**STATE OF FLORIDA**
**DEPARTMENT OF ECONOMIC OPPORTUNITY**

CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC,
OLD CORKSCREW PLANTATION, LLC,
OLD CORKSCREW PLANTATION V, LLC,
TROYER BROTHERS FLORIDA, INC., and
FFD LAND COMPANY, INC,

Petitioners,

vs. DOAH Case No. 10-2988GM

LEE COUNTY,

Respondent,

and

FLORIDA WILDLIFE FEDERATION,
COLLIER COUNTY AUDUBON SOCIETY,
CONSERVANCY OF SOUTHWEST FLORIDA, INC.,
ESTERO COUNCIL OF COMMUNITY LEADERS, INC.,
and NICK BATOS,

Intervenors.
_____/

## FINAL ORDER

This matter was considered by the Executive Director of the Department of Economic Opportunity following receipt of a Recommended Order issued by an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH").

## BACKGROUND

This is a proceeding to determine whether certain Lee County Comprehensive Plan Amendments, adopted by Ordinance Nos. 10-19, 10-20 and 10-21 on March 3, 2010, and by Ordinance No. 10-43 on November 1, 2010, (the "Plan Amendments") are "in compliance" with the Community Planning Act, Ch. 163, Part II, Florida Statutes (2011) (the "Act").

Prior to the Final Hearing, the ALJ issued two Orders Relinquishing Jurisdiction As To Certain Unchallenged Amendments which were approved by two Partial Final Orders which were not appealed. Therefore, the following portions of the Plan Amendments have already been found in compliance and are not addressed by the Recommended Order or this Final Order:

LEE County – A VISION FOR 2030
10. Gateway/Airport

FUTURE LAND USE

| | | |
|---|---|---|
| Policy 1.7.15 | Policy 16.2.7 | Policy 33.2.6 |
| Policy 6.1.2 | Policy 16.2.8 | Policy 33.2.7 |
| Policy 9.1.2 | Policy 16.2.9 | Policy 33.3.2 |
| Policy 9.1.6 | Objective 16.8 | Policy 33.3.3 |
| Policy 9.1.7 | Objective 33.2 | Policy 33.3.4 |
| Objective 10.3 | Policy 33.2.1 | Policy 33.3.5 |
| Policy 16.2.3 | Policy 33.2.2 | Policy 33.3.6 |
| Policy 16.2.5 | Policy 33.2.4 | Policy 63.1.3 |
| Policy 16.2.6 | Policy 33.2.5 | |

GLOSSARY
Definition of "Conservation Easement"
Definition of "Density"
Definition of "Private Recreation Facilities"
Definition of "Public Recreation Facility"

MAPS 1 (pages 1 and 4 of 8), 4, 6, 7, 17, 20, 25

TABLE 1(a)

All parties, except Intervenors Florida Wildlife Federation and Collier County Audubon Society, filed exceptions to the Recommended Order. All parties filed responses to exceptions.

ROLE OF THE DEPARTMENT

Since the Recommended Order recommends that the Plan Amendments be found in compliance, the ALJ submitted the Recommended Order to the Department. § 163.3184(5)(e), Fla. Stat. (2011)[1]. The Executive Director of the Department must either determine that the Plan

[1] All references to Florida Statutes will be to the 2011 edition, unless otherwise noted.

Amendments are in compliance and enter a Final Order to that effect, or determine that the Plan Amendments are not in compliance and submit the Recommended Order to the Administration Commission for final agency action. After review of the exceptions, the responses to exceptions, the Recommended Order and the record, the Executive Director accepts the recommendation of the ALJ and determines that the Plan Amendments are in compliance.

STANDARD OF REVIEW OF RECOMMENDED ORDER

The Administrative Procedure Act contemplates that an agency will adopt the ALJ's Recommended Order as the agency's Final Order in most proceedings. To this end, the agency has been granted only limited authority to reject or modify findings of fact in a Recommended Order.

Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. § 120.57(1)(l), Fla. Stat.

Absent a demonstration that the underlying administrative proceeding departed from essential requirements of law, "[a]n ALJ's findings cannot be rejected unless there is no competent, substantial evidence from which the findings could reasonably be inferred." Prysi v. Department of Health, 823 So. 2d 823, 825 (Fla. 1st DCA 2002)(citations omitted). In determining whether challenged findings are supported by the record in accord with this standard, the agency may not reweigh the evidence or judge the credibility of witnesses, both

tasks being within the sole province of the ALJ as the finder of fact. See Heifetz v. Department of Bus. Reg., 475 So. 2d 1277, 1281-83 (Fla. 1st DCA 1985).

