STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

and

FLORIDA WILDLIFE FEDERATION,

Intervenor,

vs. **DOAH Case No.: 10-10104GM**

CITY OF PALM COAST,

Respondent,

and

WILSON GREEN, LLC,

Intervenor.

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner, **DOAH Case No.: 10-10544DRI**

v.

CITY OF PALM COAST, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA AND WILSON GREEN, LLC,

Respondents.

_____/

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs, the City of Palm Coast, Wilson Green, LLC,

and Florida Wildlife Federation, as a complete and final settlement of all claims raised in the above-styled proceeding.

RECITALS

WHEREAS, the State of Florida, Department of Community Affairs ("DCA" or the "Department"), is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, the City of Palm Coast ("Local Government") is a local government with the duty to adopt comprehensive plan amendments that are in compliance; and

WHEREAS, the Local Government adopted Comprehensive Plan Amendment 10-D1 ("Plan Amendment") by Ordinance No. 2010-12 on September 7, 2010; and

WHEREAS, the Plan Amendment designates approximately 5,273 acres as City of Palm Coast Development of Regional Impact-Mixed Use (approximately 4,429 acres) and Conservation (approximately 844 acres); and

WHEREAS, DCA issued its Notice and Statement of Intent regarding the Plan Amendment on November 10, 2010 which is attached as Exhibit "A"; and

WHEREAS, as set forth in the Statement of Intent, DCA contends that the Plan Amendment is not in compliance; and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, DCA initiated a formal administrative proceeding challenging the Plan Amendment (the "Plan Amendment Petition"); and

WHEREAS, the Plan Amendment Petition was assigned the following case number: DOAH Case No. 10-10104GM; and

WHEREAS, the Local Government and Wilson Green, LLC, dispute the allegations of the Notice and Statement of Intent and the Plan Amendment Petition; and

WHEREAS, Wilson Green, LLC filed a Petition for Leave to Intervene regarding the Plan Amendment Petition on November 22, 2010, and was granted leave to intervene on November 24, 2010; and

WHEREAS, Florida Wildlife Federation ("FWF") filed a Petition for Leave to Intervene regarding the Plan Amendment Petition on November 17, 2010, and was granted leave to intervene on December 15, 2010; and

WHEREAS, DCA is the state land planning agency and has the authority to administer the Florida Environmental Land and Water Management Act of 1972, Chapter 380, as codified in Part I, Florida Statutes; and

WHEREAS, the Local Government has the duty to issue development orders for developments within the City of Palm Coast; and

WHEREAS, the Local Government adopted Resolution No. 2010-114 approving the Development of Regional Impact Development Order for the development known as Old Brick Township on September 7, 2010 (the "Wilson Green DRI/DO"); and

WHEREAS, the Wilson Green DRI/DO is a multi-use project for development on approximately 5,273 acres in the western portion of the City of Palm Coast; and

WHEREAS, DCA filed its Petition for Appeal of a Development Order (the "Wilson Green DRI/DO Petition") with the State of Florida Land and Water Adjudicatory Commission on November 5, 2010 challenging the Wilson Green DRI/DO which is attached as Exhibit "B"; and

WHEREAS, as set forth in the Wilson Green DRI/DO Petition, DCA contends that the Wilson Green DRI/DO is inconsistent with Section 380.06, Florida Statutes, and Rule 9J-2, Florida Administrative Code; and

WHEREAS, pursuant to Rule 42-2.008(4), Florida Administrative Code, the State of Florida Land and Water Adjudicatory Commission forwarded the Wilson Green DRI/DO

Petition to the Florida Division of Administrative Hearings ("DOAH") on November 24, 2010; and

WHEREAS, the Wilson Green DRI/DO Petition was assigned the following case number: DOAH Case No. 10-10544DRI; and

WHEREAS, the Local Government and Wilson Green, LLC, dispute the allegations contained in the Wilson Green DRI/DO Petition; and

WHEREAS, by way of the Order issued by Administrative Law Judge David M. Maloney, dated December 29, 2010, the Plan Amendment Petition (DOAH Case No. 10-10104GM) and the Wilson Green DRI/DO Petition (DOAH Case No. 10-10544DRI) were consolidated into the above-styled administrative proceeding; and

WHEREAS, DCA, the Local Government, TerraPointe LLC, Neoga Lakes, LLC, Wilson Green, LLC, and FWF have simultaneously entered into a Stipulated Settlement Agreement pertaining to the City of Palm Coast Overlay compliance proceedings (DOAH Case No. 10-9050GM).

WHEREAS, the parties wish to avoid the expense, delay and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinbelow set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this Agreement, the following words and phrases shall have the following meanings:

a. Act: the Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment: Comprehensive Plan Amendment 10-D1 adopted by the Local Government on September 7, 2010, as Ordinance No. 2010-12.

d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Wilson Green DRI/DO Petition. The petition for administrative hearing and relief filed by DCA in DOAH Case No. 10-10544DRI, dated November 5, 2010 which is attached as Exhibit "B".

h. Plan Amendment Petition. The petition for administrative hearing and relief filed by DCA in DOAH Case No. 10-10-10104GM, dated September 13, 2010.

i. Remedial Action: A remedial plan amendment or other action described in the statement of intent or this Agreement as an action which must be completed to bring the plan amendment into compliance.

j. Remedial Plan Amendment: An amendment to the plan, the need for which is identified in this Agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

k. Statement of Intent: The statement of intent to find the Plan Amendment not in compliance issued by the Department in this case which is attached as Exhibit "A".

l. Wilson Green DRI/DO. Resolution No. 2010-114 approving the Development of Regional Impact Development Order for the development known as Old Brick Township on September 7, 2010.

m. Overlay Remedial Amendments. The amendments to the City of Palm Coast Comprehensive Plan pursuant to the Overlay Settlement Agreement.

n. Overlay Settlement Agreement. The Stipulated Settlement Agreement pertaining to the City of Palm Coast Overlay compliance proceedings (DOAH Case No. 10-9050GM).

o. FWF Petition. The FWF's Petition for Leave to Intervene in this case is dated November 17, 2010.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.

