re-execute any amendments to the plan arising from the present case.

D. Babcock Florida Company

23. Babcock Florida Company (Babcock) owns 80,000 to 90,000 acres of land consisting of nearly all of Townships 41 South, Ranges 26 East and 27 East, and Townships 42 South, Ranges 26 East and 27 East. These townships form a square in the southeastern corner of the County. Babcock also owns an additional 10,000 acres in the two townships immediately to the south in Lee County.

24. Adjoining Babcock's holdings on the west, and separating its land from Punta Gorda and its environs, is the Webb Wildlife Management Area, which consists of 65,334 acres. The Webb Wildlife Management Area covers all but the northeast quarter (or nine sections) of Township 41 South, Range 25 East;

all of Township 41 South, Range 24 East; and approximately the northern half of the two townships immediately to the south, which are Townships 42 South, Range 24 East and Range 25 East. The nine-section carve-out is the M. Lewis Hall Ranch, which consists of 5760 acres (Hall Ranch).

E. Wilbur H. Cole

25. Wilbur H. Cole (Cole) owns land in Charlotte County.

F. Palm Island Resort and February 24 Trust

26. Palm Island Resort owns 150 acres along the northern 9000 feet of Knight Island. This land is adjacent to Stump Pass, which divides the Don Pedro Island chain from Manasota Key and connects the Gulf of Mexico and Lemon Bay. The property runs from the Gulf to narrow inlets running between Knight Island and Thornton Key and leading to Lemon Bay.

27. February 24 Trust owns some units in the Palm Island Resort and 20.4 acres immediately south and slightly east of the Palm Island Resort. The tract of land contains about 1000 feet of frontage on Lemon Bay and about 834 feet of frontage on a boat basin adjoining the Palm Island Resort.

II. Preparation, Adoption, and Rejection of Plan

A. Transmittal and Review of Proposed Plan

28. On June 28, 1988, Charlotte County transmitted to DCA the proposed comprehensive plan. DCA transmitted copies of the proposed plan to various agencies for their review and comments.

29. By letter dated August 29, 1988, the Department of Environmental Regulation offered numerous comments on the proposed plan, including: 1) the analysis is insufficient as to the suitability for development of vacant platted lands; 2) portions of the vacant platted land designated for residential use are unsuitable for development due to the presence of wetlands or other natural conditions; 3) the Preservation designation insufficiently protects natural resources because the designation is reserved for public-owned lands and public acquisition may not take place for years; 4) the failure to place the Special Surface Water Protection Districts in Preservation or Limited Development areas and the limited size of the districts fail to protect the natural resources because of the inadequacies of reviewing site development plans without adopted development standards; 5) the projected reduction of agricultural land by 25,000 acres suggests that the proposed plan will not be successful in discouraging the loss of agricultural lands; 6) the increase in conservation land uses by 11,220 acres from 1987 to 2010 relies exclusively on acquisition of land by the state and not County designation of lands as Conservation; 7) the Urban Service Area does not reflect the need to coordinate development with the ability to provide services; 8) the analysis and adopted level of service standard concerning drainage focuses on quantity issues, such as flood control, to the exclusion of quality issues, such as pollutant loads, especially with regard to estuarine waters; 9) specific policies

required but omitted include the identification of floodplains, protection of native vegetation, and allocation of revenues to sewer repair and improvements; and 10) the proposed plan should designate the northern portion of Don Pedro Island, which is vacant, as Preservation or Limited Development, rather than residential, and should pursue acquisition of the area through programs involving the transfer of development rights or purchase of conservation easements or fee simple interests.

30. By letter dated August 31, 1988, the Florida Game and Freshwater Fish Commission offered numerous comments, including: 1) the proposed plan designates as Low- and Medium-Density Residential vast portions of vacant unplatted areas within the Cape Haze Peninsula, notwithstanding the presence of wetlands, endangered or threatened species, and estuarine waters that will suffer from such development; 2) the proposed plan designates as Low- and Medium-Density Residential those portions of Sections 6, 9, 10, and 11 of Township 42 South, Range 21 East, that are proposed for state acquisition under the CARL program for addition to the Charlotte Harbor State Reserve; 3) in light of various resource values, the proposed plan should adopt local purchase initiatives with priority for acquisition given to the above-named sections and Sections 2-5 and 8, then to bald-eagle nesting habitat, and then to those areas proximate to estuaries or creeks; 4) the barrier islands should be given a Conservation Overlay to protect them from further development; 5) allowing the development of the barrier islands in accordance with



"existing zoning" encourages continued development of the areas; 6) the reduction of density "encouraged" by Policy 8.2 of the Coastal Management Element is insufficient, and the proposed plan should actively pursue reductions of density through deplatting of undeveloped areas; 7) the habitat inventory maps are insufficiently detailed, out-of-date, and inadequate; 8) the proposed plan should designate as Conservation areas the Myakka and Peace River corridors, especially with respect to unique upland habitats like scrub; 9) the Surface Water Protection Districts for Shell and Prairie Creeks and Alligator Creek should be extended to protect the entire watershed, not just the floodplains; 10) permitting residential uses adjacent to the Webb Wildlife Management Area fails to protect this natural resource, which requires management practices like burning and aerial spraying that are inconsistent with residential use, and invites flood damage to the Area as a result of water management practices of adjacent residential and agricultural development; 11) the proposed plan lacks provisions for the local acquisition of open space for wildlife-oriented recreation; and 12) the proposed plan tends to "postpone policy direction for regulation of growth related problems until the implementation of 'Land Development Regulations,' even though this would seem to be the purpose of the Comprehensive Plan."

31. By letter dated August 23, 1988, the Southwest Florida Water Management District offered numerous comments, including: 1) the policy providing that, by 1995, all areas

within 150 feet of tidal waters would be served by central sewer should be presumptively applicable to all surface waters; 2) the proposed plan needs a policy requiring at least a three-foot separation between the water table and the bottom of septic system drainfields; 3) the level of service standard for drainage, which is based on the 25-year, 24-hour storm, fails to indicate the nature or capacity of drainage facilities; 4) the proposed plan fails to identify floodplains; 5) the proposed plan fails to carry through on the data and analysis by limiting the use of septic tanks to areas with suitable soils and in locations and densities that will not lead to the further pollution of surface and ground water and will minimize the use of fill; and 6) the proposed plan fails to prioritize the developed or platted areas requiring stormwater improvements and to schedule the activities necessary to construct these improvements.

32. On October 14, 1988, DCA transmitted to Charlotte County the Objections, Recommendations and Comments Report, which included copies of the letters containing the comments of the various agencies (the ORC). The cover letter states that DCA would "participate" at the adoption hearing if asked to do so by the County.

33. Among other things, the ORC states: 1) the analysis of vacant undeveloped land should include a determination of suitability of land uses on such land; 2) the allowance of residential densities as high as one unit per acre

(1:1) in agricultural areas is too high and fails to coordinate future land uses with the availability of facilities and services, protect natural resources, and discourage urban sprawl; 3) directing intensive land development into the Urban Service Area, including the barrier islands, is inconsistent with achieving suitable population densities in the hurricane vulnerability zone and discouraging further development of the barrier islands; 4) the Future Land Use Map lacks water wells, cones of influence, floodplains, and wetlands; 5) the Future Land Use Map depicts the conversion of significant coastal wetlands on the Cape Haze Peninsula to residential use rather than conservation; 6) the proposed plan omits any analysis of the land required for total estimated housing needs; 7) the proposed plan lacks any policy requiring at least a three-foot separation between the water table and the bottom of the septic tank drainfield, as suggested by the data and analysis; 8) the proposed plan lacks an assessment of the impact upon water quality of the development and redevelopment proposed in the Future Land Use Element; 9) the proposed plan lacks an analysis of the impact of proposed population densities upon hurricane evacuation plans; 10) the proposed plan allows densities in the coastal high hazard areas equivalent to those allowed by existing zoning and thereby encourages further growth; 11) the proposed plan lacks an analysis of current local practices that govern the construction of public facilities and therefore fails to demonstrate the County's ability to provide or require the

provision of needed improvements; and 12) the data and analysis do not support the level of service standards for sanitary sewer and potable water.

34. The ORC also cites numerous provisions of the State Plan with which the proposed plan is inconsistent. These objections include: 1) the failure to identify and protect the functions of water recharge areas and provide incentives for their conservation; 2) the failure to establish minimum seasonal flows and levels for surface water courses to protect natural resources, especially marine, estuarine, and aquatic ecosystems; 3) the absence of a strict floodplain management program; and 4) the failure to discourage development on the barrier islands and conserve natural resources.

B. Objections During Review and Adoption Process

35. By letter dated November 28, 1988, from William J. Curry, III, President of Babcock, to Chairman Burdick, Babcock objected to the County staff proposal to reduce residential densities in the Agriculture II land use category from one dwelling unit per acre (1:1) to a range of one dwelling unit per five to ten acres (1:5-10).

36. By a document entitled, "Hearing Testimony: Draft Charlotte County Comprehensive Plan Board of County Commissioners 6 December 1988," Mr. Curry reiterated Babcock's objections to the reduction of residential densities in the Agriculture II land use category.

37. Following the issuance of the ORC but before the

adoption of the comprehensive plan, Cole contacted Eugene Kelly, an employee of the County Planning Department, and objected to the depiction of wetlands on his property, according to the Future Land Use Map in the proposed plan. Charlotte County revised the depiction of wetlands to the satisfaction of Cole.

38. Cole also appeared at one of the public hearings following the issuance of the ORC and objected to the density proposed in the plan for certain agricultural property.

39. By letter dated December 14, 1988, to Mr. Gumula, who was the Director of the Division of Community Development for the County, C. Guy Batsel, as attorney for Palm Island Resort, objected to the designation of existing and future land uses involving his client's property.

40. By letter dated December 15, 1988, to Chairman Burdick, R. Craig Noden, representing February 24 Trust, objected to changes in the land use categories concerning his principal's property.

#### C. Adoption of the Plan

41. The December 13 adoption hearing convened at 5:01 p.m., as scheduled. The hearing ran until 11:05 p.m., at which time it was recessed until 9:00 a.m. on December 16. The only references to DCA contained in the minutes of the December 13 hearing concern an objection from DCA as to the omission of the Coastal Area from the proposed plan and whether DCA would be able to understand certain technical information in the Drainage Subelement.

42. The necessity for a second public hearing arose when the Commissioners decided they had to defer consideration of the Future Land Use Map until staff could make some corrections. The Commissioners later decided to defer consideration of recently prepared revisions to the Drainage Subelement and two sections entitled, Monitoring and Evaluation of the Plan and Consistency with the State Plan.

43. Upon reconvening the December 13 hearing at 9:00 a.m. on December 16, the County Commissioners completed consideration of the above-mentioned items and passed the ordinance by 11:40 a.m. The only mention of DCA during the December 16 hearing is the assurance by Ken Zeichner, Acting County Planning Director, that staff would send DCA the County's responses to the ORC.

44. At the conclusion of the December 16 hearing, the Commissioners adopted the 1988 Charlotte County/City of Punta Gorda Comprehensive Plan (the Plan) by Ordinance Number 88-44.

45. The Plan consists of the following components: Future Land Use Element; Traffic Circulation Element; Mass Transit Element; Port, Aviation and Related Facilities Element; Housing Element; Infrastructure Element consisting of the Potable Water and Sanitary Sewer Subelement (Water and Sewer Subelement), Solid Waste Subelement, and Drainage Subelement; Coastal Management Element; Conservation and Groundwater Aquifer Recharge Element (Conservation Element); Recreation and Open Space Element; Intergovernmental Coordination Element; Capital

Improvements Element; Procedures for Monitoring and for Evaluation of the Plan; and Consistency of the Local Comprehensive Plan with the State Comprehensive Plan.

46. Each element generally consists of four parts, exclusive of appendices: a brief executive summary; an evaluation and appraisal report (EAR) of the corresponding element of the 1980 Charlotte County/Punta Gorda Comprehensive Plan, which is contained in a two-volume set marked "1979 Comprehensive Plan" (1980 Plan); supporting data and analysis; and the goals, objectives, and policies. Among these parts, the County formally adopted only the goals, objectives, and policies for each element and the Future Land Use Map.

47. Sections 1 and 3 of Ordinance Number 88-44 state that the Plan is adopted "in compliance with and pursuant to the provisions of the [Act] . . . ."

48. Section 3-10-5(G) of Ordinance Number 88-44 recognizes the right of certain landowners to "complete development" after the effective date of the ordinance without complying with the Plan. This right exists if: 1) the development is "specifically authorized by a development order" issued prior to December 16, 1988; 2) the development is "the completion of a development scheme" for which any of the following development orders have been issued before the effective date of the ordinance: preliminary development plan approval, plan development (PD) concept plan and rezoning approval, PD detail plan approval, amendment to PD detail plan

approval, preliminary plat approval, subdivision construction plan approval, and final plat approval; provided, however, "all remaining development orders necessary for the completion of that development scheme" are issued by December 16, 1990; 3) the development is undertaken pursuant to a valid application for a building permit, made prior to December 16, 1988, and in compliance with all criteria in effect prior to that date; 4) the development is a Development of Regional Impact authorized prior to December 16, 1988, except in certain cases; and 5) (apparently in conjunction with the above-described four situations) the development commences within the time set forth in the development order or, if not ascertainable, within the time set forth in applicable land development regulations, and, in either case, continues to completion "without lapse."

49. Section 3-10-5(I) of Ordinance 88-44 provides additional relief for owners of land whose development is not exempted from the Plan under the above-described section. These owners may petition Charlotte County for a determination of their "vested rights," provided they do so by June 16, 1989. To obtain relief from Charlotte County, the landowner must show that: 1) he had relied in good faith on some act or omission of government so as to render it inequitable to deny him the right to commence or continue development or receive the requested development order; 2) the reliance is accompanied by the substantial expenditure of funds, incurring of obligations, or existence of other hardship; 3) the expenditures, obligations, or hardships



were made, incurred, or developed prior to notice of any proposed change to the 1980 Comprehensive Plan (discussed below); and, if applicable, 4) if actual development has commenced under a now-lapsed development order, the expenses or obligations are not reasonably usable for development in compliance with the Plan.

D. Participation by DCA at Adoption Hearing

50. By letter dated November 14, 1988, Mr. Gumula informed Robert G. Nave, Chief of DCA's Bureau of Local Planning, when and where the final adoption hearing for the County would be held. The letter invites DCA to "attend" the hearing and requests that DCA notify the County whether it intends to "participate."

51. By letter dated November 28, 1988, addressed to David Schmidt, as Chairman of the Charlotte County Board of Commissioners, Mr. Nave informed the County that DCA would send a representative to "participate" at the December 13 hearing. In this letter, Mr. Nave warned that the DCA representative would be without authority to modify DCA's position or approve proposed revisions to the plan. Mr. Nave stated that DCA's role with respect to approving the adopted revisions would begin after submittal of the adopted plan.

52. The November 28 letter, a copy of which was sent to Mr. Gumula, was promptly delivered to William Burdick, who had been elected as a Commissioner on November 22, 1988, and, at that time, succeeded Commissioner Schmidt as Chairman.

53. The participation policy described in the November

28 letter was consistent with DCA policy reflected by an internal memorandum dated August 22, 1988, from Mr. Nave to Paul R. Bradshaw, Director of the Division of Resource Planning and Management of DCA.

54. As a result of the above-described correspondence, Harry Schmertmann, who is the DCA planner chiefly responsible for reviewing the Plan, attended the December 13 adoption hearing. While at the hearing, he spoke privately with various Charlotte County staff members. Both Mr. Gumula and Mr. Zeichner recognized Mr. Schmertmann at the hearing and knew that he was the DCA representative sent to participate. Both of these County employees had significant responsibilities in the preparation of the Plan and actively participated in the adoption hearing. The responsibilities of both men were heightened because this was the first hearing on the Plan for three of the five County Commissioners, who had taken office three weeks earlier.

55. Mr. Schmertmann never publicly announced his presence or introduced himself to any of the County Commissioners. The Commissioners were unacquainted with Mr. Schmertmann and were unaware during the hearing that anyone from DCA was in attendance. However, no one at the hearing asked if a DCA representative was in the audience. In any event, Mr. Schmertmann did not offer, publicly or privately, any substantive comments concerning plan language during the December 13 hearing and did not attend the December 16 hearing.

E. Determination of Noncompliance by DCA

56. After reviewing the Plan, DCA issued, on February 9, 1989, a Notice of Intent to Find the Plan Not in Compliance. The Notice of Intent cites three deficiencies: 1) the failure of the Plan to discourage urban sprawl and protect agricultural lands; 2) the failure of the Plan to discourage further development on the Don Pedro Island chain; and 3) the failure of the Plan to protect the quality of stormwater discharges.

III. Data and Analysis

A. Characteristics of Population

1. Population

57. The resident population of Charlotte County in 1989 is 97,359 persons, including 11,488 persons in Punta Gorda. The resident population of Charlotte County was 88,230 persons in 1987. The resident population for 2010 is projected, by the most liberal estimates, to be at most 190,000-200,000 persons, which is about double the present population. The ratio of persons residing in Punta Gorda to persons living in the County is expected to remain about constant through 2010. From January to March or April, the County population runs 30% higher, which results in projected totals of 114,699 persons in 1987, 125,566 persons in 1989, and about 250,000-260,000 persons, by liberal estimates, in 2010.

58. The population of Charlotte County has grown rapidly in recent years, doubling since 1977. Charlotte County's percentage of population of persons aged 65 or older is the

highest among Florida counties.

## 2. Housing Needs

59. Much of the current housing stock in the County is single-family residential. For 1987, about 35,268 dwelling units, or two-thirds of all units, including those used seasonally, were single-family residential. Almost 20% of all dwelling units, or 10,041, were multi-family residential, and about 15% of all units, or about 8416, were mobile homes. A total of 53,725 dwelling units in Charlotte County in 1987 accommodated a total population, including seasonal residents, of 114,699 persons.

60. Based on 1980 figures, a considerably higher percentage of Charlotte County's housing consisted of single-family housing than the corresponding percentages in Lee and Sarasota Counties. A considerably lower percentage of Charlotte County's housing consisted of condominiums than the corresponding percentages in Lee and Sarasota Counties. Mobile homes represented a slightly greater percentage of the housing in Charlotte County than in Lee County and considerably more than in Sarasota County.

61. However, the percentage of single-family housing in Charlotte County declined between 1979 and 1980, as well as since 1980, and the percentages of mobile home and multi-family housing have increased during the same time periods. As of 1987, about two-thirds of Charlotte County's housing was single-family residential.

62. The median value of an owner-occupied dwelling unit in Charlotte County in 1980 was \$46,200, which was at least \$5000 less than corresponding values for Lee and Sarasota Counties. The Charlotte County median value was less than \$1000 greater than the corresponding figure for Florida as a whole. Median monthly owner cost, including such expenses as mortgage payments, insurance, and utilities, was the second lowest, after Glades County, among the six counties in the Southwest Florida Region. From 1980 to 1986, Charlotte County was the only county among the six to experience a decrease of housing costs relative to housing costs statewide.

63. Most of the County's housing is of fairly recent vintage. In 1980, 87% of the dwelling units in the County had been constructed since 1960 and 61% of the units had been built since 1970.

64. The average number of persons per household in Charlotte County in 1980 was 2.25 and 2.19 in 1987. By 2010, the average number is projected to drop to 2.15 persons per household.

65. The housing in Charlotte County in 1987 could therefore accommodate about 117,657 persons, which is about 2500 persons more than the total number of residents, including seasonal visitors.

66. Based on the most liberal 2010 population projections of 250,000-260,000 persons, including seasonal visitors, Charlotte County will require, at most, between 115,000

and 120,000 dwelling units of all types, which is a little over double the number of dwelling units available in 1987.

## B. Characteristics of Land

### 1. Existing Land Uses

67. According to land-cover classifications compiled in 1984, Charlotte County can be broken down into about 229,000 acres of native habitat, 134,500-153,000 acres of agriculture (compare Future Land Use Element, Table 14 with Future Land Use Element, Table 16), 66,300 acres of urban and rural-urban transition, 4200 acres of fresh water, and 477 acres of mines.

68. Native habitat comprised about 45,000 acres of upland forest, 99,000 acres of scrub and brush, 49,000 acres of freshwater and saltwater marsh, 22,000 acres of mangroves, 14,000 acres of freshwater wetland forest, and 50 acres of aquatic vegetation.

69. Agriculture comprised about 98,000 acres of range, 22,000 acres of grass, 18,000 acres of bare soil, 10,000 acres of citrus, and 5000 acres of crop.

70. The urban and rural-urban transition classification comprised about 14,000 acres of non-vegetated urban, 8000 acres of vegetated urban, and 45,000 acres of rural-urban transition.

### 2. Types of Native Habitat

71. Based on a vegetative soils inventory conducted from 1976-1981, the entire county was classified into three categories: upland, wetland, and urban.

72. The upland habitat included 246,431 acres of South Florida Flatwoods, 5440 acres of Sand Pine and Xeric Oak Scrub, 1233 acres of Cabbage Palm Hammock, 779 acres of South Florida Coastal Strand, and 22 acres of Longleaf Pine--Turkey Oak. Upland habitat, which included agriculture and some urban, totalled 253,905 acres.

73. The wetland habitat included 70,708 acres of slough (including agriculture and some urban), 60,808 acres of freshwater marsh and swamp, 24,499 acres of mangrove swamp, and 7025 acres of salt marsh, for a total of 163,040 acres.

74. The remaining 19,934 acres of the County was classified in the inventory as urban.

75. "Endowed with a great diversity of native habitats," Charlotte County is the site of 28 different type of habitats, which can be grouped into eight general categories. Conservation Element, p. 104.

a. Coastal Uplands

76. The Coastal Uplands consist of the coastal strand, coastal hammock, and Indian mound habitats.

77. The coastal strand is found on barrier islands and includes open beach, primary or active dunes, and scrubby back dunes, which are also known as inactive dunes. The active dunes are vegetated with such pioneer species as sea oats, sea purslane, railroad vine, and inkberry. The back dunes host saw palmetto, cabbage palm, sea grape, wax myrtle, scrub oaks, and two highly undesirable exotics, Australian pine and Brazilian

pepper.

78. The coastal hammock is the original forested area on the barrier islands between the dunes and the mangroves. Within this habitat are the prickly apple and Florida coontie, which are both endangered. The Indian mounds were formed by large deposits of shell, which served as unique microhabitats that have typically been colonized by various tropical species.

79. The environmental functions of the Coastal Uplands are varied and important. The coastal strand plays a key role in the critical task of beach preservation.

Maintained in a natural state, the dunes of the coastal strand provide the temporary storage of sand required for natural processes of shoreline building and erosion that are critical to the existence of barrier islands. The deep root systems of sea oats stabilize active dunes, providing moderate protection from shoreline erosion.

Conservation Element, p. 107.

80. The open beach and dunes of the coastal strand provide wildlife habitat for the least tern, roseate tern, piping plover, southeastern snowy plover, and Loggerhead sea turtle, which nests in the primary dune. The scrubby back dune provides habitat for bobcats, raccoons, skunks, beach mice, grey fox, sparrow hawks, gopher tortoises, and, on Manasota Key, the endangered Chadwick Beach cotton mouse.

81. Threats to the coastal strand include destruction of dunes, loss of native vegetation on active dunes, artificial beach stabilization structures, development, and unrestricted



recreational use.

82. Historically, the coastal hammocks have received little attention while island tracts were cleared for housing. Although selective clearing tends to reverse the "long-term trend [of] outright elimination of coastal hammocks," selective clearing can open the canopy and expose the hammock to wind, salt-spray, increased drying, and other debilitating factors. Conservation Element, p. 107.

83. The recommendations of the data and analysis contained in the Plan (Data and Analysis) include the management of the coastal strand for wildlife habitat and recreation, preservation of active dunes and dune vegetation, revegetation of eroded dunes with native vegetation, prohibition of artificial shoreline stabilization structures that interfere with the natural beach processes, and preservation of all back dune vegetation except that needed for the footprint of a house and accessways.

b. Coastal Wetlands

84. The Coastal Wetlands consist of the tidal marshes, salt flats, and mangrove swamps. The tidal marshes are found along gradually sloping, low-energy coastlines with salinities ranging from nearly fresh to salt. The marshes and flats are periodically inundated by sea water, so that the plants growing in these areas are extremely tolerant of the high salt content of the soil.

85. The mangrove swamps are brackish or salt water

swamps occurring along low-energy coastlines. They are characterized by red, white, or black mangroves or buttonwood. Red mangrove tend to dominate below mean low water, black mangrove occupy the shallow intertidal area, and buttonwood occupy the drier inner zone. White mangrove may occur throughout the swamp or dominate landward of the black mangroves, but penetrate infrequently into the deeper, permanently inundated zone.

86. The Coastal Wetlands absorb storm tides and winds, stabilize shoreline, and filter and assimilate nutrients and other pollutants contained in upland runoff.

87. Tidal marshes provide habitat for a wide variety of species, including the endangered or threatened Marian's marsh wren. The salt flats are used as corridors by raccoons, opossum, rabbits, and bobcats. The mangrove swamps provide habitat for mosquitos, small fishes, bivalve and gastropod mollusks, fiddler crabs, amphipods, other small crustaceans, and numerous birds including the endangered or threatened little blue, tricolored, and Louisiana herons; snowy and reddish egrets; and wood stork.

88. The Coastal Wetlands are critical to nearby marine life:

. . . the single most significant function of coastal wetlands is the production of detrital food for estuarine and coastal waters (detritus is the broken-down plant material produced by wetland plants). Detritus from mangroves, tidal marsh and salt flats forms the base of the food web which supports virtually the entire estuarine and nearshore marine communities.

Conservation Element, p. 110.

89. The threats to Coastal Wetlands habitat are filling for residential or commercial use, ditching and drainage for mosquito control, and dredging for boat basins or channels.

90. "Destruction of coastal wetlands has been a significant factor in the deterioration of south Florida's natural resources." Conservation Element, p. 110. The Data and Analysis recommend that Coastal Wetlands be preserved through government regulation and, "where necessary, through public acquisition." Id. In addition, the "[f]illing of coastal wetlands should be strictly prohibited." Id.

#### c. Freshwater Wetlands

91. Freshwater Wetlands consist of wet prairies and marshes, sloughs, swamps (wooded wetlands), hardwood swamps, cypress swamps, swamp thickets, bay forests, and hydric hammock.

92. Wet prairies occur on low flatwoods subject to periodic flooding and make an often-imperceptible transition into a freshwater marsh or dry prairie community. Wet prairies are usually dominated by short grasses. Freshwater marshes are found on the borders of lakes or streams, in shallow natural depressions, and on lowlands with little topographic relief. Ranging in size from small pockets in flatwoods to vast, uninterrupted wetlands, freshwater marshes often intergrade into wet prairies. Wet prairies and marshes usually have concentric bands of vegetation, which mark the different hydroperiods (i.e., the amount of time that each band is underwater).

93. Sloughs are open expanses of grasses, sedges, and rushes in an area where the soil is saturated during the rainy season. Sloughs are usually long and narrow and lower than the surrounding flatwoods or hammocks. The convergence of several sloughs forms a major flowway, such as Gator Slough. Hydric hammocks are found on wet, poorly drained soils along rivers and streams.

94. Swamps or wooded wetlands include a wide variety of habitat types characterized by seasonal or permanent inundation and the predominance of woody vegetation. These types of habitat are: a) hardwood swamps, which are characterized by a canopy of large hardwoods, including black gum, pop ash, red maple, sweetgum, and water oak; b) cypress swamps, which are often inundated and are found in sloughs or along rivers or lakes, interspersed with other communities like pine flatwoods or dry prairies; c) swamp thickets, which are dense strands of shrubs or low trees in standing water or periodically flooded areas occurring in and around ponds, lake impoundments, marshes, rivers, and streams; and d) bay forests, which occur on wet, acidic, highly organic soils that are often flooded.

95. The environmental functions of the freshwater wetlands are dependent upon the periodic water-level fluctuations, which sustain the wetlands and discourage their transition to more aquatic or terrestrial vegetative communities. The resulting "multitude of ecological benefits" include:

natural retention of stormwaters, damping of peak flood levels in rivers and lakes,

subsequent slow-release of floodwaters during the dry season, and vegetative filtration and assimilation of pollutants and nutrients contained in upland runoff.

Conservation Element, p. 117.

96. Wet prairies and sloughs provide "high quality" habitat for a wide variety of species, including the threatened Florida sandhill crane and endangered wood stork.

97. Wetlands are threatened by many factors, including conversion to agriculture, residential or commercial development, increased water depth due to stormwater retention, and decreased water depth due to drainage of adjacent lands.

98. The Data and Analysis recommend that the wetland functions of wet prairies, marshes, and sloughs be protected as to, among other things, seasonal fluctuations of water level and vegetation subject to seasonal water level fluctuations. The Data and Analysis advise "careful review" of the conversion of wet prairies, marshes, and sloughs to lakes or borrow pits. Swamps should be preserved, but the passage and grazing of cattle should not be restricted. Upland buffers should be used to protect wetlands from encroachment, and natural drainage conditions in hydric hammocks and riverine wetlands should be maintained.

d. Pine Prairies

99. Pine Prairies are divided into South Florida pine flatwoods and dry prairies. Dry prairies are treeless plains that resemble pine flatwood communities, but with an open

overstory. Saw palmetto is the most abundant shrub in Dry Prairies.

100. Pine flatwoods occur on level ground with relatively poorly drained soils. The two major types of flatwoods in the County are slash pine and longleaf pine. Slash pine tend to be located in wetter sites; longleaf pine tend to be found in better-drained sites. Fire and water play important roles in the preservation of pine flatwoods.

101. The primary environmental function of the pine flatwoods is the support of "an impressive variety of wildlife species," with most of the wildlife occurring at the border between the pine flatwoods and adjoining communities. Mature and over-mature pine flatwoods provide habitat for the endangered bald eagle and red-cockaded woodpecker. Dry prairies provide habitat for the threatened Florida burrowing owl, Audubon's caracara, and Florida sandhill crane.

102. Pine flatwoods are "diverse, fairly resilient systems which can tolerate substantial use by man without significant endangerment." Conservation Element, p. 121. Specific threats to the Pine Prairies include the exclusion of fire, fluctuations in the water table, conversion to agricultural uses, conversion to urban development, and invasion of the punk tree.

103. The Data and Analysis recommend that developments should be required to preserve open space in native habitats, especially Pine Prairies. Also, long-rotation cultivation of

pine flatwoods (i.e., over 40 years) should be encouraged through the lower tax assessment established for native rangeland.

e. Dry Scrubs

104. Dry Scrubs include sand pine scrub, scrubby flatwoods, xeric oak scrub, and longleaf pine--turkey oak (sandhill).

105. Sand pine scrub is a xeric or dry habitat occurring on deep, acid, and very well-drained soils. One area of sand pine scrub is along Shell Creek in the area of Washington Loop Road. Sand pine forms the overstory of sand pine scrub, whose understory is well-developed with sand live oak, myrtle oak, saw palmetto, scrub palmetto, and other species. The lower limbs of the sand pine and the dense understory provide the fuel necessary for a hot, fast-burning fire every 20 to 40 years.

106. Scrubby flatwoods are similar to sand pine scrub because they are xeric, dependent upon fires, occur on well-drained soil, and possess an evergreen shrubby understory. Xeric oak scrub or oak scrub is similar environmentally to sand pine scrub and scrubby pine flatwoods. Xeric oak scrub, which lacks the pine overstory, results from the exclusion of fires or selective harvesting. Longleaf pine--turkey oak (sandhill) occurs on deep, well-drained soils. In mature stands, longleaf pine forms an open canopy with turkey oak, bluejack oak, and live oaks forming the open understory.

107. Dry Scrubs serve several environmental functions..

The deep, well-drained sands on which scrubs grow typically provide valuable aquifer

recharge areas. Scrubs are of considerable scientific interest because of their endemic flora and fauna, unique ecology, and exemplification of ecosystem response to heat stress.

Conservation Element, p. 123.

108. Scrub habitats provide habitat for several endangered or threatened animal species, including the Florida scrub lizard, blue-tailed mole skink, sand skink, short-tailed skink, and Florida scrub jay, most of which prefer the open scrub to the more dense, mesic communities that follow fire exclusion. Sandhill habitats support the gopher tortoise, Eastern indigo snake, Sherman's fox squirrel, and red-cockaded woodpecker, all of which are threatened or endangered.

109. The most serious threats to Dry Scrub are urban development and conversion to citrus and improved pasture. "Because scrub habitat supports a high number of endemic plants and animals, a number of which are endangered, threatened or of special concern status, the need to preserve and protect this habitat is great." Conservation Element, p. 124.

f. Upland Hammocks

110. Uplands Hammocks consist of live oak hammocks, cabbage palm hammocks, and mesic hammock.

111. Live oak hammocks are relatively xeric and occur primarily on well-drained sandy soils in pine flatwoods or pasture lands. Canopy species are bluejack oak, laurel oak, and cabbage palm. Cabbage palm hammocks occur on moister, highly organic soils. Cabbage palm is the dominant tree species, but



live and laurel oaks and other tree species also may occur. Shrubs and vines often form a dense understory. Mesic hammocks occur on rich, organic soils of intermediate moisture content. A wide variety of trees are found in this community.

112. Hammocks often occur in other habitats and therefore add to habitat diversity. The dense hammock canopy creates a cool, moist microclimate that is appealing to people and essential to certain plant species, such as butterfly orchids, string ferns, and bromeliads. Upland Hammocks are threatened by development pressures. The Data and Analysis recommend that developments maintain Upland Hammocks as open space in native habitats.

### 3. Endangered or Threatened Species

113. Fifteen endangered or threatened plant species and 25 endangered or threatened animal species have been recorded or are likely to occur in the Coastal Uplands and Coastal Wetlands habitats in Charlotte County. Thirty-seven endangered or threatened plant species and 21 endangered or threatened animal species, including the Florida panther, have been recorded or are likely to occur in the pine flatwoods complex, which comprises the noncoastal habitats except for the Dry Scrub.

114. The pine flatwoods complex provides nesting habitat for the bald eagle and red-cockaded woodpecker. The presence of "relatively large numbers" of bald eagles and red-cockaded woodpeckers in the County is of "national significance," so "special consideration should be given to protection of

[their] nest sites, and the loss of habitat suitable for future eagle and red-cockaded woodpecker nesting sites." Conservation Element, p. 132.

115. Most of the 29 bald eagle nests in the County are in the Cape Haze Peninsula and along the shoreline of Charlotte Harbor. Protection of some of these sites is "critical" because they are on land that will be developed. In addition to respecting the 750-foot primary zone and 1500-foot nesting-season zone, the Data and Analysis recommend the identification and protection of suitable eagle nesting habitat, especially stands of mature slash pines along coastal bays and estuaries. The Data and Analysis suggest that protection be achieved through acquisition and land use incentives, such as density bonuses and tax credits.

#### 4. Agriculture

116. By 1984-1985, land actually devoted to agricultural uses was located almost exclusively east of Interstate 95 with most of it east of the north-south centerline of the Webb Wildlife Management Area (i.e., the line dividing Range 24 East from Range 25 East).

117. Agricultural activities range from low-intensive farming, such as long-rotation timber harvest and cattle production on native range, to intensive farming such as growing vegetable crops and citrus, which have a greater adverse impact on natural resources.

118. The low-intensive agricultural uses "provide the

greatest opportunity for resource conservation while maintaining a productive land use." Future Land Use Element, p. 40.

a. Rangeland

119. Rangeland is land on which the natural vegetation, such as grasses or shrubs, is suitable for grazing or browsing. Rangeland includes pine flatwoods, dry prairie, wet prairie, and sloughs.

120. One 1984 study estimated that only about 15% of the rangelands were in excellent condition for use as rangeland and about 60% were in fair or poor condition. Although pastureland that has been drained, cleared, and planted with grasses has greater productivity per acre than rangeland, the property tax assessment of such improved pastureland is higher, thereby creating a disincentive to disturb native rangeland. Even with heavy grazing, native rangeland maintains more habitat functions and values than do more intensive agricultural uses.

b. Forest Lands

121. The major tree crop is South Florida slash pine. Typically, trees are harvested on a long-rotation basis, such as 40-80 years between harvests. The forestry practices in the County are ordinarily not intensive. In 1983, total forest-products income in Charlotte County amounted to \$34.2 million.

122. Woodlands are assessed for property taxes on the same basis as improved pasture. The absence of a more favorable tax assessment exacerbates the economic impracticality of harvesting small acreages of woodlands on long rotations. The

Data and Analysis suggest:

Offering incentives, such as property tax assessments more in line with low intensity forestry practices, or special assessments in exchange for conservation or recreational easements, would encourage landowners to maintain their property as forested lands, rather than converting it to a more profitable but intense land use.

Conservation Element, p. 156.

123. Among the benefits resulting from preserving large areas of forested land are maintaining a low-impact land use without significant demands on public services; maintaining the quality of air, water, and wildlife habitat; and providing future areas for outdoor recreation.

c. Intensive Agriculture

124. Citrus orchards and vegetable crops represent the most intensive agricultural uses in the County. Some of the vegetable crops are prone to nematodes and require the abandonment of the field and clearing of more native rangeland for cultivation. The abandoned cropland is then often converted to improved pasture for grazing.

125. The most suitable unimproved soils in the County are the high, well-drained soils bordering Shell and Prairie Creeks. However, intensive agricultural practices "generally do not lend themselves to maintaining native habitat functions." Conservation Element, p. 158. Most citrus and croplands demand extensive draining and, in some cases, lowering of the water table. They also need substantial quantities of water for

irrigation and frequently deposit large quantities of fertilizers and pesticides in surrounding waters. The Data and Analysis thus warn: "the large scale conversion of the Shell Creek--Prairie Creek drainage basin to citrus groves would threaten the quality of the City of Punta Gorda's water supply." Id.

d. Loss of Agricultural Lands

126. Acknowledging the impact of intensive agriculture on natural resources, the Data and Analysis state:

However, the greatest threat to both agriculture and resource conservation may be the loss of agricultural lands to urban uses. Approximately 50,000 acres of agricultural lands were converted to urban land uses in the County between 1973 and 1984. [Citation omitted.] In light of the development pressure directed at Charlotte County and cognizant of the need to promote compact and orderly growth, the County should strengthen incentives to maintain its agricultural land base. Consideration should also be given to strengthening agricultural zoning regulations to further discourage conversion to urban uses.

Future Land Use Element, p. 43. and Conservation Element, p. 158.

127. This trend has recently continued with the reduction of the amount of arable land in the County from 1984 to 1987 by about 18,500 acres. Between 1987 and 2010, the Data and Analysis project the loss of an additional 25,000 acres of land, although it is difficult to discern whether this projection involves land actually in agricultural use or merely arable land.

128. Considerable development pressure exists with respect much of the land in the County, which is generally

undergoing rapid urbanization. The Data and Analysis note three factors as the cause of the rapid rate of urbanization, population increases, and pattern of development now experienced by Charlotte County: coastal area amenities, "aggressive, nationwide land sales campaigns carried out by large land development companies," and the County's location between fast-growing Collier and Sarasota Counties. Future Land Use Element, pp. 12 and 15.

C. The Population of the Land:

1. Platting

129. In Charlotte County, there are over three platted lots for each nonseasonal resident.

As a result of large scale development activities, over 300,000 platted lots exist in major subdivisions surrounding Charlotte Harbor. . . . While most of the platted lots have been sold and are under private ownership, the full impact of these developments on Charlotte County, including demands on the County's natural resources, has yet to be felt, since most of the lots have not been built on at this time.

Future Land Use Element, p. 15.

130. Many of the platted subdivisions lie between the Peace River on the east and the Myakka River on the west, with a large number also west of the Myakka River, mostly on the Cape Haze Peninsula. Of the 213,000 acres of undeveloped and vacant land in Charlotte County, constituting almost half of the County, platted acreage makes up 24,000 acres between the Peace and Myakka Rivers, 34,276 acres west of the Myakka River, and 155,124

acres south and east of the Peace River, including about 4185 acres in Punta Gorda. Thousands of vacant unplatted lots south and east of the Peace River are in the eastern portion of the County where plats were recorded early in this century.

131. "Many" of the subdivisions have "basic infrastructure," but "many" of the subdivisions lack such basic infrastructure as paved roads. Future Land Use Element, p. 53. Excluding ranchette-type development in eastern Charlotte County, about 5465 acres containing about 25,000 platted lots lack roads entirely or lack paved roads. "Some" of the subdivisions are in wetlands that "may be unsuitable for development." Id. If and when the lotowners decide to build homes,

there will be a need for extensive provision of new infrastructure to these areas, including roads, water and sewer and drainage facilities. With the provision of this infrastructure, there will be additional maintenance costs, as well as additional costs relating to the provision of urban services such as police and firefighting services. The provision and maintenance of this additional infrastructure and services to all of the platted and undeveloped subdivisions will place a financial strain on the County.

Id.

132. According to 1986 property records concerning subdivisions without any roads or without paved roads, about 1000 acres including 5000 lots were owned entirely by corporations and about 800 acres including 1500 lots were owned 90-99% by corporations. To some degree, a direct relationship exists between land that is vacant and land that is largely in corporate

ownership, although, in some cases, corporations may have already entered into contracts for deed with individuals for the sale of these lots.

133. In excess of 3500 acres of unconstructed platted land are located in the southern half of the Cape Haze Peninsula to the east of County Road 771. Unconstructed platted areas are described as lacking roads entirely or lacking paved roads. In Township 42 South, Range 21 East, such land includes about 600 acres of Section 2, over 400 acres of Section 3, all of Section 4, over 400 acres of Section 5, about 250 acres of Section 9, over 400 acres of Section 10, and about 500 acres of Section 11. All of the above-described land in Sections 10 and 11 is 90-99% corporate owned, as is about half of such land in Section 2. The remainder of the above-described land in Section 2, all of such land in Sections 3 and 5, and half of such land in Section 4 is 60-89% corporate owned. The remaining portion of Section 4 is 0-59% corporate owned.

134. Larger tracts of such unconstructed platted land lie in the Rotonda area, which is a very large development in the shape of a circle located in the central portion of the Cape Haze Peninsula. The Rotonda is west of County Road 771, east and north of County Road 775, and south of County Road 776.

135. About 1000 acres of unconstructed platted land are adjacent to the northwest of the Rotonda. This land is 0-59% corporate owned. Slightly more such land is adjacent to the northeast of the Rotonda and is also 0-59% corporate owned.



About 250 acres directly to the east of this parcel and abutting County Road 771 are 60-89% corporate owned.

136. The south-southwest eighth of the Rotonda, which is about 600 acres, is unconstructed platted land owned entirely corporately. Adjoining this piece to the south and west are two tracts totalling nearly 500 acres and 0-59% corporate owned. To the east of these parcels and adjoining the south side of the Rotonda is a 600-700 acre parcel that is 60-89% corporate owned. Three or four other parcels, totalling about the same acreage, lie to the east of the 600-700 parcel and abut County Road 771. These range from 0-99% corporate owned.

137. Other unconstructed platted tracts on the Cape Haze Peninsula include a 100-acre tract about midway between County Road 771 and Charlotte Harbor at the northern end of the Peninsula. This tract is 100% corporate owned. Two smaller tracts are shown on the Don Pedro Island chain.

138. Another area of unconstructed platted lots is north of the mouth of the Myakka River on the west bank of Tippecanoe Bay. One tract is about 200 acres and is 90-99% corporate owned. The other tract, which abuts State Road 776 where it turns south, is somewhat larger and is 100% corporate owned. Other, smaller tracts lie north of State Road 776 and four small tracts lie directly on the northeast bank of the Myakka River. The tracts on the Myakka River are 90-100% corporate owned.

139. Ignoring several smaller tracts and all platted

lands in the eastern portion of the County, the major remaining unconstructed platted lots are two tracts totalling about 1000 acres on the west bank of the Peace River and across and somewhat north of the convergence with Shell Creek. The larger parcel is 0-59% corporate owned; the smaller parcel, which is about 450 acres, is 60-99% corporate owned. Other major tracts are near the County Airport and the Shell Creek reservoir. The larger of these tracts, which abuts the reservoir on the north, is 150-200 acres and 60-99% corporate owned. The smaller parcel, which is less than 100 acres, is on the northeast corner of the first parcel and about 1000 feet north of Prairie Creek; it is 100% corporate owned.

140. The large number of unconstructed platted lots lacking improvements, as well as the 3:1 ratio of platted lots to nonseasonal residents, raise obstacles to effective land use planning.

The extent of the platted lots within the County can create serious difficulty in the management of growth, allowing development to occur at urban densities where the full range of urban services cannot be economically provided. The thrust of the Growth Management techniques contained within this plan is to encourage development to occur where urban services are available.

Future Land Use Element, p. 55. Elsewhere, the Data and Analysis concede: "The opportunities for planning are thus severely limited [due to the 300,000 already-platted lots]." Water and Sewer Subelement, p. 1.

141. The Data and Analysis suggest that the County

employ mechanisms, like the transfer or purchase of development rights, to address the problems of excessive, vacant platted lots.

As a minimal step to address the problems associated with vacant platted subdivisions in the County, the County may wish to reduce the acres of unconstructed platted areas that have the potential for creating new requirements for infrastructure and urban services by creating incentives to deplat some of these subdivisions. Areas that are most remote from existing development, as shown on the existing Land Map, would have highest priority in such efforts.

Id.

## 2. Utilities

142. Complicating the problem of how to provide basic services to vast numbers of platted and undeveloped lots is that Charlotte County provides little utility service to County residents. For the most part, private entities own and operate utilities companies, subject to County regulation.

143. Discussing the mechanisms available to the County to achieve the "orderly and hence economical provision of services" to the 300,000 already-platted lots, the Data and Analysis dismiss the impact of road-building because "poor roads will not dissuade lot development." The only means by which the County can use roads as a factor to affect the timing of development is to deny building permits in areas in which no roads whatsoever exist. Water and Sewer Subelement, p. 1.

### a. Sanitary Sewer

144. Wastewater is treated in one of three ways:

centralized wastewater treatment facilities, package treatment plants, and septic tanks. In Charlotte County, treatment is provided by Punta Gorda, 10 franchise systems, 70 privately owned, small treatment centers, and about 30,000 septic tanks.

