

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

CLONTS GROVES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
DEPARTMENT OF COMMUNITY AFFAIRS,	)	Case No.
	)	
and	)	
	)	
LAKE COUNTY,	)	
Respondents.	)	

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**PETITION FOR FORMAL ADMINISTRATIVE HEARING**

COMES NOW, Clonts Groves, Inc., a Florida corporation ("Petitioner"), and files this Petition for Formal Administrative Hearing with the Florida Department of Community Affairs (the "Department"), pursuant to Sections 163.3184(9), 120.569, and 120.57, Florida Statutes, and Rule 28-106.201, F.A.C., challenging Lake County's (the "County") comprehensive plan amendment identified as Ordinance No. 2010-25 and the Department's Notice of Intent to find said amendment "in compliance" and states:

**AFFECTED AGENCIES**

1. The agencies affected by this Petition include the State of Florida Department of Community Affairs, whose address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, and whose file or identification number is Docket No. 10-1ER-NOI-3501-(A)-(I); and Lake County, whose address is 315 West Main Street, Tavares, Florida 32778, and whose file or identification number is unknown.

**IDENTIFICATION OF PETITIONER**

2. Petitioner is a Florida corporation with a business address of 1001 Geneva Drive, Oviedo, Florida 32765, and a telephone number of (407) 359-2995.

3. Petitioner owns real property in Lake County, Florida, consisting of approximately 730 acres of land located at the southeast corner of U.S. Highway 27 and Schofield Road (the "Property").

4. Petitioner's representative is Cecelia Bonifay, Esq., Akerman Senterfitt, Post Office Box 231, Orlando, Florida 32802, (407) 423-4000. The representative's address shall be the address for service purposes during the course of this proceeding.

#### NOTICE OF AGENCY ACTION

5. In accordance with Section 163.3184(9), Florida Statutes, the Department issued its "Notice of Intent" (the "Notice of Intent"), Department Docket No. 10-1ER-NOI-3501-(A)-(I), to find the amendment to the Lake County Comprehensive Plan (the "Plan"), adopted under Lake County Ordinance No. 2010-25 (the "Plan Amendment"), "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes.

6. Petitioner received notice of publication of the Notice of Intent in the July 3, 2010, edition of the *Orlando Sentinel – Lake Sentinel*. A copy of said Notice of Intent is attached as Exhibit "A."

#### PETITIONERS' STANDING

7. Petitioner is an "affected person" pursuant to Section 163.3184(1)(a), Fla. Stat., by virtue of owning the Property within unincorporated Lake County, and also by owning and operating an active citrus grove business on the Property in unincorporated Lake County, and having submitted oral and written comments to the County objecting to the Plan Amendment during the period of time beginning with the transmittal hearing and ending with the adoption hearing.

8. Petitioner's substantial interests are and will be adversely affected by adoption of the Plan Amendment because the Plan Amendment conflicts with Petitioner's existing use of the

Property as a financially viable orange grove, as well as Petitioner's planned use of the Property for a mix of commercial and residential development, and the Plan Amendment will significantly devalue the Property. The Plan Amendment attempts to replace the Property's existing Urban Expansion future land use designation with the newly-created Rural Transition future land use designation. If approved, this change would result in a 95% reduction in residential density for the Property – from four dwelling units per acre to one dwelling unit per five acres.<sup>1</sup> In addition, this change would eliminate commercial, retail, office and industrial as potential uses for the Property and replace them with significantly less-intensive uses, such as parks, equestrian related uses, schools and religious organizations. The devaluation of the Property caused by the Plan Amendment, if allowed to stand, will have a material, negative economic impact on Petitioner and its ability to secure financing for its citrus grove business.

9. Furthermore, Petitioner's substantial interests are and will be adversely affected by the adoption of the Plan Amendment because it is not supported by adequate data and analysis, is not compatible with the character of adjacent land uses, is internally inconsistent with the County's comprehensive plan, and it fails to adequately balance the property rights of the landowner.

#### MATERIAL FACTS IN DISPUTE

10. Whether the Plan Amendment is "in compliance" with Florida law, as that term is defined in Section 163.3184(1)(b), Florida Statute.

