



SPIKOWSKI PLANNING ASSOCIATES

MEMORANDUM

TO: Mr. Frank Shockey, Interim Community Development Director
Ms. Anne Dalton, Town Attorney
FROM: Bill Spikowski
DATE: March 30, 2009
SUBJECT: Pending Comprehensive Plan Amendments

In early May the Town needs to conduct a final public hearing to adopt the pending Comprehensive Plan amendments. These amendments were heard by the Town Council this past November and December and then transmitted to the Department of Community Affairs (DCA) for state review.

The DCA review has now been completed and it contains a typical extensive list of objections, recommendations, and comments, all contained in what is known as an "ORC Report."

Most of the recommendations suggest minor changes in the amendments that can be accomplished prior to the May public hearing. However, I am requesting direction from the Town Council on the first three objections. Each one requests major amendments to the existing Comprehensive Plan which would go far beyond the amendments that have been previously considered by the Town.

If the Town wishes to comply with these requests by DCA, the amendment process would need to be interrupted to draft and consider these entirely new amendments. If the Town declines to comply with these requests, DCA could find the entire package of amendments "not in compliance" with its interpretation of state law and regulations.

BACKGROUND

State law requires that all Comprehensive Plans be reviewed every seven years, beginning with preparation of an Evaluation and Appraisal Report (E/A Report). The Local Planning Agency is responsible for the preparation of that report, which it worked on from June 2004 through March 2006. The final E/A Report was formally adopted by the Town Council in January 2007. In April 2007, DCA officially accepted the report as complying with state law.

The second step in this process is formal consideration of the comprehensive plan amendments that were recommended in the E/A Report. The Town combined these amendments with other amendments that were required by state legislation between 2002 and 2006 (including a new public schools element and completely revised capital improvements element). The LPA held its public hearings on all of these amendments in March through November of 2008, and the Town Council held its initial hearings in November and December of 2008.

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The third step is formal adoption of these amendments, which will be followed by another review by DCA which will then issue a formal finding of “in compliance” or “not in compliance.” A finding of “not in compliance” triggers a process that could lead to a formal administrative hearing to decide the merits of DCA’s finding if DCA and the town are unable to agree on a negotiated resolution to the dispute.

RECOMMENDATION

Contrary to DCA’s position as expressed in its recent report, my recommendation is that the Town should proceed to the final public hearing without interrupting the process to comply with DCA’s first three objections.

In Attachment A you will find these three objections repeated verbatim from the ORC report, followed by my detailed response to each. Each response describes the difficulties the Town would face in trying to comply with these three objections. For your information, Attachment B contains DCA’s complete ORC report.

In summary, there are three general reasons for my recommendation to not interrupt the process at this time. The first is that although DCA is empowered to review proposed amendments to ensure that they meet state law and regulations, DCA is *not* empowered to re-review the existing comprehensive Plan. The second is that no law or administrative regulation requires that these additional amendments be rushed to completion at this time. Third, adding these amendments at this late stage in the process would circumvent the normal process of amending a comprehensive plan, which includes extensive public involvement, careful review by the local planning agency, and two separate public hearings before elected officials.

However, accepting my recommendation presents certain risks to the town. Should DCA not be persuaded by the responses in Attachment A, it could find one or more (or the entire package) of plan amendments “not in compliance” with state law and regulations. If such a finding were made and could not be resolved through a settlement agreement, the finding could go to a formal hearing before an administrative law judge to resolve the dispute. Another consequence of a “not in compliance” finding is that if certain of the amendments were thus challenged, the Town would be precluded from considering any amendments to its Future Land Use Map until the dispute is resolved.

The Town Council needs to be aware of these risks so that they can be weighed against the difficulties and considerable expense that would be required to comply with all of DCA’s requests.

Attachment A: Three troublesome objections from DCA, with responses
Attachment B: Objections, recommendations, and comments from DCA

ATTACHMENT A

The three troublesome objections from DCA are reprinted in the boxes below, followed by a response to each.

To understand these responses fully, please note the technical distinction between “data and analysis” and the “adopted portion” of a comprehensive plan. “Data and analysis” refers to the accumulated body of research, reports, and numerical data upon which a plan is based, plus technical analyses of that data and policy analyses that led to formulation of adopted plan policies. Most communities do not publish the data and analysis upon which their plans are based, but Fort Myers Beach publishes its Comprehensive Plan in a single volume which contains a summary of the data and analysis along with the “adopted portion” of the plan, which refers to the goals, objectives, policies, and several maps (most importantly the Future Land Use Map). In the published volume, the data and analysis sections are printed on white paper and the adopted portion is printed on grey paper.

