

STAFF REPORT ADDENDUM**TEXT AMENDMENT # PCT090222****APPLICANT: Board of County Commissioners****POLICY I.D. #: Proposed Policy 2.2.13 [C]****DATE: October 5, 2009****STAFF RECOMENDATION: Adopt Proposed Policy 2.2.13 as Transmitted****A. SUMMARY**

On August 18, 2009 the Florida Department of Community Affairs (DCA) issued an Objections, Recommendations, and Comments (ORC) Report that includes an official objection to proposed Policy 2.2.12 [C]. The objection applies only to that portion of the proposed policy that would allow up to an 800 square-foot expansion to existing lawfully established development in Special Development Zones. The objection does not apply to potential future construction of Building #9 at Canopy Oaks Elementary School or the previously proposed joint-use library facility.

The ORC Report indicates the 800 square-foot expansion provision does not restrict activities known to adversely affect water quality, is not based on the best available data and analysis, and is internally inconsistent with existing Comprehensive Plan policies. After review of the objection and consultation with the County Attorney, the Planning Department recommends adoption of the proposed policy as jointly transmitted on June 3, 2009.

B. RESPONSE TO THE ORC REPORT

The ORC Report objection to proposed policy 2.2.12 [C] is internally inconsistent. The Report objects to the 800 square-foot expansion provision and does not object to the potential significant expansion projects associated with Canopy Oaks Elementary School. No analysis or justification is provided to demonstrate why the objections to the 800 square-foot expansion provision are not equally applicable to the school site. Failure to address this clear inconsistency reduces the technical soundness of the objection.

The objection to the 800 square-foot expansion provision includes three major components identified and discussed below.

DCA OBJECTION PART 1:

The proposed policy does not restrict activities known to adversely affect the quality of water within the Lake Jackson, Bradford Brook Chain of Lakes, Fred George Basin, and Lake Imonia and is therefore not consistent with 9J-5.013(2) F.A.C.

The DCA claims the proposed policy is not consistent with 9J-5.013(2) F.A.C. because the amendment increases the amount of impervious area in the protected basins. The F.A.C. section referenced is provided below with the relevant section underlined.

The proposed policy is consistent with 9J-5.013(2) F.A.C. as it clearly “restricts” the amount of impervious area that can be added to each basin by (1) restricting impervious expansions to 800 sq. ft., (2) establishing eligibility criteria that restricts the number of properties that can utilize the expansion provision, and (3) establishing expansion standards focused on improving water quality. The expansion standards require that projects address current environmental and stormwater requirements, not disturb any natural vegetation, replant natural vegetation in an on-site area equivalent to the expansion, and utilize areas outside of the special development zones to the greatest extent practicable.

It is important to recognize that 9J-5.013(2) F.A.C. calls for the “restriction of activities” not the prohibition of activities. The proposed policy was clearly developed to include restrictions that seek to avoid, minimize, and mitigate for expansions of impervious areas in the special development zones.

9J-5.013(2) F.A.C.

(2) Requirements for Conservation Goals, Objectives and Policies.

(a) The element shall contain one or more goal statements which establish the long-term end toward which conservation programs and activities are ultimately directed.

(b) The element shall contain one or more specific objectives for each goal statement which address the requirements of paragraph 163.3177(6)(d), F.S., and which:

1. Protect air quality;
2. Conserve, appropriately use and protect the quality and quantity of current and projected water sources and waters that flow into estuarine waters or oceanic waters;
3. Conserve, appropriately use and protect minerals, soils and native vegetative communities including forests; and
4. Conserve, appropriately use and protect fisheries, wildlife, wildlife habitat and marine habitat.

(c) The element shall contain one or more policies for each objective which address implementation activities for the:

1. Protection of water quality by restriction of activities and land uses known to affect adversely the quality and quantity of identified water sources, including natural groundwater recharge areas, wellhead protection areas and surface waters used as a source of public water supply;

DCA OBJECTION PART 2:

The proposed policy is not supported by the best available data and appropriate analysis.

No data and analysis was provided regarding the capacity of closed basins to accommodate an additional amount of stormwater from the additional impervious area allowed by the policy.

No data and analysis was provided to address the quality of stormwater runoff generated by the additional impervious area allowed by the policy. It has not been demonstrated that compliance with current environmental and stormwater requirements is sufficient to protect the water quality of these lakes.

Data and analysis regarding the stormwater capacity of the multiple closed basins that occur with the designated special development zones was not provided in the staff report for the proposed amendment. Policy 1.3.2 [C] (below) calls for the calculation of stormwater capacity for development in closed basins at the time of permitting, not at the comprehensive planning level as suggested by the DCA. It is a more appropriate use of limited local government resources to conduct or require such detailed site-specific analysis as part of the permitting process for actual projects. A large-scale analysis of the potential impacts of the proposed policy, utilizing maximum potential impervious area as a proxy for impact, was provided in the staff report. This data and analysis provided decision makers with information on the scale of maximum potential development resulting from the proposed policy. The proposed policy is consistent with Policy 1.3.2[C] (d) as individual expansion project requests in closed basins will still be required to demonstrate stormwater capacity before a permit can be issued.