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<sup>1</sup> Although the Rural Transition future land use designation permits an alternative maximum allowed density of 1 unit/acre, this option is not feasible as it requires the permanent dedication of more than one-half of the Property as open space. The dedication of one-half of the net usable acreage of the Property will result in an opportunity cost that exceeds any benefit to be gained by the increased density.

## ULTIMATE AND SPECIFIC FACTS ALLEGED

### Ultimate Allegation

11. The Plan Amendment violates Sections 163.3177(6)(a) and (8), Florida Statutes, and Rules 9J-5.005(2) and 9J-5.006(2), F.A.C., because it is not based on adequate data or analysis for reasons including, but not limited to, those set forth in Sections 12 – 13 below.

### Specific Allegations

12. Since the Lake County Comprehensive Plan was initially adopted over 19 years ago,<sup>2</sup> the Property has been designated Urban Expansion on the County's Future Land Use Map. The Urban Expansion future land use category authorizes a variety of commercial and non-commercial uses, including commercial, retail, office, industrial and residential up to a maximum density of 4 dwelling units per acre, which is consistent with the Property's urban characteristics. The Property has over one-half mile of frontage along U.S. Highway 27, a major arterial roadway which is part of the Florida Intrastate Highway System and Strategic Intermodal System. The Property is located within the Lake County – City of Clermont Joint Planning Area, a district created pursuant to Section 163.3171(1) and (3), Fla. Stat., for the purpose of planning the development of properties expected to be annexed into the City of Clermont. The Property is located within the service territory of two central utility (potable water and sanitary sewer) providers – the City of Clermont and Utilities, Inc. Despite the overwhelming amount of evidence demonstrating the Property's suitability for mid to high-density residential development, the Plan Amendment attempts to "down-future land use" the Property from Urban Expansion to Rural Transition, resulting in a 95% reduction in density and the elimination of commercial, retail, industrial and office as potential uses for the Property. The data and analysis

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<sup>2</sup> The existing Lake County Comprehensive Plan was initially adopted on July 9, 1991, pursuant to Ordinance 1991-12, according to the existing Lake County Comprehensive Plan, page 3.

relied upon by the County to limit use of the Property to Rural Transition is neither relevant nor appropriate because it fails to adequately consider existing technical studies and the best available existing data applicable to the Property, in violation of Rules 9J-5.005(2)(a) and (2)(c), F.A.C. The Plan Amendment fails to analyze the availability of facilities and the suitability of the Property for future residential development, as well as the amount of land needed to accommodate the projected population, in violation of Rule 9J-5.006(2), F.A.C.

13. The Plan Amendment arbitrarily discriminates among various uses within the same Rural Transition designation, by requiring different impervious surface ratios for each. Policy 1-1.4.5 of the Plan Amendment states that the "maximum Impervious Surface Ratio within [the Rural Transition category] shall be 0.30, except for agricultural, civic and recreational uses which shall be 0.50." Significantly, the Plan Amendment does not define the term "Impervious Surface Ratio." This term is unclear and not measurable in violation of Rule 9J-5.005(6), F.A.C. Assuming that "Impervious Surface Ratio" means the ratio of impervious area, such as roads, driveways, parking lots and buildings, to land area, then Policy 1-1.4.5 lacks the necessary data and analysis to support the application of different impervious surface ratios within the same future land use district. If the purpose of the Impervious Surface Ratio is to measure the impact of development on land and water resources, then the nature of the use is irrelevant. For purposes of measuring the impacts to the rate of aquifer recharge, for example, it matters not whether the concrete comes from a home or a horse stable. Therefore, the fact that multiple uses are permitted an Impervious Surface Area Ratio of 0.50 in the Rural Transition future land use category proves that a 0.30 Impervious Surface Area Ratio for other uses within the same district is an arbitrary limitation not supported by appropriate data and analysis in violation of Rules 9J-5.005(2) and 9J-5.006(2), F.A.C. Moreover, both Impervious Surface

Ratios contained in Policy 1-1.4.5 of the Plan Amendment inordinately burden the property owner and violate private property rights in violation of Rule 9J-5.005(8), F.A.C.