3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Plan Amendment not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve all issues between the parties in this proceeding.

4. DCA Dismissal. If the Local Government completes the Remedial Actions and amendment to the Wilson Green DRI/DO required by this Agreement, and complies with the Overlay Settlement Agreement, the Department shall: (i) comply with the Overlay Settlement Agreement; (ii) issue a Notice of Intent addressing both the Remedial Plan Amendment and the initial Plan Amendment subject to these proceedings, and determine the Plan Amendment and

Remedial Plan Amendment to be in compliance pursuant to Paragraph 10.a. below; (iii) file the cumulative Notice of Intent with DOAH; (iv) file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes; (v) dismiss the Wilson Green DRI/DO Petition ("DCA DRI/DO Petition Dismissal") at which time the Department hereby agrees the OBT DRI/DO, as amended, is consistent with Section 380.06, Florida Statutes, Rule 9J-2, Florida Administrative Code, and will take no further actions adverse to the OBT DRI/DO, as amended, in any other related proceedings.

5. FWF Dismissal. If the Local Government completes the Remedial Actions required by this Agreement, FWF agrees to dismiss the FWF Petition within ten (10) days of DCA's issuance of the cumulative Notice of Intent addressing both the Remedial Plan Amendment and the initial Plan Amendment as being in compliance. FWF agrees that it will take no action adverse to Wilson Green, LLC, with respect to the Overlay Remedial Amendments and the subject matter arising out of this Agreement including the Wilson Green DRI/DO amendment and Remedial Plan Amendment.

6. Description of Provisions not in Compliance, Remedial Actions, and Amendment to Wilson Green DRI/DO; Legal Effect of Agreement. Exhibit "A" to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance and Exhibit "B" is a copy of the Wilson Green DRI/DO Petition. Exhibit "C" contains Remedial Actions needed for compliance. Exhibit "D" contains the Amendment to the Wilson Green DRI/DO. Exhibits "A", "B", "C" and "D" are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions and amendment to the Wilson Green DRI/DO are accomplished, the Plan Amendment will be in compliance.

7. Remedial Actions and amendment to Wilson Green DRI/DO to be Considered for Adoption and Resolution. The Local Government agrees to consider for adoption by formal

action of its governing body all Remedial Actions described in Exhibit "C" and by resolution the amendment to the Wilson Green DRI/DO described in Exhibit "D" no later than the time period provided for in this Agreement.

8. Adoption or Approval of Remedial Plan Amendments and Amendment to Wilson Green DRI/DO. Within 60 days after execution of this Agreement by the parties, the Local Government shall consider for adoption all Remedial Actions or Plan Amendments and amendment to Wilson Green DRI/DO. This may be done at a single hearing. Within 10 working days after adoption of the Remedial Plan Amendment and the approval by resolution of the amendment to the Wilson Green DRI/DO by incorporation and reference to this Agreement, the Local Government shall transmit 3 copies of the Remedial Plan Amendment to the Department as provided in Rule 9J-11.0131(3), Florida Administrative Code, and provide a copy of the resolution. The Local Government also shall submit one copy to the regional planning agency, to any party granted intervenor status in this proceeding, and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and the resolution.

9. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

10. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendments, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Plan Amendment and the Remedial Plan Amendment as being in compliance. The Department shall file this

cumulative notice with DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

11. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

12. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment and the Wilson Green DRI/DO. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

13. Approval of Governing Body. This Agreement has been approved by the Local Government's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(16)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the Local Government's charter or other regulations.

14. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative

regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

15. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

16. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

17. Effective Date. This Agreement shall become effective immediately upon execution by the undersigned parties ("Effective Date").

18. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

19. Retention of Right to Final Hearing. The parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

20. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

21. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

22. Governmental Discretion Unaffected. This Agreement is not intended to bind the Local Government in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

23. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

24. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

25. Recording. After the Effective Date, this Agreement shall be recorded in the public records of Flagler County, Florida by Wilson Green, LLC within ten (10) days from the DCA DRI/DO Petition Dismissal.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

By: J. Thomas Beck
Name Printed: J. Thomas Beck
Title: Director, Division of Community Planning
Date: 5-11-11

Approved as to form and legality:

Name Printed: Lynette Norr
Title: Assistant General Counsel
Date: 5-11-11

CITY OF PALM COAST

By: _____
Name Printed: _____
Title: _____

Date: _____

Approved as to form and legality:

_____
Name Printed: _____
Title: _____
Date: _____

WILSON GREEN, LLC

By: _____
Name Printed: Paul Z. Fletcher
Title: Managing Member

Date: _____

Approved as to form and legality:

_____
Name Printed: Trisha Barket
Title: Admin Assistant

FLORIDA WILDLIFE FEDERATION

By: Thomas W Reese
Name Printed: Thomas W. Reese
Title: Legal Counsel

Date: 5/10/14

Approved as to form and legality:

Thomas W Reese
Name Printed:
Title: 5/10/14

EXHIBIT “A”

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: CITY OF PALM COAST COMPREHENSIVE PLAN AMENDMENT 10-D1; OLD BRICKTOWNSHIP DEVELOPMENT OF REGIONAL IMPACT ADOPTED BY ORDINANCE NO. 2010-12 ON SEPTEMBER 7, 2010	Docket No. 10-D1-NOI-1806-(A)-(N)

STATEMENT OF INTENT TO FIND THE COMPREHENSIVE PLAN AMENDMENT NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes, and Rule 9J-11.012(6), Florida Administrative Code, hereby issues this Statement of Intent to find Comprehensive Plan Amendment 10-D1 ("Amendment") adopted by the City of Palm Coast by Ordinance No. 2010-12, on September 7, 2010, Not In Compliance based upon the Objections, Recommendations, and Comments Report (ORC Report) issued by the Department on July 2, 2010, and changes made to the amendment at the time of adoption. The ORC Report is hereby incorporated into this document by reference.