Policy 1.3.2 [C] (d) “Closed basins- These areas will be permitted to develop only to the extent that there is sufficient stormwater capacity within the basin.”

The DCA also objected, in part, based on the lack of data and analysis to address the quality of stormwater potentially generated by the proposed policy and indicated that we have not demonstrated that our current stormwater requirements protect water quality.

The Planning Department has been unable to identify an accepted methodology for modeling/quantifying the potential stormwater quality generated by numerous small-scale expansions of impervious area in four different basins and the resulting potential impacts on the water quality of the receiving water bodies. As a result, the data and analysis regarding potential impacts focused on the maximum potential impervious area expansion that would be allowed by the proposed policy (see Section 3 “Analysis of Potential Impacts” in the Staff Report). Potential impervious area expansion was utilized as a proxy for the potential scale of water quality and quantity impacts. The results provided in the staff report indicate that maximum potential expansion associated with the proposed policy represents increases of 0.07% (Lake Jackson), 0.03% (Fred George), 0.03% (Bradford Brook), and 0.01% (Lake Iamonia). These data and analysis suggests an exceedingly minor to insignificant potential impact on the water quality of the receiving water bodies.

It is possible to provide additional qualitative analysis regarding how the proposed amendment will address water quality. The proposed policy requires eligible projects to include the replanting of natural vegetation in an on-site area equivalent to the area of

proposed expansion. Conversion of existing turf grass to native trees and shrubs will reduce the area of potential turf fertilization, thereby helping to reduce potential nutrient sources that could be carried by stormwater to a receiving water body. Additionally, native trees and shrubs can help increase soil permeability and water holding capacity as a result of the increased pore space and organic material associated with their extensive root systems. Studies indicate that the large surface area of leaves and stems in a hardwood forest can intercept and retain 10-20% of annual precipitation (15-40% for coniferous forests). Retention of precipitation on-site by mimicking natural processes is an accepted practice for addressing water quality issues.

DCA OBJECTION PART 3:

The proposed policy is internally inconsistent with current plan objective 1.3 [C], policy 1.3.1 [C], and objective 2.3 [C].

The Comprehensive Plan policies cited by the DCA are included below with analysis.

Objective 1.3: [C] (*City of Tallahassee only*) (*Rev. Effective 12/10/91*)

By 1991, local government shall provide for the protection of natural resources by incorporating into the land development code stringent requirements for development within or adjacent to conservation and preservation areas.

Objective 1.3: [C] (*Leon County only*) (*Effective 7/16/90*)

By 1991, local government shall provide for the protection of natural resources by incorporating into the land development code conservation and preservation environmental overlay districts which have more stringent requirements for development within or adjacent to them.

The proposed policy is consistent with, and has no impact on, the requirements established under Objective 1.3 [C] (City and County versions). Objective 1.3[C] and associated policies identify specific natural features as either “conservation” or “preservation” features and then provides the more stringent requirements for development in each type of feature. The proposed policy has no impact on the interpretation or implementation of the “stringent requirements” currently adopted in the Comprehensive Plan (Policies 1.3.1[C] and 1.3.2[C]). It is important to note that special development zones are not identified as conservation or preservation features under Objective 1.3[C]. The DCA objection may be focused on development requirements in closed basins (designated conservation features). However, as discussed under “DCA Object Part 2” above, the proposed policy has no impact on the existing development requirements for closed basins.

Policy 1.3.1: [C] (*Leon County*) (*Rev. Effective 6/07/01*)

The following natural features shall be mapped and be included in the conservation overlay:

- a) Altered floodplains and floodways,
- b) Altered watercourses and improved elements of the primary drainage system;
- c) Altered wetlands;
- d) Closed basins;

- e) Significant grade areas (10% - 20%);
- f) High quality successional forests;
- g) Areas exhibiting active karst features;
- h) Designated canopy road corridors.

It is unclear why the DCA identified the proposed policy as inconsistent with Policy 1.3.1[C]. The policy simply identifies certain natural features as conservation features. The proposed policy will have no impact on this policy. Policy 1.3.1[C] was identified in the opening paragraph of the ORC Report objection to the proposed amendment, however it was not addressed in the analysis and explanation that followed.

Objective 2.3: [C] (*Effective 7/16/90*)

By 1991, local government shall adopt policies and ordinances that will prevent any further degradation of Lake Jackson and by the year 2000, return water quality in the lake to its condition at the time of Outstanding Florida Waters (OFW) designation.

A discussion regarding data and analysis for water quality is provided above under “DCA Objection Part 2.” Lake Jackson was designated an Aquatic Preserve in 1974. It is believed that Policies adopted have prevented further degradation of Lake Jackson and that the proposed changes will have no significant impact on the lake returning to OFW quality absent natural occurrences that reverse that trend. Due to Lake Jackson’s natural fluctuations in water level, it is difficult to compare the water chemistry of the lake today to the lake water of 1974. For example, the lake is currently rebounding from an extended naturally occurring drawdown that has resulted in a significant volume of organic matter in the water. The decomposing organic matter tends to drive nutrient levels in the lake water up and reduce the levels of dissolved oxygen. At this time it would not be appropriate to compare current water quality data from Lake Jackson with historic water quality data.