**General Allegation**

14. The Plan Amendment is inconsistent with Rule 9J-5.005(6), F.A.C., because the goals, objectives and policies do not establish meaningful and predictable standards for the use and development of land, do not provide meaningful guidelines for the content of more detailed land development and use regulations, and do not allow for implementation in a consistent manner for reasons including, but not limited to, those set forth in Sections 15 – 18 below.

**Specific Allegations**

15. The Plan Amendment offers bonus densities in the Rural Transition future land use category, but fails to contain meaningful and predicable standards necessary for Petitioner to measure the costs associated with these increased densities. Policy 1-4.5 of the Plan Amendment limits the maximum density on the Property to one (1) unit per five (5) net buildable acres, except where "Rural Conservation Subdivisions" are utilized. For "Rural Conservation Subdivisions," the maximum density is increased to one (1) unit per one (1) net buildable acre. Chapter X of the Plan Amendment defines a "Rural Conservation Subdivision" as "a clustered subdivision design that preserves natural resources and features within the subdivision in large contiguous common open space tracts *consistent with the design criteria in this plan.*" (emphasis added). Although Chapter X mandates compliance with the design criteria contained in the Plan Amendment, no such design criteria exists. Thus, the Plan Amendment is internally inconsistent in violation of Rule 9J-5.005(5), F.A.C. Instead, Policy 1-7.4.2 contains vague and unpredictable policies for the eventual adoption of such criteria into the County's Land Development Code, including:

- protect dark skies through a dark sky lighting ordinance;
- ensure that development along roadway corridors improves or protects the rural character of the corridor; and
- enhance the rural character of the project and surrounding area.

At their core, these policies call for the protection of dark skies and the character of the surrounding area, but lack specifics on how this might be accomplished. These policies are vague and immeasurable, and Petitioner is unable to determine their impact on the existing use of the Property and its ability to be developed in the future, in violation of Rule 9J-5.005(6), F.A.C.

16. Policy III-2.1.5 of the Plan Amendment states: "The County shall require the use of water conserving plumbing fixtures in all new development." The Plan Amendment does not define the term "water conserving plumbing fixtures," leading to the inconsistent application of this Policy and the lack of meaningful and predictable standards for the use and development of land in violation of Rule 9J-5.005(6), F.A.C.

17. Policy III-2.1.11 of the Plan Amendment states: "Lake County shall prohibit land uses which are known to pose a severe threat to the availability of groundwater resources or whose practices are known to pose a severe threat to the quality of groundwater." This Policy lacks meaningful and predictable standards as to what constitutes a land use that "poses a threat to the availability of groundwater resources or whose practices are known to pose a severe threat to the quality of groundwater" in violation of Rule 9J-5.005(6), F.A.C.

18. Policy III-2.1.25 of the Plan Amendment states: "All new private central wastewater systems ... shall be designed and built as *advanced wastewater treatment systems....*" (emphasis added). The Plan Amendment does not define the term "advanced wastewater treatment system," leading to the inconsistent application of this Policy and the lack

of meaningful and predictable standards for the use and development of land in violation of Rule 9J-5.005(6), F.A.C.

**General Allegation**

19. The Plan Amendment violates Rule 9J-5.005(5), F.A.C., because it is internally inconsistent for reasons including, but not limited to, those set forth in Sections 20 – 23 below.

**Specific Allegations**

20. Policies 1-1.3.3 and 1-5.1.1 contained in the Plan Amendment are inconsistent with each other, as those policies are being interpreted by the County. According to Policy 1-1.3.3 of the Plan Amendment, the Urban Medium Density future land use category "*shall* be located on or in close proximity to major collectors and arterial roadways to minimize traffic on local and minor collector roadways and to provide convenient access to transit facilities." (emphasis added). Based on this policy, the Property must be classified as Urban Medium Density since it has over one mile of frontage along U.S. Highway 27, a major arterial roadway. However, Policy 1-5.1.1 provides that: "Adjacent to Rural Protection Areas, the County *shall* utilize either the Rural or Rural Transition Future Land Use Category *wherever possible* to safeguard the long-term integrity of Rural Protection Areas and maintain a lasting compatible boundary between rural areas and more dense urban land uses." (emphasis added). Thus, Policy 1-5.1.1 requires the Property to be designated Rural Transition since it is located adjacent to a proposed Rural Protection Area, but only *when possible*. However, rather than reconcile these two policies by recognizing that Rural Transition is not a possible designation for the Property since it is adjacent to a major arterial roadway, the County created a conflict between the two policies by designating the Property as Rural Transition. This internal inconsistency violates Rule 9J-5.005(5), F.A.C.



