

County Attorney  
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STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

W.D. LONG FAMILY FARMS, LLLP, a Florida limited liability limited partnership; EDWARDS HARBOR, LLC, a Florida limited liability company; EDWARDS CAPITAL, LLC, a Florida limited liability company; EDWARDS KEY, LLC, a Florida limited liability company; BAKER HERITAGE, LLC, a Florida limited liability company; BAKER COMPLEX, LLC, a Florida limited liability company; BAKER KID, LLC, a Florida limited liability company; ISLAND TREE, LLC, a Florida limited liability company; AMES HOLDINGS, LLC, a Florida limited liability company; AMES CHARTER, LLC, a Florida limited liability company; AMES KAPP, LLC, a Florida limited liability company; JJW INVESTMENTS, LLC, a Florida limited liability company; ARNOLD GROVES and RANCH, LTD, a Florida limited partnership; and JAMES E. ROPER, as Trustee, et al. under the Will of Grace Bernice Roper; GORDON TENDER, LLC; GORDON KEEP, LLC; GORDON HEDGE, LLC, a Florida limited liability company; GORDON TRACK, LLC, a Florida limited liability company; GORDON HORN, LLC, a Florida limited liability company; CURTIS HOSPITALITY, LLC, a Florida limited liability company; CURTIS CUSTOM, LLC, a Florida limited liability company; CURTIS KING, LLC, a Florida limited liability company; DAVIDSON HARVEST, LLC, a Florida limited liability company; DAVIDSON CRUISER, LLC, a Florida limited liability company; DAVIDSON KEG, LLC, a Florida limited liability company;

DCA Docket No.:

1ER-NOI-3501-(A)-(1)

Petitioners,

vs.

LAKE COUNTY, FLORIDA and the FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS,

Respondents.

**PETITION FOR FORMAL ADMINISTRATIVE HEARING CHALLENGING  
COMPLIANCE OF PROPOSED COMPREHENSIVE PLAN**

W.D. Long Family Farms, LLLP; Edwards Harbor, LLC; Edwards Capital, LLC; Edwards Key, LLC; Baker Heritage, LLC; Baker Complex, LLC; Baker Kid, LLC; Island Tree, LLC; Ames Holdings, LLC; Ames Charter, LLC; Ames Kapp, LLC; and JJW Investments, LLC, (collectively, the “Group 1 Petitioners”); together with Arnold Groves and Ranch, Ltd; James E. Roper, as Trustee, et al., under the Will of Grace Bernice Roper; Gordon Tender, LLC; Gordon Keep, LLC; Gordon Hedge, LLC; Gordon Track, LLC; Gordon Horn, LLC; Curtis Hospitality, LLC; Curtis Custom, LLC; Curtis King, LLC; Davidson Harvest, LLC; Davidson Cruiser, LLC; and Davidson Keg, LLC; (collectively, the “Group 2 Petitioners”), by and through their undersigned attorneys, and pursuant to Sections 120.569, 120.57(1) and 163.3184(9)(a), Florida Statutes (“F.S.”), hereby request a formal administrative hearing to challenge the “in compliance” finding made by the Florida Department of Community Affairs (the “Department”) regarding the proposed Lake County Comprehensive Plan (the “Proposed Plan”). In support thereof, Petitioners state as follows:

#### **A. PRELIMINARY STATEMENT**

1. The Group 1 Petitioners are owners of property located in that portion of Lake County (the “County”) that the Proposed Plan designates as the South Lake Strategic Area Plan (the “SAP”). The Group 2 Petitioners are owners of property located in that portion of the County that the Proposed Plan designates as the South Lake Rural Protection Area (the “South Lake RPA”). The policies in the Proposed Plan that affect properties in the SAP and the South Lake RPA (i) are internally inconsistent; (ii) are not supported by sufficient data and analysis; (iii) do not establish meaningful and predictable standards for use in the development of the land within the SAP and/or the South Lake RPA Future Land Use designations; (iv) do not provide meaningful guidelines for the content of more detailed land development regulations and (v) have clear property rights implications that were not appropriately considered by the Lake

County Board of County Commissioners (the "County Commission") when adopting the Proposed Plan. In addition, the County failed to comply with required procedures to provide adequate notice to affected property owners, or to ensure adequate opportunities for the public to provide written comments, or to assure the consideration of and response to those comments. As such, the Proposed Plan is not in compliance with the State Comprehensive Plan, Chapter 187, F.S., or Rule 9J-5, Florida Administrative Code ("F.A.C.").

2. Because of the anticipated negative impact of the Proposed Plan on their respective properties, certain additional property owners with lands located either in the SAP or in the South Lake RPA are assisting with the funding of this appeal even though they did not satisfy the specific requirements for obtaining standing pursuant to Section 163.3184(1)(a), F.S. Those property owners are: Jerry J. Chicone, Jr., as Trustee under the Jerry J. Chicone, III, Irrevocable Trust; Carl and Patricia Fabry; Paul E. Fabry; Catherine E. Ross Groves, Inc.; Cra-Mar Groves, Inc.; Hickory Groves, LLC; Edwards Trust, LLC; Curtis Triad, LLC; CPB Hilltop, LLC; and McGeehee Family Partnership, Ltd. These property owners are referred to herein as the "Other Affected Owners." The locations of the various properties owned by the Other Affected Owners are depicted on **Exhibit "A."** Although the Other Affected Owners did not provide written or oral comments between the transmittal and adoption hearings on the Proposed Plan, the defective notice procedures used by the County effectively precluded them from having any meaningful knowledge of or opportunity to participate in the final determination of the SAP and South Lake RPA designations. The Other Affected Owners support the points raised in this Petition and the relief requested herein even though they are not formal parties to this appeal.



## B. THE PARTIES

3. The State agency affected by this proceeding is the Department, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. The Department is designated the state planning agency pursuant to Section 163.3164(20), F.S., charged with administering Chapter 163, F.S., Rule 9J-5, and Rule 9J-11, F.A.C. The Division of Administrative Hearings (“DOAH”) is charged with conducting proceedings under Section 120.569 and 120.57, F.S. to determine if the Proposed Plan is or is not “in compliance.” Section 163.3184(10)(a), F.S.; Rule 9J-11.012, F.A.C.

4. The County is a “governmental agency” and a “local government” as defined by Section 163.3164(10)(c), F.S., and hence is subject to the requirements of Part II, Chapter 163, F.S. The County’s address is 315 West Main Street, Tavares, Florida 32778. On May 25, 2010, the County adopted Ordinance No. 2010-25 which is the Proposed Plan that is being challenged by this Petition.

5. Petitioner W.D. Long Family Farms, LLLP, (“Long”) is a Florida limited liability limited partnership with its principal place of business at 2849 Lust Road, Apopka, Florida 32703. Long owns approximately 120 acres that have been designated as SAP in the Proposed Plan. The Long property is indicated on the aerial map attached hereto as **Exhibit “A.”**

6. Petitioners Edwards Harbor, LLC; Edwards Capital, LLC and Edwards Key, LLC (collectively “Edwards”) are each Florida limited liability companies with their principal place of business at 500 South Australian Avenue, Suite 710, West Palm Beach, Florida 33401. Edwards owns approximately 144 acres that have been designated as SAP in the Proposed Plan. The Edwards property is indicated on the aerial map attached hereto as **Exhibit “A.”**

7. Baker Heritage, LLC; Baker Complex, LLC and Baker Kid, LLC (collectively “Baker”) are each Florida limited liability companies with their principal place of business at 500 South Australian Avenue, Suite 710, West Palm Beach, Florida 33401. Baker owns approximately 322 acres that have been designated as SAP in the Proposed Plan. The Baker property is indicated on the aerial map attached hereto as **Exhibit “A.”**

