

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BARBARA HERRIN AND EDGEWATER )  
CITIZENS ALLIANCE FOR )  
RESPONSIBLE DEVELOPMENT, INC., )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 10-2419GM  
 )  
VOLUSIA COUNTY; MIAMI )  
CORPORATION; AND VOLUSIA GROWTH )  
MANAGEMENT COMMISSION, )  
 )  
Respondents. )  
 )  
----- )  
SIERRA CLUB, INC., AND BARBARA )  
HERRIN, )  
 )  
Petitioners, )  
 )  
vs. ) Case No. 11-2527GM  
 )  
VOLUSIA COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
MIAMI CORPORATION AND VOLUSIA )  
GROWTH MANAGEMENT COMMISSION, )  
 )  
Intervenors. )  
----- )

RECOMMENDED ORDER

These cases were heard by David M. Maloney, Administrative Law Judge in two sets of hearings. The first set (in Case No. 10-2419GM alone) took place in 2010 on September 14-17, and 21-24 in Deland, Florida, and on September 30 in Tallahassee,

Florida (the "2010 Hearing"). The second set (in consolidated Case Nos. 10-2419 and 11-2527) was held in Deland, Florida, one year later over the four-day span from September 12-15 (the "2011 Hearing").

APPEARANCES IN CASE NO. 10-2419GM  
(Hearing held September 14-17, 21-24, and 30, 2010)

For Barbara Herrin and Edgewater Citizens Alliance For Responsible Development, Inc:

Henry L. Morgenstern, Esquire  
Post Office Box 337  
Seville, Florida 32190

For Department of Community Affairs:

Marlene K. Stern, Esquire  
David L. Jordan, Esquire  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

For Volusia County:

Jamie E. Seaman, Esquire  
Bruce D. Page, Esquire  
County of Volusia Legal Department  
123 West Indiana Avenue  
DeLand, Florida 32720

For Miami Corporation:

William Clay Henderson, Esquire  
Holland & Knight, LLP  
200 South Orange Avenue, Suite 2600  
Orlando, Florida 32801-3461

and

Linda Loomis Shelley, Esquire  
Karen A. Brodeen, Esquire  
Fowler, White, Boggs, Banker, P.A.  
101 North Monroe Street, Suite 1090  
Tallahassee, Florida 32301

For Volusia County Growth Management:

Tracey Marshall, Esquire  
Paul Chipok, Esquire  
Gray, Harris, Robinson, P.A.  
301 East Pine Street, Suite 1400  
Orlando, Florida 32801

APPEARANCES IN CASE NO. 11-2527GM  
(Hearing held September 12-15, 2011)

For Barbara Herrin and Sierra Club:

Marcy I. Lahart, Esquire  
Marcy I. LaHart, P.A.  
4804 SW 45th Street  
Gainesville, Florida 32608

For Edgewater Citizens Alliance For Responsible  
Development, Inc.:

Henry L. Morgenstern, Esquire  
Post Office Box 337  
Seville, Florida 32190

For Volusia County:

Jamie E. Seaman, Esquire  
Derrill L. McAteer, Esquire  
County of Volusia Legal Department  
123 West Indiana Avenue  
DeLand, Florida 32720

For Miami Corporation:

Linda Loomis Shelley, Esquire  
Karen A. Brodeen, Esquire  
Fowler, White, Boggs, Banker, P.A.  
101 North Monroe Street, Suite 1090  
Tallahassee, Florida 32301

and

William Clay Henderson, Esquire  
Holland & Knight, LLP  
200 South Orange Avenue, Suite 2600  
Orlando, Florida 32801-3461

For Volusia Growth Management Commission:

Paul H. Chipok, Esquire  
Gray Robinson, P.A.  
301 East Pine Street, Suite 1400  
Orlando, Florida 32801

#### INTRODUCTION

In 2010, the Volusia County Council adopted an amendment (the "Original Amendment") to the Volusia County Comprehensive Plan that covered property owned by Miami Corporation. The Original Amendment was named the Farmton Local Plan because the property was known as "Farmton" and because it is one of a number of "local plans" within the Comprehensive Plan.

After review of the Farmton Local Plan, the Department of Community Affairs issued a Statement of Intent that determined it was not "in compliance" as that term was defined in section 163.3184(1)(b), Florida Statutes (2010). The Department filed a petition at the Division of Administrative Hearings ("DOAH") that commenced formal administrative proceedings required for the Farmton Local Plan to be finally determined to be not "in compliance" consistent with the Department's initial determination. DOAH assigned the petition Case No. 10-2419.

After the 2010 Hearing, the Department, the County, and Miami Corporation filed a motion (to which the Volusia Growth Management Commission did not object) to place the case in abeyance so that the parties could pursue a settlement agreement. The motion was granted over the objections of Intervenor Herrin and Edgewater Citizens Alliance for Responsible Development, Inc. ("ECARD"). Pursuant to a stipulated settlement agreement among the parties that sought the placement of the case in abeyance, the Volusia County Council adopted remedial amendments (the "Remedial Amendments") to meet the compliance concerns raised by the Department. After review of the Remedial Amendments, the Department found the Farmton Local Plan as remediated (the "FLP") to be "in compliance."

Sierra Club and Ms. Herrin filed a petition with the Department seeking to have the FLP determined to be "not in compliance." The petition was forwarded to DOAH and assigned Case No. 11-2527. The case was consolidated with Case No. 10-2419 and set for hearing in September 2011.

In the meantime, the Legislature enacted chapter 2011-139, Laws of Florida (the "New Law"). The New Law made significant amendments to provisions of the Local Government Comprehensive Planning and Land Development Regulation Act found in chapter 163, Florida Statutes, the law governing the proceeding. The

amendments included a change in the statutory definition of "in compliance." Upon motion by the County, following an earlier motion by Miami Corporation, the New Law was determined to apply to the proceeding both procedurally and substantively.

The consolidated cases proceeded to hearing in September 2011. Evidence admitted during the 2010 Hearing that was no longer relevant under the New Law was excluded from the evidentiary record. The evidentiary record, therefore, consists of evidence admitted at the 2010 Hearing that is relevant under the New Law and evidence admitted at the 2011 Hearing.

#### STATEMENT OF THE ISSUE

Whether the FLP is "in compliance" as that term is defined in section 163.3184(1)(b), Florida Statutes (2011).<sup>1/</sup>

#### PRELIMINARY STATEMENT

At the outset of the 2010 Hearing, eight joint exhibits were offered by the parties. Marked for identification as Joint Exhibits 1-3 and 5-9, all were admitted into evidence.

The Department in the 2010 Hearing presented the testimony of Ashley Porter, accepted as an expert in comprehensive planning; Michael McDaniel, accepted as an expert in comprehensive planning; Thomas Hctor, Ph.D., accepted as an expert in 1) regional landscape ecological analysis and conservation planning, 2) ecological reserve network design,

3) geographic information systems ("GIS") spatial analysis using Arc-Info, ArcView and ArcGIS, 4) large carnivore ecology and conservation, 5) identification of Florida natural communities and 6) identification of North American bird species through sight and song; Daniel Smith, Ph.D., accepted as an expert in landscape ecology, wildlife ecology, and the assessment of the effects of roads and traffic on wildlife; Peter Brown, accepted as an expert in comprehensive planning; Michelle Reiber, accepted as an expert in mitigation banking; Robert Pennock, Ph.D., accepted as an expert in comprehensive planning; and, Eric Hickman, accepted as an expert in wetland evaluation, mitigation, hydric soils identification and interpretation of aerial photography.

Intervenors Herring and ECARD presented no witnesses of their own in the 2010 Hearing but led the direct examination of Dr. Hoctor.

The Department offered exhibits in the 2010 Hearing marked for identification as Department Exhibits 4a-4e, 4g, 4h, 4l-4p, 5a-5g, 8, 9 (except as to its reference to critical linkages), 10-14, 16, 19, 22, 25, 26, and 29-31. The Department's exhibits were admitted into evidence.

The County and Miami Corporation in the 2010 Hearing jointly presented the testimony of Kelli McGee, accepted as an expert in the Volusia County Comprehensive Plan and its

amendments and in environmental protection policy and practice; Michael Brown, accepted as an expert in forestry and silviculture; Sharon Collins, accepted as an expert in wetland delineation, mitigation banking, and field biology; Joseph Thomas Walsh, Ph.D., accepted as an expert in wildlife conservation; Robert Sans Lassiter; Randy Kaust, accepted as an expert in threatened and endangered species, wildlife conservation, application of GIS technology to mapping wildlife and wildlife habitat and landscape-scale habitat conservation planning; Charles Lee, accepted as an expert in conservation policy; Joel Ivy, accepted as an expert in comprehensive planning; Mark Dowst (Mr. Dowst was not offered as an expert in any field but he is a licensed professional engineer in the state of Florida with a degree in civil engineering); Devo Seereeram, Ph.D., accepted as an expert in hydrology, hydrogeology, karst geology, and groundwater supply; and Kenneth Metcalf, accepted as an expert in comprehensive planning.

Exhibits offered by the County and Miami Corporation and marked for identification as MC/VC Exhibits 1, 5, 6, 9, 14, 17, 19, 23-30, 33, 34, 36-38, 40-42, 43, 45-49, 52, 53, 55, 58-60, 63-70, 72-78, composite exhibit 79 (maps a. through q.), 81, 84-86, 88, a portion of 89 and 90-93, 94 (an updated version of an

exhibit introduced by the Department), and 95-99 were admitted into evidence.

VGMC presented no witnesses but offered exhibits marked as VGMC Exhibits 1, 2, and 3. All three exhibits were admitted.

Proposed recommended orders were filed on December 8, 2010, but a recommended order was not entered because the case was placed in abeyance over the objection of ECARD and Herrin.

After a settlement that did not include ECARD and Ms. Herrin, the Volusia County Council adopted the Remedial Amendments by Ordinance No. 2011-10 on April 7, 2011.

On April 25, 2011, the Department of Community Affairs ("DCA") issued a Cumulative Notice of Intent (the "Cumulative NOI"). The Cumulative NOI found the FLP to be "in compliance." A petition for administrative hearing was filed with DCA on behalf of the Sierra Club, Inc., and Barbara Herrin on May 16, 2011. It challenged the Cumulative NOI and, together with the Cumulative NOI, was forwarded to DOAH and filed on May 17, 2011.

On May 25, 2011, Respondent Volusia County filed a Motion to Dismiss and, in the Alternative Motion to Strike and for More Definite Statement. Miami Corporation joined the May 25, 2011 motion. On May 27, 2011, VGMC gave notice of its intent to rely upon the motion filed by Volusia County and Miami Corporation.

On June 8, 2011, DCA moved for dismissal of itself as a party, based upon changes to chapter 163, Florida Statutes, made by the New Law. The motion was granted.

On June 21, 2011, Miami Corporation and VGMC were granted Intervenor status. On June 24, 2011, an Order was entered to the effect that the New Law would apply procedurally but not substantively in the proceeding.

On July 5, 2011, Petitioners filed their First Amended Petition for Administrative Hearing. On July 28, 2011, the parties filed a joint pre-hearing stipulation ("JPS").

On July 29, 2011, subsequent to a telephonic motion hearing on motions that included a motion in limine by the County to exclude evidence admitted in the 2010 Hearing that was no longer relevant under the New Law, the June 24, 2011 Order regarding the applicability of the New Law was modified. The ensuing Order ruled that the New Law applied both procedurally and substantively. The Order also granted Petitioners' ore tenus motion for continuance.

On August 9, 2011, Petitioners filed their Motion for Leave to File Second Amended Petition to conform to the New Law. On August 18, 2011, a telephone hearing was held regarding various outstanding motions, and the final hearing was continued sua sponte. A status conference was held in Tallahassee on August 25, 2011. On August 30, 2011, an Order was issued that

reflected amendments to the Joint Pre-Hearing Stipulation filed on July 28, 2011, and the two consolidated cases proceeded to hearing on the issue of whether the FLP was "in compliance" as that term is defined in the New Law under section 163.3184.

The 2011 Hearing was held on September 12-15 in Deland, Florida. At the 2011 Hearing, Joint Exhibits 1A, 10, 11, 12, and 13 were admitted into evidence. Petitioners called: Sierra Club member Linda Bremer; Craig Diamond, accepted as an expert in water resource planning and water resource science; and Thomas Pelham, an expert in comprehensive planning, land use planning, land use regulations, and growth management.

Petitioners re-called Dr. Smith to supplement his testimony from the 2010 Hearing in light of the Remedial Amendments.

Petitioners also offered transcripts of deposition testimony taken for use in the 2011 Hearing: Dr. Hoctor and Michael McDaniel. Petitioners' Exhibits 1, 2, 4, 6, 9, and 10 were admitted into evidence. Petitioners' Exhibit 5 was accepted subject to motions to strike that were granted by an Order entered January 17, 2012. ECARD did not present any evidence at the 2011 Hearing.

The County and Miami Corporation followed the case-in-chief of the Sierra Club and Ms. Herrin by presenting the testimony of seven witnesses: Kelli McGee, Randy Kautz, Sharon Collins, Charles Lee, Michael Brown, Mark Dowst, and Ken Metcalf. The

County and Miami Corporation also presented the testimony of Bruce Kraig McLane and David Telesco, accepted as an expert on the Black Bear and wildlife conservation in general. The County and Miami Corporation offered exhibits marked for identification as MC/VC Exhibits 104, 105, 106, 111, 113, 118, and 122.

VGMC did not call a witness but offered one exhibit marked as VGMC Exhibit 1. It was admitted into evidence.

The Transcript of the 2011 Hearing was filed at DOAH on October 3, 2011. The parties timely filed proposed recommended orders on October 31, 2011. Petitioners' Joint Proposed Recommended Order submitted by Sierra Club and Ms. Herrin stated that their counsel had been authorized to represent that ECARD joined in the proposed order. Respondents' Joint Proposed Recommended Order was submitted by Volusia County and Miami Corporation. A notice was filed by VGMC on October 31, 2011, that stated its intent to join and rely upon Volusia County and Miami Corporation's joint proposed order.

## FINDINGS OF FACT

### Background

1. Miami Corporation, the applicant for the Volusia County Farmton Local Plan, owns two contiguous and sizable tracts of land in Brevard County and Volusia County. Together they comprise the company's Farmton property (the "Farmton Site"). The portion of the Farmton Site in Brevard County is

approximately 11,000 acres. The portion in Volusia County is approximately 47,000 acres.

2. Miami Corporation has owned the property since the 1920's. It began silviculture operations onsite in 1952. The Farmton Site continues today to be used mainly for silviculture.

3. In 2003, Miami Corporation began exploring long-term options for alternative uses. One option was bulk sales of large lot tracts, such as 100-acre tracts, to developers to build homes on the lots. Another option was a comprehensive plan amendment applying "smart growth" principles. The company opted for the latter approach. The smart growth comprehensive plan amendment eventually pursued included the creation of a regional wildlife corridor that extends from the headwaters of the St. Johns River to the Ocala National Forest.

4. Before filing the application for the Original Amendment, Miami Corporation organized meetings of private and public stakeholders to gain input. Representatives from Brevard and Volusia Counties, affected municipalities, the Florida Fish and Wildlife Conservation Commission ("FFWCC"), St. Johns River Water Management District ("SJRWMD"), East Central Florida Regional Planning Council ("ECFRPC"), and conservation organizations participated.

