

CHRONOLOGY
CONSERVATION ELEMENT POLICY 5.2.F WETLAND POLICIES AMENDMENT 95B
DOAH CASE 96-2174GM

1. On April 18, 1995, the Board of County Commissioners (BOCC) directed staff to initiate a Comprehensive Land Use Plan (Comp Plan) amendment to repeal Objective 5 of the Conservation Element pertaining to wetlands. The BOCC concern was that the policies were duplicative of various state and federal permitting processes. (Appendix 1 – April 18, 1995 meeting minutes and agenda package)
2. On June 30, 1995, the BOCC approved the 1995B Comp Plan Amendment Package. The amendment package included amendments to several policies in addition to the repeal of Conservation Element Wetlands Policy Objective 5 in its entirety. (Appendix 2 - Proposed deletion of Conservation Element Objective 5)
3. The proposed amendments were then reviewed by both a Citizen Resource Group (CRG) and the Local Planning Agency (LPA). This review was required to occur before the transmittal of proposed amendments to the Florida Department of Community Affairs (DCA). (Appendix 3 - Staff memo)

[CRG review is longer part of the Comp Plan amendment process.]

4. The advisory groups did not recommend repealing Objective 5 in its entirety and offered alternative amendments. (Appendix 4 - Summary of advisory group recommendations)
5. On September 19, 1995, the BOCC voted to approve the Objective 5 amendments proposed by the LPA and on October 18, 1995, BOCC transmitted the proposed amendments to the DCA for consistency review pursuant Ch. 163, F.S. and Ch 9J-5, Florida Administrative Code. (Appendix 5 - Revised amendment and meeting minutes)

[The Department of Economic Opportunity (DEO) is the current, successor agency to DCA.]

[Ch 9J-5 was repealed in 2011, but many of the rule requirements were incorporated into Ch. 163.]

6. On December 22, 1995, DCA issued an Objections, Comments, and Recommendations (ORC) Report finding the Conservation Element plan amendment to be in non-compliance for a variety of reasons. (Appendix 6 - ORC Report and agency comments)

[DCA's objections claimed the proposed amendment was inconsistent because:

1. It failed to directs future land uses which are incompatible with the protection of wetlands and wetland functions away from wetlands, deferred wetland protection to permitting agencies and

eliminated land use planning requirements for nonjurisdictional wetlands.

2. There was insufficient data and analysis to support the proposed amendment.

3. It was internally inconsistent with other policies regarding the protection of natural resources such as floodplains, wildlife and wildlife habitat, and ground and surface water quality.

4. It would allow increased development for residential, commercial and industrial uses above that currently provided for by the County's comprehensive plan and create urban sprawl.

The recommendation was to not adopt the proposed amendment. Comments from other objecting agencies are included for additional insight.]

7. On February 6, 1996, the BOCC discussed the proposed amendments and the objections from the state agencies. (Appendix 7 – Meeting minutes)
8. On February 16, 1996, the BOCC held a workshop attended by representatives from state agencies. (Appendix 8 – Meeting minutes)
9. On February 23, 1996, the BOCC adopted Ordinance 96-05. (Appendix – 9 Meeting minutes and ordinance)
10. On April 18, 1996, DCA issued a Notice of Intent to find the amendments in non-compliance. DCA subsequently filed a request for an administrative hearing with the state Division of Administrative Hearings (DOAH). (Appendix 10 – DCA Notice of Intent)
11. On May 9, 1996, the Florida Native Plant Society, Indian River Audubon Society, Conradina Chapter of the Florida Native Plant Society and the Sierra Club Turtle Coast Group petitioned for leave to intervene in the administrative hearing process. The Florida Audubon Society, 1000 Friends of Florida and Howard Wolf subsequently petitioned for leave to intervene (These parties are collectively referred to as the Intervenors.)

[In addition to DCA's objections, the Intervenors claimed that the proposed amendment was inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as set forth in sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j)(1996).]

12. On May 12, 1997, DCA entered into a stipulated settlement agreement with Brevard County resolving the non-compliance items. On July 1, 1997, the BOCC adopted Ordinance 97-22. (Appendix 11 – Stipulated settlement agreement, ordinance and meeting minutes)

13. On August 11, 1997, the Intervenor filed an amended administrative petition against the County and DCA to challenge Ordinance 97-22.
14. On April 27, 1999, the BOCC discussed proposed settlement language with the Intervenor at a regular board meeting. A stipulated settlement agreement was approved on August 24, 1999, and the Board adopted Ordinance 99-48. (Appendix 12 – Meeting minutes, correspondence, stipulated settlement agreement, Ordinance 99-48)
15. A subsequent remedial Ordinance 99-52 was adopted to replace a map included in Ordinance 99-48 to accurately reflect the acreage of forested wetlands subject to the new policy language. The 1997 amendment was rescinded as a condition of this second settlement agreement. (Appendix 13 – Meeting minutes, correspondence, Ordinance 99-52)
16. DCA found the amendments to be in compliance with Ch. 163, F.S and Rule 9J-5, FAC. and the new language went into effect on November 19, 1999. (Appendix 14 – Notice of Intent)
17. Chart showing the progression of amendment language to Conservation Element Policy 5.2.F (Appendix 15)