



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

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

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

April 12, 2010

The Honorable Frank Bruno, Chair
Volusia County Board of County Commissioners
123 West Indiana Avenue
DeLand, Florida 32720



Dear Commissioner Bruno:

The Department has completed its review of the Volusia County comprehensive plan amendment (DCA No. 10-1) adopted by Ordinances Numbers 2009-27 through 2009-34 on February 18, 2010 and determined that Ordinances 2009-27 through 2009-33 are "in compliance" and Ordinance 2009-34 is "not in compliance" with the requirements of Chapter 163, Part II, Florida Statutes (F.S.) and Rule 9J-5, Florida Administrative Code (F.A.C.). The Department is therefore issuing a Statement of Intent and Notice of Intent to find Ordinance 2009-34 "not in compliance," and a Notice of Intent to find Ordinances 2009-27 through 2009-33 "in compliance." The Notice of Intent has been sent to the *Daytona Beach News Journal* for publication on April 13, 2010.

Please note that a copy of the adopted Amendments and the Department's Statement of Intent and Notices of Intent to find the Amendments "in compliance" and "not in compliance" must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Growth and Resource Management Department, 123 West Indiana Avenue DeLand, Florida 32720. Also, Section 163.3184 (8)(c)2, F.S., requires a local government that has an Internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the Notice of Intent.

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

The Honorable Frank Bruno, Chair
April 12, 2010
Page 2

The Notice of Intent and the Statement of Intent must be forwarded to the Division of Administrative Hearings of the Department of Management Services for the scheduling of an administrative law judge pursuant to Section 120.57, F.S. If you have any questions, please contact Mr. James Stansbury, Regional Planning Administrator at 850-922-1818.

Sincerely,

A handwritten signature in blue ink that reads "Mike McDaniel". The signature is fluid and cursive, with the first name "Mike" being larger and more prominent than the last name "McDaniel".

Mike McDaniel, Chief
Office of Comprehensive Planning

MM/ap

Enclosures: Notice of Intent
Statement of Intent

cc: Ms. Becky Mendez, Senior Planning Manager, Volusia County
Mr. Phil Laurien, East Central Florida Regional Planning Council

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND THE VOLUSIA COUNTY
COMPREHENSIVE PLAN AMENDMENT ADOPTED
BY ORDINANCE NO. 2009-34 NOT IN COMPLIANCE
AND THE COMPREHENSIVE PLAN AMENDMENTS
ADOPTED BY ORDINANCE NOS. 2009-27 THROUGH 2009-33
IN COMPLIANCE
DOCKET NO. 10-1-NOI-6401-(A)-(N)

The Department gives notice of its intent to find the Amendment to the Comprehensive Plan for Volusia County, adopted by Ordinance No. 2009-34, on February 18, 2010, NOT IN COMPLIANCE, and Amendments adopted by Ordinance Nos. 2009-27 through 2009-33, on February 18, 2010, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

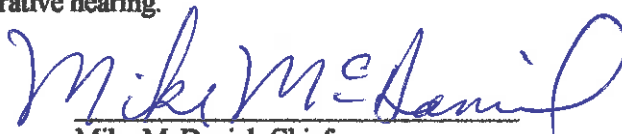
The adopted Volusia County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendment Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Volusia County Growth and Resource Management Department, 123 West Indiana Avenue, DeLand, Florida 32720-4604.

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 Amendments to the Volusia County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, a copy must be mailed or delivered to the local government 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 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. 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.

This Notice of Intent and the Statement of Intent for the amendment found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. 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 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to 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.



Mike McDaniel, Chief
Office of Comprehensive Planning
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: VOLUSIA COUNTY
COMPREHENSIVE PLAN AMENDMENT
10-1; AMENDING THE FUTURE LAND
USE MAP, FUTURE LAND USE ELEMENT,
FUTURE LAND USE MAP SERIES
ADOPTED BY ORDINANCE No. 2009-34
ON FEBRUARY 18, 2010

Docket No. 10-1-(A) -(N)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENTS
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes (F.S.), and Rule 9J-11.012(6), Florida Administrative Code (F.A.C), hereby issues this Statement of Intent to find Ordinance Number 2009-34 adopted on February 18, 2010 as part of the Volusia County 10-1 amendment package pertaining to the Farmton Local Plan and Future Land Use Map amendment, Not In Compliance based upon the Objections, Recommendations and Comments Report (“ORC Report”) issued by the Department on December 24, 2009, which is hereby incorporated by reference and based upon the changes made to the amendments as adopted. The Department finds that the amendments are not “in compliance”, as defined in Section 163.3184(1)(b), *Florida Statutes*, and not consistent with Chapter 163, Part II, F.S., Chapter 9J-5, F.A.C. and the State Comprehensive Plan, Chapter 187, F.S., for the following reasons:

I. CONSISTENCY WITH CHAPTER 163, F.S., AND RULE 9J-5, F.A.C.:

The adopted amendment creates two new Future Land Use Map (FLUM) categories, GreenKey and Sustainable Development Area (SDA). The amendment designates 31,876 acres as GreenKey and 15,081 acres as SDA, resulting in a development program that will allow 23,100 units and 4.7 million square feet of non-residential development. In its ORC response, the County states that the Farmton Plan provides better environmental protection for this property than the current Comprehensive Plan.

However, under the County's existing clustering provisions, 4,692 dwelling units and 820,217 square feet of non-residential uses could be built on the property, while requiring in return that approximately 60 to 80 percent of the area be reserved as open space. The entire site is designated as Natural Resource Management Area (NRMA) and Policy 12.2.2.5 requires "clustering of dwelling units and/or open space for land development projects which contain environmentally sensitive lands and critical habitats." In contrast, the Farmton amendment would result in a substantial increase in the amount of residential and non-residential uses, the adverse impacts of which are exacerbated by the sprawling, fragmented development pattern, the location of major roadways within sensitive natural systems, and the weak and conditional provisions which have been included to protect wildlife and natural resources. Based on these considerations, and the issues identified and discussed below, the Department concludes that the County's existing policies offer a superior choice for providing the property owner reasonable use of the land while also protecting important natural resources, discouraging urban sprawl, and

allowing the County and other public agencies to most cost effectively meet the needs of future growth.

A. Inconsistent Provisions The inconsistent provisions of the amendments under this subject heading are as follows:

1. Suitability: The amendment site is not environmentally suitable for the types, densities and intensities, and configuration of adopted land uses. The entire site is located within the NRMA, designated by the Volusia County comprehensive plan to “provide for the protection of areas determined to be environmentally sensitive, and direct growth away from such areas,” and provide “natural resources the highest degree of protection in land development decisions and planning.” (see Objective 12.2.1 and Policy 12.2.1.1 of the Conservation Element). Policy 12.2.2.5 of the County’s Conservation Element requires “clustering and/or open space” for land development projects which contain “environmentally sensitive lands and critical habitats...in order to preserve these resources.” This site contains both environmentally sensitive land and critical habitats.

The site is designated Priority 1 Critical Linkages, the highest priority, in the Florida Ecological Greenways Network classification system, administered through the Florida Department of Environmental Protection’s Office of Greenways and Trails. This means that this land “is essential for protecting a public and private network of large landscapes and wildlife corridors,” and this site is a key lynchpin in the system of connections to serve regional wildlife movements between south Florida and north Florida. This particular corridor is key to connecting isolated

bear populations. It is a connection between secondary bear habitat to the south and a large primary bear habitat to the north. Significant ecological functions for the survival of the state-listed black bear populations are served by both primary and secondary habitat. The area surrounding the site has experienced bear road kills, nuisance reports, and sightings, all indicative of the abundant presence of bears.

In addition to the significance of the site to critical wildlife linkages, and its identification as secondary bear habitat, it also contains gopher tortoise populations. Both bears and gopher tortoises are state listed species. The U.S. Fish and Wildlife Service has identified the site as a Consultation Area for Florida scrub jay, crested caracara and the Everglades snail kite.

Consultation Areas are identified by the Wildlife Service as areas essential to the conservation of a listed species.

Records from the surrounding area indicate a diversity of rich flora and fauna that likely occur on the site. A report for the development area generated from the Florida Natural Areas Inventory's (FNAI) Biodiversity Matrix has identified the probable occurrence of mesic flatwoods, an under-represented natural community and likely harbors both federal and state listed species like the wood stork, Florida sandhill crane, as well as potentially many others, such as the eastern indigo snake. The site is also identified as a FNAI Under-Represented Natural Community for scrub and pine flatwoods.

