

STATE OF FLORIDA
FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

GINN-LA MARINA, LLLP, LTD,
NORTHSHORE HAMMOCK LTD, LLLP,
and NORTHSHORE OCEAN HAMMOCK
INVESTMENT, LTD, LLLP.

Petitioners,

vs.

FLAGLER COUNTY,

FLWAC Case No.: APP-10-007
DOAH Case No.: 10-9137DRI

Respondent,

and

OCEAN HAMMOCK PROPERTY OWNERS
ASSOCIATION, INC., THE HAMMOCK
BEACH CLUB CONDOMINIUM
ASSOCIATION, INC., MICHAEL M.
HEWSON, and ADMIRAL CORPORATION,

Intervenors.

DRAFT FINAL ORDER

This cause came before the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission ("Commission") on August 2, 2011, pursuant to a Petition filed by GINN-LA MARINA, LLLP, LTD; NORTHSHORE HAMMOCK, LTD, LLLP; and NORTHSHORE OCEAN HAMMOCK, INVESTMENT, LTD, LLLP (collectively, "Petitioners"), challenging Flagler County's ("County") denial of certain amendments to the Hammock Dunes Development of Regional Impact Development Order ("Hammock Dunes DRI

DO” or “DO”) requested by Petitioners in a Notice of Proposed Change Application originally filed with the County on February 27, 2009, as amended on June 19, 2009 and on February 11, 2010 (“NOPC”). The NOPC was considered by the County at a hearing on April 5, 2010, and the County’s decision on the NOPC was memorialized via the adoption of County Resolution Number 2010-22 on April 5, 2010. The Commission is charged with adjudicating appeals in regard to any development of regional impact. See Section 380.07(2), Florida Stat. For the reasons stated below, and upon review of the record, the Commission adopts the findings of fact and conclusions of law set forth in the Recommended Order, which is incorporated and attached as Exhibit “A.”

BACKGROUND

In 2009, the Petitioners submitted a NOPC to the County, which was twice revised, seeking to amend their DO by extending for three (3) years the development of regional impact (“DRI”) build-out date authorized by Section 380.06(19), Florida Statutes; reducing the number of approved dwelling units in the DRI; creating a new residential Cluster 35 within the DRI boundaries and reallocating previously-approved, but un-built, dwelling units from other Clusters to the new Cluster 35; agreeing to a further PUD-like review process before development permits are issued; and realigning a roadway at its own expense.

After a public hearing, the County determined that the changes requested by the Petitioners in the NOPC (“Revisions”) did not constitute a substantial deviation of the DO; found that the Revisions were consistent with the County’s Comprehensive Plan (“Plan”); recognized the legislative extension of time that extended the expiration date of the DO to February 28, 2012; approved the request to reduce the total number of approved residential dwelling units from 4,400 to 3,800; and denied the request to create a new Cluster 35 with a transfer of 561

residential units to that Cluster on the ground that such transfer was inconsistent with certain provisions of the County's Land Development Code ("LDC").

On May 25, 2010, Petitioners timely filed a Notice of Appeal and Petition for Appeal with the Commission. The Commission referred the matter to the Division of Administrative Hearings ("DOAH") on September 21, 2010, requesting that an administrative law judge conduct a formal hearing. By Order dated October 1, 2010, Admiral Corporation ("Admiral"), Ocean Hammock Property Owners Association, Inc. ("Ocean Hammock"), The Hammock Beach Club Condominium Association, Inc. ("Hammock Beach"), and Michael M. Hewson ("Hewson") were authorized to intervene as parties.