The amendment redesignates approximately 3,203 acres of Flagler County Agriculture and Timberlands and 2,070 acres of Flagler County Conservation to City of Palm Coast DRI Mixed Use (approximately 4,429 acres) and Conservation (approximately 844 acres). The amendment establishes development potential at 5,000 dwelling units and 1,150,000 square feet of non-residential. Development of regional impact approval for this site is being sought simultaneously with the comprehensive plan amendment. Section 380.06(6), F.S., states that a comprehensive plan amendment related to a proposed development of regional impact may be

initiated by a developer and must be considered by the local governing body at the same time as the application for development approval. Therefore, the data and analysis provided in support of the DRI application has also been used to support the comprehensive plan amendment.

The Department finds that the Amendment is not "in compliance", as that term is defined in Section 163.3184(1)(b), Florida Statutes (F.S.), for the following reasons:

I. Inconsistent provisions. The inconsistent provisions of the Amendment under this subject heading are as follows:

A. Site Suitability: The proposed amendment designates 4,429 acres as City of Palm Coast DRI land use category (mixed use subcategory) and 844 acres of City of Palm Coast Conservation land use category. The current land use designation is Flagler County Conservation (2,070 acres) and Agriculture and Timberlands (3,203 acres) categories. The County's Conservation land use designation restricts residential and nonresidential development and the Agriculture and Timberlands land use designation has a density of 1 dwelling unit per 5 acres. Under the County's comprehensive plan, the development potential on this property is limited to 641 dwelling units. The amendment will increase the development potential of the site to 5,000 dwelling units and 1,150,000 square feet of non-residential development. The 5,273-acre site is not environmentally suitable for the adopted urban land uses. The adopted densities and intensities do not ensure the protection of the natural resources (including the natural functions of wetlands, floodplains, and surface waters) and the protection of listed species, wildlife, and wildlife habitat by directing urban development away from environmentally sensitive areas. In addition, the amendment is not supported by adequate data and analysis

demonstrating that the natural resources located within and adjacent to the development will be protected consistent with the requirements of Sections 163.3177(6)(a) and (d), F.S., Rule 9J-5.006 and 9J-5.013, F.A.C., and the City's Comprehensive Plan.

The Florida Department of Environmental Protection indicates that over 90 percent of the area is located in the 100-year FEMA flood zone and that, according to the Soil Survey of Flagler County, Florida, 80 percent of the property contains soil types with severe limitations for building site development. The soil types with severe limitations for building include Pineda, Malabar, and Pomona soils. Also, the data and analysis for the FLUM amendment identified the presence of hydric soils, including approximately 60 acres of hydric pine flatwoods. According to the Florida Department of Environmental Protection, the northern portion of the property, encompassing approximately 650 to 700 acres, is traversed by Pringle Branch which drains into Pellicer Creek Aquatic Preserve. Pellicer Creek is designated an Outstanding Florida Waters (OFW). Pellicer Creek is an important water course which drains wetlands and floodplains on the site to the Matanzas River. Stormwater impacts from the increased densities, intensities, and activities associated with urban uses could negatively impact both the Creek and River. This is inconsistent with Rule 9J-5.013(2)(c)6., F.A.C., because the amendment fails to protect the natural functions of soils, fisheries, wildlife habitats, rivers, and floodplains, and with Rule 9J-5.011(2)(c)4., F.A.C., because the adopted land use and development do not protect the functions of natural drainage features.

The St. Johns River Water Management District (SJRWMD) indicated in its comment letter, dated June 25, 2008, on the Old Brick Township Development of Regional Impact Application for Development Approval (ADA) that since the project is in an area of water shortage, it may have to use stormwater reuse for water supply, which raises concerns that the

potential reuse storage may cause adverse hydrologic impacts to surrounding wetlands and Pellicer Creek. Also, the SJRWMD states, in an email dated March 31, 2010, that the amendment site is just to the east and adjacent to the Brick Road Mitigation Bank. The mitigation bank has been selected because of its important environmental characteristics. Allowing intense urban development immediately adjacent to it could compromise its values.

According to the data and analysis submitted with the proposed amendment, the site is comprised of approximately 45 percent wetlands (2,367 acres). However, the SJRWMD stated, in an email dated October 4, 2010, that there appear to be more wetlands on site than currently estimated by the data and analysis that was provided for in both the ADA and the comprehensive plan amendment. The wetlands, identified in the data and analysis, are large, interconnected wetlands that are dispersed throughout the site necessitating a disconnected development pattern to minimize impacting wetlands. As a result, this wetlands distribution pattern will not allow for a compact, energy efficient urban form. Therefore, the adopted amendment is not consistent with Rule 9J-5.013(3)(b), F.A.C., which states that future land uses that are incompatible with the protection and conservation of wetlands and wetland functions shall be directed away from wetlands, nor is it consistent with Section 163.3177(6)(a), F.S., which requires the future land use plan to be based upon energy efficient land use patterns.