Approximately 55 percent of the area designated SDA is located in the 100-year FEMA flood zone. Additionally, approximately 24 percent of the area designated as SDA is composed of

wetlands, and 50 to 60 percent of the site as a whole is comprised of wetlands. Most of the property contains soil types that pose moderate to severe limitations to building site development. The site is located in an area designated as “more vulnerable” by the Florida Aquifer Vulnerability Assessment (FAVA), which refers to the likelihood of contamination to the Surficial Aquifer System, the principal drinking source for the area. Designating this area with a more intensive use is inconsistent with Rule 9J-5.013(3)(b), F.A.C., which states that land uses which are incompatible with protection and conservation of wetlands shall be directed away from wetlands. Additionally, the amendment is inconsistent with Policy 12.2.3.2 of the County’s Conservation Element, which states that activities within areas designated as NRMA, as is the entire site, shall avoid adverse impacts to wetlands and their associated natural physical and biological functions, except in cases where it can be demonstrated to be in the overriding public interest.

Development of uplands, wetlands and floodplains on the site may affect the hydrology, and likely reduce natural watershed functions, such as collection, storage, filtering and discharge of runoff. Stormwater runoff from development may negatively impact wetlands and groundwater in both the SDA and GreenKey areas. The increase in impervious surface area created by raising densities and intensities heightens the potential for adverse water quantity, water quality and habitat impacts in the Upper St. Johns River Basin providing further indication of the environmental sensitivity and natural resource value of the area.

The property contains a regional 24,323-acre wetlands mitigation bank. In addition, areas designated SDA encroach into the Farnton Mitigation Bank. These areas include a portion of the

Village District and portions of the Gateway District. In addition, the extension of Williamson Boulevard and Maytown Road shown on the Farmton Local Plan Spine Network Map and described in Policy FG 5.7 as 200-foot-wide multi-modal rights-of-way encroach on the area in the mitigation bank (North and West banks respectively), thereby threatening to compromise the resource values they were created to protect. Mitigation Banks are areas of environmental sensitivity and are inappropriate for intense urban development. The fact that more than half of the property has been placed in a mitigation bank underscores the environmental sensitivity and natural resource values of the area. Furthermore, the mitigation bank lands contain Cow Creek and portions of Deep Creek, which are tributaries of the St. Johns River. Urban and suburban scale development adjacent to these tributaries and within their associated wetlands and flood zones may affect and reduce natural watershed functions. Increased impervious area associated with the development potential created by this amendment heightens the potential for adverse water quantity, water quality and habitat impacts.

Further, the Greenkey lands that are not permitted as Farmton Mitigation Bank will only have ten year covenants placed over them, and the continuation of the covenant is contingent on the maximum densities and intensities established by this amendment remaining in effect. This creates uncertainty as to the long term protection of the Greenkey lands, and is inconsistent with Objective 2, which states that Greenkey land shall be conserved in perpetuity.

Additionally, the County has adopted the requirement that a Conservation Management Plan be prepared for all Greenkey and Resource Based Open Space on the site. However, the preparation of this plan could take up to two years and in the interim development is not prohibited from

occurring until the Conservation Management Plan is in effect. Moreover, once prepared there is no deadline for incorporating the plan into the conservation easements and covenants and identification of the entity that will implement the plan is deferred to the plan itself. Therefore, the uncertainties associated with the timing and implementation of the Conservation Management Plan do not ensure natural resource protection.

The abundant natural resources which exist on and around this property, the role it plays as wildlife habitat and a Critical Linkage in facilitating the movement of wildlife, the site's natural constraints to development, the sprawling pattern of development, and the weak mechanisms intended to protect the areas not being developed all indicate that the property is not suitable for the types, densities, intensities and configuration of land uses that have been adopted. Therefore, the amendment fails to protect water quality, water quantity, native vegetative communities, wildlife, wildlife habitat, threatened and endangered species, the natural functions of soils, wetlands, floodplains and rivers as required by the statutes and rules cited below.

[Sections 163.3177(2); 163.3177(6)(a),(d); 163.3177(8); 163.3177(10)(a) and (e); 187.201(9)(b)1.,3.,10., 187.201(15)(b)2., 6., 187.201(21)(b)3., 187.201(25)(b)7. F.S. Rules 9J-5.005(2), (5) and (6); 9J-5.006(2)(b); 9J-5.006(2)(e); 9J-5.006(3)(b)1., 3., 4., and 8.; Rule 9J-5.006(3)(c)2., and 6., Rule 9J-5.006(5); Rule 9J-5.011(2)(b)5; Rule 9J-5.011(2)(c)4; Rule 9J-5.013(2)(b)2., 3., and 4.; Rule 9J-5.013(2)(c)1.,3., 5., 6., 8. and 9.; Rule 9J-5.013(3) F.A.C.]