<p>DCA Objection A-1 – Planning Timeframe: The adopted portion of the Comprehensive Plan does not establish the long-term planning timeframe of the Comprehensive Plan.</p>	<p>DCA Recommendation A-1: Revise the adopted portion of the Comprehensive Plan to establish a long-term planning timeframe that is uniform and consistent among the plan elements. The long-term planning timeframe shall address at least a ten-year planning period,</p>
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This objection is based on the following requirement from the Florida Administrative Code:
9J-5.005(4) Planning Timeframe. Each local government comprehensive plan shall include at least two planning periods: one for at least the first five-year period subsequent to the plan's adoption and one for at least an overall ten-year period.

To maintain consistency with MPO and Lee County plans, the data and analysis in the Fort Myers Beach Comprehensive Plan uses the same long-term planning period (originally 2020; now being updated to 2030).

DCA does not object to this long-term timeframe, and in fact has always encouraged municipalities to use the same timeframe as their counties. This objection is to the omission of any mention of this timeframe in the *adopted portion* of the Fort Myers Beach plan.

The reason for this omission is that Fort Myers Beach is extremely close to complete build-out of vacant land within the Town, as documented in the E/A Report. Lee County’s plan includes a Future Land Use Map that shows what land uses may be allowable by 2030, with the County Commission deciding during the rezoning process what is allowable at any given time between now and then. Lee County’s plan also shows the road network that is needed to accommodate growth through 2030. By comparison, the Fort Myers Beach plan does not include plans for additional major roads, and its Future Land Use Map is not related to some specific date in the future. Many challenges confront the Town of Fort Myers Beach, but with build-out nearly here, those challenges are not related to typical Florida need to add capacity to roads or to upzone land to accommodate additional growth.

To comply with DCA’s objection, many parts of the Comprehensive Plan would have to be amended to imply that the 2030 long-term planning timeframe is meaningful — yet the plan would also somehow have to acknowledge that this is not true.

Florida's planning law has granted DCA considerable latitude to decide how much "compliance" should be demanded of each local government:

Rule 9J-5.002(2) Application of Chapter 9J-5, F.A.C. Due to the varying complexities, sizes, growth rates and other factors associated with local governments in Florida, the Department shall consider the following factors as it provides assistance to local governments and applies this chapter in specific situations with regard to the detail of the data, analyses, and the content of the goals, objectives, policies, and other graphic or textual standards required:

- (a) The local government's existing and projected population and rate of population growth.*
- (b) The geography and size of the local government's jurisdiction, and the extent or existence of undeveloped land.*
- (c) [remainder of subsections not relevant here]*

In 1999 DCA accepted the Fort Myers Beach Comprehensive Plan as "in compliance" with state law without the plan containing any mention of the long-term planning timeframe in the adopted portion of the plan, for the reasons just described.

DCA is now objecting to these amendments despite its prior determination of the plan's full compliance ten years ago. The apparent reason is that DCA recently assigned a different state planner to review southwest Florida comprehensive plan amendments.

Despite several opportunities during the E/A process, DCA has never suggested that planning timeframes were even a minor issue. At this late date, this objection is nearly impossible to respond to in a meaningful way.

<p>DCA Objection A-2 – Data and Analysis: The EAR-based plan amendments do not propose to update the data and analysis of existing conditions and projected future conditions of the short-term and long-term planning timeframes of the plan elements (Future Land Use Element, Transportation Element, Housing Element, Utilities Element, Recreation and Open Space Element) to be based on best available data and analysis, except with regard to potable water facilities.</p>	<p>DCA Recommendation A-2: The EAR-based plan amendments are supposed to update the comprehensive plan, including the data and analysis. Revise the comprehensive plan to include updated data and analysis for each plan element, including existing conditions and projections of future conditions for the short-term and long-term planning timeframes. The updated data and analysis should be based on best available data and analysis and be consistent with the proposed population estimates and projections contained in the EAR-based plan amendments.</p>
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DCA’s recommendation on this objection states: “The EAR-based plan amendments are supposed to update the comprehensive plan, including the data and analysis.” However, that statement is not accurate and is contrary to guidance documents published by DCA during the past five years. In fact, the legislation that guides the E/A process explicitly states the opposite:

Florida Statutes 163.3191(1)(c) ... The [E/A] report is not intended to require a comprehensive rewrite of the elements within the local plan, unless a local government chooses to do so.