21. The designation of the Property as Rural Transition is inconsistent with Policy 1-1.1.6 of the Plan Amendment because it does not direct density to existing urban centers. Policy 1-1.1.6 requires the County to "direct growth to existing urban areas where public facilities and services are presently in place, and discourage growth within rural areas." It further provides:

"Higher intensity commercial uses and higher density residential infill development shall be encouraged within municipalities and existing urbanized areas of the County to conserve rural land and maintain vibrant communities. Urban infill and redevelopment shall be encouraged within the Urban Future Land Use series where adequate public facilities, including central water and sewer facilities are available."

Based on the above policy, the Property should be given a future land use that is consistent with the Urban Future Land Use series contained in the Plan Amendment, which Rural Transition is not. This is because the Property is located within an existing urban area of the County where central water and sewer facilities are available or are planned to be available. As additional evidence that the Property is located within an existing urban area, the Property is located within the Lake County – City of Clermont Joint Planning Area created by the Joint Planning Interlocal Agreement between Lake County and the City of Clermont, dated December 3, 2003 (the "Agreement"). The ninth whereas clause of the Agreement states:

"WHEREAS, the Joint Planning Area depicted in Exhibit "A" [which includes Petitioner's Property] represents *areas of logical urban expansion ... contiguous to the current corporate limits* and is not in conflict with urban service provision areas adopted by adjacent municipalities."

(emphasis added). Besides being internally inconsistent, the Plan Amendment is not based on relevant and appropriate data and analysis because it ignores the Property's location in an "area of logical urban expansion," its location within two utility service areas which will ensure the provision of water and sewer to the site, and the fact that on February 17, 2010, Petitioner sent a

letter advising the Department and the County that Petitioner is in talks with the City of Clermont regarding annexation of the Property.

22. The designation of the Property as Rural Transition is inconsistent with Objective I-7.6 of the Plan Amendment because it fails to utilize compact land-use planning and strategies to reduce greenhouse gas emissions. It is inconceivable that the Property with over one-half mile of frontage along U.S. Highway 27 and within the City of Clermont-Lake County Joint Planning Area should be developed with five-acre tracts spread over 730 acres. Not only does this promote the inefficient use of land, it promotes the inefficient use of existing transportation facilities and contributes to increased greenhouse gas emissions by requiring future residents to travel away from the Property to obtain necessary goods and services. The Rural Transition designation on the Property also violates Section 163.3177(6)(a), Fla. Stat., which requires the future land use element to be based upon surveys, studies and data regarding greenhouse gas reduction strategies.

23. The designation of the Property as Rural Transition is inconsistent with the Economic Element that is also contained within the Plan Amendment. The Rural Transition designation severely restricts the usability and developability of the Property and the surrounding area. These actions are in direct conflict with the County's mandate to "diversify [the County's] tax base and encourage high-wage employment opportunities" and to "implement and enforce policies which require development of partnerships with public and private sectors in an effort to bring economic development and employment opportunities to Lake County" as set forth in the Economic Element of the Plan Amendment at Goal IV-1 and Objective IV-1.1, respectively.

### **General Allegation**

24. The Plan Amendment violates the requirements of Section 163.3161(9), Fla. Stat., because it fails to protect private property rights and is inconsistent with the property rights goals and policies of the State Comprehensive Plan in Section 187.201(15), Fla. Stat., for reasons including, but not limited to, those set forth in Sections 25 – 27 below.

