

**FLORIDA LAND AND WATER ADJUDICATORY COMMISSION
AGENDA**

July 29, 2008

1. **Approval of the minutes of the meeting held May 13, 2008. Deferred from the June 10, 2008, meeting.**

2. **Consideration of a Petition to Amend the Boundaries of the Palm Coast Park Community Development District in the City of Palm Coast, Flagler County, Florida. Petitioner: Palm Coast Park Community Development District (FLWAC Case No. CDD-07-019). Deferred from the June 10, 2008, meeting.**

On October 24, 2007, the Palm Coast Park Community Development District submitted a Petition to the Commission requesting amendment of its boundaries. (The Petition was supplemented with additional information at the request of the Secretary of the Commission.) The District currently covers approximately 4,778 acres of land located entirely within the City of Palm Coast and Flagler County. The Petition, as supplemented, proposes to contract the land area presently serviced by the District by deleting approximately 59 acres. After contraction, the District will encompass approximately 4,719 acres. Pursuant to section 190.046(1)(e), F. S., the filing of the Petition for contraction by the District Board of Supervisors constitutes consent of the landowners within the existing District. Petitioner has written consent to the contraction of the boundaries of the District from the owner of the real property to be deleted from the District.

Upon request of the Secretary, the Department of Community Affairs (DCA) reviewed the Petition from the standpoint of their programs and responsibilities, and the requirements of section 190.005(1)(e), F.S. The DCA submitted a comment letter on December 27, 2007, finding no potential inconsistency with Chapter 163, F.S.

Pursuant to Chapter 190, F.S., a local public hearing was conducted by the District Board of Supervisors on December 21, 2007, and continued to January 4, 2008. The District Board of Supervisors submitted a Report to the Commission on January 16, 2008.

Flagler County conducted a public hearing on the District Petition on December 3, 2007, and adopted Resolution No. 2007-108 in support of the proposed contraction. Additionally, the City of Palm Coast conducted a public hearing on the District Petition on December 4, 2007, and adopted Resolution No. 2007-182 in support of the proposed contraction.

Pursuant to Chapter 120, F.S., notices of proposed rulemaking were published in the *Florida Administrative Weekly*. No public hearings were requested and no written comments were received as a result of the notices.

Staff Recommendation:

Approve the Petition, as supplemented, to amend the boundaries of the Palm Coast Park Community Development District and authorize the Secretary to file the rule amendment for final adoption.

Back-Up: (Back-Up documents listed below were distributed with the June 10, 2008, agenda.)

Palm Coast Park Community Development District's Petition and Supplement to the Petition received on October 24, 2007, and November 30, 2007, respectively.

DCA's comment letter received on December 27, 2007.

District Board of Supervisors Report received on January 16, 2008.

Flagler County's Resolution No. 2007-108.

City of Palm Coast's Resolution No. 2007-182.

Final rulemaking package.

3. **Consideration of a Recommended Order issued by the Division of Administrative Hearings in the proceeding Bonita Bay Properties, Inc., and SWF Properties of Southwest Florida, Ltd., vs. City of Bonita Springs (FLWAC Case No. APP-07-013). Deferred from the June 10, 2008, meeting.**

On August 3, 2007, Bonita Bay Properties, Inc., and SWF Properties of Southwest Florida, Ltd., (Petitioners) filed a Petition for Formal Administrative Proceeding appealing the denial of an application to amend the Bonita Bay Development of Regional Impact (DRI). Petitioners sought to amend the Bonita Bay DRI to allow development of residential units within 330 feet of an active bald eagle nest – nest number LE-005.

The City of Bonita Springs entered Resolution No. 07-02 on June 27, 2007, denying the proposed amendment. The City's findings in Resolution No. 07-02 include: the Petitioner did not prove entitlement for the proposed change by demonstrating compliance with the Bonita Springs Comprehensive Plan, with conditions referenced in the resolution and other Bonita Springs Comprehensive Plan Goals, Objectives and Policies; the proposed change, as conditioned was not compatible with existing or planned uses in the surrounding area; the proposed change will adversely affect environmentally critical areas of natural resources; the proposed amendment would have an unfavorable impact upon the environment and natural resources of the area and the negative impact would override the positive value; the proposed use is not appropriate at the subject location in the DRI; and the recommended conditions considered for the eagle management plan, gopher tortoises and other applicable regulations did not provide sufficient safeguards to the public interest.

The subject appeal was forwarded to the Division of Administrative Hearings (DOAH) for assignment of an Administrative Law Judge and further proceedings on October 22, 2007. An administrative hearing was conducted in Bonita Springs on February 12 and 13, 2008, and a Recommended Order was filed with the Commission on April 21, 2008. The DOAH

Administrative Law Judge recommends the Commission enter a final order approving the proposed change to the Bonita Bay DRI. On April 28, 2008, the City of Bonita Springs filed exceptions to the DOAH Recommended Order and on May 8, 2008, the Petitioners filed a response to the City's exceptions.

Staff Recommendation:

To be distributed separately.

Back-Up: (Back-Up documents listed below were distributed with the June 10, 2008, agenda.)

Bonita Bay Properties, Inc., and SWF Properties of Southwest Florida, Ltd., (Petitioners') Petition for Formal Administrative Proceeding received on August 3, 2007.

City of Bonita Springs' Answer to Petition for Formal Administrative Hearing received on September 14, 2007.

City of Bonita Springs' Response in Opposition to Request for De Novo Hearing received on September 14, 2007.

Petitioners' Reply to "Response" of Respondent City of Bonita Springs received on September 26, 2007.

Letter from Christine Bielski received on February 18, 2008.

Letter from Micki Gillespie received on February 22, 2008.

Letter from Lori Nelson received on March 10, 2008.

Letter from Dianne O'Malley received on March 18, 2008.

Division of Administrative Hearings' Recommended Order received on April 21, 2008.

City of Bonita Springs' Exceptions to Recommended Order received on April 28, 2008.

Petitioners' Response to Respondent's Exceptions received on May 8, 2008.

Letter from Jill Kusba received on May 15, 2008.

Letter and attachments from Edgar E. Parks received on May 19, 2008.

Letter from Dan & Pat Jorndt received on May 20, 2008.

Draft Final Order (to be distributed separately)