Many listed wildlife species have been observed or have the potential to occur throughout the site, indicating that the site is environmentally sensitive and not appropriate for the urban-type uses this amendment assigns. The ADA first sufficiency response, on page 12.13, states "...the following listed species or their sign were observed within the project boundaries: gopher tortoise, wood stork, little blue heron, white ibis, and Florida black bear." Also, the data and analysis for the accompanying DRI first sufficiency report states, on page 12.14 in Appendix F,

there is a moderate to high probability that the state listed Florida mouse is on site. The Florida Department of Environmental Protection states that the urban development proposed for this site is the type which often results in predation by domestic animals on native wildlife species, negative impacts to nocturnal animals due to increased nighttime lighting, increased traffic-related wildlife mortalities, and bear/human conflicts.

The Florida Fish and Wildlife Conservation Commission's Application for Development Approval (ADA) comment letter, dated May 14, 2010, states that the site contains 11 native plant community types including: pine flatwoods, longleaf pine/xeric oak, shrub and brushland, mixed rangeland, hardwood-conifer mixed forest, wetland mixed forests, cypress, bay swamps, mixed scrub-shrub wetlands, wet prairies, and freshwater marshes. Assigning an intense urban land use designation to this site is therefore inconsistent with Rule 9J-5.013(2)(c)3., F.A.C., which requires the protection of native vegetative communities from destruction by development activities. Also, the designation is internally inconsistent with Conservation Element Objective 6.1.10, Preservation of Native Vegetative Communities and Conservation Element Policy 6.1.10.6, which state that protection of environmentally sensitive lands will be done by designating the lands as Conservation on the FLUM; and Conservation Element Policy 6.1.10.9, which states that all actions relating to development will consider the impacts on environmentally sensitive lands.

Also, the Commission states that this area contains or falls within primary and secondary habitat for the Florida black bear (State Threatened) and is a US Fish and Wildlife Service Consultation Area for the Florida scrub-jay (Federally and State Threatened). The Commission states that black bear and gopher tortoise activity has been well documented on the site, as well as a small population of gopher tortoises. It also states that a number of wading birds have been

observed on site. The Commission states that portions of the site provide suitable nesting habitat for sandhill cranes. According to a Florida Natural Areas Inventory Biodiversity Matrix Report for the site dated November 1, 2010, there are nine state and federally listed wildlife species documented or likely to occur on site. Of these, four are state listed and two are federally listed. The ADA first sufficiency response includes a table, on page 12.19, which shows 54 species of non-listed wildlife observed on site. The wildlife include six different types of frogs, four types of woodpeckers, three types of hawks, two types of owls, bobcat, Anhinga, and river otter. Thus, the amendment is inconsistent with Rule 9J-5.013(2)(b)4., F.A.C., which requires that comprehensive plans conserve, appropriately use and protect wildlife and wildlife habitat.

The site also contains or has the potential to contain endangered and threatened plant species. According to a Florida Natural Areas Inventory Biodiversity Matrix Report for the location, dated November 1, 2010, fifteen state listed plant species are either documented historically, likely to, or have the potential to occur on site. The ADA's first sufficiency response states, on page 12.21 that a colony of Celestial Lily plants was observed in the ditches along the Brick Road and that two additional species, the nodding pinweed and lakeside sunflower, were identified within five miles of the project site.

In the City's Objections, Recommendations and Comments Report response, it states that areas which are environmentally sensitive but not included in the City's Conservation land use category will be protected through the Northwest Corridor Overlay Area (NCOA). However, the amendment adopting the NCOA was found not in compliance by the Department and is therefore not in effect. Consequently, there is no assurance that the additional "at least 2,700 acres" will be designated Conservation as stated in Footnote 1 on the Future Land Use Map or that the additional acres to be designated conservation will be the appropriate areas. Even if the NCOA

amendment were in effect, the policies do not require new development to follow the sequencing process to protect large contiguous ecological systems but only that the City encourage them to do so (NCOA Future Land Use Policy 1.8.5.2 states, "the City has developed the following sequencing process in order to **encourage** property owners..."). Also, the policies are not specific enough to ensure the environmentally sensitive areas will become part of the greenway preserve, which is inconsistent with Rule 9J-5.005(6), F.A.C., which states that policies must be meaningful and predictable. For example, the NCOA Future Land Use Policy 1.8.5.2A.6. states that a suitability analysis and creation of a map identifying high quality, moderate quality and lower to moderate quality wetlands and uplands will be is required. However, the terms high quality, moderate quality and lower to moderate quality wetlands are not defined.

Therefore, the amendment is not consistent with the following requirements: Sections 163.3177(6)(a), (c), and (d), and (10)(a); 163.3187(2); 187.201(7)(b)2., 8., 9., 10., and 12., (9)(b)1., 3., 6., 7., and 10., (15)(b)2., 5. and 6., (21)(b)3., (25)(b) 7., F.S.; Rules 9J-5.005(2)(a), (5)(a), and (6); 9J-5.006(3)(b)1. and 4.; 9J-5.011(2)(b)5. and (c)4.; and 9J-5.013(2)(b)2., 3. and 4., (c)1., 3., 5., and 6., and (3)(a) and (b), F.A.C.

B. Urban Sprawl: The proposed amendment does not discourage the proliferation of urban sprawl consistent with the requirements of Section 163.3177(6)(a), F.S., and Rule 9J-5.006(5), F.A.C. The amendment leaps over undeveloped lands, has a poor functional relationship to the urbanized area of the City of Palm Coast, and the development controls for the proposed FLUM category designation do not discourage urban sprawl because they lack meaningful and predictable standards. The Department has evaluated the amendment in accordance with Rule 9J-5.006(5)(e), F.A.C., and finds that the following indicators of urban sprawl are present:

- Allows for a substantial area 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 and suitable for development.
- Designates urban development in isolated patterns emanating from existing urban development as reflected in the ADA transportation analysis that states, on page 21.11, that "given the location of the project, no pass-by trips deductions have been calculated for the development at this time."
- 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 rivers, as detailed in Issue 1 of this Statement of Intent.
- 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 because there are no facilities on site and there are no existing facilities within a reasonable distance of the site.
- Fails to maximize use of future public facilities and services because there have been no plans to provide facilities to this area in the comprehensive plan.