### **Specific Allegations**

25. If allowed to stand, the Plan Amendment will severely diminish the value of the Property by reducing the stated density by 95%, from four units per acre to one unit per five acres.<sup>3</sup> See Policy 1-1.4.5. Additionally, the Plan Amendment will eliminate commercial, retail, office and industrial as potential uses for the Property. *Id.* In making future development of the Property economically infeasible, the Plan Amendment demonstrates a lack of sensitivity to private property rights and is unduly restrictive without full and just compensation, in violation of Sections 163.3161(9) and 187.201(15), Fla. Stats., and Rule 9J-5.005(8), F.A.C. At worst, the Plan Amendment amounts to a regulatory taking of private property without just compensation in violation Rule 9J-5.001(4), F.A.C., which requires compliance with all applicable statutes, laws and rules, including the state and federal constitutions.<sup>4</sup>

26. As noted in footnote 2 below, the Plan Amendment presents alternatives to enable the Petitioner to obtain densities in excess of one (1) unit per five (5) net acres, but these alternatives are unworkable and violate the various statutory and rule provisions. Policy 1-1.4.5 of the Plan Amendment allows a maximum density of one (1) unit per three (3) net acres, on the

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<sup>3</sup> Although the Rural Transition future land use designation permits an alternative maximum allowed density of one dwelling unit per acre, this option is not feasible as it requires the permanent dedication of more than one-half of the Property as open space. The dedication of one-half of the net usable acreage of the Property will result in an opportunity cost far in excess of the benefit gained by the slight increase in density.

<sup>4</sup> The Takings Clause of the Fifth Amendment, which is applicable to states through incorporation of the Due Process Clause of the Fourteenth Amendment, says that private property shall not be taken for public use without just compensation. U.S. Const. amend. V; Palazzolo v. Rhode Island et al., 533 U.S. 606, 617 (2001). Florida's Constitution similarly provides that no private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner. Fla. Const. art. X § 6.

condition that at least 35% of the net buildable area is "dedicated in perpetuity" as open space. Similarly, Policy 1-1.4.5 of the Plan Amendment allows a maximum density of one (1) unit per (1) net acre, on the condition that at least 50% of the net buildable area is "dedicated in perpetuity" as open space. However, the dedication into perpetuity of up to 50% of the net buildable area of the Property through the use of a conservation easement dedicated to the Florida Department of Environmental Protection or St. Johns River Water Management District, as required pursuant to Policy 1-1.4.6,<sup>5</sup> would effectively prevent any redevelopment of the Property in the future, even beyond the Plan Amendment's planning horizon of 2030. There is no data and analysis to support the County's attempt to eliminate the potential for redevelopment of the Property beyond the current planning horizon of 2030, in violation of Rules 9J-5.005(2) and 9J-5.006(2), F.A.C. Moreover, the Plan Amendment places the cost of maintaining the open space upon the landowner, despite the requirement that these lands be dedicated into perpetuity for the benefit of the public. See Policy 1-1.4.6. It is impermissible under federal case law to force to a private landowner to become an unpaid conservator of land for the benefit of the general public. Palazzola v. Rhode Island et. al., 533 U.S. 606 (2001); Rule 9J-5.001(4), F.A.C.

27. Policy II-1.1.6 of the Plan Amendment contains development standards for stormwater management above and beyond that required by the applicable water management district. These standards create an additional layer of regulation that is unduly burdensome on private property rights.

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<sup>5</sup> Policy 1-1.4.6 addresses the preservation of open space within a "Rural Conservation Subdivision," which Petitioner must develop in order to be eligible for the alternative densities under Policy 1-1.4.5. See Policy 1.4.5. Policy 1-1.4.6 requires the dedication of open space by a conservation easement or similar binding and recorded instrument that runs with the property into perpetuity, and that such easement be conveyed to a conservation agency. Eligible conservation agencies include the Florida Department of Environmental Protection, St. Johns River Water Management District, a non-profit conservation organization or land trust, or Lake County, subject to County approval. See Policy 1-1.4.6.

**General Allegation**

28. In transmitting and adopting the Plan Amendment, the County failed to provide proper assurances and procedures for ensuring and encouraging public participation in the planning process as required by Rule 9J-5.004, F.A.C., and Section 163.3177, Fla. Stat., for reasons including, but not limited to, those set forth in Section 29 below.