2. Coordination with Adjacent Local Governments: Section 163.3177(4)(a), F.S. requires coordination of the Comprehensive Plan with the comprehensive plan of adjacent municipalities. Policy FG 3.4 a states that development in the Gateway District must be compatible with the Restoration Development of Regional Impact (DRI) to the north. Additionally, Policy 12.2.2.7 of the County's Conservation Element states that: "the County shall coordinate with appropriate governmental entities to protect environmentally sensitive lands which extend into adjacent counties and municipalities." Directly to the north of the Gateway District, the City of Edgewater has designated approximately 3,500 acres as Conservation and Conservation-Restoration, as part of the Restoration DRI. Intensive development, as adopted by this amendment, directly to the south of Restoration's conservation area is not compatible with conservation land uses and does not reflect coordination of the County's comprehensive plan with the City of Edgewater's Comprehensive Plan. Furthermore, the lack of coordination creates an internal inconsistency with the County's own comprehensive plan.

[Sections 163.3177(2), (4)(a), (6)(a), (d) and (h), (10), 187.201(9)(b)1.,3.,7.,10., and (15)(b)2,6 and (21)(b)3. and (25)(b)7., F.S. Rules 9J-5.005(5), 9J-5.006(1), (2) and (3)(b)1., 3., 4., 8., 9J-5.006(3)(c)1., 2., 6., 9J-5.013(1),(2)(c)8. and (3), 9J-5.015(1),(2)(c) and (3)(b)1., 2., 9J-5.015(3)(c)1., 5., 7. F.A.C.]

3. Meaningful and Predictable Guidelines and Standards: Rule 9J-5.005(6), F.A.C. requires that goals, objectives and policies establish meaningful and predictable standards for the use and development of land, and provide meaningful guidelines for the content of more detailed land development regulations. The Comprehensive Plan must identify the programs and activities that

will be part of the strategy for implementing the goals, objectives and policies within the Plan.

The policies fail to do so in the following instances:

1) The role and composition of the Community Stewardship Organization as established in Policy FG 2.16 is unclear. Other than receiving the title to the Deep Creek Conservation Area, all of its other roles listed in Policy FG 2.16 are optional, including taking title to Greenkey and Resource Based Open Space, holding conservation easements, undertaking management responsibilities and operating educational facilities. Therefore, it is unknown what entity will hold the conservation easements, who will implement the conservation management plan and who will manage the Greenkey and Resource Based Open Space lands.

2) Policy FG 3.10 establishes jobs to housing ratios for the SDA districts. Milestones that will ensure the 1:1 jobs to housing ratio is met at buildout are deferred to a development order. Additionally, this policy allows the development of a remedial plan to address development potential if the jobs to housing ratio falls below 0.65. No criterion to guide the content of the remedial plan is adopted into the Comprehensive plan. The remedial plan could allow any jobs to housing ratio. Therefore, the adopted jobs to housing ratio is not meaningful or predictable.

[Sections 163.3177(6)(a), (d), 163.3177(8) and (10), 187.201(9)(b)1., 7., 187.201(15)(b)1-6, 187.201(21)(b)3., 187.201(25)(b)7., F.S. Rule 9J-5.005(6), 9J-5.006(3)(b)4., 8., 9J-5.006(5), 9J-5.013(2) and (3), F.A.C.]

4. Internal Consistency: The amendment contains contradictory and internally inconsistent goals, objectives, and policies. This is not in compliance with Section 163.3177(2), F.S. and Rule 9J-5.005(5), F.A.C., which require the Comprehensive Plan to be internally consistent. The following text is inconsistent:

1) Policy 12.2.1.2 of the County's Conservation Element establishes special uses for areas designated as NRMA. The special use areas are: Environmental Systems Corridor, Forestry Resource and Low Impact Urban, all low density land use categories. The designation of the Farmton site as GreenKey and SDA is inconsistent with this policy, as the SDA land use designation allows intensive, high impact urban uses even though the Farmton site is wholly within the NRMA designation.

Additionally, the increase in intensity and density is inconsistent with Policy 1.3.1.28 of the Future Land Use Element, which states: "The Future Land Use Map shall not be amended to provide additional urban expansion except in conjunction with the required Evaluation and Appraisal Report update of the Comprehensive Plan and Capital Improvements Program (CIP), except under the following conditions:

- a. Population projections have been revised, and accepted by the County and FDCA;
- b. Justification is provided for the expansion of the urban boundary;
- c. Compatibility with the character of the area;
- d. Availability of the full range of all urban services, including adequate

potable water supply and facilities, to accommodate inclusion in an urban area; and,

e. Documentation is provided that urban expansion will not be in conflict with the intent of the Natural Resource Management Area.”