On December 15-17, 2010, the Honorable D.R. Alexander, Administrative Law Judge ("ALJ"), presided over a formal hearing on this matter. The ALJ rendered a Recommended Order ("Recommended Order" or "RO") on April 6, 2011, in which he disposed of the following issues: 1) what are the correct procedures and substantive criteria to be applied in reviewing Petitioners' proposed "local" changes to the Hammock Dunes DRI DO; 2) does Petitioners' (NOPC) application satisfy the applicable criteria for approval; and 3) do Petitioners or Respondent, County, have the legal ability or obligation through the NOPC to the DO to change certain obligations of Intervenor, Admiral, contained in the DO and in separate agreements related to the performance of certain DO obligations. The ALJ, in the Recommended Order, found that: a simultaneous NOPC/PUD review is reasonable and the County is authorized to take into account the general issues of public health, safety, and welfare, as well as any other sections of Article 3 of the LDC that are applicable; the NOPC is not a substantial deviation, as defined by Section 380.06(19), Florida Statutes; the Revisions in the NOPC to create a new Cluster 35 and transfer 561 units to that Cluster are inconsistent with the Plan; the new Master

Development Plan, which creates a new Cluster 35 and transfers 561 units to that cluster, is inconsistent with the relevant portions of the LDC; the Petitioners have no vested right to place up to 561 dwelling units on the land now subject to restrictions that limit the usage of the property to golf courses and other uses associated with golf club facilities, open space, parks, or recreational facilities if approved by the Board of County Commissioners (“Board”) and Section 14.5 of the DO prohibits the proposed uses; the extension of the DO expiration date until February 28, 2012, is permissible and is the result of a legislative act; and whether Admiral’s obligations under the DO are extended to the new expiration date is a matter that should be resolved in the appropriate circuit court.

STANDARD OF REVIEW OF RECOMMENDED ORDER

The Administrative Procedure Act provides that the Commission will adopt the ALJ's Recommended Order except under certain limited circumstances. The Commission has only limited authority to reject or modify the ALJ's 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.

“Matters susceptible of ordinary methods of proof...are factual matters to be determined by the hearing officer.” Gross v. Dept. of Health, 819 So. 2d 997 at 1002 (Fla. 5th DCA 2002). When fact-finding functions have been delegated to an ALJ, as is the case here, the Commission must rely upon the record developed before the ALJ. See Fox v. Treasure Coast Reg’l Planning Council, 442 So. 2d 221, 227 (Fla. 1st DCA 1983). As the ALJ in an administrative proceeding is the trier of fact, he or she is privileged to weigh and reject conflicting evidence. See Cenac v. Fla. State Bd. of Accountancy, 399 So. 2d 1013, 1016 (Fla. 1st DCA 1981). Therefore, “[i]t is

the hearing officer's function in an agency proceeding to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence." Bejarano v. State, 901 So. 2d 891, 892 (Fla. 4th DCA 2005) (quoting Heifetz v. Dep't of Bus. Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (citing State Beverage Dep't v. Ernal, Inc., 115 So. 2d 566 (Fla. 3rd DCA 1959)). The Commission cannot re-weigh evidence considered by the ALJ and cannot reject findings of fact made by the ALJ if those findings of fact are supported by competent substantial evidence in the record. Heifetz, 475 So. 2d 1277 (Fla. 1st DCA 1985). Competent substantial evidence means "such evidence as will establish a substantial basis of fact from which a fact at issue can be reasonably inferred", and evidence which "should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). Ultimate findings of fact are not conclusions of law, but are those findings of fact which "flow from preceding underlying facts." See Pillsbury v. State, Dep't. of Health and Rehab. Services, 744 So. 2d 1040 at 1042. (Fla. 2d DCA 1999).

The Commission may modify or reject conclusions of law in the Recommended Order over which it has substantive jurisdiction. See Section 120.57(1)(l), Fla. Stat. When rejecting or modifying a conclusion of law, the Commission must state with particularity its reasons for rejecting or modifying such conclusion of law. Id. Any substituted conclusion of law must be as or more reasonable than the conclusion of law provided by the ALJ in the recommended order. Id.