145. The County requires that new, for-profit utilities serving over 100 customers obtain a county certificate. With respect to such utilities, the County controls the rates and extension of service into new areas.

146. Two utilities provide the majority of centralized wastewater treatment in the County. They are Punta Gorda, which currently treats about 1.6 million gallons per day and has a capacity of 2 million gallons per day, and General Development Utilities, which now treats about 1.4 million gallons per day and has a capacity of about 3 million gallons per day (excluding the capacity of the South Port plant, which probably will be decommissioned).

147. Twelve of the facilities serve fewer than 100 customers and appear to be at or near capacity. Only four facilities, in addition to those named above, serve over 1000 customers.

148. There are three wastewater plants located on the Don Pedro Island chain. The Island Harbor facility, which serves Palm Island Resort, is at the north end of Knight Island, serves a population of 554, has a capacity of 55,000 gallons per day, and provides secondary treatment with a drainfield. The Knight Island facility is located to the south on Knight Island, has a

capacity of 55,000 gallons per day, and provides secondary treatment with a drainfield. The Bocilla Development facility is located south of the Knight Island facility, has a capacity of 21,000 gallons per day, and provides secondary treatment with a drainfield.

149. The on-site disposal of wastewater through septic tanks raises serious problems concerning public health and conservation of natural resources.

Onsite disposal of sewage through a septic tank and soil leaching system is not generally acceptable for soils in Charlotte County. All except 3,520 acres of soil in the County are noted as severely limited for septic tank absorption fields . . . . Wetness is the chief reasons the soils are unacceptable.

Water and Sewer Subelement, p. 72.

150. The Data and Analysis state that four feet is "generally considered" as the minimum safe separation between the seasonal high water table and the bottom of the trench of the seepage pit or leach field. Water and Sewer Subelement, p. 72. Elsewhere, the Data and Analysis state studies "generally support" a minimum separation of three feet. Water and Sewer Subelement, p. 79.

151. Septic tank permits have been issued in the County in cases with less separation because of the provisions of Chapter 10D-6, Florida Administrative Code, which has been promulgated by the Florida Department of Health and Rehabilitative Services. Rule 10D-6.047 provides that, among the criteria for obtaining a septic tank permit, the "water table at

the wettest season of the year is at least 24 inches below the bottom surface of the drainfield trench or absorption bed."

152. Twelve percent of the soils in the County are rated as very severe and 85% as severe with respect to the limitations for septic tanks. However, Charlotte County has issued annually between 1500 and 1900 septic tank permits from 1982-1986. During 1984-1986, Charlotte County ranked 16th among Florida counties in the number of septic tank permits issued.

153. The leachate from a septic tank contains nitrogen, phosphorus, chlorides, sulfates, sodium, toxic organic substances, heavy metals, bacteria, and viruses.

154. In the cases of nitrates, chlorides, sulfates, and sodium, dilution is the primary means of reduction of concentrations. Therefore, the most effective means of controlling the levels of these substances must include restricting the density of septic tanks.

155. Although relatively small concentrations of phosphorus may contaminate ground water, phosphorus is capable of undergoing sorption and precipitation even in saturated soils.

156. Bacterial contamination is the second most common reason for well replacement in the southeastern United States. So-called "indicator organisms" are transported over distances much greater than three feet in the presence of saturated soil, shallow depth to seasonal high water table, or high effluent loading rates.

157. The efficiency of virus absorption in the soil

can be impaired by high soil moisture content and high effluent loading rates. Viruses may travel several hundred feet laterally in saturated soil and do not die off as readily as bacteria.

158. The Data and Analysis conclude that "Charlotte County must strive to make central sewer and the extension thereof attractive to private utilities" by requiring that "when sewer is available, development must tie in." Water and Sewer Subelement, p. 85. The Data and Analysis note that a County ordinance already requires connections to sewer and water when lines are within 200 feet. The Data and Analysis recommend that the County adopt an ordinance requiring that three or four feet separate the bottom of the leach field from the seasonal high water table.

159. Among the recommendations offered by the Data and Analysis with regard to sewer are:

--Promotion of compact, economically efficient and environmentally safe development through judicious extension of water and sewer lines by promoting infill, establishing requirements that development tie into centralized water and sewer systems when available and encouraging the simultaneous extension of water and sewer when available.

\* \* \*

--A general phasing out of septic tank systems within urbanized areas of the County, with the evaluation of the impact of septic tanks on local groundwater, prohibiting the use of septic tanks within designated areas, and the discontinuance of septic treatment and connections to a centralized system when available.

Water and Sewer Subelement, p. 86.

160. Elsewhere, the Data and Analysis state:

The use of septic systems to treat waste in the more densely populated coastal area of the County, especially on lots adjacent to canals and on barrier islands, should be discontinued because of the high probability of contamination of surface waters. In addition, treatment provided by septic tanks is minimal compared to other methods of sewage treatment.

Conservation Element, p. 43. The Data and Analysis "question the suitability of using septic tanks to treat domestic sewage in some of the more densely populated areas of Charlotte County."

Conservation Element, p. 80.

161. Other general recommendations include the "coordination with private water and sewer facilities in maintaining adequate capacity," completion of a pending study as to the advisability of the County acquiring the private sewer and water systems, "protection of potable water and groundwater recharge areas," and "utilization of the Capital Improvement program process to provide the necessary water and sewer facilities." Id.

b. Potable Water

162. Twenty-six central water systems and private wells now serve Charlotte County's needs for potable water. At least 82 public-supply wells are located within ten miles of the coast; however, these wells are not in an integrated wellfield, which would tend to prevent overpumping and saltwater intrusion.

163. The only public entity providing water is Punta Gorda, which obtains its water from the reservoir on Shell Creek. The design capacity of the Punta Gorda facility is 5.2 million



gallons per day, but it is now being expanded to 8 million gallons per day.

164. The only other central water systems with a capacity to treat at least 5 million gallons per day are those of the Englewood Water District and General Development Utilities.

165. The Englewood Water District, which is a state agency, serves 34,000 persons, has a design capacity of 5 million gallons per day, and uses groundwater that is treated by lime softening and reverse osmosis.

166. General Development Utilities serves 60,000 persons, has a design capacity of 12 million gallons per day, and uses surface water that is treated by color removal, chlorination, filtration, and pH adjustment.

167. Only one other facility has a design capacity of one million gallons per day or more. Six of the facilities serve less than 100 customers, and only five of the facilities serve at least 1000 customers.

168. Each of the three major suppliers of potable water is projected to experience demand in excess of capacity by 1995-2000. The projected deficiencies are: General Development Utilities--2.5 million gallons per day; Punta Gorda--4 million gallons per day (after present expansion); and Englewood Water District--2.5 million gallons per day.

169. General Development Utilities obtains its water from the Peace River. The Englewood Water District obtains its water from three freshwater wellfields, which are operating at or

near capacity, and one brackish-water wellfield.

170. The capacity of Shell Creek to provide potable water is about 8 million gallons per day. This source will be adequate until about 1995.

171. Although it may take 10 years to put into operation a new source of water, Punta Gorda has yet to identify such a source. Raising the reservoir one or two feet can supply Punta Gorda with enough raw water to satisfy demand until about 1999 or 2002.

172. Another source of freshwater for Punta Gorda is groundwater in an unspecified location in north Charlotte County. "Somewhat of a rarity in southwest Florida," this source of water would not require reverse osmosis. Water and Sewer Subelement, p. 30. Punta Gorda would be required to acquire about 160-200 acres of land to protect the wellfield. The Data and Analysis warn that "there is competition for the water and competitive land uses such as farming and development activities make it more difficult each year to obtain tracts for water supply." Id.

173. The Data and Analysis mention two other possible sources of water for Punta Gorda. The Telegraph Swamp area has usable water, but would be costly to import and is in the jurisdiction of the South Florida Water Management District. The Alligator Creek impoundment may not have sufficient water.

174. In the case of General Development Utilities, the Peace River will provide an adequate supply of raw water for the Port Charlotte service area through about 2000. The best

available sources of groundwater appear to be the upper and lower Floridan aquifers in southeastern DeSoto County. Although the water would require little treatment, the quantity may be limited due to competition from adjoining users.

175. The Data and Analysis disclose two water treatment plants on the Don Pedro Island chain. Knight Island Utilities has a design capacity of about 400,000 gallons per day. Little Gasparilla Island Water Plant, which is located at the south end of the island chain, has a design capacity of 10,000 gallons per day. A third water treatment plant appears to exist on the northern half of the island chain. One of the plants on Knight Island serves Palm Island Resort.

### 3. Drainage

176. Charlotte County encompasses 15 drainage basins. Basin 1, which includes the northern half of the Don Pedro Island chain, drains into Lemon Bay. Basin 2, which includes the southern half of the Don Pedro chain, drains into Gasparilla Sound and Placida Harbor. Basin 15, which is the northeastern corner of the County, drains east into Fisheating Creek in Glades County. Basins 13 and 14, which are mostly within the Webb Management Area and Babcock property, drain south into the Caloosahatchee River in Lee County. The remaining basins drain into Charlotte Harbor.

177. Six factors are most responsible for the alteration of natural drainage conditions in the County. These are: the creation of man-made canals by excavating uplands and

channelizing natural drainage features like tidal creeks and sloughs; the use of surface waters as sources for potable water; the reduction of the Lemon Bay and Gasparilla Sound drainage basins; the destruction of sloughs that serve as natural flowways; the loss of wetlands that serve as natural water-storage areas; and the elimination of sheet flow.

178. In the development of several major subdivisions in Charlotte County, extensive canal systems were constructed. Many of the canals in the Port Charlotte area drain directly into Charlotte Harbor. The quantity and quality of the drainage may be harmful due to the increased levels of freshwater suddenly introduced into the brackish waters of the harbor and the pollutants associated with urban runoff. Other canals are less harmful because of the presence of interceptor lagoons and perimeter canals.

179. The Peace River and Shell Creek, which are the major sources of potable water for Punta Gorda and the portion of Charlotte County south of the Peace River, also supply about 85% of the major surface water discharge into the northern portion of the Charlotte Harbor estuary. The Data and Analysis advise that "[c]areful consideration should be given to any proposals that would reduce freshwater flow to the Charlotte Harbor estuary so as to cause a significant change in the natural variation in its salinity." Drainage Subelement, p. 8.

180. Land development on the Cape Haze Peninsula has greatly reduced the size of the basins draining into Lemon Bay,

Placida Harbor, and Gasparilla Sound. Data are not yet available to indicate what effect, if any, the ensuing reduction of freshwater and detrital food supply will have on these estuarine systems.

181. Sloughs "allow for the slow, natural drainage that provides maximum recharge of the surficial aquifer and serves to slowly release freshwater to creeks and rivers which in turn supply the estuaries." Drainage Subelement, p. 9. "Developments proposed for areas containing natural slough flowways should incorporate these sloughs as part of the water management system." Id.

182. Creeks and other natural flowways, isolated marshes, and wet prairies provide surface water storage capacity and flood control. Some marshes and wet prairies may serve as limited recharge and discharge areas for the surficial aquifer. Wetlands also purify surface waters by trapping sediments and assimilating nutrients and pollutants carried by surface waters.

183. Early large-scale development often involved the "indiscriminate . . . fill[ing] or excavat[ion of wetlands] to created developable lands." Drainage Subelement, p. 10. Agriculture has often involved the ditching and draining of wetlands to allow cattle to forage on wetland vegetation or the cultivation of crops.

184. Sheet flow, which is the slow movement of large areas of water over flat land, has been largely eliminated in the County, except for Drainage Basins 2, 13, 14 (western portion of

Telegraph Swamp), and 15, where sheet flow still exists during the rainy season. The Data and Analysis recommend that the drainage basins and natural drainage features remaining relatively undisturbed "should be protected from further structural alteration, except where such alteration would restore or enhance the functions of stormwater storage . . . ." Id.

185. The Data and Analysis acknowledge that the alteration of stream channels and other natural drainage features for drainage and land development has harmed the County in the past. However, the Data and Analysis state that the present permitting process involving the Southwest Florida Water Management District, South Florida Water Management District, and Department of Environmental Regulation "is effective in protecting natural drainage features." Drainage Subelement, p. 32a.

186. In the case of urban stormwater runoff, the Data and Analysis acknowledge that many systems were constructed prior to the adoption of current County ordinances and state law. In such cases, the Data and Analysis recommend:

Additional treatment of urban stormwater can be provided through the County drainage rework program by acquiring undeveloped lots for constructing stormwater retention/detention ponds and by designing swales for greater attenuation of stormwater.

Conservation Element, p. 64.

187. The Data and Analysis nevertheless identify the following shortcomings in the present permitting process:

insufficiently restrictive guidelines with respect to mangrove trimming; often-inadequate requirements regarding the buffering of upland; and the "failure to adequately review and regulate land development practices on a case by case basis." Id. As to the last problem, the Data and Analysis suggest that regulation may be more suitable at the local, rather than state, level.

188. Although several drainage rework projects are identified in the Data and Analysis, there remains a "significant need" for the preparation of a master drainage plan for the County. Drainage Subelement, p. 45. Such a plan would include procedures for ensuring that adequate drainage facility capacity is available when a development permit is issued; revisions to the Capital Improvements Element showing needs, priorities, and funding sources; identification of natural recharge areas and natural drainage areas coupled with procedures for their protection; and the promulgation of stormwater and floodplain regulations to prevent degradation of water quality and flooding.

D. Environmental Resources of Charlotte County

1. Eastern Portion of County

a. Rural Characteristics

189. "Urban development has largely occurred in western Charlotte County, with the eastern half of the County remaining rural." Future Land Use Element, p. 12. The rural eastern half of the County accommodates "agricultural uses, natural areas, and scattered low density residential use." Future Land Use Element, p. 15.

190. The present uses of the eastern half of the County generally place little stress on the surrounding natural resources because the present uses represent

[t]he most suitable use[s] of [these] lands-- with respect to protecting groundwater recharge areas, surface water quality, and endangered species[--are] low intensity agricultural practices, conservation, or low density residential estate uses.

Future Land Use Element, p. 17. Consequently, the Data and Analysis recommend that "incentives and protective measures" be used to ensure the continued existence of the County's agricultural and natural lands. Id.

b. Important Natural Resources

191. Among the most important natural resources in the eastern half of Charlotte County are Shell and Prairie Creeks, the Webb Wildlife Management Area, Telegraph Swamp, and Long Island Marsh.

192. The Shell Creek and Prairie Creek Corridor, which is the wetland and upland corridor bordering the two creeks, is characterized by willow and cypress strands, cabbage palm, oak hammocks, and, in the area of Washington Loop Road, sand pine scrub. The South Florida Water Management District has proposed the purchase of these corridor lands as part of the Save Our Rivers program. Because of the role of the creeks and their tributaries, including Myrtle's Slough, in providing potable water, the Data and Analysis recommend: "special consideration should be given to changes in land use within the Shell Creek



drainage basin." Conservation Element, p. 62. Shell Creek drains about 423 square miles and Prairie Creek drains about 273 square miles, although these areas overlap. Drainage Subelement, p. 14.

193. Telegraph Swamp, which is a 7000-acre cypress swamp running through the land owned by Babcock, is now used for agriculture and hunting. "It represents the largest surface reservoir of freshwater in the County and also provides critical habitat for several endangered species (e.g., bald eagles, wood storks and red cockaded woodpeckers)." Future Land Use Element, p. 17. It supports rookeries for wood storks, great egrets, white ibis, great blue herons, and little blue herons.

194. Long Island Marsh, which is a large sawgrass marsh in the northeast corner of the County, has been converted to agricultural uses. It overlies "the only recharge area located within Charlotte County for the County's intermediate aquifers. The effect of agricultural practices associated with Long Island Marsh on the quality and quantity of groundwater recharge has not been determined." Future Land Use Element, p. 17.

195. The Webb Wildlife Management Area is managed by the Florida Game and Freshwater Fish Commission for hunting, fishing, and general public outdoor use. The Area is characterized by pine flatwoods, wet prairies, and freshwater marshes and sloughs. It provides habitat "critical to the survival of several endangered species." Future Land Use

Element, p. 17.

196. Significant natural resources located on tracts of undeveloped land in the eastern half of the County are in private ownership and have been "maintained, for the most part, in their natural state and function as natural reserves." Future Land Use Element, p. 53. In addition to the Telegraph Swamp and Shell Creek and Prairie Creek Corridor, these tracts include the Peace River Wetlands; Myrtle's Creek or Myrtle's Slough, which is also north of the Webb Wildlife Management Area; Rainey Slough and Jack's Branch, of which the latter appears to run at least in part on Babcock's land; and the Hall Ranch.

197. The Peace River Wetlands comprise wetland marshes and swamps in the upper portion of the Peace River. These wetlands serve as important wildlife habitat and floodplains. The only state-owned lands in the area are three islands: Bird Key, Coon Key, and Long Island.

198. Rainey Slough and Jack's Branch remain in their natural state and provide significant wildlife habitat. Rainey Slough is a freshwater marsh draining northeastern Charlotte County. Jack's Branch is a hardwood swamp in the southeastern corner of the County. Together with Gator Slough, which drains the Webb Wildlife Management area south into Lee County, these are the major flowways in the eastern and southern portions of the County.

199. The Hall Ranch, which is about 5760 acres, includes cypress swamps, flatwoods, and wet prairies. It "would

make a valuable addition to the . . . Webb Wildlife Management Area[,] . . . [which] presently does not have any significant tracts of freshwater swamp habitat." Conservation Element, p. 153. The cypress swamps on the ranch are part of the headwaters of the Telegraph Swamp and would "greatly enhance the diversity of wildlife habitat of the Webb Area." *Id.*

200. With the exception of the Webb Wildlife Management Area, all of the public acquisition of conservation lands has taken place in the western part of the County. Apart from the federal funds used to purchase the Island Bay National Wildlife Refuge in 1908 and the Webb Wildlife Management Area in 1941, state funds have been used for the acquisition of all conservation lands in Charlotte County.

201. In a recommendation applicable to the entire County, the Data and Analysis note that the County has not purchased any of the environmentally sensitive lands and warn:

The established priorities of these groups [administrators of federal and state land-acquisition programs], and fierce competition for their limited funds, suggest that it would be imprudent to rely solely upon these sources for the acquisition of endangered or biologically significant native habitats in the County. The County should therefore provide a mechanism by which funds may be generated to allow for County acquisition of tracts deemed significant by the County, but not within the realm or jurisdiction of other agencies. It should also consider other means for insuring the preservation of important tracts.

202. Toward this end, the Data and Analysis suggest the use of the following mechanisms in addition to outright

purchase: conservation easements, requirements for open space in native habitats in the case of large developments, tax incentives to encourage private efforts, and cooperative efforts with private conservation entities, such as the Nature Conservancy and the Trust for Public Land. Further, the County should immediately inventory and prioritize those undeveloped lands and then apply for federal or state funding for their acquisition.

c. Special Protection Zones

203. The Coastal High Hazard Zone extends along the entire shoreline of Charlotte Harbor, down the southern tip of the Cape Haze Peninsula, and then up the western shoreline of the peninsula, encompassing the barrier islands.

204. The Hurricane Vulnerability Zone includes all but a small portion of the County west of the Peace River, curves to the east to encompass Washington Loop Road, extends south between Punta Gorda and the County Airport, and runs just east of Burnt Store Road out of the County. The only portion of the eastern part of the County within the Hurricane Vulnerability Zone is north of the Webb Wildlife Management Area near Washington Loop Road.

205. The Coastal Area includes the western part of the County and a significant part of the eastern part of the County. The line runs, from the south, to a point in the center of the Webb Wildlife Management Area, then turns northeast as it encompasses the northwest corner of the Hall Ranch, turns southeast at it crosses County Road 74, turns back to the

northeast, and then the northwest, including about half of the land north of State Road 31 and east of County Road 74.

2. Western Portion of County

a. Urban Service Area

206. As noted above, the primary population concentrations in Charlotte County are in the western half of the County. In recognition of this fact, the Data and Analysis incorporate almost all of the western part of the County into the Urban Service Area.

207. The Urban Service Area is the area in which:

intensive growth is intended to occur . . . [and] where the full range of urban services are either provided or planned to be provided. Services include centralized water and sanitary sewer facilities, drainage systems, a high capacity transportation system, urban police and fire and EMS [Emergency Medical Services] facilities, libraries and recreational facilities.

. . . It is the intent that [Punta Gorda] and the County will focus the provision of the full range of urban services within this area to direct the location of intensive growth. The location of the urban service area is based upon: concentrations of existing development, the availability of infrastructure (e.g., water and sewer) and services, environmental concerns and avoidance of agricultural lands.

Future Land Use Element, p. 72a.

208. The larger Urban Service Area, as depicted on the Future Land Use Map, includes the entire western portion of the County, except for publicly owned land along the shoreline of Charlotte Harbor and the lower Cape Haze Peninsula, as well as islands and wetlands in the Peace River.

209. Running from north to south, the east boundary of the Urban Service Area travels along the line dividing Township 40 South, Range 23 East, from Township 40 South, Range 24 East. It juts about a mile east to capture a development north of Shell Creek and slightly northwest of the Shell Creek reservoir. At the southern point of the dividing line between the two townships, the line runs west one mile, to exclude a development known as Charlotte Ranchettes, which consists of a large number of five-acre tracts. The line then turns south for about seven miles running east of the County Airport and cutting across the eastern end of Alligator Creek to a point near the intersection of the southwest corner of the Webb Wildlife Management Area and U.S. Route 41. At that point, the line runs in a generally northwesterly direction to capture most of the Punta Gorda area.

210. The smaller Urban Service Area includes a separate area of about 2000-2500 acres on the shore of Charlotte Harbor and adjacent to Lee County.

b. Important Natural Resources

i. General

211. Among the natural resources of western Charlotte County is an

extensive estuarine system including a barrier island chain, estuarine bays, tidal creeks, and, most significantly, Charlotte Harbor. The Charlotte Harbor estuary with its two major tributaries, the Myakka and Peace Rivers, is one of the most productive, pristine and unpolluted estuaries in the State.

Conservation Element, p. 17.

212. Most of the County's more open estuarine waters are contained within one of three state aquatic preserves: the Lemon Bay Aquatic Preserve, Cape Haze Aquatic Preserve, and the Gasparilla Sound/Charlotte Harbor Aquatic Preserve.

213. The waters within each of these preserves are largely classified as Outstanding Florida Waters and Class II waters, in which shellfish propagation and harvesting may be permitted. However, nonpoint sources of pollution, which pose the "greatest threat to the quality of surface waters in Charlotte County," threaten at least certain of these estuarine waters, especially the eastern half of Lemon Bay across from Knight Island. Conservation Element, p. 43.

214. The Data and Analysis identify various sources of pollution contributing to the overall degradation of water quality in the Lemon Bay Estuary. The Data and Analysis note bacterial contamination from septic systems and observe that the Don Pedro Island chain is "highly unsuitable for septic systems" due to poorly drained soils. Conservation Element, p. 45.

215. The Data and Analysis also note that some of the older wastewater treatment plants have been built in close proximity to Lemon Bay, including two on the Don Pedro Island chain. Some of the plants have occasionally dumped effluent into the bay.

216. The Lemon Bay Aquatic Preserve is located in Charlotte and Sarasota Counties. It encompasses the south half

of Lemon Bay, as well as Placida Harbor. The Lemon Bay Aquatic Preserve also includes the lower portions of Lemon, Buck, Oyster, Ainger, and Gotfrey Creeks, which are on the mainland and provide natural drainage for a portion of the Cape Haze Peninsula.

217. Noting that all of this land lies within floodplains, the Data and Analysis warn that the development of the remaining vacant land, which is largely platted, must be done "carefully." As to the creek basins, development that is compatible with natural topography and drainage will be "difficult" and offers a "challenge for the creation of new land development practices." Drainage Subelement, p. 30.

218. The Cape Haze Aquatic Preserve is located at the south end of the Cape Haze Peninsula. The preserve includes the east half of Gasparilla Sound, as well as numerous creeks in the peninsula, two small bays, and a number of mangrove islands.

219. The Gasparilla Sound--Charlotte Harbor Aquatic Preserve, which is the largest of the three preserves, constitutes all of Charlotte Harbor below the mouths of the Myakka and Peace Rivers and almost all of the wetlands bordering the preserve. A large portion of the preserve is located in Lee County. Adjoining the preserve is the 15,500-acre Charlotte Harbor State Reserve, which forms a ring of predominantly mangrove wetlands from Lee County up the east shoreline of Charlotte Harbor, across the north shoreline of the harbor, and down the west shoreline of the harbor down to the southern tip of the Cape Haze Peninsula. The Island Bay National Wildlife



Refuge, which is under federal jurisdiction, occupies nearly 20 acres on six tracts on mangrove islands at the southern tip of the Cape Haze Peninsula.

220. Another significant conservation land in the western portion of Charlotte County is the Port Charlotte Recreation Area, which consists of 213 acres primarily on the southern tip of Manasota Key.

221. Using funds from the Save Our Coasts (SOC), Environmentally Endangered Lands (EEL), and Conservation and Recreational Land (CARL) programs, the State of Florida has expended substantial sums of money in recent years to protect important natural resources of western Charlotte County. For example, EEL and CARL funds were used to purchase the Charlotte Harbor State Reserve.

222. Substantial parcels of land are currently proposed or recommended for purchase under CARL as additions to the Charlotte Harbor State Reserve. These additions are especially critical on the Cape Haze Peninsula where the present boundary of the reserve arbitrarily divides tidal flats, leaves many active bald eagle nests outside of the reserve, and creates access problems for patrol and management of the reserve.

ii. Don Pedro Island Chain

223. One of the outstanding natural resources of western Charlotte County is the bridgeless barrier island known as the Don Pedro Island chain. The chain of islands consists of 6.67 miles of beach and 228.2 miles of active dunes, which are

dunes that are actively gaining or losing sand. There are a total of 12.4 miles of beach and 311.7 acres of dunes on the barrier islands within the County.

224. All of the barrier islands, whose highest elevation is about nine feet, are vulnerable to erosion from catastrophic hurricanes and winter weather. Hurricanes are relatively common, occurring one every five years between 1900-1976. Winter and tropical storms occur about twice as frequently.

225. Several factors leave the County's barrier islands especially vulnerable to storm damage. These factors include increased development, sea level rising at the rate of about one foot over the last 100 years, coarse-grained sand that is high in shell contents, and steep beach profiles.

226. The Don Pedro Island chain has been cut by at least five different inlets from 1883-1981. These inlets, which are now all closed, were Bocilla Pass on Knight Island, an unnamed inlet on Knight Island, Blind Pass between Knight and Don Pedro Islands, and Little Gasparilla Pass between Don Pedro and Little Gasparilla Islands. In general, the beach areas within one-half to one mile north and south of the inlets "are the most dynamic of all on barrier islands and must be considered high-hazard zones for any structures." Coastal Management Element, p. 44.

227. The Department of Natural Resources has considered a beach nourishment project for the replacement of

eroded sands along 7230 feet of Knight Island, beginning about 4800 feet south of Stump Pass. Portions of the beach along this stretch are less than 50 feet in width. Within the project area, the total structure value is about \$20.4 million and total land value is about \$11.3 million. Further consideration has been suspended pending resolution of issues involving limited public access and environmental factors.

228. An important public holding on the island chain is Don Pedro State Park, which the state recently acquired under the SOC program. The park consists of about 140 acres of coastal strand, tidal lagoon, and fringing mangrove swamp habitats just north of Little Gasparilla Island. At present, the park is accessible only by boat and is not used very much.

229. The only infrastructure present on the Don Pedro Island chain, in addition to the water treatment and wastewater facilities described above in Paragraphs 148 and 175, respectively, is the Palm Island Station #10 fire station, which is located at the north end of the island chain.

c. Special Protection Zones

230. All of the barrier islands are in the Coastal High Hazard Area. As noted above, almost the entire remainder of the County west of the Peace River is in the Hurricane Vulnerability Zone, which is also the 100-year hurricane flood zone.

231. The Data and Analysis state:

The Coastal High Hazard Area identifies areas in which development should be limited and existing

infrastructure should be relocated to minimize the threat of natural disasters to human life and property.

Coastal Management Element, p. 22.

232. In dealing with land uses within the Coastal High Hazard Area, the Data and Analysis recognize a "basic perceived conflict between the duty of government to protect the health, safety, and welfare of its citizens and the rights of property owners to the use and disposition of their property." Coastal Management Element, p. 85.

233. The Data and Analysis suggest that "perhaps the best way" to resolve this conflict is for "government to acquire properties deemed as having high hazards with regard to hurricane flooding." Id.

234. Three factors contribute to the hazards to which specific properties are exposed during a hurricane. The first factor is proximity to large bodies of water; those areas within 150 feet of water will suffer the greatest damage. The second factor, which is vital to the barrier island chain, is the proximity to shifting channels. The third factor is the elevation because lower elevations may receive localized surges not experienced by higher elevations.

235. The Data and Analysis recommend that government first acquire land adjacent to existing passes and channels. The Data and Analysis recommend that government last acquire land adjacent to shoreline because of the large amount of such land and the presence of many water-dependent uses.

236. Recognizing the obvious exposure of the water and sewer systems to damage from a hurricane or other major storm, the Data and Analysis recommend that the best approach is to replace existing systems with regional systems.

237. Infrastructure tends to be assembled in proximity to the populations served. To mitigate hurricane damage, it is therefore necessary to incorporate disaster-preparedness considerations into land use planning. The Data and Analysis recommend that the following uses be directed away from hazardous areas: moderate- to high-density residential, population-related intense commercial development, most forms of industrial development, and population-related institutional uses (e.g., schools) and utility development. Uses to be encouraged in such areas would include water-dependent commercial, industrial, and tourist development, recreation, agriculture, and estate housing.

238. The Data and Analysis recommend that fiscal policies be structured to discourage the development of high-hazard areas. Among the needs for indirect infrastructure are off-site shelters and roadways, which are imperative for the evacuation of the area.

239. In the case of Charlotte County, the need for shelters is pressing. The County has sufficient shelter space to accommodate about 3.5% to 4% of the evacuees from a Category 2-5 storm. Also, the roads serving the evacuees from the Don Pedro Island chain are two-laned and require the use of State Road 776 in order to cross the Myakka River, which is heavily travelled.

#### IV. 1980 Plan and Evaluation and Appraisal Report

##### A. Background

240. Pursuant to the 1975 Local Government Comprehensive Planning Act, Charlotte County adopted by ordinance on November 20, 1979, effective July 1, 1980, a Comprehensive Land Use Management Plan, which consists of two volumes (1980 Plan). Portions of the Plan contain evaluations and appraisals of the 1980 Plan. The evaluation and appraisal report (EAR) is contained in the Executive Summary at the beginning of each element of the Plan.

##### B. Future Land Use

###### 1. 1980 Plan

241. The Land Use Management Element, which is the first element of the 1980 Plan, states as its first objective:

Encourage development into urban areas where sewer, water, transportation and other urban services are available and economically feasible.

1980 Plan, p. 2.

242. The Land Use Management Element recognizes in two other objectives the importance of mixed-use development, as it applies to commercial land use:

Encourage the development of commercial facilities (e.g. neighborhood commercial districts) that are compatible with adjacent residential areas based on proper zoning, urban design principles, and careful review of proposed developments.

Promote a distribution of commercial shopping centers throughout the planning area in order to avoid unnecessary travel and traffic congestion.

1980 Plan, p. 3.

243. The Land Use Management Element also acknowledges the importance of reserving land for industrial use:

Identify and encourage the setting aside of adequate quantities of land with industrial potential to meet the future needs of industry.

Id.

244. The Land Use Management Element cites the relationship of transportation to land use planning:

Encourage land use planning that would create density clusters which would support the establishment and economical operation of mass transit facilities under private and/or government ownership.

1980 Plan, p. 4.

245. In the discussion following these and other objectives, the Land Use Management Element states:

One of the major problems within the planning area is the scattered residential development in many of the older and new subdivisions in the County. The major developments will account for new patterns of growth.

As is always the case when development is scattered throughout a county, fire and police protection, school bus services and many other required services must be undertaken at greater cost when expansion is necessary in order to accommodate these particular patterns of development. More intense and cohesive development facilitates less expensive expansion of public services and utilities.

It is not anticipated that all new development will occur within the existing patterns of residential development in Charlotte County. The recently announced development . . . will have the effect of scattering the existing development patterns.

1980 Plan, p. 14.

246. The Land Use Management Element describes the "general goal of the Land Use Plan" as the creation of an urban area having a distinctive lifestyle and a

physical form that reflects and takes advantage of the unique natural resources of the area.

1980 Plan, p. 67.

247. The Land Use Management Element establishes three ranges of density in residential areas. Low density ranges from 1-5 units per acre (1-5:1). Medium density ranges from 6-10 units per acre (6-10:1). High density ranges from 11-15 units per acre (11-15:1).

248. As to nonurban areas, the Land Use Management Element establishes two classifications of agricultural lands. Agriculture I lands permit a maximum residential density of one unit per acre (1:1). Agriculture II lands permit a maximum residential density of one unit per ten acres (1:10). As to the latter classification, the Land Use Management Element warned:

Lands that are identified in this classification are generally associated closely with environmentally sensitive lands. They contribute to the ecological value of preservation lands and are complex environments. They are seasonal wetlands and may sustain only limited or restricted alteration. Development in Agriculture II lands must be carefully planned to ensure the continued, long term functioning of the natural hydrologic and ecological systems. The natural water regime should be maintained or improved.

1980 Plan, p. 74.

249. The Agriculture II category encompasses the eastern six townships, the Hall Ranch, and Township 40 South, Range 25 East, which is north of the Hall Ranch and the Webb Wildlife Management Area. The area directly south of the Webb Wildlife Management Area and east of what is now Interstate 75 was predominantly Agriculture I. The record does not disclose



the land use designation of land to the west of these areas.

250. The Land Use Management Element also provides a Planned Unit Development District, which could be overlaid anywhere in the County. As to nonurban lands generally, the Land Use Management Element warns developers of fringe areas that water and sewer facilities might not be available in the short-term future and recommends that developers should be required to furnish a bond for such facilities for the protection of future residents of the area.

251. In dealing with the coastal zone of the County, which was defined as that land within the 100-year floodplain, the Ecological Principles of the Coastal Zone Element of the 1980 Plan consider two issues concerning future land use.

252. First, recognizing that land is a nonrenewable resource that, once built upon, "is usually permanently committed to that use," the first objective under Ecological Principles is to balance supply and demand for natural resources. The underlying policy is to "encourage the early purchase or other forms of preservation of needed recreation and open space in the coastal zone." 1980 Plan, p. 101.

253. Second, under the same objective, the 1980 Plan identifies the need to "control the speed at which [growth] spreads." Among the recommended actions is a study of "the unique situation of thousands of platted lots unbuilt upon." 1980 Plan, p. 105.

2. EAR

254. After noting several of the above-described objectives of the 1980 Plan, the EAR in the Plan observes: "Control of growth within areas of Charlotte County that have the full range of urban services is very difficult because of the extensive 'platted' (and pre-sold) land problem within the County." Future Land Use Element, second unnumbered page. The EAR asserts that this problem is addressed by Plan provisions establishing an urban service area and concentrating urban services within such area.

C. Water and Sewer

1. 1980 Plan

255. The Land Use Management Element establishes several objectives concerning potable water and sewer, including objectives to

Encourage centralized sewage treatment plants and collection systems under private and/or public ownership for efficiency and better control of pollution . . . .

Encourage the development of centralized water systems in order to replace individual wells and small scale systems in urban areas as soon as economic feasibility is determined.

Encourage use of septic tanks only in areas which exhibit adequate soil and hydrological requirements.

1980 Plan, p. 5.

2. EAR

256. After noting several of the above-described objectives, the EAR recognizes that issues remain unresolved

concerning the "extension of water and sewer and . . . on-site sewage disposal systems." Water and Sewer Subelement, third unnumbered page. Noting that a 3 Municipal Service Taxing Unit (MSTU) study is to commence next year, the EAR states that issues still needing to be addressed include the maintenance or expansion of public/private water and sewer systems. Objectives of the 1980 Plan will be achieved by the Plan through the:

promotion of compact, economically efficient development through judicious extension of water and sewer lines, County facilitation in the extension of centralized sewer and water facilities, and general phasing out of septic tanks . . .

Water and Sewer Subelement, third unnumbered page.

D. Drainage

1. 1980 Plan

257. The Land Use Management Element includes an objective to

Encourage the establishment and maintenance of a drainage control program in order to manage storm water runoff and minimize flood hazard, erosion, and reduce water pollution.

1980 Plan, p. 6.

258. The Land Use Management Element divides drainage improvements into two categories. Drainage improvements to uplands may cause nonpoint pollution and reduced groundwater recharge. Drainage improvements to seasonally wet lands involve consequences that vary in magnitude in proportion to the length of time that the land is under water. Drainage improvements to seasonally wet lands "should not be permitted . . . without full

knowledge and understanding of the probable environmental impact." 1980 Plan, p. 53.

259. Under the category of Surface Water within the Coastal Zone Element, the 1980 Plan states that

rapid elimination of storm water runoff is a common practice in Charlotte County. . . . Yet, drainage, by encouraging fast runoff[,] contributes to pollution of the estuary. Slow movement of water over large areas provides an opportunity for natural, physical and chemical process to "cleanse" the water[,] but fast movement in channels conveys the pollution directly to the bay. In addition, fast storm water drainage also reduces the time available for natural seepage and recharge of the critical subsurface aquifers.

260. As a consequence, the 1980 Plan includes a policy to "encourage maximum retention of storm water runoff and to discourage rapid drainage as a technique of land development" and a policy to "encourage the development of a countywide stormwater runoff management plan to include flow regulation, and practices for reducing pollution loads." 1980 Plan, p. 114. The 1980 Plan also recommends the preparation of a "drainage management plan" to provide a means to evaluate proposals to alter drainage. Id. at p. 115.

## 2. EAR

261. Noting the above-described objectives, the EAR states that the County has a stormwater ordinance that provides "significant control" in the design of new facilities. The EAR cites swales and detention areas as "significant strides in protecting the quality of the County's surface water." The County also has established several drainage Municipal Service

Taxing Units. However, the County has yet to prepare an overall drainage study, which is a "major policy" under the Plan.

E. Coastal Management

1. 1980 Plan

262. The Coastal Zone Element of the 1980 Plan contains several goals, objectives, and policies. Under the objective seeking to "maintain or improve long-range prospects for continued maximum yield of fish species and shellfish," the Coastal Zone Element acknowledges that: "Water pollution from surface run-off and septic tank seepage degrades estuarine waters and damages marine life." 1980 Plan, p. 90. The 1980 Plan recommends "continued study" of the "causes and remedies of water degradation in the Lemon Bay and Charlotte Harbor" waterbodies. Id. at p. 91.

263. Under the objective to preserve important coastal marshes and mangrove systems, the Coastal Zone Element recognizes the "extraordinary success" of purchases by the state of miles of fringe mangroves. In order to complement these state efforts, the 1980 Plan recommended that, if feasible, the local government assist in the preservation of privately owned mangroves and related lands by employing economic incentives, such as tax relief, transfer of development rights, and public purchases of easements.

2. EAR

264. The Coastal Management Element of the Plan contains no EAR.

F. Conservation of Natural Resources

1. 1980 Plan

265. Under the Conservation of Natural Resources Element of the 1980 Plan, the Plants category contains an objective to protect and maintain the native vegetation of the County. Policies included in this category require the identification and protection of vegetative associations that are of unique botanical value or critical to the protection of threatened animal species.

266. Recognizing the threat of urban growth to wildlife habitat, the Wildlife category of the Conservation of Natural Resources Element includes a policy to "encourage the preservation of wildlife habitat within areas of urban expansion." 1980 Plan, p. 128.

2. EAR

267. The Conservation and Natural Resources Element of the Plan contains no EAR.

V. Additional Findings

A. Eastern Part of County

268. The severe and very severe soil ratings applicable to nearly all of the soils of the County are generally the result of poor drainage. In the eastern half of the County, the water table is within 10 inches of the surface for the majority of soils for two to four months during the year.

269. There are no prime farm lands in Charlotte County. Such land is level or nearly level, deep, and well-

drained. It has high water-holding capacity and high natural fertility. No prime farm land is found in Florida south of Hernando County.

270. Although various portions of the County contain "unique" farm land, the label is somewhat misleading. Unique farm land resembles prime farm land except that it lacks one of the above-described characteristics and is used to grow certain crops, such as citrus, deemed unique by the United States Department of Agriculture, Soil Conservation Service.

271. However, little of the land in Charlotte County is well-suited for more intensive agricultural practices, like the cultivation of vegetable crops or citrus. Citrus has moved into the County due to the freezes of Christmas 1983 and January 1985 rather than the suitability of the soil. Vegetable farming remains a risky practice. In the case of the Babcock land, for instance, the only vegetable farming is done by tenants. Although the usual factors such as weather and market conditions at the harvest of perishable commodities are important risk factors, the poor quality of the soil in the County contributes significantly to the risk involved in vegetable farming in the area. The local soils require so much energy that vegetable farming resembles a hydroponic operation with the naturally occurring soil providing structural rather than nutritional support.

272. Babcock now uses much of its land for the production of timber and cattle, which are generally low-

intensive practices. The land, which was assembled in 1914, was used predominantly for logging in the 1920's and 1930's.

273. Cattle ranching became an important activity in the mid-1930's. Due to the inability of the land to support corn or other feed, cattle ranching on the Babcock lands, as well as elsewhere in the County, is primarily a cow/calf operation. About 80% of the calves are sold out-of-state so that they can be fattened on richer pastureland.

274. The logging operations on the Babcock land involve the development of mixed-aged forests, which are harvested on a long-rotation basis. As a result of Babcock's progressive practices in this regard, which are also favorable to the preservation of a variety of native habitats and natural resources, Babcock was named Florida's Tree Farmer of the Year in 1987.

275. Agriculture is a highly cyclical business. A farmer commonly needs loans to fund operations during less profitable periods. Residential designations may add to the collateral value of the farmland, which must satisfy the lender's requirements as to loan-to-value ratios. However, the agricultural loan is ultimately predicated upon the determination that the projected income from agricultural operations is sufficient to service the debt. In other words, the residential designation of the land would facilitate the agricultural use of the property only in those theoretical cases in which, even though the projected income is sufficient for repayment, the



agricultural value of the land must be supplemented in order to satisfy applicable loan-to-value requirements.

276. More likely, the designation of agricultural land for low-density residential development encourages the conversion of the agricultural land into an urban-type use. Such a designation often provides the farmer with an opportunity to "cash out" at a greater profit than he would enjoy if the land were sold strictly as farmland. The anticipation of such an opportunity generally hastens the process at which the agricultural land is converted, as long as the supply of residential land does not so greatly outstrip the population growth of the area as to dampen speculative activity.

B. Don Pedro Island Chain

277. Two bridges previously connected the Don Pedro island chain with the mainland. However, they were substandard and were removed at about the time of the construction of the Intracoastal Waterway through Lemon Bay. The prospects of another bridge are remote. The island chain has few paved roads and few motor vehicles.

278. The pass between Don Pedro Island and Little Gasparilla Island closed around 1955 and has remained closed continuously ever since. The pass between Knight Island and Don Pedro Island closed about five or six years later and has remained closed continuously ever since.

279. Palm Island Resort is now zoned as a planned development (PD) with a density of three units per acre (3:1).

Approximately 175 units have already been built. In addition to central water and sewer facilities, Palm Island Resort has installed a drainage system.

280. The land owned by February 24 Trust is now zoned as a PD with a density of three and one-half units per acre (3.5:1). Although served by a road, the property is completely unbuilt.

281. Immediately south of Palm Island Resort is Palm Island Estates, which consists of 175 acres zoned at densities ranging from three and one-half to six units per acre (3.5-6:1). No more than one-half of the approximately 600 lots have been built out. A central water system serves about one-third of the lots.

282. Among the other significant tracts north of the Don Pedro State Park are a 14-acre unplatted parcel zoned at a density of six units per acre (6:1), a 31-acre parcel subdivided into 55 lots but still owned by the developer, and four parcels ranging in size from a 20-lot subdivision to 45 acres, but largely undeveloped.

283. South of the Don Pedro State Park is Little Gasparilla Island, which contains only three unplatted parcels and about 14 platted subdivisions. Radnor/Gasparilla Corporation owns one unplatted parcel, which is a fully built-out condominium complex. P. Wallenberg Development Co., Inc. owns another unplatted parcel, which is roughly 35 acres and contains a condominium complex, but is not completely built out. The third

parcel is about 15 acres. Nearly all of Little Gasparilla Island is zoned at a density of six units per acre (6:1). About 300 dwelling units exist with hundreds of vacant platted lots. The only centralized sewer facility on Little Gasparilla Island serves about 156 units.

284. Although the 1980 Plan would have permitted considerably greater densities for the Don Pedro Island chain, as compared with the zoning in existence at the time of the adoption of the Plan, the densities permitted by the Plan (i.e., existing zoning) would allow at least a doubling of the existing number of dwelling units on the Don Pedro Island chain.

#### C. Urban Sprawl

285. Resulting in most cases from ineffective or no land use planning, urban sprawl is the extension of urban-type development into rural, agricultural, or other undeveloped or sparsely developed lands in a haphazard development pattern in which land uses are not functionally related to each other. Common patterns of the premature land development characteristic of urban sprawl are the ribbon pattern, leapfrog pattern, and concentric circle pattern.

286. In the ribbon pattern, development not functionally or proximately related to other non-urban development in the area extends in ribbons or strips along certain roads and away from urban development.

287. In the leapfrog pattern, development not functionally or proximately related to other non-urban

development in the area leaps from urban development so as to leave significant amounts of rural, agricultural, or other undeveloped or sparsely developed land between the existing urban development and the scattered leapfrog development. The concentric circle pattern is similar except that the development not functionally or proximately related to other non-urban development in the area assumes the pattern of concentric circles, such as along rural roads bypassing an urban area, and is characteristically more exclusively low-density residential.