None of these conditions have been met by this amendment. This is not an Evaluation and Appraisal Report and CIP update to the Comprehensive Plan. Population projections have not been revised, no justification is provided for expanding the urban boundary, the amendment is not compatible with the character of the area, urban services are not available, and development of this density and intensity is not consistent with the intent of the NRMA overlay.

2) Policy 1.1.3.5 of the Future Land Use Element states that “new urban development shall be located inside an urban designated area where a full range of urban services exist or are planned.” No urban services exist or are planned for the site in the Capital Improvements Element, the County’s water supply plan or water supply plans of adjacent local governments, the Future Transportation Map, or the School Board’s work plan; nor is the site an urban designated area. It is not consistent to defer this planning to a Development of Regional Impact or “prior to development approval” as stated in Policy FG 7.7, nor is it in compliance with Section 163.3177(6)(a), F.S., which requires the future land use plan to be based on the availability of water supplies and public facilities.

3) Policies FG 6.1 and 6.2 defer a finding of school adequacy to the issuance of a development order or a change in zoning classification and an amendment to the Interlocal Agreement for

Public School Facility Planning. This is inconsistent with Policy 3.1.4.3 of the Public Schools Facilities Element of the County's Comprehensive plan, which states that Volusia County will not approve land use changes that increase residential density until the School Board finds that adequate public schools can be timely planned and constructed, or that the applicant has provided adequate mitigation. That an amendment to the Interlocal Agreement is needed further demonstrates this amendment's inconsistency with the existing concurrency service areas that establish this site as a "no school zone."

4) Policy FG 7.1 requires fiscal neutrality for infrastructure required by development of the site. However, Policy FG 5.13 allows proportionate fair share. If the development only assumes responsibility for a fraction of offsite transportation needs on a proportionate fair share basis, then the responsibility will be placed on the County or State to make up the difference between the proportionate fair share payment and the total cost of the improvement, and the development will not be fiscally neutral, resulting in an internal inconsistency between Policy FG 7.1 and Policy FG 5.13.

[Sections 163.3177(2), (3), (4)(a), (6)(a), (c), (d) and (j), 163.3177(10), 163.3177(12), 187.201(7)(b)5., 187.201(9)(b)1., 7., 187.201(15)(b)1-6, 187.201(17)(b)1., 2., 3., 7., 9., 187.201(19)(b)3., 13., 187.201(21)(b)3., 187.201(25)(b)7, F.S. Rule 9J-5.005(5), 9J-5.006(3)(b)1., 4., 8., 9J-5.011(2)(b), 9J-5.011(2)(c)4., 9J-5.013(2)(b)2., 3., 4., 9J-5.013(2)(c)1., 3., 5., 6. 9J-5.013(3), 9J-5.016(3)(b)1., 3., 9J-5.016(4), 9J-5.019(3), (4) and (5), 9J-5.025(2)(c), (g) and (j), 9J-5.025(3)(b), F.A.C.]

5. Planning Horizon: Policy FG 1.1 establishes a 50-year planning horizon specifically for the Farmton Tract. Establishing a planning horizon of 2060 for a single property is inconsistent with Section 163.3177(5)(a), F.S., and Rule 9J-5.005(4), F.A.C., which require the comprehensive plan to contain at least two planning horizons, not separate horizons for individual properties. The separate 2060 planning horizon for this property indicates that this amendment is not appropriate, since public facility availability cannot be demonstrated within the County's existing long term planning horizon. Establishing a separate and different planning horizon for a single property is inconsistent with the requirement that the Comprehensive Plan have planning horizons that are applicable to the County and the plan as a whole.

Furthermore, Section 163.3177(2), F.S., states that "Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent ..." Rule 9J-5.005(5), F.A.C., sets forth a similar requirement. Creating a separate horizon for a single property results in a plan that is not internally consistent, because the remainder of the plan contains goals, objectives, and policies which have been adopted to meet planning needs and statutory and rule requirements for a 2025 planning horizon. The result is the creation of a plan whose elements are not internally coordinated, consistent and mutually supportive.

[Sections 163.3177(2), (5)(a), and (10), 187.201(25)(b)7, F.S; Rule 9J-5.005(4) and (5), F.A.C.]