5. After the application of Miami Corporation was filed, the County convened a Peer Review Panel. Chaired by two former

Department Secretaries, the panel included nine experts in planning and natural resources fields. The panel made various recommendations that were incorporated into the Farmton Local Plan. Specific recommendations included the creation of a Community Stewardship Organization to protect the most sensitive natural resources. Florida Audubon made additional recommendations to strengthen the conservation measures consistent with mechanisms that experience in other areas of the state had taught Audubon were necessary to achieve conservation measures protective of the area's natural resources that would be perpetual.

6. Due to the scale of the proposed amendment, the County hired an outside transportation engineering firm to review the Farmton Local Plan. In addition, the local plan's natural resource mapping and policies were subjected to two other peer reviews convened by the ECFRPC and University of Florida GeoPlan Center. These reviews included the participation of resource agencies, conservation organizations, and scientists.

7. The County worked closely with Miami Corporation in revising the substantive content of the Farmton Local Plan through over 30 iterations to incorporate recommendations from the peer review process, the Volusia County Growth Management Commission, various County divisions, local governments, state agencies, and conservation organizations.

The Brevard County Portion of the Farmton Site

8. The Brevard County portion of the Farmton Site is immediately adjacent to the Volusia County portion of the site. Brevard County adopted an amendment to its comprehensive plan regarding the portion of the Farmton Site in Brevard County. The amendment allows urban development. The amendment was challenged followed by a settlement of the case through the adoption of a remedial amendment.

9. Subsequent to the filing of Case No. 10-2419, the amendment and the remedial amendment to the Brevard County Comprehensive Plan led to a determination that the Brevard Farmton amendments were in compliance. The amendment as remediated became effective with no further challenges. The effectiveness of the amendment to the Brevard County Comprehensive Plan which allows urban-type development was one of several significant events that took place between the 2010 Hearing and the 2011 Hearing.

Significant Events

10. Following the filing of proposed recommended orders in Case No. 10-2419, the Department, the County, VGMC, and Miami Corporation moved that the case be placed in abeyance so that settlement discussion could take place. The motion was granted over the objections of the Petitioners in Case No. 10-2419.

11. The settlement discussions led to the Remedial Amendments adopted by the County in April 2011. The Original Amendments and the Remedial Amendments (the "FLP") were determined by the Department to be in compliance.

12. The "in compliance" determination was challenged in a petition filed at the Department on May 16, 2011, by the Petitioners in Case No. 11-2527. The petition was forwarded to DOAH and the case was consolidated with Case No. 10-2419.

13. In the meantime, the Florida Legislature passed chapter 2011-39, Laws of Florida (the "New Law"). The New Law substantially amends chapter 163, including the definition of "in compliance" in section 163.3184(1)(b). It took effect on May 17, 2011, when it was approved by the Governor and filed with the Secretary of State's office.

14. The New Law was determined to be fully applicable to the consolidated cases.

15. Prior to the Brevard County amendments taking effect, the Department regarded the Volusia portion of the Farmton Site as isolated and removed from other urban areas. Once the Brevard County Comprehensive amendments allowing urban development were determined to be in compliance and became effective, the Volusia portion of the Farmton Site became adjacent to "an urban area that is its match to the south." Petitioners' Ex. 6, Deposition of Michael McDaniel, at 14.

16. The effectiveness of the Brevard County plan amendments that place an urban area adjacent to the Volusia Farmton Site was significant to the Department in its determination in 2011 that the FLP is in compliance.

#### The Volusia Farmton Site

17. The FLP applies to 46,597 acres in southern Volusia County. The Volusia Farmton Site is rural and much of it is classified as wetlands. No services or public facilities currently exist on the site. It contains abundant habitat for both upland and wetland dependent species.

18. Within the site there are several outparcels owned by other persons or entities on which low density residential development is allowed by the Volusia County Comprehensive Plan. More significant to the issues in this proceeding, the Comprehensive Plan allows low density residential development on the remainder of the site as well.

19. The site includes approximately 260 miles of dirt roads that are maintained by Miami Corporation. In good condition, the roads are acceptable for ordinary passenger cars.

#### The Current Plan

20. Prior to the adoption of the FLP by the Original Amendment, the Volusia County Comprehensive Plan adopted in 1990 had been updated twice through the Evaluation and Appraisal Process. The first update occurred in 1998 and the second in

2007. (The updated plan was referred to in hearing as the "Current Plan" and was admitted into evidence as Joint Ex. 1.) The intent of the updates "is to take into account changes to state law and to reflect changing conditions within the community." Joint Ex. 1, Introduction, page 3 of 5.

21. Chapters 1 through 18 of the Current Plan contain elements and sub-elements "which are the basic building blocks of the Plan." Id. There are eleven required elements, the first of which is the Future Land Use Element (the "FLUE").

a. FLUE Overview

22. Section A. of Chapter 1 of the Current Plan entitled, "Overview," states the following:

The Future Land Use Element . . . ensures that physical expansion of the urban areas are managed (1) at a rate to support projected population and economic growth; (2) in a contiguous pattern centered around existing urban areas; and (3) in locations which optimize efficiency in public service delivery and conservation of valuable natural resources.

\* \* \*

[W]hile it reflects existing urban services capacities and constraints, it also establishes locations where future service improvements will follow. It also reflects and promotes . . . activity in the private land market.

\* \* \*

New urban growth, predicated on appropriate population projections, environmental

suitability, and fiscal feasibility will be encouraged adjacent to the major cities that have a full range of urban services or inside County service areas. County service areas may include undeveloped land inside or near existing unincorporated urban areas where the developer agrees to provide necessary urban services through private means.

\* \* \*

Regarding public systems, the major assumption is that the area adjacent to existing public infrastructure will be the primary areas for future infrastructure extension. Expansion of existing facilities in a fiscally and environmentally appropriate manner will be the primary option. The intent of this concept is to maximize efficiency of urban services through compact development otherwise consistent with the Volusia County Comprehensive Plan. Planned developments include large scale, mixed-use, integrated, compact and distinct urban developments under Chapter 380, Florida Statutes.

\* \* \*

[A]reas that are outside the proposed development areas or contain environmentally sensitive features will receive special attention to ensure proper management of the County's natural resources. In order to further protect the County's natural resources and promote sustainability, the following will be included in the County mission statement:

To balance development and the environment through innovative practices that lessen the impact of the development while preserving natural resources and improving the quality of life for present and future generations.

Joint Ex. 1, Chapter 1, pages 2-3 of 109 (emphasis added).

b. Future Land Use Overlays and Designations

23. Future land use overlays and designations are part of the adopted Future Land Use Policies. Id. at page 4 of 109.

24. The entire Volusia Farmton Site is located within the Comprehensive Plan's overlay area of Natural Resources Management Area ("NRMA"). Approximately 11,000 acres of the site lie within the Environmental Core Overlay ("ECO").

25. There are three land uses on the Volusia Farmton Site under the Current Plan: Forestry Resources ("FR"), 22,294 acres (approximately); Environmental Systems Corridor ("ESC"), 22,344 acres (approximately); and Agricultural Resources ("AR"), 2,309 acres (approximately).

26. Residential densities on the Farmton Site are different for the three land uses allowed on site but all are "low-density" and all have the same floor area ratio ("FAR"): 0.10. The AR land use allows a maximum residential density of one unit per ten acres. The FR land use allows a maximum residential density of one unit per twenty acres or one unit per five acres with clustering. The ESC land use allows a maximum residential density of one unit per 25 acres.

27. The Current Plan would allow 4,692 residential units: 228 in AR; 706 in ESC; and 3,758 in FR. The land designated AR would allow 100,580 square feet of nonresidential development

and the land designated FR would allow 719,637 square feet, for a total of 820,217 square feet of non-residential development.

c. Types of Amendments

28. The Current Plan allows four types of amendments: "Mandated," "Administrative," "Development," and "Small Scale." See Joint Ex. 1, 2010 Hearing, Tab 21, p. 5 of 7.

29. The Farmton Local Plan is categorized as a "Development Amendment." A "Development Amendment" is defined by Chapter 21, Section (C)1.c. of the Volusia County Comprehensive Plan (the "Plan" or the "Comprehensive Plan") as: An Amendment which is initiated by the property owner(s) to change the Plan so that a particular development type or land use not otherwise consistent with the Plan, would become consistent following adoption of the amendment. Applicants may be private individuals or a public agency sponsoring an amendment subject to the Comprehensive Plan.

Id.

d. Local Plans

30. The FLP is included in the Local Plan section of the Plan's Future Land Use Element.

31. Local Plans in the Comprehensive Plan apply to specific geographic areas and provide a greater level of detail than the Plan in general. The Current Plan includes 13 other

Local Plans. Once enacted, "the most detailed portion of the Volusia Comprehensive Plan," tr. 458, will be the FLP.

The FLP

a. The Original Amendment

32. The Original Amendment includes one goal, eight related objectives and numerous policies under each of the eight objectives. The Amendment depicts on the Future Land Use Map two new future land use designations: "GreenKey" and "Sustainable Development Area" ("SDA"). The entire site is designated as either GreenKey or SDA.

33. Objective FG 2 in the Amendment states: GreenKey and designated Resource Open Based Space shall be managed for natural resource protection and preservation of interconnected regional wildlife corridors, and conserved in perpetuity.

34. "Resource Based Open Space" ("RBOS") is governed by Policy FG 2.4 of the Original Amendment:

**Resource Based Open Space.** Resource Based Open Space shall be designed within Sustainable Development Area districts to protect and enhance environmental systems. Resource Based Open Space shall not include parcels identified for development (including, but not limited to individual yards), active open space, or civic open space. Resource Based Open Space lands may include areas set aside for ecological preservation, enhancement and restoration, nature trails, conservation education programs, observation decks and similar facilities including lakes used for detention and retention of surface water.

Resources [sic] Based Open Space may include, flood plains, wetlands, mitigation areas, vegetative buffers, specialized habitat for flora or fauna, passive recreation areas, water resource development areas, and shall be designed during the development review process. All such lands shall be subject to a conservation management plan, as set forth in FG 2.10 and FG 2.11, and protected in perpetuity by conservation easements. At least 25% of each SDA district shall be Resource Based Open Space.

Joint Ex. 7, 2010 Hearing, Tab D-2, pgs. 9 and 10 of 49.

35. The SDAs are primarily altered pine plantation lands. They total approximately 15,000 acres. Within the 15,000 acres of SDA land "are four land use districts which define the uses, densities, and intensities planned for each district." Id. at p. 4 of 49. The four are the Gateway District, Work Place District, Town Center District, and the Villages District.

36. Within GreenKey, the Farmton Local Plan allows the continuation of agricultural uses employing practices regarded as "Best Management Practices" and prohibits residential and nonresidential development. There are two areas in GreenKey with additional natural resource protection standards. They are the Deep Creek Conservation Area which will be conveyed to a Community Stewardship Organization and managed in a primarily natural state and the Southwest Wildlife Corridor which will be managed to maintain habitat for wildlife, particularly for the Florida Black Bear.

37. The FLP includes two long-range planning horizons. The "initial planning horizon" is 2025; "[t]he second planning horizon . . . shall be from 2026 to 2060." Policy FG 1.1, 2010 Hearing Joint Ex. 7, Tab D-2, p. 7 of 49. Through 2025, residential and nonresidential development may only occur within the Gateway District, "a distinct geographic area of approximately 821 acres at the northern end of the Farmton Local Plan near SR 442 and I-95." 2010 Hearing Joint Ex. 7, Tab D-2, p. 4 of 49. The development in the Gateway District is limited to a maximum under any circumstances of 4,692 residential units and 820,217 square feet of nonresidential development. See Policies FG 1.1, 1.4. "However, in order to plan for school capacity, there shall be no more than 2,287 dwelling units [in the Gateway District] unless there is a finding of school adequacy issued by the school district." Policy FG 3.4.

38. Through 2060, the Amendment allows a total of 23,100 residential units and 4.7 million square feet of nonresidential development, excluding educational facilities and other institutional uses, within the various SDAs.

39. With the exception of the Gateway District, which is in phase one of development, Policy FG 3.10 requires the development and implementation of a program designed to ensure an adequate number of jobs per residential dwelling unit exists in the SDAs. In phase two and subsequent phases, the

development order shall require milestones for achieving the jobs-to-housing ratio target. In the event that the jobs-to-housing ratio drops below 0.65, residential development approvals shall be suspended until a remedial plan can be developed and approved as set forth in an accompanying development order. Policy FG 3.10.

40. Prior to the FLP, the site had been subdivided into approximately 1,700 vested lots pursuant to existing exempt subdivision policies in the Volusia Land Development Code. The Original Amendment extinguished the vested exempt subdivisions as of the effective date of Ordinance 2009-34.

41. The Original Amendment requires all lands designated GreenKey to be placed either in a conservation easement or a conservation covenant.

42. A conservation covenant "is similar to an easement" 2010 Hearing, tr. 1077, "except that its term shall run with the land for an initial term of ten years, which shall automatically be renewed every ten years thereafter so long as the maximum densities and intensities established in the Farmton Local Plan Objective 3 shall remain in effect . . . ." Policy FG 2.15. For example, "Density and Intensity" for the WorkPlace District is described in Policy FG 3.5: "The WorkPlace district shall have a minimum density of eight units per acre and a target density of 18 units per acre. The minimum floor area ratio

(FAR) for the nonresidential uses shall be 0.3 FAR." Joint Ex. 7, p. 22 of 49.

43. A covenant under the FLP is converted to a perpetual conservation easement as prescribed in Policy FG 2.15:

"At such time as the Master Development of Regional Impact equivalent Master Plan as provided in Objective 8 is approved consistent with the densities and intensities as set forth in Objective 3 in effect [when the FLP is adopted] . . ., a perpetual easement shall be recorded within 60 days."

Joint Ex. 7, p. 15 of 49.

44. The FLP requires a minimum amount of land to be set aside for conservation purposes as RBOS. Policy FG 2.4, quoted above, requires that a minimum of 25 percent of SDA land be set aside as RBOS. The RBOS lands will be placed in conservation covenants or easements.

45. Policy FG 2.5 b. requires that a Black Bear Management Plan be developed in consultation with the Florida Fish and Wildlife Conservation Commission consistent with the Commission's Black Bear Habitat Management Guidelines and best available science. The Black Bear Management Plan applies to the Southwest Wildlife Corridor, part of which is on the site in Volusia County and part of which is in Brevard County.

46. GreenKey and RBOS are subject to a mandatory conservation management plan ("CMP") to be funded by the

landowner or its successors in interest. The CMP is to be developed by the owner through a task force appointed by the county within one year of the recording of the conservation easement. The CMP is to be "incorporated into the conservation covenants and easement and made enforceable." Policy FG 2.11, 2010 Hearing Joint Ex. 7, p. 12 of 49.

47. Under the FLP, protected wetlands within the SDA will be afforded a wider buffer than was required under Plan prior to the FLP. Through the RBOS designation, additional lands will be preserved and protected by what is in essence a secondary buffer.

48. Under Policy FG 3.2, the footprint of SDAs is "designed to shrink." Tr. 1078. The policy provides: "For the purposes of calculating residential density and . . . FAR within the SDA districts, the density and FAR provision provided in the policies of Objective 3 of this Local Plan shall be calculated based on net SDA Buildable Area. Net SDA Buildable Area shall equal the total SDA district reduced by the minimum 25 percent [RBOS] area and by the minimum 40 percent mandatory Civic Space. Civic Space includes streets, stormwater systems, parks, buffers, water, access easements and other public infrastructure. . . ." Joint Ex. 7, p. 19 of 49.