RULINGS ON EXCEPTIONS

Petitioner's Exception 1: Finding of Fact 29

The Petitioners object to the following portions of Finding of Fact 29: 1) that the County was entitled to conduct a simultaneous NOPC/PUD review; 2) that the County was authorized to take into account the substantive criteria set forth in 3.04.02.F.1. and 2. of the LDC; and 3) that the County may unilaterally apply its normal procedure for NOPC/PUD review. The Petitioners also object to the findings of fact which they believe stem from unsupported conclusions and mischaracterized facts set forth in Finding of Fact 29, including Findings of Fact 30, 39, and 40-45, and Conclusions of Law 59, 60, 63, and 64.

The Petitioners' exception to Finding of Fact 29 is focused on the following language:

“While conflicting testimony was submitted on this issue, the more persuasive evidence supports a finding that these procedures and substantive criteria are the most logical and reasonable interpretation of the County’s LDC and the DO, and they should be used in reviewing the NOPC.”

The Petitioners argue that the foregoing language is not a finding of fact, but is a conclusion of law. Finding of Fact 29 contains findings of fact which lead to the ultimate finding of fact quoted above. See Pillsbury , 744 So. 2d 1040 at 1042. The statements contained in Paragraph 29 are findings of fact as they are “matters susceptible to ordinary methods of proof.” See Gross, 819 So. 2d 997 at 1002. The Commission may not disturb a Finding of Fact supported by any competent substantial evidence from which the finding could be reasonably inferred. See Heifetz, 475 So. 2d 1277.

Section 17.6 of the DO provides that, “for purposes of compliance with the Flagler County Development and Subdivision Regulations and other development ordinances, this project for procedural purposes shall be treated as a ‘Planned Unit Development’ under article X of those regulations. This project shall be subject only to the following review provisions...” The

Petitioners claim that they have vested rights under Section 17.6 and that therefore provisions of the LDC adopted after the DO was issued are not applicable to the review of the NOPC. There is competent substantial evidence in the record to support the ALJ's finding of fact that the LDC provisions adopted after the DRI DO was issued are applicable to the review of the NOPC, because the constraints, processes and substantive criteria found in Sections 17.5 and 17.6 of the DO do not apply where the developer of the DRI proposes to create a new development cluster where none has previously existed. Therefore, Sections 17.5 and 17.6 do not limit the County's review of the NOPC. These sections would be applicable to constrain the review of what would be allowed on an existing cluster after a NOPC has been approved and the developer is seeking site plan approval. (T. 189, 212-214, 381, 396-398, 429-431). Additionally, there is competent substantial evidence in the record that, when reviewing the NOPC, the County may take into account considerations of public health, safety, and welfare, and any other sections of Article III of the LDC that are applicable. Section 1.02.02(2)(B) of the LDC provides that provisions of validly approved development orders "shall supersede and prevail over any conflicting provisions of this Code" but, "to the extent that a previously issued development order is not in conflict with this Code, then the provisions of this Code shall apply to all development undertaken subsequent to the enactment of this Code." (Jt. Ex. 11). The DO does not provide a process or criteria for review of a NOPC which proposes the creation of a new cluster of residential development where residential development has not been previously permitted. Therefore, the processes and criteria in the LDC, which were adopted after the DO was adopted, do not conflict with the DO, so such provisions of the LDC are applicable to the review of the NOPC. (Jt. Ex. 11, T. 382, 471, 472). The Commission has reviewed both the Petitioners' exception to Finding of Fact 29 and the Respondents' response to that exception, as well as

relevant parts of the record. The Commission finds that the Administrative Law Judge's findings of fact in Finding of Fact 29 were supported by competent substantial evidence in the record. Additionally, the Petitioners' objections to Findings of Fact 30, 39, 40-45 and Conclusions of Law 59, 60, 63, and 64, on the basis that they stem from unsupported conclusions and mischaracterized facts set forth in Finding of Fact 29, are denied as Finding of Fact 29 is supported by competent substantial evidence in the record.