**Specific Allegation**

29. The County violated Rule 9J-5.004, F.A.C., and Section 163.3177, Fla. Stat., by severely limiting Petitioner's opportunity for public comment at the transmittal hearing, while affording other property owners significantly more time. The County allotted three minutes of hearing time for each member of the public who spoke at the transmittal hearing. However, the County declined Petitioner's request to differentiate between those speakers who represented themselves and those speakers, including Petitioner's attorney, who represented multiple affected owners. Because Petitioner's case was one of several squeezed into a three minute presentation, the effect of the Lake County Board's directive was to limit Petitioner's hearing time to less than one minute. By comparison, those owners who represented themselves received three times as much hearing time. The County failed to give advance notice to Petitioner that its right to participate in the planning process would be materially affected by its decision to hire an attorney. However, even if the County did provide such notice, such limitations on the Petitioner's rights would still be in violation of Rule 9J-5.004, F.A.C. and Section 163.3177, Florida Statutes.

**General and Specific Allegation**

30. Policy II-1.1.8 of the Plan Amendment attempts to fix level of service standards for potable water facilities not under the maintenance jurisdiction of the County in cases where

the municipality's level-of-service is below 100 gallons per capita per day. This policy violates Section 163.3180, Fla. Stat., which states as follows:

(3) Government entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on government entities that do bear those responsibilities.

**General and Specific Allegation**

31. Policy II-1.1.9 of the Plan Amendment attempts to fix level of service standards for sanitary sewer facilities not under the maintenance jurisdiction of the County in cases where the municipality's level-of-service is below 100 gallons per capita per day. This policy violates Section 163.3180, Fla. Stat., which states as follows:

(3) Government entities that are not responsible for providing, financing, operating, or regulating public facilities needed to serve development may not establish binding level-of-service standards on government entities that do bear those responsibilities.

**General and Specific Allegation**

32. The Plan Amendment is inconsistent with the concurrency requirements found in Section 163.3180, Florida Statutes. Section 163.3180(2)(c), Fla. Stat., requires needed transportation facilities to be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation. However, under the "pay and go" option found in subsection (16), a developer is entitled to a building permit even though it otherwise fails to meet transportation concurrency, if it contributes its fair share of the cost of the needed improvement. Section 163.3180(16)(b) and (f), Fla. Stat. The developer is entitled to utilize the "pay and go" option if the improvement is reflected in the *first 5 years* of the 5-year capital improvements element of the local government's financially feasible comprehensive plan. Id. Policy II-3.1.6(2) of the Plan

Amendment conflicts with the "pay and go" section of the statute by allowing issuance of a building permit only if the necessary road improvements are scheduled within the *first 3 years* of the County's Five-Year Capital Improvements Plan. Such action violates Rule 9J-5.001(4), F.A.C., which requires the Plan Amendment to comply with Chapter 163, Florida Statutes.

#### INCONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

33. The Plan Amendment is inconsistent with several provisions of the State Comprehensive Plan, including Section 187.201(4)(b)3. and 4., Section 187.201(14), Section 187.201(15)(a) and (b)1., Section 187.201(21)(a) and (b)1., Section 187.201(24)(b)5., and Section 187.201(25)6., Florida Statutes.

#### STATUTES AND RULES ENTITLING PETITIONERS TO RELIEF

34. Petitioner is entitled to relief pursuant to Chapter 163, Part II, Fla. Stat., Rule 9J-5, F.A.C., and the State Comprehensive Plan.

35. Section 163.3184(1)(b), Fla. Stat., states that a comprehensive plan amendment is "in compliance" if it is consistent with Sections 163.3177, 163.3178, 163.3180, 163.3191, and 163.3245, Fla. Stat., the State Comprehensive Plan, the applicable strategic regional policy plan, and Rule Chapter 9J-5, F.A.C.

36. As alleged above, the Plan Amendment is inconsistent with Section 163.3177, Fla. Stat., Rule Chapter 9J-5, and the State Comprehensive Plan. Therefore, the Plan Amendment is not "in compliance."


#### RELIEF SOUGHT BY PETITIONERS

37. Petitioners seek the following relief:

(a) That this Petition be forwarded to the Division of Administrative Hearings to conduct a formal administrative hearing on this matter in the manner prescribed by law;

(b) That the Administrative Law Judge assigned to this matter issue a recommended order finding the Plan Amendment not "in compliance" for the reasons described above; and


(c) That the Administration Commission enter an order finding the Plan Amendment to be not "in compliance" and require the County to rescind the Plan Amendment or adopt remedial actions that would bring the Plan Amendment into compliance.