8. Island Tree, LLC (“Island”) is a Florida limited liability company with its principal place of business at 500 South Australian Avenue, Suite 710, West Palm Beach, Florida 33401. Island owns approximately 40 acres that have been designated as SAP in the Proposed Plan. The Island property is indicated on the aerial map attached hereto as **Exhibit “A.”**

9. Ames Holdings, LLC; Ames Charter, LLC and Ames Kapp, LLC (collectively “Ames”) are each Florida limited liability companies with their principal place of business at 500 South Australian Avenue, Suite 710, West Palm Beach, Florida 33401. Ames owns approximately 476 acres that have been designated as SAP in the Proposed Plan. The Ames property is indicated on the aerial map attached hereto as **Exhibit “A.”**

10. JJW Investments, LLC (“JJW”) is a Florida limited liability company with its principal place of business at 500 South Australian Avenue, Suite 710, West Palm Beach, Florida 33401. JJW owns approximately 5 acres that have been designated as SAP in the Proposed Plan. The JJW property is indicated on the aerial map attached hereto as **Exhibit “A.”**

11. Petitioners Long, Edwards, Baker, Island, Ames and JJW are collectively designated as the “Group 1 Petitioners.” Each Group 1 Petitioner’s property is included in the SAP Future Land Use designation in the Proposed Plan and is similarly situated in regard to the legal issues raised in this Petition pertaining to the SAP designation and policies



12. Petitioner Arnold Groves and Ranch, Ltd. LLP (“Arnold Groves”) is a Florida limited partnership with its principal place of business at 15625 Frank Jarrell Road, Clermont, Florida 34714. Arnold Groves owns approximately 1,626 acres that have been designated as South Lake RPA in the Proposed Plan. The Arnold Groves property is indicated on the aerial map attached hereto as **Exhibit “A.”**

13. Petitioner James E. Roper, as Trustee, et al., under the Will of Grace Bernice Roper (“Roper”) owns approximately 551 acres that have been designated as South Lake RPA in the Proposed Plan. The Roper property is indicated on the aerial map attached hereto as **Exhibit “A.”**

14. Petitioners Gordon Tender, LLC; Gordon Keep, LLC; Gordon Hedge, LLC; Gordon Track, LLC and Gordon Horn, LLC (collectively “Gordon”) are each Florida limited liability companies with their principal place of business at 500 South Australian Avenue, Suite 710, West Palm Beach, Florida 33401. Gordon owns approximately 105 acres that have been designated as South Lake RPA in the Proposed Plan. The Gordon property is indicated on the aerial map attached hereto as **Exhibit “A.”**

15. Petitioners Curtis Hospitality, LLC; Curtis Custom, LLC and Curtis King, LLC (collectively “Curtis”) are each Florida limited liability companies with their principal place of business at 500 South Australian Avenue, Suite 710, West Palm Beach, Florida 33401. Curtis owns approximately 349 acres that have been designated as South Lake RPA in the Proposed Plan. The Curtis property is indicated on the aerial map attached hereto as **Exhibit “A.”**

16. Petitioners Davidson Harvest, LLC; Davidson Cruiser, LLC and Davidson Keg, LLC (collectively “Davidson”) are each Florida limited liability companies with their principal place of business at 500 South Australian Avenue, Suite 710, West Palm Beach, Florida 33401.

Davidson owns approximately 540 acres that have been designated as South Lake RPA in the Proposed Plan. The Davidson property is indicated on the aerial map attached hereto as **Exhibit "A."**

17. Petitioners Arnold Groves, Roper, Gordon, Curtis and Davidson are collectively referred to in this Petition as the "Group 2 Petitioners." Each Group 2 Petitioner's property is included in the South Lake RPA Future Land Use designation in the Proposed Plan and is similarly situated in regard to the legal issues raised in this Petition pertaining to the South Lake RPA designation and policies.

18. Each of the Group 1 Petitioners and each of the Group 2 Petitioners is an "affected person" as defined in Section 163.3184(1)(a), F.S., and has either timely submitted written comments, recommendations and objections, or appeared at and has spoken in opposition to some iteration of the Proposed Plan through one or more designated representatives during the period of time beginning with the transmittal hearing and ending with the County Commission's adoption of the Proposed Plan. *See* Minutes of a Special Meeting of the Board of County Commissioners on January 19, 2010 (the "Transmittal Hearing") attached hereto as **Exhibit "B"**; Minutes of a Special Meeting of the Board of County Commissioners on May 11, 2010, attached hereto as **Exhibit "C"**; Minutes of the Regular Meeting of the Board of County Commissioners on May 18, 2010, attached hereto as **Exhibit "D"**; and Minutes of a Special Meeting of the Board of County Commissioners on May 25, 2010 (the "Adoption Hearing"), attached hereto as **Exhibit "E."**

19. The substantial interests of the Group 1 Petitioners and the Group 2 Petitioners will be determined in this proceeding, as hereinafter more particularly set forth.



20. The northern boundary line of the South Lake RPA moved following each meeting of the County Commission at which the South Lake RPA designation was discussed. Some property owners thought their land would not be adversely affected once the South Lake RPA designation was removed from their properties by a vote of the County Commission. Each of the Other Affected Owners listed in Paragraph 2 of this Petition learned after the adoption of the Proposed Plan of the imposition of the SAP designation and the final location of the South Lake RPA designation. A determination of the substantial interests of the Petitioners in this proceeding will necessarily determine the substantial interests of the Other Affected Owners named herein. As such, the Administrative Law Judge who will be assigned to this case has the authority to enter an order requiring that the Other Affected Owners be given an opportunity to be joined as parties of record. Rule 28-106.109, F.A.C.

21. In these proceedings, the Group 1 Petitioners, the Group 2 Petitioners and the Other Affected Owners are represented by the law firm of Lowndes, Drosdick, Drosdick, Kantor & Reed, P.A., located at 215 North Eola Drive, Orlando, FL 32801. Lead counsel is Miranda F. Fitzgerald, and she is assisted by Jennifer F. Cerasa (hereinafter "Counsel"). Counsel may be contacted via e-mail at [miranda.fitzgerald@lowndes-law.com](mailto:miranda.fitzgerald@lowndes-law.com) and [jennifer.cerasa@lowndes-law.com](mailto:jennifer.cerasa@lowndes-law.com). Counsel may also be contacted by phone on behalf of each of the listed Petitioners and the Other Affected Owners at (407) 843-4600.

22. Counsel for the Group 1 Petitioners, the Group 2 Petitioners and the Other Affected Owners received notice of the Notice of Intent ("NOI") on July 23, 2010, by seeing it published on the Department's website. A true and correct copy of the NOI is attached to this Petition as **Exhibit "F."**



### C. STATEMENT OF ULTIMATE FACTS

23. The Group 1 Petitioners, the Group 2 Petitioners and the Other Affected Owners own property in the area of the County generally known as "South Lake." This area is located south of the Clermont municipal limits, east of U.S. 27, west of the County's common boundary with Orange County and north of the southernmost boundary of the Arnold Groves property as shown on **Exhibit "A."**

24. The County Commission provided advance public notice of its Transmittal Hearing scheduled for January 19, 2010. An enlarged excerpt of the version of the Future Land Use Map that was included in the County Commission's agenda packet for consideration at the January 19, 2010 Transmittal Hearing is attached hereto as **Exhibit "G."** It shows the proposed South Lake RPA covering an extensive area. The County Commission's agenda packet for the Transmittal Hearing also included the proposed Objective and Policies quoted below that were to apply to the designated South Lake RPA area depicted on **Exhibit "G."**

#### **OBJECTIVE I-5.5 SOUTH LAKE RURAL PROTECTION AREA**

The County hereby establishes the South Lake Rural Protection Area generally located south of Clermont between U.S. Highway 27 and eastern Lake County boundary as depicted on the Future Land Use Map. This Rural Protection Area is intended to preserve rural density, character, lifestyle compatibility, agriculture, and aquifer recharge in South Lake County and to buffer the recognized environmentally sensitive Green Swamp Area of Critical State Concern from the significant impact of Orange County's large Horizon West development east of the Lake County border.