The Administrative Procedure Act also specifies the manner in which the agency is to address conclusions of law in a Recommended Order. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. §120.57(1)(l), Fla. Stat. See also, DeWitt v. School Board of Sarasota County, 799 So. 2d 322 (Fla. 2nd DCA 2001).

The label assigned a statement is not dispositive as to whether it is a finding of fact or conclusion of law. Kinney v. Dept. of State, 501 So. 2d 1277 (Fla. 5th DCA 1987); and Goin v. Comm. on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995). Conclusions of law labeled as findings of fact, and findings labeled as conclusions, will be considered as a conclusion or finding based upon the statement itself and not the label assigned.

## RULINGS ON EXCEPTIONS

### Lee County Exception 1

Paragraphs 4 and 6 of the Recommended Order state that certain property owned by two of the Petitioners "... is shown on Lee County planning maps as 'potential mining area.'" Lee County contends that these findings of fact would be clearer if they stated that the potential mining area maps have never been adopted as part of the comprehensive plan or land

development regulations, and asks the Department to supplement Finding of Facts 4 and 6. However, "[i]t is not proper for the agency to make supplemental findings of fact...." Fla. Power & Light Co. v. State Siting Bd., 693 So. 2d 1025 (Fla. 1st DCA 1997).

Lee County also contends that Finding of Fact 6 is not supported by competent substantial evidence because the OCP parcel is not shown on any County planning map. However, a comparison of Petitioner's Exhibit 69 (Potential Mining Area of Lee County Map) and County Exhibit 8 (a map depicting ownership) shows a portion of the OCP parcel within the potential mining area.

Lee County Exception 1 is DENIED.

Lee County Exception 2

Paragraph 30 of the Recommended Order states, "The seven-county region of Collier, Lee, Charlotte, Glades, Hendry, Manatee, and Sarasota Counties constitutes the primary market for limerock from the DR/GR." Lee County contends that all the evidence in the record demonstrates that DeSoto County is part of the seven-county primary market area, but Manatee County is not. The Petitioners' response to exceptions did not address Lee County exception 2.

The Department could not find any evidence in the record which included Manatee County in the seven-county primary market area. The following competent substantial evidence in the record supports a seven-county primary market area which excludes Manatee County and includes DeSoto County: Appendix B of County Exhibit 25, Testimony of Depew (Tr. 391) and Testimony of Spikowski (Tr. 525).

Lee County exception 2 is GRANTED, and paragraph 30 of the Recommended Order will be replaced with:

30. The seven-county region of Collier, Lee, Charlotte, Glades, Hendry, DeSoto, and Sarasota Counties constitutes the primary market for limerock from the DR/GR.

Lee County Exception 3

Paragraph 41 of the Recommended Order states that, "This acreage figure [in Table 1(b)] includes old mines, current mines, and approved new mines." The County contends that Table 1(b) also includes mines yet to be approved. The Petitioners' response to exceptions did not address Lee County exception 3.

The Department could not find any evidence in the record which indicated that Table 1(b) does not include mines yet to be approved. The following competent substantial evidence in the record supports a finding that Table 1(b) includes additional mining area: County Exhibit 27 – pages 38-40, and Testimony of Spikowski (Tr. 564-565).

Lee County exception 3 is GRANTED, and paragraph 41 of the Recommended Order will be replaced with:

41. Table 1(b) of the Future Land Use Element, entitled "Year 2030 Allocations," shows the total acreage allocated for Industrial land uses for Southeast Lee County as 7,246 acres. Mining is an industrial use. This acreage figure includes old mines, current mines, approved new mines, and additional acreage available for mining.

Lee County Exception 4

Paragraph 64 states that the future mining acreage shown on Map 14 and the industrial acreage listed in Table 1(b) do not match. The last sentence states, "For reasons that were not made clear in the record, Lee County did not amend Table 1(b) to add the Florida Rock acreage." Lee County Exception 4 consists of an explanation of the mismatch between Map 14 and Table 1(b), and asks the Department to supplement the Recommended Order with this explanation. However, the Department cannot supplement the ALJ's findings of fact. Fla. Power & Light, supra. Lee County Exception 4 is DENIED.