49. Policy FG 1.6c requires the SDAs to contain RBOS "such that when combined with GreenKey lands more than 36,000 acres or

75 percent of the area with the Farmton Local Plan shall be preserved." Joint Ex. 7, p. 8 of 49. Based on the acreage in GreenKey, RBOS, and buffers required by FG Policy 2.19 for SDA boundaries, wetlands, trails and roads, Sharon Collins, a private biological consultant for Miami Corporation and the primary field biologist onsite, estimated that the minimum amount to be protected under the FLP is 39,265 acres, which equals 80 percent of the total acreage subject to the FLP.

b. The Remedial Amendments

50. The County Council of Volusia County's Ordinance 2011-10 (the "2011 Ordinance") which adopts the Remedial Amendments describes their substance in three sections. See 2011 Joint Ex. 10, page 2 of 3.

51. Section I of the 2011 Ordinance consists of text amendments to: "Chapter 1 Future Land Use Element, Farmton Local Plan, Policies FG 2.4, FG 2.56, FG 2.18, FG 4.14, FG 4.15, FG 4.18, FG 4.20, FG 4.21, FG 5.7, FG 5.8, FG 5.16, and FG 8.1 . . . ." Id. The language of the text amendments referred to in Section I is contained in Exhibit A to the 2011 Ordinance.

52. Sections II and III of the 2011 Ordinance refer to amendments to maps and figures. In Section II, the "Farmton Local Plan-Future Land Use Map" is amended "to include new land use of Mandatory Resource Based Open Space and by expanding the

Southwest Wildlife Corridor to include additional lands." Id.  
Section III adds the "Farmton Local Plan Spine Transportation  
Network" to the Comprehensive Plan "as a new Figure 2-10 to the  
transportation map series." Id.

53. The lands under the new land use of Mandatory Resource  
Based Open Space ("MRBOS") count toward the calculation of the  
requirement that at least 25 percent of the SDAs taken as a  
whole be RBOS.

54. The location of all of the RBOS lands have not been  
determined. They are not shown, therefore, on the Future Land  
Use Map ("FLUM") series. The revised FLUM, however, delineates  
where the MRBOS lands are located.

55. The MRBOS will be subject to a Black Bear Management  
Plan. Policy FG 2.5b sets forth that it is to be developed in  
consultation with the FFWCC consistent with its Black Bear  
Habitat Management Guidelines and best available science.

#### The Parties

##### a. Petitioners

56. Petitioner Barbara Herrin is a resident and owner of  
real property in Volusia County. She submitted comments  
regarding the Original Amendment during the time period between  
the transmittal hearing and the adoption hearing. She submitted  
comments about the Remedial Amendment at the adoption hearing.

57. ECARD, one of two Petitioners in Case No. 10-2419 (with Ms. Herrin), is a Florida not-for-profit corporation with a membership of approximately 60 members, of which at least 50 are residents of Volusia County. ECARD submitted comments about the Original Amendment during the period of time between the transmittal and final adoption hearings for Ordinance 2009-34. It provided oral comments through counsel at the adoption hearing for Ordinance 2011-10.

58. Sierra Club, one of the two Petitioners in Case No. 11-2527, is a California not-for-profit corporation registered in Florida with approximately 90,000-100,000 members. It has unincorporated state and local chapters. The Florida Chapter has approximately 29,000-30,000 members and the local Volusia County Chapter has approximately 820 members.

59. Three letters containing comments about the Remedial Amendment were submitted to the Volusia County Council by the "Volusia/Flagler Group of Sierra Club and the Northeast Florida Group of Sierra Club," tr. 27, and by the Sierra Club Florida at the public hearing on the Remedial Amendment held in April 2011. All three letters were presented on behalf of Sierra Club. In addition, "[t]he Sierra Club Florida presented comments [at] the same public hearing." Tr. 28.

60. Sierra Club does not own land in Volusia County. It does not own or operate a business in Volusia County. "The

Volusia/Flagler Group has [its] own bank account." Tr. 39. Sierra Club has general meetings "in the area" id., to which the public is invited. The Club conducts outings to parks and natural areas "in the area" id., and members appear in public hearings where they speak. Members engage in letter-writing and "various other civic activities." Id.

b. Respondents

61. Volusia County (the "County"), a political subdivision of the State, adopted the FLP.

62. Miami Corporation is a Delaware corporation registered in the State of Florida. It is the owner of the property that is the subject of the FLP and was the applicant for the text and map amendments that make up the FLP. Through its representatives, Miami Corporation submitted comments to the County about the Original Amendment during the period of time beginning with its application and through the transmittal hearing and the adoption hearing. It submitted comments to the County about the Remedial Amendment at the adoption hearing.

63. Volusia Growth Management Commission ("VGMC") is a dependent special district of the County created pursuant to Volusia County Charter Section 202.3. Its duties include the review of amendments to local comprehensive plans. VGMC submitted comments to the County about the Original Amendment during the period of time between the transmittal hearing and

the adoption hearing. It submitted comments to the County about the Remedial Amendment at the adoption hearing.

#### Suitability

64. The Community Planning Act defines "suitability" as "the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development." § 163.3164(45), Fla. Stat.

65. "Compatibility" is defined as "a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition." § 163.3164(9), Fla. Stat.

66. Future land use map amendments are required to be based upon several analyses. One of them is "[a]n analysis of the suitability of the plan amendment for its proposed use considering the character of the undeveloped land, soils, topography, natural resources, and historic resources on site." § 163.3177(6)(a)8.b., Fla. Stat.

67. The future land use plan element is required to include criteria to be used to ensure the protection of natural and historic resources and to provide for the compatibility of adjacent land uses. See § 163.3177(6)(a)3.f. and g., Fla. Stat.

Suitability: Petitioners' Evidence

68. Mr. Pelham, Secretary of the Department at the time the Original Amendment was found by the Department to be not in compliance, testified at the 2011 Hearing that the site of the FLP is not suitable for development of the magnitude and nature allowed by the FLP.

69. Consistent with the definition of suitability, the testimony of Mr. Pelham addressed both land and water. Commencing with water, he described the property as "extremely wet [and] dominated by an extensive system of sloughs, marshes, creeks, [and] swamps . . . ." 2011 Hearing, tr. 249.

70. The property is an important state and regional resource that contains a variety of important wildlife habitats. Much of the property and substantial parts of the SDAs are in the 100-year flood plain. The property is extremely significant to the area's watershed as an area of recharge and a "high aquifer vulnerability area." 2011 Hearing, tr. 249.

71. Mr. Pelham drew support for his opinion on suitability from the Comprehensive Plan. The County finds in the Plan that the lands subject to the FLP consist of "large, relatively uninterrupted expanses of rich natural resource areas." Tr. 250. The County gave the lands the NRMA designation precisely because they should "be protected and maintained because they serve a variety of functions, water-related,

habitat area, a source of water, the open space and rural character, . . . [all] very important to Volusia County . . . ." Id.

72. Mr. McDaniel testified as to the official position of the Department in 2010: that the property is not suitable for the FLP. Mr. Pelham's testimony in the 2011 hearing echoes and amplifies Mr. McDaniel's testimony. Dr. Smith testified in both the 2010 Hearing and the 2011 Hearing that development at the scale and intensity of the FLP is not suitable for the site for the same reasons given by Mr. Pelham and Mr. McDaniel.

Other Analysis of the Character of the Land

73. The FLP is based on an ecological evaluation that uses GIS-based decision support models and is supported by field work of biologist Sharon Collins. The ecological evaluation was reviewed by scientists from state agencies, universities, and conservation organizations.

74. Ms. Collins provided 15 years' worth of data collection and field work on the site. Her first field assessment of the entire site took place between 1995 and 1998, and included wetlands delineation, evaluations of vegetative communities, habitats, historic natural conditions, hydrology, and listed species.

75. Ms. Collins began remapping and reevaluating toward an ecological evaluation in 2005. The efforts led to the issuance

of a report prepared for Miami Corporation and submitted in November 2008. The report was revised in July 2009. It is entitled, "GreenKey Project, Ecological Evaluation Assessment Methods" (the "EEAM Report"). See 2011 Hearing, Joint Ex. 5, Tab 10.

76. Section 1.3 of the EEAM Report, entitled "Resource Identification," describes Ms. Collins' collection of data she used to identify habitat on the site. Among the data sources are the "'Guide to the Natural Communities of Florida' (FNAI, 1990)," id. at 3, and the "Florida Land Use, Cover and Forms Classification System (FLUCFCS) produced by the Florida Department of Transportation." Id. Other data used in support of the EEAM Report include soils surveys, historic aerial photographs, the U.S. Fish and Wildlife ("USFWS") and Florida Fish and Wildlife listed species databases, a SJRWMD GIS FLUCCS map and an "exhaustive list" which Ms. Collins detailed at hearing. See 2011 Hearing tr. 1314.

77. After evaluation of the data, Ms. Collins conducted "ground-truthing" or work in the field. Armed with the FLUCCS Map and the infrared aerials, she "went out in the field and did a comprehensive field analysis . . . and ground-truthed what [she] saw in the field with the [data] . . . ." 2010 Hearing tr. 1309.

78. In order to evaluate and rank the various habitats on site, Ms. Collins designed a methodology using seven metrics that target the protection of regionally significant landscapes. She then assigned "ecological value ratings" and groupings of the habitats based on value as described in Section 1.5 of the EEAM Report:

The habitat values ranged from a score of 7 to 1, as shown below from highest to lowest value:

Crane Swamp and Spruce Creek Swamp (A & B)  
Buck Lake and Buck Lake Marsh (C)  
Cow and Deep Creek (D)  
Large Sloughs--forested and herbaceous E & F)  
Scrub Uplands (H)  
Smaller Wetlands--forested and herbaceous (J & K)  
Salt March (G)  
Oak and Hardwood Hammocks (I)  
Natural Pine Flatwoods (L)  
Harvested Wetlands (O)  
Hydric Pine Plantation (M)  
Pine Plantation (N)

To provide a simple yet comprehensively applicable natural resource rating that applies and transfers value to the Farmton landscape, the habitats were further reduced to four groups of comparable ecological value and function. Therefore, Habitats A-D were grouped as one, Habitats E&F another, Habitats G-L as one, and the silvicultural habitats--Habitats M-O--as the fourth group.

\* \* \*

The habitat types with natural resource rating scores around 7.0 (6.93 to 7.0) include Crane/Spruce Creek Swamps, Buck Lake and Marshes, and Cow and Deep Creeks. They are classified as "Regionally Significant Conservation Habitat Areas." They are

regionally situated, extending beyond the boundaries of Farmton. The habitat types with natural resource rating values of around 6.0 include the larger sloughs and swamps. They are classified as "Significant Conservation Habitat Areas." They are generally greater than 100 acres in size, make up a significant portion of the Farmton landscape, provide an interconnected network of wetlands across the property, but remain mostly onsite. The habitat types with natural resource rating values that are midrange around 3 (2.7-3.7) include the scrub uplands, oak and hardwood forests, salt marshes, natural pine flatwoods, and the smaller swamps and sloughs that have been generally embedded within pine plantations onsite. They are classified as "Conservation Habitat Areas." The fourth habitat types are with natural resource rating values of less than 3, with a range from 2.4 to 1.0, include the silvicultural habitats of the hydric and upland plantations as well as the harvested wetlands. They are classified as "Silvicultural Habitat Areas." These habitats are located onsite and are managed for timber, with varying degrees of tree ages, tree densities and site preparation stages, and/or harvesting disturbances.

Joint Ex. 5, Tab 10 at 7-8.

79. The EEAM's rankings were used as a basis for the Farmton Plan's design. The most significant natural resources and environmentally sensitive lands according to the EEAM rankings were designated GreenKey to be subject to permanent conservation. Areas which were disturbed or the least environmentally sensitive lands were deemed more suitable for future development and designated as SDA.

80. The FFWCC used its own data to review the Farmton Local Plan. It was the first comprehensive plan amendment (or project) reviewed under the Critical Lands and Waters Identification Project ("CLIP"). In the opinion of Dr. Walsh, a biological administrator with the FFWCC who supervises FFWCC land use consultations with external entities such as local governments and private land owners, the Farmton Local Plan is based on the best available science. In Dr. Walsh's opinion, the FLP provides for the conservation of wildlife and wildlife habitat and conserves and appropriately plans for protection of endangered and threatened wildlife.

#### Land Use Protections

81. The environmental evaluations are reflected in the FLP policies that require at least 67 percent of the site be designated as GreenKey and 75 percent or at least 36,000 acres of the site be preserved as GreenKey and RBOS. See Policies FG 1.3 and 1.6c, 2010 Hearing, Joint Ex. 7 at pages 7 and 8.

Furthermore, Policy FG 2.6 states:

As Sustainable Development Area districts are planned for future development, they shall employ Greenprinting decision support models to identify wetlands, flood plains, mitigation areas, vegetative buffers, specialized habitat for flora and fauna, and under-represented natural communities, water resources development areas and trails.

Joint Ex. 7, page 11 of 49.

82. The FLP provides additional conservation measures for the most environmentally significant areas. Policy FG 2.5 establishes the Southwest Wildlife Corridor. Policy FG 2.5a establishes the Deep Creek Conservation Area with special levels of protection. The Remedial Amendment creates MRBOS lands and designates them on the Future Land Use Map. The result is that 33,665 acres of the site will be placed into conservation. With RBOS, wetland protections, and associated buffers, 80 percent of the site or 39,265 acres ultimately will be conserved.

83. All lands placed in GreenKey, MRBOS, and RBOS are subject to the CMP approved by the Volusia County Council and ultimately subject to a conservation easement that perpetually protects the lands. See Policy FG 2.10, Joint Ex. 7. Policy FG 8.1 provides:

No building permit shall be issued for new development within the SDA districts within five (5) years of the effective date of the Farmton Local Plan. No development order for new construction shall be issued prior to the approval by the county council of the Conservation Management Plan (CMP) described in policies FG 2.10 and 2.11 and the recording of a perpetual conservation easement over all Green Key lands as set forth in policy FG 2.15 with the specific exception of essential public utilities or communication structures.

Joint Ex. 10, page 7 of 7. The Council has appointed a CMP Task Force to develop the plan.

### Natural Resource Management Area

84. The NRMA overlay covers the entire site. It does not prohibit development but subjects it to scrutiny by the County. The NRMA overlay has not successfully prevented habitat fragmentation. Prevention of habitat fragmentation is a basis for the "layered additional protections," 2010 Hearing tr. 1167, of the FLP, including the Environmental Core Overlay Areas ("ECO").

85. Areas that must be protected are covered by the ECO, which receive the greatest protection in the Current Plan. The ECO covers approximately 11,000 acres of the site. The FLP adds 20,900 acres to the ECO.

86. Without the FLP, and in spite of the NRMA and ECO overlays, existing Current Plan policies allow the Farnton property to be subdivided into approximately 1,700 lots. Significant habitat fragmentation is a potential result. The FR portion of the site, moreover, may develop in a clustered pattern at a density of one unit per 5 acres, as opposed to one unit per 20 acres under Future Land Use Policy 1.2.3.2. There are ranchette subdivisions in the site's vicinity and ranchettes are a feasible development option for the site.