- Allows for land use patterns which disproportionately increase the cost of providing and maintaining facilities and services including roads, 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.
- Results in poor accessibility among linked or related land uses.
- Results in the loss of significant amounts of functional open space.

While the proposed amendment includes an urban sprawl analysis, the Department does not agree with the conclusion of that analysis. The urban sprawl analysis states that the proposed amendment has development controls and pursuant to Rule 9J-5.006(5)(j), F.A.C. should not be considered urban sprawl. Rule 9J-5.006(5)(j), F.A.C., states that development controls may affect the determination regarding urban sprawl. The amendment partially relies on the development controls contained in the Northwest Corridor Overlay Area amendment and partially on the footnotes on the future land use map. However, the NOCA amendment was found not in compliance and is therefore not in effect. Even if it were in effect, however , the controls it and the footnotes establish lack meaningful and predictable guidelines and standards adequate to counter the urban sprawl indicators the amendments evinces.

For example, the Rule states that land use functional relationship linkages is one of the development controls that can be included to discourage sprawl. The NOCA establishes four development forms, but does not assign them specifically to the future land use map or provide

adequate guidance as to how they are to be arranged on the site. Therefore, the extent, distribution, number, and location of these development forms are unknown and the establishment of functional relationship linkages is not assured.

Minimum densities, another development control referenced by the Rule, are established only for the Village Center; however, no minimum number or size of the Village Center is indicated by the NOCA and consequently it could be small and the number limited. In fact, the footnotes on the Old Brick Township future land use map establish only one Center for the amendment site and establish a minimum density of 7 units per net residential acre within it. However, without a minimum size, the Center could be very small and the number of units which actually develop at that density could be limited, leaving the remaining units to develop in a low density, largely single use pattern over the majority of the 5,273-acre site. Furthermore, even the minimum seven units per net residential acre may be reduced by an unspecified amount "where vertical mixed use development occurs." The location of the Village Center is not specified to ensure it is centrally located to facilitate access and connectivity to surrounding neighborhoods.

Phasing of land uses over time is another development control that can be employed. While footnote four establishes a schedule linking residential and nonresidential development, there are no policies establishing the mix of uses in any of the development forms and therefore there is no assurance that a self-contained, attractive, and functional mixed use community will be developed.

Although Neighborhood Centers are listed as one of the four development forms, the amendment does not indicate how many are required, their size, or the amount of nonresidential uses they will contain. Mixed Use Neighborhoods is another development form. Again,

however, the mix of uses is unspecified. Although Policy 1.8.1.10 states that Mixed Use Neighborhoods "shall include a diverse mix of housing types", there are no standards establishing what that mix must be and therefore no assurance that a diversity of types will be achieved.

The amendment fails to include meaningful and predictable guidelines and standards to ensure that the development controls listed in Rule 9J-5.006(5)(j), F.A.C., will be implemented. Therefore, the indicators of urban sprawl are not mitigated and the amendment fails to discourage urban sprawl. The plan amendment is also inconsistent with the FLUE Objective 1.1.4 (Discourage Urban Sprawl) which states that the City will promote compact and contiguous development, a mixture of land uses, and discourage urban sprawl.

Furthermore, the comprehensive plan does not promote energy conservation, energy efficient land use patterns and greenhouse gas reduction strategies, pursuant to Sections 163.3177(6)(a), F.S.

Therefore, the amendment is not consistent with the following requirements: Sections 163.3177(2), (6)(a); 163.3187(2); 187.201(7)(b)5.; (9)(b) 1., 3., 7., and 10., and (11)(b)4. and 6., (15)(b)1., 2., 3., 5., and 6., (17)(b)1. and 2., (21)(b)3., and (25)(b)7., F.S.; Rules 9J-5.005(2)(a), (5)(a) and (6); 9J-5.006(2)(a), (b) and (c), (3)(b)8., and (5); 9J-5.011(2)(b)3., F.A.C.

C. Lack of Professionally Acceptable Population Projections and Land Use Needs Analysis: The amendment's data and analysis reference the land use needs analysis that was provided in the City's 10-2 adopted amendment, which the Department found not in compliance, to also support this amendment. As stated in the Department's Statement of Intent for the 10-2 amendment, the City's methodology for projecting its share of the County's population has not

been demonstrated to be professionally acceptable, pursuant to Rule 9J-5.005(2)(a) and (e) and 9J-5.006(2)(b) and (c), F.A.C., because the analysis is based on flawed and unsubstantiated assumptions. The underlying assumption of the ratio technique, as used by the City, is that the historic relationships and conditions for future growth in and between the subject and the parent area will remain the same during the projection period. This assumption has not been demonstrated to be true for the population relationship between the City of Palm Coast and Flagler County. The assumption that the City will continue to capture 91.4 percent of the County's growth rate throughout the planning timeframe is not justified. The population projections include the enabling factors to show why the City of Palm Coast will continue to grow at the same rate in the future (i.e. the City is used to dealing with fast growth and can serve future populations with utilities), but do not include the constraining factors in this analysis or consider that the factors which led to that historic growth rate no longer exist. The foremost constraining factor is that the area to be included in the NCOA, which includes the Old Brick Township DRI amendment, is unsuitable for the type, densities, and intensities of uses allowed. The unsuitability of land for development and other changing conditions indicate that there will be less anticipated growth.