288. Urban sprawl typically interferes with one or more of four general objectives of effective land use planning: 1) promotion of the efficient use of land in the development of new, and maintenance of existing, viable mixed-use communities; 2) protection of natural resources in rural, agricultural, or other undeveloped or sparsely developed areas; 3) protection of agricultural lands and uses in rural, agricultural, or other undeveloped or sparsely developed areas; and 4) promotion of the efficient provision to both urban and non-urban areas of public facilities and services, such as water, sewer, roads, schools, police, fire, drainage, and other infrastructure, whether provided by public or private entities.

289. Evidence of urban sprawl may therefore be found in Plan provisions affecting any of these four areas, if such provisions are unsupported by the Data and Analysis, inconsistent with other Plan provisions, inconsistent with provisions of the State Plan, or inconsistent with the minimum criteria of the Act

and Chapter 9J-5.

290. The concept of urban sprawl and the goal of urban containment are incorporated into the Plan itself. The first goal of the Future Land Use Element is to promote land uses that are compatible with natural resources, efficiently related to essential public services and facilities, and appropriately mixed to meet the social and economic needs of the community. In addition, the Charlotte Harbor Management Plan, which is incorporated into the Plan, encourages land use changes for vacant platted areas to "discourage urban sprawl." Both of these provisions are set forth in Part VI below.

291. Representatives of Charlotte County have acknowledged that urban sprawl interferes with the attainment of basic objectives of land use planning. Thomas Frame, who is the County Manager, testified that the County did not want a lot of one-acre development in non-urban areas because such development is not "an efficient use of land" and would impede the County in its efforts to protect agricultural areas and natural resources and promote compact development to facilitate the economic delivery of services. Tr., Day 4, Vol. II, p. 236.

292. Mark Gumula, who was the Community Development Director for the County when the Plan was adopted, implicitly acknowledged the same relationship when he testified that development outside the urban service areas would be acceptable if the developer provided all of the services, protected natural resources, and did not interfere with prime agricultural lands.

Tr., Day 1, p. 164. Various provisions of the 1980 Plan also reflect the County's awareness of the adverse relationship between urban sprawl and effective land use planning.

293. Urban sprawl is addressed in the Final Report of the Governor's Task Force on Urban Growth Patterns, issued in June, 1989 (Urban Growth Report). The Urban Growth Report recommends a "comprehensive and bold program for encouraging more concentrated urban growth and for discouraging sprawling urban development patterns in Florida." Accompanying Letter from Task Force to Governor Martinez dated June 30, 1989, page one.

294. The Urban Growth Report finds that urban sprawl jeopardizes the natural environment and agricultural economy, generates single-use development rather than vibrant mixed-use communities, and increases the cost of public facilities and services. Urban Growth Report, pp. 4-6.

295. The Urban Growth Report acknowledges that "consumer self interest and developer and builder profit maximization" often underlie sprawl. These strong market forces result in part from cheaper land prices away from urban areas. Cheaper prices reflect the lesser expense of installing on-site infrastructure on raw land and the utilization of excess rural road capacity. Urban Growth Report, p. 11.

296. In recognition of such strong market forces and the provisions of the State Comprehensive Plan favoring compact urban development, the Urban Growth Report recommends the creation of up to three general land designations. First, "urban

drainage basin." Conservation Element, p. 62. Shell Creek drains about 423 square miles and Prairie Creek drains about 273 square miles, although these areas overlap. Drainage Subelement, p. 14.

193. Telegraph Swamp, which is a 7000-acre cypress swamp running through the land owned by Babcock, is now used for agriculture and hunting. "It represents the largest surface reservoir of freshwater in the County and also provides critical habitat for several endangered species (e.g., bald eagles, wood storks and red cockaded woodpeckers)." Future Land Use Element, p. 17. It supports rookeries for wood storks, great egrets, white ibis, great blue herons, and little blue herons.

194. Long Island Marsh, which is a large sawgrass marsh in the northeast corner of the County, has been converted to agricultural uses. It overlies "the only recharge area located within Charlotte County for the County's intermediate aquifers. The effect of agricultural practices associated with Long Island Marsh on the quality and quantity of groundwater recharge has not been determined." Future Land Use Element, p. 17.

195. The Webb Wildlife Management Area is managed by the Florida Game and Freshwater Fish Commission for hunting, fishing, and general public outdoor use. The Area is characterized by pine flatwoods, wet prairies, and freshwater marshes and sloughs. It provides habitat "critical to the survival of several endangered species." Future Land Use

Element, p. 17.

196. Significant natural resources located on tracts of undeveloped land in the eastern half of the County are in private ownership and have been "maintained, for the most part, in their natural state and function as natural reserves." Future Land Use Element, p. 53. In addition to the Telegraph Swamp and Shell Creek and Prairie Creek Corridor, these tracts include the Peace River Wetlands; Myrtle's Creek or Myrtle's Slough, which is also north of the Webb Wildlife Management Area; Rainey Slough and Jack's Branch, of which the latter appears to run at least in part on Babcock's land; and the Hall Ranch.

197. The Peace River Wetlands comprise wetland marshes and swamps in the upper portion of the Peace River. These wetlands serve as important wildlife habitat and floodplains. The only state-owned lands in the area are three islands: Bird Key, Coon Key, and Long Island.

198. Rainey Slough and Jack's Branch remain in their natural state and provide significant wildlife habitat. Rainey Slough is a freshwater marsh draining northeastern Charlotte County. Jack's Branch is a hardwood swamp in the southeastern corner of the County. Together with Gator Slough, which drains the Webb Wildlife Management area south into Lee County, these are the major flowways in the eastern and southern portions of the County.

199. The Hall Ranch, which is about 5760 acres, includes cypress swamps, flatwoods, and wet prairies. It "would



make a valuable addition to the . . . Webb Wildlife Management Area[,] . . . [which] presently does not have any significant tracts of freshwater swamp habitat." Conservation Element, p. 153. The cypress swamps on the ranch are part of the headwaters of the Telegraph Swamp and would "greatly enhance the diversity of wildlife habitat of the Webb Area." Id.

200. With the exception of the Webb Wildlife Management Area, all of the public acquisition of conservation lands has taken place in the western part of the County. Apart from the federal funds used to purchase the Island Bay National Wildlife Refuge in 1908 and the Webb Wildlife Management Area in 1941, state funds have been used for the acquisition of all conservation lands in Charlotte County.

201. In a recommendation applicable to the entire County, the Data and Analysis note that the County has not purchased any of the environmentally sensitive lands and warn:

The established priorities of these groups [administrators of federal and state land-acquisition programs], and fierce competition for their limited funds, suggest that it would be imprudent to rely solely upon these sources for the acquisition of endangered or biologically significant native habitats in the County. The County should therefore provide a mechanism by which funds may be generated to allow for County acquisition of tracts deemed significant by the County, but not within the realm or jurisdiction of other agencies. It should also consider other means for insuring the preservation of important tracts.

202. Toward this end, the Data and Analysis suggest the use of the following mechanisms in addition to outright

purchase: conservation easements, requirements for open space in native habitats in the case of large developments, tax incentives to encourage private efforts, and cooperative efforts with private conservation entities, such as the Nature Conservancy and the Trust for Public Land. Further, the County should immediately inventory and prioritize those undeveloped lands and then apply for federal or state funding for their acquisition.

c. Special Protection Zones

203. The Coastal High Hazard Zone extends along the entire shoreline of Charlotte Harbor, down the southern tip of the Cape Haze Peninsula, and then up the western shoreline of the peninsula, encompassing the barrier islands.

204. The Hurricane Vulnerability Zone includes all but a small portion of the County west of the Peace River, curves to the east to encompass Washington Loop Road, extends south between Punta Gorda and the County Airport, and runs just east of Burnt Store Road out of the County. The only portion of the eastern part of the County within the Hurricane Vulnerability Zone is north of the Webb Wildlife Management Area near Washington Loop Road.

205. The Coastal Area includes the western part of the County and a significant part of the eastern part of the County. The line runs, from the south, to a point in the center of the Webb Wildlife Management Area, then turns northeast as it encompasses the northwest corner of the Hall Ranch, turns southeast at it crosses County Road 74, turns back to the

northeast, and then the northwest, including about half of the land north of State Road 31 and east of County Road 74.

2. Western Portion of County

a. Urban Service Area

206. As noted above, the primary population concentrations in Charlotte County are in the western half of the County. In recognition of this fact, the Data and Analysis incorporate almost all of the western part of the County into the Urban Service Area.

207. The Urban Service Area is the area in which:

intensive growth is intended to occur . . . [and] where the full range of urban services are either provided or planned to be provided. Services include centralized water and sanitary sewer facilities, drainage systems, a high capacity transportation system, urban police and fire and EMS [Emergency Medical Services] facilities, libraries and recreational facilities.

. . . It is the intent that [Punta Gorda] and the County will focus the provision of the full range of urban services within this area to direct the location of intensive growth. The location of the urban service area is based upon: concentrations of existing development, the availability of infrastructure (e.g., water and sewer) and services, environmental concerns and avoidance of agricultural lands.

Future Land Use Element, p. 72a.

208. The larger Urban Service Area, as depicted on the Future Land Use Map, includes the entire western portion of the County, except for publicly owned land along the shoreline of Charlotte Harbor and the lower Cape Haze Peninsula, as well as islands and wetlands in the Peace River.

209. Running from north to south, the east boundary of the Urban Service Area travels along the line dividing Township 40 South, Range 23 East, from Township 40 South, Range 24 East. It juts about a mile east to capture a development north of Shell Creek and slightly northwest of the Shell Creek reservoir. At the southern point of the dividing line between the two townships, the line runs west one mile, to exclude a development known as Charlotte Ranchettes, which consists of a large number of five-acre tracts. The line then turns south for about seven miles running east of the County Airport and cutting across the eastern end of Alligator Creek to a point near the intersection of the southwest corner of the Webb Wildlife Management Area and U.S. Route 41. At that point, the line runs in a generally northwesterly direction to capture most of the Punta Gorda area.

210. The smaller Urban Service Area includes a separate area of about 2000-2500 acres on the shore of Charlotte Harbor and adjacent to Lee County.

b. Important Natural Resources

i. General

211. Among the natural resources of western Charlotte County is an

extensive estuarine system including a barrier island chain, estuarine bays, tidal creeks, and, most significantly, Charlotte Harbor. The Charlotte Harbor estuary with its two major tributaries, the Myakka and Peace Rivers, is one of the most productive, pristine and unpolluted estuaries in the State.

Conservation Element, p. 17.

212. Most of the County's more open estuarine waters are contained within one of three state aquatic preserves: the Lemon Bay Aquatic Preserve, Cape Haze Aquatic Preserve, and the Gasparilla Sound/Charlotte Harbor Aquatic Preserve.

213. The waters within each of these preserves are largely classified as Outstanding Florida Waters and Class II waters, in which shellfish propagation and harvesting may be permitted. However, nonpoint sources of pollution, which pose the "greatest threat to the quality of surface waters in Charlotte County," threaten at least certain of these estuarine waters, especially the eastern half of Lemon Bay across from Knight Island. Conservation Element, p. 43.

214. The Data and Analysis identify various sources of pollution contributing to the overall degradation of water quality in the Lemon Bay Estuary. The Data and Analysis note bacterial contamination from septic systems and observe that the Don Pedro Island chain is "highly unsuitable for septic systems" due to poorly drained soils. Conservation Element, p. 45.

215. The Data and Analysis also note that some of the older wastewater treatment plants have been built in close proximity to Lemon Bay, including two on the Don Pedro Island chain. Some of the plants have occasionally dumped effluent into the bay.

216. The Lemon Bay Aquatic Preserve is located in Charlotte and Sarasota Counties. It encompasses the south half

of Lemon Bay, as well as Placida Harbor. The Lemon Bay Aquatic Preserve also includes the lower portions of Lemon, Buck, Oyster, Ainger, and Gotfrey Creeks, which are on the mainland and provide natural drainage for a portion of the Cape Haze Peninsula.

217. Noting that all of this land lies within floodplains, the Data and Analysis warn that the development of the remaining vacant land, which is largely platted, must be done "carefully." As to the creek basins, development that is compatible with natural topography and drainage will be "difficult" and offers a "challenge for the creation of new land development practices." Drainage Subelement, p. 30.

218. The Cape Haze Aquatic Preserve is located at the south end of the Cape Haze Peninsula. The preserve includes the east half of Gasparilla Sound, as well as numerous creeks in the peninsula, two small bays, and a number of mangrove islands.

219. The Gasparilla Sound--Charlotte Harbor Aquatic Preserve, which is the largest of the three preserves, constitutes all of Charlotte Harbor below the mouths of the Myakka and Peace Rivers and almost all of the wetlands bordering the preserve. A large portion of the preserve is located in Lee County. Adjoining the preserve is the 15,500-acre Charlotte Harbor State Reserve, which forms a ring of predominantly mangrove wetlands from Lee County up the east shoreline of Charlotte Harbor, across the north shoreline of the harbor, and down the west shoreline of the harbor down to the southern tip of the Cape Haze Peninsula. The Island Bay National Wildlife

Refuge, which is under federal jurisdiction, occupies nearly 20 acres on six tracts on mangrove islands at the southern tip of the Cape Haze Peninsula.

220. Another significant conservation land in the western portion of Charlotte County is the Port Charlotte Recreation Area, which consists of 213 acres primarily on the southern tip of Manasota Key.

221. Using funds from the Save Our Coasts (SOC), Environmentally Endangered Lands (EEL), and Conservation and Recreational Land (CARL) programs, the State of Florida has expended substantial sums of money in recent years to protect important natural resources of western Charlotte County. For example, EEL and CARL funds were used to purchase the Charlotte Harbor State Reserve.

222. Substantial parcels of land are currently proposed or recommended for purchase under CARL as additions to the Charlotte Harbor State Reserve. These additions are especially critical on the Cape Haze Peninsula where the present boundary of the reserve arbitrarily divides tidal flats, leaves many active bald eagle nests outside of the reserve, and creates access problems for patrol and management of the reserve.

ii. Don Pedro Island Chain

223. One of the outstanding natural resources of western Charlotte County is the bridgeless barrier island known as the Don Pedro Island chain. The chain of islands consists of 6.67 miles of beach and 228.2 miles of active dunes, which are

dunes that are actively gaining or losing sand. There are a total of 12.4 miles of beach and 311.7 acres of dunes on the barrier islands within the County.

224. All of the barrier islands, whose highest elevation is about nine feet, are vulnerable to erosion from catastrophic hurricanes and winter weather. Hurricanes are relatively common, occurring one every five years between 1900-1976. Winter and tropical storms occur about twice as frequently.

225. Several factors leave the County's barrier islands especially vulnerable to storm damage. These factors include increased development, sea level rising at the rate of about one foot over the last 100 years, coarse-grained sand that is high in shell contents, and steep beach profiles.

226. The Don Pedro Island chain has been cut by at least five different inlets from 1883-1981. These inlets, which are now all closed, were Bocilla Pass on Knight Island, an unnamed inlet on Knight Island, Blind Pass between Knight and Don Pedro Islands, and Little Gasparilla Pass between Don Pedro and Little Gasparilla Islands. In general, the beach areas within one-half to one mile north and south of the inlets "are the most dynamic of all on barrier islands and must be considered high-hazard zones for any structures." Coastal Management Element, p. 44.

227. The Department of Natural Resources has considered a beach nourishment project for the replacement of



eroded sands along 7230 feet of Knight Island, beginning about 4800 feet south of Stump Pass. Portions of the beach along this stretch are less than 50 feet in width. Within the project area, the total structure value is about \$20.4 million and total land value is about \$11.3 million. Further consideration has been suspended pending resolution of issues involving limited public access and environmental factors.

228. An important public holding on the island chain is Don Pedro State Park, which the state recently acquired under the SOC program. The park consists of about 140 acres of coastal strand, tidal lagoon, and fringing mangrove swamp habitats just north of Little Gasparilla Island. At present, the park is accessible only by boat and is not used very much.

229. The only infrastructure present on the Don Pedro Island chain, in addition to the water treatment and wastewater facilities described above in Paragraphs 148 and 175, respectively, is the Palm Island Station #10 fire station, which is located at the north end of the island chain.

#### c. Special Protection Zones

230. All of the barrier islands are in the Coastal High Hazard Area. As noted above, almost the entire remainder of the County west of the Peace River is in the Hurricane Vulnerability Zone, which is also the 100-year hurricane flood zone.

231. The Data and Analysis state:

The Coastal High Hazard Area identifies areas in which development should be limited and existing

infrastructure should be relocated to minimize the threat of natural disasters to human life and property.

Coastal Management Element, p. 22.

232. In dealing with land uses within the Coastal High Hazard Area, the Data and Analysis recognize a "basic perceived conflict between the duty of government to protect the health, safety, and welfare of its citizens and the rights of property owners to the use and disposition of their property." Coastal Management Element, p. 85.

233. The Data and Analysis suggest that "perhaps the best way" to resolve this conflict is for "government to acquire properties deemed as having high hazards with regard to hurricane flooding." Id.

234. Three factors contribute to the hazards to which specific properties are exposed during a hurricane. The first factor is proximity to large bodies of water; those areas within 150 feet of water will suffer the greatest damage. The second factor, which is vital to the barrier island chain, is the proximity to shifting channels. The third factor is the elevation because lower elevations may receive localized surges not experienced by higher elevations.

235. The Data and Analysis recommend that government first acquire land adjacent to existing passes and channels. The Data and Analysis recommend that government last acquire land adjacent to shoreline because of the large amount of such land and the presence of many water-dependent uses.

236. Recognizing the obvious exposure of the water and sewer systems to damage from a hurricane or other major storm, the Data and Analysis recommend that the best approach is to replace existing systems with regional systems.

237. Infrastructure tends to be assembled in proximity to the populations served. To mitigate hurricane damage, it is therefore necessary to incorporate disaster-preparedness considerations into land use planning. The Data and Analysis recommend that the following uses be directed away from hazardous areas: moderate- to high-density residential, population-related intense commercial development, most forms of industrial development, and population-related institutional uses (e.g., schools) and utility development. Uses to be encouraged in such areas would include water-dependent commercial, industrial, and tourist development, recreation, agriculture, and estate housing.

238. The Data and Analysis recommend that fiscal policies be structured to discourage the development of high-hazard areas. Among the needs for indirect infrastructure are off-site shelters and roadways, which are imperative for the evacuation of the area.

239. In the case of Charlotte County, the need for shelters is pressing. The County has sufficient shelter space to accommodate about 3.5% to 4% of the evacuees from a Category 2-5 storm. Also, the roads serving the evacuees from the Don Pedro Island chain are two-laned and require the use of State Road 776 in order to cross the Myakka River, which is heavily travelled.

#### IV. 1980 Plan and Evaluation and Appraisal Report

##### A. Background

240. Pursuant to the 1975 Local Government Comprehensive Planning Act, Charlotte County adopted by ordinance on November 20, 1979, effective July 1, 1980, a Comprehensive Land Use Management Plan, which consists of two volumes (1980 Plan). Portions of the Plan contain evaluations and appraisals of the 1980 Plan. The evaluation and appraisal report (EAR) is contained in the Executive Summary at the beginning of each element of the Plan.

##### B. Future Land Use

###### 1. 1980 Plan

241. The Land Use Management Element, which is the first element of the 1980 Plan, states as its first objective:

Encourage development into urban areas where sewer, water, transportation and other urban services are available and economically feasible.

1980 Plan, p. 2.

242. The Land Use Management Element recognizes in two other objectives the importance of mixed-use development, as it applies to commercial land use:

Encourage the development of commercial facilities (e.g. neighborhood commercial districts) that are compatible with adjacent residential areas based on proper zoning, urban design principles, and careful review of proposed developments.

Promote a distribution of commercial shopping centers throughout the planning area in order to avoid unnecessary travel and traffic congestion.

1980 Plan, p. 3.

243. The Land Use Management Element also acknowledges the importance of reserving land for industrial use:

Identify and encourage the setting aside of adequate quantities of land with industrial potential to meet the future needs of industry.

Id.

244. The Land Use Management Element cites the relationship of transportation to land use planning:

Encourage land use planning that would create density clusters which would support the establishment and economical operation of mass transit facilities under private and/or government ownership.

1980 Plan, p. 4.

245. In the discussion following these and other objectives, the Land Use Management Element states:

One of the major problems within the planning area is the scattered residential development in many of the older and new subdivisions in the County. The major developments will account for new patterns of growth.

As is always the case when development is scattered throughout a county, fire and police protection, school bus services and many other required services must be undertaken at greater cost when expansion is necessary in order to accommodate these particular patterns of development. More intense and cohesive development facilitates less expensive expansion of public services and utilities.

It is not anticipated that all new development will occur within the existing patterns of residential development in Charlotte County. The recently announced development . . . will have the effect of scattering the existing development patterns.

1980 Plan, p. 14.

246. The Land Use Management Element describes the "general goal of the Land Use Plan" as the creation of an urban area having a distinctive lifestyle and a

physical form that reflects and takes advantage of the unique natural resources of the area.

1980 Plan, p. 67.

247. The Land Use Management Element establishes three ranges of density in residential areas. Low density ranges from 1-5 units per acre (1-5:1). Medium density ranges from 6-10 units per acre (6-10:1). High density ranges from 11-15 units per acre (11-15:1).

248. As to nonurban areas, the Land Use Management Element establishes two classifications of agricultural lands. Agriculture I lands permit a maximum residential density of one unit per acre (1:1). Agriculture II lands permit a maximum residential density of one unit per ten acres (1:10). As to the latter classification, the Land Use Management Element warned:

Lands that are identified in this classification are generally associated closely with environmentally sensitive lands. They contribute to the ecological value of preservation lands and are complex environments. They are seasonal wetlands and may sustain only limited or restricted alteration. Development in Agriculture II lands must be carefully planned to ensure the continued, long term functioning of the natural hydrologic and ecological systems. The natural water regime should be maintained or improved.

1980 Plan, p. 74.

249. The Agriculture II category encompasses the eastern six townships, the Hall Ranch, and Township 40 South, Range 25 East, which is north of the Hall Ranch and the Webb Wildlife Management Area. The area directly south of the Webb Wildlife Management Area and east of what is now Interstate 75 was predominantly Agriculture I. The record does not disclose

the land use designation of land to the west of these areas.

250. The Land Use Management Element also provides a Planned Unit Development District, which could be overlaid anywhere in the County. As to nonurban lands generally, the Land Use Management Element warns developers of fringe areas that water and sewer facilities might not be available in the short-term future and recommends that developers should be required to furnish a bond for such facilities for the protection of future residents of the area.

251. In dealing with the coastal zone of the County, which was defined as that land within the 100-year floodplain, the Ecological Principles of the Coastal Zone Element of the 1980 Plan consider two issues concerning future land use.

252. First, recognizing that land is a nonrenewable resource that, once built upon, "is usually permanently committed to that use," the first objective under Ecological Principles is to balance supply and demand for natural resources. The underlying policy is to "encourage the early purchase or other forms of preservation of needed recreation and open space in the coastal zone." 1980 Plan, p. 101.

253. Second, under the same objective, the 1980 Plan identifies the need to "control the speed at which [growth] spreads." Among the recommended actions is a study of "the unique situation of thousands of platted lots unbuilt upon." 1980 Plan, p. 105.

2. EAR

254. After noting several of the above-described objectives of the 1980 Plan, the EAR in the Plan observes: "Control of growth within areas of Charlotte County that have the full range of urban services is very difficult because of the extensive 'platted' (and pre-sold) land problem within the County." Future Land Use Element, second unnumbered page. The EAR asserts that this problem is addressed by Plan provisions establishing an urban service area and concentrating urban services within such area.

C. Water and Sewer

1. 1980 Plan

255. The Land Use Management Element establishes several objectives concerning potable water and sewer, including objectives to

Encourage centralized sewage treatment plants and collection systems under private and/or public ownership for efficiency and better control of pollution . . . .

Encourage the development of centralized water systems in order to replace individual wells and small scale systems in urban areas as soon as economic feasibility is determined.

Encourage use of septic tanks only in areas which exhibit adequate soil and hydrological requirements.

1980 Plan, p. 5.

2. EAR

256. After noting several of the above-described objectives, the EAR recognizes that issues remain unresolved



concerning the "extension of water and sewer and . . . on-site sewage disposal systems." Water and Sewer Subelement, third unnumbered page. Noting that a 3 Municipal Service Taxing Unit (MSTU) study is to commence next year, the EAR states that issues still needing to be addressed include the maintenance or expansion of public/private water and sewer systems. Objectives of the 1980 Plan will be achieved by the Plan through the:

promotion of compact, economically efficient development through judicious extension of water and sewer lines, County facilitation in the extension of centralized sewer and water facilities, and general phasing out of septic tanks . . .

Water and Sewer Subelement, third unnumbered page.

D. Drainage

1. 1980 Plan

257. The Land Use Management Element includes an objective to

Encourage the establishment and maintenance of a drainage control program in order to manage storm water runoff and minimize flood hazard, erosion, and reduce water pollution.

1980 Plan, p. 6.

258. The Land Use Management Element divides drainage improvements into two categories. Drainage improvements to uplands may cause nonpoint pollution and reduced groundwater recharge. Drainage improvements to seasonally wet lands involve consequences that vary in magnitude in proportion to the length of time that the land is under water. Drainage improvements to seasonally wet lands "should not be permitted . . . without full

knowledge and understanding of the probable environmental impact." 1980 Plan, p. 53.

259. Under the category of Surface Water within the Coastal Zone Element, the 1980 Plan states that

rapid elimination of storm water runoff is a common practice in Charlotte County. . . . Yet, drainage, by encouraging fast runoff[,] contributes to pollution of the estuary. Slow movement of water over large areas provides an opportunity for natural, physical and chemical process to "cleanse" the water[,] but fast movement in channels conveys the pollution directly to the bay. In addition, fast storm water drainage also reduces the time available for natural seepage and recharge of the critical subsurface aquifers.

260. As a consequence, the 1980 Plan includes a policy to "encourage maximum retention of storm water runoff and to discourage rapid drainage as a technique of land development" and a policy to "encourage the development of a countywide stormwater runoff management plan to include flow regulation, and practices for reducing pollution loads." 1980 Plan, p. 114. The 1980 Plan also recommends the preparation of a "drainage management plan" to provide a means to evaluate proposals to alter drainage. Id. at p. 115.

## 2. EAR

261. Noting the above-described objectives, the EAR states that the County has a stormwater ordinance that provides "significant control" in the design of new facilities. The EAR cites swales and detention areas as "significant strides in protecting the quality of the County's surface water." The County also has established several drainage Municipal Service

Taxing Units. However, the County has yet to prepare an overall drainage study, which is a "major policy" under the Plan.

E. Coastal Management

1. 1980 Plan

262. The Coastal Zone Element of the 1980 Plan contains several goals, objectives, and policies. Under the objective seeking to "maintain or improve long-range prospects for continued maximum yield of fish species and shellfish," the Coastal Zone Element acknowledges that: "Water pollution from surface run-off and septic tank seepage degrades estuarine waters and damages marine life." 1980 Plan, p. 90. The 1980 Plan recommends "continued study" of the "causes and remedies of water degradation in the Lemon Bay and Charlotte Harbor" waterbodies. Id. at p. 91.

263. Under the objective to preserve important coastal marshes and mangrove systems, the Coastal Zone Element recognizes the "extraordinary success" of purchases by the state of miles of fringe mangroves. In order to complement these state efforts, the 1980 Plan recommended that, if feasible, the local government assist in the preservation of privately owned mangroves and related lands by employing economic incentives, such as tax relief, transfer of development rights, and public purchases of easements.

2. EAR

264. The Coastal Management Element of the Plan contains no EAR.

F. Conservation of Natural Resources

1. 1980 Plan

265. Under the Conservation of Natural Resources Element of the 1980 Plan, the Plants category contains an objective to protect and maintain the native vegetation of the County. Policies included in this category require the identification and protection of vegetative associations that are of unique botanical value or critical to the protection of threatened animal species.

266. Recognizing the threat of urban growth to wildlife habitat, the Wildlife category of the Conservation of Natural Resources Element includes a policy to "encourage the preservation of wildlife habitat within areas of urban expansion." 1980 Plan, p. 128.

2. EAR

267. The Conservation and Natural Resources Element of the Plan contains no EAR.

V. Additional Findings

A. Eastern Part of County

268. The severe and very severe soil ratings applicable to nearly all of the soils of the County are generally the result of poor drainage. In the eastern half of the County, the water table is within 10 inches of the surface for the majority of soils for two to four months during the year.

269. There are no prime farm lands in Charlotte County. Such land is level or nearly level, deep, and well-

drained. It has high water-holding capacity and high natural fertility. No prime farm land is found in Florida south of Hernando County.

270. Although various portions of the County contain "unique" farm land, the label is somewhat misleading. Unique farm land resembles prime farm land except that it lacks one of the above-described characteristics and is used to grow certain crops, such as citrus, deemed unique by the United States Department of Agriculture, Soil Conservation Service.

271. However, little of the land in Charlotte County is well-suited for more intensive agricultural practices, like the cultivation of vegetable crops or citrus. Citrus has moved into the County due to the freezes of Christmas 1983 and January 1985 rather than the suitability of the soil. Vegetable farming remains a risky practice. In the case of the Babcock land, for instance, the only vegetable farming is done by tenants. Although the usual factors such as weather and market conditions at the harvest of perishable commodities are important risk factors, the poor quality of the soil in the County contributes significantly to the risk involved in vegetable farming in the area. The local soils require so much energy that vegetable farming resembles a hydroponic operation with the naturally occurring soil providing structural rather than nutritional support.

272. Babcock now uses much of its land for the production of timber and cattle, which are generally low-

intensive practices. The land, which was assembled in 1914, was used predominantly for logging in the 1920's and 1930's.

273. Cattle ranching became an important activity in the mid-1930's. Due to the inability of the land to support corn or other feed, cattle ranching on the Babcock lands, as well as elsewhere in the County, is primarily a cow/calf operation. About 80% of the calves are sold out-of-state so that they can be fattened on richer pastureland.

274. The logging operations on the Babcock land involve the development of mixed-aged forests, which are harvested on a long-rotation basis. As a result of Babcock's progressive practices in this regard, which are also favorable to the preservation of a variety of native habitats and natural resources, Babcock was named Florida's Tree Farmer of the Year in 1987.

275. Agriculture is a highly cyclical business. A farmer commonly needs loans to fund operations during less profitable periods. Residential designations may add to the collateral value of the farmland, which must satisfy the lender's requirements as to loan-to-value ratios. However, the agricultural loan is ultimately predicated upon the determination that the projected income from agricultural operations is sufficient to service the debt. In other words, the residential designation of the land would facilitate the agricultural use of the property only in those theoretical cases in which, even though the projected income is sufficient for repayment, the

agricultural value of the land must be supplemented in order to satisfy applicable loan-to-value requirements.

276. More likely, the designation of agricultural land for low-density residential development encourages the conversion of the agricultural land into an urban-type use. Such a designation often provides the farmer with an opportunity to "cash out" at a greater profit than he would enjoy if the land were sold strictly as farmland. The anticipation of such an opportunity generally hastens the process at which the agricultural land is converted, as long as the supply of residential land does not so greatly outstrip the population growth of the area as to dampen speculative activity.

B. Don Pedro Island Chain

277. Two bridges previously connected the Don Pedro island chain with the mainland. However, they were substandard and were removed at about the time of the construction of the Intracoastal Waterway through Lemon Bay. The prospects of another bridge are remote. The island chain has few paved roads and few motor vehicles.

278. The pass between Don Pedro Island and Little Gasparilla Island closed around 1955 and has remained closed continuously ever since. The pass between Knight Island and Don Pedro Island closed about five or six years later and has remained closed continuously ever since.

279. Palm Island Resort is now zoned as a planned development (PD) with a density of three units per acre (3:1).

Approximately 175 units have already been built. In addition to central water and sewer facilities, Palm Island Resort has installed a drainage system.

280. The land owned by February 24 Trust is now zoned as a PD with a density of three and one-half units per acre (3.5:1). Although served by a road, the property is completely unbuilt.

281. Immediately south of Palm Island Resort is Palm Island Estates, which consists of 175 acres zoned at densities ranging from three and one-half to six units per acre (3.5-6:1). No more than one-half of the approximately 600 lots have been built out. A central water system serves about one-third of the lots.

282. Among the other significant tracts north of the Don Pedro State Park are a 14-acre unplatted parcel zoned at a density of six units per acre (6:1), a 31-acre parcel subdivided into 55 lots but still owned by the developer, and four parcels ranging in size from a 20-lot subdivision to 45 acres, but largely undeveloped.

283. South of the Don Pedro State Park is Little Gasparilla Island, which contains only three unplatted parcels and about 14 platted subdivisions. Radnor/Gasparilla Corporation owns one unplatted parcel, which is a fully built-out condominium complex. P. Wallenberg Development Co., Inc. owns another unplatted parcel, which is roughly 35 acres and contains a condominium complex, but is not completely built out. The third



parcel is about 15 acres. Nearly all of Little Gasparilla Island is zoned at a density of six units per acre (6:1). About 300 dwelling units exist with hundreds of vacant platted lots. The only centralized sewer facility on Little Gasparilla Island serves about 156 units.

284. Although the 1980 Plan would have permitted considerably greater densities for the Don Pedro Island chain, as compared with the zoning in existence at the time of the adoption of the Plan, the densities permitted by the Plan (i.e., existing zoning) would allow at least a doubling of the existing number of dwelling units on the Don Pedro Island chain.

C. Urban Sprawl

285. Resulting in most cases from ineffective or no land use planning, urban sprawl is the extension of urban-type development into rural, agricultural, or other undeveloped or sparsely developed lands in a haphazard development pattern in which land uses are not functionally related to each other. Common patterns of the premature land development characteristic of urban sprawl are the ribbon pattern, leapfrog pattern, and concentric circle pattern.

286. In the ribbon pattern, development not functionally or proximately related to other non-urban development in the area extends in ribbons or strips along certain roads and away from urban development.

287. In the leapfrog pattern, development not functionally or proximately related to other non-urban

development in the area leaps from urban development so as to leave significant amounts of rural, agricultural, or other undeveloped or sparsely developed land between the existing urban development and the scattered leapfrog development. The concentric circle pattern is similar except that the development not functionally or proximately related to other non-urban development in the area assumes the pattern of concentric circles, such as along rural roads bypassing an urban area, and is characteristically more exclusively low-density residential.

288. Urban sprawl typically interferes with one or more of four general objectives of effective land use planning: 1) promotion of the efficient use of land in the development of new, and maintenance of existing, viable mixed-use communities; 2) protection of natural resources in rural, agricultural, or other undeveloped or sparsely developed areas; 3) protection of agricultural lands and uses in rural, agricultural, or other undeveloped or sparsely developed areas; and 4) promotion of the efficient provision to both urban and non-urban areas of public facilities and services, such as water, sewer, roads, schools, police, fire, drainage, and other infrastructure, whether provided by public or private entities.

289. Evidence of urban sprawl may therefore be found in Plan provisions affecting any of these four areas, if such provisions are unsupported by the Data and Analysis, inconsistent with other Plan provisions, inconsistent with provisions of the State Plan, or inconsistent with the minimum criteria of the Act

and Chapter 9J-5.

290. The concept of urban sprawl and the goal of urban containment are incorporated into the Plan itself. The first goal of the Future Land Use Element is to promote land uses that are compatible with natural resources, efficiently related to essential public services and facilities, and appropriately mixed to meet the social and economic needs of the community. In addition, the Charlotte Harbor Management Plan, which is incorporated into the Plan, encourages land use changes for vacant platted areas to "discourage urban sprawl." Both of these provisions are set forth in Part VI below.

291. Representatives of Charlotte County have acknowledged that urban sprawl interferes with the attainment of basic objectives of land use planning. Thomas Frame, who is the County Manager, testified that the County did not want a lot of one-acre development in non-urban areas because such development is not "an efficient use of land" and would impede the County in its efforts to protect agricultural areas and natural resources and promote compact development to facilitate the economic delivery of services. Tr., Day 4, Vol. II, p. 236.

292. Mark Gumula, who was the Community Development Director for the County when the Plan was adopted, implicitly acknowledged the same relationship when he testified that development outside the urban service areas would be acceptable if the developer provided all of the services, protected natural resources, and did not interfere with prime agricultural lands.

Tr., Day 1, p. 164. Various provisions of the 1980 Plan also reflect the County's awareness of the adverse relationship between urban sprawl and effective land use planning.

293. Urban sprawl is addressed in the Final Report of the Governor's Task Force on Urban Growth Patterns, issued in June, 1989 (Urban Growth Report). The Urban Growth Report recommends a "comprehensive and bold program for encouraging more concentrated urban growth and for discouraging sprawling urban development patterns in Florida." Accompanying Letter from Task Force to Governor Martinez dated June 30, 1989, page one.

294. The Urban Growth Report finds that urban sprawl jeopardizes the natural environment and agricultural economy, generates single-use development rather than vibrant mixed-use communities, and increases the cost of public facilities and services. Urban Growth Report, pp. 4-6.

295. The Urban Growth Report acknowledges that "consumer self interest and developer and builder profit maximization" often underlie sprawl. These strong market forces result in part from cheaper land prices away from urban areas. Cheaper prices reflect the lesser expense of installing on-site infrastructure on raw land and the utilization of excess rural road capacity. Urban Growth Report, p. 11.

296. In recognition of such strong market forces and the provisions of the State Comprehensive Plan favoring compact urban development, the Urban Growth Report recommends the creation of up to three general land designations. First, "urban

service areas" will "receive concentrated, mixed-use development" and the local government's commitment for new or expanded infrastructure. Urban Growth Report, pp. 12-13.

297. Where appropriate, "urban expansion areas" will absorb growth that cannot be accommodated by the urban service area. Development in the urban expansion area must provide or pay for the "full marginal cost of all onsite and offsite infrastructure necessitated by the development . . . ." Urban Growth Report, p. 13. The Report cautions against developing urban expansion areas entirely at low densities that preclude later development or redevelopment at urban densities when the urban service area expands. Id. Urban expansion areas should receive compact urban development, such as through the establishment of multiple urban service areas for "regional activity centers and distinct, compact, mixed-use urban village and communities." Id.

298. Remaining land "should be designated as rural areas with greenbelt or very large lot residential zoning, e.g., 1 unit per 40 acres." Urban Growth Report, p. 13. Clustered urban-type development involving, for instance, neighborhood commercial or semi-rural residential might be included in appropriate areas, such as intersections, outside of the urban service and urban expansion areas.

299. Recommendation #4 of the Urban Growth Report identifies several incentives available for the successful promotion of compact urban development patterns. Among the

incentives are: 1) allowing increased floor area ratios in exchange for the inclusion of residential or daycare facilities in downtown projects; 2) adopting flexible zoning classifications encouraging mixed-use development; 3) designating urban service areas as receiving zones for programs involving the transfer of development rights; and 4) making firm public commitments (e.g., scheduling projects and identifying revenues) in the capital improvements program to provide infrastructure capacity.

300. The discussion accompanying Recommendation #7 links urban sprawl to state policies permitting small-scale wastewater treatment facilities, septic tanks, and individual potable water wells. Expressly disregarding the "environmental considerations associated with these systems," the discussion notes that reliance upon such privately provided facilities and services has "clearly supported low density, sprawling development patterns," thereby undercutting the role of "public investment decisions to guide and manage urban growth patterns." Urban Growth Report, p. 19. In the case of septic tank permits, the discussion and recommendation caution the local government and landowner not to rely upon the issuance of a permit by the Department of Health and Rehabilitative Services as indicative that the permit is consistent under the local comprehensive plan or land development regulations, which, by implication, may well address larger considerations in order to combat urban sprawl.

301. Historically in Charlotte County, the use of

septic tanks has facilitated development. The unavailability of centralized sewer in a given area has not discouraged development. To the contrary, the imminent availability of centralized sewer causes a proliferation of septic tanks in the County because landowners rush to acquire septic tank permits.

302. The density of one unit per acre (1:1) permitted throughout the Agriculture I area and in planned developments within the Agriculture II area will spread, according to the testimony of the County Administrator, a "tremendous amount of development over a great area," which will lead to a proliferation of individual wells and septic tanks. Tr., Day 4, Vol. II, p. 236-237.

#### VI. Goals, Objectives, and Policies of the Plan

##### A. Future Land Use Element

303. The first goal is:

To develop Charlotte County . . . in a manner which promotes: (1) compatibility between land use activities and with natural resources; (2) an efficient relationship between land development and the provision of essential public facilities and services; (3) an appropriate mix of land uses to provide and to meet the social and economic needs of the community.

304. Objective 1 of the Future Land Use Element requires local government to respect private property rights in land and not take private property without just compensation.

305. Objective 2 of the Future Land Use Element states:

Intensive land development activity should be directed into those areas designated as the urban service areas and away from non-urban service areas, provided that there should be no increase in allowable residential

density on barrier islands above existing zoning.

(Underlined text indicates additions to the proposed plan, and stricken-through text indicates deletions from the proposed plan. However, in most cases, references to Plan provisions will not expressly note such changes.)

306. Policy 2.1 recommends that land use decisions and public facilities planning "should be consistent" with Objective 8 of the Coastal Management Element, which generally limits public expenditures in, and directs populations away from, coastal high-hazard areas.

307. Policy 2.2 provides that land development regulations shall be adopted within the time provided by law to:

a. Encourage infill development through provisions which allow techniques such as Transfer of Development Rights (allowing density or intensity bonuses for development in selected areas) and use of flexible zoning provisions such as Planned Development Zones and Mixed Use Zones.

b. Require development to demonstrate the availability of adequate facilities to maintain adopted levels of service standards. . . .

c. Changes to the Future Land Use Map or change to the Zoning Map to allow increased density/intensity of development shall require the determination of the availability of adequate facilities to maintain adopted levels of service standards. Areas outside of the Urban Service area are presumed not to have the full range of urban services.

d. Encourage new development within the non-urban service areas to be low density/low intensity land uses (i.e., rural commercial, rural industrial, low-density residential estate lot sizes, agricultural[]).

e. Facilitate the creation and use of Urban Redevelopment Areas within appropriate areas of the County.



308. Policy 2.3 provides:

When determining capital improvement projects to be included in the Capital Improvements Element, priority considerations shall be given to those projects needed to meet existing deficiencies or projected needs within rapidly developing areas in the designated urban service areas.

309. Policy 2.4 promises land development regulations to "appropriate[ly] protect . . ." lands designated as preservation, conservation, and special surface water protection areas on the Future Land Use Map and Conservation Element; "regulate" areas subject to flooding and "provide" for drainage and stormwater management; "protect" potable water wellfields and aquifer recharge areas; and prohibit the issuance of development orders and permits if they result in a reduction of levels of service below the levels of service adopted in the Plan.

310. Objective 4 of the Future Land Use Element incorporates by reference the Charlotte Harbor Management Plan, which consists of 15 objectives and numerous "implementation actions," which resemble policies. The Charlotte Harbor Management Plan and its implementation are expressly subject to applicable vested property rights.

311. Objective 4 of the Charlotte Harbor Management Plan states that "future development in floodplain areas is to occur only in a manner consistent with the function of floodplains."

312. Objective 5 of the Charlotte Harbor Management Plan deals with stormwater runoff and drainage. Finding that "continued development of stormwater/drainage systems which alter the rate and hydroperiod of runoff may adversely impact estuarine productivity," Policy a. requires local governments to "adopt a master stormwater/drainage management plan and require future development to be consistent with this plan." Policy b. requires local governments to establish plans and regulations to require that post-development runoff conditions approximate the natural surface water flow in terms of "rate, quality, hydroperiod, and basin."

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 focusses 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 areas to protect those environmentally sensitive and to assist in the provision of governmental services, to discourage urban sprawl and to protect agricultural lands.

c. Local Government/DOT: Highway corridor planning for undeveloped areas shall consider suitability of adjacent land for urbanization and construction away from environmentally sensitive lands.

d. Legislature: Explore ways to encourage voluntary reassembly by development of platted and sold subdivisions where environmental or other public benefits could result from a redesign of such subdivisions.

318. Objective 14 of the Charlotte Harbor Management Plan relates to the coastal floodplain. The four policies directed toward local governments include the preparation and implementation of an evacuation plan, management of growth so that persons living in areas subject to tidal flooding may evacuate and find shelter, location of structures subject to tidal flooding as far from tidal waters as practicable, and discouragement of new development of non-water dependent uses within the high hazard flood zones.

319. Policy 5.6 of the Plan requires that the land development regulations to be adopted shall provide for

Neighborhood Commercial Centers, which are designed to meet the shopping needs of "immediately surrounding residents [and] reduce the need to travel . . . ."

320. Objective 6 of the Future Land Use Element states:

Encourage appropriately located industrial development compatible with environmental and economic resources and surrounding land uses through the designation of sufficient land for industrial uses at appropriate locations.

321. Policy 6.3 restricts the location of new industrial development in those areas designated as Industrial on the Future Land Use Map or areas designated mixed use or Planned Development with approved industrial uses.

322. Policy 6.4 provides for land development regulations to locate research/industrial parks adjacent to or near high-intensity residential uses, provided certain compatibility requirements are met.

323. Objective 6a recommends that land most appropriately and advantageously used for industrial purposes should be identified and reserved for industrial use.

324. Objective 7 states that the County should "protect environmentally sensitive lands in accordance with the Conservation and Coastal Management Elements through implementation of the Land Use Plan."

325. Policy 7.1 promises land development regulations to require site plan review for new development in areas designated as Special Surface Water Protection Districts with

provisions for standards, variance procedures, and development procedures.

326. Policy 7.2 provides that no new development shall occur in areas designated as Preservation Lands, except as may be provided by land development regulations.

327. Policy 7.4 also refers to activity that the County intends to take place following adoption of the Plan. By January 1, 1990, the County will identify for inclusion on a Conservation Overlay

environmentally sensitive areas characterized by coastal wetlands, riverine floodplains, transitional wetlands, sloughs, marshes, cypress strands and hardwood swamps that serve as major flowways, large isolated wetland systems, and linkage or corridor areas, [as well as] significant tracts of scrub habitat characterized by the presence of one or more of three scrub oak species [names omitted] and fragile and vulnerable segments of the barrier island chain.