#### **Policy I-5.5.1 Importance of South Lake County Rural Protection Area**

The Rural Protection Area provides highly valuable aquifer recharge for both the Green Swamp and Wekiva Springshed.

Protecting the integrity of this Rural Protection Area is important to sustaining the long-term rural character of Lake County, preventing urban sprawl, and averting the eventual erosion of remaining rural lands between Horizon West development in Orange County and the Green Swamp. Within the South Lake County Rural Protection Area, private land use is largely characterized by agrarian and equestrian-oriented activities that represent a valuable part of the history, culture, and lifestyle of rural Lake County.

**Policy I-5.5.2 Land Use in the South Lake Rural Protection Area**

Lake County shall limit future land use within the South Lake Rural Protection Area to the Rural Future Land Use Category and Public Benefit Future Land Use Series. The County may require Rural Conservation Subdivision design with clustering for any proposed development within the South Lake Rural Protection Area to ensure the protection of natural resources including, but not limited to habitat, wildlife, and wildlife corridors. Clustering and common open space shall emphasize the protection of natural resources including, but not limited to habitat, wildlife and wildlife corridors; maximization of buffers and open space adjacent to public conservation land; protection of aquifer recharge; and the provision of opportunities for passive recreation.

At the Transmittal Hearing, the area encompassed by the South Lake RPA designation was substantially reduced, but the Objective and Policies applicable to the reconfigured South Lake RPA remained unchanged.

25. Following the Transmittal Hearing, the County staff made changes to the Future Land Use Map and various policies in the Comprehensive Plan that had been approved by the County Commission for transmittal to the Department (the "Transmittal Plan"). An enlarged excerpt of the Transmittal Plan's version of the Future Land Use Map is attached hereto as **Exhibit "H"** which shows the revised, smaller configuration of the proposed South Lake RPA. The version of the South Lake RPA Policies that were included in the Transmittal Plan is unchanged from the text quoted in Paragraph 24 above.



26. The County Commission conducted a Special Meeting on May 11, 2010, and a Regular Meeting on 18, 2010, to discuss, among other topics, the Future Land Use Map designations, including the configuration of the South Lake RPA. As a result of these hearings, the area in the South Lake RPA designation was again reconfigured and reduced in size. After the meeting, the County staff prepared a further revised version of the Future Land Use Map dated May 18, 2010. An enlarged excerpt of this version of the Future Land Use Map showing the reconfigured and further reduced South Lake RPA is attached hereto as **Exhibit "I."**

27. The County Commission provided advance public notice of its Adoption Hearing on May 25, 2010. The version of the Future Land Use Map of the Future Land Use Map dated May 18, 2010, was included in the County Commission's agenda packet for consideration at the May 25, 2010 Adoption Hearing. The version of the South Lake RPA Policies quoted in Paragraph 24 above were also included in the County Commission's agenda packet for the May 25, 2010 Adoption Hearing. No advance public notice of any kind was given regarding the potential adoption of a new Future Land Use Map designation and policy that could substantially affect the South Lake area of the County.

28. County Commission Chairman, Welton Cadwell, was not present at the Adoption Hearing due to illness. County Commission Vice Chair, Elaine Renick, conducted the Hearing and proposed an entirely new Future Land Use Map designation and an entirely new Future Land Use policy to be imposed within the South Lake area. This land use designation and policy had not been reviewed or considered by the County's Land Planning Agency during the preparation of the Proposed Plan and had not been considered by the County Commission at the Transmittal Hearing.

29. The text of the proposed policy entitled "South Lake Strategic Area Plan for South Lake County" (the "SAP Policy") reads as follows:

The County recognizes the unique characteristics of southeast Lake County and its proximity to planned development in Orange County.

Through joint planning the County believes an opportunity exists to provide for economic development and preservation of open space, natural resources, and high recharge areas. It is the intent of Lake County to pursue a Strategic Area Plan with the City of Clermont and Orange County that will foster economic development of targeted industries.

The density permitted in this area shall be limited to one (1) dwelling per five (5) net acres and 60% of the net acres shall be preserved as open space or conservation. Such plan shall provide for the Transfer of Development Rights. The resulting Strategic Area Plan shall be implemented through the Comprehensive Plan Amendment Cycle.

30. Only those people who happened to be present at the Adoption Hearing were made aware of the new SAP Policy that Commissioner Renick proposed for adoption. Many of the Group 1 Petitioners and Other Affected Owners with lands that would be significantly affected by the SAP Policy were not in attendance at the Adoption Hearing and had no notice whatsoever that the SAP Policy would be brought up for discussion and adoption. Their properties had previously been removed from the South Lake RPA by official action of the County Commission.

31. During the Adoption Hearing, Commissioner Jennifer Hill questioned the propriety of considering the SAP Policy when no one in the general public had been given a prior opportunity to review the proposed policy and formulate comments for the County Commission's consideration in advance of the Adoption Hearing. Commissioner Hill suggested it would be prudent to delay final adoption of the Proposed Plan to provide an opportunity for those persons who would be affected by the new SAP Policy to receive notice and be given a



meaningful opportunity to be heard regarding the potential impacts the proposed SAP Policy might have on their particular interests. Commissioner's Hill's pleas for postponement and notice regarding the SAP Policy were ignored by the other members of the County Commission, and the SAP Policy and new Future Land Use Map designation were approved at the Adoption Hearing. *See* Minutes of May 25, 2010 County Commission meeting attached hereto as **Exhibit "E."**

32. Following the Adoption Hearing, the County staff made further changes to the Future Land Use Map and included the SAP Policy as new Future Land Use Policy I-1.4.9, positioning it as the last policy in the Rural Future Land Use Series of policies. An enlarged excerpt of the South Lake area shown on the Future Land Use Map in the Proposed Plan is attached hereto as **Exhibit "J."** The yellow line on the Map outlining the properties within the SAP designation appears to also entirely surround the properties within the South Lake RPA designation. A copy of Future Land Use Policy I-1.4.9 regarding the South Lake Strategic Planning Area as included in the Proposed Plan is attached hereto as **Exhibit "K."** A copy of Objective 1-5.5 and Policies 1-5.5.1 and 1-5.5.2 regarding the South Lake RPA are attached hereto as **Exhibit "L."**

33. Also at the Adoption Hearing, 11 other changes were made to the Future Land Use Map that had not been considered by the County Commission at the Transmittal Hearing. In its NOI, the Department refused to make a compliance determination as to these 11 Future Land Use Map amendments because the County had failed to address them during the Transmittal Hearing. The Department, however, did not object to the last minute addition of the SAP designation to the Future Land Use Map or the addition of the SAP Policy; even though this designation and policy, like the 11 other amendments, were not addressed during the Transmittal

Hearing and were never mentioned in any public forum or public notice prior to the Adoption Hearing. The Department found them to be “in compliance” along with the vast majority of the Proposed Plan.

34. A major portion of the SAP designation is immediately contiguous to the Town Center in Orange County’s Horizon West Sector Plan. The Town Center is approved for 8,151,400 square feet (“s.f.”) of non-residential uses, including office, hotel, retail, warehouse, warehouse showroom, light industrial, civic and entertainment uses, as well as a site for a new Valencia Community College campus, plus 4,870 attached and detached residential units.

35. The entire South Lake RPA is immediately contiguous to the southern portion of the Town Center and Village H in Horizon West. Village H is approved for 400,000 s.f. of commercial uses, 104,544 s.f. of office uses, 60,000 s.f. of neighborhood center uses, and 6,676 residential units, including estate homes, garden homes, townhomes, apartments, village homes, and condominiums.