Petitioners' Exception 1 is DENIED.

Petitioners' Exception 2: Finding of Fact 36

The Petitioners object to Finding of Fact 36 as they claim that the ALJ's findings are conclusions of law based on speculation, not findings of fact. The ALJ's findings in Finding of Fact 36 are findings of fact as they are matters susceptible to ordinary methods of proof. In Finding of Fact 36, the ALJ finds that the "mass and scale of development that is authorized under the NOPC will dwarf the 16th Road park and marginalize public beach access" and the "persons occupying the new dwelling units in Cluster 35 (up to 561 units) will be concentrated directly at the intersection of the beach and the park. These impacts...would change the pristine, rural character of the beachfront and park at 16th Road..." Therefore, the ALJ concluded that the NOPC revisions conflict with the corridor management plan¹, which applies to the Highway A1A scenic corridor, and are inconsistent with the requirement in Policy 3-3 of the Plan that the County support the corridor management plan. The corridor management plan requires that whatever is built around the corridor should fit in or blend with the location where it is proposed. Cluster 35 is proposed to be built around the corridor. The Commission has reviewed both

¹ Highway A1A is a north-south route that runs along the western boundary of the DRI and it is commonly known as the A1A Scenic Highway. It includes not only A1A, but also the public roads that run from A1A through the DRI to the beach, including 16th Road and the park at its terminus at the beach next to the proposed Cluster 35. (See R.O. , Finding of Fact 34)

Petitioners' exception to Finding of Fact 36 and the Respondent's response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge's findings of fact in Finding of Fact 36 were supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners' Exception to Finding of Fact 36.

Petitioners' Exception 2 is DENIED.

Petitioners' Exception 3: Finding of Fact 37

The Petitioners posit that Finding of Fact 37 is a conclusion of law, not a finding of fact. They object to the ALJ's finding that "the NOPC allows Petitioners to relocate 16th Road and the 16th Road park facilities further south" and that "the dune cut at 16th Road would have to be abandoned as an access point to the beach." Additionally, the Petitioners object to the ALJ's ultimate finding of fact which states that the NOPC's "impacts to natural resources and recreational facilities conflict with objective 3 of the Plan that requires the County to preserve the natural and recreational resources of the Scenic Highway" and that the NOPC "contravenes policy 3-6, which requires the County to improve recreational facilities without adversely affecting natural resources along the Scenic Corridor." The findings in Finding of Fact 37 are findings of fact, not conclusions of law, as they are matters susceptible to ordinary methods of proof. The Commission has reviewed both Petitioners' exception to Finding of Fact 37 and the Respondent's response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge's findings of fact in Finding of Fact 37 were supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners' Exception to Finding of Fact 37.

Petitioners' Exception 3 is DENIED.

Petitioner's Exception 4: Finding of Fact 38

The Petitioners object to Finding of Fact 38 which states “for the reasons stated above, the NOPC is inconsistent with objective 3 and policies 3-3 and 3-6 of the Recreation and Open Space Element of the Plan and in these respects is inconsistent with the County Plan.” Objective 3 of the Plan requires the County to preserve natural and recreational resources of the Scenic Highway, policy 3-3 requires the County to support the corridor management plan, and policy 3-6 requires the County to improve recreational facilities without adversely affecting natural resources along the Scenic Corridor. The Petitioners claim that Finding of Fact 38 is a conclusion of law. However, this finding of fact is an ultimate finding of fact which flows from the findings in Finding of Fact 37 and other findings of fact in the record. The Commission has reviewed both Petitioners’ exception to Finding of Fact 38 and the Respondent’s response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge’s finding of fact was supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners’ Exception to Finding of Fact 38.

Petitioners’ Exception 4 is DENIED.