Policy 7.4 promises land development regulations to provide standards, criteria, and procedures for the review of development and redevelopment "to minimize the impact of such development on natural resources within these [Conservation] areas."

Recommended means of minimizing impacts include limited land use intensity on upland buffers, transfer of development rights, conservation easements, tax incentives, creative site planning upon platting and replatting, and public purchase.

328. Objective 8 calls for population densities within the Category 3 Hurricane Vulnerability Zone to be consistent with County and regional hurricane evacuation plans, taking into account hurricane evacuation and shelter capacity.

329. Policy 8.2 provides for the County to "encourage" reductions in densities for undeveloped platted areas within the Category 1 hurricane vulnerability zone by the transfer of development rights and public acquisition of platted property.

330. Policy 8.4 promises that the County will "evaluate inclusion of provisions within the Land Development Regulations to be adopted by July 1, 1989, of requirements that new residential development provide on-site, or equivalent off-site shelter facilities" outside Categories 1 and 2 storm zones, when "it is determined" that the evacuation roads or shelter facilities are inadequate. The policy also promises, by an unidentified date, the evaluation and, if appropriate, implementation of impact fees to provide hurricane shelters.

331. Objective 9 states:

Encourage the effective use of innovative land development regulations such as planned developments and other mixed use techniques to promote the following:

--Flexibility and efficiency in site design to reduce infrastructure costs, improve interior circulation patterns, and promote open space.

--Development that is adapted to natural features including wetlands, trees and other vegetation and habitat, and which avoids disruption of natural drainage patterns.

--A mix of land uses to promote convenience in the location of related uses and amenities and to reduce travel costs.

--Economy of development to

encourage the provision of low and moderate cost housing.

332. Policy 9.1 permits subsequent land development regulations to include Planned Developments anywhere in the County, provided the development is "consistent with the goals, objectives and policies of the [P]lan, generally consistent with the Land Use Plan Element, and [sic] the standards and criteria in the [Planned Development] section of the Land Development Regulations."

333. Policy 9.2 provides criteria to be included in the land development regulations. These criteria include the preservation of natural features through clustering, internal compatibility within the Planned Development, external compatibility between the Planned Development and other development within the vicinity of the Planned Development, and consistency with all adopted level of service standards.

334. Policy 9.4 provides that land development regulations will allow density bonuses for certain Planned Developments. The opaque language of the policy appears to establish conditions under which densities within Planned Developments could exceed those established elsewhere in the Plan.

335. Objective 13 is the last and most important objective of the Future Land Use Element. This objective incorporates the Future Land Use Map and describes the land use designations. It also states that land development regulations



shall regulate the use of land "in accordance with the Future Land Use Map" and the following categories of land use.

336. Agricultural lands are "intended to be used predominantly for cultivation of crops and livestock. The two subcategories are Agriculture I and Agriculture II. In the proposed plan, all agricultural lands were in one category, which provided a maximum density of one unit per acre (1:1).

337. Agriculture I lands

are set aside for small agricultural land uses (e.g., cultivation of ornamentals, horticulture, nurseries) and low density residential uses at a density not exceeding one dwelling unit per acre.

Agriculture I lands may be outside the fringes of the Urban Service Area serving as a transitional district between Residential Estate and Agriculture II areas, and as low density limited use areas within the urban service area.

338. Agriculture II lands

are set aside for continuance of agricultural use (e.g., raising and keeping livestock, citrus, groves, vegetable crops, timber production) compatible recreational uses and rural residential living outside of the urban service areas.

The maximum residential density shall be in a range from one dwelling unit per five acres to one dwelling unit per ten acres, except as otherwise provided in Planned Development (PD) Zones which may be allowed within this land use category.

Within areas zoned PD the gross residential density shall be one dwelling unit per acre provided the development meets the following criteria:

The PD shall not significantly adversely affect natural resources, surrounding agricultural uses, nor significantly adversely impact public services and facilities. Developer shall provide all necessary infrastructure for the PD. The residential densities should be clustered if provided in the PD zone. The development must meet all other PD criteria contained

within the Land Development Regulations.

339. Agriculture/Conservation lands "may be used for certain limited agricultural uses carried on in a way that would be compatible with the conservation or protection of certain natural resources within these areas." These areas contain wetland systems, such as marshes, sloughs, swamps, and associated upland buffers. Permitted uses include long-rotation timber management in naturally forested areas, native range pastureland, and carefully improved pastureland in pine flatwoods and wet prairies, as well as "sparse development not exceeding one unit per ten acres."

340. Residential classifications include Residential Estates, for which the density range is one unit per five acres (1:5) to two units per acre (2:1); Low Density, for which the density range is one unit per acre (1:1) to five units per acre (5:1); Medium Density, for which the density range is over five units per acre (5:1) to ten units per acre (10:1); High Density, for which the density range is over ten units per acre (10:1) to fifteen units per acre (15:1); PD--High Density, for which the density range is over fifteen units per acre (15:1) to thirty units per acre (30:1); and Mobile Home, for which the density ranges from five units per acre (5:1) to eight units per acre (8:1). Each PD--High Density requires an amendment to the Future Land Use Map, and no PD--High Density may be located on the barrier islands, the Category 1 hurricane vulnerability zone, or anywhere lacking sufficient infrastructure exists to support such

densities.

341. Preservation areas have "significant ecological value and/or wildlife and vegetative habitats." No new development is permitted within such areas, "except as may be provided within the Land Development Regulations." Limited Development areas are closely associated with preservation or conservation land. Development within these areas should ensure the "long term functioning of the natural hydrologic and ecologic systems." The land development regulations will specify development standards for these areas.

342. There are two overlays. The Town Center is applied to towns within the Urban Service Area. The Special Surface Water Protection District is applied to land bordering surface waters with special economic or ecologic significance, including sources of potable water and wetland habitats. "[A]ny development within these areas should be carried out according to the standards, criteria and procedures to be included in the Land Development Regulations [described] in Policies 7.1 above and 2.1 of the Conservation Element."

#### B. Future Land Use Map

343. The Future Land Use Map depicts which parts of the County are assigned to each of the land use categories (except Conservation) and two overlays. A critical component of the Plan, the Future Land Use Map provides the graphic representation necessary for the determination of the proper application of the goals, objectives, and policies to specific

parcels of land. The Future Land Use Map is essential to the effective implementation and enforcement of the Plan.

344. The entire County west of the Peace River, except for state-owned land designated Preservation, is within the Urban Service Area. Vast expanses of land are designated Low-Density Residential. Much of the land designated Medium- and High-Density Residential is in the Cape Haze Peninsula. Considerable blocks of Medium-Density Residential land are located in the southern tip of the Cape Haze Peninsula, where the larger Urban Service Area abuts the Preservation lands of the Charlotte Harbor State Reserve. A large number of High- and Medium-Density Residential tracts lie generally between the Rotunda and the southern end of Lemon Bay.

345. About half of the Don Pedro Island chain is designated Medium-Density Residential. Little Gasparilla Island is designated entirely Medium-Density Residential. Don Pedro Island north of the state part and through the lower third of Knight Island facing the Gulf is also designated Medium-Density Residential. The remainder of the Don Pedro Island chain is designated Low-Density Residential, except for what appears to be a small tract designated Commercial.

346. The eastern portion of the County is dominated by Agriculture I and II lands and the Webb Wildlife Management Area, which is designated Preservation.

347. The Agriculture II classification covers the easternmost six townships, the Hall Ranch, and Township 40 South,

Range 25 East. Major portions of this land, such as Telegraph Swamp, are in the Agriculture/Conservation classification. Aside from these two classifications, there are two relatively small parcels designated Commercial, a larger tract designated Mobile Home, and a 100-acre tract designated Agriculture I (east of the easternmost extension of the Special Surface Water Protection District placed over Shell and Prairie Creeks). A major portion of Township 40 South, Range 25 East, is occupied by the above-described Special Surface Water Protection District.

348. The Agriculture I classification encompasses most of Township 40 South, Range 24 East; the southern halves of Townships 42 South, Range 24 East and Range 25 East; much of Township 42 South, Range 23 East; and a small portion of Township 41 South, Range 23 East.

349. The Agriculture I land in Township 40 South, Range 24 East, is north of the Webb Wildlife Management Area and surrounds the reservoir at Shell and Prairie Creeks. The Special Surface Water Protection District is placed over the two creeks and the reservoir. The reservoir area is otherwise designated as Limited Development. Large areas east and north of the confluence of the two creeks are designated Residential Estates. The tract north of the creeks is about one mile by two miles. The tract east of the rivers is somewhat larger. Two Low-Density Residential tracts of land, one of which is about one mile by one-half mile in size, abut the Limited Development area. The Urban Service Area extends east into Township 40 South, Range 24

East, in order to capture the larger of these tracts. A larger tract, about one mile by one and one-half miles, extends between the Webb Wildlife Management Area and the southern boundary of the Shell Creek Special Surface Water Protection Area, just east of the Limited Development area. This large tract is designated Low-Density Residential, except for two small areas designated Commercial. Adjoining this large tract are three tracts designated Mobile Home. The two smaller of these three tracts extend north and abut Shell Creek. Two parcels in the southwest corner of the township are designated Mobile Home and Low-Density Residential.

350. The Agriculture I land in Townships 42 South, Ranges 24 East and 25 East, is directly south of the Webb Wildlife Management Area. The other classifications in these townships are three parcels that are designated Mobile Home, a large block of publicly owned land in the middle of the western township that is designated Public and Semi-Public, and a strip along U.S. Route 41 about one and one-half miles long that is designated Commercial.

351. The Agriculture I land in Township 41 South, Range 23 East, is west of the Webb Wildlife Management Area. About five square miles of Agriculture I land separates the County Airport from the Charlotte Ranchettes, which occupy a one-mile by three-mile parcel and are designated Residential Estates. To the south, the Agriculture I land separates Alligator Creek from nearby areas designated Low-Density Residential and

Commercial.

352. The Agriculture I land in Township 42 South, Range 23 East, separates Punta Gorda from the smaller Urban Service Area in the southwest corner of the township. In the southeast quarter of the township there are two one-square mile parcels. One is designated Public and Semi-Public and is the site of the sole County-operated landfill, which is off Zemel Road. The other bears a marking that is not explained in the map's legend and is not borne by any other land on the map.

C. Infrastructure Element

1. Water and Sewer Subelement

353. Objective 1 of the Water and Sewer Subelement provides:

Maintain or expand as needed centralized water and sewer facilities to insure that adequate facility capacity is available or will be available when needed to serve development that will be using these facilities.

354. Policy 1.1 sets forth the applicable level of service standards for determining the availability of adequate facility capacity. Concerning the availability of sanitary sewer in the County, the policy states:

Sanitary Sewer will be available to industrial users, and by 2000 to all new commercial, as well as residential areas exceeding 50% of allowed density will be served by central sanitary sewer. ~~(Also, by 1995 all areas within 150 feet of tidal waters will be served by central sanitary sewer.)~~

355. Policies 1.2 and 1.3 require that all expanded or new facilities are compatible with the adopted level of service

standards.

356. Objective 1a of the Water and Sewer Subelement states: "Coordinate with private water and sewer facilities to maintain adequate capacity to meet demand on their facilities." The ensuing policies require the utilities to analyze periodically demand and capacity and adopt a capital improvements program to maintain adopted level of service standards. Policy 1.a3 provides:

Projects needed to correct existing sewer and water deficiencies should be given priority by the appropriate utility system. Appropriate rate structures should be utilized to permit funding to correct such deficiencies. . . .

357. Objective 2 states:

The extension of sewer and water lines and the expansion of treatment plants should be utilized to promote compact, economically efficient, and environmentally safe development.

358. Policy 2.1 states:

Encourage the extension of water and sewer lines to existing partially developed areas and to areas immediately adjacent thereto before the extension of lines into undeveloped or sparsely developed areas.

359. As adopted by the County, Policy 2.2 states:

Require all existing and new residential development tie into a centralized sanitary sewer and/or potable water system where such connections are located within 500 feet of the existing or proposed development contiguous to the right of way which contains these utilities and within 10 feet of the projection of any property corner normal to the utility lines, and the facility has sufficient capacity to accommodate the development. In addition, all Commercial, Industrial, and high-density multi-family development property located within 200 feet of the above described utility lines shall be required to connect to these available utilities provided the facility has sufficient capacity to accommodate the development. Parcels of 5 acres or



more with a single family residential unit shall be exempt from the requirements of this Policy.

360. Policy 2.4 provides:

The County . . . shall encourage the extension of water and water facilities into those areas which provide the full range of urban services (e.g., police, fire, schools, libraries, roads and recreation).

361. Objective 3 states:

By 1990, the County will facilitate the extension of centralized sanitary sewer facilities within the urban service area.

Policies 3.1 and 3.2 require the County to commence the necessary engineering studies for the extension of centralized sewer and identify areas in which central sewers are most needed in view of factors such as proximity to estuarine waters and age and density of septic systems.

362. Policy 3.2(a) provides:

By the end of 1989 the County shall develop a phased plan that is technically and financially feasible in cooperation with utilities to achieve the provision of centralized sanitary sewer service to all areas within 150 feet of tidal waters, implementation of this plan shall begin by 1990 and if technically and financially feasible, all areas within 150 feet of tidal waters shall be served by 1995.

This plan should also include an assessment of the feasibility of requiring mandatory connection to centralized sanitary or water facilities where connections to such facilities are located within 500 feet of development.

363. Policy 3.3 requires the establishment, in 1989, of a MSTU, or other rate structure, to finance the extension of centralized sewer facilities. Policy 3.5 directs the County to include in the 1990 budget the funds necessary "to commence

extension of the centralized sewer lines into the selected areas" and include in the Capital Improvements Element the projected expenditures to complete the first project.

364. Objective 4 states that the County shall complete by 1992 a study, such as the 3 MSTU study, of the "economic benefits or costs of County acquisition of all private sewer and water utility systems, including a study on the economics of scale and practicality of a multi-county utility authority."

365. Objective 5 states: "Phase out the use of septic systems within the urbanized areas of the county." Policy 5.1 states: "The policy of the County . . . is to phase out the use of inappropriately located on-site sewage disposal systems."

366. Policy 5.2 allows the use of on-site sewage disposal systems whenever permitted by the Department of Health and Rehabilitative Services. However, the land development regulations shall require that on-site systems over five years old be discontinued within six months of the availability of centralized sewer. Policy 5.3 recommends that the County encourage the Department of Health and Rehabilitative Services to develop more stringent siting criteria for package plants. Under Policy 5.4, the County will "actively encourage" the interconnection of small, inefficient wastewater treatment plants.

## 2. Drainage Subelement

367. Goal 1 of the Drainage Subelement states: "needed public drainage facilities shall be provided in a manner

which protects investments in existing facilities and promotes orderly, compact urban growth."

368. Objective 1.1 provides:

By July 1, 1989, the County . . . will implement procedures to ensure that at the time a development permit is issued, adequate facility capacity is available or will be available when needed to serve the development.

369. Policy 1.1.1 sets forth various level of service standards for drainage, as adopted by the County. Subsection (d) notes that projects previously approved for construction or platting "shall be built and maintained in accordance with the approved design." Subsection (f) provides:

Attenuation of Stormwater Runoff resulting from a 25-Year frequency, 24-Hour duration rainfall event distributed in accordance with SCS TR-55 Type 2 modified storm, assuming an antecedent moisture condition 2, shall be required for development activity which would otherwise increase peak rates of discharge beyond documented design capacities or allocations. Direct discharge into tidal waters shall not require attenuation.

Punta Gorda adopted Policy 1.1.2, which allows the use of the drainage design standard in effect at the time of approval in cases involving drainage rework of pre-October 1, 1984, construction; however, unbuilt platted residential projects permitted without a County-approved drainage plan are subject to the current, more rigorous level of service standard for drainage.

370. Objective 1.2 requires the County to establish a five-year schedule of capital improvements for public facilities. Policy 1.2.2 establishes three levels of priority for such

projects. Projects with the highest priority are those needed to protect health and safety, discharge the County's legal obligation, or maintain or achieve full use of existing facilities. Projects with the next highest priority are those that increase the efficiency of use of existing facilities, avoid or reduce future facility costs, "provide service to developed areas lacking full service, or promote in-fill development." Projects with the next highest priority are those that represent a "logical extension of facilities and services within a designated service area."

371. Policy 2.1.3 provides that no permits shall be issued for new development that would increase demand on deficient facilities until the improvements to the facility are completed or under construction. Deficiency is determined based on the level of service standards set forth in Policy 1.1.1.

372. Policy 2.1.4 states:

Rework of drainage facilities will be implemented on a schedule designed to promote orderly, compact urban growth (i.e., infill of developing areas where the full range of urban services is being directed--water, sewer, etc.).

373. Objective 2.2 promises that the County will, by 1990, prepare a master drainage plan for the platted lands and lands in the urbanized area. The plan will identify the location of existing facilities, their deficiencies, and future demands. Objective 2.3 promises a similar plan, by 1994, for the entire County. The plan also will include a map of the floodplains, including the location of existing facilities, their

deficiencies, and future demands.

374. Objective 3 states:

The function of natural recharge areas for potential drinking water aquifers and natural drainage features will be protected and maintained at a level consistent with the long term public good.

375. Objective 3.1 requires the County to "identify and map natural recharge areas for drinking water aquifers, relatively unaltered drainage features," and certain altered drainage features.

376. Objective 3.2 promises that, within one year of completion of the map of natural recharge areas for drinking water aquifers, the County will adopt the map and land development regulations that "encourage development consistent with maintaining the quantity and quality of recharge." Policy 3.2.1 requires a public hearing before adoption of such regulations.

377. Similarly, Objective 3.3 promises that, within one year of completion of the map of drainage features, the County will adopt land development regulations that "address the protection and conservative use of these features." Policy 3.3.3 allows the County to consider, on a "case-by-case basis," mitigation of impacts to relatively undisturbed drainage features.

378. Goal 4 states: "adequate stormwater drainage will be provided to prevent degradation of water quality and flooding."

379. Objective 4.1 states that, by 1990, the County will conform its stormwater drainage regulations to hydrological analyses of the Southwest Florida Water Management District and South Florida Water Management District. Policy 4.1.2 states that the land development regulations "should insure that":

A. New developments are required to manage runoff from the 25 year frequency, 24 hour duration design storm event on-site so that runoff rates do not exceed pre-development conditions, except for developments which discharge directly to tidal waters and can demonstrate no flooding impact to receiving waters, using tailwater analysis.

B. Stormwater engineering, design, and constructions standards for on site systems are provided.

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F. The goals, objectives and policies of this drainage section of the Plan are implemented.

380. Objective 4.2 states that, by 1990, the County shall adopt by reference the regulations of the above-described water management districts protecting floodplains from encroachment.

D. Coastal Management Element

381. The only goal of the Coastal Management Element is to:

Conserve, enhance and restore the natural and historical resources of the coastal area; increase public access to the shoreline and coastal waters; protect human life in areas subject to natural disasters; and limit public expenditures in areas subject to natural disasters.

382. Objective 1 states that the County shall "strive to conserve and maintain balanced and biologically productive .

ecosystems" with representatives of each native habitat found within the County.

383. Objective 2 provides:

The surface waters of Charlotte County, including wetlands, lakes, ponds, sloughs, natural flowways, rivers, streams, and estuaries, shall be protected so that the ecological and hydrological functions of the system are maintained or improved.

384. Objective 3 states:

Reduce the pollution of surface waters so that by 1993 the environmental quality of Charlotte County's marine, estuarine and freshwater systems is maintained or improved.

385. Objective 5 addresses the beaches and dunes as follows:

Protect existing beach and dune systems from human-induced erosion and promote the long term restoration of seriously eroded beaches and dunes.

386. Policy 5.1 requires the County to adopt land development regulations that prohibit the destructive alteration of beach and dune systems except for elevated, dune walkovers and County-approved projects to restore or renourish the beach; prohibit artificial shoreline stabilization structures along the Gulf shoreline unless there is imminent danger of damage or loss to a structure and the stabilization will not cause erosion that will jeopardize another structure; prohibit motorized vehicles from operating on beaches and dunes; and promote indigenous vegetation as part of the restoration and stabilization projects.

387. Objective 8 states: "Limit public expenditures in and direct populations away from coastal high-hazard areas."

Toward this end, Policy 8.1 provides:

The intensity of development in the Coastal High Hazard Area shall not exceed that allowed by existing zoning, which is no more than six residential units per acre on the bridgeless barrier island system and in accordance with Ch. 83-385, Laws of Florida, no more than 5 units per acre on Gasparilla Island. ~~or the existing developed density where that is less than the current zoning.~~

388. Policy 8.2 requires the County to "encourage" reductions in density for undeveloped platted lands within the Category 1 hurricane vulnerability zone through such means as the transfer of development rights and public acquisition of platted property.

389. Policy 8.3 states:

County funded public facilities shall not be built in the coastal high-hazard area, unless the facility is for public access, resource restoration or resource use, or unless the public benefit of funds expended in the high hazard area outweighs the risk of damage. For example, the long term benefit derived from providing central sewer facilities to protect estuarine water quality may outweigh the risk of damage to sewer lines by hurricanes.

390. Objective 9 states: "Provide for adequate hurricane evacuation times and shelter facilities to protect public safety."

391. Objective 10 provides: "Carry out building and development activities in a manner which minimizes the danger to life and property from hurricanes." Policy 10.3 involves areas subject to at least a 1% chance of flooding in any year. In all such areas, new and replacement sanitary sewers and water-supply systems shall be designed to minimize or eliminate infiltration



of flood waters into the systems and, in the case of sanitary sewer, to minimize or eliminate discharges from the system into flood waters. Additionally, on-site sewage disposal systems shall be located and constructed to avoid impairment or contamination during flooding.

392. Policy 10.4 states that the County Planning Department shall "monitor" areas with structures suffering "repeated storm damage" with the objective being to identify areas requiring redevelopment.

393. Policy 12.2 sets the level of service standard for hurricane evacuation at 20 hours for Category 1 and 2 storms and 25 hours for a Category 3 storm. Policy 12.3 states that the County "should strive," by 1989, to provide shelter for 24% of the evacuating population for a Category 1 storm and, by 2010, all persons who do not wish to evacuate.

E. Conservation Element

394. Objective 2 of the Conservation Element is identical to Objective 2 of the Coastal Management Element.

395. Policy 2.1 requires the County to adopt, by 1989, land development regulations that

1) Relatively unaltered, natural drainage features, as identified in the Conservation Element, are protected to minimize the disruption of natural hydroperiods, flows and water quality.

2) Further disruption of altered natural drainage features is minimized and mitigated; development shall be encouraged to create new drainage works which, on balance, improves [sic] the adverse effects of previous works.

3) Developments maintain and utilize existing sloughs

and natural flowways as part of the stormwater management system, without significantly degrading their natural functions.

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5) All reasonable modifications to a project are made before wetland alterations are permitted (i.e. avoid or minimize alteration).

6) Where alteration of wetlands is necessary, mitigation will be required to offset the wetland values lost as a result of the alteration.

7) Naturally vegetated upland buffers are used to protect natural surface waters from water quality degradation and encroachment by upland development. A minimum buffer of 15 foot width . . . will normally be required around water bodies and wetlands . . . . Greater buffer zone requirements may be specified for surface water features deemed to be of special economic or ecological significance. Construction in buffer zones will be limited to utility line crossings, fencing, drainage conveyance crossings, bridges, and removal of exotic vegetation, but shall not include removal of native trees and ground cover except as allowed above. Buffer zones will count toward "open space" requirements.

8) The construction of vertical seawalls along the shoreline of natural surface waters is discouraged.

396. Policy 2.5 states:

By 1990, the local government shall identify and recommend for purchase by the State of Florida those floodplains that warrant acquisition under the Conservation and Recreational Lands (CARL) Program or the Save Our Rivers (SOR) Program, or the Save Our Coast (SOC) Program.

397. Objective 3 of the Conservation Element is identical to Objective 3 of the Coastal Management Element. Policy 3.2 requires the County, by 1990, to identify surface waters that are considered "economically, recreationally and ecologically significant" and develop a program to monitor the

water quality. Policy 3.3 requires the County to adopt land development regulations that establish minimum setbacks from Class I and II surface waters for land application of effluent.

398. Policy 3.4 states that the County shall continue to identify areas receiving inadequate stormwater detention for water quality treatment and provide for additional treatment by "acquisition of available land for detention" and the design of swales.

399. Policy 3.7 requires the County to "carefully evaluate" proposals that would alter freshwater inflow to the estuaries and coastal waters.

400. Objective 4, which concerns groundwater, promises that the quality of the groundwater resources shall be "maintained or improved" and shall not be degraded by human influences below state or federal standards. Policy 4.4 states that the County shall "prohibit" the construction of new drainage canals that "may result" in increased salt-water intrusion.

401. Objective 5, which also concerns groundwater, promises that: "existing and future well field sites and the function of natural recharge areas for potential drinking aquifers shall be protected and maintained."

402. Policy 5.1 states that, by 1990, the County shall "identify and map existing well sites, general areas for future wellfield sites, cones of influence, and natural recharge areas for drinking water aquifers." Policy 5.2 states that, by 1991, the County shall adopt the map of these items and adopt land

development regulations that "encourage development consistent with wellfield protection and maintaining the quantity and quality of recharge."

403. Objective 7, which deals with soils, states:

The soils of Charlotte County shall be protected and maintained as an integral part of the County's natural resources and economy.

Objective 9 requires the County to "encourage" the use of native vegetation for landscaping within the urban service area. The only policy under either of these objectives that mentions septic tanks is Policy 9.4, which provides:

When evaluating the economic feasibility of sewer line extensions and comparing the cost between central sewer and septic systems, local government shall consider the costs of lot filling, landscaping and the real estate value attributable to saving native vegetation on lots not requiring fill for septic systems.

404. Objective 10, which involves native habitats, states that the County shall "strive" to conserve and maintain balanced and biologically productive ecosystems for each native habitat. Policy 10.1 requires the County to conduct a "comprehensive inventory of each type of native habitat in the County, including habitat condition, species composition and total area remaining in the County." Policy 10.2 requires the County to "implement a program" for the preservation and acquisition of native habitat in open space. Policy 10.3 states that the land development regulations shall "adequately protect seagrass meadows."

405. Objective 11, which deals with endangered species and habitats, states:

Local government shall protect endangered and threatened plant and animal species . . . and maintain their habitats and shall protect scrub habitats. The degree of protection extended to any given species through the land development regulations shall consider the degree to which the species is imperiled. . . .

406. Policy 11.1 states:

Local government shall protect endangered and threatened plant and animal species and their habitats through the use of such techniques as conservation easements, "open space in native habitat" requirements, tax incentives (as provided by Ch. 193, Florida Statutes), transfer of development rights, fee simple public acquisition and zoning. . . . [T]he Land Development Regulations shall provide flexible, incentive based programs to foster conservation of habitat critical to the survival of endangered and threatened species. . . .

407. Policy 11.2 states that the County shall "designate the most biologically significant tracts of scrub habitat for purchase under appropriate acquisition programs."

408. Policy 11.3 calls for land development regulations to require that site plans locate plants or animals with respect to land on which endangered or threatened species are known to occur. The site plan must identify the methods proposed for protection of the species, such as habitat preservation or relocation. Policy 11.6 states that the County shall not approve the relocation of endangered and threatened species unless the species is amenable to relocation.

409. Objective 12 states that the County shall "promote the protection of natural reserves, preserves and

ability of the local government to fund the facilities, or within the local government's authority to require others to provide the facilities.

422. Policy 2.2 states that existing development shall pay for the "some or all of the facilities that reduce or eliminate existing deficiencies, some or all of the replacement of obsolete or worn out facilities, and may pay a portion of the cost of facilities needed by future development." New development shall pay for "some or all of the facilities needed to address the impact of such future development and may pay a portion of the cost of the replacement of obsolete or worn out facilities."

423. Objective 3 states:

Provide needed capital improvements for replacement of obsolete or worn out facilities, eliminating existing deficiencies, and to serve future development and redevelopment caused by previously issued and new development orders.

424. Policy 3.1 provides that the County shall provide, "or arrange for others to provide," the public facilities listed in the Schedule of Capital Improvements.

425. The Schedule of proposed capital improvements in Charlotte County for 1989-1994 reflect the following expenditures: \$80,000 for the Master Drainage Plan (excluding \$50,759,000 for the drainage MSTU's) during 1989-1991; \$400,000 for water and sewer during 1989-1991 in the form of the 3 MSTU study; no expenditures for the acquisition of environmentally sensitive land or open space; and no expenditures associated with grandfathered-in development orders, as described in the

adopting ordinance.

VII. Contents of the State Comprehensive Plan

426. The State Comprehensive Plan (State Plan) is divided into 26 goals and is set forth at Section 187.201, Florida Statutes. Each reference below to a goal of the State Plan is a reference to the corresponding subsection of Section 187.201, Florida Statutes. Each goal is stated under subsection (a) of the relevant general subsection, and all of the numbered policies are stated under subsection (b) of the general subsection.

427. Public Safety is the seventh goal of the State Plan. Policies 24 and 25 of the Public Safety goal respectively state:

Require local governments, in cooperation with regional and state agencies, to prepare advance plans for the safe evacuation of coastal residents.

Require local governments, in cooperation with regional and state agencies, to adopt plans and policies to protect public and private property and human lives from the effects of natural disasters.

428. Water Resources is the eighth goal of the State Plan. In part, this goal states that Florida "shall maintain the functions of natural systems and the overall present level of surface and ground water quality."

429. Relevant Water Resources policies provide:

2. Identify and protect the function of water recharge areas and provide incentives for their conservation.

5. Ensure that new development is compatible with existing local and regional water supplies.

6. Establish minimum seasonal flows and levels for

surface watercourses with primary consideration given to the protection of natural resources, especially marine, estuarine, and aquatic ecosystems.

8. Encourage the development of a strict floodplain management program by state and local governments designed to preserve hydrologically significant wetlands and other natural floodplain features.

9. Protect aquifers from depletion and contamination through appropriate regulatory programs and through incentives.

10. Protect surface and groundwater quality and quantity in the state.

12. Eliminate the discharge of inadequately treated wastewater and stormwater runoff into the waters of the state.

13. Identify and develop alternative methods of wastewater treatment, disposal, and reuse of wastewater to reduce degradation of water resources.

14. Reserve from use that water necessary to support essential nonwithdrawal demands, including navigation, recreation, and the protection of fish and wildlife.

430. Coastal and Marine Resources is the ninth goal of the State Plan. In part, this goal states that "Florida shall ensure that development . . . in coastal areas do(es) not endanger public safety or important natural resources."

431. Relevant Coastal and Marine Resources policies provide:

1. Accelerate public acquisition of coastal and beachfront land where necessary to protect coastal and marine resources or to meet public demand.

3. Avoid the expenditure of state funds that subsidize development in high-hazard coastal areas.

4. Protect coastal resources, marine resources, and dune systems from the adverse effects of development.

5. Develop and implement a comprehensive system of coordinated planning, management, and land acquisition



to ensure the integrity and continued attractive image of coastal areas.

6. Encourage land and water uses which are compatible with the protection of sensitive coastal resources.

7. Protect and restore long-term productivity of marine fisheries habitat and other aquatic resources.

9. Prohibit development and other activities which disturb coastal dune systems, and ensure and promote the restoration of coastal dune systems that are damaged.

432. Natural Systems and Recreational Lands is the tenth goal of the State Plan. This goal states:

Florida shall protect and acquire unique natural habitats and ecological systems, such as wetlands, tropical hardwood hammocks, palm hammocks, and virgin longleaf pine forests, and restore degraded natural systems to a functional condition.

433. Relevant Natural Systems and Recreational Lands policies provide:

1. Conserve forests, wetlands, fish, marine life, and wildlife to maintain their environmental, economic, aesthetic, and recreational values.

2. Acquire, retain, manage, and inventory public lands to provide recreation, conservation, and related public benefits.

3. Prohibit the destruction of endangered species and protect their habitats.

4. Establish an integrated regulatory program to assure the survival of endangered and threatened species within the state.

5. Promote the use of agricultural practices which are compatible with the protection of wildlife and natural systems.

6. Encourage multiple use of forest resources, where appropriate, to provide for timber production, recreation, wildlife habitat, watershed protection, erosion control, and maintenance of water quality.

7. Protect and restore the ecological functions of wetlands systems to ensure their long-term environmental, economic, and recreational value.

9. Develop and implement a comprehensive planning, management, and acquisition program to ensure the integrity of Florida's river systems.

10. Emphasize the acquisition and maintenance of ecologically intact systems in all land and water planning, management, and regulation.

12. Protect and expand park systems throughout the state.

434. Property Rights is the fifteenth goal of the State Plan. The goal states:

Florida shall protect private rights and recognize the existence of legitimate and often competing public and private interests in land use regulations and other government action.

435. The three Property Rights policies provide:

1. Provide compensation, or other appropriate relief as provided by law, to a landowner for any governmental action that is determined to be an unreasonable exercise of the state's police power so as to constitute a taking.

2. Determine compensation or other relief by judicial proceeding rather than by administrative proceeding.

3. Encourage acquisition of lands by state or local government in cases where regulation will severely limit practical use of real property.

436. Land Use is the sixteenth goal of the State Plan.

The goal states:

In recognition of the importance of preserving the natural resources and enhancing the quality of life of the state, development shall be directed to those areas which have in place, or have agreements to provide, the land and water resources, fiscal abilities, and service capacity to accommodate growth in an environmentally acceptable manner.

437. Relevant Land Use policies provide:

1. Promote state programs, investments, and development and redevelopment activities which encourage efficient development and occur in areas which will have the capacity to service new population and commerce.

2. Develop a system of incentives and disincentives which encourages a separation of urban and rural land uses while protecting water supplies, resource development, and fish and wildlife habitat.

3. Enhance the liveability and character of urban areas through the encouragement of an attractive and functional mix of living, working, shopping, and recreational activities.

6. Consider, in land use planning and regulation, the impact of land use on water quality and quantity; the availability of land, water, and other natural resources to meet demands; and the potential for flooding.

438. Downtown Revitalization is the seventeenth goal of the State Plan. The goal states:

In recognition of the importance of Florida's developing and redeveloping downtowns to the state's ability to use existing infrastructure and to accommodate growth in an orderly, efficient, and environmentally acceptable manner, Florida shall encourage the centralization of commercial, governmental, retail, residential, and cultural activities within downtown areas.

439. Public Facilities is the eighteenth goal of the State Plan. The goal states:

Florida shall protect the substantial investments in public facilities that already exist and shall plan for and finance new facilities to serve new residents in a timely, orderly, and efficient manner.

440. Relevant Public Facilities policies provide:

1. Provide incentives for developing land in a way that maximizes the uses of existing public facilities.

2. Promote rehabilitation and reuse of existing

facilities, structures, and buildings as an alternative to new construction.

3. Allocate the costs of new public facilities on the basis of the benefits received by existing and future residents.

4. Create a partnership among state government, local governments, and the private sector which would identify and build needed public facilities and allocate the costs of such facilities among the partners in proportion to the benefits accruing to each of them.

5. Encourage local government financial self-sufficiency in providing public facilities.

6. Identify and implement innovative but fiscally sound and cost-effective techniques for financing public facilities.

441. Transportation is the twentieth goal of the State Plan. Relevant Transportation policies provide:

9. Ensure that the transportation system provides Florida's citizens and visitors with timely and efficient access to services, jobs, markets, and attractions.

11. Emphasize state transportation investments in major travel corridors and direct state transportation investments to contribute to efficient urban development.

12. Avoid transportation improvements which encourage or subsidize increased development in coastal high-hazard areas or in identified environmentally sensitive areas such as wetlands, floodways, or productive marine areas.

442. Governmental Efficiency is the twenty-first goal of the State Plan. Relevant Governmental Efficiency policies provide:

3. Encourage the use of municipal services taxing units and other dependent special districts to provide needed infrastructure where the fiscal capacity exists to support such an approach.

8. Replace multiple, small scale, economically inefficient local public facilities with regional facilities where they are proven to be more economical, particularly in terms of energy efficiency, and yet can retain the quality of service expected by the public.

13. Encourage joint venture solutions to mutual problems between levels of government and private enterprise.

443. The Economy is the twenty-second goal of the

State Plan. Policy 3 provides:

Maintain, as one of the state's primary economic assets, the environment, including clean air and water, beaches, forests, historic landmarks, and agricultural and natural resources.

444. Agriculture is the twenty-third goal of the State

Plan. The goal states:

Florida shall maintain and strive to expand its food, agriculture, ornamental horticulture, aquaculture, forestry, and related industries in order to be a healthy and competitive force in the national and international marketplace.

445. Relevant Agriculture policies provide:

1. Ensure that goals and policies contained in state and regional plans are not interpreted to permanently restrict the conversion of agricultural lands to other uses.

5. Encourage conservation, wastewater recycling, and other appropriate measures to assure adequate water resources to meet agricultural and other beneficial needs.

11. Continue to promote the use of lands for agricultural purposes by maintaining preferential property tax treatment through the greenbelt law.

VIII. Ultimate Findings

A. Participation by DCA at Adoption Hearing

446. DCA justified its nonrule policy concerning participation, as set forth in its letter of November 28, 1988, to the County. DCA Secretary Thomas G. Pelham retains final authority to approve or reject any plan or provision thereof. In view of the number of plans submitted for review to DCA, Secretary Pelham is unable to attend the many adoption hearings held throughout the state, and, even if he could, he would not necessarily be able to digest the information presented to him and offer an immediate, binding response. Any attempt at the hearing to substitute new objections or recommendations or even substantially restate existing objections or recommendations might constitute a waiver of the objections and recommendations set forth in the ORC.

447. The participation of DCA is evidenced by the following facts: 1) the November 14 letter requested a DCA representative to attend and participate, but was not, in itself, a request for a formal presentation to the Commission or the public; 2) Mr. Schmertmann attended the hearing; 3) two County officials recognized Mr. Schmertmann the hearing and chose not to request him to make a presentation, ask him any questions, or even inform the Commissioners of his presence in the audience; and 4) the Commission had delegated substantial responsibilities in the preparation, revision, and explanation of the plan to these two County officials.

448. DCA's participation was not vitiated by Mr. Schmertmann's failure to attend the December 16 hearing, whose purpose was limited to taking care of details left unfinished from the first, six-hour hearing. Mr. Schmertmann reasonably concluded that his presence was unnecessary at the second day of hearing because no one asked him anything at the first day or that he appear when the hearing continued. As it turned out, he was correct.

B. Supporting Data and Analysis

1. Urban Sprawl in County Other Than Don Pedro Island Chain

449. The objectives and policies providing for the use of land are not, on their face, indicative of urban sprawl. However, these provisions provide for the inefficient use of land because they are refuted by, and fail to address issues raised in, the Data and Analysis. Under the circumstances of this case, these unsupported objectives and policies contribute directly to urban sprawl.

450. Likewise, the objectives and policies protecting natural resources and agriculture and promoting the efficient provision of public facilities and services are ineffective because they are unsupported by, and fail to address issues raised in, the Data and Analysis. Under the circumstances of this case, these unsupported objectives and policies are also indicative of urban sprawl.

a. Efficiency of Land Use

451. The provisions of the Plan having the greatest bearing on the efficiency of the use of the land are the provisions establishing two Urban Service Areas, designating nearly all of the remaining developable land as Agriculture I and Agriculture II; and permitting residential development of the Agriculture I and Agriculture II areas.

452. The Data and Analysis do not support the objectives and policies of the Plan described in the preceding paragraph. To the contrary, the Data and Analysis refute the residential densities permitted in the Agriculture I and II areas and the size of the combined Urban Service Areas. As a result, these provisions promote an inefficient use of the land, which contributes directly to urban sprawl.

453. The Data and Analysis contain projections for the planning timeframe as to population and the amount of land needed to accommodate the estimated population. Using the most liberal population estimates, the County's projected resident and seasonal population for 2010 is 260,000 persons. Using the projected ratio of persons to households of 2.15:1, approximately 121,000 dwelling units will be needed by 2010. The County contained a little less than 54,000 dwelling units in 1987. The housing stock is new, so the number of units that will reach the end of their useful lives during the planning timeframe is negligible. The County therefore needs, at most, about 67,000 additional dwelling units of all types to accommodate the



population projected for 2010.

454. The County contains about 300,000 platted lots with probably not more than 10% of these lots located in the eastern portion of the County beyond the Urban Service Areas. The assumption that all new residents will occupy single-family residential housing is unjustified even for Charlotte County, where about two-thirds of the residents live in single-family housing. However, even assuming that all residents occupy single-family detached housing, the number of lots inside the Urban Service Areas will, by 2010, more than double the number of dwelling units in the entire County. Adjusting for persons occupying multifamily housing, the ratio of lots to dwelling units will be even greater.

455. Vast expanses of platted, unconstructed land exist within the larger Urban Service Area, including 24,000 acres between the Peace and Myakka Rivers. Even if all of that land were Low-Density Residential, it would nevertheless accommodate at least 24,000 dwelling units, or 51,600 persons, if developed at the lowest permitted density of 1:1. (Most of the already-platted land is at higher densities; if platted at the highest permitted density of 5:1, this land could absorb 120,000 units or 258,000 persons.) Another 34,276 vacant platted acres west of the Myakka River, located largely on the Cape Haze Peninsula, would be capable of absorbing from 74,000 to 368,000 persons.

456. The remaining tracts of vacant platted land lie

south and east of the Peace River. Some of these tracts are within the Urban Service Areas and some are not. Ignoring all of such tracts, the vacant platted lots north and west of the Peace River, if developed entirely on a single-family detached basis, could accommodate anywhere from 125,000 to 626,000 persons, with the likely densities leading to the higher end of the range. This translates to about 58,000 to 291,000 new dwelling units, which are more than sufficient for the maximum estimated need of about 66,000 units, given all of the above-cited assumptions. The assumptions are sufficiently liberal to allow for substantial reductions in vacant platted acreage by deplattting or acquisition of lands unsuitable for development.

457. By stretching the assumptions almost to the point of distortion, the Data and Analysis may support an urban service area no larger than the size of the larger Urban Service Area. However, the Data and Analysis fail to support the residential densities permitted by the Plan for the Agriculture I and Agriculture II land outside the Urban Service Areas.

458. The Agriculture II area encompasses seven entire townships in the east end of the County plus one quarter of another (i.e., the Hall Ranch). Netting out the areas designated Agriculture/Conservation, the Agriculture II area contains about 145,000 acres. The Agriculture I area consists of a little less than the southern halves of the two townships south of the Webb Wildlife Management Area, about three-quarters of the township containing the reservoir and Shell and Prairie Creeks, and about

30 sections of land in the townships south and east of Punta Gorda. The Agriculture I area is roughly 59,000 acres.

459. If developed pursuant to the PD-zone provisions, the Agriculture II land, like the Agriculture I land, may be developed at a density of one unit per acre (1:1). The application of such a density throughout the developable portions of the Agriculture I and II areas would therefore result in a maximum population of 200,000 persons.

460. The presence in the vicinity of the Agriculture I and Agriculture II areas of an additional five sections of Residential Estates, two and one-half sections of Low-Density Residential, and one section of Mobile Home mean that, pursuant to the Plan, the outlying areas could accommodate at least another 5000 persons.

461. The Plan's land use designations for the land beyond the Urban Service Area are refuted by the Data and Analysis. Even if the potential population designated for the land outside the Urban Service Areas is reduced by half to reflect undevelopable land (apart from Agriculture/Conservation), this land could still bear a density capable of accommodating about 100,000 of the 125,000 persons, including seasonal residents, projected to relocate to Charlotte County by 2010. Because they are unsupported by the Data and Analysis, the Plan provisions establishing the Urban Service Areas and designating the Agriculture I and Agriculture II areas do not promote efficient use of available land, but instead encourage urban

sprawl.

b. Protection of Natural Resources

462. The Future Land Use Element of the Plan contains several general provisions for the protection of natural resources. Policy 2.4 promises "appropriate" protection for the Preservation and Special Surface Water Protection areas on the Future Land Use Map. Provisions of the Charlotte Harbor Management Plan offer protection or special consideration for floodplains, wetlands, stormwater runoff and drainage, wastewater treatment, and a separate provision encouraging land use changes for vacant platted areas to protect environmentally sensitive areas.

463. Other elements of the Plan contain objectives and policies pertaining specifically to water, native habitats, and sewage-disposal facilities. These three areas are of particular importance in assessing the degree to which Plan provisions protecting natural resources are supported by, and address issues raised in, the Data and Analysis.

464. Surface waters receive protection under Objectives 2 and 3 of the Coastal Management and Conservation Elements. Groundwater is protected under Objective 4 of the Conservation Element. Objective 5 of the same element protects existing and future wellfield sites and natural recharge areas for potential drinking water. Policy 3.2 requires the County, by 1990, to identify significant surface waters and monitor their water quality. As to natural recharge areas, Objective 3.2 of

the Drainage Subelement promises land development regulations within one year after the completion of a map to encourage development consistent with the quantity and quality of recharge. Policy 5.1 of the Conservation Element promises that, by 1990, the County will map existing and future wellfield sites and natural recharge areas. Objective 1a of the Water and Sewer Subelement requires the County to coordinate with private providers to maintain adequate water capacity.

465. Objective 3 of the Drainage Subelement states that natural drainage features will be protected and maintained at a level consistent with the public good. Policy 2.1 of the Conservation Element provides for the adoption of land development regulations to protect natural drainage systems and upland buffers adjoining surface waters. Objective 3.3 of the Drainage Subelement promises, within one year of the completion of a map of drainage features, that the County will adopt land development regulations that address the protection and conservation of the mapped drainage features. Policy 3.4 of the Conservation Element states that the County will continue to identify areas receiving inadequate stormwater detention for water quality treatment. Objectives 4.1 and 4.2 of the Drainage Subelement promise protection for floodplains by 1990.

466. Objective 12 and Policy 12.3 of the Conservation Element promote the protection of natural reserves, preserves, and conservation lands and encourage the acquisition of private lands suitable for natural reservations. In the same vein,

Objective 9 and Policies 9.1 and 9.3 of the Recreation and Open Space Element require the maintenance of open space for "relief from urbanization and preservation of native habitat" and the promotion by the County of acquisition or dedication of open space by, among others, the state and federal governments.