87. The FLP provides stronger natural resource protection than existing policies for the resources it protects. Its more restrictive standards eliminate the potential for development of

the most sensitive areas and eliminate vesting of previously vested lots. Policy FG2.1 provides that the FLP is supplemental to NRMA and ECO. If the FLP conflicts with NRMA, the more specific or restrictive policies apply.

88. The FLP is consistent with the current Plan provisions for the NRMA, Environmental Systems Corridor, and ECO.

The Florida Black Bear and Regional Wildlife Corridor

89. The Florida Black Bear is a State-designated Threatened Species. See chapter 68A-27. The purpose of the FFWCC in promulgating rules relating to endangered or threatened species is stated at the outset of chapter 68A-27:

The purpose . . . is to conserve or improve the status of endangered and threatened species in Florida to effectively reduce the risk of extinction through the use of a science-informed process that is objective and quantifiable, that accurately identifies endangered and threatened species that are in need of special actions to prevent further imperilment, that identifies a framework for developing management strategies and interventions to reduce threats causing imperilment, and that will prevent species from being threatened to such an extent that they become regulated and managed under the federal Endangered Species Act of 1973, as amended, 16 U.S.C. §1531 et seq.

Fla. Admin. Code R. 68A-27.001(1).

90. In June 2010, the FFWCC accepted recommendations of bear experts that it find there is "not a high risk of extinction," 2011 Hearing tr. 626, for the Florida Black Bear.

Acceptance of the recommendation was accompanied by the commencement of the adoption of a management plan for the Black Bear. Upon the adoption of such a plan, the FFWCC is expected to de-list the Florida Black Bear from the threatened and endangered species lists. See id.

91. Policy FG 2.5b requires the CMP within the Southwest Wildlife Corridor to address habitat requirements for the Florida Black Bear in consultation with FFWCC.

92. The FLP provides for the protection of regional wildlife corridors. Objective FG 2 of the FLP reads: "GreenKey and other Resource Based Open Space shall be managed for natural resource protection and preservation of interconnected regional wildlife corridors, and conserved in perpetuity." Joint Ex. 5, Tab 3 at 8.

93. Nearly the entire Farmton Site constitutes Bear Potential Habitat. See DCA Ex. 4F. The entire site has been identified as Secondary Bear Range, see DCA Ex. 4G, and is roughly within 10 miles of an area of Primary Bear Range to its north and 20 miles of the same area of Primary Bear Range to its west. The area of Secondary Bear Range that includes the Farmton Site also includes urban areas such as the cities of Deland, Orange City, Deltona, and Sanford. Several hundred thousand people live in the secondary range that includes the Farmton site.

94. The area of Secondary Bear Range in which the Farmton Site is located is habitat for the Ocala and St. Johns subpopulations of the Black Bear. While Dr. Hoctor considers the Ocala and St. Johns subpopulations to be separate, David Telesco, the Black Bear Management Program Coordinator for the FFWCC, described them as one subpopulation of bears that range over the Farmton Site, the Secondary Bear Range in which it is located, and nearby Primary Bear Range:

This is our largest population of bears, estimated as potentially 1,200 animals. It's also the most densely populated, which means it's the highest quality habitat we have in the state. And our habitat models that we have are showing it as a stable subpopulation.

2011 Hearing, Tr. 625.

95. Bear ranges do not coincide perfectly with bear habitat. Bears may range in areas that are not habitat. Just as in the case of ranges, bear habitats are classified as primary and secondary. Primary and Secondary Bear Habitats are both present on the Farmton Site. In Dr. Hoctor's opinion, to view Secondary Bear Habitat composed of pine plantation (as is the secondary habitat on the Farmton Site), to be more suitable for development would not be accurate or scientifically defensible. "[P]ine plantations are important habitat in and of themselves, plus they're important for . . . connecting all of [the] forested wetlands on [the Farmton] site . . . ." Tr. 475.

96. An array of expert testimony was presented at the 2010 Hearing by Petitioners, the County, and Miami Corporation as to whether the FLP provided adequate wildlife corridors and protection of bear habitat.

97. Dr. Hoctor testified that the Farmton Site is "particularly significant for potentially supporting . . . functional connectivity between the Ocala and Saint Johns [Black Bear] [sub]populations to those that are further south, the Highlands/Glades [sub]populations and Big Cypress [sub]population." Tr. 463.

98. In the past, Florida's Black Bear population was integrated. There was "one [Black Bear] population . . . that occurred throughout the State of Florida." Tr. 465. The several Black Bear populations identified in the state now, however, are genetically distinct due to isolation caused by habitat loss, hunting and poaching.

99. Re-integration will promote genetically healthy populations. Genetically healthy populations are more likely to adapt to future environmental changes and maintenance of connectivity between the subpopulations will promote a genetically healthy population of the Black Bear.

100. A primary method of promoting a genetically healthy population is maintenance or restoration of functional corridors that connect sub-populations of the Black Bear in the state.

Functional corridors are necessary to restore a single Black Bear population in the state or a "metapopulation . . . a set of subpopulations that are interacting through disbursal [sic] of individuals between . . . [the] various populations." Tr. 468. Dr. Hoctor opined, "If we're going to have a functional corridor between the populations to the south [south of northern Brevard and southern Volusia Counties] and to the Saint Johns and Ocala populations [to the north], it's more than likely going to have to occur through the Farmton Property." Tr. 467.

101. It is Dr. Hoctor's opinion that functional corridors through the Farmton Property are particularly important to maintenance of the St. Johns subpopulation which consists of only 96 to 170 bears when a viable sub-population of bears is at least 200.

102. Dr. Hoctor regards the wildlife corridors provided by the FLP, both for the Black Bear and other species, to be insufficient to offer adequate protection. They are not wide enough nor do they encompass enough acreage, in his opinion, to provide an adequate home range for a female Black Bear. The FLP allows too many significant road crossings. With regard to the Black Bear and other species, moreover, the FLP, in his opinion, does not sufficiently counter negative edge effects, that is, "negative impacts on natural areas or protected lands . . . from adjacent intensive land uses." Tr. 483.

103. Consistent with action taken in June 2010, the Commission is in the process of adopting a Black Bear Management Plan for Florida. On May 19, 2010, the FFWCC issued a "Draft Black Bear Management Plan for Florida" (the "Draft Plan") which has been up-dated but remains in draft form. The Draft Plan opens with an executive summary, the first paragraph of which follows:

The long-term future of Black Bears in Florida currently is uncertain because of their large spatial requirements, the fragmented nature of remaining populations, and increasing human development and activity leading to conflicts. A statewide management plan is needed to conserve this valued wildlife species.

\* \* \*

This management plan is not intended to set all policies and operations for bears, rather it is intended to form a platform from which policies can be updated and operations can be based. While this plan will set clear guidance and structure for bear conservation in Florida, it will not be a panacea or silver bullet for current issues. In fact, this plan may create more work as key challenges are addressed in implementation.

VC/MC Ex. 49.

104. The Draft Plan does not contain any reference to Dr. Hoctor's opinion that the Farmton Site is a critical linkage between the Ocala and St. John's subpopulations and the subpopulations of Black Bear to the south. Randy Kautz, a

supervisor of the nongame habitat protection planning section at the FFWCC and its predecessor agency for 20 years, testified that he knew of no agency recommendation to establish a corridor for Black Bears between the Ocala/St. Johns subpopulations and subpopulations of Black Bear to the south. Furthermore, he thought it very unlikely that the subpopulations would become connected if an adequate Black Bear corridor existed on the Farmton Site. He gave several reasons that included man-made disruptions between the subpopulations (such as pasture lands) and natural barriers posed by the St. Johns River, Lake Harney and marshes to the southwest of the Farmton Site over which Black Bears are not likely to traverse.

105. Under the Original Amendment, the Southwest Wildlife Corridor ensures a wildlife corridor approximately one mile in width in the areas closest to the St. Johns River because the science indicated that was the primary regional wildlife corridor for the region. Within the Southwest Wildlife Corridor is the Deep Creek Conservation Area. It is the site's most significant area for regional movement of wildlife and will contribute to a corridor spanning as wide as three miles near the St. Johns River. The Remedial Amendment increases the Southwest Wildlife Corridor to establish a minimum of a one-mile buffer outside the areas planned for development.

106. There are no hard and fast rules for what constitutes a functional wildlife corridor.

107. The Cow Creek Corridor, Southwest Wildlife Corridor, and the corridor along the Volusia-Brevard border exceed a 10:1 ratio of length to width, a favorable ratio for wildlife, and each is a minimum of 900 meters in width. The Southwest Wildlife Corridor, which is 11.81 miles in length, was expanded by the Remedial Amendments to a minimum width of one mile, an average width of 2.26 miles, and a maximum width of 5.3 miles, and has a reduced length-to-width ratio of 5.2:1. The Cow Creek Corridor, which is not a regional wildlife corridor, was increased to 3.86 miles in length, a maximum width of 1.07 miles, a minimum width of 0.63 of a mile, and has a length-to-width ratio of 4.73:1.

108. Respondents provided expert opinions that the FLP's provision of wildlife corridors is consistent with regional long range conservation planning and fits into an ecosystem pattern with wildlife corridors, linkages, and a variety of habitats.

109. Respondents also presented expert opinion that FLP's proposed conservation areas are consistent with Florida wildlife conservation strategy.

### Other Listed Species and Wildlife Habitat

110. Petitioners allege that the amendment fails to protect native vegetative communities, wildlife, wildlife habitat, and threatened and endangered species.

111. The SOI lists several federally listed species within USFWS consultation areas for the Crested Caracara, the Florida Scrub Jay, and the Everglades Snail Kite. A consultation area includes the bird's dispersal range. Ms. Collins has never seen one of these three bird species on the property during her 15 years onsite, which she attributes to the site's inappropriate habitat for the species. Dr. Smith and Dr. Walsh also testified that it was highly unlikely to find these species on site. If a project is located within a listed species consultation area, the developer is required to meet with the USFWS to address the issue further during the permit process.

112. Other listed species are found or are likely to be found on the site. However, there will be adequate habitat and conservation areas to support them. Gopher tortoises, for example, found within an SDA will be protected by existing County policies.

113. The FLP provides a higher level of protection for listed species and other wildlife than if the site were developed under the current land uses. No development may take place, moreover, until the CMP is approved and incorporated in

the development order. Policy FG 2.11 lists numerous minimum criteria for the CMP, including the identification of USFWS consultation areas and known onsite threatened and endangered plants and animals, the protection of habitats of species that are listed, imperiled, and otherwise in need of special protection, and coordination with management plans of adjacent conservation areas.

114. Farnton contains native vegetative communities including mesic flatwoods, scrub flatwoods, and pine flatwoods. These native vegetative communities are predominantly present in the GreenKey conservation areas and will be protected.

#### FAVA and Site-specific Data

115. A Florida Aquifer Vulnerability Assessment Map (the FAVA Floridan Map) for the Floridan Aquifer of the Farnton Site depicts three levels of vulnerability: "More Vulnerable," "Vulnerable," and "Less Vulnerable." See DCA Ex. 4D.

116. Most of the Farnton Site is in the area depicted by the FAVA Floridan Map as "More Vulnerable." All of the SDAs allowed by the FLP to be developed as Gateway, Town Center and Work Place subareas, for example, are depicted as "More Vulnerable." Most of the SDAs allowed by the FLP to be developed as Village subareas are depicted as "More Vulnerable" and the remainder is depicted as "Vulnerable." The FAVA Floridan Map depicts none of the SDAs as "Less Vulnerable." See

DCA Ex. 4-D. The FAVA maps supported the Department's determination that the Original Amendment was not in compliance.

117. FAVA maps are used as data by the Department because they depict areas where the aquifer is susceptible to contamination from surface contaminants. In that they "cover broad swaths of the State of Florida, [however] . . . they are not meant to supersede site-specific data." Tr. 1942.

118. Dr. Seereeram, on behalf of Miami Corporation, gathered data specific to the Farmton site. The data included "detailed soil profiles every six inches vertically . . . [to] depths . . . over 100 feet . . . ." Tr. 1941. His site-specific data showed that there are confining layers between the surficial aquifer and the Floridan aquifer that prevent "rapid movement of groundwater from [the surficial] aquifer into the underlying Florida[n] aquifer." Tr. 1941.

119. The site-specific data led Dr. Seereeram to conclude that the Department's concern for contamination potential to the Floridan Aquifer based on the FAVA is misplaced. In light of his site-specific data, Dr. Seereeram's opinion is that the development of the Farmton property will not "pose a threat to the aquifer." Tr. 1942.

120. Dr. Seereeram's opinion, based on the question from counsel, is expressed in terms of "the aquifer." See id. Based on the FAVA maps and the entirety to his testimony with regard

to site-specific data, the opinion does not apply to the Surficial Aquifer but only the Floridan Aquifer.

121. The development of the Farmton Site in Volusia County does not pose a threat to contaminate the Floridan Aquifer.

Floodplains, Wetlands, and Soil

122. The Farmton Site in Volusia County is predominantly floodplains and wetlands. Petitioners allege that the land uses proposed by the FLP are incompatible with wetland protection and conservation.

123. The Comprehensive Plan's map series depicts a large portion of the County as being located within the 100-year floodplain. A significant part of the SDAs are within the 100-year floodplain.

124. There is no state or federal prohibition of development in a floodplain.

125. The Comprehensive Plan and the FLP describe the floodplain. The Comprehensive Plan does not prohibit development in the 100-year floodplain. The FLP, however, "advises development away from the floodplain, specifically as it relates to schools in the Farmton Local Plan." Tr. 1095-6.

126. Development in floodplains has been allowed by the County subject to elevation of construction to be flood-free upon completion and mitigation via on-site flood storage. The Plan's floodplain policies would apply to development under the

FLP and the FLP has policies which relate to floodplains.

Policy FG 2.21 in the FLP, for example, requires the following:

**Floodplains.** Impact to the 100-year floodplain shall be minimized. Any impacts must be fully mitigated by providing compensatory storage on-site.

Joint Ex. 7, Tab D-3 at 17 of 46.

127. As a result of changes made by the Remedial Amendment, the majority of developable lands within the SDAs are uplands not wetlands. Based on a review of aerial photography, soil surveys, and other data, combined with field work, Ms. Collins concluded that approximately 29 percent of the total SDA acreage can be identified generally as wetlands.

128. The dominant soils in the SDAs are Smyrna fine sand, Immokalee fine sand, Eau Gallie fine sand, and Myakka fine sand. Myakka soil, the soil of the flatwoods, is the most common soil in the state and has been designated as the "state soil." Tr.

1358. There are similar soils on adjacent properties. They are soils "that have had development occur on them." Tr. 1097. All of the soils in the SDAs are suitable for development.

129. Wetlands delineation is not required at the comprehensive plan stage. It will be required prior to approval of development plans or issuance of a development order.

130. The buildable areas within the SDAs will be determined with input from environmental regulation agencies prior to development order approvals.

131. Without the FLP, preserved wetlands would be protected by a fifty-foot buffer. In contrast, Policy FG 2.19d requires all preserved wetland areas within an SDA to be protected by a buffer that averages 75 feet in width and is no less than 50 feet in width. See Joint Ex. 7, Tab D-2, page 17 of 49. On GreenKey land, the policy provides enhanced wetland buffer widths of an average of 100 feet with a minimum buffer of 75 feet. See id. "If different buffer widths are required by a permitting agency, the wider buffer shall apply." Id.