In fact, Fort Myers Beach has voluntarily chosen to do comprehensive rewrites of its capital improvements element and its potable water supply element. In each case, conditions had changed sufficiently to warrant the time and expense that is required for diligent rewrites. A conscious decision was made during the E/A process not to undertake comprehensive rewrites of the other elements, all of which were adopted in 1999 as part of an extensive community process (most other comprehensive plans in the state are at least twice as old).

Given these circumstances, DCA’s last-minute recommendation to comprehensively rewrite five additional elements should be declined.

<p>DCA Objection A-3 – Energy Efficiency and Green House Gas Reduction:</p> <p>The proposed amendment does not include plan policies, based on supporting data and analysis, which establish meaningful and predictable guidelines and standards addressing the following: (1) Future Land Use Element policies addressing greenhouse gas reduction strategies pursuant to Section 163.3177(6)(a), F.S.; (2) Transportation Element policies addressing transportation strategies to address reduction in greenhouse gas emissions from the transportation sector pursuant to Section 163.3177(6)(b and j), F.S.; (3) Housing Element policies addressing principles to be followed in: (a) energy efficiency in the design and construction of new housing; and (b) use of renewable energy sources; pursuant to Section 163.3177(6)(f), F.S.; and (4) Conservation Element policies addressing energy conservation pursuant to Section 163.3177(6)(d), F.S.</p>	<p>DCA Recommendation:</p> <p>Revise the Future Land Use Element to establish policies addressing greenhouse gas reduction strategies pursuant to Section 163.3177, F.S. Revise the Transportation Element to establish policies addressing transportation strategies to address reduction in greenhouse gas emissions from the transportation sector pursuant to Section 163.3177(6)(b and j), F.S. Revise the Housing Element to establish policies addressing principles to be followed in: (a) energy efficiency in the design and construction of new housing; and (b) use of renewable energy sources; pursuant to Section 163.3177(6)(f), F.S. Revise the Conservation Element to establish policies addressing energy conservation pursuant to Section 163.3177(6)(d), F.S.</p>
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This third objection from DCA is based on a statute that was adopted in the 2008 legislative session (HB 697), which became effective on July 1, 2008.

This statute is exceptionally vague. DCA has concluded that it needs to adopt an administrative rule before it can provide any guidance to local governments on how they should comply. DCA conducted an initial rulemaking workshop in January 2009; no draft of a rule was available at that workshop. If a draft rule exists now, it has not been released to the public.

Fort Myers Beach will be able to comply with this statute more easily than most local governments because its entire plan supports compact development, the expansion of public transportation, and walkability as a key concept. However, it would make little sense to rush an amendment in an attempt to comply with this law before DCA can figure out what it will be looking for when making compliance findings. The result would be a rushed amendment now, followed by a second amendment a year or two from now after DCA determines how it will measure compliance.

DCA’s new rule may establish specific dates for compliance with this statute, or it may require compliance during the next E/A cycle, which begins with initial workshops sponsored by DCA in July 2009. In either case, the Town will comply with all requirements of this legislation and its implementing rules.

ATTACHMENT B

DEPARTMENT-OF COMMUNITY AFFAIRS
OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR
TOWN OF FORT MYERS BEACH
AMENDMENT 09-1ER

March 13, 2009
Division of Community Planning
Bureau of Local Planning

This report is prepared pursuant to Rule 9J-11.010, F.A.C.

INTRODUCTION

The following objections, recommendations and comments are based upon the Department's review of the Town of Fort Myers Beach proposed comprehensive plan amendment, pursuant to Section 163.3184, Florida Statutes (F.S.).

The objections relate to specific requirements of relevant portions of Chapter 9J-5, Florida Administrative Code (F.A.C.), and Chapter 163, Part II, F.S. The objections include a recommendation of approaches that might be taken to address the cited objections. Other approaches may be more suitable in specific situations. Some of these objections may have initially been raised by one of the other external review agencies. If there is a difference between the Department's objection and the external agency advisory objection or comment, the Department's objection would take precedence.