36. The properties in the SAP and the South Lake RPA are located either within the City of Clermont’s water and wastewater service area or are within a Florida Public Service Commission franchised water and wastewater territory controlled by a private utility provider. The provision of water and wastewater treatment services in this area would not be an obligation of the County.

37. The properties in the SAP and the South Lake RPA are routinely provided “first responder” services by the Orange County Fire Department and the Orange County’s Sheriff’s Department. Lake County does not provide any effective public safety services in these portions of the County. Orange County steps in to provide these services.



38. Many of Petitioners' properties in the SAP and the South Lake RPA are only accessible by unimproved roads in these areas and are more easily accessible from the Orange County road network, including C.R. 545, S.R. 429 (the "Western Beltway"), New Independence Parkway and Schofield Road than from U.S. 27, S.R. 50, U.S. 192 or any other roads in Lake County. Some of the Petitioners' only access is from roads located in Orange County.

39. During the 20-year planning horizon of the Proposed Plan, Horizon West will become a regional employment and education center that will serve Lake County as well as Orange County. Lake County participated in the East Central Florida Regional Planning Council's "My Region.Org" initiative that produced the document entitled "How Shall We Grow." This document focused on regional development patterns, rather than parochial and political jurisdictional boundaries.

40. The County's Proposed Plan ignores virtually all of the planning concepts in the "How Shall We Grow" study in favor of policies that express a preference for retaining the South Lake portion of the County as rural, agrarian, equestrian-oriented communities, with minimal connectivity to this adjoining regional, urbanizing area which provides the bulk of employment opportunities for residents in Lake County.

#### **D. STATEMENT OF DISPUTED MATERIAL FACTS**

41. The disputed issues of material fact in this Petition are:

(a) Whether the procedures followed by the County during the Adoption Hearing on May 25, 2010, provided potentially affected persons with appropriate notice and an opportunity to present oral or written comments on the imposition of the SAP designation.

(b) Whether the policies pertaining to the SAP Policy and/or the South Lake RPA Objective and Policies establish meaningful and predictable standards for use in

development of land and provide meaningful guidelines for the content of more detailed land development regulations.

(c) Whether the SAP designation and/or the South Lake RPA designation and related policies are based on appropriate data and analysis.

(d) Whether the SAP designation and/or the South Lake RPA designation and related policies are internally consistent with other policies in the Proposed Plan.

(e) Whether the SAP designation and/or the RPA designation and related policies in the Proposed Plan are consistent with the protection of property rights as required by Section 187.101(3), F.S.

42. Neither the Group 1 Petitioners nor the Group 2 Petitioners are aware of any disputed issues regarding their status as “affected persons” under Section 163.3184(1)(a), F.S. and how they are “substantially affected” by the Proposed Plan.

#### **E. NON-COMPLIANCE ISSUES / EXPLANATION**

##### **I. The County Failed to Provide Potentially Affected Persons with Appropriate Notice of the SAP Designation and SAP Policy**

43. Section 9J-5.004, F.A.C. requires each local government’s adopted comprehensive plan to include procedures that provide for and encourage public participation in the planning process, including consideration of amendments to the comprehensive plan. The procedures must include notice provisions to keep the general public informed, provisions to ensure that there are opportunities for the public to provide written comments, and provisions to assure the consideration of and response to public comments. The County’s currently effective Comprehensive Plan does not set forth the procedures required by this section of the Florida Administrative Code. The County failed to give appropriate notice of a proposed significant



change to the Future Land Use Map and the addition of a new Future Land Use policy in advance of the Adoption Hearing.

44. At the final Adoption Hearing, Commissioner Elaine Renick proposed an entirely new Future Land Use Map designation and policy that had never been made available to the public at any prior time and that included significant restrictions on the development of private property. The new Future Land Use Map designation was called the “South Lake Strategic Area Plan,” and the new policy was called the “South Lake Strategic Area Plan for South Lake County.” The public had no prior notice that this future land use designation or policy would be proposed at the Adoption Hearing and no opportunity to study its potential impact or provide meaningful comments regarding the effect this Future Land Use designation and policy might have on their individual properties.

45. Even those Group 1 Petitioners and Group 2 Petitioners who were in attendance at the Adoption Hearing could not determine precisely which properties in the South Lake area would be subject to the proposed SAP designation and SAP Policy—whether the SAP designation would apply only to properties located north of the South Lake RPA or whether it would also include the South Lake RPA. The Future Land Use Map prepared by the County staff following the Adoption Hearing has a yellow line demarking the SAP that appears to encompass the entire South Lake RPA designation, as well as a significant area north of the South Lake RPA designation. *See Exhibit “J”* attached hereto.

46. The County violated principles of fundamental fairness by the stealth tactics used to introduce and adopt the SAP Future Land Use Map designation and the related SAP Policy (Policy I-1.4.9). The adoption of this Future Land Use Map designation and policy should not have been found “in compliance” by the Department. At a minimum, the Department should

have treated the SAP designation in the same manner that it treated the eleven (11) other last minute map amendments which were not properly adopted, by refusing to make a compliance determination. Alternatively, the Department should not have found the SAP designation and the SAP Policy to be “in compliance,” as will be demonstrated by the additional points included in this Petition.

**II. The SAP Policy Fails to Establish Meaningful and Predictable Standards for Use in Development of Land and Fails to Provide Meaningful Guidelines for the Content of More Detailed Land Development Regulations.**

47. The SAP Policy, when read in conjunction with other policies in the Rural Land Use Series of the Future Land Use Element and in the Conservation Element, arbitrarily requires that each landowner in this designated area set aside a *minimum* of 60% of the useable land in *each parcel* and encumber it with a conservation easement or some other form of dedication to the County. See Policy I-1.2.4 (Calculation of Residential Density), Policy I-5.1.4 (Development Design Standards), Policy I-7.4.4 (Protection of Rural Viewscapes), Policy I-7.4.2 (Rural Conservation Subdivision), Policy I-7.5.3 (Consistency with Conservation Element), Policy I-7.5.9 (Required Use of Conservation Easements), III-2.5.4 (Encourage Protection of Isolated and Ephemeral Wetlands), III-3.3.1 (Conservation of Natural Upland Plant Communities). There is no explanation of how the 60% figure was derived. It was literally pulled out of thin air and is not rationally related to any demonstrated need for this abrogation of property rights.

48. Even though the SAP Policy expresses an intent “to pursue a Strategic Area Plan with the City of Clermont and Orange County that will foster economic development for targeted industries,” the remaining text of the policy restricts development in the SAP to one (1) dwelling unit per five (5) “net acres,” with 60% of the “net acres” being “preserved” as open space or conservation. The term “net acres” used in the SAP Policy refers to the number of dwelling units



that may be constructed on the “net buildable area *of a parcel*,” which is defined in Policy I-1.2.4 as the total area *of a parcel*, less wetlands and water bodies. (Emphasis added).

49. Policy I-5.1.7 entitled “Protection of Wetlands” prohibits all impact to *all* wetlands in Rural Protection Areas regardless of their size or quality, except as necessary to provide for legal ingress and egress to upland areas “to the extent allowed by law.” Presumably, even wetlands that would be non-jurisdictional under State law are included in this blanket restriction on wetland impacts and would be lessed out before the number of “net acres” in a parcel is determined, unless the landowner is able to convince the County staff that only State jurisdictional wetlands may be lessed out in the derivation of the “net acres” figure.

50. In addition, Policy III-2.5.4 in the Conservation Element purports to give the County authority to include “ephemeral wetlands” in the wetland areas that must be lessed out and preserved, even though “ephemeral wetlands” are not recognized in the uniform method adopted by the State that is binding on all local governments in the State for determining the jurisdictional wetland limits. Section 373.421(1), F.S., Section 373.4211, F.S.; Rule 17-340, F.A.C. As a result, no meaningful or predictable standards are provided for a landowner to know the amount of wetland acres that will be lessed out before the number of “net acres” is calculated and 60% of that number is forced to be preserved through coercion of a conservation easement.