Intervenors Exception

Intervenors Conservancy of Southwest Florida, Inc., Estero Council of Community Leaders, Inc., and Nick Batos ask the Department to "clarify or supplement" the Recommended Order with additional facts regarding the impact of mining development within the DR/GR land use district upon the members of the Conservancy of Southwest Florida, Inc. However, the Department cannot supplement the ALJ's findings of fact. Fla. Power & Light, supra.

Intervenors Exception is DENIED.

Petitioners Exception 1 to Findings of Fact

Paragraph 40 of the Recommended Order states,

> Map 14 depicts an area of about 9,000 acres where limerock mining is allowed to occur in the DR/GR. There are lands with limerock "reserves" that lie outside of the area designated for future mining on Map 14, but these lands are not currently being mined and are not currently designated for mining uses.

Petitioners exception 1 contends that the "undisputed evidence" established that there are DR/GR lands outside of the area designated for limerock mining by Map 14 which are currently being mined. However, the Petitioners' citations to the record do not support that contention.

Petitioners exception 1 also argues that, since the Plan Amendments at issue in this proceeding are not yet effective, mining is currently an allowed use in the DR/GR land use district whether or not those lands are depicted for limerock mining on Map 14. This portion of paragraph 40 is a conclusion of law, and the theory advanced by the Petitioners is more reasonable than the ALJ's conclusion of law.

Petitioners exception 1 to findings of fact is partially Granted, and paragraph 40 is modified to state,

> Map 14 depicts an area of about 9,000 acres where limerock mining is allowed to occur in the DR/GR. There are lands with limerock "reserves" that lie outside of the area designated for future mining on Map 14, but these lands are not currently being mined.

The remainder of Petitioners exception 1 to findings of fact is DENIED.

Petitioners Exceptions 2, 3 & 4 to Findings of Fact

Paragraphs 44, 45 and 46 describe the difficulties faced by the County's planning consultant in gathering data to estimate the acreage of limerock reserves in the DR/GR land use district. Petitioner's exceptions 2, 3 and 4 ask the Department to reject those findings of fact based on the evidence presented by the Petitioners, which attempted to show that the County's planning consultant had much more data available for his estimate. However, there is competent substantial evidence in the record to support the ALJ's findings of fact. Testimony of Spikowski (Tr. 514-522), and County Exhibits 21, 25B, 30.

Petitioners Exception 2, 3 and 4 to findings of fact are DENIED.

Petitioners Exception 5 to Findings of Fact

Paragraphs 47 through 52 discuss the per capita rate of limerock usage to determine the need for limerock mining acreage over the planning timeframe. The County's expert used a rate of 9 tons per person per year. Paragraphs 47 and 48. In paragraphs 49 through 52, the ALJ discusses the Petitioner's critique of the County's per capita rate, rejects that critique, and ultimately finds that the rate of 9 tons per person per year is supported by relevant data and analysis.

Petitioners exception 5 asks the Department to reject the evidence that supports the ALJ's findings of fact, and instead accept the Petitioner's evidence. The Department cannot reweigh the evidence. The ALJ's findings of fact are supported by the testimony of Spikowski (Tr. 534-544) and County Exhibits 21 and 25B. Petitioners exception 5 to findings of fact is DENIED.

Petitioners Exception 6 to Findings of Fact

Paragraph 53 states that the County's planning expert reduced the estimated amount of needed limerock by 20% based upon the amount historically supplied by mines outside the DR/GR. Petitioners exception 6 asks the Department to reject this finding of fact because the only creditable evidence on this point was presented by the Petitioners. However, the ALJ weighs the creditability of the evidence, and the ALJ found that, "Petitioners attacked the figure of 20 percent, but did not establish in the record a percentage that is more reliable." Finding of fact 53 is supported by competent substantial evidence in the record. Testimony of Spikowsky (Tr. 526-534) and County Exhibits 21, 25B. Petitioners exception 6 to findings of fact is DENIED.

Petitioners Exception 7 to Findings of Fact

Paragraph 55 states, "Petitioners claim that Spikowski overestimated the amount of limerock produced per acre from the DR/GR." Petitioners exception 7 asserts that the ALJ mischaracterized Petitioners' arguments, and then attempts to demonstrate that Spikowski did, indeed, overestimate the amount of limerock produced per acre, stating, "It is the use of the erroneously high yield per acre number to calculate future demand that causes the fatal flaw in Mr. Spikowski's analysis." Therefore, it is clear that the ALJ accurately summarized Petitioners' argument. Petitioners exception 7 to findings of fact is DENIED.

