

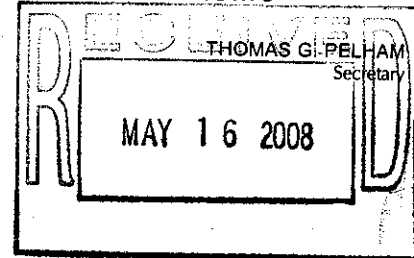


STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor



May 13, 2008

The Honorable D.M. Whitehead
Chairman, Escambia County Board of County
Commissioners
P.O. Box 1591
Pensacola, Florida 32591-1591

Re: Status Regarding Escambia County's Perdido Key amendments

Dear Commissioner Whitehead:

I am writing to summarize the current status of settlement discussions and our review of materials received to date. I apologize for the delay in sending this letter as activities associated with the final weeks of the Legislature have absorbed our attention. After our first meeting, the Department sent a letter that outlined anticipated information and actions to be taken by both the County and the Department. To date the Department has received and reviewed information related to land use need, natural resource policies in the County's Comprehensive Plan, the Coastal High Hazard Area, and the mix of uses allowed by the MU-PK category. We have also received a letter from the U.S. Fish and Wildlife Service and spoken with the Florida Fish and Wildlife Conservation Commission and the Florida Department of Environmental Protection. Based on all of this information, we believe there are additional concerns that must be resolved before the Department can move forward with a settlement.

As part of the response to the Statement of Intent, a land use needs analysis has been submitted. Separate analyses are performed for permanent residential, seasonal/second homes, lodging, and commercial. With respect to permanent residential, it is projected there will be a need for 18,002 dwelling units by 2020 and the County has sufficient vacant developable land to accommodate 27,586 units. The analysis therefore concludes the County has sufficient development capacity on the Future Land Use Map to accommodate the projected 2020 population, not even taking into account the 16,000-acre sector plan, which the County has recently been authorized to prepare.

The demonstration of need for seasonal/second homes is based on a market share comparison between Escambia County and Baldwin County, Alabama, where the county contends, the same development restrictions that constrain Perdido Key are non-existent and Baldwin County therefore enjoys a competitive advantage. First, it is inappropriate to base the need for additional development potential on a comparison with another state which has not crafted the same approach to growth management as Florida. Given Florida's vulnerable geographic position, long exposed coast line, and vigorous growth, the Legislature enacted

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strong growth management laws to control and guide the amount, type, and location of growth, including provisions to direct population concentrations away from coastal high hazard areas. Alabama does not have a similar growth management program. Second, competitive advantage and market share are not the type of needs analysis upon which Florida's growth management program is based. Need is based on projections of growth taking into account past trends and likely future development, not competition and market share. That is the reason the use of population projections from the University of Florida's Bureau of Economic Development and Business Research are central to determining how much additional land should be designated for development by the comprehensive plan.

Third, the analysis emphasizes that Escambia County's market share is smaller than Baldwin County's, and presents figures showing that Baldwin County has 24.7 percent of the six-county market share while Escambia County has 11.5 percent. The analysis also states that Orange Beach has 7,503 condominium units and 881 lodging units. This data is presented to make the point that "... Escambia County in general and Perdido Key specifically have not benefited from the economic benefit, employment and tax revenue that would have come from development on the Key." However, the numbers these comparisons are based on is development that actually exists, not development that has been approved but not yet built; that is, development that is actually drawing visitors who are paying hotel bills, buying goods and services, and paying fees and taxes. Information from the County's own needs analysis indicates that Perdido Key and Orange Beach have roughly the same number of units (Orange Beach 7,503 condominium units and 881 hotel/motels units while Perdido Key has 7,150 dwelling units and 1,000 hotel/motel units). However, in the case of Orange Beach they are actually built, while on Perdido Key, although some have been allocated or reserved, they have not been built. In a recent letter to the Department dated April 18, 2008, David Theriaque, the attorney representing Perdido Key Association, Inc., and Kelly Robertson, intervenors, states that

*Pursuant to the latest information from the County's own website, the number of dwelling units available to be allocated is 136, and the number of lodging units to be allocated is 651. If unallocated units reserved for the WCI development are included, the total increases to 718 dwelling units and 851 lodging units. Moreover, a large portion of these units are based upon development orders that have been issued but not constructed. The number of dwelling units and lodging units actually constructed is **far less** than those that the County has authorized. Indeed, information from the County Tax Collector's Office indicates that there are only approximately 3,889 dwelling and lodging units "on the ground." Additionally, approximately 1,000 vacant parcels are available for single- and multi-family development on Perdido Key. Furthermore, there is the very real possibility that a significant number of the approved, but unbuilt units could return to the available unit pool as development orders expire in today's soft real estate market.*

The County's study concludes that

When 80 percent of visitors to Escambia cite a visit to the beach as a major attraction, and only 5 percent of those same visitors cite the choice (one could say the ability) to stay on Perdido Key, the survey data suggest that there is a lack of

ability to make the choice to stay on the Key – a lack of accommodations supply, or inventory of accommodations units.