51. As noted above, the SAP Policy expresses the intent to pursue a Strategic Area Plan with the City of Clermont and Orange County for economic development purposes. Section 163.3177(6)(A), F.S. and Rule 9J-5.006(3)(c)7, F.A.C. require that each future land use category establish the densities or intensities for each land use allowed in that category. The SAP Policy does not establish an intensity for the non-residential uses that could be included as part of a Strategic Area Plan. Only one dwelling unit per five acres is allowed in the entire area remaining

after the wetlands and water bodies are first removed and then 60% of the net acres is preserved for open space or conservation. This policy is inconsistent with Section 163.3177(6)(A), F.S., and Rule 9J-5.006(3)(c)7, F.A.C.

52. Exactly where will this potential economic development area fit within the adopted scheme of land use restrictions imposed by the SAP Policy? No land is set aside to accommodate this economic development potential. Moreover, if Constitutional Amendment #4 passes in November, 2010, any further comprehensive plan amendment that might attempt to implement an agreed-upon Strategic Area Plan would be submitted to a voter referendum and have no assurance of passage. The prospect of a Strategic Area Plan for economic development purposes is mere pretext that holds out to the landowners only a very speculative chance that such a Plan could in fact be implemented.

53. There also is no indication in the SAP Policy that the affected landowners will be invited to be participants in the process of developing the Strategic Area Plan; and no time frame is provided for the planning process to commence. In the interim (however long that may be) the landowners are relegated to the highly restrictive and arbitrary 60% open space/conservation preservation requirements and a maximum of one dwelling unit per five acres on every square inch of their property that is not set aside as wetlands or water bodies.

54. The SAP Policy also holds out the prospect that the Strategic Area Plan will include a provision for the Transfer of Development Rights, and yet Policy I-5.1.2 indicates that the County will be preparing a Transfer of Development Rights ("TDR") Ordinance within 12 months following the adoption of the Proposed Plan. The TDR Ordinance will address the transfer of development rights from *inside* the Rural Protection Area to *outside* the Rural Protection Area. The TDR Ordinance is not required to address transfers within the SAP, and the



SAP Policy, as written, does not allow any clustering of the permitted residential units. Within the same 12-month period, the County has committed in various other Future Land Use and Conservation Policies to prepare Ordinances or conduct studies addressing at least 25 substantive areas that need implementation detail. It is highly likely, given the County's staffing levels and the reduced revenues available to the County, that very few of the promised ordinances and studies will be implemented in the 12-month time frame. It is reasonable to assume that the TDR provisions will not be accomplished in the initial 12-month period following the adoption of the Proposed Plan.

55. In summary, the SAP Policy fails to establish meaningful and predictable standards for use in the development of land and fails to provide meaningful guidelines for the content of more detailed land development regulations. Therefore, it does not satisfy the requirements of Rule 9-J-5.005(6), F.A.C., or Section 163.3201, F.S., and must be determined to be not in compliance.

56. If it is determined that the SAP Future Land Use designation encompasses the South Lake RPA, then all of the points addressed in Subsection E. II. above apply to the Group 2 Petitioners as well as the Group 1 Petitioners.

**III. The South Lake RPA Designation and Related Policies are Inconsistent with the State Comprehensive Plan and the Strategic Regional Policy Plan and are not Based on Appropriate Data and Analysis.**

57. Objective I-5.5 states in part that the purpose of the South Lake RPA is:

[t]o *preserve* rural density, character, lifestyle compatibility, agriculture, and aquifer recharge in South Lake County and to buffer the recognized environmentally sensitive Green Swamp Area of Critical State Concern from the significant impact of Orange County's large Horizon West development east of the Lake County border. (Emphasis added).

Section 187.201(22), F.S., of the State Comprehensive Plan prohibits provisions in State or Regional plans (and through the compliance provisions in Section 163.3177(10)(a), F.S., also in local comprehensive plans) that could be interpreted as permanently restricting the conversion of agricultural lands to other uses. To the extent the South Lake RPA Objective and Policies attempt to permanently preserve agricultural uses, they are not in compliance with the State Comprehensive Plan.

58. The imposition of the South Lake RPA designation as a means of retaining agricultural uses in South Lake County is premature and inconsistent with Policy I-7.7.2 (Agricultural Land Retention Study). As such, it is not based on appropriate data and analysis. This policy states that:

[w]ithin 12 months of effective date of the Comprehensive Plan, Lake County shall initiate an Agricultural Lands Retention Study to identify agricultural lands suitable for protection and conservation. The study shall also identify property owner incentives for the conservation of identified lands; methods to maintain viable agricultural economies; potential barriers to the conduct of agricultural activities, and scenarios that describe the types and characteristics of agricultural uses and practices for Lake County in the future.

The South Lake RPA designation and policies have targeted this area as the place in which agricultural uses must be preserved, without any data and analysis showing that lands in this area *should be* preserved for agricultural purposes and without any concept of incentives to encourage retention of these lands for agricultural uses. Targeting the South Lake RPA for preservation of agricultural uses is putting the cart before the horse when no study has been conducted to determine that this is the appropriate place for long-term viable agricultural uses, particularly in light of this area's immediate proximity to Orange County's high intensity Horizon West Sector Plan, the onset of new diseases that have the potential for severely impacting continued citrus production in Central Florida, uncertainty regarding continued, long



term future use of Conserv II water under existing grower agreements, and the potential for future severe freezes, such as the ones in the early 1980's.

59. The County's effort to restrict the uses and densities in the South Lake area also ignores any concept of regionalism when determining the appropriate location for future development. Section 163.3177(4)(a), F.S. requires the County to include a specific policy statement indicating the relationship of the proposed development of the area to the comprehensive plans of adjacent counties and cities. Section 163.3177(6)(a), F.S., requires the County's Future Land Use Element to be based upon surveys, studies and data regarding, among other topics:

the discouragement of urban sprawl; energy-efficient land use patterns accounting for existing and future electric power generation and transmissions systems; greenhouse gas reduction strategies; and, in rural communities, the need for job creation, capital investment, and economic development that will strengthen and diversify the community's economy.

In addressing the South Lake area of the County, the Proposed Plan seeks to preserve rural, agrarian lifestyles in the area of the County that presents the best opportunity for regional cooperation to achieve energy efficiencies, reduce vehicle miles traveled, reduce greenhouse gasses and promote synergistic business opportunities. Many of the properties in the South Lake area can only be accessed from Orange County and should be allowed to benefit from development potential related to Horizon West. Although the County has expressed economic development goals in the Economic Element of the Proposed Plan, many of the Future Land Use and Conservation policies in the Proposed Plan are inconsistent with the concepts expressed in the Economic Element and provide a substantial impediment to the creation of regional efficiencies that are now required by Section 163.3177(6)(a), F.S. The Proposed Plan is internally inconsistent and does not comply with this section of Chapter 163, F.S.



60. Many Lake County residents travel daily to work in downtown Orlando or at the tourist attractions in Orange County. Section 187.201(19), F.S. is a provision in the State Comprehensive Plan which indicates that transportation systems should “provide Florida’s citizens and visitors with timely and efficient access to services, jobs, markets and attractions.” Policy I-5.1.6 (Protection of Rural Roads) in the Proposed Plan would limit the capacity of every road through the Rural Protection Areas of the County to no more than two travel lanes, with the exception of CR 561 in the Yalaha-Lake Apopka Rural Protection Area. The County’s insistence on preservation of rural density, character, lifestyle compatibility and agriculture in the South Lake RPA during the 20-year planning horizon, unreasonably restricts the logical extension for future urbanized development adjacent to Horizon West and appropriate transportation corridors to provide “timely and efficient access to services, jobs, markets and attractions.”