Petitioners’ Exception 5: Finding of Fact 41

Petitioners object to the language of Finding of Fact 41 which provides that “at this stage of development in the DRI, the residents of the area and the County have the right to rely on the stability of the Master Development Plan. Substantial changes to the Master Development Plan such as those proposed here will likely cause adverse impacts to residents owning property in the DRI and to the community as a whole.” The Petitioners assert that Finding of Fact 41 is a conclusion of law. This language is properly classified as a finding of fact and an ultimate finding of fact as it is susceptible to ordinary methods of proof. The Commission has reviewed

both Petitioners' exception to Finding of Fact 41 and the Respondent's response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge's findings of fact in Finding of Fact 41 were supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners' Exception to Finding of Fact 41.

Petitioners' Exception 5 is DENIED.

Exception 6: Finding of Fact 42

Petitioners take exception to Finding of Fact 42 as they assert that it is not supported by competent substantial evidence in the record. Specifically, the Petitioners challenge the following language, "By contrast, the scale and intensity of development permitted by the NOPC will obstruct or eliminate ocean views of property owners, principally in Cluster 33, behind the golf course, where several condominium buildings are now located. The evidence shows that these unit owners with an obstructed view can also expect a substantial loss (around 45 percent) in value of their properties." The Commission has reviewed both Petitioners' exception to Finding of Fact 42 and the Respondent's response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge's findings of fact in Finding of Fact 42 were supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners' Exception to Finding of Fact 42.

Petitioners' Exception 6 is DENIED.

Petitioners' Exception 7: Finding of Fact 43

The Petitioners object to Finding of Fact 43 as they assert that it includes findings which are unsupported by competent substantial evidence. Finding of Fact 43 provides "Likewise, the relocation of the existing access to the public beach and relocation of the public park will

adversely impact the public since they will no longer have the ease of access to the beach and use of facilities the current park and beach access provide.” The Commission has reviewed both Petitioners’ exception to Finding of Fact 43 and the Respondent’s response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge’s finding of fact was supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners’ Exception to Finding of Fact 43.

Petitioners’ Exception 7 is DENIED.

Petitioners’ Exception 8: Finding of Fact 44

Petitioners’ take exception to Finding of Fact 44 which provides, in relevant part, that “given the mass and scale of development that can occur in the buffer area (golf course) between the ocean and the other DRI development, the new Cluster will have an adverse effect on adjacent Clusters. As such, the NOPC will not be compatible with adjacent land uses.” The Petitioners assert that the foregoing statements are conclusions of law. Finding of Fact 44 is an ultimate finding of fact, not a conclusion of law, as it involves matters susceptible to ordinary methods of proof and it flows from other findings of fact. The Commission has reviewed both Petitioners’ exception to Finding of Fact 44 and the Respondent’s response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge’s finding of fact was supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners’ Exception to Finding of Fact 44.

Petitioners’ Exception 8 is DENIED.

Petitioners' Exception 9: Finding of Fact 45

Petitioners object to Finding of Fact 45 and assert that such fact is a conclusion of law which is based on speculation and is unsupported by competent substantial evidence in the record. Finding of Fact 45 states "Collectively, these considerations support a finding that the proposed development will adversely affect the orderly development of the County, and it will be detrimental to the use of adjacent properties and the general neighborhood." Finding of Fact 45 is an ultimate finding of fact, not a conclusion of law, as it is susceptible to ordinary methods of proof and it flows from other findings of fact which are supported by competent, substantial evidence. The Commission has reviewed both Petitioners' exception to Finding of Fact 45 and the Respondent's response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge's finding of fact was supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners' Exception to Finding of Fact 45.

Petitioners' Exception 9 is DENIED.