6. Capital Improvements Element/Public Facilities: Given the concentration of development in an area with no current development and little infrastructure, the amendment will create a need for public facilities, including potable water, wastewater, reclaimed water, solid waste, recreation, schools and transportation facilities, in order to provide access to the site and achieve and maintain adopted level of service standards. However, no analysis identifying these needed facilities was provided. No amendments to the Capital Improvements Element depicting necessary improvements were adopted for the short term or long term planning horizons.

The County defers the demonstration of the availability of public facilities and services until a development is applied for under the DRI provisions in Policy FG 8.1. This does not address the requirement in Section 163.3177(6)(a), F.S. that the future land use plan be based on the availability of public facilities and services, since a DRI is not a part of the future land use plan. Therefore, the County has not demonstrated the availability of public facilities and services to serve development on the site.

[Sections 163.3177(2), (3), (4), (5)(a), (6)(a), (c) & (j); 163.3177(8); 163.3177(10)(a) and (e); 163.3177(12); 163.3187(2), 187.201(15)(b)1., 187.201(17)(b)1., 7., 187.201(19)(b)2., 3., 9., 13., 187.201(25)(b)7., F.S.; and Rules 9J-5.005(2), (3) and (5); 9J-5.006(2)(a); 9J-5.006(3)(c)3., 9J-5.011(1) and (2); 9J-5.016(1), (2), (3)(b)1., 3., 4., 5., (3)(c)4., 6., and (4); 9J-5.019(2), (3), (4), and (5), F.A.C.]

7. Water Supply: The increase in development on the site was not anticipated in any local government's ten year water supply plan or the Water Management District's ten year work plan,

and no amendments to a water supply plan have been concurrently proposed or adopted. This is not adequate to fulfill the requirements of Sections 163.3167(13), and 163.3177(6)(a), (c) and (d), F.S., which require that the future land use plan be based on the availability of water supplies and that local governments assess projected water needs and sources necessary to meet water demands within a local government's jurisdiction as part of a water supply plan. Additionally, this amendment is inconsistent with Policy 7.1.3.1 of the County's Potable Water Sub-element which requires that the County maintain a Water Supply Facilities Work Plan to address water supply facilities necessary to meet existing and projected demand.

[Sections 163.3167(13); 163.3177(2), (4)(a), (6)(a), (c), (d) and (h); 163.3177(8); 163.3177(10)(a) and (e) ; 163.3187(2), 187.201(7)(b)5., 9. 187.201(15)(a) and (b)1., 2., 187.201(25)(b)7. F.S.; Rule 9J-5.005(2),(5); 9J-5.006(2)(a), (3)(b)1., 4., (3)(c)3.; 9J-5.011(1)(b), (c), (d), (f); 9J-5.011(2)(b)4.; 9J-5.011(2)(c) 4.; 9J-5.013(1)(c), (2)(b)2., (2)(c)1., F.A.C]

8. Transportation Facilities: The amendment did not include any commitments for roadway improvements necessitated by the amendment. No amendments to the County's Future Transportation Map or Capital Improvements Element are included in this amendment package to depict the necessary short term and long term improvements. Policy FG 8.3 defers a transportation study to a DRI. Policy FG 5.16 defers a roadway improvement plan to the County's Evaluation and Appraisal Report (EAR) and the EAR based amendments.

In the short term, the adopted amendment would generate an estimated 67,478 external daily trip ends, whereas the current transportation plans for the site only project 2,200 daily trip ends by 2025, according to data and analysis prepared by the Florida Department of Transportation (FDOT). Because no amendments were included to the Capital Improvements Element and the Future Transportation Map, the plan amendment is not based on the availability of adequate transportation capacity to ensure level of service standards will be achieved and maintained.

[Section 163.3177 (2), (3), (5), (6), (8), (10), 163.3180, 187.201(10)(b)2, (11)(b)4. and 6., (15)(b)1., (17)(b), (19)(b) 2., 3., 9., 11., 12., 13., and 15., (25)(b)7, F.S.; and Rule 9J-5.005(2), (5) and (6), 9J-5.0055(1) and (2); 9J-5.006(2) and (4), 9J-5.016(1), (2) and (4), 9J-5.019(2), (3), (4) and (5), F.A.C.]