Petitioners Exception 8 to Findings of Fact

Petitioners exception 8 asks the Department to reject paragraph 56, "for the same reason set forth in Petitioners exception 7." Paragraph 56 discusses "a second analytical approach," different than the approach discussed in paragraph 55. Therefore, the reasoning in exception 7 does not apply to paragraph 56. In any event, Petitioners exception 8 does not allege that

paragraph 56 is not supported by competent substantial evidence. Petitioners exception 8 to findings of fact is DENIED.

Petitioners Exception 9 to Findings of Fact

Paragraph 57 states that, "Spikowski then weighted his two analytical approaches to arrive at a final estimate of mining acreage needed to meet the future demand...." Petitioners exception 9 critiques the weighting on the basis that there is no competent substantial evidence in the record to support the weighting approach. However, the weighting approach is supported by the testimony of Spikowski (Tr. 550-556) and County Exhibits 25B and 40. As the ALJ summarized in paragraph 58, "Both of Spikowski's approaches yielded estimates of total future demand, but were far apart. His weighting was to account for their relative reliability." Petitioners exception 9 to findings of fact is DENIED.

Petitioners Exceptions 10, 11 and 12 to Findings of Fact

Paragraphs 59, 60 and 61 summarize the ALJ's evaluation of the Petitioners' critique of Spikowski's analysis. The ALJ found that:

> Spikowski's approaches to developing estimates of local supply and regional demand were necessary because much of the data had not been developed, compiled, or analyzed by anyone else. His approaches were logical and he used relevant and appropriate data. Spikowski's analysis was professionally acceptable as a planning function. Paragraph 59.
>
> Petitioners attacked Spikowski's data and analysis, but Petitioners offered no comparable alternative analyses.... Paragraph 60.
>
> The data and analysis in the public reports in the record which Petitioners consider reliable, taken as a whole, do not prove that Spikowski underestimated the future mining acreage needed to meet the regional demand through 2030. Paragraph 61.

Petitioners' exceptions 10, 11 and 12 ask the Department to reweigh the evidence. This the Department cannot do. Petitioners' exceptions 10, 11 and 12 to findings of fact are DENIED.

Petitioners Exception 13 to Findings of Fact

Paragraph 66 discusses the relationship between Map 14 and Table 1(b), and mentions the 4,397 acres that Spikowski's analysis determined to be sufficient to meet regional needs. Petitioners exception 13 restates the Petitioners' critique of the acreage number. Since this final order denied the earlier exceptions, Petitioners exception 13 to findings of fact is also DENIED.

Petitioners Exceptions 14 and 16 to Findings of Fact

Policy 158.1.10 of the Lee Comprehensive Plan requires an evaluation to identify and remove "... unwanted impediments to ensuring development is fiscally beneficial." Policy 158.6.1 requires an assessment of "...the impact of [a new] regulation upon the local economy and [adoption of] such regulations only in cases of compelling public need." The ALJ stated in paragraphs 68 and 70 that the Petitioners did not show what such an evaluation or assessment must entail. Petitioners exceptions 14 and 16 argue that the Petitioners did not have the burden of establishing what the evaluations should consist of. However, the Petitioners did have the burden to prove beyond fair debate that the Plan Amendments are not in compliance.

The ALJ found that the County's "extensive investigation of land use issues," and "the County's balancing of the conflicting uses by allocating sufficient mining lands," achieved both required assessments. Petitioners exceptions 14 and 16 to findings of fact are DENIED.

Petitioners Exceptions 15 and 17 to Findings of Fact

Petitioners exceptions 15 and 17 contend that paragraphs 69 and 71 should be rejected, based on the critiques in their previous exceptions. Since the previous exceptions have been denied, Petitioners exceptions 15 and 17 to findings of fact are also DENIED.

Petitioners Exception 19 to Findings of Fact

Paragraph 73 states,

> Policy 33.1.1 states that "the spread of limerock mining impacts into less disturbed environments will be precluded until such time as there is a clear necessity to do so (and Map 14 is amended accordingly)."

The ALJ found in paragraph 74 that, "The County's interpretation of the Plan Amendments as not requiring a showing of clear necessity to amend Table 1(b) is a reasonable interpretation." Petitioners exception 19 contends that there is no competent substantial evidence in the record to support this finding. However, the language of Policy 33.1.1 states that it applies to Map 14, and does not mention Table 1(b). This competent substantial evidence supports paragraph 74. Petitioners exception 19 to findings of fact is DENIED.