132. Policy FG 2.20 states that activities within the FLP "shall be planned to avoid adverse impacts to wetlands and the required buffers as described in FG 2.19(d)." Id. No less than 25 percent of each SDA as a whole must be set aside as RBOS, which may include wetlands. See Policies FG2.4 in Joint Ex. 10, Exhibit A, page 1 of 7; and 3.2 in Joint Ex. 7, Tab D-2. Per Policy FG 2.8, those open space areas will be determined in consultation with regulatory agencies, Volusia Forever and entities that are parties to the conservation easements required by Policy FG 2.12. See Joint Ex. 7, Tab D-2. Policy FG 2.6 requires that, when establishing RBOS, priority "be given to lands on the perimeter of the SDA, which are contiguous to

GreenKey lands." Id. at page 11 of 49. In accordance with Policies FG 2.10 and 2.11, those RBOS areas will be added to the conservation easement and be incorporated in the CMP. Policy FG 2.11h requires the CMP to contain "[p]rovisions for significant water resources (such as streams, creeks, natural drainage ways, floodplains, and wetlands) protection, enhancement, and restoration and planned hydrological restoration." Joint Ex. 7, Tab 2-D, page 13 of 49.

#### Wetlands Mitigation Bank

133. In 2000, after a two-year permitting process, approximately 16,337 acres of the Volusia Farmton site was approved for use as a mitigation bank. Of that approved acreage, only 7,030 acres have been placed under a conservation easement and are required to be maintained in perpetuity for conservation purposes. Those 7,030 acres will continue to be preserved under the FLP.

134. The portions of the mitigation bank that have not been placed under conservation easement may not remain within the mitigation bank and may be withdrawn. At the time of the final hearing, an application filed by Miami Corporation was pending before the SJRWMD to modify the mitigation bank permit to withdraw approximately 1,100 acres from areas within the mitigation bank that have not been placed in conservation easement. The lands proposed for removal from the permit are

located within the SDA areas. The remaining portions of the mitigation bank would be protected from SDA uses through the 200 foot SDA perimeter buffer and wetland buffer requirements in Policy FG 2.19.

#### Conservation Management Plans

135. Within one year of the effective date of the FLP, the Deep Creek Conservation Area and the permitted Mitigation Bank lands will be placed into permanent conservation easement. Within two years, a CMP will be developed and enforced through the conservation easements. Remaining lands will be protected through a conservation covenant as well as the CMP. The covenant will have a ten-year term and automatically renew until the initial development plan is approved. Upon approval of a development plan consistent with the densities and intensities of the comprehensive plan, those lands will also be converted to a permanent conservation easement. The Remedial Amendment requires that no development can take place until the CMP plan is established and perpetual easements are recorded.

#### Urban Sprawl

##### a. The Thirteen Statutory Indicators

136. Section 163.3177(6)(a)9 mandates that an amendment to the future land use element discourage urban sprawl. Section 163.3177(6)(a)9.a provides 13 "primary indicators that a plan or plan amendment does not discourage the proliferation of urban

sprawl . . . ." Evaluation of the indicators "consists of analysis of the plan or plan amendment within the context of features and characteristics unique to each locality . . . ." See section 163.3177(6)(a)9.a. The 13 indicators are listed in the statute under roman numerals "I" through "XIII."

I.

137. The first indicator is promoting, allowing or designating "for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses."

138. The current Plan (without the FLP) allows the site to develop as single residential uses at low densities. The pre-FLP densities allowed on the Farmton Site are one unit per 10 acres, one unit per 20 acres, or one unit per 25 acres depending on the three designations on the site: Agricultural Resource, Forestry Resource or Environmental Systems Corridor. Mixed use is not required, nor is clustering required. The result is a "ranchette pattern of land use." 2010 Hearing, Tr. 1817.

139. Mr. Ivey at the 2010 Hearing described ranchette-style development and the use to which a ranchette would typically be put. He depicted a development pattern dominated by owners of property who want to be in the country to enjoy a country lifestyle. After purchase of the property, the owner typically builds a house, frequently clears the land, constructs

a number of outbuildings and grows grass to support cows or goats. In Mr. Ivey's opinion, "if your goal is to protect the environment, [the ranchette pattern of development] does not do it." Tr. 1720.

140. Mr. Pelham opined that, despite the current Plan's allowance of a ranchette style of development on the Farnton Site, the indicator is triggered because the FLP disperses so much low density development over the landscape and in development nodes. Such a pattern, in his opinion, "does result in a significant amount of low density sprawl, compounded by the fact that it's fragmented and distributed out rather than being in a very compact fashion." Tr. 280.

141. In comparison to the ranchette style of development, however, the FLP calls for a mixed-use development much more concentrated than a ranchette type of development and, on balance, more protective of natural resources.

142. The current land uses allow nonresidential development at a floor area ratio of 0.10 but non-residential uses are not required to be included so as to ensure a mix of uses. The current land use could result in an inefficient land use pattern of more than 4,600 residential units, each of which would be entitled to use a septic tank and potable water well.

143. Conservation Element Policy 12.2.2.5 requires either clustering or open space for developments that contain

environmentally sensitive lands or critical habitats but includes no minimum standards. The FLP removes residential entitlements from the GreenKey area and clusters residential development into the SDA areas.

144. Since development is not allowed in GreenKey, it is reasonable to evaluate the FLP's density in terms of "net density" rather than "gross density." It is also appropriate to evaluate density based on the various SDAs. Each Village has a minimum density of 3 units per acre and a target density of 10 units per acre. The Town Center has a minimum density of 8 units per acre, a target density of 15 units per acre, and a center town square required density of 24 units per acre. Work Place has a minimum density of 8 units per and a target density of 18 units per acre. Finally, Gateway has a minimum density of 4 units per acre and a target density of 12 units per acre. The weighted average of the minimum densities throughout the SDAs is 3.3 units per acre and their weighted target density is 6.8 units per acre. This density is relatively high compared with developed portions of cities in Volusia County. The City of DeBary has a weighted average density of less than 2 units per acre. The City of Deltona has a weighted average density of 2.68 units per acre, and the City of Edgewater has a weighted average density of 4.89 units per acre. The weighted average

maximum density for the residential land use categories in the unincorporated County is only 2.36 units per acre.

145. The FLP also includes requirements for a mix of uses in the Gateway, Town Center, and Village districts. The jobs-to-housing ratio in Policy FG 3.10 also will ensure that development will contain a mix of uses.

## II.

146. The second indicator is promoting, allowing or designating "significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while not using undeveloped lands that are available and suitable for development."

147. Mr. Pelham found the indicator to be triggered because it designates over 12,000 acres of urban development in a rural area at a significant distance from existing urban development and leapfrogs over undeveloped urban-designated lands. Mr. Pelham holds the opinion despite the match of the FLP by the development that will be allowed under the Brevard County Comprehensive Plan on the Brevard County Farmton Property immediately adjacent to the Farmton Site in Volusia County.

148. In addition to abutting the Brevard County Farmton Property, the Farmton Site abuts the City of Edgewater, and the approved Restoration DRI and Reflections PUD. There are

undeveloped publicly managed lands and conservation easements in the vicinity of the Site.

149. In contrast to Mr. Pelham, Mr. Metcalf does not think the indicator is triggered. He sees the FLP with its requirement of a greenbelt designated as GreenKey and RBOS and MRBOS to contain the essential components of an innovative development type known as "urban village."

150. An urban village has the following characteristics: an area with urban density, a mix of uses including all major land use types in a self-contained, clustered, compact form that is transit-supportive and has a grid or modified grid street network and a walkable, unified design, with a defined edge separating urban rural uses.

151. The FLP contains all the components required it to be considered to contain an "urban village" development pattern.

### III.

152. Mr. Pelham concluded that the third indicator is triggered by the FLP's "fragmented development pattern . . . [with] ribbon strips of nodes, five or six of them, . . . in an isolated area." Tr. 281.

153. In contrast, Mr. Metcalf opined that the FLP's "node" development pattern does not trigger the indicator. The nodes of development are not in a radial, strip or ribbon pattern. They do not, moreover, emanate from urban development.

#### IV.

154. Mr. Pelham's view that the FLP triggers the Indicator IV focuses on the 12,000 acres of NRMA land, a substantial portion of which will be converted to urban-type development.

155. In contrast, witnesses for Miami Corporation cast the FLP as providing for the conversion of rural lands in a way that protects and conserves a range of natural resources, including wetlands and upland habitats. The indicator, moreover, does not require protection or conservation through preservation. Therefore, it is not triggered in all cases in which there is some use of the resource. GreenKey and MRBOS keep development out of the most environmentally sensitive wetlands and confines development to the SDAs so that wetland encroachment occurs only in wetlands of lower value than others in the area. Designation of areas as RBOS will also conserve natural resources.

#### V.

156. Indicator V refers to failure to adequately protect "adjacent agricultural areas and activities." Petitioners criticize FLP for failure to protect agricultural and forestry areas and activities within the SDAs. The Department of Community Affairs, however, has never applied the indicator to lands internal to an amendment.

157. Policy FG 2.2 allows agricultural activities to continue in the GreenKey using Best Management Practices.

158. Existing agricultural areas adjacent to the Farmton Site are mainly to the west. The FLP includes provision to adequately protect activities within those areas. Policy FG 2.19, for example, requires a minimum buffer of 200 feet around each SDA.

159. Protection of adjacent areas and activities in the areas means Indicator V is not triggered by the FLP.

#### VI.

160. Mr. Pelham offered the opinion that the FLP fails to maximize use of existing public facilities and services by allowing a large urban development in a rural area that has no public facilities and services and no plan to provide them.

161. Mr. Metcalf testified that the services to be considered would be law enforcement, fire, emergency medical treatment and solid waste. In assessing Indicator VI, Mr. Metcalf began with the assumption that development under the FLP will increase the population in the service district. He opined that the indicator is not triggered because "[t]he higher [the] population in that service district, the higher the maximum usage of that service." Tr. 808.

#### VII.

162. Mr. Pelham believed the FLP fails to maximize use of future public facilities and services because, whether the developer makes significant payment for them or not, the remote

location and type of the development will keep it from benefiting from the efficiencies and advantages of scale it would enjoy if it were more proximate to urban development and more compact.

163. Policy FG 3.6d requires the Town Center to house a majority of civic uses, including public safety facilities. The Spine Transportation Network and its related policies provide a network of roads that disperses traffic designed to avoid overloading with local trips. Water service in Gateway will be provided by extension of infrastructure from the Restoration site. "The extension of those lines would be closer than would be many neighborhoods within existing urban areas." Tr. 809. School capacity for the initial 2,287 units will be concentrated in Gateway.

164. The critical mass that can be achieved through the urban village form of development will support onsite facilities needed by schools, law enforcement and fire departments. The location of the facilities will serve development on the Farmton Site and also nearby ranchettes and all of South Volusia County.

165. Mr. Metcalf's opinion is that that the indicator is not triggered by the FLP.

#### VIII.

166. Mr. Pelham's opinion is that Indicator VIII is triggered. "Many studies have shown that allowing urban

development far distances from existing urban development drive up the cost of providing infrastructure." 2011 Hearing, tr. 285.

167. Policies FG 7.1 and 5.13 require development within SDAs to provide infrastructure, including onsite roads, and government services that are fiscally neutral. They also require the developer to pay for its share of off-site transportation impacts on a pro rata basis. Construction of the Spine Transportation Network is required by Policy FG 5.7 to be funded solely by the owner/developer. These policies together with the urban village development pattern led Mr. Metcalf to the opinion that the FLP will not disproportionately increase the cost in time, money and energy of providing and maintaining facilities and services.

#### IX.

168. By establishing SDA areas and buffer requirements in Policy FG 2.19 for perimeter boundaries and wetlands, the FLP establishes clear separations between rural and urban areas.

#### X.

169. The FLP would discourage and inhibit the redevelopment of existing neighborhoods and communities, in Mr. Pelham's opinion, because it will compete with all other urban areas for residential and nonresidential growth.

170. Joel Ivey, who has worked on many amendments to the Volusia County Comprehensive Plan, testified that he was not aware of any areas in the County in need of re-development or any infill areas with which the FLP would interfere. The Petitioners did not identify any areas in which the FLP will discourage development opportunities covered by the indicator.

XI.

171. Indicator XI is not triggered. The FLP encourages a functional and attractive mix of uses. It requires a mix of residential and nonresidential uses in the SDA districts, a jobs-to-housing ratio, placing lands in conservation easements, walk-ability, compact development, and a hierarchy of street systems to foster connectivity and pedestrian mobility.

XII.

172. Indicator XII is not triggered. The FLP promotes accessibility among linked and related land uses with interlinked multimodal roadways and paths, including the Spine Transportation System, walkways and bike paths.

XIII.

173. The FLP preserves significant areas of functional open space. It provides for passive recreation open space in RBOS areas. It provides expanses of functional open space areas for wildlife habitat. The Farmton Site, currently private property used primarily for silviculture that can be developed

with more than 4,600 homes, under the FLP will place at least 36,000 acres in functional open space in perpetuity. It will conserve the site's most environmentally-sensitive lands and establish a network of wildlife corridors.

b. Development Patterns and Urban Forms

174. Section 163.3177(6)(a)9.b declares that a future land use element or plan amendment "shall be determined" to discourage the proliferation of urban sprawl if it incorporates a development pattern or urban form that incorporates four or more factors listed in the statute. The development patterns or urban forms are listed by roman numerals, I through VIII.

I.

175. The FLP promotes conservation and avoids adverse impacts to the most significant natural resources on site. It does so by placing the most significant natural resources in GreenKey and MRBOS, locating development in the SDAs so as to keep it out of the most ecologically significant areas on the Farmton Site, providing protections to the Southwest Wildlife Corridor, and deeding the Deep Creek Conservation area for permanent preservation.

176. Any development within an SDA will be subject to development controls that first require impacts to wetlands to be avoided. If impacts cannot be avoided, only wetlands of

lower ecological significance may be impacted, and the impacts must be mitigated to achieve no net loss in function and value.

177. Policy FG 2.19 includes several buffer requirements. Other natural resource protection mechanisms include Policy FG 2.7 which promotes habitat connectivity and requires RBOS to minimize habitat fragmentation. Policies FG 2.10 and 2.11 require a conservation management plan. Policy FG 2.5 and 2.5b. require a forestry management plan and a bear management plan.

## II.

178. The FLP promotes the efficient and cost-effective provision or extension of public infrastructure and services based upon findings above.

## III.

179. The third development pattern is present. The FLP includes several provisions that promote walk-ability and connected communities, including Policies FG 3.1; 3.4g; 3.6e; 3.7a-d, h, and j; 5.1;, 5.3; 5.5; 5.6; and 5.7; and, the Spine Network Map. The SDA district policies provide for compact development and a mix of uses at densities and intensities that support a range of housing options and transit options. The FLP requires park-and-ride lots for bus stops, which supports a form of mass transit, and requires multimodal options, such as sidewalks, bike paths and multi-use paths that accommodate different transportation options such as golf carts and

bicycles. Policies FG 3.1e (applicable to all SDA districts), 3.4 (Gateway) and 3.7k (Villages) require housing diversity and choice through a mixture of housing types and price points.