The Town should address each of these objections when the amendment is resubmitted for our compliance review. Objections that are not addressed may result in a determination that the amendment is not in compliance. The Department may have raised an objection regarding missing data and analysis items that the Town considers not applicable to its amendment. If that is the case, a statement, justifying its non-applicability, pursuant to Rule 9J-5.002(2), F.A.C., must be submitted. The Department will make a determination on the non-applicability of the requirement, and if the justification is sufficient, the objection will be considered addressed.

The comments that follow the objections and recommendations are advisory in nature. Comments will not form the basis of a determination of non-compliance. They are included to call attention to items raised by our reviewers. The comments can be substantive, concerning planning principles, methodology or logic, as well as editorial in nature dealing with grammar, organization, mapping, and reader comprehension.

Appended to the back of the Department's report are the comment letters from the other state review agencies and other agencies, organizations and individuals. These comments are advisory to the Department and may not form the basis of Departmental objections unless they appear under the "Objections" heading in this report.

**OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR
TOWN OF FORT MYERS BEACH
AMENDMENT 09-1ER**

I. CONSISTENCY WITH CHAPTER 163, PART II, F.S., AND RULE 9J-5, F.A.C.

The proposed Amendment 09-1ER consists of Evaluation and Appraisal Report (EAR) based plan amendments to update the Comprehensive Plan.

A. The Department raises the following objections to the proposed amendments:

1. Objection (Planning Timeframe): The adopted portion of the Comprehensive Plan does not establish the long-term planning timeframe of the Comprehensive Plan.

Rules 9J-5.005(1), (2), (4), (5), and (6); 9J-5.006; 9J-5.010; 9J-5.011; 9J-5.013; 9J-5.015; 9J-5.016; 9J-5.019; and 9J-5.025, Florida Administrative Code (F.A.C.); and Sections 163.3177(2), (5), and (6); and 163.3191, Florida Statutes (F.S.).

Recommendation: Revise the adopted portion of the Comprehensive Plan to establish a long-term planning timeframe that is uniform and consistent among the plan elements. The long-term planning timeframe shall address at least a ten-year planning period.

2. Objection (Data and Analysis): The EAR-based plan amendments do not propose to update the data and analysis of existing conditions and projected future conditions of the short-term and long-term planning timeframes of the plan elements (Future Land Use Element, Transportation Element, Housing Element, Utilities Element, Recreation and Open Space Element) to be based on best available data and analysis, except with regard to potable water facilities.

Rules 9J-5.005(2) and (5); 9J-5.006(1) and (2); 9J-5.010(1) and (2); 9J-5.011(1); 9J-5.012(3); 9J-5.015(1) and (2); 9J-5.016(1) and (2); and 9J-5.019(2) and (3), F.A.C.; and Sections 163.3177(2), (3), (4), (6), (8), and (10); 163.3178; and 163.3191, F.S.

Recommendation: The EAR-based plan amendments are supposed to update the comprehensive plan, including the data and analysis. Revise the comprehensive plan to include updated data and analysis for each plan element, including existing conditions and projections of future conditions for the short-term and long-term planning timeframes. The updated data and analysis should be based on best available data and analysis and be consistent with the proposed population estimates and projections contained in the EAR-based plan amendments.

3. Objection (Energy Efficiency and Green House Gas Reduction):

The proposed amendment does not include plan policies, based on supporting data and analysis, which establish meaningful and predictable guidelines and standards addressing the following: (1) Future Land Use Element policies addressing greenhouse gas reduction strategies pursuant to Section 163.3177(6)(a), F.S.; (2) Transportation Element policies addressing transportation strategies to address reduction in greenhouse gas emissions from the transportation sector pursuant to Section 163.3177(6)(b and j), F.S.; (3) Housing Element policies addressing principles to be followed in: (a) energy efficiency in the design and construction of new housing; and (b) use of renewable energy sources; pursuant to Section 163.3177(6)(f), F.S.; and (4) Conservation Element policies addressing energy conservation pursuant to Section 163.3177(6)(d), F.S.

Rules 9J-5.005(1), (2), (5), and (6), F.A.C.; and Sections 163.3177(6)(a), (b), (d), (f), and (j); 163.3177(2), (8), and (10); and 163.3191, F.S.