61. The County has not shown how additional transportation capacity will be created to retain Level of Service Standards on S.R. 50 and U.S. 192 during the 20-year planning period. An interchange feasibility study was conducted by the Orlando-Orange County Expressway Authority in 2006. This study focused on the characteristics of the land in Lake County between the County line and U.S. 27 as a significant factor in selecting the location of two proposed interchanges on S.R. 429. The Conserv II lands and the parcels located west of Schofield Road were determined to provide viable transportation corridors from S.R. 429 to U.S. 27. As a result, interchanges were approved for construction at New Independence Parkway and Schofield Road. The Schofield Road Interchange is the closest interchange on S.R. 429 to Lake County. The County’s arbitrary restriction of the width of the potential east-west reliever roads is inappropriate in the only areas where it is feasible to provide one or two direct connections between U.S. 27 and the interchanges on S.R. 429. It is reasonable to expect that construction of

at least one, and possibly two, four-lane, east-west roads through the SAP and South Lake RPA designations will be necessary to alleviate traffic congestion on S.R. 50 and U.S. 192 during the next 20 years. Policy I-5.1.6, as applied to the South Lake area is inconsistent with the State Comprehensive Plan.

62. As noted, the appropriate place for higher intensity development from a regional perspective is directly adjacent to Horizon West in the South Lake area of the County. Policy I-7.12.3 in the Proposed Plan actually *prohibits* any centralized water and wastewater services in the South Lake RPA and other Rural land use designations (including the SAP), unless the absence of central services would result in a threat to public health or the environment. This policy ignores the fact that a portion of the South Lake area is already within the City of Clermont's water and wastewater service territory, and the remaining portion of the South Lake area is served by private utility providers with franchised territories authorized by the Florida Public Service Commission. There is no reason to require only wells and septic tanks in this area of the County. The County will not be the utility provider, and County taxpayers will bear no expense for providing these services. Contrary to the provisions in Rule 9J-5.006(3)(b)8, F.A.C., urban sprawl will actually be promoted by requiring primarily large lot, very low density development on wells and septic tanks in the portion of the County adjacent to Horizon West.

**IV. The SAP and RPA Policies are Inconsistent with the Aquifer Recharge Sub-Element in the Proposed Plan, are not Based on Data and Analysis, and are Therefore Not "in Compliance."**

63. Section 163.3177(2), F.S. and Rule 9J-5.001(6), F.A.C., require internal consistency among the various provisions of a local government's comprehensive plan. The SAP Policy (Policy I-1.4.9) and the South Lake RPA Objective and Policies (Objective I-5.1; Policies I.5.1.1 and I.5.1.2) are inconsistent with other policies in the Proposed Plan. The SAP Policy and RPA Policies cite aquifer recharge characteristics in the South Lake area as a basis for imposing



significant restrictions on the use of the properties in the SAP and South Lake RPA designations. The Proposed Plan, however, contains an Aquifer Recharge Sub-Element that provides specific development guidelines for lands with high recharge characteristics and does not require preservation of this land in its undeveloped state through the use of conservation easements.

64. South Lake RPA Objective I-5.5 states that the South Lake RPA is intended to “preserve . . . aquifer recharge in South Lake County and to buffer the environmentally sensitive Green Swamp Area of Critical State Concern from the significant impact of Orange County’s large Horizon West development east of the Lake County border.” This statement, on its face, is ludicrous. The western boundary of Horizon West is more than four miles “as the crow flies” from the eastern border of the Green Swamp Area of Critical State Concern. The Green Swamp Area of Critical State Concern already has included in it a substantial buffer area that is for the express purpose of protecting the more environmentally sensitive areas of the swamp. *See* Section 380.0551, F.S., Rule 22F-5, F.A.C.

65. RPA Policy I-5.5.1 also indicates that the South Lake RPA provides valuable aquifer recharge for the “Wekiva Springshed.” “Wekiva Springshed” is not a defined term in the Proposed Plan, and no data or analysis is provided that shows water runoff in the South Lake RPA has any effect whatsoever on the Wekiva Springshed. The Lake County portion of the Wekiva Protection Area is more than 12 miles from the northern boundary of the proposed South Lake RPA.

66. Previously adopted State and regional stormwater management provisions are entirely adequate to protect the Green Swamp from development impacts in Orange County and the future development impacts in the South Lake area. No development can proceed without first obtaining an Environmental Resource Permit from the applicable water management



district. As such, any development in Horizon West that impacts aquifer recharge areas has to comply with the already-adopted standards of the South Florida Water Management District and implement design criteria to ensure the amount of pre-development runoff equals or exceeds the amount of post-development runoff that reaches the aquifer. The stated justifications for the aquifer recharge component of the SAP Policy and the South Lake RPA Policies are not based on data and analysis and are vulnerable to a science-based challenge.

67. The concepts stated in the SAP Policy and in the South Lake RPA policies pertaining to aquifer recharge directly conflict with several policies in the Aquifer Recharge Sub-Element. For example, Policy IX-1.1.2 (Floridian Aquifer Vulnerability Assessment Map) requires the County to prepare a Floridian Aquifer Vulnerability Assessment (“FAVA”) Map on a county-wide scale “to determine areas within the County vulnerable to contamination of the Floridian Aquifer, including primary, secondary and tertiary protection zones, karst features, springs and sinks.” In addition, this policy indicates that “an aquifer vulnerability model prepared using data specific to Lake County, will help determine which areas within the County are vulnerable and allow for establishment of appropriate development standards.” There is no time frame for the FAVA mapping exercise. Prior to the time the FAVA is developed and the aquifer vulnerability model is prepared, the SAP Policy and South Lake RPA Policies use “aquifer recharge” as a primary basis for requiring reduced residential densities and retention of large, open space tracts that must be permanently restricted from use by conservation easements. This policy documents the lack of data the County currently has to justify coercion of easements over large areas of developable land on the pretext of protecting the aquifer, the Green Swamp and the “Wekiva Springshed.”

68. Policies IX-1.3.1, IX-1.3.3, and IX-1.3.4 in the Aquifer Recharge Sub-Element expressly allow development in aquifer recharge areas in accordance with adopted water retention requirements. Specifically, Policy IX-1.3.1 (Protection Strategies) lists eight separate bullet points that will enhance the protection of groundwater resources without requiring conservation easements. Designating the entire South Lake RPA area as a buffer for the Green Swamp and protector of the Wekiva Springshed without appropriate data and analysis, and severely restricting land uses based on undocumented conjecture is arbitrary and capricious. The policies in the Aquifer Recharge Sub-Element do not require massive, permanent set asides of developable land for aquifer recharge protection.

69. In addition, Policy IX-1.3.3 (Protection of Recharge Volume) indicates that the County:

shall ensure that post-development recharge volume conditions approximate pre-development recharge volume conditions within Aquifer Protection Zones. This shall be accomplished through implementation of Land Development Regulations by requiring that the first three inches of stormwater be retained on site. As an alternative the applicant may conduct a hydrologic survey and site analysis to demonstrate that post-development recharge is equal to or greater than pre-development recharge. The County shall require compliance with all state and water management district rules pertaining to the design of stormwater management systems in most effective recharge areas located wholly or partially within the Wekiva Study Area.

Implementation of this policy obviates the need to require conservation easements over large open space areas for the purpose of aquifer recharge protection.

70. Finally, Policy IX-1.3.4 (Design Strategies for Aquifer Recharge Protection) expressly allows development in Aquifer Protection Zones. It states:

Development within an Aquifer Protection Zone shall be required to maintain pre-development net retention in a manner that protects ground and surface water quality. Exemptions may be given for agricultural activities utilizing Best Management Practices adopted

by federal, state, and regional agencies that protect ground and surface water quality. The use of stormwater capture, swales, dry wells, grass parking, porous pavement, pervious concrete, turf blocks, and other innovative technologies shall be encouraged as a method of protecting aquifer recharge. Porous pavement, pervious concrete and turf blocks however shall not be used to completely fulfill this requirement because these materials tend to become impervious over time.