#### IV.

180. The fourth development pattern is present as the FLP promotes water and energy conservation. Policy FG 4.2c requires various conservation measures and water neutrality. The multimodal components and employment centers required by the FLP will reduce vehicles miles and promote energy conservation.

#### V.

181. The fifth development pattern is present if the word "preserve" is interpreted to allow agricultural and silviculture activities to continue, rather than mandate that they continue. Policy FG 2.2 allows agriculture activities to continue, but does not require or guarantee that they will continue in perpetuity. Id. Policies 2.2, 2.5a, 2.11g, 2.12f, 2.23, and 3.13 ensure that agriculture may continue. The timberland soils in GreenKey and MRBOS will be preserved.

#### VI.

182. The sixth development pattern is present. Policies 1.3, 1.7, 2.10, 2.11, 2.15, 2.4, 2.6, 2.8, 2.8, 2.5, and 2.16 preserve open space and natural lands. The conservation easements for GreenKey will preserve open space in natural lands. MRBOS and RBOS will provide open space areas in natural

lands. Parks in RBOS will provide public open space and passive recreational areas. The SDA parks also will provide active recreational areas.

#### VII.

183. The seventh development pattern is present. The residential and non-residential allocations are balanced and are comparable to those in other master-planned communities. The jobs-to-housing ratio requirement in Policy FG 3.10 ensures a 1:1 balance at build-out and provides a mechanism to ensure that the balance does not drop below 0.65 during development. Gateway Policy FG 3.4d appropriately targets interstate commerce given its proximity to the I-95 and State Road 442 Interchange.

#### VIII.

184. The eighth development pattern is present. The FLP remediates the ranchette pattern allowed under the current Plan over the site. It also provides an innovative urban village development pattern, as well as transit oriented development.

#### Internal Inconsistency

##### a. Future Land Use Element

185. Future Land Use Objective 1.1.3 in the Current Plan states: "Volusia County shall limit urban sprawl by directing urban growth to those areas where public facilities and services are available inside designated service areas and within urban areas." Joint Ex. 1, page 29 of 109.

186. Future Land Use Policy 1.1.3.5 in the current Plan provides that:

New urban development shall be located inside an urban designated area where a full range of urban services exist or are planned and with direct access to arterials and mass transit routes sufficient to handle existing and future development.

Joint Ex. 1, page 30 of 109.

187. Policy 1.1.3.6 provides:

Requests for land use map amendments will be reviewed using the urban sprawl indicators contained in Rule 9J-5.006(5)(g). Requests that exhibit a presence of a majority of the indicators shall be concluded as to encourage urban sprawl.

Id.

188. Mr. Pelham concluded the FLP was inconsistent with these two policies because the Farmton Site is in a remote, rural area outside of urban areas and away from existing or planned urban services. The basis of the opinion is contradicted by the Farmton amendments to the Brevard County Comprehensive Plan now in effect.

189. While rule 9J-5.006(5)(g) no longer exists, Mr. Pelham testified as to why the FLP constitutes urban sprawl.

190. When evaluating whether a plan amendment is consistent with a provision in the plan, including a policy, the plan should be considered "as a whole." Tr. 222. As Mr. Pelham testified, "a common mistake in interpreting comprehensive plans

is that policies are lifted out of context, considered in a vacuum without regard to the plan as a whole . . . ." Id.

191. Mr. Pelham's approach is sanctioned by the Current Plan's provision that governs "Plan Interpretation" found in Chapter 21 of the Current Plan entitled "Administration and Interpretation." In particular, it is consistent with a statement that appears in the Introduction of the Current Plan as one of three guidelines or "statements which represent the underlying assumptions which support the Plan preparation." Joint Ex. 1, Introduction, page 3 of 5. That statement is "Guideline Three: The Comprehensive Plan will be construed as a complete document and no specific goal, objective, policy or recommendation shall be used independently." Joint Ex. 1, Introduction, page 4 of 5. Guideline Three is emphasized by its restatement in a quote from the Current Plan's Introduction in the provision governing "Plan Interpretation." See Joint Ex. 1, Chapter 21, page 2 of 7.

192. The Current Plan does not prohibit urban development activities within NRMA. To the contrary, the Current Plan allows "Low Impact Urban," as defined in Policy 12.2.2.1c on lands within NRMA. See Joint Ex. 1, Chapter 12, page 8 of 16.

193. The FLP directs development to certain areas within NRMA and away from the most environmentally sensitive lands in NRMA. There is a fair argument advanced by Miami Corporation,

the County and VGMC that the FLP is coordinated with NRMA, is consistent with its objectives as to the bulk of the site and does not conflict with the Current Plan's Objective 12.2.1: "To provide for the protection of areas determined to be environmentally sensitive, and to direct growth away from such areas."

194. Policy 12.2.1.2 requires the County to promote land use activities compatible with NRMA. The policy discusses the land use categories of ESC, FR and Low Impact Urban, among others. The County's planning and development services director for the County construes the uses under ESC, FR, and Low Urban Impact as not the only land uses allowed within NRMA. The critical determination is whether a land use is NRMA-compatible.

195. Consistent with the Current Plan, Policy FG 2.1 states that the whole site is located within NRMA and the NRMA policies apply if they are more protective or stringent than the FLP's policies. The FLP provides more protection for the most environmentally sensitive areas on the Farmton Site than is provided under NRMA. Examples are the FLP requirement for a wider buffer and a minimum of 75 percent open space.

196. Policy 1.3.1.28 forbids amendment of the FLUM not adopted in conjunction with the required Evaluation and Appraisal Report ("EAR") except under five conditions expressed in the policy. The FLUM amendment by the FLP was not in

conjunction with an EAR. The five conditions, all of which must be met, therefore, are:

- a. Population projections have been revised, and accepted by the County and FDCA;
- b. Justification is provided for the expansion of the urban boundary;
- c. Compatibility with the character of the area;
- d. Availability of the full range of all urban services, including adequate potable water supply and facilities, to accommodate inclusion in an urban area; and,
- e. Documentation is provided that urban expansion will not be in conflict with the intent of the Natural Resource Management Area and Environmental Core Overlay.

Joint Ex. 1, Chapter 1, page 41 of 109.

197. Testimony at the 2010 Hearing established that the County's population projections were rejected by DCA because they were not based on a professional methodology. The projections were not accepted by the Department in the interim between the 2010 and 2011 Hearing. Mr. Pelham testified that "[t]he Department has never accepted them." 2011 Hearing, tr. 242. The Department's planning function, including review of comprehensive plan amendments and compliance determinations, was transferred by the 2011 Legislature to the Department of Economic Opportunity.

198. The Current Plan does not establish an urban service boundary.

199. Mr. Ivey opined that the FLP is compatible with the character of the area because of the 200-foot wide buffers that exist between the SDA and GreenKey areas.

200. The FLP provides for the City of Edgewater and Farmton Water Resources to provide central water and sewer, and there is adequate water supply.

201. The FLP is consistent with NRMA and ECO because it achieves permanent protection of the key ecological resources on-site. The 11,000 acres of land on the Farmton Site under the ECO are entirely preserved.

b. Conservation Element Policies

202. Petitioners allege that the FLP is inconsistent with Conservation Element Policies 12.2.1.1, 12.2.1.2, 12.2.2.5, 12.2.2.7 and 12.2.3.2.

203. The "Overview" section of the Conservation Element opens with the following paragraph:

The Conservation Element provides the framework for the preservation, protection, and enhancement, of the County's natural resources. As such, the goals, objectives and policies outlined in this Element are strongly intertwined with other elements in the Comprehensive Plan relating to land use, utilities, recreation and open space, transportation and coastal management. It is the intent of this Element to provide a basis for responsible decision making for

the appropriate use of natural resources when confronted by growth and corresponding development, as well as the identification and preservation of ecologically irreplaceable resources.

Joint Ex. 1, Chapter 12, at page 2 of 16.

204. Objective 12.2.1 is: "To provide for the protection of areas determined to be environmentally sensitive, and direct growth away from such areas." Id. at page 7 of 16.

205. Policy 12.2.1.1, in pertinent part, provides that "existing, relatively uninterrupted expanses of natural resources contained within the County shall be managed as an individual unit, providing natural resources the highest degree of protection in land development decisions and planning. These lands shall comprise the NRMA established in the Future Land Use Element.

206. Mr. Pelham views the FLP as not managing the natural resources on the Farmton Site as a unit because it allows development to occur in eight different nodes of development spread out across the property. The development that is allowed, therefore, is fragmented.

207. Mr. Pelham, moreover, sees the FLP as far less protective than the Current Plan because it does not retain protection of the NRMA. By eliminating low-density land use classifications in the SDAs, and replacing it with a large city, the effect on the more protective NRMA designation in his view,

is that the FLP "retains the shell and takes out the meat." Tr. 271.

208. In contrast, experts for the County and Miami Corporation see just the opposite. By confining development in the SDAs, which have additional internal protections provided by RBOS and MRBOS designations, and preserving in perpetuity up to 80 percent of the Farmton Site with special protections for wildlife corridors, the FLP provides permanent protection for the most environmentally-sensitive land on site.

209. Policy 12.2.1.2 establishes the three low-density categories that currently apply in the NRMA area: ESC, FR and Low Impact Urban. Replacing the low density use classifications with the FLP has the benefit of protecting the Farmton Site from ranchette-type development with the urban village development pattern that provides the conservation benefit of permanent protection of the most environmentally sensitive lands on site.

210. Objective 12.2.2 is "[t]o minimize, and eliminate where reasonably achievable, impacts to ecological communities which degrade their natural physical and biological functions as a result of land development activities." Id. at page 8 of 16.

211. Policy 12.2.2.5 provides, "The County shall require clustering of dwelling units and/or open space for land development projects which contain environmentally sensitive

lands and critical habitats within its project boundaries, in order to preserve these resources." Id.

212. The policy is the most detailed rural clustering plan in Florida.

213. The FLP is viewed by Mr. Pelham as inconsistent with the policy because of the allocation of multiple development nodes spread out over the Farmton Site.

214. Ms. McGee sees a distinction in the language of the policy when compared to the FLP. "The important distinction is that this policy specifically refers to land development projects versus land planning projects." (emphasis added).

Tr. 445. Petitioners contend there is no inconsistency because the aim of the policy is achieved since the most environmentally sensitive land is preserved in perpetuity by the FLP, functional and natural open space is set aside, and wetland buffers are provided in the FLP.

215. Policy 12.2.2.7 requires the County to coordinate with appropriate governmental entities to protect environmentally sensitive lands that extend into adjacent counties and municipalities.

216. Michael McDaniel testified at the 2010 hearing that the FLP allows the Gateway development to be adjacent to a 3,500 acre conservation area designated by the City of Edgewater as part of the Restoration DRI. Development allowed by the FLP in

the Gateway SDA was determined by DCA initially to be not compatible with the resources in the conservation area and the designation of the area by the City of Edgewater. The Original Amendment, therefore, failed to reflect the intergovernmental coordination required by the policy in his view. At his deposition conducted prior to the 2011 Hearing, Mr. McDaniel testified that after the Remedial Amendments the Gateway Project would still be just south of the conservation land designated by the City and that nothing specific had been done in the Remedial Amendments to address the inconsistency with the policy.

217. Policy FG 3.4 in the FLP includes several provisions relating to coordination with adjacent jurisdictions, two of which specifically refer to the Restoration DRI. Policy FG 2.11q requires the Farmton conservation management plan to be coordinated with the natural resource protection measures within the RBOS and Conservation Areas of Restoration. This requirement will ensure maximum open space connectivity between the Restoration development and any development in the northern portions of the Farmton site.

218. On the southern end of the Restoration site (just to the north of the Farmton Site) is an area designated to be used for utilities. That area directly adjoins one of the three Gateway SDAs.

219. The Restoration site includes a significant amount of degraded areas in need of restoration. East and west of the Gateway SDAs, there will be broad corridors that connect with the Restoration site. The Restoration DRI is subject to a conservation management plan requirement that can be coordinated with the FLP's CMP.

220. During the Original Amendment process, the County coordinated with the City of Edgewater. As a result of discussions between the County and the City, the FLP incorporates policies to address common water supply issues and future coordination. The City has no objection to the FLP.

221. The Amendment is internally consistent with Conservation Policy 12.2.2.7.

222. Objective 12.2.3 is "[t]o eliminate any net loss of wetlands and prevent the functional values of such wetlands to be degraded as a result of land development decisions."

223. Policy 12.2.3.2, in pertinent part, provides that "[p]roposed activities within the NRMA . . . shall avoid adverse impacts to wetlands and their associated natural, physical and biological functions, except in cases where it can be demonstrated to be in the overriding public interest." The policy also calls for mitigation in cases of overriding public interest.

224. Wetland features are present in abundance and interspersed throughout the Farmton Site.

225. Respondents contend that a reasonable interpretation of the policy is that it applies to projects at the time of decisions on applications for development orders rather than planning decisions such as adoption of the FLP. Since the policy, under the interpretation, does not apply to the FLP, the policy cannot be inconsistent with it.

c. Public School Facilities

226. Public School Facilities Element Policy 3.1.4.3 requires a finding by the School Board that adequate school capacity will either be timely planned or constructed if there is inadequate capacity at the time of a land use change.

227. Petitioners contend that FLP Policies FG 6.1 and 6.2 are inconsistent with Public School Facilities Element 3.1.4.3.

228. The FLP was coordinated with the Volusia County School District ("School Board"). The School Board reviewed the proposed FLP and revised its school provisions. At the time of the Original Amendment, the School Board, based on its independent data and analysis, determined that there is adequate school capacity for a maximum of 2,287 residential units through 2025.

229. Based on school capacity, Policy FG 1.4 limits residential development through 2025 to 2,287 units in the

Gateway district. The policy further restricts residential density in the Gateway district to a maximum of 4,692 units. "[A]ny increase in the density of the Gateway district above the 2,287 units [for which there is adequate school capacity now] and up to 4,692 units [the number of units allowed] shall not be effective until such time as the school district has issued a finding of school adequacy." Joint Ex. 7, Tab D-2, at page 7 of 49.

230. Policies FG 6.1 and 6.2 reiterate the 2,287 unit cap and do not allow additional residential units until the School Board finds adequate capacity to provide for additional units.

d. Other FLP Policies

231. "Fiscal neutrality means the costs of additional school district and local government services and infrastructure that are built or provided for the SDA districts shall be funded by properties within the approved SDA districts." Joint Ex. 7, Policy FG 7.1, page 42 of 49. Policy FG 7.1 requires each development within an SDA to provide adequate infrastructure that meets or improves level of service standards or will result in a fiscal benefit to the County and its municipalities.

232. Policy FG 5.13 authorizes mitigation for offsite transportation impacts through proportionate fair-share or proportionate share payments. The policy requires proportionate

fair-share or proportionate share payments to mitigate the offsite transportation impacts.

233. State law authorizes proportionate-share contributions or construction to satisfy transportation concurrency requirements of a local comprehensive plan under certain circumstances. See § 163.3180(5)(h)3. There is no definition in chapter 163 of "fiscal neutrality." Nor is there a requirement that a developer pay for more than its pro rata share of impacts.

Capital Improvements Element/Public Facilities

234. With regard to "capital improvements and public facilities," Petitioners make three allegations that the FLP is not in compliance.