467. Dealing more specifically with native habitats, Objective 10 of the Conservation Element states that the County will strive to protect balanced and biologically productive ecosystems for each native habitat. Policy 10.2 requires the County to implement a program for the preservation and acquisition of native habitat in open space. Objective 11 requires the County to protect endangered and threatened plant and animal species, maintain their habitats, and protect scrub habitats generally. Policy 11.1 states that the protection shall take the form of techniques such as purchasing conservation easements, requiring open space in native habitat, granting tax incentives, permitting the transfer of development rights, purchasing the fee simple, and zoning. Policy 11.2 states that the County will identify the most important tracts of scrub habitat for purchase. Policy 11.3 envisions land development regulations to require that site plans locate endangered or threatened plants or animals and propose methods for their protection.

468. Various objectives and policies within the Water and Sewer Subelement provide for the extension of centralized water and sewer systems. Policy 2.2 requires that all existing

development and new residential development tie into centralized water or sewer systems, apparently when connections are contiguous to a development's right-of-way for utilities. Policy 3.2(a) provides that, if technically and financially feasible, all areas within 150 feet of tidal waters shall receive centralized sewer by 1995. Objective 5 states that the County intends to phase out the use of septic tanks in urbanized areas, and Policy 5.1 states that the policy of the County is to phase out the use of on-site sewage disposal systems that are inappropriately located. However, Policy 5.2 allows the use of on-site sewage disposal systems whenever permitted by the Department of Health and Rehabilitative Services, although Policy 5.3 promises that the County will encourage the Department to develop more stringent criteria for the siting of package plants.

469. The Data and Analysis do not support many of the objectives and policies described in the preceding paragraphs concerning water, native habitats, and sewer-disposal facilities. The failure of the Data and Analysis to support these Plan provisions intended to protect natural resources renders the provisions ineffective. Under the circumstances of this case, these unsupported provisions are indicative of urban sprawl.

470. The Plan provisions dealing with water lack support from the Data and Analysis in several important respects. For instance, the Data and Analysis suggest that demand for drinking water could outstrip supply by 2000. The Data and Analysis identify Shell Creek and the existing reservoir as Punta

Gorda's primary source of potable water, but note the availability to the city of groundwater in an undisclosed wellfield in north Charlotte County. This potential source is especially important because the water would not require reverse osmosis and would therefore be cheaper to produce. However, the Data and Analysis warn that a new source of water may take 10 years to be placed into operation. Also, as to the new wellfield, Punta Gorda would need to acquire 160-200 acres, while acquisition becomes more difficult each year due to competitive land uses such as farming and land development.

471. The omission from the Future Land Use Map or other map of such an important future wellfield is not supported by the Data and Analysis, nor is the policy that promises the mapping of such sites by 1990, given the urgent circumstances described in the Data and Analysis. This omission undermines the objective requiring the County to coordinate with water providers to maintain adequate supplies. The failure to designate the potential wellfield on a map and secure it with specific safeguards in the Plan is especially significant in view of the development pressures attendant upon the designation of a large Urban Service Area and allowance of residential development throughout the Agriculture areas at a density of one unit per acre (1:1).

472. On the other hand, the Future Land Use Map depicts Shell Creek, and the Future Land Use Element places the Shell Creek and Prairie Creek Corridor in a special overlay.



However, in view of the Data and Analysis, the protection afforded Shell Creek in the Plan is ineffective.

473. The Data and Analysis state that the Shell Creek and Prairie Creek Corridor is a critical resource because the two creeks provide about 85% of the major surface water discharge into the northern portion of the Charlotte Harbor estuary. Therefore, the Data and Analysis recommend "careful consideration" to any proposal that reduces the freshwater flow into the estuary because of the possible adverse affect on natural salinity variation. In recognition of a second, equally vital role of these creeks as sources of potable water, the Data and Analysis recommend that "special consideration" be given to land use changes within the 423 square-mile drainage basin of Shell Creek. The Data and Analysis note that the South Florida Water Management District has proposed the purchase of these corridor lands as part of the Save Our Rivers program.

474. Like the unidentified potential wellfield, the Shell Creek and Prairie Creek Corridor is subject to development pressure due to the allowance of a density of one unit per acre (1:1) in the Agriculture I area and higher densities in nearby areas designated Urban Service Area, Low-Density Residential, and Residential Estates. The significance of the Special Surface Water Protection District overlay is unknown until the adoption of promised land development regulations, which are to provide the development standards for the District. The Plan itself, which is the subject of this case, does not contain such

protective standards. Even the relatively small portion of the corridor in the Limited Development area enjoys only qualified protection, as land development regulations will later be promulgated setting forth "development standards" for this area. The most definitive treatment by the Plan of the corridor is to introduce or maintain undue development pressures because of the above-described land use designations in the area. On balance, the treatment of the Shell Creek and Prairie Creek Corridor is thus not supported by the Data and Analysis.

475. The deficiencies as to Plan provisions dealing with the Shell Creek and Prairie Creek Corridor are exacerbated because the State of Florida is considering the purchase of important tracts. The development pressure on these tracts makes it more difficult or even impossible for the state to complete these purchases due to the inflated cost of the land. In the case of the Shell Creek and Prairie Creek Corridor, the unsupported Plan provisions indicate the presence of urban sprawl through inadequate protection of natural resources.

476. In another, similar case, an anomaly between Plan provisions and the Data and Analysis indicates the presence of urban sprawl through inadequate protection of natural resources within an excessively large Urban Service Area. The State of Florida has proposed to purchase important, largely vacant tracts of land to add to the Charlotte Harbor State Reserve. Notwithstanding this proposal, the Plan has placed these tracts in the larger Urban Service Area and even designated many of them

Medium-Density Residential.

477. The tracts of land are located in the southern tip of the Cape Haze Peninsula. In this area, Sections 2, 3, 4, 6, 9, 10, and 11 of Township 42 South, Range 21 East, are, according to the Data and Analysis, largely vacant, but platted lands. These sections are surrounded on the east and south by land that is already owned by the State of Florida as part of the Charlotte Harbor State Reserve. The Data and Analysis recommend various measures, including acquisition, to address the impact that development of the area will have on natural resources and public-type facilities and services. The Data and Analysis reveal that the state is proposing for purchase under the CARL program Sections 6, 9, 10, and 11 and is considering the purchase of other nearby parcels as well, largely because they are part of an integrated whole with the already purchased lands. Facilitating the prospects of state purchase, Sections 10 and 11 are only 1-10% individually owned.

478. The inclusion of all of the above-described land not already owned by the state in the larger Urban Service Area and the designation of this land as Medium-Density Residential make the acquisition more expensive and less likely. Such land use designations, together with other provisions protecting the affected resources, are, in this case, refuted by the Data and Analysis and thereby indicate the presence of urban sprawl.

479. Generally, in the eastern portion of the County, private parties own all of the critical parcels of land

encompassing important natural resources, except for the Webb Wildlife Management Area and three state-owned islands in the Peace River Wetlands. The landowners have maintained these lands mostly in their natural state so that they continue to function as natural reserves without jeopardizing the natural resources located on them.

480. In order to protect natural resources such as groundwater, recharge areas, surface water quality, and endangered species, the Data and Analysis recommend that the most suitable uses of these lands are low intensity agricultural practices, conservation, or low density residential estate uses. (Under current zoning regulations, residential estates permit densities from one unit per acre (1:1) to one unit per five acres (1:5), so that the low-density end of the range is at or near one unit per five acres (1:5).) Although present land uses are fairly consistent with the protection of the natural resources, the Data and Analysis recommend additional "incentives and protective measures," including the acquisition of critical lands by public entities, such as Charlotte County and the State of Florida.

481. Acquisition also plays a role in the recommendations of the Data and Analysis concerning drainage and stormwater runoff. The Data and Analysis record the destruction of wetlands and other natural drainage features often occasioned by large-scale development and certain agricultural practices in the past. The reduction of the basins draining into Lemon Bay

has coexisted with, if not proven to have caused, a reduction in water quality in that estuarine system.

482. In general, the Data and Analysis recommend that drainage basins and natural drainage features remaining relatively undisturbed should be protected from further structural alteration, except to "restore or enhance the functions of stormwater storage." As to urban stormwater runoff, the Data and Analysis advise that the County acquire undeveloped lots for use as detention/retention ponds and design swales for greater attenuation of stormwater. The Data and Analysis conclude that there remains a "significant need" for a master drainage plan for the County.

483. The recommendations of the Data and Analysis emphasize more strongly the role of acquisition in the protection of native habitats and open land. Three native habitats in particular are critical to the preservation of natural resources, including numerous endangered and threatened plant and animal species such as the Florida panther. The Freshwater Wetlands habitat provides natural drainage, good land for low-intensive cattle grazing, and "high quality" habitat for endangered wood storks and threatened Florida sandhill cranes, among other species. The Data and Analysis specifically point out that the acquisition of the Hall Ranch would add freshwater swamp habitat to the Webb Wildlife Management Area, which now has none. The Pine Prairies habitat provides land well-suited for low-intensive, long-rotation timber (for which the Data and

Analysis recommend a reduced tax assessment) and habitat valuable for the endangered bald eagle and red cockaded woodpecker and threatened burrowing owl, Florida sandhill crane, and Audubon's caracara. The Dry Scrubs habitat, which includes only 22 acres of longleaf pine--turkey oak habitat, provides habitat for a number of endangered and threatened species. The Dry Scrubs habitat, for which "great . . . need" for preservation and protection exists, is important for scientific research into its unique ecology, endemic flora and fauna, and ecosystemic response to heat stress.

484. The Data and Analysis report that the County has not purchased any environmentally sensitive lands. In recognition of the limits of available federal and state funds, the Data and Analysis caution that it would be "imprudent" to rely solely on these sources for the acquisition of native habitats, so the County should provide a mechanism for generating funds for the purchase of such lands.

485. Plan provisions protecting natural resources are repeatedly refuted by the Data and Analysis, which, as to various types of such resources, recommend specific protective measures that find no expression in the Plan. Some of these omissions are narrow in scope. For example, the Data and Analysis recommend no alterations to natural drainage features unless the alterations restore or enhance the functions of stormwater storage; the Plan restricts protection of such features to what is consistent with the long term public good.

486. More often, the Plan fails to address more comprehensive issues in the Data and Analysis, such as the identification of broad protective measures such as the purchase of the land or a conservation easement or the adoption of transferable development rights or tax incentives. These Data and Analysis do not support Plan provisions that maintain or enhance development pressures on valuable natural resources without providing specific, meaningful protective standards.

487. Vague assurances of protection of natural resources lack support from the Data and Analysis when the Plan fails to counteract the above-described land use designations with any broad, protective measures. Notably, the Plan fails to disclose any funds in the Capital Improvement Element for the acquisition of interests in environmentally sensitive lands, whose purchase by the state will be jeopardized by the land use designations contained in the Plan. The Plan also fails to include any regulations initiating innovative programs involving transferable development rights or tax incentives.

488. Worse, in view of the recommendations contained in the Data and Analysis, is the repeated failure of the Plan even to locate important natural resources, such as floodplains, wellfields, and native habitats, so as to lend credence to the many vague assurances of protection. Recommendations in the Data and Analysis to protect such resources are undermined by Plan provisions that fail even to locate the resources to be protected. The critical functions of floodplains, wellfields,

and native habitats, which are places in a landscape and not mere concepts, cannot be protected in the abstract.

489. Consequently, Plan provisions protecting natural resources are unsupported by, and fail to address, the Data and Analysis. These provisions are therefore ineffective. Under the circumstances of this case, these unsupported objectives and policies are indicative of urban sprawl.

490. Last, the Data and Analysis do not support Plan provisions concerning sewage-disposal facilities, which impact surrounding natural resources and are closely linked with land use issues. With respect to sanitary sewers, the Data and Analysis note the minimal treatment afforded by septic tank systems and conclude that septic tank systems should be "phased out" throughout the County. The Data and Analysis suggest that septic tanks should be prohibited in certain areas and, in any event, discontinued when centralized systems become available. As to the latter point, the Data and Analysis note that a County ordinance already requires tie-ins to sewer or water when lines are within 200 feet. Strong tie-in requirements are, according to the Data and Analysis, important in making "central sewer and the extension thereof attractive to private utilities."

491. Dealing specifically with septic tanks, the Data and Analysis discuss at length the unsuitability of the soils in the County for septic tanks. The saturated soils, which are the result of poor drainage caused by high water tables, facilitate the conveyance of bacteria and viruses, if not also nutrients and



heavy metals. The Data and Analysis consequently recommended that three or four feet separate the bottom of the septic tank drainfield from the seasonal high water table.

492. The Data and Analysis do not support Plan provisions dealing with sewage-disposal facilities. In the proposed plan, Policy 2.2 of the Water and Sewer Subelement would have strengthened the County ordinance by requiring sewer or water tie-ins if lines were within 500 feet of existing or proposed development and if the facility had sufficient capacity. As finally adopted, Policy 2.2 apparently weakens the present County ordinance and requires tie-ins only when the connection is contiguous to the development's utility right-of-way and the facility has sufficient capacity. The absence of a strong tie-in provision, in view of the relationship between such a policy and the development of centralized sewer, ignores the Data and Analysis as to its emphasis on centralized sewer and water lines and deemphasis of septic tanks.

493. Policy 5.2 of the Water and Sewer Subelement perpetuates the County's practice of permitting septic tank systems wherever allowed by the rules of the Department of Health and Rehabilitative Services. Although Objective 5 and Policy 5.1 state that the County intends to phase out the use of inappropriately sited septic systems, at least in the urbanized areas of the County, no policy or objective adopts the minimum separation recommended by the Data and Analysis for seasonal water tables and drainfields.

494. The unsupported Plan provisions dealing with sewage-disposal facilities are indicative of urban sprawl.

c. Protection of Agriculture

495. Various objectives and policies in the Plan protect agriculture. Objective 13 of the Conservation Element provides that the local government shall strive to protect and maintain prime and unique agricultural lands. Policy 13.2 of the same element states that the County shall use appropriate incentives, such as tax incentives and the purchase of development rights and conservation easements, to maintain agricultural land uses, especially those of low intensity. Other provisions in the Future Land Use Element note that the Agriculture I and II areas are predominantly for various types of agricultural uses.

496. The Data and Analysis project the loss of about 25,000 acres of agricultural land between 1987 and 2010 and estimate that 50,000 acres of arable land were lost from 1973 to 1984, plus an additional 18,500 acres of arable land from 1984 to 1987. However, these projections do not necessarily mean that the Data and Analysis fail to support the Plan provisions protecting agriculture. In the first place, averaging these numbers, 4545 acres per year of arable land were lost from 1973 to 1984, 6167 acres per year of arable land were lost from 1984 to 1987, and only 1087 acres per year of arable land will be lost from 1987 to 2010. The rate of loss is therefore slowing. In the context of this case, the protection of agricultural lands

cannot preclude the loss of any agricultural lands without conflicting with Policy 1 of the Agriculture Goal of the State Comprehensive Plan, which is set forth above in Paragraph 445.

497. However, the amount of arable land is projected to be a little over the size of a township, which is 23,000 acres. Virtually all of the arable land is east of Interstate 95 and in the eastern portion of the County, so little of the arable land is within either Urban Service Area. As noted above, the Data and Analysis do not support Plan provisions facilitating the residential development of the land east of the Urban Service Areas.

498. As is the case with respect to natural resources, the Data and Analysis recommend the adoption of incentives to protect agricultural lands. The Plan lacks such incentives. Notwithstanding such omissions, both Agricultural designations allow residential densities of one unit per acre (1:1) over every acre of arable land remaining in the County, which will impede the County's efforts to protect agricultural practices. Moreover, present agricultural practices in the County generally require parcels larger than five acres and certainly one acre.

499. The allowable residential land uses in the Agriculture I and II areas are unsupported by the Data and Analysis discussed above. The PD provisions overlaid upon the Agriculture II requirements fail to provide sufficient concrete guidelines for residential development at densities of one unit per acre (1:1). The Plan in effect permits the Agriculture II

area to develop in a pattern resembling the vast expanses of one-acre lot development that is expressly permitted in the Agricultural I area. However, on balance, Plan provisions protecting agriculture are both supported and unsupported by the Data and Analysis.

d. Efficiency of Public Facilities

500. The Data and Analysis do not generally support the objectives and policies of the Plan with respect to the efficiency of the provision of public facilities and services, as the efficient provision of public facilities and services relates to the issue of urban sprawl. The efficiency of provision of infrastructure involves lands within and beyond the Urban Service Areas.

501. The Data and Analysis direct much attention to the issue of vacant platted land. The full impact of these lands upon infrastructure, as well as natural resources within or adjacent to the Urban Service Areas, has yet to be felt by the County, according to the Data and Analysis. As noted above, most of these vacant unplatted lands are within the Urban Service Areas. Once the owners decide to build, the Data and Analysis predict a need for "extensive infrastructure," including roads, water and sewer and drainage, plus additional maintenance costs, all of which "will place a financial strain on the County." Although the existence of a high number of vacant platted lots may raise problems in a number of areas, the basic problem is one of infrastructure because, in the words of the Data and Analysis,

the presence of these lots allows "development to occur at urban densities where the full range of urban services cannot be economically provided."

502. Recognizing the problem with vacant platted lots as a serious obstacle to planning, the Data and Analysis recommend, "as a minimal step . . .," that the County "may wish to reduce the acre[age] . . . by creating incentives to deplat some of these subdivisions."

503. One of the single greatest deficiencies in the Plan is its failure to address meaningfully the serious problem presented by the vacant platted lots, especially where, as here, the County does not own the utilities, which are provided, in the case of wastewater, by 80 private entities and 30,000 septic tanks and, for drinking water, 26 private systems and an unreported number of individual wells. Complicating the situation for planning purposes is that most of the suppliers are small and all are private, except for Punta Gorda, which is a municipal water and sewer supplier to part of the unincorporated area of the County, and the Englewood Water District, which is a state-chartered water supplier to the western portion of the County.

504. As noted above, the Data and Analysis generally discourage the use of septic tanks and, in fact, conclude that "on-site disposal of sewage through a septic tank and soil leaching system is not generally acceptable for soils in Charlotte County."

505. The Data and Analysis project that the three central water systems delivering at least 5 million gallons per day will experience more demand than supply by 1995-2000. Perhaps more significantly, the Data and Analysis disclose that sources for additional drinking water are not numerous. The wellfields for the smallest provider of the three major providers, the Englewood Water District, are pumping at or near capacity, but that system will experience demand in excess of capacity of 2.5 million gallons per day. The largest producer, General Development Utilities, depends on the Peace River, which will be adequate only to 2000. Punta Gorda, which draws water from Shell Creek and the reservoir at Shell and Prairie Creeks, will need a new source by about 1995 or 2000. Such a source may exist at an unspecified location in northern Charlotte County, but the Data and Analysis warn that it takes as much as 10 years to bring a new source into operation and the City faces competition from farming and development in acquiring the 160-200 acres necessary to protect this new wellfield.

506. Drainage represents another problem, especially as the vacant platted lots are developed. Many of these lots are in the vicinity of manmade canal systems, whose quantity and quality of drainage, which would be affected by more development, often adversely affect nearby waterbodies, including Charlotte Harbor and Lemon Bay. As to urban stormwater runoff, the Data and Analysis recommend that the County provide additional treatment through a drainage rework program, including the

acquisition of undeveloped lots for constructing stormwater retention and detention ponds and swales for greater attenuation of stormwater.

507. The Data and Analysis recommend strongly that the County prepare a master drainage plan that would include procedures for ensuring that adequate facility capacity exists before the issuance of a development permit and the promulgation of specific stormwater and floodplain regulations.

508. The Data and Analysis support the creation of two Urban Service Areas where "intensive growth is intended to occur . . . [and] where the full range of urban services are either provided or planned to be provided." This support extends to Objective 2 of the Future Land Use Element, which states that "intensive land development activity" should be directed to the urban service areas; Policy 2.2, which encourages in-fill development and requires development to demonstrate the availability of adequate facilities to maintain adopted level of service standards; and, in particular, Policy 2.2(c), which distinguishes between the land within the two Urban Service Areas and the remaining land when it provides that land outside the areas is presumed not to have the full range of urban services.

509. Somewhat more vaguely, Policy 2.3 assigns "priority considerations" to projects needed to meet existing deficiencies or projected needs within rapidly developing areas in the Urban Service Areas. Such a policy raises as many questions as it answers, leaving unaddressed important questions

such as the meaning of "priority considerations" and the consideration extended to areas in the Urban Service Areas that are not rapidly developing versus areas outside the Urban Service Areas.

510. Although the PD provisions overlaid on the Agriculture II requirements by Objective 13 of the Future Land Use Element require the developer to provide "all necessary infrastructure," nothing defines this vital phrase. What is clear is that the developer may not "significantly" adversely impact public services and facilities.

511. The vagueness of the above-described objectives and policies concerning infrastructure lack support by the Data and Analysis. The Data and Analysis describe inadequate and nonexistent infrastructure within the Urban Service Areas as a result of the vacant platted areas within the Urban Service Areas. Two facts complicate the situation. The County cannot control the timing of the demand because many of the vacant lots are already in private ownership. The County cannot control the timing of the provision of infrastructure because the County does not own any of the utilities. Also, funds for public-facility capital improvements are largely raised by these utilities and MSTU's, not the County. Serious limitations are predicted in terms of future water supplies and the suitability of on-site sewage disposal. The exact magnitude of the County's drainage problems awaits the preparation of a Master Drainage Plan.

512. In the face of all this, the Plan ignores the



recommendations of the Data and Analysis to address the problems posed by the vacant platted lands and instead encourages the proliferation of more individual wells, septic tanks or, at best, package plants, and small-scale drainage facilities (i.e., dikes and dams). Instead, the Plan designates about 184,000 acres of Urban Service Area, 60,000 acres of one-unit-per-acre (1:1) residential, and 92,000 acres of at least one-unit-per-five-acres (1:5) residential with a potential of one-unit-per-acre (1:1) residential. When the County itself provides no infrastructure, Plan provisions encouraging or prioritizing infrastructure within the Urban Service Areas require careful scrutiny, especially when serious deficits already exist or will exist as soon as lotowners within the Urban Service Areas build and demand services. On the other hand, Plan provisions requiring developers to provide all necessary infrastructure for PD's outside the Urban Service Area invite sprawl to such sites where the decentralized infrastructure costs will be cheaper. Nothing suggests that PD developers will have to provide more than a package plant, individualized wells or perhaps a small water system, some drainage (largely in the form of flood control), perhaps dedicate a parcel or two for a public school and fire station, and pay some transportation impact fees. The proliferation of such small-scale development of infrastructure discourages the implementation of centralized sewer and water systems.

## 2. Don Pedro Island Chain

513. The findings at Paragraphs 451-461 and 462-494

concern the relationship between the Data and Analysis and Plan provisions promoting the efficient use of land and protecting natural resources. Many of these findings are applicable to the Don Pedro Island chain. Additional ultimate findings specifically as to the Don Pedro Island chain are set forth in the following paragraphs.

514. Two Plan provisions designate residential densities on the Don Pedro Island chain. Objective 2 of the Future Land Use Element directs intensive land development activity to the Urban Service Areas, except that no increase in residential zoning density may take place on the barrier islands. Policy 8.1 of the Coastal Management Element adds that existing zoning on the bridgeless barrier island (i.e., the Don Pedro Island chain) is no more than six units per acre (6:1).

515. These critical land use provisions are unsupported by the Data and Analysis. They note that the Coastal High Hazard Area defines those areas in which development should be limited and existing infrastructure should be relocated to minimize the threat of natural disasters to human life and property. Noting the tendency of infrastructure to locate in proximity to the population served, the Data and Analysis recommend that the relocation of infrastructure would be facilitated by eliminating from the Coastal High Hazard Area moderate- and high-density residential in favor of, as to residential uses, estate housing.

516. The Data and Analysis recognize a basic perceived

conflict between the duty of government to protect its citizens and the right of these citizens to the enjoyment of their property. The Data and Analysis suggest that the acquisition of land may be the "best way" for the government to resolve this conflict. The Data and Analysis then prioritize, by a function of risk and cost, the types of lands that the government ought to purchase. The highest priority is assigned to lands within one-half to one mile north and south of passes or channels, whose volatility is evidenced by the existence of five different inlets cutting across the Don Pedro Island chain over the last 100 years. The next two priorities are low land and land within 150 feet of water.

517. The Data and Analysis described in the preceding paragraph do not support the designations extended to the Don Pedro Island chain by the Plan, which will allow considerably more residential development on the island chain than now exists. Consistent with the pattern demonstrated as to land elsewhere in the County, the allowed densities in the Plan succeed only in inflating the value of the land that the Data and Analysis recommend be purchased. Moreover, the Plan does not allocate funds for these purchases. In these critical respects as well, the provisions of the Plan lack support by the Data and Analysis.

518. The Plan provisions dealing with sanitary sewer and septic tanks are described above in Paragraphs 353-366. As noted in Paragraphs 490-494, the Data and Analysis do not support these provisions as they apply generally throughout the County.

The Plan provisions that continue to allow septic tanks on the barrier islands are not merely refuted by the Data and Analysis, but are in defiance of these materials.

519. In strong terms, the Data and Analysis condemn the use of septic tanks on the barrier islands as "highly unsuitable" because of the "high probability" of contamination of surface waters due to wet conditions rendering soils unsuitable for on-site disposal systems. Lemon Bay itself has received effluent from some of the older wastewater plants, although the three plants on the barrier island are outnumbered by many more on the other shore of the bay, where the water-quality problems are worse.

520. The Data and Analysis note that nonpoint sources of pollution are the greatest threat to surface water quality in Charlotte County, including estuaries. The Data and Analysis also recommend the use of detention/retention ponds and swales for greater attenuation of stormwater. These observations and recommendations do not support Policy 1.1.1 of the Drainage Subelement, which permits unattenuated stormwater to drain into tidal waters.

521. The Data and Analysis therefore do not support critical provisions of the Plan dealing with the Don Pedro Island chain.

B. Internal Consistency

1. Urban Sprawl in County Other Than  
Don Pedro Island Chain

522. Many of the objectives and policies in the Plan are internally consistent. However, important inconsistencies exist with respect to Plan provisions dealing with the efficient use of land, protection of natural resources and agriculture, and efficient provision of public facilities and services. These inconsistencies are indicative of urban sprawl.

a. Efficiency of Land Use

523. Various goals, objectives, and policies promote the efficient use of land. Many of these provisions are in the Future Land Use Element. For example, Objective 2 of the Future Land Use Element states that intensive land development activity should be directed into urban service areas and away from non-urban service areas. Other relevant provisions in the Future Land Use Element are Objectives 1, 5, 6, 6a, and 9, as well as various policies within these objectives.

524. The Infrastructure Element also includes provisions promoting the efficient use of land. For example, Objective 2 of the Water and Sewer Subelement and Goal 1 of the Drainage Subelement provide for the provision of relevant public facilities "to promote compact, economically efficient, and environmentally safe development" and "[to promote] orderly, compact urban growth," respectively.

525. The goals, objectives, and policies promoting the efficient use of land are inconsistent with parts of Objective 13 of the Future Land Use Element and the corresponding portions of the Future Land Use Map. Objective 13 describes the various land uses shown on the Future Land Use Map. Objective 13 provides the one-unit-per-acre (1:1) density for Agriculture I, one-unit-per-five-acres (1:5) density for Agriculture II, and one-unit-per-acre (1:1) density for the PD zones that may be placed over the entire Agriculture II area.

526. As revealed by the Data and Analysis, the residential densities allowed in the Agriculture I and II areas are excessive and contribute to the inefficient use of land. In particular, these densities impede the establishment of viable mixed-use communities outside the Urban Service Areas and the maintenance of viable mixed-use communities within the Urban Service Areas. The effect of these densities specifically upon agriculture is set forth in Paragraphs 555-558 below.

527. Consequently, it is not fairly debatable that the Plan provisions promoting the efficient use of land are internally consistent; they are not. Moreover, the inconsistencies are indicative of urban sprawl.

b. Impacts Upon Natural Resources

528. Many objectives and policies protect natural resources. Consistent with the importance of the Future Land Use Map, the most important protection extended natural resources is the designation of areas on the Future Land Use Map as

Preservation, Agriculture/Conservation, Limited Development, and Surface Water Protection District. These four land use designations are intended to address broadly the extent of development of environmentally sensitive lands.

529. The Agriculture/Conservation designation offers effective protection to certain environmentally sensitive lands. These lands, which are outside of the Urban Service Areas, may be used for limited agriculture uses compatible with the protection of existing natural resources. Enumerated uses include cattle grazing on native rangeland or carefully improved pastureland in pine flatwoods or wet prairie habitats; long-rotation timber management in naturally forested areas; and residential development at densities not over one unit per ten acres (1:10); and appropriate, more intensive agricultural uses in areas shown to be less sensitive to alteration.

530. The Conservation, Preservation, Limited Development, and Special Surface Water Protection District designations deal with, respectively: environmentally sensitive areas like wetlands, floodplains, sloughs, marshes, major flowways, certain scrub habitat; areas of significant ecological value and/or wildlife or vegetative habitats; areas closely associated with Preservation or Conservation land in which development ensures the functioning of the natural hydrologic and ecologic systems; and land areas bordering surface waters with special economic or ecologic importance. These provisions lack the specificity of the Agriculture/Conservation designation.

531. In fact, the Conservation designation is nonexistent. No lands on the Future Land Use Map received that designation. The Conservation Overlay or Conservation Area results merely from Plan provisions referring to unadopted, vaguely defined land development regulations applied to as-yet unidentified areas of the County. Despite this fact, Policy 2.4 of the Future Land Use Element promises land development regulations for the "appropriate protection" of the absent Conservation areas.

532. The other three land use designations correspond to areas on the Future Land Use Map. However, the protection that these designations afford to natural resources is so attenuated that the designations could conflict only with other Plan provisions offering real protection.

533. In the first place, Objective 13 of the Future Land Use Element broadly qualifies the protective aspects of these designations. In each case, Objective 13 promises to-be-adopted land development regulations as the source of standards for the review of proposals for the development of land within any of these classifications. Policy 2.4 adds that the Special Surface Water Protection Districts and Preservation areas will receive "appropriate protection."

534. The inadequate protection afforded by yet-to-be adopted land development regulations is well illustrated by the Special Surface Water Protection District placed over the Shell and Prairie Creeks area. Until the County adopts land



development regulations, no "standards" or "criteria" exist for development in this especially critical source of drinking water for Punta Gorda; even the small area within the Limited Development area awaits land development regulations for "development standards." In the meantime, development pressure will increase, in part due to the proximity of the creeks and reservoir to the larger Urban Service Area and large-scale developments outside the area, as well as the presence of Washington Loop Road encircling the area.

535. These land development regulations do not await completion of the task of preparing detailed, perhaps technical standards for the implementation of objectives that are specific and measurable and policies that clearly identify the programs and activities by which such objectives shall be attained. The Plan defers to the land development regulations the responsibility of establishing the standards for the resolution of conflicts between the development of land and the protection of natural resources in this critical area.

536. In addition to the qualified protection extended to broad land areas by the three above-described designations, many internal inconsistencies exist with respect to other Plan provisions dealing with the protection of natural resources.

537. For example, several inconsistencies exist with respect to the Plan's treatment of floodplains. In general, floodplains may be developed in the future only in a manner consistent with their function, according to Objective 4 of the

Charlotte Harbor Management Plan.

538. The protection extended floodplains, however, is inconsistent with the omission of floodplains from the Future Land Use Map, possibly because they were to have been included in the Conservation Area. This omission is critical because the Future Land Use Map, which guides future development for the next 20 years, is the only map actually adopted by the County. Therefore, the omission is not cured by depictions of floodplains on other maps in the Data and Analysis. For instance, Map 1 in the Coastal Management Element identifies the Hurricane Vulnerability Zone, which corresponds to the floodplain resulting from the 100-year hurricane. The 100-year hurricane floodplain encompasses nearly all of the land west of the Peace River, the east shore of the Peace River, Washington Loop Road, and all land west of the County Airport and Burnt Store Road. The map apparently does not address flooding resulting from nonhurricane storm events. In addition, Table 16 in the Data and Analysis for the Drainage Subelement identifies water surface elevations along portions of Shell and Prairie Creeks, but does not identify a floodplain even as to this area. Evidently in recognition of the need to depict floodplains, Objective 2.3 of the Drainage Subelement promises that the floodplains will be mapped by 1994. In the meantime, though, the inconsistency between the Plan objective protecting the function of floodplains and the failure to depict them adequately makes effective protection unlikely.

539. Even more serious is the inconsistency between

the protective objective and the land use designations in the Future Land Use Map for the Cape Haze Peninsula. The repugnancy existing between these provisions underscores the materiality of the omission of floodplains from the Future Land Use Map and the futility of deferring their mapping until 1994. The Data and Analysis warn of potential risks to estuarine waters from additional development of the floodplains in the vicinity of the four tidal creeks emptying into Lemon Bay. The accompanying recommendation for the creation of new land-development practices is reflected in Policy 2 of Objective 10 of the Charlotte Harbor Management Plan, which encourages land use changes for vacant platted lands to protect environmentally sensitive areas.

540. Despite these protective provisions, the Future Land Use Map designates as High-Density Residential one large area of largely vacant platted land that abuts on the east the Rotonda and on the west Buck Creek, which is one of the four above-described tidal creeks. A larger parcel, which is also largely vacant and platted, is south of the Rotonda and designated Medium-Density Residential. Although close to Coral Creek, which drains into Gasparilla Sound, this parcel, as well as the other, are contained within the larger Urban Service Area. The designations for both parcels allows intense development that is antagonistic to the functioning of the-already stressed floodplains in which both parcels are located. Likewise, the designation of these parcels in the floodplains is inconsistent with Objective 3 of the Coastal Management Element, which states:

that, by 1993, the pollution of surface waters will be reduced.

541. Another inconsistency regarding the floodplains concerns Policy 2.5, which provides that, by 1990, the County will identify and recommend the purchase of floodplains. This provision is inconsistent with provisions of the Plan that fail to earmark funds in the Capital Improvements Element for the purchase of floodplains, fail to map the floodplains until 1994, and discourage state or federal acquisition by permitting residential densities over broad areas of land so as to inflate the purchase price.

542. Inconsistencies exist with respect to the treatment of drainage, which receives protection under the Plan. For example, Policy 2 of Objective 4 of the Charlotte Harbor Management Plan requires that post-development runoff not exceed pre-development runoff with respect to rate, quality, hydroperiod, and drainage basin. However, this provision is directly contrary to Policy 4.1.2 of the Coastal Element, which permits stormwater runoff into tidal waters without attenuation. The conflict here involves runoff rate, which is a function of volume over time. The limitation on post-development runoff conflicts as well with the absence of a master drainage plan, which the County shall prepare by 1990 for lands that are platted or in either Urban Service Area and by 1994 for the remainder of the County, according to Objectives 2.2 and 2.3 of the Drainage Subelement. The restrictions on post-development runoff are inconsistent with the absence of a master drainage plan for the

County; without such benchmark information, which was an unachieved objective of the 1980 Plan, case-by-case determinations of runoff characteristics will be difficult, if not impossible in complicated situations.

543. Drainage is also protected by Objective 2 of the Coastal Management and Conservation Elements, which require the protection of sloughs, flowways, and estuaries with respect to their ecologic and hydrologic functions. However, the unqualified protection extended these natural drainage features is inconsistent with other, highly qualified provisions. Although involved with the nonexistent Conservation Area, which was to have included natural drainage features, Policy 2.1 of the Drainage Subelement protects natural drainage features only to minimize disruption to natural hydroperiods, flows, and quality. Moreover, this policy permits development to degrade existing sloughs and flowways as long as the degradation is not significant. In the same vein, Objective 3 of the Drainage Subelement limits the protection of natural drainage features to what is consistent with the long-term public good, and Policy 3.3.3 expressly creates a process for the case-by-case consideration of development that disturbs natural drainage.

544. Although not required to be included in the Future Land Use Map, the failure to depict graphically the location of important drainage features makes it more difficult to protect them. This problem is only partly resolved by Objective 3.1 of the Drainage Subelement, which promises that

natural and partly altered drainage features will be mapped at some unspecified point in the future.

545. Closely related to drainage are natural recharge areas, which Objective 3.1 of the Drainage Subelement promises will be mapped with the drainage features some time in the future. Objective 3 of the Drainage Subelement also protects natural recharge areas, but again only to the extent consistent with the long term public good. Based on maps in the Data and Analysis, however, the only recharge area in the County embraces Long Island Marsh and adjoining Rainey Slough, which recharge the intermediate aquifer. Although Rainey Slough is designated Agriculture/Conservation, Long Island Marsh is not given such protection and is left in the Agriculture II area. However, the absence of any Plan provision offering these critical areas unqualified protection precludes a finding of inconsistency as to natural recharge areas.

546. The Plan contains inconsistencies as to native habitats and endangered and threatened plant and animal species. Objective 1 of the Coastal Management Element states that the County will conserve and maintain balanced and biologically productive ecosystems with respect to each native habitat. Objective 11 of the Conservation Element protects endangered and threatened plant and animal species and their habitats. Policy 11.3 requires site plans to deal with such species occurring on lands proposed for development.

547. Although not required to be depicted on the

Future Land Use Map, native habitats resist protection to the extent that they are not effectively represented on any maps in the Data and Analysis. The general representation of wildlife habitats on maps in the Future Land Use and Conservation Elements is useless because the scale prevents the location of different habitats on specific tracts of land. The failure to map habitats is partly explained by the absence of the Conservation Areas, which were to have identified certain scrub habitats. Policy 10.1 of the Conservation Element requires the County to inventory its habitats at an unspecified point in the future, and Policy 10.2 requires the implementation of an undefined program for their protection. But protective provisions are futile in the abstract. Uncharted habitat is not amenable to protection, and threatened and endangered species cannot be effectively protected without protecting their habitat.

548. The same inconsistencies concerning the purchase of other environmentally sensitive lands apply to the purchase of tracts that support or may support native habitats. For instance, Policy 12.3 of the Conservation Element encourages the acquisition of private lands as natural reservations, Policy 11.2 requires the County to designate the most biologically significant tracts of scrub habitat for public purchase, Objective 9 of the Open Space and Recreation Element recommends the acquisition of open space for native habitat, and Policy 9.1 encourages the state and federal governments to purchase land for open space if the acquisition is beyond the means of the County.

These provisions are inconsistent with Plan provisions that fail to earmark funds in the Capital Improvements Element for the purchase, fail to inventory habitats until an undetermined point in the future, and discourage state or federal acquisition by permitting residential densities over broad areas of land so as to inflate the purchase price of the land.

549. Inconsistencies are present with respect to the Plan's treatment of wetlands and wellfields. The ecological and hydrological functions of wetlands are to be maintained, according to Objective 2 of the Coastal Management and Conservation Elements. Wellfields are protected by Objective 5 of the Conservation Element. However, no wetlands, existing or planned waterwells, or cones of influence are depicted, as required, on the Future Land Use Map.

550. The practical importance of depicting natural resources on the Future Land Use Map is illustrated in the case of wetlands, which are well mapped on the 1987 Wetlands Inventory Map that is part of the Data and Analysis. The Wetlands Inventory Map discloses that wetlands occupy all of Section 11 of Township 42 South, Range 21 East, nearly all of Section 2, and at least one-half of Sections 3 and 10. However, roughly one-quarter of this land, nearly entirely covered by wetlands, is designated Medium-Density Residential and the remainder, which is part of the Urban Service Area extending into the southern tip of the Cape Haze Peninsula, is designated Low-Density Residential. These designations are inconsistent with maintaining the



ecological and hydrological functions of these wetlands.

551. Aggravating this inconsistency is that state acquisition has been recommended as to Section 2, most of Section 11, and parts of Sections 3 and 10. Land use designations inflating the purchase price of these tracts conflict with provisions encouraging state or federal acquisition of environmentally sensitive lands.

552. The failure to include on the Future Land Use Map existing and planned water wells and cones of influence similarly frustrates efforts to promote their protection. This omission carries into the Data and Analysis, which include only a map for wellfields in Sarasota County. In particular, the failure to map the major new wellfield in northern Charlotte County precludes effective protection and conflicts with Objective 1a of the Conservation Element, which requires that the County coordinate with private and public suppliers of water.

553. Another important inconsistency arises with respect to Objective 13 of the Future Land Use Map, which permits the establishment of PD zones that do not "significantly adversely affect" natural resources. This provision conflicts with all provisions offering effective and sometimes unqualified protection for natural resources. The importance of the PD-zone qualification of such protection is underscored by the fact that the Plan permits such an overlay over the entire Agriculture II area.

554. In view of the above, it is not fairly debatable

that the Plan provisions protecting natural resources are internally consistent; they are not. Moreover, these inconsistencies are indicative of urban sprawl. In particular, these inconsistencies reflect inadequate protection of still-viable natural resources subjected to excessive development pressures generated by the allowance of excessive residential densities outside the Urban Service Areas and the designation of excessive large Urban Service Areas.

c. Impacts Upon Agriculture

555. Three major provisions of the Plan offer protection for agriculture. Policy 4 of Objective 10 of the Charlotte Harbor Management Plan provides for the protection of agriculture. Objective 13 of the Conservation Element offers protection for prime and unique lands and encourages low intensity land uses. Policy 13.2 suggests the use of incentives to achieve such objectives. Objective 13 of the Future Land Use Element states that the Agriculture I and II areas have been "set aside" for various agricultural purposes.

556. The above-cited provisions conflict with the residential densities permitted in the Agriculture II area, as set forth in Objective 13. The permissible lot sizes frustrate any effort to set aside these lands for agriculture. The lots are entirely too small for the dominant forms of agriculture in the Agriculture II area: timber production and cattle grazing.

557. The permissible lot sizes are more appropriate for the types of agriculture envisioned in the Agriculture I

area.

558. Consequently, it is fairly debatable that the Plan provisions protecting agriculture in the Agriculture I area are internally consistent. It is not fairly debatable that the Plan provisions protecting agriculture in the Agriculture II area are internally consistent; they are not. These inconsistencies are indicative of urban sprawl.

d. Efficiency of Public Facilities

559. Various provisions facilitate the efficient provisions of public facilities and services. Most of these provisions are linked to the establishment of the two Urban Service Areas. For instance, Policy 2.2C of the Future Land Use Element creates the presumption that sufficient urban services do not exist outside the Urban Service Areas. Policy 2.3 gives "priority" to capital improvement projects "needed to meet existing deficiencies or projected needs within rapidly developing areas in the designated urban service areas."

560. Although related to the protection of natural resources, provisions dealing with water and sewer facilities affect the efficiency by which public facilities and services can be provided. In general, these provisions are internally consistent.

561. Certain inconsistencies exist, however, with respect to sanitary sewer facilities, and these inconsistencies are indicative of urban sprawl. Noting the history of failures of septic tank systems, Objective 6 of the Charlotte Harbor

Management Plan encourages the strengthening of inspection and permitting for these systems. A policy under this objective requires local governments to address the needs of vacant platted lands and natural restrictions to specific treatment systems.

562. Objective 5 of the Water and Sewer Subelement requires the County to phase out septic tanks in urban areas, although the only policy under this objective somewhat inconsistently states that the County is to phase out "inappropriately located" on-site disposal systems. Objective 3 provides that the County will facilitate the extension of centralized sewer lines in the Urban Service Areas by 1990. Objective 2 of the Water and Sewer Subelement recommends the expansion of centralized water and sewer lines to promote "compact, economically efficient, and environmentally safe development." Objective 7 of the Conservation Element requires the conservation of soil. The applicability of such an objective is explained in Policy 9.4, which acknowledges the need for fill for many septic-tank installations. These objectives and policies operate in the context, as described in maps in the Data and Analysis, of very limited centralized sewer service anywhere in the County. Apart from Punta Gorda and its environs, the largest land areas served by centralized sewer are nearly all of the Rotonda and most of the land between Interstate 75 and the Peace River. Otherwise, centralized sewer is available for roughly 5000-5500 acres between the Peace and Myakka Rivers, 3000-3500 acres on the Cape Haze Peninsula, part of Knight

Island, and Gasparilla Island.

563. On the other hand, Policy 5.2 of the Water and Sewer Subelement continues the practice, which is implicitly rejected in the Data and Analysis, of permitting septic tanks whenever permitted by the Department of Health and Rehabilitative Services. In other words, no more than two feet is required to separate the bottom of the drainfield from the water table. The provision permitting this practice is inconsistent with the provisions requiring the County to address natural restrictions to specific treatment systems and protect surface and groundwater.

564. Other provisions reflect an ongoing dependence upon septic tanks that is inconsistent with the provisions requiring the conservation of soils, protecting surface and groundwater, encouraging land use changes for vacant platted land to protect environmentally sensitive land, phasing out septic tanks, and generally promoting compact development that efficiently utilizes public-type facilities and services. As reflected in Objective 2 of the Water and Sewer Subelement, the point of requiring efficient delivery of public-type facilities and services is financial savings. It is irrelevant whether such savings are enjoyed by taxpayers or private-utility customers. The person paying the bill is more interested in the amount of the bill than whether he or she is paying in the capacity of a customer of a private utility, customer of a public utility, or a taxpayer.

565. The inconsistent provisions include Policy 2.2 of the Water and Sewer Subelement. As originally proposed, this policy would have required sewer tie-ins when sewer lines came within 500 feet of the development. As finally adopted, this policy, although not a model of clarity, appears to require tie-ins only when the sewer lines are contiguous (or nearly so) to the development. The abandonment of the 500-foot requirement is evidenced less by the language of Policy 2.2 than by the provision of Policy 3.2(a), which requires the County to assess by the end of 1989 the feasibility of requiring tie-ins when sewer lines are within 500 feet of development.

566. Given the high number of vacant platted lots, limited availability of centralized sewer in the County, historically rapid development of lots with septic tanks after centralized sewer has been announced for an area, adverse soil conditions throughout nearly the entire County, relative inability of the County to control the provision of a utility that it does not supply, and other factors, the provisions permitting continued use of septic tanks under the conditions described above are inconsistent with the above-cited provisions encouraging the efficient provision of centralized sewer service.