Secondly, the assumptions do not take into account the capacity of the surrounding development opportunities in the City of Bunnell or Flagler County, which may accommodate a larger share of the future growth. Also, the analysis did not analyze the suitability of other lands available to the City for annexation.

Additionally, the non-residential land use needs analysis is based on inconsistent assumptions. For instance, the analysis assumes it will capture 70 percent of the labor force working in the County but Table 1.23 assumes that all the workers who live in the City but work

in unincorporated Flagler County and other incorporated areas in the County will only work in the City in the future. Therefore, the analysis over estimates the total amount of land acreage needed for non-residential development. Since the population projections and land use needs analysis are not professionally acceptable, the adopted amendment has not demonstrated a need for the urban densities and intensities allowed in the NCOA (including the Old Brick Township DRI). This is inconsistent with Section 163.3177(6)(a), F.S., which states the FLUM must be based upon data that shows the amount of land required to accommodate anticipated growth.

Therefore, the amendment is not consistent with the following requirements: Section 163.3177(6)(a), and (8); 187.201(15)(b)6. and (25)(b)7., F.S. and Rule 9J-5.005(2)(a) and (e) and 9J-5.006(2)(b) and (c), F.A.C.

D. Water Supply: The City stated that it updated its Water Supply Plan to include this adopted amendment in its 10-2 amendment package. However, the Department found the 10-2 amendment package not in compliance and it is not in effect. Therefore, this amendment is not supported by an adopted in effect Water Supply Plan that includes the development in this DRI, pursuant to Section 163.3177(6)(a), (6)(c), and (6)(d), F.S. and Rule 9J-5.011(2)(b) and 9J-5.013(1)(c), F.A.C.

Therefore, the amendment is not consistent with the following requirements: Sections 163.3167(13); 163.3177(2) and (6)(a), (c), and (d); 163.317(2); 187.201(7)(b) 5., 9., and 10., (15)(b)1., 2. and 6., (17)(b)1.-7., 9., (25)(b)7., F.S.; Rules; 9J-5.005(2) through (5); 9J-5.0055(1)(a) and (b)and (2)(a), 9J-5.006(2)(a), (3)(b)1. and (c)3.; 9J-5.011(1)(a) and (f), (2)(b)1. and 2. and (c)1. and 2., 9J-5.013(1)(c); 9J-5.016(1), (2), (3)(b)1., 3., 4., and 5. and (c)6. and 8., and (4)(a) and (b), F.A.C.

E. Impacts to Transportation Facilities: The amendment and corresponding DRI development order state the development will address transportation impacts by proportionate share contribution pursuant to Section 163.3180(12)(a), F.S. and in turn Section 163.3177(3)(e), F.S., which states a development that uses the proportionate share contribution option pursuant to Section 163.3180(12)(a), F.S. will be deemed to achieve and maintain the City's adopted level of service standards. However, the DRI development order has been appealed by the Department and is not in effect. Therefore, the comprehensive plan amendment cannot rely on the DRI development order to address the transportation impacts. The comprehensive plan amendment's data and analysis, as a result of this amendment, shows numerous transportation facilities not meeting their level of service standards, both in 2015 and 2025.

Thus, the amendment is not consistent with the following requirements: Section 163.3177(2), (3)(a), 5(a), (6)(a) and (b); 163.3187(2); 187.201(15)(b)1., (19)(b)9., (25)(b)7., F.S.; and Rule 9J-5.005(2)(a) and (c), 9J-5.006(2)(a), 9J-5.006(3)(b)1., and (c)3., 9J-5.016(4)(a)2.and 4., 9J-5.019(3)(h), (4)(b)2, F.A.C.

F. Land Use Authority: The amendment includes a roadway called the Matanzas Woods Parkway Extension (or, as an alternative, the Northern Optional Route from Old Brick Township Center to US1). Both proposed roadways are located in unincorporated areas of Flagler County or St. Johns County and neither project is depicted on the Future Transportation Maps of either County. The Five-year Schedule of Capital Improvements purports to guide future land use decisions and development of transportation facilities in lands not under the City's jurisdiction.

Under Chapter 163, Part II, Florida Statutes, a municipality may adopt plan provisions and exercise planning authority only for the area under its jurisdiction, as defined by Section 163.3164(2), F. S., unless it has entered into a "Joint Planning Agreement" providing procedures for joint action in the preparation and adoption of the comprehensive plan and meeting the requirements of Section 163.3171, F. S. The City has not submitted a Joint Planning Agreement along with this amendment package as data and analysis. Accordingly, the Five-year Schedule of Capital Improvements is not consistent with the requirement that the City plan only for the area under its jurisdiction or, alternatively, that the City have a valid Joint Planning Agreement with the Counties to plan for unincorporated areas.

Therefore, the amendment is not consistent with the following requirements: Sections 163.3167(1); 163.3171; 163.3177(6)(a), and (b); 187.201(b)(25)7. , F.S.; Rule 9J-5.019(5), F.A.C.

G. Transportation Facilities Located on Sites not Environmentally Suitable: The amendment adopted a project with two options on the Five-year Schedule of Capital Improvements for the Matanzas Woods Extension or Northern Optional Route from Old Brick Township Town Center to US1. Either option for this road improvement would fragment wildlife habitat, including the primary wildlife habitat of the Florida Black Bear, adversely affect the Florida Black Bear and the other listed species, and is not consistent with the following requirements of Rule 9J-5, F.A.C.: 1) to conserve, appropriately use, and protect wildlife and wildlife habitat (Rule 9J-5.013(2)(b)4., F.A.C.); 2) restriction of activities known to adversely affect the survival of endangered and threatened wildlife (Rule 9J-5.013(2)(c)5., F.A.C.); 3) the

protection and conservation of the natural functions of wildlife habitats (Rule 9J-5.013(2)(c)6., F.A.C.); and 4) the protection of natural resources (Rule 9J-5.006(3)(b)4., F.A.C.)