We draw a different conclusion. There is abundant additional development capacity existing and approved for Perdido Key by the comprehensive plan, but for reasons apparently attributable to market forces, it has not been built. If it were, then the competitive position of Perdido Key vis-à-vis Baldwin County and Orange Beach would be comparable. The reason only 5 percent of the visitors to Escambia stay on Perdido Key is not because of development caps in the comprehensive plan, but because the number of units the plan authorizes have not been built.

As for lodging units, the analysis is inappropriately based on questionable assumptions, such as the assumption that 20 percent of the visitors to Baldwin County would choose Perdido Key if hotel units were available. Since there is an excess of unclaimed capacity remaining for the construction of lodging units, it is hard to see how increasing the cap would increase Perdido Key's market share. Apparently the market is not there. Other problematic assumptions include the 60% occupancy rate and the 40% allowance for peak periods, and the application of assumptions to inflate the number of lodging units needed. The lodging unit analysis concludes that "both the Escambia County survey and Alabama Gulf Coast CVB studies combined identify a need for 1,286 lodging units to accommodate visitors in today's market." It is unclear how the need for 1,286 lodging units translates into the number of units actually proposed, which is 2,684 units.

The commercial analysis does not support the amount of commercial space proposed. The analysis states that ULI projected that between 100,000 and 150,000 square feet of commercial space would be needed to support a peak season population of between 25,000 and 30,000 residents and visitors. The analysis states that using 14 square feet for each residential unit results in a need for 132,300 square feet. Based on this information it is not clear why 304,450 square feet of nonresidential uses are proposed.

The Department is also concerned about the four-laning of Perdido Key. In the last settlement negotiations when the development cap was increased, the Department agreed to a level of 7,150 residential units and 1,000 lodging units based, in part, upon the improvements to Perdido Key Drive. The County was not able to make those improvements but has recently incorporated capital improvements projects to four-lane Perdido Key Drive from the Alabama State Line to the South end of the Intracoastal Waterway Bridge. Companion improvements include design and engineering of the four-laning of Sorrento Road and the Intracoastal Waterway Bridge itself. Based on this adopted Capital Improvements Schedule, there does not appear to be construction funding for the widening of the bridge across the Intracoastal Waterway and for widening Sorrento Road. Without a committed construction project to widen the bridge and the primary route on the mainland, there is no justification for allowing additional development on the Key as it is a critical circulation and evacuation component. Department staff has coordinated with Florida Department of Transportation to determine if state or federal funds are incorporated into any pertinent work plans and that agency has confirmed that construction funding is not available or planned for the aforementioned facilities.

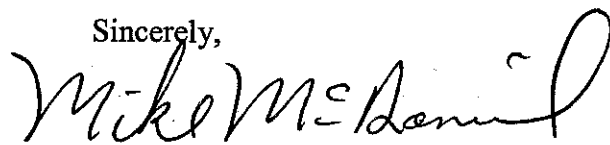
The Honorable D.M Whitehead
May 13, 2008
Page 4

Department staff notes that the hurricane evacuation analysis is based on the four-laning of Perdido Key Bridge and Sorrento Road. Without programmed construction funding the analysis has a critical flaw which is the reliance on facility improvements that are not within the scheduled program. Thus, the proposed development increase for Perdido Key is not supported.

It has also come to our attention in a letter dated March 25, 2008 from the United States Fish and Wildlife Service that there are significant concerns regarding widening the Perdido Key Drive through the state park which is critical habitat, in part, for Perdido Key Beach mice. In conversations with U.S. Fish and Wildlife staff, the planning for the roadway is in its nascent stages having just begun the federal review via the Efficient Transportation Decision Making process for the widening of Perdido Key Drive through the Florida Department of Transportation. The concerns are of a magnitude that the federal agency has indicated its intent to continue objecting to the proposal and to enter into the "dispute resolution" process. Before the roadway can proceed the County must receive federal approval under the Endangered Species Act and it appears that there are significant concerns and challenges that make the receipt of such approval tenuous at best.

Submittals on habitat protection and land use category standards were reviewed but the Department has determined that further comment on those issues should await resolution of the needs analysis and widening of Perdido Key Drive and bridge. Until these fundamental issues are addressed, the Department will not move forward with a settlement which will increase development on the key. Given our current situation and status, the Department will begin focusing its resources on preparing for the upcoming hearing. Should you have any questions please contact me or Kelly Martinson, the attorney handling this matter on behalf of the Department.

Sincerely,



Mike McDaniel, Chief
Office of Comprehensive Planning

MDM/spb

cc: Charles Pepler, Esq., Escambia County Attorney's Office
David Theriaque, Esq., Theriaque Vorbeck & Spain
Uma Outka, Esq., 1000 Friends of Florida
Terry Joseph, Executive Director, West Florida Regional Planning Council