This policy also conflicts with any required exaction of conservation easements over private open space areas for the purpose of aquifer recharge protection. The County should not coerce the dedication of conservation easements over aquifer recharge areas when other, more appropriate, less intrusive means are available for protecting the resource and protecting private property rights.

71. The SAP Policy and the South Lake RPA Objective and Policies are internally inconsistent with the Aquifer Recharge Sub-Element, are not based on appropriate data and analysis and are not “in compliance.”

**V. The SAP Policy, the South Lake RPA Policies and Related Policies in the Proposed Plan, are Inconsistent with the Provision in Section 187.101(3), F.S. that Property Rights Must be Protected.**

72. Section 187.101(3), F.S., is a section within the State Comprehensive Plan. It provides:

The goals and policies contained in the State Comprehensive Plan shall be reasonably applied where they are economically and environmentally feasible, not contrary to the public interest, *and consistent with the protection of private property rights*. The plan shall be construed and applied as a whole, and no specific goal or policy in the plan shall be construed or applied in isolation from the other goals and policies in the plan. (Emphasis added).

Section 187.201(14), F.S., states:

(14) PROPERTY RIGHTS

(a) Goal.—Florida shall protect private property rights and recognize the existence of legitimate and often



competing public and private interests in land use regulation and other government action.

(b) Policies.—

....

3. Encourage acquisition of lands by state or local government in cases where regulation will severely limit practical use of real property.

73. The County's adoption of the SAP Policy, in particular, is not in compliance with the State Comprehensive Plan because it abrogates private property rights without relevant consideration of those rights. *See, CNL Resort Hotel, L.P. v. City of Doral, Florida*, 991 So. 2d 417 (Fla. 3<sup>rd</sup> DCA 2008). As noted in Section E.I. of this Petition, this policy declares that South Lake County has "unique characteristics" that somehow justify a mandatory exaction of conservation easements for the public benefit over 60% of each affected owner's developable land, after first setting aside and preserving all wetlands and water bodies.

74. For properties located within the SAP or South Lake RPA designations, once the developable portion of the parcel is determined, then Policy I-7.5.3 (Consistency with Conservation Element) becomes applicable. It states that all proposals for development of property must conform to all applicable goals, objectives and policies of the Conservation Element before such proposal can be considered consistent with the Future Land Use Element. This policy requires that all "environmental features and constraints" must be identified in the development proposal, including but not limited to, topography, wetlands, vegetation, wildlife, habitat, flood hazards, the 100-year floodplain, soils, springsheds, karst features and adjacent conservation lands and "environmentally sensitive" lands. Policy I-7.5.9 then provides that:

In order to protect the following areas from any future encroachment or development, the County *shall require* conservation easements as allowed by law consistent with Chapter 704, Florida Statutes, or similarly recorded binding legal

instrument (including plat restrictions), or fee simple dedication to a public agency:

- Post-development flood prone areas;
- Wetlands and buffer areas;
- Environmentally sensitive areas including, but not limited to xeric uplands and scrub habitats;
- Wildlife corridors and buffers;
- Karst features and buffers;
- Aquifer recharge areas;
- Natural or engineered drainage features which qualify as open space;
- “Preservation” or “conservation” areas which are part of the development project; and
- Common open space in clustered subdivisions.

The Land Development Regulations will specify *additional criteria* required to preserve required open space, which may include standards based upon size threshold and type of open space, to limit future encroachment or development of required open space, drainage areas, recreation areas, and other areas set aside as requirement for development approval. (Emphasis added).

If applied literally, these policies, taken together, will remove from private control virtually every portion of a development site that is not covered with a permitted structure. As such, these policies go much too far and do not appropriately consider the impact on private property rights.

75. A consistent and repeated theme that carries throughout the Future Land Use and Conservation Elements in the Proposed Plan is the forced exaction of conservation easements over otherwise developable upland open space areas, in addition to the conservation easements that are required for undefined and unidentified “environmentally sensitive” areas, buffers, wildlife corridors, habitat areas, etc., as a condition for obtaining any development approvals. If these open space conservation easements are for a public benefit, they cannot be required



without the County being able to satisfy the “dual rational nexus test” under the regulatory takings case law. The County’s addition of the phrase “as allowed by law” in several places in the Proposed Plan merely flags those area where the County Attorney recognized the potential for the County to go too far in restricting private property rights. The addition of this phrase does not mean that the County gave any serious consideration to protecting property rights when enacting these policies; it merely puts the burden on the property owner to object to and potentially litigate the imposition of such easements as part of each land use approval process. Simply adding the phrase “as allowed by law” does not give any assurance that the County will not impose inappropriate or illegal exactions.

76. Once conservation easements are in place, it becomes very difficult to undo them if, within the 20-year planning period, it becomes preferable to intensify land use to reduce vehicle miles traveled and greenhouse gasses or provide uses other than open space. It would be much more appropriate, and more protective of individual property rights to simply include the upland open space requirements as part of a PUD zoning plan and conditions of approval, without the need for conservation easements. That way, if there is a reason to modify the PUD in the future, an easement would not have to be terminated or modified. Conservation easements over upland areas that are not expressly protected by State law are only appropriate if the County is prepared to pay for them or if they are voluntarily granted by the property owner without duress from the County during the development process.

77. The SAP Policy and the South Lake RPA Policies express the intent to preserve “open space,” “natural resources,” “habitat,” “wildlife,” and “wildlife corridors.” These policies do not restrict the protection to State or federal endangered, threatened or special concern species and their habitat, leaving the distinct possibility that the County will make expansive



determinations of what natural resources, habitat, wildlife, and wildlife corridors need to be protected with conservation easements. As an example, Conservation Policy III-2.5.4 (Encourage Protection of Isolated and Ephemeral Wetlands) states:

The County shall adopt land development regulations within 12 months of the effective date of this Comprehensive Plan to protect and preserve isolated and ephemeral wetlands, and the unique functions such wetlands provide, *such as habitat for upland amphibians that require wet environment for part of their life cycle.* (Emphasis added).

There is no indication that the “upland amphibians” to be protected need any protection whatsoever! If they are not State or federally listed species, a landowner cannot be required to involuntarily protect them.

78. Similarly, Policy III-3.3.1 (Conservation of Natural Upland Plant Communities) provides:

The County shall regulate, and as appropriate, require restoration and preservation of natural upland communities through provisions of the Land Development Regulations. The following upland plant communities shall be protected from the impacts of development: pine flatwoods, longleaf pine/xeric oak, sand hill, sand pine scrub, upland mixed coniferous hardwood, mesic flatwoods/dry prairie.

This list includes some sensitive natural habitats specifically identified for protection in the Wekiva Parkway and Protection Act (longleaf pine, sand hill, sand pine scrub, and xeric oak scrub.). That Act is only applicable within the Wekiva Study Area. This policy and Policy III-3.3.2 (Survey and Protection of Natural Upland Plan Communities) will require preservation of extensive upland areas located outside of the Wekiva Study Area. There is no legal protection granted in State law for these upland vegetative communities outside of the directive in the Wekiva Parkway and Protection Act that local governments whose boundaries include portions of the Wekiva Study Area must establish land use strategies in their comprehensive plans that protect “sensitive natural habitats including Longleaf Pine, Sand Hill, Sand Pine, and Xeric Oak

Scrub” within the Wekiva Study Area. Section 369.321(3), F.S. The Act also states that “[s]uch strategies shall recognize property rights and the varying circumstances within the Wekiva Study Area, including rural and urban land use patterns.” The list of vegetative communities included in Policy III-3.3.1 is significantly broader than the list of vegetative communities that is to be protected in the Wekiva Study Area, and there is no expression of sensitivity to the potential impact on private property rights.