Therefore, the amendment is not consistent with the following requirements: Section 163.3177(6)(a) and (d); 163.3187(2); 187.201(15)(b)2., (21)(b)3., (25)(b)7.; and 9J-5.005(5)(a); 9J-5.006(3)(b)1., and 4.; 9J-5.013(1)(a)5., (2)(b)4., and (c)5. and 6., F.A.C.

H. Internal Inconsistency: Planning Timeframe: The City of Palm Coast's comprehensive plan, including the long-term transportation plan and the City's water supply plan currently has a long-term planning timeframe of year 2020. The DRI development plan includes phasing development out to year 2025, which is beyond the comprehensive plan's long-term planning timeframe. The City indicated that it updated the comprehensive plan's amendment to 2035 in its 10-2 comprehensive plan amendment; however, the Department found that amendment not in compliance. Thus, the amendment is not in effect.

Establishing a different planning horizon 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. 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 plan as a whole. These statutory and rule requirements apply not just to portions of the comprehensive plan, but to the entirety of the plan. 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 since the remainder of the effective comprehensive plan contains goals, objectives, and policies that have a 2020 planning horizon. The result is the creation of a plan whose elements are not internally coordinated and mutually supportive.

Therefore the amendment is inconsistent with the following requirements: Sections 163.3161(3); 163.3167(2); 163.3177(2), (5)(a), (6)(a), and (10)(a); and 187.201(25)(b)7., F.S.; Rules 9J-5.005(1)(c)5., (4), (5)(a) and (b), and (6), F.A.C.

I. Density and Intensity Standards do not meet the Minimum Requirements of Rule 9J-5, F.A.C.): The amendment adopted a footnote on Future Land Use Map that states, "All land uses except residential may be increased by up to 30%, subject to a corresponding reduction in other land uses to demonstrate that equivalent or lesser impacts will result. This range of density and intensity shall not require a comprehensive plan amendment, provided that a DRI Development Order condition is adopted to establish procedural requirements to ensure equivalent transportation and potable water impacts pursuant to this land use category limitation. No land uses shall be reduced by more than 30%." This provision allows unpredictable changes in density and intensity, an unknown amount of development, and defers to an instrument and process outside of the comprehensive plan to achieve compliance. This policy provision does not provide predictable or meaningful standards for the use and development of land pursuant to Rule 9J-5.005(6), F.A.C. and does not meet the requirements of Section 163.3177(6)(a), F.S. and Rule 9J-5.006(3)(c)7., F.A.C., which state all FLUM categories must have density and intensity standards. Public facility planning cannot be done if development amounts are allowed to fluctuate in an unspecified manner by up to one third of the amount the amendment now establishes.

Therefore the amendment is inconsistent with the following requirements: Section 163.3177(6)(a); 187.201(15)(b), (25)(b)7., F.S. and Rule 9J-5.005(6); 9J-5.006(3)(c)7., and (4)(c), F.A.C.

II. Recommended Remedial Actions.

These inconsistencies may be remedied by the following recommendation:

Sections A through H: Rescind the amendment. Alternatively, since this amendment relies heavily on the Northwest Corridor Overlay Area amendment for the location and form of development, first revise that amendment as recommended in the Statement of Intent dated August 26, 2010, and then revise this amendment to be consistent with the Overlay.

Section I: Delete the provision that allows unpredictable changes to the densities and intensities established for the amendment site.

III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The Amendment is inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, Florida Statutes, are included in the citations above.

B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendment as described above in Section I.

CONCLUSIONS

1. The Amendments identified above are not consistent with the State Comprehensive Plan;

2. The Amendments identified above are not consistent with Chapter 9J-5, F.A.C.;

3. The Amendments identified above are not consistent with the requirements of Chapter 163, Part II, F.S.;

4. The Amendments identified above are not "in compliance," as defined in Section 163.3184(1)(b) F.S.; and,

5. In order to bring the Amendment into compliance, the City may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 8th day of November 2010, at Tallahassee, Florida.

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

EXHIBIT “B”

10-10544 DRI

STATE OF FLORIDA
LAND AND WATER ADJUDICATORY COMMISSION

FILED
2010 DEC 15 P 1:16
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

v.

Case No. APP-10-015
Project No. ADA-04-2007-051

CITY OF PALM COAST,
a political subdivision of the State of Florida;
and, WILSON GREEN, LLC, Developer

Respondents.
_____/

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ADJUDICATORY
COMMISSION

DEPARTMENT OF COMMUNITY AFFAIRS'
PETITION FOR APPEAL OF A DEVELOPMENT ORDER

The **DEPARTMENT OF COMMUNITY AFFAIRS**, by and through its undersigned attorney and pursuant to Section 380.07, Florida Statutes and Rules 9J-2.026 & 42-2.002, Florida Administrative Code, appeals a Development Order approved on September 7, 2010, by the City of Palm Coast City Commissioners by Resolution No. 2010-114. This Resolution, approving a Development Order for the Old Brick Township Development of Regional Impact, was rendered to the Department on September 23, 2010. In support of this appeal, the Department states:

Parties

1. Petitioner Department of Community Affairs ("Department") is the state land planning agency with the power and duty to enforce and administer Chapter 380, Florida Statutes, "The Florida Environmental Land and Water Management Act of 1972," which includes provisions relating to Developments of Regional Impact ("DRI"). **Fla. Stat.** §§ 380.031(18) & 380.032. The Department has the authority to appeal any local government development order regarding a DRI within forty-five days after the development order is

EXHIBIT "B"

rendered to the Department. **Fla. Admin. Code r.** 9J-2.026; **Fla. Stat.** § 380.07 (2).