9. Public School Facilities: Adequate school capacity is not available or planned to be available to support the adopted increase in residential density. The amendment is not supported by data and analysis to demonstrate the adopted level of service standards for public school facilities will be maintained. While Policy FG 1.4 conditions residential development beyond 2,287 units on obtaining a finding of school adequacy; that finding must be determined prior to the adoption of a future land use map amendment and not deferred. Therefore, this amendment is inconsistent with Policy 3.2.2.8 of the County's Public Schools Facility Element, which requires that comprehensive plan amendments demonstrate how school capacity will be met consistent with the Interlocal Agreement, which requires a finding of school adequacy or a Capacity Enhancement Agreement before approval of a Future Land Use Map amendment. Additionally, Section 163.3177(6)(a), F.S. requires that the future land use plan be coordinated with the

availability of public facilities, including public schools. No finding of school adequacy or a Capacity Enhancement Agreement has been reached for the maximum development potential of this amendment.

Based on the School Board's analysis, up to five elementary schools, one and one-half middle school and one and one-half high schools will be needed to serve the development. Thus, the amendment does not demonstrate internal consistency with the County's Public School Facilities Element, Policy 3.1.4.2, which requires the County's Future Land Use Map to be coordinated with Public School Facilities Planning Maps, which do not reflect these needed schools.

[Sections 163.3177(2), (3), (4), (6)(a), (h), (8), (10), and (12); and 163.3180(13); 163.3187(2), 187.201(15)(b)1., (17)(b)1.-7., 9., (25)(b)7.; F.S.; Rules 9J-5.005(2) (3), and (5); 9J-5.0055(1) and (2); 9J-5.006(2), (3) and (4); 9J-5.015, 9J-5.016; and 9J-5.025, F.A.C.]

10. Need: The County's adopted EAR, from 2006, states that the County has adequate land designated as residential to support a 2025 projected population of approximately 657,000 people, with additional land to accommodate further residential growth. The Farmton property was not considered in the analysis. The County's analysis was based on the medium range Bureau of Economic and Business Research (BEBR) population projections from 2004. In 2010, BEBR reduced its medium projected population for Volusia County to 587,100 people in 2025, the Comprehensive Plan's long-term planning horizon. The need analysis submitted by the County does not reflect the most updated population projections and is not based upon a

professionally acceptable methodology for a variety of reasons, including: it is not based on the increment of growth, not based on best available data and analysis and uses a 2060 timeframe to demonstrate need. The 2060 timeframe exceeds the adopted 2025 long term planning horizon.

In view of the amount of residential land allocated in more suitable areas of the County, the Farnton property's environmental constraints, the lack of meaningful and predictable standards, lack of planned public facilities, the fifty year planning horizon and indicators of urban sprawl, land use need has not been demonstrated to justify the increase of development by 18,408 dwelling units and four million square feet. This increase is inappropriate.

[Sections 163.3177(2), (3), (6)(a), (c), (d), (f), and (j), (8) and (10); 163.3187(2), 187.201(15)(b)1.-6., (25)(b)7, F.S.; Rules 9J-5.005(1), (2), (4) and (5); 9J-5.0055 (1) and (2); 9J-5.006(2), (3), (4), and (5), 9J-5.010(2), 9J-5.011(1) and (2), 9J-5.013, 9J-5.016(2),(3) and (4), 9J-5.019(2), (3) and (4), 9J-5.025(2) and (3) F.A.C.]

11. Urban Sprawl, Energy Efficient Land Use Patterns and Reduction of Greenhouse

Gases: The amendment constitutes urban sprawl pursuant to Section 163.3177(6)(a), F.S., and Rule 9J-5.006(5), F.A.C. The site leaps over undeveloped lands, is not functionally related to the urbanized area of the County, sprawls in a fragmented development pattern across the environmentally sensitive mid-section of the County, is proposed in an area designated as a “no school zone,” and the development controls introduced to overcome urban sprawl are not adequate. Specifically, the amendment reflects the following indicators of urban sprawl:

- Allows for substantial areas to develop as low-intensity, low-density, or single-use development or uses in excess of demonstrated need,
- Designates significant amounts of urban development to occur in rural areas at substantial distances from existing urban areas while leaping over undeveloped lands which are available, according to the County's EAR.
- Designates urban development in isolated patterns emanating from existing urban developments.
- Promotes premature conversion of rural land to urban uses and fails to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, and natural groundwater aquifer recharge areas.
- Fails to adequately protect adjacent agricultural areas and activities, including silviculture, and including active agricultural and silvicultural activities as well as passive agricultural activities and dormant, unique and prime farmlands and soils.
- Fails to maximize use of existing public facilities and services, as no facilities or services exist on the site.
- Fails to maximize use of future public facilities and services, as no facilities or services are planned for the site.
- Allows for land use patterns which disproportionately increase the cost of providing and maintaining facilities and services including roads, solid waste, potable water, sanitary sewer, stormwater management, and education.
- Fails to provide a clear separation between rural and urban uses.
- Discourages infill development or the redevelopment of existing neighborhoods and communities.