Petitioners' Exception 10: Finding of Fact 50

Petitioners take exception to Finding of Fact 50 as they claim that it is a conclusion of law that is unsupported by competent evidence in the record. Finding of Fact 50 provides, in relevant part, "The most reasonable interpretation of those documents, as further explained by testimony at hearing, is that the Petitioners' proposal to reallocate up to 561 dwelling units to the proposed Cluster 35 within the golf course land and assign the 'Ocean Recreation Hotel' community type to that Cluster, is not a use permitted by section 14.5." Finding of Fact 50 is an ultimate finding of fact, not a conclusion of law, as it is an issue susceptible to ordinary methods of proof and it is based upon other findings of fact which are supported by competent substantial

evidence in the record. The Commission has reviewed both Petitioners' exception to Finding of Fact 50 and the Respondent's response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative Law Judge's Finding of Fact 50 was supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners' Exception to Finding of Fact 50.

Petitioners' Exception 10 is DENIED.

Petitioners' Exception 11: Finding of Fact 51

Petitioners object to Finding of Fact 51 as they posit that it is a conclusion of law which is unsupported by evidence in the record. Finding of Fact 51 provides, in relevant part, "However, the County has always interpreted section 14.5, the Plat, and the Plat Addendum to mean that the golf course land will remain a golf course in perpetuity and cannot be developed for residential purposes. Notwithstanding contrary evidence presented by Petitioners, the County's interpretation of those documents has been credited as being the most persuasive. Given these considerations, Petitioners have no vested right under the current DO to develop 12 acres for residential purposes and must request an amendment to section 14.5 in order to authorize another form of development. For this reason, the NOPC should be denied." Finding of Fact 51 is a finding of fact as it is a matter susceptible to ordinary methods of proof. The statement that Petitioners have no vested right under the current DO to develop the 12 acres for residential purposes and must request an amendment to Section 14.5 in order to authorize a change in the form of development is an ultimate fact which flows from previous findings of fact which are supported by competent substantial evidence in the record. The Commission has reviewed both Petitioners' exception to Finding of Fact 51 and the Respondent's response to that exception, as well as relevant parts of the record. The Commission finds that the Administrative

Law Judge's findings of fact in Finding of Fact 51 were supported by competent substantial evidence in the record. Therefore, the Commission must deny Petitioners' Exception to Finding of Fact 51.

Petitioners' Exception 11 is DENIED.

Petitioners' Exception 12: Conclusion of Law 60

Petitioners take exception to Conclusion of Law 60, which provides "For the reasons previously found, the process and criteria used by the County are reasonable and appropriate and should be used in reviewing the NOPC." The Petitioners assert that the terms "reasonable and appropriate" should be replaced with the term "correct" as the Recommended Order's Statement of Issues section provides that one of the issues to be determined in the proceeding is "what are the correct procedures and substantive criteria to be applied" in reviewing the NOPC. The Commission may only modify a conclusion of law over which it has substantive jurisdiction and its substituted or modified conclusion of law must be as or more reasonable than the ALJ's conclusion of law. See Section 120.57(1)(l), Florida Stat. The Commission has reviewed Petitioners' exception and Respondent's response to that exception. Although the Statement of Issues section utilizes the language "correct procedures" in regard to the procedures and substantive criteria utilized by the County, Finding of Fact 29 utilizes the terms "logical and reasonable" to apply to those procedures and criteria. The Commission finds that that the Petitioners' assertion is not as or more reasonable than the Administrative Law Judge's conclusion of law. Therefore, the Petitioners' exception to Conclusion of Law 60 is denied.

Petitioners' Exception 12 is DENIED.

Petitioners' Exception 13: Conclusion of Law 62

Petitioners object to Conclusion of Law 62 as being incorrect and unsupported by the evidence in the record. Conclusion of Law 62 states that "For the reasons previously found, the evidence supports a conclusion that the NOPC revisions are not consistent with objective 3 and policies 3-3 and 3-6 of the Recreation and Open Space Element of the Plan. Therefore, the NOPC does not satisfy the requirement in section 163.3194(1)(a) that the DO is consistent with the local comprehensive plan." The Commission has reviewed the Petitioners' exception and the Respondent's response to that exception. The Commission finds that the Petitioners' assertion is not as or more reasonable than the Administrative Law Judge's conclusion of law. Therefore, the Petitioners' exception to Conclusion of Law 62 is denied.