567. Critical consistency issues emerge with respect to the provision in Objective 13 of the Future Land Use Element allowing PD zones with densities as great as one unit per acre (1:1) anywhere in the Agriculture II area. The objective states that the development shall not "significantly adversely impact

public facilities and services" and requires the developer to provide "all necessary infrastructure for the PD."

568. As noted in the Capital Improvements Element, not all types of infrastructure are required to be provided concurrent with development. Even if the PD provision saves the County all infrastructure expenses, including the construction and maintenance of schools, public safety facilities, and inter-development roads, the PD is expressly permitted to impact adversely public facilities and services to some extent. The unavoidable impact in the case of sanitary sewer is to frustrate the purpose of Objective 4 of the Water and Sewer Subelement, which requires the completion of a study by 1992 of the feasibility of County acquisition of all private sewer systems, and Policy 4.2, which requires the County to continue its utility reserve fund for use in purchasing the private utilities, if the study so justifies.

569. The PD provisions contained within the Agriculture II area contradict provisions encouraging the establishment of a centralized sewer system. Even if the PD provisions do not result in a proliferation of septic tanks, they are inconsistent with the provisions generally promoting compact development that efficiently utilizes public-type facilities and services. Therefore, the portion of Objective 13 of the Future Land Use Element establishing the PD zones within the Agriculture II area is internally inconsistent with other provisions of the Plan. The internal inconsistency is indicative of urban sprawl.

## 2. Don Pedro Island Chain

570. The findings at Paragraphs 523-527, 528-554, and 559-569 concern the internal inconsistency of Plan provisions promoting the efficient use of land, impacting natural resources, and promoting the efficient provision of public facilities, as such provisions pertain to the County other than the Don Pedro Island chain. Many of these findings are applicable to the Don Pedro Island chain. Additional ultimate findings specific to the Don Pedro Island chain are set forth in the following paragraphs.

571. The Plan provisions described in Paragraph 514, which permit residential development on the Don Pedro Island chain at densities of up to six units per acre (6:1), and the inclusion of the Don Pedro Island chain in the larger Urban Service Area are inconsistent with Objective 8 of the Charlotte Harbor Management Plan, which discourages further development on the barrier islands, and Policy 2.1, which states that land use decisions should be consistent with Objective 8 of the Coastal Management Element. In relevant part, Objective 8 directs populations away from the Coastal High Hazard Area.

572. The density issues are closely related to hurricane evacuation considerations. The Plan provisions allowing densities of up to six units per acre (6:1) are inconsistent with Objective 14 of the Charlotte Harbor Management Plan, which, in the context of hurricane-preparedness, discourages within the high hazard flood zones new development that is not water-dependent.



573. The density issues are also related to public facility considerations. Policy 2.3 of the Future Land Use Element assigns a high priority to capital improvement projects within the Urban Service Areas to eliminate existing deficiencies or meet future needs. This policy, together with Plan provisions allowing densities of up to six units per acre (6:1), are inconsistent with Policy 2.1 of the Future Land Use Element, which states that public facilities planning should be consistent with Objective 8 of the Coastal Management Element. In relevant part, Objective 8 limits public expenditures in the Coastal High Hazard Area.

574. Policy 8.3 of the Coastal Management Element restricts County-funded public facilities in the Coastal High Hazard Area unless the public benefit of the funds outweighs the risk of damage, such as in the case with the installation of centralized sewer facilities on the Don Pedro Island chain. The policy is somewhat inconsistent with Plan provisions limiting public expenditures in the Coastal High Hazard Area. More important, the policy acknowledges an obvious dilemma confronting the County. On the one hand, Plan provisions encourage the County to avoid investing public funds in the Coastal High Hazard Area on infrastructure subject to loss or damage from storms. On the other hand, Data and Analysis repeatedly recommend the discontinuation of septic tank systems on the barrier islands. The real effect of Policy 8.3 is therefore to emphasize the inconsistency of the Plan provisions allowing up to a six-unit-

per-acre (6:1) residential density on the Don Pedro Island chain; as populations increase on the barrier island, the dilemma will heighten with the increasing need for more vulnerable package plants or harmful septic tanks.

575. Plan provisions described in Paragraphs 353-366 allow the installation of septic tanks on the Don Pedro Island chain. Policy 3.3 of the Conservation Element promises land development regulations by an unspecified date to establish minimum setbacks from Class I and II waters for land application of effluent. These provisions are inconsistent with several objectives of the Plan. Objective 3 of the Coastal Management and Conservation Elements require that pollution of surface waters be reduced by 1993 to maintain or improve the environmental quality of marine and estuary systems. Objective 6 of the Charlotte Harbor Management Plan, which notes that barrier islands are "not naturally suitable" for septic tanks due to improper soils or high water tables, requires that the County addresses natural restrictions to specific treatment systems. Objective 10 of the Coastal Management Element, which requires the location of on-site disposal systems to avoid damage from flooding, does not address the nonstorm-related adverse effects of such systems on the barrier islands.

576. Internal inconsistency also exists with respect to the attenuation of stormwater runoff into tidal waters. Policy 1.1.1 of the Drainage Subelement does not require attenuation. Although Policy 4.1.2 limits the nonattenuation

policy to situations in which no flooding results, these policies nevertheless conflict with the requirements as to post-development runoff rate, if not also quality, imposed by Objective 5, Policy 2, of the Charlotte Harbor Management Plan. With respect to runoff quality, the two nonattenuation policies conflict with Objective 3 of the Coastal Management and Conservation Elements.

577. It is not fairly debatable that the above-described objectives and policies dealing with the Don Pedro Island chain are internally consistent; they are not.

C. Consistency with State Plan

1. County Other Than Don Pedro Island Chain

578. Numerous inconsistencies exist between Plan provisions and policies within the State Plan promoting the efficient use of land, protecting natural resources or agriculture, and promoting the efficient provision of public facilities and services. These inconsistencies are generally indicative of urban sprawl.

579. With respect to the Water Resources goal of the State Plan, the failure to protect the Long Island Marsh is inconsistent with Policy 2. The Plan does not "ensure" that new development is compatible with existing water supplies due to the insufficient protections extended to the critical Shell and Prairie Creeks area, especially in view of the development pressure maintained or increased by the residential densities permitted by the Plan in this area. This failure is inconsistent

with the requirements of Policy 5.

580. The Plan does not establish minimum seasonal flows and levels of watercourses, which is required by Policy 6. The deficiencies with respect to floodplain protection in the Plan are inconsistent with Policy 8. In several respects, the Plan fails to protect surface and groundwater quality and quantity, which is inconsistent with Policy 10. Allowing unattenuated stormwater runoff to drain into tidal waters is inconsistent with Policy 12. The Plan ignores alternative methods of wastewater treatment and, inconsistent with Policy 13, continues to rely on septic tanks. The Plan does not reserve from use the water necessary to support essential nonwithdrawal demands, which is not consistent with Policy 14.

581. With respect to the Coastal and Marine Resources goal of the State Plan, the Plan does not protect coastal resources from the adverse effects of development, which is inconsistent with Policy 4. In general, the Plan fails to develop a comprehensive system of coordinated planning, management, and land acquisition to ensure the integrity and continued attractiveness of coastal areas. This failure is inconsistent with Policy 5. Inconsistent with Policy 6, the Plan fails to encourage land uses that are compatible with the protection of sensitive coastal resources.

582. The Plan is inconsistent with the 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. The land use designations in the Plan frustrate Florida in its efforts in this regard by inflating the value of the lands that need to be acquired. In this manner, the Plan is inconsistent with the following policies within the Natural Systems and Recreational Lands goal: 1-4, 7, 9, 10, and 12. The Plan is not consistent with Policies 5 and 6, which promote the use of agricultural practices compatible with the protection of wildlife and encourage the multiple use of forest resources, although such practices now predominate in the Agriculture II area.

583. Plan provisions conflict with the 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. As noted above, the Plan repeatedly fails to promote effectively the efficient use of land within the Urban Service Areas or the land outside the Urban Service Areas. In so doing, the Plan is inconsistent with Policy 1, which provides for state programs, investment, and development that encourages efficient development; Policy 2, which requires the development of a system of incentives and disincentives for the separation of urban and rural land uses while protecting natural resources; Policy 3, which provides for the enhancement of urban areas by encouraging mixed-uses within them; and Policy 6, which requires the consideration, in land use planning, of the availability of

land, water, and other natural resources to meet demands and the potential for flooding.

584. In the manner described in the preceding paragraph, the Plan is inconsistent with the Downtown Revitalization goal, which encourages the centralization of commercial, governmental, retail, residential, and cultural activities within downtown areas.

585. The Plan is not consistent 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. The Plan is inconsistent with Public Facilities Policy 1, which requires incentives for developing land in a way that maximizes the uses of existing public facilities, and Policy 2, which promotes the rehabilitation and reuse of existing facilities instead of new construction.

586. With respect to the goal of the Economy, the Plan is inconsistent with Policy 3, which requires the maintenance of the environment, including clean water and natural resources.

587. With respect to the goal of Agriculture, the Plan is consistent with Policy 1, which ensures that provisions in state and regional plans are not interpreted to restrict permanently the conversion of agricultural lands to other uses.

588. In view of the foregoing, the Plan, when construed as a whole, is inconsistent with the State Plan, when construed as a whole. The Plan is repeatedly in conflict with the State Plan and generally does not take action in the

direction of realizing goals or policies of the State Plan.

## 2. Don Pedro Island Chain

589. The findings at Paragraphs 578-588 concern inconsistencies between the State Plan and Plan provisions. Many of these findings are applicable to the Don Pedro Island chain. Additional ultimate findings specific to the Don Pedro Island chain are set forth in the following paragraphs.

590. Various Plan provisions conflict with provisions of the State Plan. The nonattenuation policies discussed in Paragraph 576 above conflict with Policy 12 of the Water Resource goal of the State Plan, which requires the elimination of discharge of inadequately treated stormwater and wastewater.

591. The provisions allowing, on the Don Pedro Island chain, development at a density of up to six units per acre (6:1) and septic tanks are inconsistent with the following provisions of the State Plan: a) Policy 6 of the Land Use goal, which requires the consideration of the impact of land use on water quality and quantity; the availability of land, water, and other natural resources to meet demands; and the potential for flooding; b) Policy 2 of the Land Use goal, which recommends incentives and disincentives for the separation of rural and urban land uses; c) Policy 1 of the Coastal and Marine Resources goal, which accelerates public acquisition of coastal and beachfront land where necessary to protect coastal or marine resources or to meet public demand; d) Policy 4 of the Coastal and Marine Resources goal, which protects coastal resources,

marine resources, and dune systems from the adverse effects of development; e) Policy 5 of the Coastal and Marine Resources goal, which provides for the development and implementation of a comprehensive system of coordinated planning, management, and land acquisition to ensure the integrity and continued attractiveness of coastal areas; f) Policy 6 of the Coastal and Marine Resources goal, which encourages land and water uses that are compatible with the protection of sensitive coastal resources; and g) Policy 9 of the Coastal and Marine Resources goal, which prohibits development and other activities that disturb coastal dune systems.

592. In view of the foregoing, the Plan provisions concerning the Don Pedro Island chain, when construed as a whole, are also inconsistent with the provisions of the State Plan, when construed as a whole. These provisions are in conflict with the State Plan and generally do not take action in the direction of realizing goals or policies of the State Plan.

#### CONCLUSIONS OF LAW

##### I. Jurisdiction

1. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter. Sections 120.57(1) and 163.3184(10), Florida Statutes. (References to provisions of law by Section, or the Chapter corresponding thereto, are to the Florida Statutes.)

2. Under Section 163.3184(10), the purpose of the subject proceeding is to determine whether the Plan is in



compliance. As applicable to this case, "in compliance" means consistent with the requirements of Sections 163.3177, 163.3178, and 163.3191; the State Plan; and "rule" 9J-5, Florida Administrative Code. Section 163.3184(1)(b). (References to provisions of law by Rule, or the Chapter corresponding thereto, are to the Florida Administrative Code.)

3. Sections 163.3177 and 163.3178 set forth the elements that a comprehensive plan must contain. Section 163.3191 requires periodic evaluation and appraisal reports for plans and is not relevant to the subject proceeding.

4. Chapter 9J-5 "establishes the minimum criteria for the preparation, review, and determination of compliance of comprehensive plans." Rule 9J-5.001.

## II. Standing of Parties

5. Section 163.3184(10)(a) recognizes the following parties to the subject proceeding: DCA, the County, and "any affected person who intervenes." The standing of the County is obvious.

6. The standing of Babcock, Cole, February 24 Trust, and Palm Island Resort depends upon whether they have satisfied the statutory requirements for an "affected person." The Legislature established specific requirements for "affected person" standing to intervene in a Section 163.3184(10) proceeding.

7. The intent of the Legislature not to incorporate Chapter 120 standing standards is evidenced by the requirement,

set forth in Section 163.3213(2)(a), that a person challenging land development regulations must show that he is a "substantially affected person" under Chapter 120. A third standard exists for a person seeking to challenge development orders. Such a person must be an "aggrieved or adversely affected party." The elaborate framework for three types of standing under the Act does not invite the casual addition of alternative standing requirements that can be satisfied instead of those specified in the Act.

8. Pursuant to Section 163.3184(1)(a), an "affected person" includes persons residing or owning property within the boundaries of the local government whose plan is being challenged. Each person claiming to be an affected person, except for an adjoining local government, must have "submitted oral or written objections during the local government review and adoption proceedings" in order to qualify as an "affected person." Id.

9. Cole, Babcock, February 24 Trust, and Palm Island Resort each satisfies the affected-person requirements. They therefore have standing to intervene, subject to the above-described conditions attached to the intervention of the last two parties due to the lateness of the filing of their respective petitions.

10. The standing of DCA to commence a Section 163.3184(10) proceeding is based on its issuance of a Notice of Intent, pursuant to Section 163.3184(8). This subsection

prohibits DCA from finding a plan not in compliance "unless [DCA] has participated in the public hearing pursuant to subsection (7) if requested to do so by the applicable local government." The public hearing to which the subsection refers is the hearing at which the local government adopts the plan.

11. Charlotte County asked DCA to attend and participate at the County adoption hearing on December 13, 1988. DCA advised the County that it would do so, but its representative would be unable to sign-off on substantive provisions while at the hearing. This limitation upon participation was entirely justified. Requiring on-the-spot approval or rejection of plan revisions would unreasonably deprive DCA of the 45 days provided by Section 163.3184(8)(a) for reviewing new provisions in the context of the entire plan and the accompanying data and analysis.

12. DCA complied with the County's request by sending Mr. Schmertmann to the adoption hearing. The Act does not command, and good sense does not permit, the DCA representative to force his participation upon the local government. In so doing, he might be violating the prerogative of the local government to restrict his participation to mere attendance, if that is all they want. All that the Act requires is that responsible representatives of the local government are informed of the presence of the DCA representative. Certainly, the conventional means of satisfying this requirement is for the DCA representative to announce himself at the adoption hearing. A

formal announcement is unnecessary if the DCA representative is recognized by responsible representatives of the local government. In this event, however, DCA assumes the risk that its representative erroneously believes that he has been seen and, if seen, recognized as the DCA representative. In this case, the proof amply demonstrated that two key County representatives recognized Mr. Schmertmann as the DCA representative.

13. The absence of Mr. Schmertmann from the December 16 hearing is immaterial. Mr. Schmertmann was not required to ask whether his presence was required for the December 16 hearing because local officials had clearly decided not to involve him actively in the adoption hearing.

14. Under the circumstances, DCA was not prohibited by the Act to find the Plan not in compliance.

### III. The Act

#### A. Elements Required of All Plans

##### 1. General

15. The comprehensive plan must consist of materials in such descriptive form, written or graphic, as may be appropriate to the prescription of principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.

Section 163.3177(1).

16. Each plan must contain the following elements, as applicable to a local government with the characteristics of

Charlotte County: Capital Improvements; Future Land Use, including a Future Land Use Map; Traffic or Transportation; Infrastructure, including sanitary sewer, solid waste, drainage, potable water, and natural groundwater recharge; Conservation; Recreation and Open Space; Housing; Coastal Management; Intergovernmental Coordination; Mass-Transit; and Port, Aviation, and Related Facilities. Section 163.3177.

17. Each element of the plan contains various goals, objectives, and policies. The plan typically adopted by the local government consists of these goals, objectives, and policies; the Future Land Use Map; and procedures for plan monitoring and evaluating. Rule 9J-5.005(c). Each plan must address two planning timeframes: the first five years following adoption of the plan and "an overall ten-year period," which presumably must also commence with the adoption of the plan. Rule 9J-5.005(4).

18. A goal is a "long-term end toward which programs or activities are ultimately directed." Rule 9J-5.003(32). An objective is a "specific, measurable, intermediate end that is achievable and marks progress toward a goal." Rule 9J-5.003(57). A policy is the "way in which programs and activities are conducted to achieve an identified goal." Rule 9J-5.003(64).

19. The Act and Chapter 9J-5 impose several requirements upon Plans. Four of these requirements are pertinent to the present case.

20. First, all plan provisions must be based on

"appropriate" data. Sections 163.3177(8) and (10)(e). Although these data are not subject to the compliance-review process, they may be used by DCA to "aid in its determination of compliance and consistency." Section 163.3177(10)(e). See also Rule 9J-5.005(2). In general, the criteria set forth in Chapter 9J-5 parallel the planning process itself in acknowledging that the data must first be identified and analyzed before the goals, objectives, and policies can be prepared. Rule 9J-5.001.

21. Second, the elements of the plan must be internally "consistent," and the plan must be "economically feasible." Section 163.3177(2). See also Rule 9J-5.005(5). In a practical sense, the first two requirements are a measure of the effectiveness of the plan without regard to the degree to which it conforms to externally imposed requirements.

22. Third, the plan must be consistent with the State Plan. Section 163.3184(1)(b). In determining consistency with the State Plan, certain principles govern. The plan is consistent if it is "compatible with" and "furthers" the State Plan. Section 163.3177(10)(a). "Compatible with" means that the plan is "not in conflict with" the State Plan. "Furthers" means "to take action in the direction of realizing goals or policies of the" State Plan. Id. In determining the consistency of the local plan and State Plan, the latter "shall be construed as a whole and no specific goal or policy shall be construed or applied in isolation from the other goals or policies . . . ." Id.

23. Fourth, the plan must be consistent with Chapter 9J-5. Section 163.3184(1)(b). The provisions contained in Chapter 9J-5 are often described as "minimum criteria" that a plan must satisfy. See, e. g., Section 163.3177(9) and Rule 9J-5.001. The interrelationship between the "consistency" and "minimum criteria" provisions suggests that satisfaction of each of the hundreds of criteria set forth in Chapter 9J-5 may not, in all cases, be required, depending upon the circumstances of the specific case.

## 2. Future Land Use Element and Map

24. Each plan must contain a Future Land Use Element that designates the future "distribution, location, and extent" of the use of land with respect to: residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other uses. Section 163.3177(6)(a). Each land use designation must be defined by the "types of uses included and specific standards for the density or intensity of use." Id. The Future Land Use Element shall contain "standards to be followed in the control and distribution of population densities and building and structure intensities." Id.

25. The "proposed distribution, location, and extent" of the various land use designations shall be shown on a map or map series generally identified as the Future Land Use Map. Section 163.3177(6)(a). In addition, the Future Land Use Map must depict existing and planned waterwells and cones of

influence; beaches and shores, including estuarine systems; rivers, bays, lakes, floodplains, and harbors; wetlands; and minerals and soils. Section 163.3177(6)(d) and Rule 9J-5.006(1)(b).

26. The data and analysis upon which the Future Land Use Element is based must themselves satisfy several statutory requirements. They must describe the amount of land required to accommodate anticipated growth, the projected population of the area, the character of the undeveloped land, the availability of public services, and the need for redevelopment. Section 163.3177(6)(a).

27. Among the requirements imposed upon the analysis of the data are that it include an analysis of the need for redevelopment, including the elimination or reduction of uses inconsistent with proposed future land uses, and an analysis of the proposed development and redevelopment of flood-prone areas. Rule 9J-5.006(d) and (e). The analysis also must consider the character and magnitude of existing vacant or undeveloped land to determine its suitability for use. Rule 9J-5.006(2)(b).

28. The Future Land Use Element must include objectives that:

1. Coordinate future land uses with the appropriate topography, soil conditions, and the availability of facilities and services;

\* \* \*

4. Ensure the protection of natural resources . . . .;

5. Coordinate coastal area population



densities with the appropriate local or regional hurricane evacuation plan, when applicable;

\* \* \*

7. Discourage the proliferation of any urban sprawl;

8. Ensure the availability of suitable land for utility facilities necessary to support proposed development; and

9. Encourage the use of innovative land development regulations which may include provisions for planned unit developments and other mixed-use development techniques.

Rule 9J-5.006(3)(b).

29. The Future Land Use Element must include "one or more policies for each objective which address implementation activities for the:

1. Regulation of land use categories included on the [Future Land Use Map] . . . and areas subject to seasonal or periodic flooding;

2. Provision for compatibility of adjacent land uses;

\* \* \*

4. Provision for drainage and stormwater management [and] open space . . .;

\* \* \*

6. Protection of potable water wellfields, and environmentally sensitive land;

7. Establishment of standards for densities or intensities of use for each future land use category;

Rule 9J-5.006(3)(c).

3. Infrastructure Element

30. Each plan must contain an Infrastructure Element "correlated to principles and guidelines for future land use" and indicating ways to provide for the future needs of the area with respect to sanitary sewer, solid waste, drainage, potable water, and natural groundwater recharge. Section 163.3177(6)(c). The data and analysis "shall describe the problems and needs and the general facilities that will be required for solution of the problems and needs." Id. For areas served by septic tanks, the data must include soil surveys indicating the suitability of the soils for septic tanks. Id.

31. The data and analysis must identify, among other things, all public and private sanitary sewer facilities, potable water facilities, and drainage facilities and describe each facility in terms of its design capacity, current demand, and current level of service. Rule 9J-5.011(1)(d) and (e).

32. The data and analysis must identify existing and projected drainage needs for the five-year and ten-year planning timeframes based upon analyses of facility capacity; facility design capacity and current demand; projected demand, based on current level of service standards, as a result of development permitted by local government, population growth, land use distributions as indicated in the future land use element; and available surplus capacity. Rule 9J-5.011(1)(f)1.

33. The data and analysis also must assess the general performance of the existing facilities, as to the adequacy of the current level of service, their general condition and life

expectancy, and the impact of such facilities upon adjacent natural resources. Rule 9J-5.011(1)(f)2. The data and analysis also must set forth the problems and opportunities for drainage facilities replacement and expansion. Rule 9J-5.011(1)(f)3.

34. The data and analysis also must identify all major natural drainage features. Rule 9J-5.011(1)(g).

35. The Infrastructure Element must contain objectives that:

1. Address correcting existing facility deficiencies;
2. Address coordinating the extension of, or increase in the capacity of, facilities to meet future needs;
3. Address maximizing the use of existing facilities and discouraging urban sprawl;
4. Address conserving potable water resources; and
5. Address protecting the functions of natural groundwater recharge areas and natural drainage features.

Rule 9J-5.011(2)(b).

36. The Infrastructure Element must contain one or more policies for each objective which address implementation activities for:

1. Establishing priorities for replacement, correcting existing facility deficiencies and providing for future facility needs;

\* \* \*

3. Establishing and utilizing potable water conservation strategies and techniques; and
4. Regulating land use and development to protect the functions of natural drainage features and natural groundwater aquifer

recharge areas.

Rule 9J-5.011(2)(c).

4. Conservation Element

37. The plan must contain a conservation element

for the conservation, use, and protection of natural resources in the area, including . . . water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, . . . , harbors, forests, fisheries and wildlife, marine habitat, . . . and other natural and environmental resources.

Section 163.3177(6)(d).

38. The data and analysis must identify rivers, bays, lakes, wetlands, floodplains, fisheries, wildlife, marine habitats, and vegetative communities, indicating endangered and threatened species. Rule 9J-5.013(1)(a). For each of these natural resources, the data and analysis must identify known pollution problems and the potential for conservation, use, or protection. Rule 9J-5.013(1)(b). The data and analysis also must assess "current, as well as projected, water needs and sources for a 10-year period." Section 163.3177(6)(d) and Rule 9J-5.013(1)(c).

39. The Conservation Element must contain objectives that:

\* \* \*

2. Conserve, appropriately use and protect the quality and quantity of current and projected water sources and waters that flow into estuarine waters or oceanic waters;

3. Conserve, appropriately use and protect [protect coexists with use] . . . soils and

native vegetative communities including forests; and

4. Conserve, appropriately use and protect fisheries, wildlife, wildlife habitat and marine habitat.

Rule 9J-5.013(2)(b).

40. The Conservation Element must contain one or more policies for each objective which address implementation activities for the:

1. Protection of water quality by restriction of activities known to adversely affect the quality and quantity of identified water sources including existing cones of influence, water recharge areas, and waterwells;

\* \* \*

3. Protection of native vegetative communities from destruction by development activities;

\* \* \*

5. Restriction of activities known to adversely affect the survival of endangered and threatened wildlife;

6. Protection and conservation of the natural functions of existing soils, fisheries, wildlife habitats, rivers, bays, lakes, floodplains, harbors, wetlands including estuarine marshes, freshwater beaches and shores, and marine habitats;

7. Protection of existing natural reservations identified in the recreation and open space element;

\* \* \*

Rule 9J-013(2)(c).

5. Coastal Management Element

41. The plan of a coastal community must contain a Coastal Management Element "appropriately related to the requirements of [the Conservation and Recreation and Open Space Elements]." Section 163.3177(6)(g). The express legislative intent underlying this element is that, in the event of natural disaster, "the state may provide financial assistance to local governments for the reconstruction of roads, sewer systems, and other public facilities." Section 163.3178(1). Consequently, the Legislature intends that local plans

restrict development activities where such activities would damage or destroy coastal resources, and that such plans protect human life and limit public expenditures in areas that are subject to destruction by natural disaster.

Id.

42. The data and analysis must contain a land use and inventory map of existing uses, wildlife habitat, wetland and other vegetative communities, undeveloped areas, areas subject to coastal flooding, and public access routes to beach and shore resources, among other areas. Section 163.3178(2)(a). The analysis must consider the environmental, socioeconomic, and fiscal impact on coastal natural resources of development and redevelopment proposed in the Future Land Use Element, plus required infrastructure. Section 163.3178(2)(b). The analysis must contain the plans and principles to be used to control development and redevelopment to

eliminate or mitigate the adverse impacts of coastal wetlands; living marine resources; barrier islands, including beach and dune

systems; unique wildlife habitat; . . . and other fragile coastal resources.

Id.

43. The analysis must also consider

the effects of existing drainage systems and the impact of point source and nonpoint source pollution on estuarine water quality and the plans and principles . . . which shall be used to maintain or upgrade water quality while maintaining sufficient quantities of water flow.

Section 163.3178(2)(c).

44. Other items that must be covered in the data and analysis include the effect of future land uses on coastal natural resources, including vegetative cover, wetlands, and floodplains, and wildlife habitats. Rule 9J-5.012(2)(b). The analysis shall cover estuarine pollution conditions and actions needed to maintain estuaries, including an assessment of the impact of development and redevelopment proposed in the Future Land Use Element and the impacts of proposed facilities on water quality. Rule 9J-5.012(2)(d).

45. The analysis must also address natural disasters. It must consider the hurricane vulnerability zone, the number of persons requiring evacuation and shelter, the availability of shelter, evacuation routes and constraints on such routes, and evacuation times. Rule 9J-5.012(2)(e)1. The analysis must consider existing and proposed development in the coastal high-hazard area, structures with a history of repeated damage in coastal storms, infrastructure in coastal high-hazard area, and

beach and dune conditions. The analysis must include measures to reduce exposure to hazards, including relocation, structural modification, and public acquisition. Rule 9J-5.012(2)(e)2.

46. As to infrastructure in the coastal area, the data and analysis must inventory roadways, sanitary sewer facilities, potable water facilities, man-made drainage facilities, public coastal or shore protection structures, and beach nourishment projects. The analysis must describe the demand and capacity for each item of infrastructure.

47. The Coastal Management Element must contain objectives that

1. Protect, conserve, or enhance remaining coastal wetlands, living marine resources, coastal barriers, and wildlife habitat;

2. Maintain or improve estuarine environmental quality;

\* \* \*

4. Protect beaches or dunes, establish construction standards which minimize the impacts of man-made structures on beach or dune systems, and restore altered beaches or dunes;

5. Limit public expenditures that subsidize development permitted in coastal high-hazard areas subsequent to the element's adoption except for restoration or enhancement of natural resources;

6. Direct population concentrations away from known or predicted coastal high-hazard areas;

7. Maintain or reduce hurricane evacuation times;

8. Prepare post-disaster redevelopment plans which will reduce or eliminate the exposure



of human life and public and private property to natural hazards;

\* \* \*

11. Establish level of service standards, areas of service and phasing of infrastructure in the coastal area.

Rule 9J-5.012(3)(b).

48. The Coastal Management Element must contain one or more policies for each objective, which identify techniques for

1. Limiting the specific impacts and cumulative impacts of development or redevelopment upon wetlands, water quality, water quantity, wildlife habitat, living marine resources, and beach and dune systems;

2. Restoration or enhancement of disturbed or degraded natural resources including beaches and dunes, estuaries, wetlands, and drainage systems; and programs to mitigate future disruptions or degradations;

3. General hazard mitigation including regulation of building practices, floodplains, beach and dune alteration, 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 . . . ;

4. Hurricane evacuation . . . ;

5. Post-disaster redevelopment including policies to: . . . [involving] the removal, relocation, or structural modification of damaged infrastructure and unsafe structures; [and] limiting redevelopment in areas of repeated damage . . . ;

6. Identifying areas needing redevelopment, including eliminating unsafe conditions and inappropriate uses as opportunities arise;

7. Designating coastal high-hazard areas, limiting development in these areas, and relocating or replacing infrastructure away from these areas;

arises from some public program adjusting the benefits and burdens of economic life to promote the common good.

Id. at 124, 98 S. Ct. at 2659. As an example, the Penn Central Court notes that where

"the health, safety, morals, or general welfare" would be promoted by prohibiting particular contemplated uses of land, this Court has upheld land-use regulations that destroyed or adversely affected recognized real property interests. [Citations omitted.]

Id. at 125, 98 S. Ct. at 2659. Consequently, the third factor generally precludes the finding of a taking when the government "merely restrains uses of property that are tantamount to public nuisances." Keystone Bituminous Coal Association v.

DeBenedictis, 480 U.S. 470, 505-06, 107 S. Ct. 1232, 1245 (1987).

66. The first and second factors are closely related. The second factor is explained in Pennsylvania Coal Co. v. Mahan, 260 U.S. 393, 43 S. Ct. 158 (1922), which "is the leading case for the proposition that a state statute that substantially furthers important public policies may so frustrate distinct investment-backed expectations as to amount to a 'taking.'" Penn Central, 438 U.S. 127, 98 S. Ct. 2661. The Penn Central Court explained that the Pennsylvania Coal decision, which held that a taking had occurred, was predicated on a finding that the challenged statute had made it commercially impracticable to mine the coal and "thus had nearly the same effect as the complete destruction of rights claimant had reserved from the owners of the surface land." Id.

67. In order to conclude that a temporary taking had occurred in First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 107 S. Ct. 2378 (1987), the Court assumed, due to the procedural posture of the case, that the government action deprived the landowner of all use of his property and was not based on safety considerations. In land use cases generally, a:

diminution in property value, standing alone, can[not] establish a "taking," see Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114 . . . (1926) (75% diminution in value caused by zoning law); Hadacheck v. Sebastian, 239 U.S. 394, 36 S. Ct. 143 . . . (1915) (87 1/2% diminution in value) . . .

Penn Central, 438 U.S. at 131, 98 S. Ct. at 2663.

68. In reliance on much of the above-cited authority, the Court in Bensch v. Metropolitan Dade County, 541 So. 2d 1329, 1330 (Fla. 3d DCA 1989), affirmed the dismissal of an amended complaint that sought relief for a taking, but failed to allege that "the zoning regulations deprived the plaintiffs of all beneficial uses, including agricultural ones, of their property." In such cases, the inquiry focuses on whether, after government action, there remains an economically reasonable use of the property as a whole, not whether the remaining, allowable use is the most desirable or profitable or whether the government action totally denies the use of a portion of the property. Fox v. Treasure Coast Regional Planning Council, 442 So. 2d 221, 225-26 (Fla. 1st DCA 1983); Smith v. City of Clearwater, 383 So. 2d 681 (Fla. 2d DCA 1980).

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69. Vested rights do not exist in the continuation of any zoning or land use scheme, in the absence of estoppel. See, e.g., City of Gainesville v. Cone, 365 So. 2d 737, 739 (Fla. 1st DCA 1978). A landowner may prove that a local government is estopped from exercising its zoning power if he shows that he: 1) relied in good faith; 2) upon some act or omission of the government; 3) and "has made a substantial change in position or incurred such excessive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired." Smith v. City of Clearwater, at p. 686.

70. The situation is somewhat different when the zoning changes after a landowner has filed for a building permit that would have been granted under the first zoning scheme but not under the second. In this case, the landowner does not have to show estoppel to obtain the building permit as long as the rezoning ordinance was not pending at the time of the application. Id. at 689. But compare Cone, supra at 739 ("it is clear that a city may adopt an amendment to a land use ordinance even during the pendency of a controversy and the controversy must then be determined based on the law as amended.")

71. Based on the above authority, Plan provisions promoting the efficient use of land and efficient provision of public facilities, protecting natural resources and agriculture, and concerning the Don Pedro Island chain are not, on their face, inconsistent with the vested rights provisions of the Plan and the Charlotte Harbor Management Plan, even without regard to the

Plan provisions encouraging public acquisition of various types of land.

4. Consistency of Plan with State Plan

72. The Plan, when construed as a whole, is in conflict with, and does not take action in the direction of realizing, numerous provisions of the State Plan, when construed as a whole. Conflicts and incompatibilities exist between the Plan and provisions of the State Plan protecting natural resources and agriculture and promoting the efficient use of land and efficient provision of public facilities. Provisions of the Plan more directly limited to the Don Pedro Island chain are also in conflict with, and do not take action in the direction of realizing, numerous provisions of the State Plan, when construed as a whole.

73. Based on the above, the Plan is not compatible with and does not further the State Plan. The Plan is therefore inconsistent with the State Plan.

4. Consistency of Plan with Minimum Criteria of Act and Chapter 9J-5

74. The Plan is not consistent with the minimum criteria required of comprehensive plans by the Act and Chapter 9J-5.

75. The importance of the Future Land Use Map to the effective protection of natural resources is reflected in the requirement that the map must depict certain categories of these resources. Without the graphic depiction of many of these

resources on the Future Land Use Map, the protection afforded these resources by various objectives and policies will be more theoretical than real. In this case, the Future Land Use Map is inconsistent with the minimum criteria of the Act and Chapter 9J-5 because it has omitted existing and planned waterwells and cones of influence, floodplains, and wetlands.

76. The analysis underlying the Future Land Use Element fails to deal with the development and redevelopment of floodprone areas, as such development is proposed in the residential designations assigned to such areas in the Plan. Likewise, the analysis is insufficient in its consideration of the character and magnitude of existing vacant or undeveloped land to determine its suitability for use.

77. The Future Land Use Element, as well as the remainder of the Plan, does not contain required objectives coordinating future land uses with appropriate topography, soil conditions, and the availability of facilities and services. In general, the Plan disregards the special requirements of floodplains and ignores even wetlands in such matters as the designations of future land uses and allowance of septic tanks.

78. The Future Land Use Element, as well as the remainder of the Plan, does not contain required objectives ensuring the protection of natural resources, coordinating coastal area population densities with applicable plans, discouraging urban sprawl, and ensuring the availability of suitable land for utility facilities necessary to support

proposed development.

79. The Future Land Use Element, as well as the remainder of the Plan, does not contain required policies addressing implementation activities for regulating land use categories included in the Future Land Use Map and areas subject to flooding. The implementation activities for critical categories, such as Special Surface Water Protection Districts and Limited Development, are missing from the Plan, which defers such activities until the adoption of land development regulations. The implementation activities for floodplains are plagued by, among other things, the inconsistent and inappropriate land use designations assigned to vast areas of such floodplains in the Cape Haze Peninsula, which encourages unsuitable development and discourages public acquisition; the failure to include the floodplains on the Future Land Use Map; and the express intent to map them only by 1994.

80. The Future Land Use Element, as well as the remainder of the Plan, does not contain required policies addressing implementation 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. As to the last point, no such standards exist for the Special Surface Water Protection District, Limited Development area, nonexistent Conservation area, or Preservation area.



81. The Infrastructure Element, including subelements, as well as the remainder of the Plan, is not correlated to the future land uses and does not indicate ways to provide for the County's needs as to sanitary sewer, drainage, potable water, and natural groundwater recharge. The Data and Analysis insufficiently describe the problems, needs, and general facilities required for the solution of the problems.

82. The Infrastructure Element, including subelements, as well as the remainder of the 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 and discouraging urban sprawl, the conservation of potable water, and the protection of the function of natural groundwater recharge areas and natural drainage features.

83. The Infrastructure Element, including subelements, as well as the remainder of the Plan, does not contain required policies addressing implementation activities for establishing and using potable water conservation strategies and techniques and effective policies regulating land use and development to protect the functions of natural drainage features and natural groundwater aquifer recharge areas.

84. The Conservation Element, as well as the remainder of the Plan, does not contain required objectives effectively conserving, appropriately using, and protecting: a) the quality:

and quantity of current and projected water sources and waters that flow into estuarine or oceanic waters; b) soils and native vegetative communities; and c) fisheries, wildlife, wildlife habitat, and marine habitat.

85. The Conservation Element, as well as the remainder of the Plan, does not contain required policies addressing implementation activities for the protection of water quality by restriction of activities known to affect adversely the quality and quantity of identified water sources, including existing cones of influence, water recharge areas, and waterwells. The Plan fails in this regard in the protection extended to the Shell Creek and Prairie Creek Corridor and reservoir, which is a critical source of drinking water for Punta Gorda, and the Long Island Marsh, which is part of the recharge area for the intermediate aquifer.

86. The Conservation Element, as well as the remainder of the Plan, does not contain required policies effectively addressing implementation activities for the protection of native vegetative communities from destruction from development activities and restriction of activities known to affect adversely the survival of endangered and threatened wildlife. Effective protection of these habitats, and the endangered and threatened wildlife that they support, is impossible without more detailed identification of the habitats' location.

87. The Conservation Element, as well as the remainder of the Plan, 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.

88. The Coastal Management Element, as well as the remainder of the Plan, does not restrict development activities where the cumulative effect of such activities would damage or destroy coastal resources and does not protect human life and limit public expenditures in areas subject to destruction by natural disaster.

89. The Coastal Management Element, as well as the remainder of the Plan, does not contain required objectives protecting, conserving, or enhancing remaining coastal wetlands, especially on the Cape Haze Peninsula; wildlife habitat; and coastal barriers. The same deficiencies exist with respect to 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. The excessive residential densities permitted on the Don Pedro Island chain preclude the achievement of such objectives.

90. The Coastal Management Element, as well as the remainder of the Plan, does not contain required policies limiting the specific and cumulative 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; involving 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.

91. The Capital Improvements Element, as well as the remainder of the Plan, does not contain required objectives: a) addressing the needs of the County for capital facilities, including land acquisitions, to meet existing deficiencies, accommodate desired future growth, and replace worn-out facilities b) demonstrating the County's ability to provide or require the provision of the items identified elsewhere in the Plan; and c) managing the land development process so that public facility needs created by previously issued land development orders or future development do not exceed the ability of the County to fund, or require the funding of, needed capital improvements. In view of the wide-scale privatization of utilities in the County, the primary failures in this regard concern the absence of funds for the acquisition of environmentally important lands or interest in lands and for the

development grandfathered-in by Sections 3-10-5(G) and 3-10-5(I) of the adoption Ordinance.

92. Based upon the above-cited deficiencies, the Plan is not consistent with the minimum criteria of the Act and Chapter 9J-5.

D. Remedial Action

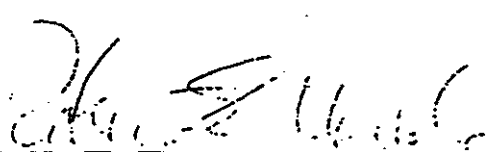
7Q. In order for the Plan to be in compliance with the Act, Charlotte County must take remedial action with respect to the matters noted above in Section VIII of the Findings of Fact and Section IV of the Conclusions of Law.

RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED that the Administration Commission enter a Final Order determining that the Plan is not in compliance.

ENTERED in Tallahassee, Florida, this 27 day of November, 1989.

  
\_\_\_\_\_  
ROBERT E. MEALE  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 30 day of November, 1989.

Copies to:

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Secretary  
Department of Community Affairs  
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Tallahassee, FL 32399-2100

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David Emerson Bruner, Attorney  
Southwest Florida Regional Planning Council  
1114-B North Collier Blvd.  
Marco Island, FL 33937

APPENDIX

Treatment Accorded the Proposed Findings of DCA

The following paragraphs are rejected in whole or in part:

111 (should be east boundary of T 40 S, R 23 E, not T 40 S, R 24 E), 120 (should show about 100 acres of Ag I), 123 (should be 5760 acres of Ag II and 17,280 acres of Preservation), 197-98 (irrelevant), 201-02 (irrelevant), 203 (subordinate), 204 (irrelevant), 211 (last sentence is unsupported by the greater weight of the evidence; DCA representative must either announce himself or, as here, he must be recognized as the DCA representative by responsible County representatives), 231 (unnecessary), 239-42 (internal inconsistency exists with respect to Ag II, not Ag I; other problems exist, however, as to Ag I designation), and 262 (second sentence, as to State Plan Ag goal; unsupported by the greater weight of the evidence).

The remaining paragraphs are adopted or adopted in substance.

Treatment Accorded Proposed Findings of County, Babcock, and Cole

The following paragraphs are adopted:

74 (first sentence), 77, 82, 109, 112, 126, 152-54 (except any request was not a request that any DCA representative announce himself and begin a presentation), 157-58, 160 (except for first clause to the extent that it implies a solicitation of remarks from the DCA representative), 162-63 (except that there are two Urban Service Areas), 165 (as to cited provision), 166, 170 (adopted), 173, 176, 178, 180, 186 (first sentence), 216 (first sentence and first clause of second sentence), 231, 240, 247, 291-92, 297, 300 (first sentence), and 318 (although DER objected to this policy, as set forth in Paragraph 30(8) of the Recommended Order, and as noted in the ORC, DCA Exhibit 4, p. 25).

The following paragraphs are adopted in substance:

78, 85, 116-19, 164 (first two sentences), 171, 172 (although unpromulgated standards do

not preserve the viability of the areas), 174-75, 177, 181, 187, 203 (as partial definition), 212 (first clause), 220 (as partial definition), 235, 238, 242-44, 258, 282-87, 293, 317, and 320.

The following paragraphs are adopted or adopted in substance:  
1-13, 15-18, 20, 22-25, 29, 32-33, and 35.

The following paragraphs are rejected for the reasons set forth below. Paragraphs rejected for more than one reason are listed more than once.

**Irrelevant:**

14, 19, 21, 26-28, 30-31, 34, 36, 37, 39, 41-73, 76 (second sentence), 83, 86-88, 91-93, 95-98, 102 (except as to standing), 103-04, 106-08, 111, 113-15, 120-25, 136-147, 156 (third sentence), 161, 182, 184-85, 190-92, 194-96, 200, 201-02, 204-05, 209-210, 213, 227, 236, 246, 254-56, 272, 274, 276-80, 288, 301-02, 304-07, 308 (second and third sentences), 311-12, 316, and 321-24.

**Legal argument or not a finding of fact:**

38, 40, 99 (meaning unclear), 100, 132-34, 168 (meaning unclear), 223 (meaning unclear), 252 (first sentence), 274, 275, and 296 (although true).

**Unsupported by the greater weight of the evidence:**

74 (second sentence), 75-76, 79-81, 84 (also contrary to proposed finding 240), 89-90, 101, 156, 159, 160 (first clause to the extent that it implies a solicitation of remarks from the DCA representative), 164 (last sentence), 170 (except for first sentence), 179 (Zemel landfill), 186 (second sentence), 193, 207, 212 (second sentence), 216 (second clause), 224-26, 251, 257, 261, 271, 281, 298-99, 300 (second and third sentences; CHMP prohibits construction of bridge to "undeveloped" barrier islands), 308 (first sentence), 310 (first and second sentences), 315, and 319.

**Subordinate:**

94, 110, 127-31, 135, 155, 167, 169, 183, 188-89, 208, 214 (although accurate in the sense that the effect of discouraging or encouraging something can be ascertained only from due consideration of the entire plan,



and not any provision in isolation), 215, 217-18, 221-22, 232, 239, 245, 259-60, 262-63, and 310 (third and fourth sentences).

Recitation of evidence or testimony:

101, 147-51, 197-99, 206, 211, 253, 294, and 300 (fourth sentence).

Cumulative:

219, 228-30, 233-34, 237, 241, 252 (except first sentence), and 295.

Miscellaneous:

248: unsupported by the greater weight of the evidence to the extent that such loans may be based on the speculative value of agriculture land for purposes other than agriculture, rather than the ability of agricultural operations to provide sufficient funds to service the debt over a term roughly equivalent to the relevant economic cycle for which the loan is sought.

249-50: unsupported by the greater weight of the evidence. The ability to borrow funds based on an inflated value based on speculative, nonagricultural considerations is not conducive to the maintenance of agricultural operations. Also, the size of a parcel affects the viability of agricultural operations because, once the land is subdivided into tracts too small to sustain specific agricultural uses, these uses are discouraged because of the difficulty and expense in reassembling tracts of land large enough to sustain a profitable farming operation.

264-70: unsupported by the greater weight of the evidence, which emphasized the ability to service debt in the ordinary course of business, which is a reflection of income, rather than the value of the equity following default and foreclosure, which is a reflection of the value of the collateral.