- Fails to encourage an attractive and functional mix of uses, as the policies intended to do so are not meaningful and predictable.
- Results in poor accessibility among linked or related land uses, as the policies intending to do so are not meaningful and predictable.
- Results in the loss of significant amounts of functional open space.

Development controls, pursuant to Rule 9J-5.006(5)(j), F.A.C., may be considered when evaluating urban sprawl. However, the development controls adopted within this amendment do not establish meaningful and predictable standards that ensure an urban form is created which discourages urban sprawl, achieves a compact, energy efficient development pattern, results in a balanced and integrated mix of uses over time, and reduces greenhouse gas emissions through alternate modes of mobility.

Phasing of development on the site is deferred to a DRI or Master Plan-equivalent development order. Although phasing is one development control that can be used to overcome urban sprawl, it is required to be included in the comprehensive plan, not deferred to a later process outside the comprehensive plan.

The policies provide a minimum mix of uses for the Gateway, Town Center and Village Center districts, but no phasing mechanisms are provided to ensure that the mix of uses is achieved over time. Although a minimum percentage of acreage is established for residential and non-residential uses, there are no policies which link the construction of residential units to non-

residential square footage over time to ensure a balanced mix of uses is achieved. Without an appropriate and enforceable mix of uses, the adopted development potential is not sustainable.

Little infrastructure exists on the site, and no additional infrastructure is planned to serve the development through the Capital Improvements Element, the Future Transportation Map and the ten year water supply plan of the County and/or potable water and sewer providers.

Furthermore, the size of the development areas, their sprawling configuration across one of the most environmentally sensitive areas of the County, their fragmentation of the natural environment, the lack of meaningful and predictable development controls to achieve the desired urban form, and the lack of planning for public facilities, result in the amendment not meeting the requirements of Section 163.3177(6)(a), F.S. to discourage urban sprawl, achieve energy efficient land use patterns, and reduce green house gas emissions.

Finally, the amendment is internally inconsistent with Policy 1.1.3.6 of the County's Future Land Use Element, which states, "requests for land use map amendments will be reviewed using the urban sprawl indicators contained in Rule 9J-5.006(5)(g), F.A.C. Requests that exhibit a presence of a majority of the indicators shall be concluded as to encourage urban sprawl." Since the amendment demonstrates the above listed indicators of urban sprawl it is internally inconsistent with this policy.

[Sections 163.3177(6)(a), (b), (c), (d), (f), and (j); 163.3177(2), (3), (4), (8) and (10); 163.3180; 163.3187(2), 187.201(7)(b)5; 187.201(9)(b) 1., 3., 7., and 10., and (11)(b)4.

and 6., and (15)(b), (17)(b), (21)(b)3., (25)(b)7.; F.S.; Rules 9J-5.005(1), (2), (4), (5) and (6); 9J-5.006(2), (3), (4), and (5); 9J-5.011, 9J-5.013; 9J-5.016; 9J-5.018; 9J-5.019; and 9J-5.025, F.A.C.]

B. Recommended remedial actions: The above inconsistencies may be remedied by taking the following action: Rescind Ordinance Number 2009-34.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent Provisions: Adopted Ordinance Number 2009-34 is not consistent with the State Comprehensive Plan as cited above.

B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendment as described earlier in this statement of intent.

CONCLUSIONS

1. The Amendment is not consistent with the State Comprehensive Plan.
2. The Amendment is not consistent with Chapter 9J-5, *Florida Administrative Code*.
3. The Amendment is not consistent with the requirements of Chapter 163, Part II, *Florida Statutes*.
4. The Amendment is not "in compliance," as defined in Section 163.3184(1)(b) *Florida Statutes*.

5. In order to bring the Comprehensive Plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 12th day of April 2010, at Tallahassee, Florida.

A handwritten signature in blue ink that reads "Mike McDaniel". The signature is written in a cursive style and is positioned above a horizontal line.

Mike McDaniel, Chief

Division of Community Planning

Department of Community Affairs

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