  
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CECELIA BONIFAY, ESQ.  
Florida Bar No. 0546992  
AKERMAN SENTERFITT  
P.O. Box 231  
Orlando, FL 32802  
(407) 423-4000  
Fax No: (407) 254-4230

Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399; and a copy was provided to Charles Gauthier, AICP, Director Community Planning, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399; and a copy was provided to Melanie Marsh, Acting County Attorney, Lake County, 315 West Main Street, Tavares, Florida 32778, this 13<sup>th</sup> day of August, 2010.

  
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CECELIA BONIFAY



## Exhibit "A"

Published in the ORLANDO SENTINEL-LAKE SENTINEL on FRIDAY, JULY 23, 2010.

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS  
NOTICE OF INTENT TO FILE  
LAKE COUNTY  
COMPREHENSIVE PLAN AMENDMENT  
IN COMPLIANCE  
DOCKING: 10-1ER-KU-35U-(A)-(1)

The Department gives notice of its intent to find the Amendment to the Comprehensive Plan for Lake County, adopted by Ordinance No. 2010-23 on May 23, 2010, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S., except for amendments 1, 2, 3, 4, 5, 6, 7, 9, 10, and 11, which were not properly adopted and are identified in the Table entitled "Future Land Use Map Changes" (19 changes made in the Transportation) Lake County 2036 Comprehensive Plan" as submitted by the County on June 11, 2010. The Department did not make a compliance determination on Amendments 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 which are further identified as follows: Amendment No. 1 - 1500 acres, west of US 27, Fruitland Park and Lady Lake area, from Rural to Urban Low Density; Amendment No. 2 - 16.3 acres, CR 44, Radio Road and CR 473 area, from Urban Expansion and Rural within a Neighborhood Activity Center, to Regional Commercial; Amendment No. 3 - 17.5 acres, CR 44 and Emerald Avenue, Tressburg Area, from Rural Village to Industrial; Amendment No. 4 - 291 acres, Lake Road, Lake Lincoln Lane and Balise Avenue, East side, from Suburban and Urban Expansion to Urban Low Density; Amendment No. 5 - 10 acres at SR 44 and CR 437, Rustic area, from Rural, WRPA Receiving area within a Neighborhood Activity Center, to Rural, Rural Transition and WRPA Receiving area with a Rural Support Intersection overlay; Amendment No. 6 - 40 acres on US 441 East of W. Dora, Florida 1 who Gladys Parale, Urban Expansion to Regional Commercial; Amendment No. 7 - 25 acres on CR 437, Jones parcel, in Mt. Plymouth Sorrento area from Urban Compact Node Non-Residential to Mt. Plymouth Sorrento Main Street (51 acres) and Mt. Plymouth Sorrento Neighborhood (34 acres); Amendment No. 9 - 350 acres west to Industrial Park in the Cleveland area, from Suburban to Regional Office; Amendment No. 10 - 42 acres south of RR 50, East of Clement, from Urban Expansion with Employment Center Overlay to Regional Office; and Amendment No. 11 - 615 acres north of SR 50 and CR 50, East of Clement, from Urban Expansion to Urban Low Density.

The adopted Lake County Comprehensive Plan Amendment and the Department's Objections, Recommendations and Comments Report (if any) are available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Lake County Department of Growth Management, Division of Planning, 315 West Main Street, 3<sup>rd</sup> Floor, Administration Building, Room 410 and the Clerk's Office, 315 West Main Street, Tavares, Florida 32778-7800.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendment to the Lake County Comprehensive Plan is in compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within seventy-one (71) days after publication of this notice, and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Stannard Oak Boulevard, Tallahassee, Florida 32399-3100, and a copy mailed or delivered to the local government. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

If a petition is filed, other affected persons may petition for leave to intervene in the proceeding. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.203, F.A.C. A petition for leave to intervene shall be filed at the Division of Administrative Hearings, Department of Management Services, 1240 Apalachee Parkway, Tallahassee, Florida 32399-3068. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing under Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.

-s- Mike McDaniel, Chief  
Office of Comprehensive Planning  
Division of Community Planning  
Department of Community Affairs  
2555 Stannard Oak Boulevard  
Tallahassee, Florida 32399-3100