Recommendation: Revise the Future Land Use Element to establish policies addressing greenhouse gas reduction strategies pursuant to Section 163.3177, F.S. Revise the Transportation Element to establish policies addressing transportation strategies to address reduction in greenhouse gas emissions from the transportation sector pursuant to Section 163.3177(6)(b and j), F.S. Revise the Housing Element to establish policies addressing principles to be followed in: (a) energy efficiency in the design and construction of new housing; and (b) use of renewable energy sources; pursuant to Section 163.3177(6)(f), F.S. Revise the Conservation Element to establish policies addressing energy conservation pursuant to Section 163.3177(6)(d), F.S.

4. Objection (Coastal High Hazard Area): The proposed EAR-based amendments do not include an amendment to the Coastal Management Element to define the Coastal High Hazard Area as is defined by Section 163.3178, F.S. The Town's Comprehensive Plan Future Land Use Map (or map series) does not depict the Coastal High Hazard Area, and the proposed Amendment 09-1ER does not amend the Future Land Use Map (or map series) to depict the Coastal High Hazard Area, supported by data and analysis, consistent with the new definition of the Coastal High Hazard Area.

Rules 9J-5.005(2), (5), and (6); 9J-5.006(1), (2), and (4); 9J-5.012(1), (2), and (3), F.A.C.; and Sections 163.3177(6)(a); 163.3177(2), (8), and (10); 163.3178; 163.3191, F.S.

Recommendation: Revise the amendment to adopt a Coastal Management Element policy that defines the Coastal High Hazard Area consistent with the definition in Section 163.3178, F.S. Revise the Future Land Use Map (or map series) to depict the Coastal High Hazard Area, supported by data and analysis, consistent with the definition of the Coastal High Hazard Area.

B. The Department raises the following objections and comment to the proposed Amendment 2008-02-TEXT:

5. Objection (Data and Analysis): The proposed Public Schools Element is not supported by appropriate and relevant data and analysis required under Section 163.3177(12)(c), F.S., and Rule 9J-5.025, F.A.C., regarding the following: (1) a map or maps depicting the existing location of public school facilities by type and existing location of ancillary plants; and (2) school facilities needed for each concurrency service area to accommodate projected enrollment at the adopted level of service standard each year for the five-year planning period, and for the end of the long-range planning period of the host county, including ancillary plants and land area requirements.

Rules 9J-5.005(2); 9J-5.025(2)(e); 9J-5.025(4), F.A.C.; and Sections 163.3177(12)(c); and 163.3191, F.S.

Recommendation: Revise the Public Schools Element to be supported by the data and analysis identified above.

6. Objection (Concurrency Exemption): The Public Schools Element Policy 16-C-1.iv provides for exemptions from school concurrency, including an exemption for “other uses as provided in the code amendments.” This exemption does not establish meaningful and predictable guidelines and does not ensure the provision of school facilities for residential development consistent with Sections 163.3177(12) and 163.3180(13), F.S.

Rules 9J-5.005(6); and 9J-5.025(3)(g), F.A.C.; and Sections 163.3177(12)(g); 163.3180(13); and 163.3191, F.S.

Recommendation: Revise the amendment to delete the exemption.

7. Objection (Maps, Objectives and Policies): The proposed Public Schools Element and proposed amendments to the Intergovernmental Coordination Element do not propose adoption of the required map series or include plan objectives and policies addressing the following requirements:

- a. (Public Schools Element): An objective to coordinate the location of public schools with the future land use map or map series of the relevant jurisdiction to ensure that existing and proposed school facilities are located consistent with the existing and proposed residential areas they serve and are proximate to appropriate existing and future land uses. The use of schools to serve as community focal points should also be addressed. [163.3177(12)(g)6., F.S., and 9J-5.025(3)(b)4., F.A.C.]
- b. (Public Schools Element): A policy to include standards for revision of concurrency service area boundaries to ensure that the utilization of school capacity is maximized to the greatest extent possible, taking into account transportation costs, court approved desegregation plans, as well as other factors Policy 16-B-3 establishes guidelines and standards for modifications to “these standards” but does not specifically identify that this

applies to the current concurrency service areas and/or changes in the use of schools. [163.3177(12)(f), F.S., and 9J-5.025 (3)(c), F.A.C.]