Petitioners Exception 20 to Findings of Fact

As the ALJ stated in paragraph 80, section 163.3177(6)(a)4. provides that the amount of land designated for future planned uses "should allow the operation of real estate markets to provide adequate choices for permanent and seasonal residents and businesses and may not be limited solely by the projected population." The Petitioners attempted to prove at the hearing that the Plan Amendments do not provide adequate choices. Petitioners exception 20 argues that the Petitioners presented the only evidence on this issue, therefore the ALJ should have found that the Amendments did not provide adequate choices.

The Petitioners have the burden of proving beyond fair debate that the Plan Amendments are not in compliance. The ALJ, in paragraph 81, found their evidence to be speculative and not persuasive. The ALJ is not required to accept speculative, unpersuasive evidence, even if it is the only evidence presented on a particular point. Previous paragraphs, which have been accepted by this final order, found that the Plan Amendments designate sufficient mining lands for the planning timeframe. Petitioners exception 20 to findings of fact is DENIED.

Petitioners Exception 21 to Findings of Fact

Paragraph 82 states:

> Petitioners argued that Lee County failed to consider the suitability of the mining lands it designated on Map 14 with regard to the character of the soils and natural resources. The record shows that consideration of the suitability of the affected lands was a central part of the planning effort.

Petitioners exception 21 contends that the only competent substantial evidence in the record demonstrates that Map 14 does not depict mineral resources. However, the following evidence supports the ALJ's finding that consideration of the suitability of the affected lands for mining was a central part of the planning effort. County Exhibits 11-13, 21, and 25, and Testimony of Spikowski – Tr.558-563. Petitioners exception 21 to findings of fact is DENIED.

Petitioners Exception 1 to Conclusions of Law

Paragraph 102 of the Recommended Order states,

> Petitioners argue that because the Rawl Report did not undergo peer review, it is not professionally acceptable. There is no evidentiary presumption that the statements contained in a technical report which has not undergone peer review are false, inaccurate, or otherwise unreliable. Many technical reports do not undergo peer review, but are regularly accepted into evidence. The issue is a matter of the weight to be given the report.

Petitioners exception 1 argues that the Rawl Report should have been rejected by the ALJ because, in addition to the failure to undergo peer review, the Report was used improperly by the County's planning expert. The legal theory advanced by the Petitioners is not as reasonable as the ALJ's conclusion of law. Petitioners exception 1 to conclusions of law is DENIED.

Petitioners Exceptions 2, 3 and 4 to Conclusions of Law

Petitioners exceptions 2, 3 and 4 object to the conclusions of law stated in paragraphs 105, 107 and 111 "for the reasons stated" in the Petitioners exceptions to findings of fact. Since the Petitioners exceptions to those findings of fact have been denied, Petitioners exceptions 2, 3 and 4 to conclusions of law are also DENIED.

Petitioners Exception 18 to Findings of Fact
and Exception 5 to Conclusions of Law

Paragraphs 72, 112, 113 and 114 of the Recommended Order state,

> 72. Petitioners argue that Table 1(b) is internally inconsistent because the County uses BEBR medium population projections to allocate every land use in Table 1(b) except mining, which is expressly linked to Policy 33.1.4 and Appendix B of the Dover Kohl Report. As discussed in the Conclusions of Law, the County is not required to use BEBR population projections to allocate lands to meet regional needs.
>
> * * *
>
> 112. Section 163.3177(1)(f)3. requires comprehensive plans to be "based on permanent and seasonal population estimates and projections" and "based on at least the minimum amount of land required to accommodate the medium projections of the University of Florida's Bureau of Economic and Business research for at least a 10-year planning period."
>
> 113. Some of the parties argued that this section was not intended to require the use of BEBR population projections for mining or other industrial land uses. That argument does not need to be addressed because the more obvious point is that section 163.3177(1)(a)(f)3. [sic] does not require local governments to designate lands needed to serve regional needs based on regional population projections. The statute is addressing local needs based a projection of the local government's own population.
>
> 114. It is academic whether the Act should require local governments to designate sufficient lands to meet regional needs, in general, or to meet the regional need for mining lands, in particular. The Act does not require it....

The Petitioners contend in exception 18 to findings of fact and in exception 5 to conclusions of law that the County assessment must address the medium BEBR projections for the seven-county market area.