273: irrelevant. The Plan does not adopt a TDR program. Although land development regulations may one day adopt such a program, the evidence does not permit a finding that such an adoption is a mere formality, so as

Treatment Accorded Proposed Findings of February 24 Trust and Palm Island Resort

The following paragraphs are adopted or adopted in substance:

1-11, 38, and 45 (second sentence).

The following paragraphs are rejected for the reasons set forth below. Paragraphs rejected for more than one reason are listed more than once.

Unsupported by the greater weight of the evidence:

12-15, 18 (see discussion above as to County's proposed finding in Paragraph 303), 19, 29, 32, 33 (first sentence), 36, 37, 39, 40, 54, 57, 60, 62 (first sentence), 63, 66, and 68-73.

Irrelevant:

16(b), 17, 20 (except first sentence), 21-25, 26-28, 30, 31 (but see discussion above as to County's proposed finding in Paragraph 309), 34-35, 36, 41, 44, 45 (first sentence), 51, 58-59, 61, and 65.

Recitation of testimony or evidence:

47-51, 58-59, 62 (second sentence), 64, and 66-67.

Legal argument or not finding of fact:

20 (first sentence), 42-43, 46, 57, and 60.

Cumulative:

37.

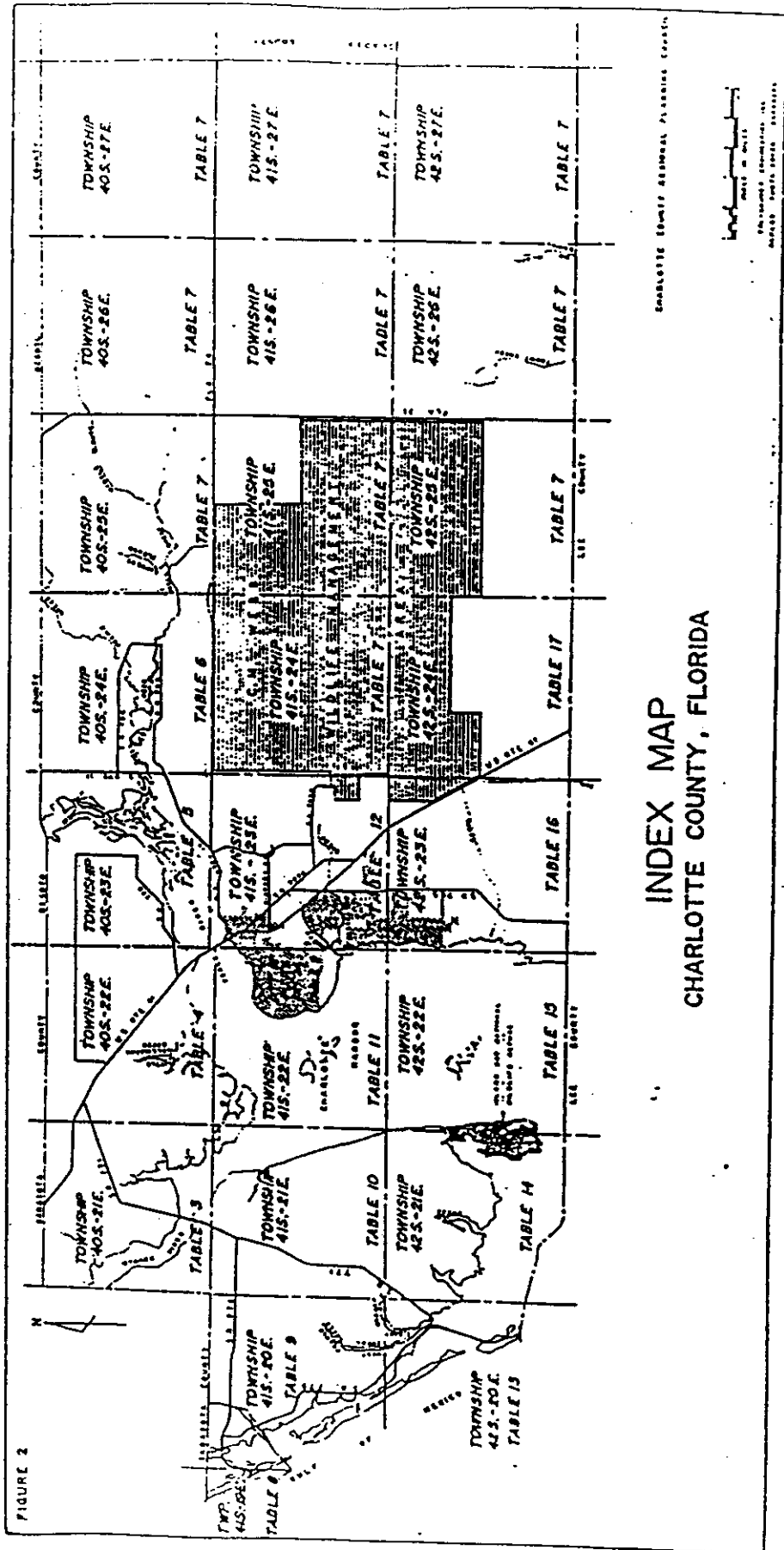
Subordinate:

33 (except first sentence).

Miscellaneous:

16(a): unsupported. CHMP prohibits construction of bridge to "undeveloped" barrier islands. However, the possibility of a bridge linking the Don Pedro Island chain

to the mainland appears remote and thus was not a basis for any finding of fact or conclusion of law in the recommended order.



INDEX MAP  
CHARLOTTE COUNTY, FLORIDA

EXHIBIT "B"

EXHIBIT B

RECEIVED

JAN 22

STATE OF FLORIDA  
ADMINISTRATIVE COMMISSION

FLORIDA AIR 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 U. 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 DATE: January 22, 1990  
Secretary  
Thomas G. Pelham

COUNTY OF CHARLOTTE

BY: [Signature] DATE: 1/18/90  
Chairman, Board of County  
Commissioners

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

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.

---

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

1988  
Growth Management  
Planning Policy Unit

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.

  
\_\_\_\_\_  
David U. Russ  
Senior Attorney

J. Michael Rooney, Esquire  
City Attorney  
P.O. Box 400  
Punta Gorda, Florida 33951-0400

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

Kenneth G. Oertel, Esquire  
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Tallahassee, Florida 32314-6507

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 Carol D. Lounsbury  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

Sandra J. Augustine  
Sandra J. Augustine  
County Attorney

# Attachment 1

CHARLOTTE COUNTY PLANNING AND ZONING BOARD  
ADMINISTRATION CENTER PORT CHARLOTTE, FLORIDA  
Minutes of Regular Meeting, October 28, 1991

## Amendment to Master and Increment I Development Orders

### MURDOCK DRI

By General Development Corporation (GDC) requesting an amendment to the Murdock Center Development of Regional Impact (DRI) Master and Increment I Development Orders. This request will require a Non-Substantial Deviation Determination. Parcels located on the east side of E. Toledo Blade Blvd., north of U.S. 41 and south of Peachland Blvd. also, one parcel south of Kennilworth Blvd. and north of the S.R. 776/El Jobean extension, Murdock area. It contains a total 85 acres more or less. A complete legal description is on file.

### RECOMMENDATION

Mr. Frawley presented the petition with the staff's recommendation for APPROVAL. He advised the Board that this request was to amend the Murdock Center Master and Increment I Development Order to revise AMDA Conceptual Master Development Plan (Map H), delete the requirement for biennial monitoring for fiscal impact, wastewater and water supply from the Master Development Order, revise Increment I Master Phasing Plan (Map H-2), revise the Increment I proportionate share calculation for transportation improvements to reflect the changes in land use, and delete the requirement for biennial monitoring for fiscal impact and wastewater management from the Increment I Development Order. He added that staff's supporting comments were that the request to amend the Development Order should be approved to include the revised Exhibit 6 to allow GDC to satisfy impact fee requirements by donating right-of-way for Quesada Blvd. and by charging the balance of the impact fees to impact fee credits which are established at the Building Department. He stated that staff has more backup from the Traffic Engineer showing that the calculations confirm that this will not be a substantial deviation as far as traffic impacts. There is also an updated resolution from the County Attorney's office.

Mrs. Hess said that the information submitted by staff was very well written and succinctly put.

### APPLICANT'S INPUT

Charlie Telfair represented the petitioner. He said he was aware of one problem that the submission references a 34-acre park and Map H depicts a 34-acre park, but it is actually a 31.95 acre park. He said he would provide a new Map H between now and the date of the Board of County Commissioners' hearing. Mrs. Hess asked if the new community park was now 33 acres. Mr. Telfair responded that the new community park was represented in the Development Order as 38 acres of which 6.5 acres is a canal. He said this now leaves 31.5 acres of land area for the community park. He added that through a number of meetings it was determined that the County does not wish for this proposed park site to be divided by a canal because it limits the uses the County can put on the park site. This amendment is deleting this as a park site and it will become multifamily and commercial property. The new proposed park site is a 31.95 acre parcel. Mrs. Hess asked if that was the only error in the table. Mr.



## MURDOCK DRI (CONTINUED)

Telfair responded that it was and the decrease in acreage would read "decrease of six acres" in community park and there are a number of places where that will be changed. He added that this is the only change and it does not constitute a substantial deviation. He informed the Board that he would have an additional traffic impact. An agreement has been reached that the additional traffic impacts will be paid by a combination of a right-of-way conveyance and reduction in road impact fee credits that are owed to GDC. Mrs. Hess said that it was the opinion of staff and the Board that the proposed park site location is an improvement because it is a contiguous parcel of land. Mr. Telfair read a letter into the record from Max Forgey, Planning Director, dated August 9, 1991. Mrs. Hess said the Board did not need a copy of that letter because it was essentially what he said in his recommendation.

## CITIZENS' INPUT

**MRS. HESS OPENED THE PUBLIC HEARING.** Louise Raterman said that the 38-acre proposed park site was filled with debris. She asked if this site was really suitable park material. Mr. Telfair said he has been on the site and there is some land clearing debris and some pipe that will be relocated. He added that GDC does not have a dumping division and obviously any site will have a degree of littering. The proposed park site probably has less litter than the old park site. He asked Ms. Raterman to ask his permission to go on his property because otherwise it was considered trespassing. Ms. Raterman said that when she went to the site there were motorcyclists and children on the property. She asked why he was concerned about trespassing when there was no enforcement on the site. Mr. Flischel said this discussion should not be heard in this forum.

**MR. FLISCHEL MOVED TO CLOSE THE PUBLIC HEARING. MR. GRAVESEN SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY.**

## MOTION

**MR. GOLDBERG MOVED THAT THE AMENDMENT TO THE MURDOCK DRI MASTER AND INCREMENT I DEVELOPMENT ORDERS BE FORWARDED TO THE BOARD OF COUNTY COMMISSIONERS WITH A RECOMMENDATION FOR APPROVAL. MR. FLISCHEL SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.**

The meeting adjourned at 5:15 P.M.

Attachment 2

**MURDOCK CENTER  
MASTER AND INCREMENT I  
NOTIFICATION OF  
PROPOSED CHANGE**

NOTIFICATION OF A PROPOSED CHANGE TO THE MURDOCK CENTER MASTER  
AND INCREMENT I DEVELOPMENT OF REGIONAL IMPACT (DRI)  
SUBSECTION 380.06(19), FLORIDA STATUTES

Subsection 380.06(19)(e)5, Florida Statutes (1989), requires that submittal of a proposed change to a previously approved DRI be made to the local government, the regional planning council, and the state land planning agency. The following form is recommended by the Florida Department of Community Affairs.

1. I, Lisa Davis Anness, authorized representative of General Development Corporation as Debtor in Possession, U.S. Bankruptcy Court, Southern District of Florida, Case #: 90-12231-BKC-AJC, hereby give notice of a proposed change to a previously approved Development of Regional Impact in accordance with Subsection 380.06(19)(e)2, Florida Statutes (1989). In support thereof, I submit the following information concerning the Murdock Center Master and Increment I development, which information is true and correct to the best of my knowledge and belief. I have submitted today, under separate cover, copies of this notification to the Southwest Florida Regional Planning Council and to the Bureau of Land Management, Department of Community Affairs.

8-23-91  
(Date)

  
Lisa Davis Anness

2. Applicant: General Development Corporation  
Debtor in Possession  
U.S. Bankruptcy Court  
Southern District of Florida  
Case #: 90-12231-BKC-AJC  
2601 S. Bayshore Dr.  
Miami, Florida 33133
3. Authorized Agent: Lisa Davis Anness  
Vice President
4. Location: Charlotte County, Florida

5. **Prior Changes:** Previous changes to the Development Orders include the following:

- I. **Murdock Center Master (Resolution No. 87-48)**
  - A. Resolution 88-280
  - B. Resolution 89-142
  - C. Resolution 89-367
  
- II. **Murdock Center Increment I (Resolution No. 88-83)**
  - A. Resolution 89-143
  - B. Resolution 89-368

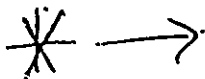
These amending resolutions, along with the original Development Orders for the Master and Increment I, are attached as Exhibits II and III, respectively.

6. **Currently Proposed Changes:** The proposed changes to the Murdock Center Master and Increment I Development Orders, to be adopted by the County Commission of Charlotte County, are incorporated into the proposed amending resolutions attached as Exhibit I. These proposed changes would provide the following:

I. **Murdock Center Master**

A. **Revise the current Map H, Murdock Center AMDA Conceptual Master Development Plan to reflect the changes shown below (a-e). Attached as Exhibit A is the proposed Map H. For clarity, these changes are illustrated on the attached Exhibit B AIDA: Increment I, Conceptual Master Development Plan, where they are lettered A-E. The proposed changes reflect the following:**

- a. **Change 34-acre Multifamily tract (MF-15) with 510 units to Community Park.**
- b. **Change 5-acre Multifamily tract (MF-20) with 100 units to Commercial (CZ-1).**
- c. **Change 18 acres of Community Park (CP) to MF-12.**
- d. **Change 3 acres of Government (G) and 15 acres of CP to CZ-1. In addition, 6.5 acres of the Crestview Waterway which was identified as Community Park, are now included as part of Open Space/Waterways (WW).**
- e. **Change 10-acre Multifamily tract (MF-20) with 120 units to Light Industrial (LI).**



As shown in Table A (Exhibit C) the proposed changes will have the following impacts to the current land use summary: decrease multifamily by 1,209 units; increase retail by 207,000 square feet; decrease the amount of community park

by 4 acres; and add an industrial use with 100,000 square feet. It should be noted that while the proposed change will result in a 4 acre reduction in the total acres of community park, the change will actually result in a 2.5 acre increase in net park acreage, since the current 38-acre tract includes 6.5 acres of the Crestview Waterway and the proposed tract is 34 acres of contiguous uplands.

- B. Delete the requirement for biennial monitoring reports for fiscal impact, wastewater management and water supply from the Murdock Center Master Development Order.

## II. Murdock Center Increment I

- A. Revise Map H, Murdock Center Increment I Conceptual Master Development Plan to reflect the same changes made to the AMDA Conceptual Master Development Plan described in I.A. A revised Map H for Increment I is attached as Exhibit D.
- B. Revise Map H-2, Murdock Center Increment I, Master Phasing Plan to reflect the changes in multifamily and commercial land uses and the addition of industrial land use stated above. A revised Map H-2 (Exhibit E) and Table 12-12-i (Exhibit F) are attached as the proposed phasing map and phasing schedule respectively.
- C. Revise the proportionate share calculation for transportation improvements included in the Murdock Center Increment I Development Order to reflect the changes described above to the Master Plan. A revised proportionate share calculation is included as Exhibit G.
- D. Delete the requirement for biennial monitoring reports for fiscal impact and wastewater management from the Murdock Center Increment I Development Order.

## 7. Justification for Request

- I. The justification for the proposed change to the Murdock Center AMDA Conceptual Master Development Plan (I.A. above) and the Increment I Conceptual Master Development Plan and Master Phasing Plan (II. A. and B. above) are included below.

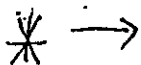
According to subsection 380.06(19)(e)5.c. a proposed change consisting of simultaneous increases and decreases of at least two or more land uses is presumed to be a substantial deviation but may be rebutted by clear and convincing evidence that the proposed change does not create any additional regional impacts not previously reviewed. The proposed change affects four of the development's land uses by reducing the amount of multifamily, increasing

the amount of retail, reducing the amount of park acreage and increasing the amount of open space. In addition, the 10 acres of industrial that will be added to the development are subject to subsection 380.06(19)(e)5.a. It is presumed that the addition of 10 acres of industrial is not a substantial deviation since the proposed change affects 1.5 percent of the Master and 3.2 percent of the Increment I land area, well below the 15 percent threshold. It is our position that the proposed changes do not create a substantial deviation for the following reasons:

- A. Similar to a previously approved non-substantial deviation, the proposed changes will not result in increased transportation impacts above those permitted by subsection 380.06(19)(e)15, that is, a 15 percent increase in the number of external vehicle trips. Attached as Exhibit IV is a detailed transportation analysis which demonstrates that the proposed change will result in an overall 5 percent reduction in peak hour traffic as a result of a reduction in the amount of high peak hour land uses such as multifamily and office. Average daily traffic is anticipated to increase by 14.8 percent.

In addition to not exceeding the threshold for the amount of new traffic generated, the proposed change does not generate the need for additional roadway improvements from the original or current transportation study. Table 31.12A from the traffic analysis (Exhibit IV) is attached as Exhibit H, compares the original roadway improvements schedule to those required by the proposed changes. As shown, there are no additional roadway improvements or changes in timing of the improvements resulting from the proposed change.

In accordance with Subsection 380.06(19)(a), "Any proposed change to a previously approved development which creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, shall constitute a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review." As stated above the proposed change does not exceed the 15 percent threshold for external vehicle trips; rather, it results in a reduction in peak hour trips and does not result in any additional transportation impacts or changes in timing for transportation improvements. Thus, the change creates no additional or new regional impacts not previously reviewed.



- B. The addition of 10 acres of light industrial will permit the development of warehousing, outside storage and light manufacturing. The currently approved Master Plan identifies this property for multifamily development with 120 units. As shown in the Master Plan (Exhibit A) this tract has

3. Wastewater Management

- a. The applicant agrees that any hazardous wastewater will be treated separately from everyday wastewater and dealt with according to FDER criteria.
- b. There shall be no on-site treatment or disposal of wastewater.
- c. There shall be no use of septic tanks within Increment I.

4. Water Supply

- a. Water conservation measures as described within the Water Conservation act (Section 553.14, Florida Statutes) must be utilized.
- b. Prior to construction of each approved phase, the developer should show verification acceptable to the SWFWMD that adequate water and wastewater facilities are available for that respective portion of construction.
- c. The lowest quality of water practicable should be utilized for all non-potable water use.

5. Solid Waste

- a. There shall be no on-site disposal of solid waste.

6. Energy

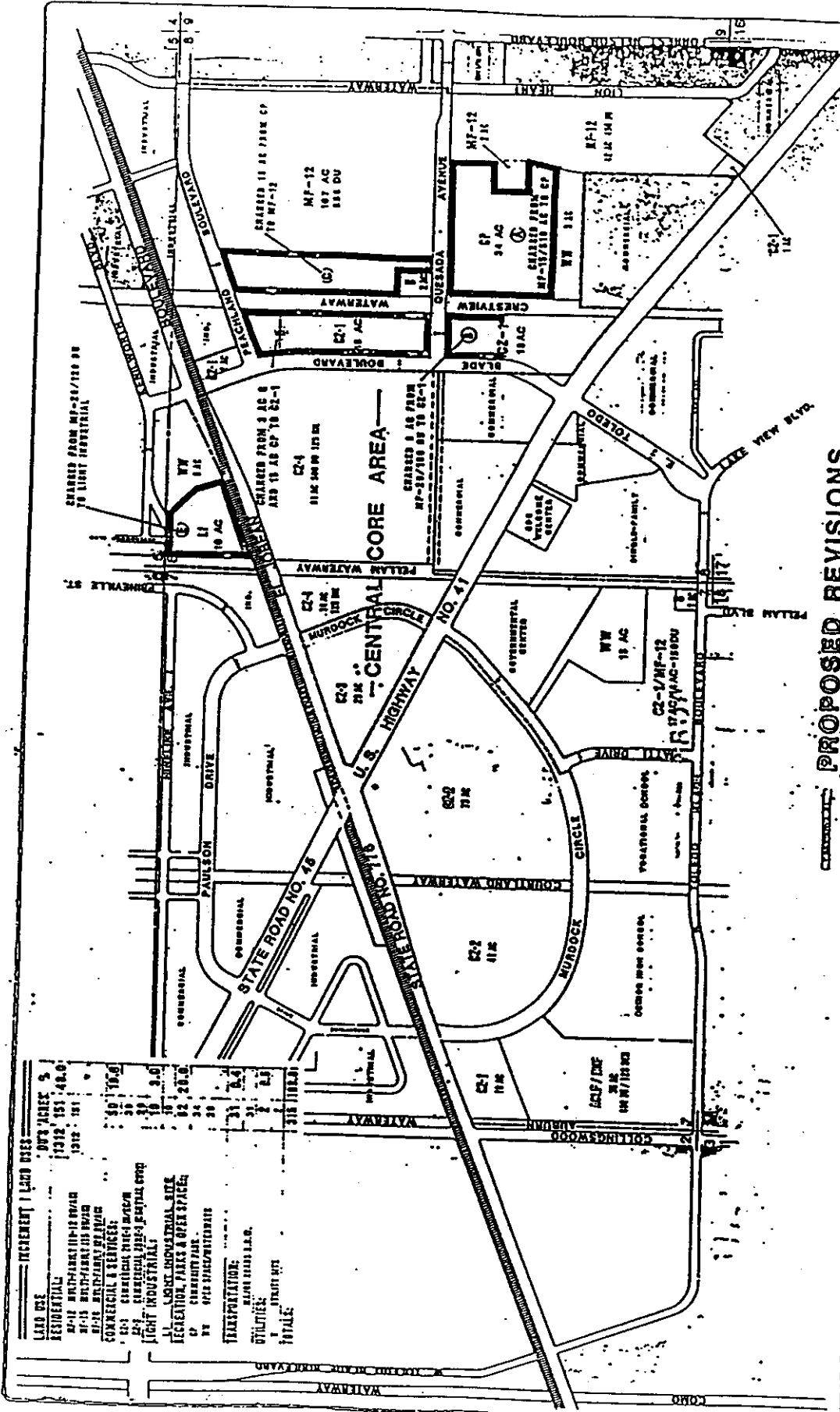
- a. The applicant shall comply with the energy conservation conditions outlined in Section 4.A. of Exhibit 2 of the Master Development Order.

7. Vegetation and Wildlife

- a. A wildlife survey for Eastern Indigo snakes, gopher tortoises and Sherman's Fox squirrels must be performed by the applicant prior to ground-breaking and, depending on the survey results, the preservation of habitat or relocation of these species must be carried out.
- b. A program for the on-going control and removal of nuisance exotic plants on-site must be instituted by the applicant.
- c. The applicant is responsible for the preservation, or relocation of the nine plant species found on-site and listed in Table 18-2 of the AMDA.  
The applicant must preserve any on-site palm hammocks.

→

\* →



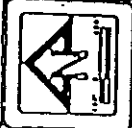
**PERCENTAGE LAND USES**

LAND USE	PERCENT	ACRES
RESIDENTIAL	10.0	48.0
COMMERCIAL	10.0	48.0
INDUSTRIAL	10.0	48.0
RECREATION	10.0	48.0
UTILITIES	10.0	48.0
TRAILS	10.0	48.0

**LEGEND**

- RESIDENTIAL
- COMMERCIAL
- INDUSTRIAL
- RECREATION
- UTILITIES
- TRAILS

**PROPOSED REVISIONS**



**MURDOCK CENTER**  
 AIDA: INCREMENT I  
 CONCEPTUAL MASTER DEVELOPMENT PLAN

MAP  
**H**

SEE EXHIBIT B FOR THE  
 CONCEPTUAL MASTER DEVELOPMENT  
 PLAN IN PROPORTION. EXHIBIT B  
 IS PLACED  
 ON  
 SEE SHEET 15-14

**EXHIBIT B**





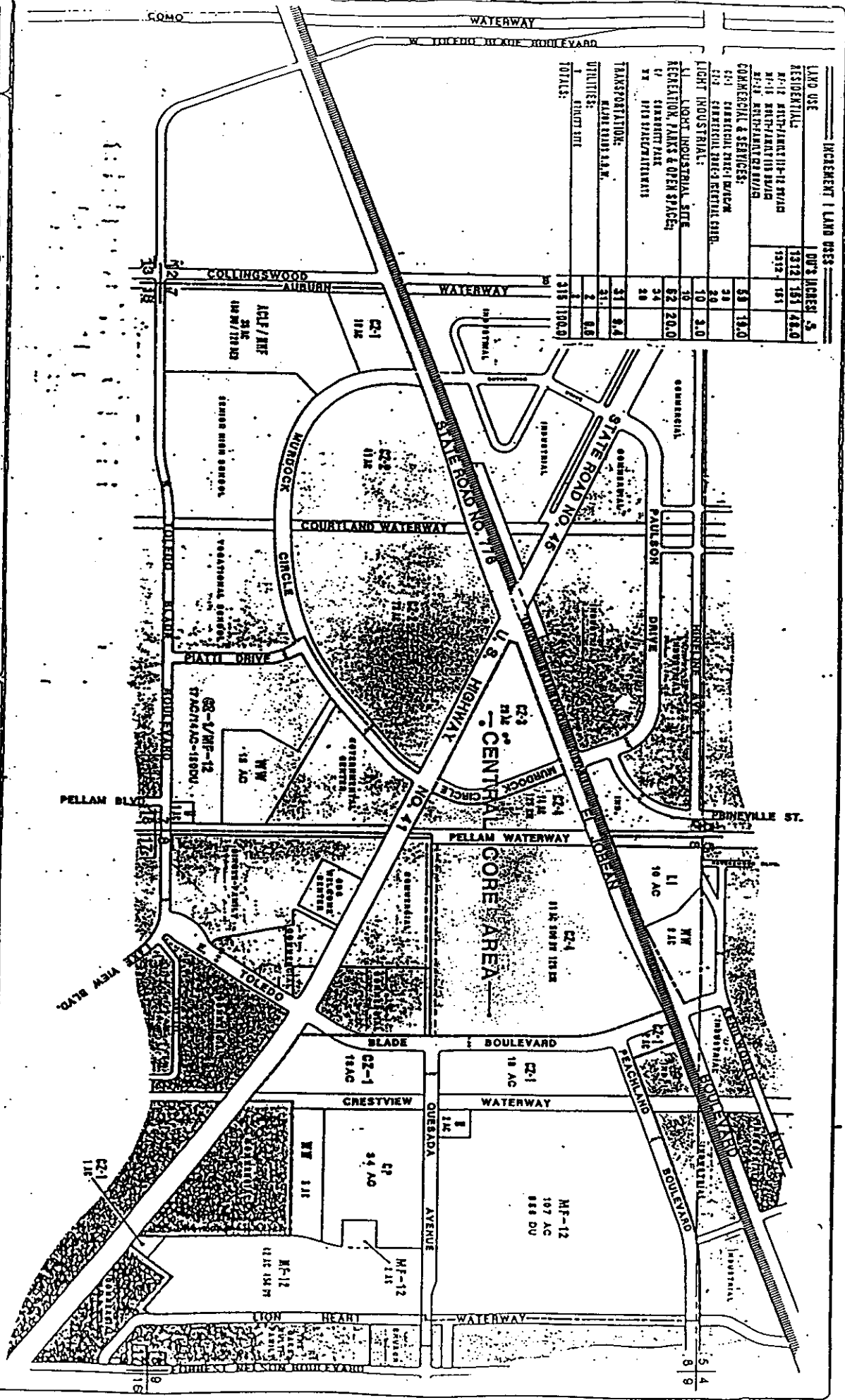
**MURDOCK CENTER**  
**AIDA: INCREMENT I**  
 CONCEPTUAL MASTER DEVELOPMENT PLAN

LAND ACQUISITION  
 LAND ACQUISITION  
 WITH EXISTING OR RESERVED LAND USE

LAND ACQUISITION  
 WITH EXISTING OR RESERVED LAND USE

MAP  
**H**

LAND USE	ACRES
<b>TOTALS:</b>	<b>318.17000</b>
UTILITIES:	2.88
STREET EMT	2.88
TRANSPORTATION:	31.84
RECREATION, PARKS & OPEN SPACES:	34.00
COMMERCIAL & SERVICES:	58.1900
RESIDENTIAL:	1312.151
INDUSTRIAL:	10.00



451.50  
C416  
K.C.C.

# Attachment 3

G-C-RR YC

## RESOLUTION NUMBER 88 - 83

INCREMENTAL DEVELOPMENT ORDER FOR INCREMENT I OF THE  
MURDOCK CENTER DEVELOPMENT OF REGIONAL IMPACT (DRI).

BE IT RESOLVED by the Board of County Commissioners of Charlotte County,  
Florida:

### Section 1. Findings of Fact and Conclusions of Law.

The Board of County Commissioners of Charlotte County, Florida, hereby makes  
the following findings of fact and conclusions of law:

- 1.1 On September 18, 1985, General Development Corporation, hereafter referred to as General, or applicant, submitted an Application for Master Development Approval (AMDA) and an Application for Incremental Development Approval (AIDA), both dated August, 1985 for the Murdock Center Development of Regional Impact, to Charlotte County and the Southwest Florida Regional Planning Council (SWFRPC), pursuant to Chapter 380.06(21), Florida Statutes.
- 1.2 On March 3, 1987, the Board of County Commissioners of Charlotte County passed and duly adopted the Master Development Order for the Application for Master Development Approval for the Murdock Center DRI (see Resolution 87-48).
- 1.3 Increment I encompasses approximately 315 acres, generally located north of U.S. 41 and east of the intersection of U.S. 41 and S.R. 776, and is more specifically described in Exhibits 1 and 2.
- 1.4 The review of Increment I has been carried out according to and in compliance with Chapter 380, Florida Statutes and the Master Development Order for the Murdock Center DRI.
- 1.5 All public hearings related to Increment I have been duly advertised in compliance with Chapter 380.06(11), Florida Statutes, the Charlotte County Zoning Regulations and all other applicable laws and regulations.
- 1.6 On May 2, 1988, the Charlotte County Planning and Zoning Board held a public hearing on Increment I, and received pertinent evidence, including the SWFRPC report and recommendations, and recommended to the Board of County Commissioners that Increment I be granted conditional approval.
- 1.7 On June 14, 1988, the Charlotte County Board of County Commissioners held a public hearing on Increment I and received and considered

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RECORD VERIFIED - BARBARA T. SCOTT, CLERK  
TANMIE WHISSEMAN  
*[Signature]*

2. Temporary shelter space shall be above the category 3 elevation either totally or through adequate space in common areas or the upper interior hallways of multi-story structures or similarly protected area containing no opening directly to the exterior.
3. The applicant shall meet with County Disaster Preparedness officials to discuss and identify appropriate hurricane mitigation measures to include, but not be limited to, using any common areas in the multi-story residential units/commercial/industrial/office buildings for suitable hurricane shelter.

I. VEGETATION AND WILDLIFE

1. A wildlife survey for Eastern Indigo snakes, gopher tortoises and Sherman's Fox squirrels must be performed by the applicant prior to ground-breaking and, depending on the survey results, the preservation of habitat or relocation of these species must be carried out.
2. A program for the on-going control and removal of nuisance exotic plants on-site must be instituted by the applicant.
3. The applicant is responsible for the preservation, or relocation of the nine plant species found on-site and listed in Table 18-2 of the AMDA.
4. The applicant must preserve any on-site palm hammocks.

J. TRANSPORTATION

1. From a period of one (1) year after the effective date of this Incremental Development Order, all new improvements to the roadways shown on Exhibit 8 shall be constructed in accordance with the adopted design standards of Charlotte County and the FDOT Manual of Uniform Minimum Standards for Design, Construction, and Maintenance for Streets and Highways ("Green Book") in effect on the effective date of this Development Order.
2. The applicant's total proportional share for roadway improvements to Kenilworth Boulevard between U.S. 41 and Hillsborough Boulevard (prior to gas tax and license credits), as shown in Exhibit 6, has been calculated for each link based on the following formula:

$$P.S. = (T.C.I.P. \times \frac{A-B}{A}) \times \% \text{ Project Traffic}$$

Where:

P.S. is the Murdock Increment I applicant's proportional share prior to gas tax and license credits for needed improvements to Kenilworth Boulevard.

T.C.I.P. is the total cost of the improvements needed for each segment of Kenilworth Boulevard shown in Exhibit 6.

A is the total estimated cost of the entire Kenilworth corridor from U.S. 41 to King's Highway (\$10,912,016).

B is the current cost of Kenilworth corridor improvements associated with the Villages of DeSoto DRI. (\$6,030,341).

% Project Traffic - is the percentage of total traffic on a particular road link which has been identified by the traffic model as being attributable to Increment I, and as shown in Exhibit 6.

If the number of dwelling units in the Villages of DeSoto DRI is modified such that credits are granted to the applicant, thereby reducing the \$6,030,341 identified above as variable "B" by the amount of the credits, the Murdock Increment I applicant's proportional share, prior to gas tax and license credits, for roadway improvements to Kenilworth Boulevard will be recalculated.

## Attachment 4

### "CURRENT FUTURE LAND USE MAP (F.L.U.M.) DESIGNATION FOR SITE A"

#### THE OFFICIAL (COLOR) F.L.U.M. MAP DESIGNATION:

The designation on the official (color) F.L.U.M. is "Medium Density Residential" for Site A. However, the official map does not reflect the F.L.U.M. amendment (petition #ZAR-89-6-30-LS) which was adopted by the Board of County Commissioners on February 13, 1990 (see Exhibit 1a, the ordinance adopting the land use change and Exhibit 1b, the resolution amending the Murdock Center DRI Conceptual Master Development Plan).

#### THE UNOFFICIAL CHANGE (BLUE-LINE) F.L.U.M. DESIGNATION:

The color F.L.U.M. map, adopted in December of 1988, has not been revised to reflect the F.L.U.M. amendments that were approved between December 1988 and the present date. The County currently does not have a system in place to amend the color F.L.U.M. map. These changes are recorded on the blue-line map (see Exhibit 2, that portion of blue-line map that contains the 1990 F.L.U.M. amendment).

#### THE LOCATION OF A WETLAND OFF SITE:

Regarding petition #ZAR-91-12-27-LS, Site A, there is some confusion concerning the exact boundary location of the land use designation "Recreation/Non-Public." The actual occurrence of the wetland is off site, however, a portion of the land use designation "Recreation/Non-Public" is located on site.

#### THE HISTORY OF THE CONFLICT:

The original staff report, issued for #ZAR-91-12-27-LS, is probably the closest facsimile to the truth. Confusion arose when the applicant did a wetland survey which determined there was no occurrence of a wetland on Site A. But, the wetland is not the only reason for the land use designation of "Recreation/Non-Public". The request for the "Recreation/Non-Public" land use designation (and the acreage involved) is recorded in the old file #ZAR-89-6-30-LS.

**THE LEGAL DESCRIPTION FROM THE OLD FILE:**

The rezoning/Comprehensive Plan amendment, #ZAR-89-6-30-LS, contained a legal description for a 17± acre parcel of land (see Exhibit 3). (The current request is a 10 acre sub-parcel of this 17± acre parcel.) In a letter to Kevin Grace, Assistant County Administrator, the applicant further defined the 17± acre request as a change from "Medium Density Residential" to 6± acres of "Town Center/High Density Residential" and 11± acres of "Recreation/Non-Public", consisting of 6± acres of wetland and 5± acres of upland preserve. (see Exhibit 4).

Please note, the legal description for this request was done for the 17± acre mother parcel only. Separate legal descriptions were not submitted for the 6± and 11± acre sub-parcels. The upland preserve (a portion of the 11± acre sub-parcel) contains a palm hammock which is to be preserved as a condition for development as outlined in the Murdock Center DRI Increment I Development Order.

**THE LEGAL DESCRIPTION FROM THE CURRENT FILE:**

The rezoning/Comprehensive Plan amendment, #ZAR-91-12-27-LS (for Site A), contains a legal description for a 10.02± acre parcel of land (see Exhibit 5).

If you recognize the 1990 change, then the current request is for 6± acres of "Town Center/High Density Residential" and 4.02± acres of "Recreation/Non-Public" to be changed to "Industrial" (see Exhibit 6, that portion of the blue-line map that contains Site A).

10.50  
10.50

ORDINANCE  
NUMBER 90 - 8

AN ORDINANCE PURSUANT TO SECTION  
163.3187(1)(c), FLORIDA STATUTES (1987),  
ADOPTING AN APPROVED LARGE SCALE AMENDMENT TO  
THE CHARLOTTE COUNTY COMPREHENSIVE PLAN.

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CHARLOTTE COUNTY

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RECITALS

1. After its public hearing on August 15, 1989, the Board of County Commissioners transmitted the second set of proposed amendments to the Charlotte County Comprehensive Plan for calendar year 1989 to the state land planning agency.

2. The Board of County Commissioners has considered all comments received from persons, agencies and governmental units, as well as the recommendations of the County Planning Department.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Charlotte County, Florida:

Section 1. Proposed Amendment. The following petition for amendment to the Charlotte County Comprehensive Plan is hereby approved:

PETITION #ZAR-89-6-30-IS

Land use plan amendment request by General Development Corporation requesting a land use plan amendment from Medium Density Residential to Town Center (High Density) (6 acres more or less and Recreation/Non-Public (11 acres more or less) on property described as a parcel of land lying in Section 8, Township 40 South, Range 22 East, Charlotte County, Florida, more particularly described as follows:

Beginning at the Northwest corner of said Section 8, run thence S 89°53'04" E (shown as S 89°53'37" E on the Plat of Port Charlotte Subdivision Section 34, recorded in Plat Book 5, Pages 38A through 38H of the Public Records of Charlotte County, Florida) along the North line of said Section 8, a distance of 1541.28 feet; thence S 47°41'05" W a distance of 638.73 feet to the Point of Curvature of a circular curve concave Northwesterly, and having a

REC'D FEB 15 1990



radius of 900 feet; thence Southwesterly along the arc of said curve through a central angle of 21°20'41" a distance of 335.28 feet to the Point of Tangency, said point being also a point on the Northwesterly line of the Seaboard Coast Line Railroad right of way; thence S 69°01'46" W along said right of way line, a distance of 839.57 feet to a point on the West line of said Section 8; thence N 0°04'48" W along said Section line, a distance of 908.44 feet to the Point of Beginning.

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OR BOOK

Containing 17 acres, more or less, and includes a portion of Pellam Waterway along the Westerly line.

Section 2. Transmittal of Adopted Amendment. Pursuant to Section 163.3187(2), Florida Statutes (1987), a copy of this ordinance shall be transmitted to the state land planning agency.

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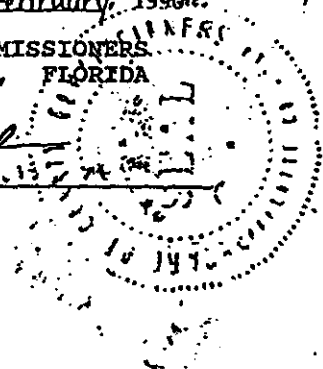
Section 3. Effective Date. This ordinance shall take effect upon receipt of the acknowledgment of its filing in the Office of the Secretary of State, State of Florida.

PASSED AND DULY ADOPTED this 13 day of February, 1990.

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

BY

*Jack [Signature]*



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

By *Deane Demaster*  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

*Sandra J. Augustine*

Sandra J. Augustine  
County Attorney

olrgam6/a/111289



RECEIVED  
 APR 30 1990  
 CHARLOTTE COUNTY  
 PLANNING DEPT.

90 APR 30 AM 8:26

STATE OF FLORIDA  
 DEPARTMENT OF COMMUNITY AFFAIRS

2740 CENTERVIEW DRIVE • TALLAHASSEE, FLORIDA 32399

BOB MARTINEZ  
 Governor

THOMAS G. PELHAM  
 Secretary

April 25, 1990

The Honorable Jack Lotz  
 Chairman, Charlotte County Board of  
 Commissioners  
 18500 Murdock Circle  
 Port Charlotte, Florida 33948-1094

Dear Commissioner Lotz:

The Department of Community Affairs has completed its review of the adopted Comprehensive Plan amendment (Ordinance No. 90-8) for Charlotte County and determined that it meets the requirements of Chapter 163, Part II, Florida Statutes, for compliance, as defined in Subsection 163.3184(1)(b). The Department is issuing a Notice of Intent to find the amendment in compliance. The Notice of Intent has been sent to the Charlotte Herald-News for publication on April 30, 1990.

Please note that a copy of the amended Charlotte County Comprehensive Plan amendment, the Department's Objections, Recommendations and Comments Report dated December 11, 1989, and the Notice of Intent must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Charlotte County Annex, 1510 Placeta Road, Port Charlotte, Florida 33948, the Charlotte County Library and the Punta Gorda City Hall, 326 West Marion Avenue, Punta Gorda, Florida 33950.

The Department appreciates your effort to prepare and adopt your new Comprehensive Plan to guide the growth and development of your community and further the growth management policies of the region and state.

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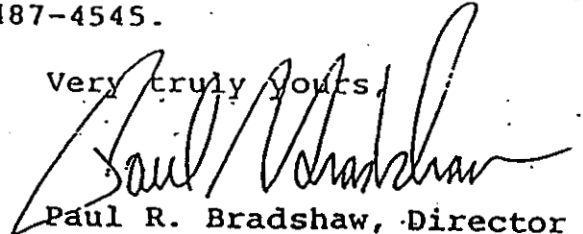
COLLEGE OF COMMUNITY  
 CHARLOTTE COUNTY



The Honorable Jack Lotz  
April 25, 1990  
Page Two

If you have any questions, please contact Bob Nave, Chief,  
Bureau of Local Planning at 904-487-4545.

Very truly yours,



Paul R. Bradshaw, Director  
Division of Resource Planning  
and Management

PRB/mdr

Enclosure: Notice of Intent

cc: Max Forgey, Planning Director

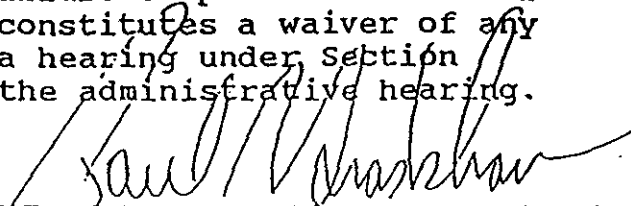
STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS  
NOTICE OF INTENT TO FIND THE  
CHARLOTTE COUNTY  
COMPREHENSIVE PLAN AMENDMENTS IN COMPLIANCE  
DOCKET NO. 90D2-NOI-0801-(A)-(I)

The Department gives notice of its intent to find the amendments to the Comprehensive Plan for Charlotte County, adopted by Ordinance No. 90-8 on February 13, 1990, IN COMPLIANCE pursuant to Sections 163.3184 and 163.3187, F.S.

The adopted Charlotte County Comprehensive Plan amendments and the Department's Objections, Recommendations, and Comments Report, are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Charlotte County Annex, 1510 Placeta Road, Port Charlotte, Florida 33948, the Charlotte County Library and the Punta Gorda City Hall, 326 West Marion Avenue, Punta Gorda, Florida 33950. This determination of compliance applies to amendments referenced above only, and does not apply to the entire plan which has previously been determined to be "not in compliance".

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the amendments to the Charlotte County Comprehensive Plan are in compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, and must include all of the information and contents described in Rule 9J-11.012(8), F.A.C. The petition shall be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If a petition is filed, other affected persons may petition for leave to intervene in the proceeding. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 22I-6.010, F.A.C. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Administration, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing under Section 120.57, F.S., or to participate in the administrative hearing.

  
Paul R. Bradshaw, Director  
Department of Community Affairs  
Division of Resource Planning  
and Management  
2740 Centerview Drive  
Tallahassee, Florida

1308  
15.00

EXHIBIT 1b

RESOLUTION NO. 89 -142

A RESOLUTION OF CHARLOTTE COUNTY, STATE OF FLORIDA, AMENDING THE CONCEPTUAL MASTER DEVELOPMENT PLAN OF RESOLUTION NO. 87-48 (AS AMENDED); FINDING SUFFICIENT COMPLIANCE WITH RESOLUTION NO. 87-48, THE MURDOCK CENTER MASTER DEVELOPMENT ORDER (AS AMENDED); FINDING THAT THIS AMENDMENT DOES NOT CONSTITUTE A SUBSTANTIAL DEVIATION; AND PROVIDING FOR AN EFFECTIVE DATE.

U1149  
OR BOOK

RECORDED

WHEREAS, on March 3, 1987, the Board of County Commissioners of Charlotte County, Florida, passed and approved Resolution No. 87-48, constituting the Development Order for a development known as Murdock Center Master Development (Development Order).

U0856  
PAGE

ALPHABETICALLY

WHEREAS, the Development Order was amended by Charlotte County Resolution No. 88-280 on December 13, 1988.

WHEREAS, General Development Corporation has requested further amendment to the Development Order be considered by the Board of County Commissioners of Charlotte County.

WHEREAS, the Board of County Commissioners of Charlotte County has considered, pursuant to the procedure provided in subparagraph 380.06(19)(e)2, F.S. (1988), the amendment requested by General Development Corporation, and finds that pursuant to Subsection 380.06(19) F.S., it does not constitute a substantial deviation.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Charlotte County that Resolution No. 87-48 be further amended as follows:

Section 1. The conceptual master development plan (Map "H") contained within Resolution No. 87-48 is hereby deleted in its entirety, and the attached "Map H, revised" dated February 10, 1989 is substituted in its stead.

Section 2. The amendment incorporated herein does not constitute a substantial deviation to the conditions of the Development Order. All other terms and conditions of the Development Order shall remain unchanged and in full force and effect.

RECORD VERIFIED - BARBARA T. SCOTT, CLERK  
TAMMIE WHISENANT  
BY \_\_\_\_\_

REC'D JUL 14 1989



*[Handwritten signature]*

Section 3. The applicant proposes to develop a 17 acre parcel within the project as 6 acres of multi-family and 11 acres of non-public park (Proposed change #2) (Attachment #2). An amendment to the Comprehensive Plan's Future Land Use Map is required for that 17 acre parcel to provide consistency with the Future Land Use Plan. No development of that 17 acre parcel shall be permitted until such time as the amendment to the Comprehensive Plan has been approved. However, nothing in this development order shall be deemed to require favorable consideration of that Comprehensive Plan amendment.