- c. (Public Schools Element): A policy which requires the adoption of annual plan amendments adding a new fifth year, updating the financially feasible public schools capital facilities program, coordinating the program with the 5-year district facilities work plan, the plans for other local governments, and, as necessary, updates to the concurrency service area map. The annual plan amendments shall ensure that the capital improvements program continues to be financially feasible and that the level of service standards will continue to be achieved and maintained. Public Schools Element Policy 16-D1 includes some of the required language, but does not fully address the statutory and Rule requirements. [9J-5.025(3)(c)2., F.A.C., and 163.3177(12)(g)1., F.S.]
- d. (Public Schools Element): A policy addressing coordination of the annual review of the element with the school board, the county and applicable municipalities; coordination of annual review of school enrollment projections, and establishing the procedures for the annual update process. [9J-5.025(3)(c)3., F.A.C., and 163.3177(12)(g)1., F.S.]
- e. (Public Schools Element): A policy addressing coordination of school site selection, permitting, and collocation of school sites with other public facilities such as parks, libraries and community centers. While the Town provides an extensive discussion of the existing collocated facilities, the policy language is not included. [9J-5.025(3)(c)4., F.A.C., and 163.3177(12)(g)1., 2., and 5., F.S.]
- f. (Public Schools Element): A policy addressing coordination of the long range public school facility map with the local government's comprehensive plan, including the future land use map. [9J-5.025(3)(c)6., F.A.C., and 163.3177(12)(g)9., F.S.]
- g. (Public Schools Element): A future conditions map or map series which depicts the planned general location of public school facilities and ancillary plants and renovated facilities by year for the five year planning period, and for the end of the long range planning period of the host county. [9J-5.025(4)(b), F.A.C., and 163.3177(12)(h), F.S.]
- h. The Intergovernmental Coordination Element does not include a policy addressing joint processes for collaborative planning and decision making on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance. [163.3177(6)(h)2., F.S.]
- i. The Intergovernmental Coordination Element does not include a policy requiring an interlocal agreement with the district school board, the county, and nonexempt municipalities pursuant to s. 163.31777, F.S., and providing that coordination between the local government and school board is pursuant to the agreement and shall state the obligations of the local government under the agreement. [163.3177(6)(h)4.a., F.S.]

Rules 9J-5.005(6); 9J-5.025(3)(b) and (c); and 9J-5.025(4), F.A.C.; and Sections 163.3177(6)(h); 163.3177(12)(f), (g) and (h); 163.31777; and 163.3191, F.S.

Recommendation: Revise the Public Schools Facilities Element to include the plan objectives, policies, and maps identified above. Revise the Intergovernmental Coordination Element to include the policies identified above.

8. Objection (Financial Feasibility): Capital Improvements Element Policy 11-A-7, states, “Table 11-7 of the proposed Amendment presents the five-year schedule of capital improvements to be undertaken by the Town of Fort Myers Beach....To comply with § 163.3180(13)(d), *F.S.*, the required five-year schedule of capital improvements also includes the capacity-enhancing school improvements and summary of estimated revenues as presented by the Lee County School District through its Five-Year District Facilities Work Program, as updated each September. For FY 2008/09 through 2012/13, the specific capacity-enhancing school improvements are listed in Table 16-7 of the Public Schools Element and the formal demonstration that those improvements meet all requirements of state law is set forth in that element.” Table 16-7 of the Public Schools Element, is inconsistent with the adopted Lee County School District’s 2008-2009 District Facilities Five Year Work Plan, dated September 9, 2008. The numerical totals do not match the totals listed in the “Capacity Project Schedule” and “Other Project Schedule” Tables in the 2008-2009 District Facilities Five Year Work Plan. Therefore, the proposed Public Education Facilities Element is not demonstrated to be financially feasible. In addition, the proposed Five-Year Schedule of Capital Improvements does not identify the project cost, funding source, and timing for the following three school capacity projects: (1) New Elementary South Zone; (2) New Elementary West Zone; and (3) New Elementary East Zone. The Five-Year Schedule has not been demonstrated to be financially feasible for these projects.

Rules 9J-5.005(2) and (5); 9J-5.016(1), (2), (3), and (4); and 9J-5.025(1), (2), and (3), F.A.C.; and Sections 163.3164(32); 163.3177(2), (3), (8), (10), and (12); 163.3180(13); and 163.3191, F.S.