235. First, Petitioners allege the FLP fails to demonstrate the availability of public facilities and services, as required by sections 163.3177(3)(a), 163.3177(6)(a)2.d., and 163.3177(6)(a)8.a.

236. Second, pointing to sections 163.3177(6)(a)2.d. and 163.3177(6)(a)3.e., they allege that the FLP improperly defers data and analysis on which to base the adequacy of public facilities and services.

237. Third, they allege the revised water supply data and analysis used to support the Remedial Amendments do not demonstrate the availability of sufficient water supplies.

238. The term "public facilities" is defined in section 163.3164(38). It "means major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities."

239. Section 163.3177(1)(f), requires all mandatory and optional elements of the comprehensive plan and plan amendments to be based on relevant and appropriate data and analysis. Section 163.3177(6)(a)2.d. requires the future land use element and plan amendments to be based on surveys, studies and data regarding the area as applicable including the availability of water supplies, public facilities and services. FLUM amendments are required by section 163.317(6)(a)8.a. to be based on an analysis of the availability of facilities and services.

240. The FLP is supported by adequate public facility data and analysis.

241. The data and analysis supporting the Original Amendment includes transportation network maps that generally depict and project external roadways and transportation improvements that will need to be built to serve development under the Amendment through 2025 and through 2060. It also includes an evaluation of current and future roadway level of service standards.

242. The Original Amendment includes data and analysis that evaluate potable water and sanitary sewer demand. The

water and sewer analysis includes separate charts for build-out in 2025 and in 2060 which assume maximum residential potential and expected nonresidential development types.

243. The data and analysis evaluate impacts of development under the FLP in the short term and in the long term. A transportation analysis was submitted as part of the proposed Amendment package that evaluates impacts on the level of service standards of roadways through 2014 (5 years from the submission of the original Amendment) and 2025. Tables 12 and 13 of the analysis identify roadway improvements needed to maintain level of service standards in 2014 and 2025, respectively, assuming maximum development under the existing land uses and under the Amendment.

244. The transportation analysis assumes full maximum development potential under the Amendment, not realistic growth projections. The analysis therefore evaluates 4,692 residential units and 820,217 square feet of nonresidential development, the maximum development potential under the current land uses.

245. The original water demand analysis applies the Amendment's water conservation policies, as encouraged by the SJRWMD. That analysis estimates a water demand of 1.36 million GPD in 2025 and 6.714 million GPD in 2060.

246. Another water demand analysis compares onsite development scenarios for ranchettes, a commercial nursery, and

development under the FLP. The analysis demonstrates development under the FLP would use substantially less water than would development of ranchettes and a commercial nursery.

247. The Remedial Amendments include revised water supply data and analysis that was requested by, and coordinated with, the SJRWMD to more closely reflect the water conservation policies in the FLP. The Original Amendment's water supply analysis assumes usage of 250 GPD per residential unit, whereas the Remedial Amendments' revised water supply data and analysis assume a reduced usage of 175 GPD per residential unit. The SJRWMD accepted the revised data and analysis. Petitioners dispute the data and analysis' use of 175 GPD as underestimating demand, but they do not dispute the data and analysis' nonresidential usage rates.

248. The use of 175 GPD is professionally accepted and the data and analysis demonstrate the availability of adequate potable water supplies. The estimated usage of 175 GPD is achievable under the FLP's conservation measures and is a conservative rate based on the FLP's provision for many multi-family units which have a lower GPD than single family units. Applying either 250 GPD or 175 GPD, the site's groundwater source of potable water, estimated to be 9.6 million GPD, will be adequate to provide potable water for maximum residential and nonresidential development under the Amendment while meeting the

contractual obligation to provide 2.75 million GPD to the city of Titusville.

249. Petitioners also dispute the reclaimed water analysis assumption in the revised water supply data and analysis that 20 percent of the SDAs will be covered with stormwater facilities. "Twenty percent of the developed landscaped is a lot of land devoted to stormwater treatment." Tr. 142. Mr. Diamond, Petitioners' expert, suggested an assumption of seven to eight percent of the SDAs devoted to stormwater treatment is more appropriate. Civil engineer Mark Dowst, however, demonstrated the 20 percent assumption is based on his experience designing hundreds of stormwater systems and is professionally acceptable. The general range, in his opinion, is 12 to 15 percent. In areas with flood plains or a high water table, such as the Farmton Site, the amount of land devoted to stormwater treatment must be more than the general range.

250. The School District determined there was adequate school capacity through 2025 for a maximum of 2,287 residential units authorized under the current land uses. The School District also found the Amendment addresses and protects the School District's interests.

251. Based on the School District's finding, Policy FG 1.4 limits residential development through 2025 to 2,287 units within the Gateway district until the School District issues a

finding there is additional capacity. Policy FG 6.2 recognizes the School Board has not determined there is capacity for more than 2,287 units and therefore "no finding of school adequacy can be issued until and unless the Interlocal Agreement is amended to allow school capacity to be provided within the concurrency service area in which the Farmton Local Plan is located." Joint Ex. 7, Tab D-2, page 40 of 49. The Amendment reacts appropriately to relevant school capacity data and analysis.

252. Petitioners did not demonstrate how the FLP is inconsistent with applicable public facility requirements. They did not demonstrate that the FLP triggers a need under the New Act to amend the Capital Improvements Element.

253. In order to encourage the efficient use of public facilities, section 163.3177(3)(a) mandates that the comprehensive plan contain a capital improvements element designed to consider the location of public facilities that covers at least a 5-year period and that sets forth:  
"A schedule of capital improvements [the "CIS"] which includes any publicly funded projects of federal, state or local government, and which may include privately funded projects for which the local government has no fiscal responsibility.  
Projects necessary to ensure that any adopted level-of-service standards are achieved and maintained for the 5-year period must

be identified as either funded or unfunded and given a level of priority for funding." § 163.3177(3)(a)4.

254. Policy FG 8.1 prohibits the issuance of any building permit within five years of the Amendment's effective date. This provision clarifies that the Capital Improvement Schedule ("CIS") need not be amended yet. There is no requirement the CIS include public facilities that are privately owned or operated, or are owned or operated by a different local government. None of the infrastructure to be provided by Farmton Water Resources LLC or the City of Edgewater under the numerous policies under Objective 4 need be included in the CIS. The evidence shows it is not realistic to expect development impacts to occur within five years from the adoption of the Remedial Amendments on February 18, 2011.

255. Section 163.3177(3)(b) requires that the capital improvements element be reviewed annually. The CIS will be amended in the future as needed based on projected public facility impacts of future development proposals.

256. Section 163.3177(3)(a) requires less detail for long-range public facility planning than for the five year CIS. The Amendment includes an adequate amount of detail for long range planning for public facilities. Policy FG 4.14 authorizes Farmton Water Resources, LLC, and the City of Edgewater to provide water to the site. Policy FG 4.19 identifies the City

of Edgewater as the provider of potable water and wastewater for Gateway. The data and analysis include a utility service area map showing the service area. Policy FG 4.18 requires Farmton Water Resources, LLC, to provide off-site and on-site potable water, nonpotable water, and wastewater. That policy and Policy FG 4.21j list various infrastructure improvements that will be needed to provide those services. At this time, it is not possible to identify where public facilities will be located or their costs. Policy FG 8.3 requires all SDA development to undergo master development-of-regional impact review process, which will ensure infrastructure, including transportation, schools, stormwater, and water supply, to be a condition of the master DRI development order. Policy FG 8.7 includes a requirement that each increment of development address the adequacy of public facilities and services such that they are available to accommodate development and maintain or improve level of service standards. The master DRI requirement is a reasonable strategy to ensure infrastructure will keep pace with development.

#### Water Supply

257. Petitioners contend that the increased development allowed under the FLP was not anticipated by the water supply plan of the SJRWMD, or of any local government, and that a concurrent water supply plan amendment is required. They

further argue this omission demonstrates the FLP is not based on the availability of water supplies. Petitioners also allege the Amendment is inconsistent with the Plan's Potable Water Sub-Element Policies 7.1.3.1 and 7.1.3.3.

258. Those issues were raised by the Department and SJRWMD, but were resolved to their satisfaction in the Remedial Amendments. SJRWMD proposed Remedial Policies FG 4.14, 4.15, 4.18, and 4.21. The Remedial Amendments also included additional data and analysis, which was accepted by SJRWMD.

259. The Original Amendment is supported by data and analysis demonstrating there is a new source of potable water located on the site. The new water source is groundwater contained within the Upper Floridan aquifer and is of potable water quality.

260. The potable water supply analysis demonstrates the new source of potable water is adequate to supply more than enough potable water to supply development under the FLP. The supply is conservatively estimated to be able to produce a sustainable 9.6 million GPD, while the projected demand for development under the FLP is estimated to be 6.76 million GPD.

261. Future land use plan amendments must be based on data regarding the area including "[t]he availability of water supplies . . . ." see § 163.3177(6)(a)2.d. Adequate potable

water supply must be shown to be available but need not yet be a permitted source.

262. Regardless of whether the new groundwater source is identified in a regional or local water supply plan, the FLP is supported by a demonstration of an adequate water supply, as required by section 163.3177(6)(a)2.d. Non-inclusion in a water supply plan does not negate the fact that a new source of potable water has been discovered and demonstrated to be available.

263. Section 163.3177(6)(c) requires each water management district to adopt a regional water supply plan every five years and for each local government to incorporate relevant facilities contained in the regional plan into its comprehensive plan by adopting a local water supply plan within eighteen months after the regional water supply is adopted. The FLP was adopted between updates of the SJRWMD regional water supply plan and local water supply plan updates. The SJRWMD plan was required to be adopted in 2005, but was not adopted until February 2006. The mandatory five-year update for the SJRWMD was due in the fall of 2010, but has been delayed. The County's required water supply facilities work plan was adopted on June 8, 2009. There is no requirement for the county to amend its Water Supply Facilities Work Plan before the SJRWMD amends its regional water supply plan.

264. Potable Water Sub-Element Policy 7.1.3.3 requires the County to review its Water Supply Facilities Work Plan annually and update it as necessary. The FLP recognizes the County's obligation to later amend its Water Supply Facilities Work Plan and is consistent with it. Policy FG 4.15 requires Farmton Water Resources, LLC, to coordinate with the County, municipalities and the SJRWMD to propose additions to their applicable water supply work plans. The unchanged portion of revised Policy FG 4.18 expressly requires projects to be included in the annual updates as those projects are identified and approved.

265. There is no statutory requirement that such availability be included in a water supply project list until the county and regional water supply plans are updated. Nonetheless, the report prepared by Dr. Seereeram demonstrated through data and analysis that sufficient on-site water will be available.

266. Potable Water Sub-Element Policy 7.1.3.1 requires the County to maintain a Water Supply Facilities Work Plan that is coordinated with the SJRWMD water supply plan. The FLP is consistent with this policy because Policy 7.1.3.1 does not address the situation posed in this case by the delay of the update to the SJRWMD water supply plan. Policy FG 4.18, moreover, requires coordination after that update is made.

267. Section 163.3177(6)(c) is silent as to the need to identify potable water projects between water supply amendment cycles, and as to the format a local government must use to identify water supply projects. Petitioners did not demonstrate the FLP is required to include amendments to the water supply plan, as opposed to a later update of the water supply plan, as required by Policy FG 4.18. They also did not demonstrate what legal requirement necessitates additional information, beyond the identity of the water source and its demonstrated adequacy, in order for the Amendment to be based on relevant and appropriate data and analysis to demonstrate the availability of a water supply.

#### Public Schools

268. The County is required by section 163.3177(6)(a)7 to identify the land use categories in which public schools are an allowable use.

269. The School District is responsible for identifying sites for future schools. In keeping with its responsibility, the School District has mapped future school sites needed through 2025. It has not planned, however, for new school sites needed through 2060.

270. Objective 3.2.2 governs and requires establishment of "School Concurrency Service Areas," Joint Ex. 1, ch. 3, page 6 of 12. They are areas "within which an evaluation is made of

whether adequate school capacity is available based on the adopted level of service standard." Id.

271. Policy 3.2.2.8 requires "[r]equests to develop properties within the central school concurrency service areas at residential densities and intensities greater than the current land use or zoning designations . . . . [to] be done via a comprehensive plan amendment consistent with the Volusia County Charter provision 206 regarding school planning." Id. at page 7 of 12. Section 206 required the county council not later than September 30, 2007, to adopt an ordinance to the effect that any plan amendment allowing increased residential density "may be effective only if adequate public schools can be timely planned and constructed to serve the projected increase in school population." DCA Ex. 10. The policy further requires the amendment to demonstrate how school capacity will be met consistent with the terms of the First Amendment to the Interlocal Agreement for Public School Facility Planning, effective July 2007, and Section 206 of the Volusia County Charter.

272. The FLP is consistent with Public Schools Policy 3.2.2.8 because it limits residential development to 2,287 units until there is a School District finding of additional capacity. Policy FG 8.3g. requires each increment of development in the master development order to include provision for schools, thus

further ensuring adequate public schools will be timely built and available to serve all future development. The use of a plan amendment to include limitations on development based upon the availability of public facilities has been accepted by the Department.

273. Policy FG 6.2 requires an amendment to the Interlocal Agreement before the School District can find there is additional capacity. This policy is coordinated and consistent with Policy FG 3.2.2.8's requirement that plan amendments be consistent with the Interlocal Agreement. A plan amendment creates an internal inconsistency when it has the effect of conflicting with an existing provision of the comprehensive plan, but if an amendment expressly creates an exception or waiver to a general rule set forth in the plan, it does not create an internal inconsistency.

274. Related school concurrency Public Schools Objective 3.2.1 requires the County to "ensure that the capacity of schools is sufficient to support residential subdivisions and site plans at the adopted level of service standard within the period covered by the five-year schedule of capital improvements." Joint Ex. 1, ch. 3, page 5 of 12. Since school concurrency is a five-year planning concern and no development should occur within the next five years, there is no inconsistency between the FLP and Policy FG 3.2.2.8.

275. Policy FG 3.1.4.1 requires the County to "take into consideration" School District comments and findings on the availability of adequate school capacity in its evaluation of plan amendments. The FLP is consistent with this policy. The County not only took the School District's comments and findings into consideration, but the FLP limits development to current and future findings of adequate school capacity made by the School District through Policy FG 1.4.

276. Objective FG 6 in the FLP governs "School Planning and Concurrency." It states: "The Sustainable Development Area districts shall be designed and planned to ensure that the educational facilities are integral components within the community and that adequate school capacity can be timely planned and constructed to serve the anticipated population." Joint Ex. 7, Tab D-2, page 39 of 49.

277. The school policies that implement Objective FG 6, Policies FG 6.1 through 6.8, were drafted by the School District and are based on the best available data and analysis about future school sites, which currently is available from the School District only through 2025.

#### Meaningful and Predictable Standards

278. Petitioners contend that Policies FG 2.16 and FG 3.10 (untouched after the Original Amendment), and Policies FG 2.4, 2.5, and 2.18 (as revised by the Remedial Amendments) fail to

establish the meaningful and predictable standards required by section 163.3177 (1). The statute, in pertinent part, provides:

The plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.