The ALJ's conclusion of law is more reasonable than the theory advanced by the Petitioners. The County's comprehensive plan is required to "...provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area...." §163.3177(1) (emphasis supplied). "The future land use plan and plan amendments shall be based upon surveys, studies,

and data regarding the area...." §163.3177(6)(a)2. (emphasis supplied). A county is only authorized to "...exercise authority under this act for the total unincorporated area under its jurisdiction...." §163.3171(2).

Petitioners exception 5 to conclusions of law is DENIED.

Petitioners Exceptions 6 and 7 to Conclusions of Law

Paragraph 115 of the Recommended Order states,

> 115. Petitioners complained about the "cap" on mining lands created by the Plan Amendments. Every future land use designation on a future land use map creates a cap on the land use because there cannot be an expansion of the use without a comprehensive plan amendment. The Act does not prohibit these kinds of caps. In fact, it requires them. See § 163.3177(6)(a), Fla. Stat. (future land use element must designate the "extent" of various land uses).
>
> 116. Petitioners failed to prove that the Plan Amendments do not accommodate BEBR medium population projections for at least a 10-year planning period.

Petitioners exceptions 6 and 7 restate their argument that the County's data and analysis was flawed and that the Plan Amendments restrict the amount of land available for limerock mining to less than needed for the seven-county market area. The Petitioners contend that,

> ... while a land use allocation may exceed that necessary to serve the medium BEBR population, it cannot now, under the new law, be ratcheted downward or weighted, or otherwise lowered, as was done here. The new law quite clearly establishes need as a floor, not a ceiling. The County's approach, conversely, took the ceiling (the limerock usage projection for the seven county region) and lowered it further, contrary to the new law.

Although the County attempted to estimate the need for limerock for a seven-county area, and attempted to meet that need, the ALJ correctly determined that the Act does not require the County do so. The ALJ's findings of fact, which have been accepted by this final order, find that the County did provide a land use allocation for limerock mining that was adequate to serve the County (not the seven-county region) medium BEBR population. The ALJ's conclusion of law is more reasonable than the theory advanced by the Petitioners.

Petitioners exceptions 6 and 7 to conclusions of law are DENIED.

Petitioners Exceptions 8, 9 and 10 to Conclusions of Law

Petitioners exceptions 8, 9 and 10 are based upon their preceding exceptions. Since the preceding exceptions were denied, Petitioners exceptions 8, 9 and 10 are also DENIED.

ORDER

IT IS THEREFORE ORDERED as follows:

1. The findings of fact and conclusions of law in the Recommended Order, except as modified above, are ADOPTED.

2. The Administrative Law Judge's recommendation is ACCEPTED.

3. The Lee County Comprehensive Plan Amendments adopted by Ordinance Nos. 10-19, 10-20 and 10-21 on March 3, 2010, and by Ordinance No. 10-43 on November 1, 2010, except the portions previously addressed by the Partial Final Orders, are determined to be "in compliance" as defined in Section 163.3184(1)(b), Florida Statutes.

DONE AND ORDERED in Tallahassee, Florida.

Cynthia R. Lorenzo, Interim Executive Director
DEPARTMENT OF ECONOMIC OPPORTUNITY

**NOTICE OF RIGHTS**

EACH PARTY IS HEREBY ADVISED OF ITS RIGHT TO SEEK JUDICIAL REVIEW OF THIS FINAL ORDER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(b)(1)(C) AND 9.110.

TO INITIATE AN APPEAL OF THIS ORDER, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, OFFICE OF THE GENERAL

COUNSEL - CALDWELL BUILDING, 107 EAST MADISON STREET, MSC 110 TALLAHASSEE, FLORIDA 32399-4128, WITHIN 30 DAYS OF THE DAY THIS ORDER IS FILED WITH THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(a). A COPY OF THE NOTICE OF APPEAL MUST BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL AND MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22(3), FLORIDA STATUTES.

YOU **WAIVE** YOUR RIGHT TO JUDICIAL REVIEW IF THE NOTICE OF APPEAL IS NOT TIMELY FILED WITH THE AGENCY CLERK AND THE APPROPRIATE DISTRICT COURT OF APPEAL.

MEDIATION UNDER SECTION 120.573, FLA. STAT., IS NOT AVAILABLE WITH RESPECT TO THE ISSUES RESOLVED BY THIS ORDER.

**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that the original of the foregoing has been filed with the undersigned Agency Clerk of the Department of Economic Opportunity, and that true and correct copies have been furnished to the persons listed below in the manner described, on this 30th day of March, 2012.

Miriam Snipes, Agency Clerk
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