Recommendation: In order to demonstrate financial feasibility at the time of adoption of this Amendment, revise Table 16-7 of the Public Schools Element to incorporate the exact Project Schedule and Revenue tables from the Lee County School District’s 2008-2009 District Facilities Five Year Work Plan, dated September 9, 2008. Alternatively revise the policy to adopt by reference the Lee County School District’s annually updated financially feasible Lee County School District’s 2008-2009 District Facilities Five Year Work Plan. The policy and/or actual tables should include a reference that identifies the document by title, volume and date.” To comply with Rule 9J-5.005(2)(g), F.A.C., documents adopted by reference that are revised subsequent to Plan adoption will need to have their reference updated within the Plan through the annual amendment process. The policy or table should indicate the date, title, author and volume of the document being referenced, and where possible the applicable pages.

9. Comment: At the end of the proposed Public Schools Element, the Town includes a reference to the “Draft Lee Public School Facilities Element, prepared by Lee County School District, revised October 2008.” The Department recommends that the Town revise the Amendment to

reference, as a source of data and analysis in support of the Element, the adopted Lee County Public Education Facilities Amendment, DCA Number 09-1, approved by Ordinance 08-21 on September 11, 2008. The entire Amendment file can be accessed through the following links, which could be incorporated into the Element consistent with the existing format.

<http://dcapapers.eoconline.org/FloridaPAPERS/FlashAug16/Model/documentView.cfm?UserID=6239&AreaID=11&DocumentID=435854>

<http://dcapapers.eoconline.org/FloridaPAPERS/FlashAug16/Model/documentView.cfm?UserID=6239&AreaID=11&DocumentID=435854>

C. The Department raises the following objection to the proposed Amendment 2008-11/12-TEXT:

10. Objection: Proposed Utilities Element Policy 8-B-3 states that prior to issuance of building permits, the Town must obtain assurances from Lee County Utilities that an adequate bulk water supply will be available to the Towns' water distribution system to serve new development at the rates specified in Policy 8-B-1. The proposed Utilities Element Policy 8-B-3 does not establish concurrency management system requirements for water supply consistent with the requirements of Section 163.3180(2)(a), F.S., that prior to the approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent.

The data and analysis does not quantify the projected water supplies in the Town's proposed Work Plan by providing details from the Bulk Water Agreement with Lee County Utilities covering water demands, agreement timelines, and level of service. The proposed plan amendment does not include plan policy language that adopts by reference the adopted Lee County Work Plan. The proposed amendment does not include plan policies addressing on-going coordination with Lee County to ensure that water supplies will be sufficient to meet water demand, including coordinating peak seasonal demands and allocations based on consistent population projections and level of service standards, and to provide coordination with Lee County on water conservation that includes implementation plans for a conservation rate structure and a leak detection program for the Town. Policy 14-A-5 does not ensure that the future Water Supply Facilities Work Plan amendments will be adopted within 18 months after updates or amendments to the *Lower West Coast Water Supply Plan Update* are adopted by the District.

Rules 9J-5.005(2), (5), and (6); 9J-5.011(1) and (2); 9J-5.013(1) and (2), F.A.C.; and Sections 163.3177(6)(a), (c), and (d); 163.3177(2), (3), (4), (8), and (10); and 163.3191, F.S.

Recommendation: Revise Utilities Element Policy 8-B-3 to establish concurrency management system requirements for water supply consistent with the requirements of Section 163.3180(2)(a), F.S. Revise the data and analysis to quantify the projected water supplies in the Town's proposed Work Plan by providing details from the Bulk Water Agreement with Lee

County' Utilities covering water demands, agreement timelines, and level of service. Revise the amendment to adopt plan policies that address the following: (1) adopt the Lee County Work Plan by reference; and (2) address ongoing coordination with Lee County to ensure that water supplies will be sufficient to meet water demand, including coordinating peak seasonal demands and allocations based on consistent population projections and level of service standards, and to provide coordination with Lee County on water conservation that includes implementation plans for a conservation rate structure and a leak detection program for the Town. Revise Policy 14-A-5 to ensure that the future Water Supply Facilities Work Plan amendments will be adopted within 18 months after updates or amendments to the *Lower West Coast Water Supply Plan Update* are adopted by the District.