279. Policy FG 2.16 requires a Community Stewardship Organization ("CSO") to be established and governed by seven directors. The policy provides the CSO's governance board of directors is to be composed of seven members, four of whom must be representative of statewide or national non-profit environmental/conservation organizations in existence at the time of the adoption of the FLP such as the Nature Conservancy, Florida Audubon Society, Trust for Public Lands, and the Florida Wildlife Federation. The owner shall be represented on the board, and the other two members may include representatives of public agencies, stakeholders and public citizens who participated in the development of the FLP. The policy also lists various functions the CSO may or must perform, including taking title to the GreenKey and RBOS areas or co-holding a conservation easement. The CSO is mandated to participate in development of the CMP. The policy also requires all current and future deeds of the Deep Creek Conservation Area, which is within the West Mitigation Bank, to be conveyed to the CSO.

280. Policy FG 2.16 identifies specific activities for the CSO to undertake, and contains meaningful and predictable standards to guide the CSO's composition and actions.

281. Policy FG 3.10 requires a jobs-to-housing ratio of one job per one residential unit. The policy also states Gateway development shall be Phase One and is exempt from the ratio requirement. Development orders for subsequent phases must include milestones for achieving the ratio. The ratio must be monitored at least annually. If the ratio falls below 0.65 (0.65 job for each housing unit), the policy requires development approvals to cease until a remedial plan is developed and approved.

282. Policies FG 8.3j and Policy FG 8.4j require any development orders to include provisions to implement the jobs to housing ratio.

283. Policy FG 3.10 does not allow the remedial plan to achieve any other ratio. A plain reading of Policy FG 3.10 as a whole, including the requirement to monitor compliance with the ratio, reveals it to be a remedial plan that must achieve the 1:1 ratio referred to in the policy. Policy FG 3.10 identifies specific strategies to achieve a balance of housing and employment opportunities, and contains meaningful and predictable standards to guide its implementation.

284. There is no requirement for a CSO and there are no compliance criteria to guide the composition and roles of entities such as the CSO, nor does the law require or provide criteria for jobs to housing ratio.

285. Policy FG 2.4 was revised by the Remedial Amendment to create MRBOS areas and depict them on Map Figure 1-12N so as to provide certainty as to where certain portions of RBOS lands will be located. MRBOS lands have the effect of expanding the GreenKey designated areas for the Cow Creek Corridor and the Southwest Wildlife Corridor. The Policy states MRBOS lands will not be subject to the RBOS public access plan, but will be subject to the Black Bear management plan. The Remedial Amendment's details for the new MRBOS areas are predictable and meaningful.

286. The changes to Policy FG 2.5 clarify that the Southwest Wildlife Corridor must be "consistent with a forestry management plan designed to provide prescribed fire, promote dense understory vegetation such as palmetto and [be] consistent with the Black Bear Management Plan" as required in original Policy 2.5b. Petitioners did not present any competent substantial evidence that this guidance for the forestry management plan does not provide adequate meaningful and predictable standards.

287. Policy FG 2.18, "Transportations Policies and Natural Resource Protection," addresses the arterial roads that traverse the GreenKey lands and provides design guidance to avoid and minimize conflicts between motor vehicles and the movement of wildlife. Section "a" of the policy, which was unchanged by the Remedial Amendment, includes the following non-exhaustive list of tools to minimize this conflict: landscaping techniques, fencing, speed limits, wildlife overpasses or underpasses, bridges, and elevating roadways. This section applies to the three arterial roads shown on the Spine Network Map; Williamson Boulevard, Maytown Road, and Arterial A. The proposed general alignment of Williamson Boulevard does not intrude into the boundaries of the Deep Creek Conservation Area, the Cow Creek Corridor, the Power Line corridor, or the Southwest Wildlife Corridor. Williamson Boulevard runs through, and connects, the largest Gateway SDA and the Work Place, Town Center, and the easternmost village.

288. The Remedial Amendment revises Policy FG 2.18 by creating Sections "b" and "c." Section "b" provides mandatory guidelines that apply only to Maytown Road and Arterial A and requires their design to be based on "best available science" as determined by the FFWCC. Section "c" encourages additional guidelines for Maytown Road and Arterial A subject to the discretion of the roadway designers.

289. As a whole, Policy FG 2.18 provides meaningful and predictable guidance for the designers of the roadways. There are no minimum standards in the New Law for the design of roadways to minimize conflicts with wildlife. With proper implementation, the guidelines in Policy FG 2.18 are reasonably expected to produce the defined outcome of a roadway network that will minimize conflict with wildlife. Audubon's Charles Lee testified the policies were based on the model policies in the Wekiva Parkway Plan. Mr. Telesco of the FFWCC testified the policies were in line with FDOT policies. Further, the phrase "to the extent practicable" is a known conservation standard taken from the Endangered Species Act.

290. Policies FG 2.4, 2.5, 2.16, 2.18, and 3.10 provide an adequate amount detail for a comprehensive plan amendment, as required by section 163.3177(1).

#### CONCLUSIONS OF LAW

##### Jurisdiction

291. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569, 120.57, and 163.3187(3)(a).

##### Standing

292. In order to have standing to challenge an amendment to a local government's comprehensive plan, the challenger must be an "affected person."

293. To be an "affected person" with standing to file a petition with the Division of Administrative Hearings pursuant to sections 120.569 and 120.570 to challenge whether a plan amendment is "in compliance," a person must pass two tests. The person must meet the definition of "affected person" that appears in section 163.3184(1) (a) and qualify for standing by submitting to the local government comments, recommendations or objections during the period of time that begins with the transmittal hearing and ends with the adoption of the plan or plan amendment. See § 163.3184(1) (a) and (5) (a).

294. The parties stipulated that Barbara Herrin and ECARD are affected persons with standing to initiate one or both of these consolidated cases. They also stipulated that Miami Corporation and VGMC have standing to appear in the proceeding.

295. In contrast to the positions taken with regard to Ms. Herrin and ECARD, the County and Miami Corporation contest Sierra Club's standing to file the petition that initiated Case No. 11-2527. Given Ms. Herrin's standing, however, it is not necessary to address Sierra Club's standing. See Durham v. Polk County, Case No. 03-0593 (Fla. Feb. 24, 2004); Case No. ACC-04-002 at 2-3, (Fla. AC June 25, 2004).

296. The only evidence Sierra Club presented on its own apart from Ms. Herrin's, moreover, related to its standing. Were Sierra Club concluded to have standing in error, the error

would not affect the disposition of the other issues in the proceeding.

Burdens and Standards of Proof

297. The Department of Community Affairs issued a Cumulative Notice of Intent finding the Amendment and the Remedial Amendments (the FLP) to be "in compliance." Petitioners, therefore, have the burden to prove beyond fair debate that the FLP is not in compliance as set forth in section 163.3184(5)(c)1:

In challenges filed by an affected person, the comprehensive plan or plan amendment shall be determined to be in compliance if the local government's determination of compliance is fairly debatable.

298. Facts are found in this proceeding on a preponderance of the evidence standard. See § 120.57(1)(j).

In Compliance

299. "In compliance" is defined by the Community Planning Act, see section 163.3161(1), as follows:

"In compliance" means consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, 163.3245, and 163.3248, [and] with the appropriate strategic regional policy plan . . . .

§ 163.3184(1)(b).

300. Petitioners are limited to the "compliance" issues timely raised by their petition. In their Proposed Recommended Order, Petitioners propose conclusions of law under six

categories of "in compliance" issues: data and analysis; suitability; urban sprawl; internal inconsistency; meaningful and predictable standards; and, public facilities and services.

#### Data and Analysis

301. A plan amendment must be based upon relevant and appropriate data and analysis. See § 163.3711(1)(f)1.

302. Petitioners contend that "the data and analysis regarding water fails to demonstrate the availability of sufficient water and facilities to meet the demands that would be created by increased development allowed by the amendments." Petitioners' Proposed Recommended Order, para. 105 at 40. Petitioners complain about adequate data and analysis because "[p]lanning for water infrastructure is deferred." Id.

303. The data and analysis submitted with the Original Amendment and subsequently demonstrated that there is a new adequate source of potable water source located onsite.

304. The FLP recognizes the County obligation to amend its Water Supply Facilities Work Plan and is consistent with it. Farmton Water Resources, LLC, will have to coordinate with the County, municipalities and the SJRWMD to propose water supply work plans under Policy FG 4.15 and projects for water supply facilities must be included in the annual updates pursuant to Policy FG 4.18 as they are identified and approved.

305. Petitioners did not prove beyond fair debate that the data and analysis that supports the FLP is not relevant and appropriate.

#### Suitability

306. The future land use plan and plan amendments are required by section 163.3177(6)(a)2.c, to be based upon surveys, studies and data regarding the area including the character of undeveloped land.

307. Petitioners base their case for non-compliance when it comes to suitability on the "well-recognized planning principle that lands which have high proportion of wetlands are generally not suitable for land use designations that allow for intense uses." They cite to Department of Community Affairs v. Miami Dade County, Case No. 08-3164 (DOAH May 13, 2009).

308. Exceptions from planning principles with general applicability may be taken based on the unique circumstances of the land to which the principles are applied. The County and Miami Corporation proved that the character of the land, including its natural resources and features, was evaluated. Furthermore, they proved that the character of the undeveloped land is taken into consideration by the FLP's allowance for development of the least ecologically-valuable land, the provision of wildlife corridors, and the preservation in perpetuity of the bulk of the Farmton Site in Volusia County.

In short, the FLP is based upon a comprehensive understanding of the site's natural resources and systems and will preserve most of the site's natural areas, including its most environmentally sensitive areas.

309. The FLP reacts appropriately and is based on relevant and appropriate data and analysis as required by section 163.3711(1)(f).

310. Petitioners did not prove beyond fair debate that the Farmton Site in Volusia County is not suitable for the intensity, density, and configuration of development authorized by the FLP.

#### Urban Sprawl

311. Petitioners failed to prove beyond fair debate that the FLP fails to discourage the proliferation of urban sprawl based on the thirteen indicators of urban sprawl found in section 163.3177(6)(a)9.a.

312. Furthermore, the FLP is determined to discourage the proliferation of urban sprawl since it incorporates a development pattern or urban form that achieves seven of the eight factors listed in section 163.3177(6)(a)9.b.

313. Whatever the outcome with regard to urban sprawl of the application of the thirteen indicators in section 163.3177(6)(a)9.a., moreover, the determination in this proceeding under section 163.3177(6)(a)9.b., controls. This

means that even had the application of the 13 Indicators resulted in a finding that the FLP does not discourage urban sprawl, the incorporation of four of the listed factors in the FLP's development pattern or urban form leads to an ultimate determination under the statute that the FLP discourages the proliferation of urban sprawl.

314. The FLP is "in compliance" with regard to the proliferation of urban sprawl.

#### Internal Consistency

315. Section 163.3177(2) states:

Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent. Where data is relevant to several elements, consistent data shall be used, including population estimates and projections unless alternative data can be justified for a plan amendment through new supporting data and analysis. Each map depicting future conditions must reflect the principles, guidelines, and standards within all elements and each such map must be contained within the comprehensive plan.

316. Internal consistency does not require a comprehensive plan amendment to further every other goal, objective, and policy in the plan. It is enough if a plan provision is "compatible with," i.e., does not conflict with, other goals, objectives, and policies in the plan. If the compared provisions do not conflict, they are coordinated, related and

consistent. Melzer, et al., v. Martin Cnty., et al., Case No. 02-1014GM (Fla. DOAH July 1, 2003) para. 194 at 80; (Fla. DCA September 29, 2003).

317. Much of the Petitioners claim of internal inconsistency is based on the premise that the FLP is in a remote, rural area outside of urban areas. Whatever validity the claim may have had prior to the final adoption of the Farmton amendments to the Brevard County Comprehensive Plan, with the adoption the premise is no longer valid.

318. Petitioners claim the FLP is inconsistent with the policies which implement Objective 1.1.3. The objective requires the County to direct urban growth to those areas where public facilities and services areas available inside designated service areas and within urban areas. But the express purpose of the objective is to "limit urban sprawl." See Joint Ex. 1, page 29 of 109. The FLP discourages urban sprawl. Therefore, it does not conflict with Current Plan policies that further the objective.

319. Petitioners' case for inconsistency overlooks the provision in the Current Plan entitled "Overview," underscored in paragraph 20, above, at 19-20. That provision calls for a balancing of development and the environment through practices that lessen the impact of development while preserving natural resources and improving the quality of life for future and

present generations. The County and Miami Corporation have made a "fairly debatable" case that the FLP accomplishes exactly that which is called for by the provision.

320. Petitioners failed to prove beyond fair debate their allegations that the FLP is in conflict with any element in the Volusia County Comprehensive Plan when the plan is considered as a whole.

Meaningful and Predictable Standards and Meaningful Guidelines

321. "[A comprehensive] plan [and its amendments] shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations." § 163.3177(1).

322. On the basis of the facts found in paragraphs 278 to 290, above, it is determined that Petitioners failed to prove beyond fair debate that the FLP is not in compliance with the statutory requirements that it provide meaningful and predictable standards and meaningful guidelines.

Public Facilities and Services

323. The FLP must be based upon surveys, studies, and data regarding availability of water supplies, public facilities, and services. See § 163.3177(6)(a)2.d.

324. The five-year CIS requirements are not triggered by the FLP because Policy FG 8.1 prohibits the issuance of building permits for five years from the effective date of the FLP.

325. Petitioners did not provide any evidence regarding what the statute requires for long-range public facility and services planning and whether it was met.

326. The FLP includes objectives and policies that adequately consider and outline principles for construction, extension, and increases of public facilities needed for development in both long-range planning periods.


327. Petitioners did not prove beyond fair debate that the FLP is not in compliance with section 163.3177.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Economic Opportunity enter a Final Order that determines the Farmton Local Plan incorporated into the Volusia County Comprehensive Plan through amendments adopted by Volusia County Council Ordinance Nos. 2009-34 and 2011-10 is "in compliance."

DONE AND ENTERED this 24th day of January, 2012, in  
Tallahassee, Leon County, Florida.



---

DAVID M. MALONEY  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 24th day of January, 2012.

ENDNOTE

1/ All references to the Florida Statutes are to 2011 unless  
indicated otherwise.

COPIES FURNISHED:

Paul H. Chipok, Esquire  
Gray, Harris, Robinson, P.A.  
301 East Pine Street, Suite 1400  
Orlando, Florida 32801

Linda Loomis Shelley, Esquire  
Fowler, White, Boggs, P.A.  
101 North Monroe Street, Suite 1090  
Post Office Box 11240  
Tallahassee, Florida 32302-3240

William Clay Henderson, Esquire  
Holland & Knight, LLP  
200 South Orange Avenue, Suite 2600  
Orlando, Florida 32801

Marcy I. LaHart, Esquire  
Marcy I. LaHart, P.A.  
4804 Southwest 45th Street  
Gainesville, Florida 32608-4922

Derrill L. McAteer, Esquire  
County of Volusia  
123 West Indiana Avenue  
Deland, Florida 32720

Henry Lee Morgenstern, Esquire  
Post Office Box 337  
Seville, Florida 32190

Jamie Seaman, Esquire  
County of Volusia  
123 West Indiana Avenue  
Deland, Florida 32720-4613

Doug Darling, Executive Director  
Department of Economic Opportunity  
107 East Madison Street, MSC 110  
Caldwell Building  
Tallahassee, Florida 32399-4128

Deborah Kearney, General Counsel  
Department of Economic Opportunity  
107 East Madison Street, MSC 110  
Caldwell Building  
Tallahassee, Florida 32399-4128

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.