79. Policy III-3.3.2 (Survey and Protection of Natural Upland Plant Communities) requires any development proposal to include an inventory of the type and extent of natural upland vegetative communities. Development located outside the Wekiva and Green Swamp Areas and impacting 40 acres or more will require the most intense survey. The second sentence in the second paragraph of this policy states:

If a protected upland plant community *identified in the previous policy* is identified on site, then those communities shall be preserved up to 50% of the subject site, to the extent allowed by law. . . . The County shall have the authority to accept alternatives to onsite conservation that provide for the long-term protection and management of upland communities of equal or greater value elsewhere. (Emphasis added).

This policy requires preservation of 50% of each identified “protected” upland vegetative community, irrespective of its location within the site or the proposed land use, unless the County, in its discretion, is willing to accept an alternative to onsite conservation.

80. The Florida Natural Area Inventory (“FNAI”) vegetative communities’ list has no legal status for regulatory purposes on lands located outside of the Wekiva Study Area. Policies III-3-3-1 and III-3.3.2, as currently written would impose mandatory protection for seven of the designated upland vegetative communities on FNAI’s list, without providing any indication of the impact this policy is likely to have on the otherwise developable lands that are located outside the Wekiva Study Area. The applicability of these two policies should be restricted to the



Wekiva Study Area, where statutory authority exists for protection of some (but not all) of these vegetative communities. The County has elected to apply these policies to other areas of the County without any exception for land use proposals that promote economic development and job creation. Merely adding to this policy the phrase “to the extent allowed by law” does not give any assurance that private property rights will be protected in the implementation of the policies pertaining to the preservation of upland vegetative communities since there is no legal authority supporting such preservation outside of the Wekiva Study Area.

81. These vegetative community preservation policies are also inconsistent with the East Central Florida Regional Planning Council’s Strategic Policy Plan. See Policies 4.25, 4.26, which discuss providing incentives to landowners to preserve “ecologically viable portions of natural upland plant communities.” The policies in the Strategic Regional Policy Plan also state that consideration should be given to acquisition of habitat corridors that serve as connections between existing managed areas once they have been designated by FGFWFC, FDEP, FNAI and the Regional Planning Council, or providing economic incentives to property owners to assist with their protection. Once again, the policies in the County’s Proposed Plan go too far.

82. Then, as if to add insult to injury, Policy VII-1.4.5 (Mandatory Dedication of Land for Recreation Space) in the Parks and Recreation Element states:

Lake County shall incorporate provisions within its Land Development Regulations which require new residential development to provide recreation space consistent with the concurrency management system. The provision of open space for activity-based recreation *shall be in addition to the area required for open space.* (Emphasis added).

If half or more than half of the useable land on a parcel must be set aside and preserved for open space under the SAP and RPA Policies, any required activity-based recreation areas should be

accommodated within that open space. There is no need to exact additional private property for activity-based recreation

83. The policies noted herein are merely a few of many that indicate the County Commission's cavalier attitude toward private property rights. The Proposed Plan is not "in compliance" because the County Commission did not adequately consider the impact on private property rights during the process of adopting the Proposed Plan.

#### F. STATEMENT OF GOVERNING RULES AND STATUTES

84. A finding that the Proposed Plan is not in compliance is required by statutes and rules which include but are not limited to:

- (a) Chapter 120, F.S., and specifically Sections 120.569 and 120.57, F.S.
- (b) Chapter 163, F.S., and specifically, Sections 163.3164(10)(c) and (20); 163.3177(2), (4)(a), (6)(a) and (10)(a); 163.3184(1)(a) and (10)(a), 163.3191, 163.3201, F.S.
- (c) Chapter 187, F.S., and specifically, Sections 187.101(3) and 187.201(14), (19) and (22), F.S.
- (d) Chapter 369, F.S., and specifically, Section 369.321(3), F.S.
- (e) Chapter 373, F.S., and specifically Sections 373.421 and 373.4211, F.S.
- (f) Chapter 380, F.S., and specifically Section 380.0551, F.S.
- (g) Rules 9J-5.001, *et seq.*, F.A.C.
- (h) Rule 9J-11.012, F.A.C.
- (i) Rules 28-106.109, *et seq.*, F.A.C.
- (j) Rule 17-340, F.A.C.
- (k) Rule 22F-5, F.A.C.
- (l) Rule 29F-21.001, *et seq.*, F.A.C.



**G. RELIEF REQUESTED BY PETITIONERS**

85. The Group 1 Petitioners and the Group 2 Petitioners hereby request that:

(a) That this Petition be forwarded to the Division of Administrative Hearings and assigned to an Administrative Law Judge;

(b) That the Administrative Law Judge enter an order requiring that the Other Affected Owners be given an opportunity to be joined as parties of record;

(c) That a formal administrative hearing be scheduled and conducted by the Administrative Law Judge regarding DCA's finding the Proposed Plan "in compliance" with Part II, Chapter 163, F.S. and Rule 9J-5, F.A.C.;

(d) That the Administrative Law Judge enter an order recommending that the Proposed Plan is not "in compliance" as defined in Section 163.3184(1)(b), F.S.;

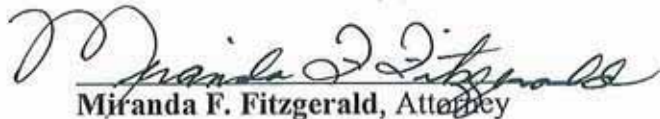
(e) That the Department determine, based on the recommended order, that the Proposed Plan is not "in compliance";

(f) That the Administration Commission enter a Final Order finding the Proposed Plan adopted by Ordinance 2010-25 not "in compliance" and specifying appropriate sanctions and remedial actions; and

(g) That such other relief be granted Petitioners as may be appropriate.

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Respectfully submitted this 12<sup>th</sup> day of August 2010.



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**Attorneys for Petitioners**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 12<sup>th</sup> day of August, 2010, the original and a true and correct copy of the foregoing Petition has been furnished by FedEx delivery to the Agency Clerk of the Florida Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100 (850-922-2679) and that two true and correct copies have also been furnished by FedEx delivery to Melanie Marsh, Acting County Attorney for Lake County, Florida, 315 West Main Street, Tavares, FL 32778 (352-343-9787)



MIRANDA F. FITZGERALD



## EXHIBIT LIST

- |                    |  |
|--------------------|--|
| <b>Exhibit "A"</b> | Aerial Map showing parcel locations  |
| <b>Exhibit "B"</b> | Minutes of a Special Meeting of the Board of County Commissioners on January 19, 2010 (the "Transmittal Hearing")                                  |
| <b>Exhibit "C"</b> | Minutes of a Special Meeting of the Board of County Commissioners on May 11, 2010  |
| <b>Exhibit "D"</b> | Minutes of the Regular Meeting of the Board of County Commissioners on May 18, 2010  |
| <b>Exhibit "E"</b> | Minutes of a Special Meeting of the Board of County Commissioners on May 25, 2010 (the "Adoption Hearing")   |
| <b>Exhibit "F"</b> | Notice of Intent   |
| <b>Exhibit "G"</b> | Excerpt of the Future Land Use Map included in the County Commission's agenda packet for consideration at the January 19, 2010 Transmittal Hearing |
| <b>Exhibit "H"</b> | Excerpt of the Future Land Use Map as transmitted  |
| <b>Exhibit "I"</b> | Excerpt of the Future Land Use Map dated May 18, 2010 as prepared by County staff  |
| <b>Exhibit "J"</b> | Excerpt of the Future Land Use Map Adopted May 25, 2010  |
| <b>Exhibit "K"</b> | Future Land Use Policy I-1.4.9   |
| <b>Exhibit "L"</b> | Objective 1-5.5 and Policies 1-5.5.1 and 1-5.5.2   |