D. The Department raises the following objections to the proposed Amendment 2008-01-TEXT:

11. Objection (Concurrency Management): The proposed amendments do not revise the Capital Improvements Element to establish concurrency management system requirements for water supply, transportation, and schools that are consistent with Sections 163.3180(2)(a and c) and 1623.3180(13)(e), F.S. Capital Improvements Element Policy 11-B-5 (existing policy) establishes requirements for the Town's concurrency management system. Policy 11-B-5 allows public facilities for transportation and schools to meet concurrency if the necessary facilities are in place and available to serve the development at the time of the issuance of the certificate of occupancy. Policy 11-B-5 is inconsistent with Section 163.3180(2)(c), F.S., because Policy 11-B-5 does not ensure that transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. Policy 11-B-5 is inconsistent with Section 163.3180(13)(e), F.S., because Policy 11-B-5 does not ensure that adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. The Town's Comprehensive Plan (Utilities Element Policy 8-B-3) does not establish concurrency management system requirements for water supply consistent with the requirements of Section 163.3180(2)(a), F.S., that prior to the approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier to determine whether adequate water supplies to serve new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent.

Rules 9J-5.005(6); 9J-5.0055; 9J-5.016(3), F.A.C.; and Sections 163.3177(3) 163.3180(2)(a) and (c); 163.3180(13)(e); and 163.3191, F.S.

Recommendation: Revise Capital Improvements Element Policy 11-B-5 to address concurrency for transportation consistent with Section 163.3180(2)(c), F.S. Revise Capital Improvements Element Policy 11-B-5 to address concurrency for schools consistent with the requirements Section 163.3180(13)(e), F.S. Revise Utilities Element Policy 8-B-3 to establish concurrency management system requirements for water supply consistent with the requirements of Section 163.3180(2)(a), F.S.

11. Objection (Data and Analysis): The Capital Improvements Element update to the Five-Year Schedule of Capital Improvements is not supported by appropriate data and analysis addressing

the public facilities (transportation, sanitary sewer, solid waste, parks and recreation, and stormwater/drainage) that are needed to maintain the adopted level of service standards through to fiscal year 2012/13.

Rules 9J-5.005(2), (3), (5), and (6); 9J-5.0055; 9J-5.016(1), (2), and (4); 9J-5.011(1); 9J-5.019; F.A.C.; and Sections 163.3164(32); 163.3177(2), (3), (4), and (8); and 163.3191, F.S.

Recommendation: Support the amendment with data and analysis addressing the five-year projected operating level of service of the public facilities and identify the need for any public facilities improvements that are to meet the adopted level of service standards. If capital improvements are needed to public facilities in order to achieve and maintain the adopted level of service standards, then revise the Five-Year Schedule of Capital Improvements to include financially feasible public facility projects that are needed to achieve and maintain level of service.

II. CONSISTENCY WITH STATE COMPREHENSIVE PLAN

Objection: The proposed Comprehensive Plan amendments related to the objections raised above are not consistent with and do not further the following provisions of the State Comprehensive Plan (Chapter 187, Florida Statutes) for the reasons noted in the objections raised above in Section I:

- (a) Goal 6.a (Public Safety); Policy 6.b.23 (the amendments related to Objection 4);
- (b) Goal 7.a (Water Resources); Policy 7.b.5 (the amendments related to Objections 2, 10, and 11);
- (c) Goal 11.a (Energy); Policies 11.b.4 and 11.b.5 (the amendments related to Objection 3);
- (d) Goal 15.a (Land Use); Policies 15.b.1, 15.b.6; (the amendments related to Objections 1, 10, and 11);
- (e) Goal 16.a (Urban and Downtown Revitalization); Policy 16.b.8; (the amendments related to Objections 5, 6, 7, and 8);
- (f) Goal 17.a (Public Facilities); Policy 7.b.7; (the amendments related to Objections 2);
- (g) Goal 19.a (Transportation); Policies 19.b.3, 19.b.9, and 19.b.13; (the amendments related to Objections 2 and 11); and
- (h) Goal 25.a (Plan Implementation); Policy 25.b.7; (the amendments related to Objections 1, 2, 3, 4, 5, 6, 7, 8, 10, and 11).

Recommendation: Revise the plan amendments as recommended for the objections raised above.