Section 4. It is agreed by General Development Corporation and the Board of County Commissioners that the 1 acre parcel (proposed Change #1) will not be subject to the conditions of the Transportation Section of J.(9), (10), (11) of Resolution 88-83. Impact fees for this parcel are to be paid in accordance with the fee schedule in effect at the time of development.

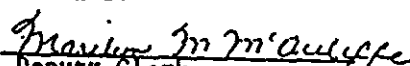
Section 5. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of Charlotte County, Florida, this 11th day of July 1989.

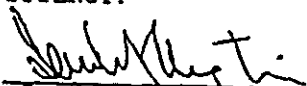
BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

By:   
Wm. D. Noel, Jr., Vice Chairman

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

By:   
Deputy Clerk

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

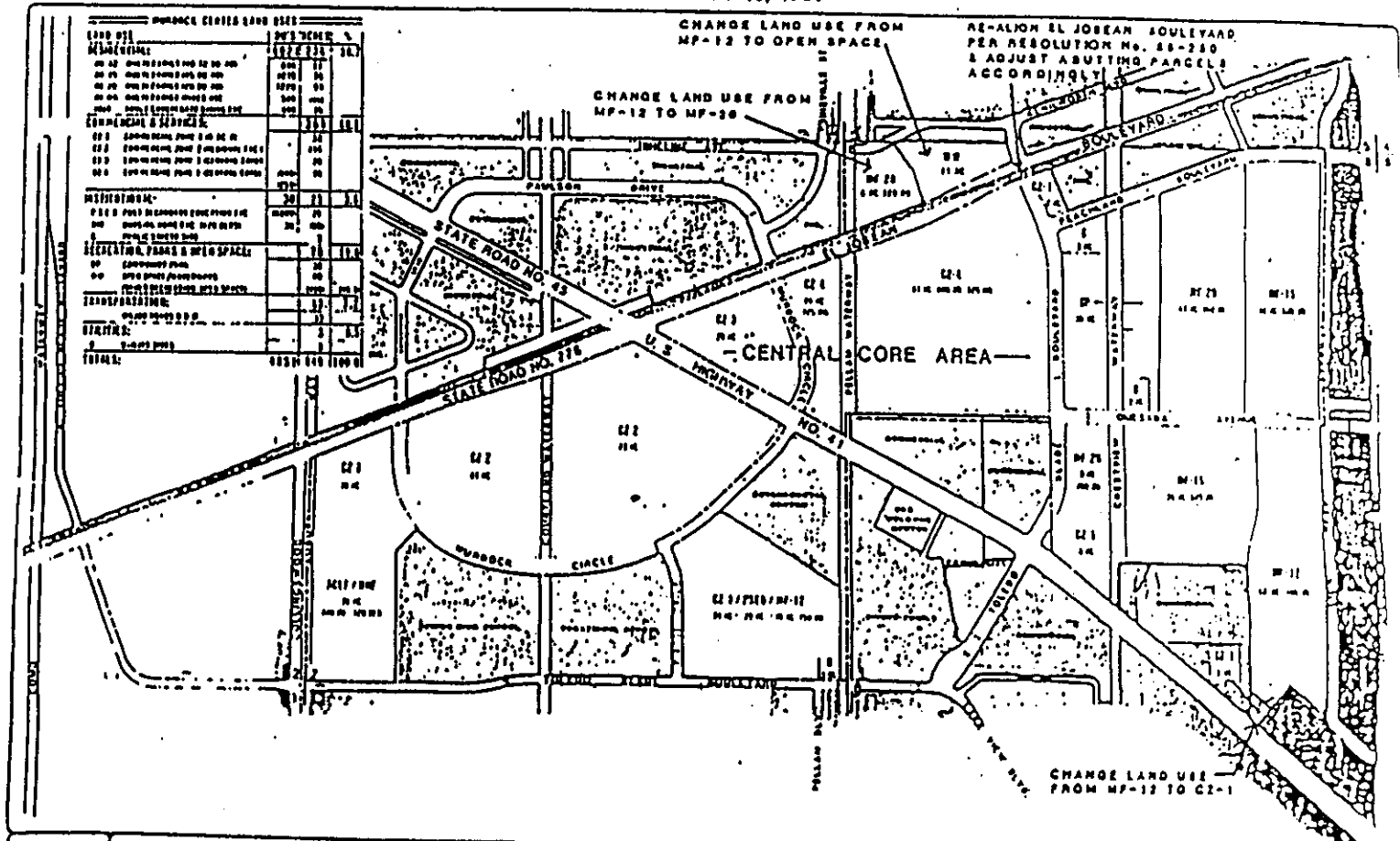
By:   
Sandra Augustine  
County Attorney


UUU43  
OR BOOK

UUU55/  
PAGE


# APPLICATION FOR DEVELOPMENT ORDER AMENDMENT ATTACHMENT #2

FEBRUARY 10, 1989





**MURDOCK CENTER**  
AMDA  
CONCEPTUAL MASTER DEVELOPMENT PLAN



Scale: 1" = 100'

OR BOOK

MAP  
H

Ch  
Bec  
15,00

RESOLUTION NO. 89 - 143

A RESOLUTION OF CHARLOTTE COUNTY, STATE OF FLORIDA, AMENDING THE CONCEPTUAL MASTER DEVELOPMENT PLAN OF RESOLUTION NO. 88-83 (AS AMENDED); FINDING SUFFICIENT COMPLIANCE WITH RESOLUTION NO. 88-83, THE MURDOCK CENTER INCREMENT I DEVELOPMENT ORDER (AS AMENDED); FINDING THAT THIS AMENDMENT DOES NOT CONSTITUTE A SUBSTANTIAL DEVIATION; AND PROVIDING FOR AN EFFECTIVE DATE.

89 JUL 14 AM 11:39

RECORDED

978124

CHARLOTTE COUNTY

OR BOOK

PAGE

WHEREAS, on June 14, 1988, the Board of County Commissioners of Charlotte County, Florida, passed and approved Resolution No. 88-83, constituting the Development Order for a development known as Murdock Center Increment-I Development (Development Order).

WHEREAS, the Development Order was amended by Charlotte County Resolution No. 88-280 on December 13, 1988.-

WHEREAS, General Development Corporation has requested further amendment to the Development Order be considered by the Board of County Commissioners of Charlotte County.

WHEREAS, the Board of County Commissioners of Charlotte County has considered, pursuant to the procedure provided in subparagraph 380.06(19)(e)2, F.S. (1988), the amendment requested by General Development Corporation, and finds that pursuant to Subsection 380.06(19) F.S., it does not constitute a substantial deviation.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Charlotte County that Resolution No. 88-83 be further amended as follows:

Section 1. The conceptual master development plan (Map "H") contained within Resolution No. 88-83 is hereby deleted in its entirety, and the attached "Map H, revised" dated February 10, 1989 is substituted in its stead.

Section 2. The amendment incorporated herein does not constitute a substantial deviation to the conditions of the Development Order. All other terms and conditions of the Development Order shall remain unchanged and in full force and effect.

ALSO VERIFIED - BARBARA T. SCOTT, CLERK  
TAMMIE WHISENANT  
BY [Signature] DC

REC'D JUL 14 1989

*[Handwritten signature]* ★



Section 3. The applicant proposes to develop a 17 acre parcel within the project as 6 acres of multi-family and 11 acres of non-public park (Proposed change #2) (Attachment #2). An amendment to the Comprehensive Plan's Future Land Use Map is required for that 17 acre parcel to provide consistency with the Future Land Use Plan. No development of that 17 acre parcel shall be permitted until such time as the amendment to the Comprehensive Plan has been approved. However, nothing in this development order shall be deemed to require favorable consideration of that Comprehensive Plan amendment.

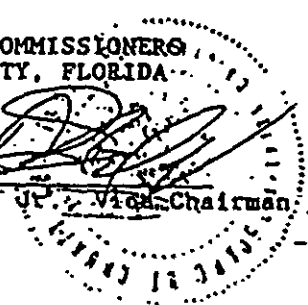
Section 4. It is agreed by General Development Corporation and the Board of County Commissioners that the 1 acre parcel (proposed Change #1) will not be subject to the conditions of the Transportation Section of J.(9), (10), (11) of Resolution 88-83. Impact fees for this parcel are to be paid in accordance with the fee schedule in effect at the time of development.

Section 5. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of Charlotte County, Florida, this 11th day of July, 1989.

BOARD OF COUNTY COMMISSIONERS  
OF CHARLOTTE COUNTY, FLORIDA

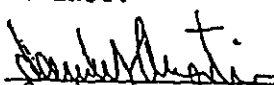
By:    
Wm. D. Noel, Jr., Vice Chairman



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

By:   
Deputy Clerk

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

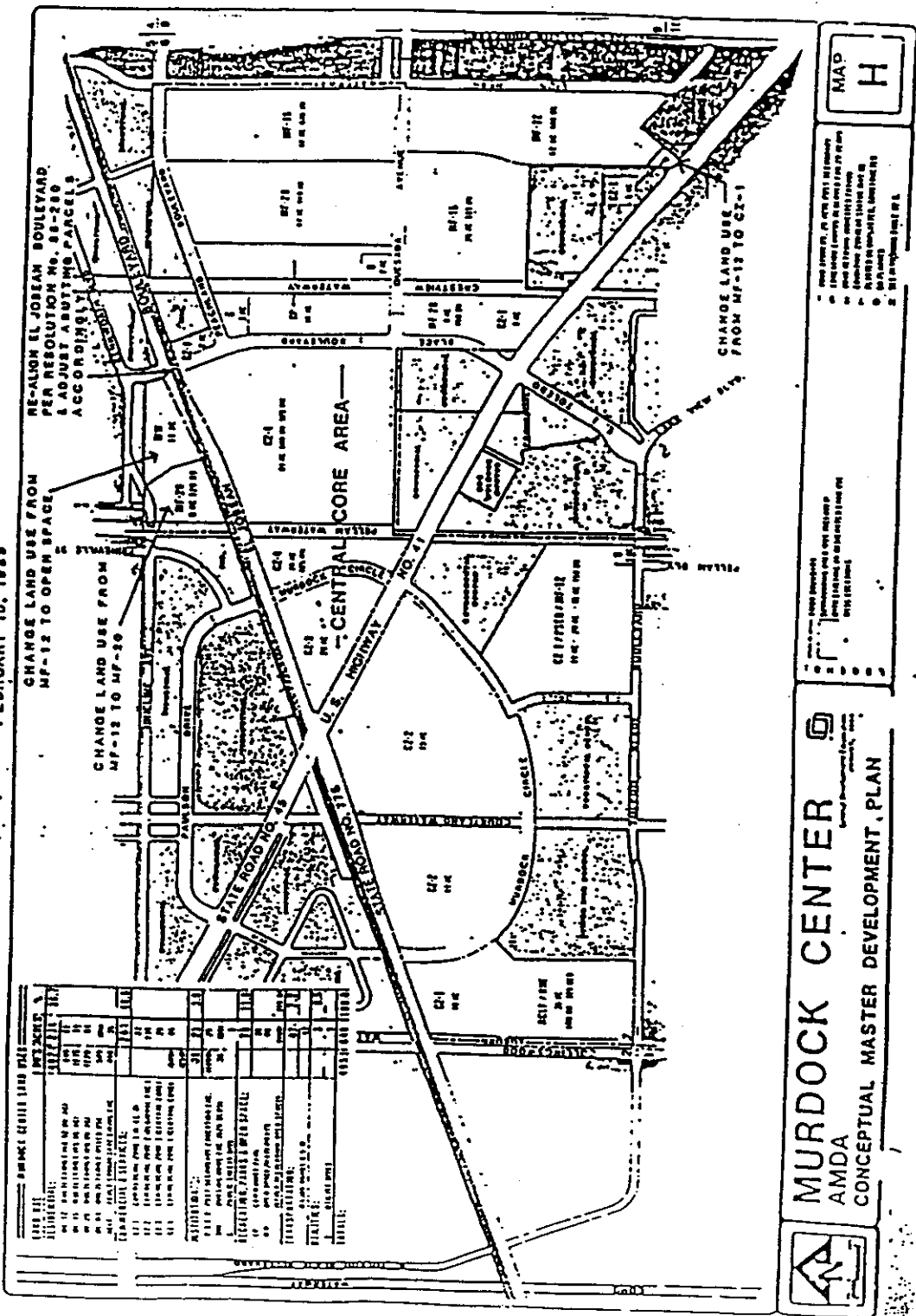
By:   
Sandra Augustine  
County Attorney

UUIU49  
OR OK

000861

APPLICATION FOR DEVELOPMENT ORDER AMENDMENT  
ATTACHMENT #2

FEBRUARY 10, 1989

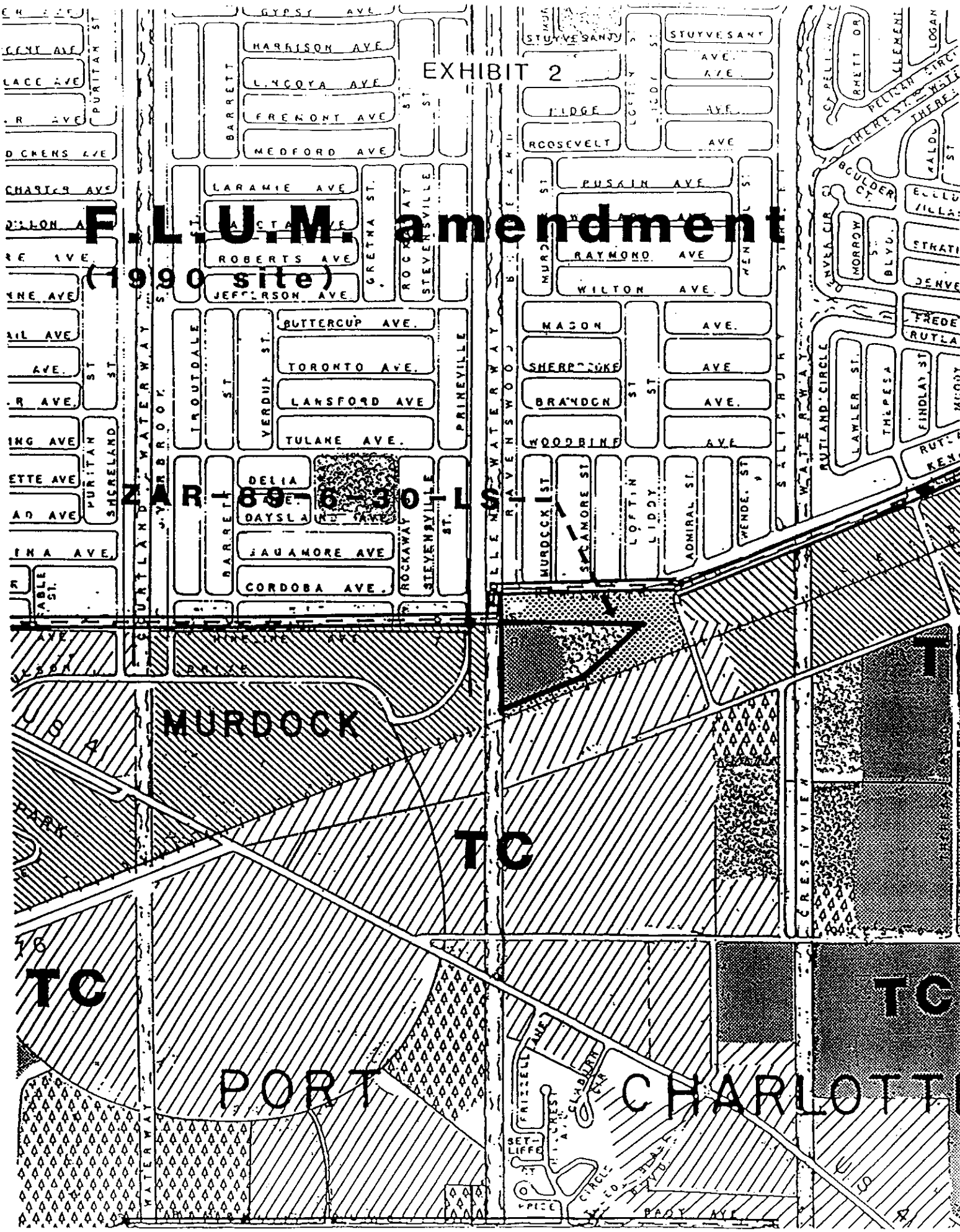


**MURDOCK CENTER**  
AMDA  
CONCEPTUAL MASTER DEVELOPMENT PLAN



EXHIBIT 2

**F. L. U. M. amendment**  
(1990 site)



**89-8-30-LS**

**MURDOCK**

**TC**

**TC**

**PORT**

**CHARLOTTE**


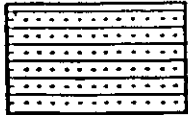

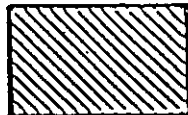
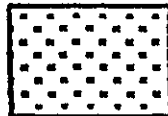
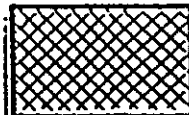


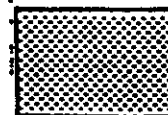

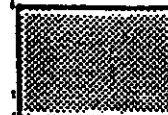



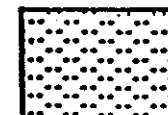
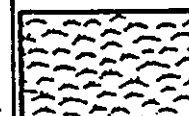

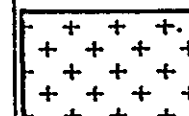



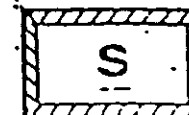
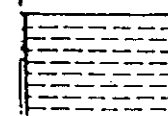

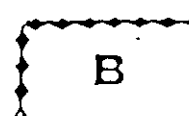
**TC**

# FUTURE LAND USE MAP

3/2/90

## UNINCORPORATED CHARLOTTE COUNTY

### LEGEND

	<b>AGRICULTURE</b> (1 DU/1 ACRE INSIDE USA) (1 DU/10 ACRES OUTSIDE USA)		<b>HIGHWAY SERVICE - RUP</b>
	<b>AGRICULTURE/ CONSERVATION</b> (NOT EXCEEDING 1 DU/40 ACRES)		<b>INDUSTRIAL</b>
	<b>RESIDENTIAL ESTATES</b> (1 DU/5 ACRES TO 2 DU/ACRE)		<b>INDUSTRIAL/OFFICE</b>
	<b>LOW DENSITY RESIDENTIAL</b> (1 DU/ACRE TO 5 DU/ACRE)		<b>RECREATION - NON-PUB</b>
	<b>MEDIUM DENSITY RESIDENTIAL</b> (ABOVE 5 DU/ACRE TO 10 DU/ACRE)		<b>RECREATION - PUBLIC</b>
	<b>HIGH DENSITY RESIDENTIAL</b> (ABOVE 10 DU/ACRE TO 15 DU/ACRE)		<b>PUBLIC and SEMI-PUBLIC</b>
	<b>PLANNED DEVELOPMENT HIGH DENSITY RESIDENTIAL</b>		<b>PUBLIC and SEMI-PUBLIC EXISTING SCHOOL</b>
	<b>MOBILE HOME RESIDENTIAL</b> (UP TO 6 DU/ACRE)		<b>PRESERVATION</b>
	<b>R V PARK</b>		<b>LIMITED DEVELOPMENT</b>
	<b>COMMERCIAL</b>		<b>TOWN CENTER</b>
	<b>COMMERCIAL/OFFICE</b>		<b>SPECIAL SURFACE WATER PROTECTION DISTRICTS</b>
	<b>PROFESSIONAL OFFICE</b>		<b>URBAN SERVICE AREA</b>
			<b>BARRIER ISLAND PROTECTION DISTRICT</b>

## EXHIBIT 3

### ATTACHMENT

A parcel of land lying in Section 8, Township 40 South, Range 22 East, Charlotte County, Florida, further described as follows:

Beginning at the Northwest corner of said Section 8, run thence S. 89°53'04" E. (shown as S. 89°53'37" E. on the Plat of PORT CHARLOTTE SUBDIVISION SECTION THIRTY FOUR, recorded in Plat Book 5, Pages 38A through 38H of the Public Records of Charlotte County, Florida) along the North line of said Section 8, a distance of 1541.28 feet thence S. 47°41'05" W. a distance of 638.73 feet to the Point of Curvature of a circular curve concave Northwesterly, and having a radius of 900.00 feet; thence Southwesterly along the arc of said curve through a central angle of 21°20'41" a distance of 335.28 to the Point of Tangency, said point being also a point on the Northwesterly line of the SEABOARD COAST LINE RAILROAD Right of Way; thence S. 69°01'46" W. along said Right of Way line, a distance of 839.57 feet to a point on the West line of said Section 8; thence N. 0°04'48" W. along said Section line, a distance of 908.44 feet to the Point of Beginning.

Containing 17 acres, more or less, and includes a portion of Pellam Waterway along the Westerly line.

EXHIBIT 4

1111 SOUTH BAYSHORE DRIVE  
MIAMI, FL 33131-2993

(305) 350-1200

April 4, 1989

Mr. John Kevin Grace  
Assistant County Administrator  
Charlotte County  
18500 Murdock Circle  
Port Charlotte, FL 33952

RE: Amendment to the Murdock Center Increment I Development Order

Dear Kevin:

We are transmitting herewith a notice of proposed change to the Murdock Center Increment I Development Order.

On June 14, 1988, the Board of County Commissioners of Charlotte County, Florida, passed and approved Resolution No. 88-83, constituting the Increment I Development Order for a development known as Murdock Center. The proposed change to the Murdock Center Increment I Development Order, would do the following:

- A) Change #1 - Amend the Master Development Plan to reflect a change in the existing Charlotte County Zoning and Comprehensive Plan Land Use designation of "commercial" for a 1.0 acre parcel previously shown as MF-12.

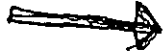
The existing zoning and comprehensive land use plan of Charlotte County designate this parcel for commercial usages.

Support for the proposed change is based on analysis of the traffic modelling done for the Master Development Order. Traffic modelling assumed commercial development for the parcel, and analyzed the impacts accordingly. Therefore, the commercial use of this parcel will not cause any change in impacts on roadway LOS volumes from those previously reviewed. The land use map originally submitted for the Murdock Center DRI had, over the two year course of review, not been updated to reflect this condition.

123 6779

- B) Change #2 - Amend the Master Development Plan, to reflect the Land Use designation from MF-12 to Open Space on a 11 acre parcel along El Jobean (New Kenilworth) Boulevard used for wetland mitigation. The original parcel was shown as 17 acres of MF-12 with 204 dwelling units.

In July, 1987, General received a SWFWMD permit for Port Charlotte Industrial Park Unit 2 (CCIP-2) in the vicinity of the Murdock Center DRI. As a condition of the permit, General was required to mitigate the loss of one small wetland within CCIP-2 area by the expansion of another wetland located within Increment 1. The expanded wetland is referred to as "M-1" in the Increment 1 ADA. This "M-1" wetland is located within the 17 acre parcel along El Jobean Boulevard presently designated as MF-12, and consists of 6 acres of wetland and 5 acres of upland preserve for a total of 11 acres. The requested change would amend the Master Plan to be consistent with this condition.



- C) Change #3 - Amend the Master Development Plan designation from MF-12 to MF-20 on a 6 acre parcel along El Jobean Boulevard to transfer the dwelling units potentially lost from Change #2 above. The original parcel was shown as 17 acres of MF-12 with 204 dwelling units. Between Change #2 and Change #3, the total remaining dwelling units will be 120, a net loss of 84.

Change #2 above, affects 11 acres currently approved for multi-family development at 12 DU/acre, for a total of 132 units. To preserve this development potential, it is requested that the density allowed on the remaining 6 acres be increased from 12 DU/acre to 20 DU/acre. The total number of units resulting from this change will be 120, a net loss of 84 MF DU's from the originally approved 204 units.

It is our position that the proposed change does not involve any of the criteria enumerated in paragraph 380.06(19)(a), (b), or (c), Florida Statutes, which are presumed to create a substantial deviation.

Specifically the proposed change will not create new or additional regional impacts, does not involve an increase in land use or intensity, does not decrease any areas set aside for open space, preservation, buffering, or special protection, and does not extend the date of buildout.

Mr. John Kevin Grace  
Amendment - Murdock Center MDO and IDO  
October 17, 1989  
Page 3

Due to the above factors, we believe that there is no significant impact on regional environmental resources, public facilities, or services created by the proposed change and that the only area that requires detailed analysis to determine whether additional or new regional impacts would be created is the transportation network. As stated above, GDC believes that the attached traffic analysis demonstrates that there are no significant changes to the transportation impacts previously identified.

Therefore, we ask that you review this request and that you proceed to give notice of a public hearing, as required by subparagraph 380.06(f)3, Florida Statutes. Pursuant to that subparagraph notice should be given sometime between November 17th and December 1st for the Board of Commissioners hearing on December 19th. This timetable would also set the Planning and Zoning Board meeting on November 27th.

Thank you for your continuing cooperation and assistance. If you have any comments or questions, please feel free to contact me.

Sincerely,



Michael K. Griffey  
Project Manager  
Environmental Planning & Engineering

MKG:do  
Attachments

cc: Wayne Daltry, Southwest Florida Regional Planning Council  
Tom Beck, Department of Community Affairs  
Nancy Roen, GDC  
Charlie Telfair, GDC  
Kim Woodbury, GDC



## EXHIBIT 5

### LEGAL DESCRIPTION: (Site "A")

A parcel of land lying in the Northwest  $\frac{1}{4}$  of Section 8, Township 40 South, Range 22 East, Charlotte County, Florida, being more particularly described as follows:

Commencing at the Northwest corner of said Section 8; thence S89°53'00"E (Record S89°53'37"E); along the north line of said Section 8, for 100.03 feet to the Point of Beginning; thence continue S89°53'00"E, along the north line of said Section 8, also being along a portion of the south boundary line of the plat of PORT CHARLOTTE SUBDIVISION SECTION SEVENTEEN as recorded in Plat Book 5 at Page 6A and along a portion of the south boundary line of the plat of PORT CHARLOTTE SUBDIVISION SECTION THIRTY FOUR as recorded in Plat Book 5 at Page 38A, both of the Public Records of Charlotte County, Florida, for 298.43 feet; thence S48°10'50"E for 390.75 feet; thence S24°35'41"E for 358.61 feet to the northerly Right-of-Way line of the SEABOARD AIRLINE RAILROAD (abandoned) as described in a COUNTY DEED as recorded in Official Records Book 814 at Page 1983 of the Public Records of Charlotte County, Florida; thence S69°01'46"W, along said northerly Right-of-Way line of the SEABOARD AIRLINE RAILROAD, for 790.00 feet; thence N00°04'48"W, along a line parallel with and 100.00 feet east of, as measured at right angles to, the west line of the Northwest  $\frac{1}{4}$  of said Section 8, for 869.95 feet to the Point of Beginning.

Said lands situate, lying and being in Charlotte County, Florida, and containing 10.02 acres, more or less, and being subject to a waterway maintenance easement over the westerly 20.00 feet.





# FUTURE LAND USE MAP

3/2/90

## UNINCORPORATED CHARLOTTE COUNTY

### LEGEND

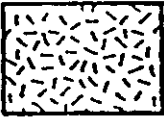


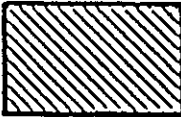
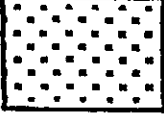
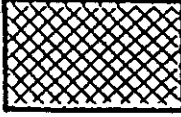

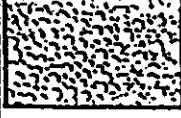
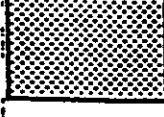

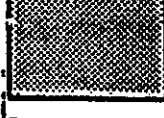






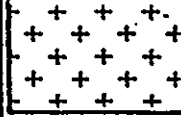


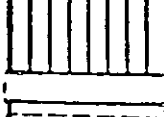
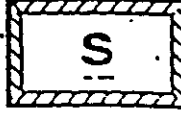
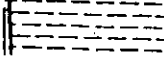


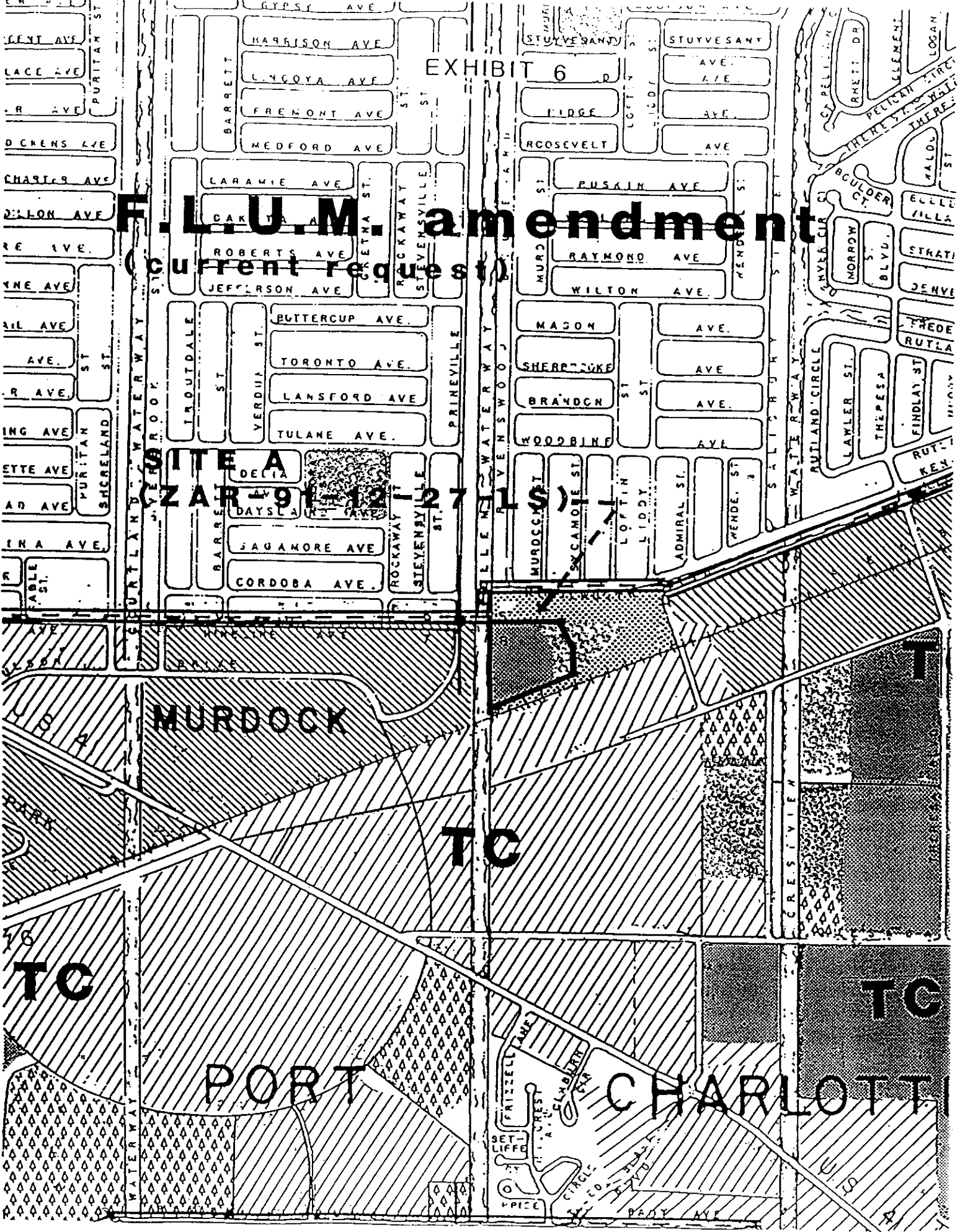
	<b>AGRICULTURE</b> (1 DU/1 ACRE INSIDE USA) (1 DU/10 ACRES OUTSIDE USA)		<b>HIGHWAY SERVICE - RURAL</b>
	<b>AGRICULTURE/ CONSERVATION</b> (NOT EXCEEDING 1 DU/40 ACRES)		<b>INDUSTRIAL</b>
	<b>RESIDENTIAL ESTATES</b> (1 DU/5 ACRES TO 2 DU/ACRE)		<b>INDUSTRIAL/OFFICE</b>
	<b>LOW DENSITY RESIDENTIAL</b> (1 DU/ACRE TO 5 DU/ACRE)		<b>RECREATION - NON-PUBLIC</b>
	<b>MEDIUM DENSITY RESIDENTIAL</b> (ABOVE 5 DU/ACRE TO 10 DU/ACRE)		<b>RECREATION - PUBLIC</b>
	<b>HIGH DENSITY RESIDENTIAL</b> (ABOVE 10 DU/ACRE TO 15 DU/ACRE)		<b>PUBLIC and SEMI-PUBLIC</b>
	<b>PLANNED DEVELOPMENT HIGH DENSITY RESIDENTIAL</b>		<b>PUBLIC and SEMI-PUBLIC EXISTING SCHOOL</b>
	<b>MOBILE HOME RESIDENTIAL</b> (UP TO 6 DU/ACRE)		<b>PRESERVATION</b>
	<b>R V PARK</b>		<b>LIMITED DEVELOPMENT</b>
	<b>COMMERCIAL</b>		<b>TOWN CENTER</b>
	<b>COMMERCIAL/OFFICE</b>		<b>SPECIAL SURFACE WATER PROTECTION DISTRICTS</b>
	<b>PROFESSIONAL OFFICE</b>		<b>URBAN SERVICE AREA</b>
			<b>BARRIER ISLAND PROTECTION DISTRICT</b>

EXHIBIT 6

# F.L.U.M. amendment

(Current request)

**SITE A**  
**(ZAR-91-12-27 LS)**



MURDOCK

TC







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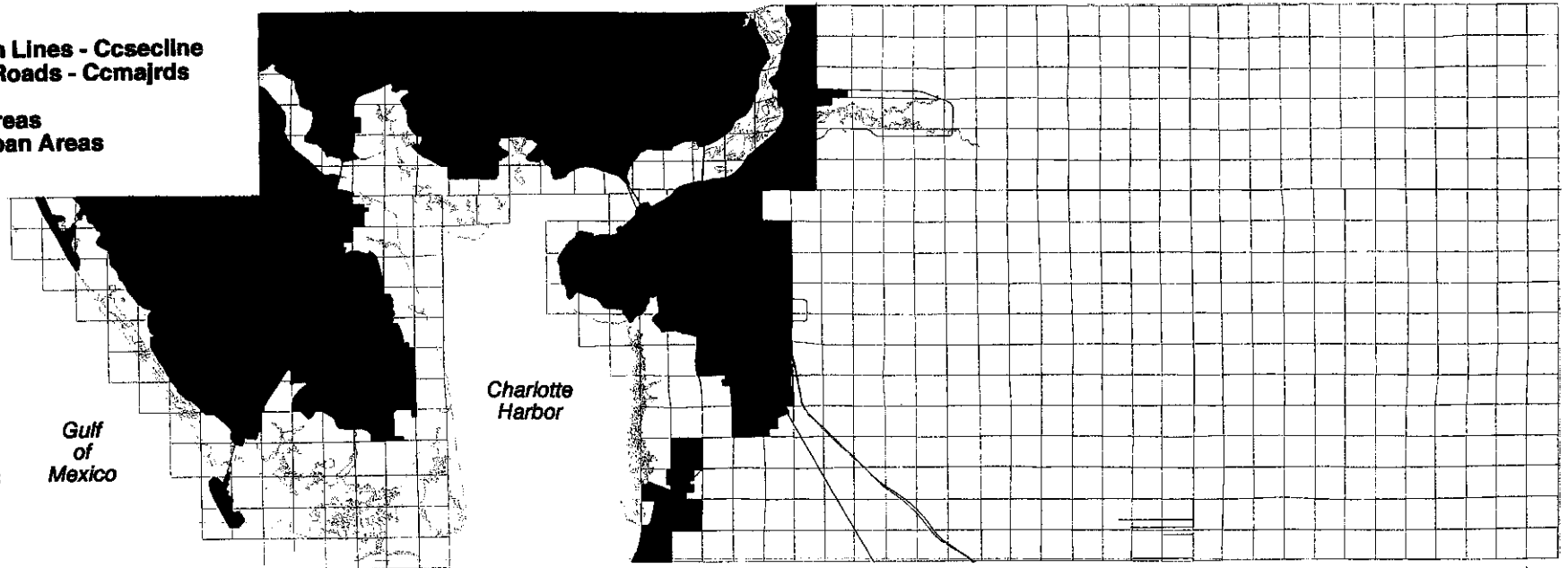
PORT

CHARLOTTE

TC

# Urban Service Area Overlay District 1997-2010

-  Section Lines - Ccsecline
-  Major Roads - Ccmajrds
-  Usa1997
-  Infill Areas
-  Suburban Areas
-  Coast



Gulf of Mexico

Charlotte Harbor

2 0 2 4 6 Miles

FUTURE LAND USE MAP SERIES NO. 2  
Adopted October 7, 1997

Charlotte County Community Development Department  
Map Prepared by Planning Division - 8/97 JPO  
Source: Charlotte County Community Development Department



Map located /gig7/planning/jono/FLU\_maps.apr

Doc. # 1257A-98  
Cont'd.

## **1988 Future Land Use Element**

**Goal:** To develop Charlotte County and Punta Gorda in a manner which promotes: (1) compatibility between land use activities and with natural resources; (2) an efficient relationship between land development and the provision of essential public facilities and services; (3) an appropriate mix of land uses to provide and to meet the social and economic needs of the community.

**Objective 2:** Intensive land development activity should be directed into those areas designated as the urban service areas and away from non urban service area, provided that there should be no increase in allowable residential density on barrier islands above existing zoning.

**Policy 2.2:** The land development regulations shall include provisions which: D. encourage new development within the non-urban service areas to be low density/low intensity land uses (i.e. rural commercial, rural industrial, low-density residential estate lot sizes, agricultural).

## **1988 Potable Water and Sanitary Sewer Sub-element**

**Objective 2:** Upon the completion of the Phase II Water & Sewer Study which is currently being undertaken, and in conjunction with the recommendations therein, Charlotte County will require the orderly extension of water and sewer facilities into those areas which provide the full range of urban services (e.g., police, fire, schools, libraries, roads and recreation). The extension of sewer and water lines and the expansion of treatment plants, should be utilized to promote compact, economically efficient, and environmentally safe development.

**Policy 2.1:** Encourage the extension of water and sewer lines to existing partially developed areas and to areas immediately adjacent thereto before the extension of lines into undeveloped or sparsely developed areas. Extensions of facilities will represent logical extensions of existing services to promote an economically efficient extension of infrastructure.

**Policy 2.3:** In the case of utilities which provide both potable water and sanitary sewerage, the certificated area for potable water will not be extended unless the certificated area for sanitary sewers is also extended, where economically feasible.

**Policy 2.4:** The County and City shall encourage the extension of water and sewer facilities into those areas which provide the full range of urban services (e.g., police, fire, schools, libraries, roads and recreation).

12572-98  
Contd.



**Objective 3:** *By 1990, the County will facilitate the extension of centralized sanitary sewer facilities within the urban service area.*

**Policy 6.5:** *Determinations of certificated areas, for any decisions entailing public expenditures for utilities, shall be evaluated for consistency with Capital Improvements Element.*

## 1997-2010 Future Land Use Element

**Goal 1 (Growth Management):** *Charlotte County will manage growth and development in a manner which safeguards the public investment, balances the benefits of economic growth with the need for environmental protection, and prevents urban sprawl.*

**Objective 1.1(Urban Service Area):** *The Urban Service Area strategy will direct the timing, location, density, and intensity of development and infrastructure throughout Charlotte County so that at least 90% of urbanized development is located within the Urban Service Area's Infill Areas.*

**Policy 1.1.1:** *The Urban Service Area strategy consists of two distinct service areas which are:*

### **I. Urban Service Area (comprised of 2 sub-areas).**

- (1) *Infill Areas are areas which have a significant level of urban development with buildout density of 30% or greater as delineated by Planning Analysis Zones. The majority of urban services and infrastructure are concentrated in these areas. Services provided include central potable water and wastewater treatment as described in the Infrastructure Element, road and drainage construction and maintenance, public education, libraries, and higher levels of police and fire/EMS protection.*
- (2) *Suburban Areas are relatively undeveloped at less than 30% buildout density as delineated by Planning Analysis Zones; however, there are scattered homes and businesses located in these areas. For the most part, Suburban Areas are undeveloped platted lands which may receive urban infrastructure and services in the future and may eventually become Infill Areas. These areas will receive higher levels of urban services and infrastructure once a need develops in the long-range future past the planning horizon through 2010, or provided in order to maintain existing infrastructure and services, or paid for by the landowners in the area by self-assessment/private contribution, or through a community planning process.*

### **II. Rural Service Area.**

*Rural Service Areas are located primarily within the southern, eastern, and bridgeless barrier island sections of Charlotte County. They are characterized by agricultural lands and very low density residential development. Services provided include, but are not limited to, garbage*



*collection, emergency services, and roadway and drainage maintenance. Provision of additional infrastructure and services will be at a lower priority level than for land within the Urban Service Area.*

***Policy 1.1.3:*** *The construction and maintenance of roadways, drainage facilities, central potable water and sanitary sewer facilities will be prioritized within Infill Areas.*

***Policy 1.1.5:*** *Within the East County planning area, Charlotte County will encourage those forms of development which serve an agricultural community and a rural lifestyle.*

***Objective 1.3 (Infrastructure and Services):*** *Charlotte County will use the location and timing of infrastructure and services to direct growth in an orderly and efficient manner.*

***Policy 1.3.1:*** *Charlotte County's provision of infrastructure and services shall be guided by the following service areas which are listed by level of priority:*

*First priority - Infill Areas.*

*Second priority - Suburban Areas.*

*Third priority - Rural Service Areas.*

***Objective 1.7:*** *To ensure the protection of the natural environment by minimizing adverse impacts created by development.*

***Policy 1.7.1:*** *Charlotte County shall protect groundwater resources by maintaining a maximum density of one dwelling per ten acres in areas of prime aquifer recharge.*

***Goal 2 (Land Use Patterns):*** *Charlotte County will provide for a variety of development opportunities and will promote freedom of individual choice consistent with the Urban Service Area strategy.*

***Objective 2.1 (Future Land Use Map):*** *Charlotte County will maintain a Future Land Use Map series to be used as both a prescriptive and regulatory tool to guide land acquisition, development, and regulation.*

### ***Agriculture***

*These lands are designated for agricultural activities and are located primarily within the Rural Service Area. Agricultural lands may not exceed a maximum residential density of one (1) dwelling unit per ten (10) acres within the Rural Service Area and one (1) dwelling unit per one (1) acre within the Urban Service Area. Uses on land designated as such include: single-family residential*



*dwelling units, ranching, crop farming including citriculture, silviculture, aquaculture, and row crops, and extractive industries.*

*Policy 2.2.19: Charlotte County will encourage the bona fide practice of agriculture and will promote the conservation of agricultural lands to assure that the County experiences no substantial loss of agricultural productivity.*

*Policy 2.2.20: Agricultural lands illustrated on the Future Land Use Map will be generally located within Charlotte County's Rural Service Area. This policy will not be construed to prohibit the practice of bona fide agricultural uses within the Urban Service Area.*

*Policy 2.2.21: Charlotte County will preserve the economic viability of agricultural lands and will prevent the premature conversion of these lands to other uses.*

***Resource Conservation***

*These lands will be maintained for continuing the sustainable yield of natural resources, including game, sport fishing, timber, and potable water. Residential densities may not exceed one (1) dwelling unit per forty (40) acres and must be located as far as possible from the resources that are protected.*

*Policy 2.2.26: Charlotte County will protect environmentally sensitive lands and waters from urban development through various means including, but not limited to, the acquisition and maintenance of land and development rights, or through land use regulation. Implementation programs shall include transfers of development rights, stormwater management, the Special Surface Water Protection Overlay District, prohibition of discharges of untreated wastewater, and erosion control.*

*Policy 2.5.5: The Urban Service Area Overlay District designates the locations in Charlotte County which will receive increased levels of service for infrastructure and services in accordance with Policy 1.1.1.*

**1997-2010 Infrastructure Element**

*Objective 9.1: Charlotte County and the utilities serving the county shall assure the provision of potable water and sanitary sewer services to new and existing development in conjunction with previously certificated areas and the Urban Service Area strategy through the planning timeframe of 2010.*

***Policy 9.1.1: Utilities are encouraged to extend central potable water and sanitary sewer services to Infill Areas in accordance with the Urban Service Area strategy. Such extensions will represent sequential extensions of service.***

***Policy 9.1.2: In the case of a utility which provides both central potable water and sanitary sewer service, the utility is encouraged to extend potable water and sanitary sewer lines concurrently. As an exception to this policy, lines may be extended separately if the service area is primarily composed of one type of service line and is located at a distance from which it would be economically inefficient to require concurrent extensions.***

***Policy 9.1.3: In the case of utilities which provide both central potable water and sanitary sewer service, the certificated area for one service will not be extended to an area unless the certificated area for the other service is also extended to the same location.***

***Policy 9.1.4: Certificated areas will not be extended or expanded for potable water or sanitary sewer service outside of Infill Area boundaries. Exceptions shall be made in the case of New Communities or Developments of Regional Impact in West County, Mid County, or South County or Rural Communities in East County; or in the case of where a utility(s) shall provide both central potable water and sanitary sewer service in a tandem manner within the Urban Service Area Overlay District.***

***Policy 9.1.6: When it is necessary for potable water or sanitary sewer lines to be extended through a Rural Service Area in order to provide service to lands located within another Urban Service Area, the extension of such transmission lines shall not be construed as justification for development at urban intensities in the Rural Service Area adjacent to the extended infrastructure.***

***Policy 9.2.3: Water and sewer availability will not necessarily provide justification for development approval.***