Petitioners' Exception 13 is DENIED.

Petitioners' Exception 14: Conclusion of Law 63

Petitioners object to Conclusion of Law 63 as being incorrect and unsupported by the evidence in the record. Conclusion of Law 63 provides "For the reasons previously found, the evidence supports a conclusion that the NOPC does not satisfy relevant portions of the LDC." The Commission has reviewed the Petitioners' exception and the Respondent's response to that exception. The Commission finds that the Petitioners' assertion is not as or more reasonable than the Administrative Law Judge's conclusion of law. Therefore, the Petitioners' exception to Conclusion of Law 63 is denied.

Petitioners' Exception 14 is DENIED.

Petitioners' Exception 15: Conclusion of Law 64

Petitioners take exception to Conclusion of Law 64 on the grounds that it is incorrect and unsupported by evidence in the record. In Conclusion of Law 64, the ALJ concludes that the Petitioners do not have a vested right to place up to 561 dwelling units at the location proposed in the NOPC, absent the amendment of Section 14.5 of the DO. The Commission has reviewed the Petitioners' exception and the Respondent's response to that exception. The Commission finds that the Petitioners' assertion is not as or more reasonable than the Administrative Law Judge's conclusion of law. Therefore, the Petitioners' exception to Conclusion of Law 64 is denied.

Petitioners' Exception 15 is DENIED.

ORDER

Upon review and consideration of the entire record in this proceeding, the Recommended Order, and the Petitioners' exceptions and the response to exceptions thereto, the Commission adopts all of the ALJ's findings of facts and conclusions of law in the Recommended Order.

Wherefore, the Commission concludes that the NOPC for the Hammock Dunes Development of Regional Impact, originally filed with the County on February 27, 2009, as amended on June 19, 2009 and on February 11, 2010, is not a substantial deviation; the expiration date of the Hammock Dunes DRI DO is extended to February 28, 2012, by virtue of legislative action in 2007; the reduction in residential units for the DO from 4,400 to 3,800 is approved; the proposed revisions in the NOPC to create a new Cluster 35 and transfer 561 dwelling units to that Cluster are inconsistent with the County's Comprehensive Plan and LDC, and therefore these changes to the DO are denied; and the Petitioners have no vested right to

construct up to 561 dwelling units on 12 acres of land located in the Ocean Hammock Golf Course.

It is therefore ORDERED AND ADJUDGED that: Ginn-La Marina LLLP, LTD; Northshore Hammock LTD, LLLP, and Northshore Ocean Hammock Investment, LTD, LLLP's Notice of Proposed Change, originally filed with the County on March 2, 2009, as amended on June 19, 2009 and on February 11, 2010, is **DENIED** as to the portion of the NOPC which seeks to create a new Cluster 35 on 12 acres of land located in the Ocean Hammock Golf Course and transfer 561 dwelling units to that Cluster and **APPROVED** as to the remainder of the NOPC.

NOTICE OF RIGHTS

Any party to this Order has the right to seek judicial review of the Final Order pursuant to Section 130.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Commission, Office of Policy and Budget, Executive Office of the Governor, The Capitol, Room 1801, Tallahassee, Florida 32399-0001; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. Notice of Appeal must be filed within thirty (30) days of the day this Order is filed with the Clerk of the Commission.

DONE AND ORDERED this _____ day of August, 2011.

JERRY L. MCDANIEL, Secretary
Florida Land and Water
Adjudicatory Commission

FILED with the Clerk of the Florida Land and Water Adjudicatory Commission this _____ day of August, 2011.

Clerk, Florida Land and Water
Adjudicatory Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following persons by United States mail this _____ day of August, 2011.

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Adjudicatory Commission

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