2. The City of Palm Coast ("City") is a political subdivision of the State of Florida and, through its City Commission, is responsible for issuing development orders for development in the City. **Fla. Stat.** § 163.3171. The City Commission issued the Development Order ("DO") that is the subject of this appeal.

3. Developer, Wilson Green LLC, 1548 The Greens Way, Suite 4, Jacksonville Beach, Florida 32250, is authorized to do business in the State of Florida. **Exhibit A,** appended hereto and incorporated herein by this reference, contains the legal description of the property to be developed.

Background

1. The City of Palm Coast is situated in the northern portion of Flagler County, which is located along the Atlantic Ocean in northeast Florida. The City has a population of 73,910 residents per BEBR estimate dated April 1st, 2009, and covers an area of 89.31 square miles.

2. The DRI Application for Development Approval ("ADA"), ADA-04-2007-051, was submitted to the Northeast Florida Regional Council in May of 2008. That application was distributed to all the reviewing agencies and their comments were provided to the developer. The Developer then provided a "sufficiency response" to the issues raised by the agencies in August of 2009, and a second review was conducted and comments again provided. In April 2010 a "second sufficiency response" was submitted by the developer in response to the second round of comments.

3. On September 7, 2010, the City, pursuant to Chapter 380, Florida Statutes, approved Resolution No. 2010-114 granting the DO for a development known as Old Brick

Township. The Development Order ("DO") approved a "Development of Regional Impact" as that term is used in Chapter 380, Florida Statutes.

4. The Old Brick Township DRI, as approved by the DO, is a multi-use project proposed for construction on 5,273 acres in western Palm Coast. The subject property is more specifically located west of the Florida East Coast Railroad, south of the Flagler/St. Johns County boundary line, and east of County Road 13, also known as Old Brick Road. A map showing the general location of the subject property is incorporated herein by this reference and attached as **MAP A**.

5. The project is within the City's proposed Northwest Corridor Overlay Area (NCOA). The NCOA is the largest and most contiguous remaining area of undeveloped land within the City's corporate limits and Chapter 180 Utility Service Area for providing water and sanitary sewer service. Old Brick Township is one of two DRIs proposed for the NCOA.

6. There are areas within the development that are of special environmental concern, such as wetland communities where natural vegetation should remain. Approximately 45% of the site consists of wetlands according to the DRI ADA. The area falls within primary and secondary ranges for the Florida Black Bear (Threatened Species) as well as habitat for other threatened and endangered species.

7. The existing land use categories of the subject property are the Flagler County Future Land Use Map designation of Agriculture and Timberlands (3,203 acres) and Conservation (2,070 acres). The City adopted a companion FLUM amendment, 10-D1, to change the designation of the property to City of Palm Coast FLUM designation of Development of Regional Impact-Mixed Use (DRI-MU) (4,429 acres) and Conservation (844 acres).

8. The DO approved the Old Brick Township DRI for a maximum of 5,000

residential units, 100,000 square feet of retail, 50,000 square feet of office, and 1,000,000 square feet of industrial.

9. The Old Brick Township DRI is to be built in three construction phases. Phase 1 is scheduled for 2011 to 2015, phase 2 from 2016 to 2020, and Phase 3 from 2021 to 2025.

Land Use	**Phase 1 2011-2015**	**Phase 2 2016-2020**	**Phase 3 2021-2025**	**Total Units**
Residential	1,500 DU	1,700 DU	1,800 DU	5,000 DU
Office	10,000 sf	20,000 sf	20,000 sf	50,000 SF
Retail	0 sf	50,000 sf	50,000 sf	100,000 SF
Industrial Park	200,000 sf	0 sf	800,000 sf	1,000,000 SF
Schools	School	-	-	1 school

The DRI expiration date is December 31, 2030. The commencement date for construction is within five years from the Effective Date of the DO, or the acquisition of the Matanzas Woods Parkway Extension right-of-way, whichever occurs later.

Issue 1: Inconsistency With Comprehensive Plan Land Use Categories

10. Section 380.07(3), Florida Statutes, and Rule 9J-2.040(3)(c), F.A.C., require that the Department review a local government development order to ensure that it is consistent with the adopted local government comprehensive plan.

11. The City's comprehensive plan amendment 10-D1, adopted by Ordinance No. 2010-12 on September 7, 2010, redesignates approximately 5,273 acres from Agriculture and Timberlands and Conservation (County designation) to Development of Regional Impact - Mixed Use and Conservation (City designation).

12. The City's comprehensive plan amendment 10-D1 is under compliance review by

the Department and is not in effect as of the date of this appeal; thus, the comprehensive plan land use categories for the subject 5,273 acres remain Agriculture and Timberlands and Conservation (County designation). The maximum amount of residential development these categories allow is 641 dwelling units and no industrial or commercial development.

13. The Development Order, which relies upon a City of Palm Coast Development of Regional Impact - Mixed Use land use designation, is inconsistent with the in effect Agriculture and Timberland and Conservation (County designation) land use designations.

14. Based on the foregoing, the Old Brick Township Development Order is inconsistent with the Palm Coast comprehensive plan in violation of Section 380.07(3), Florida Statutes, and Rule 9J-2.040(3)(c), F.A.C.

Issue 2: Inconsistency With Comprehensive Plan Policies

15. Section 380.07(3), Florida Statutes, and Rules 9J-2.040(3)(c) and 9J-2.041(3)(h), F.A.C., permit the Department to review a local government development order to ensure that it is consistent with the adopted local government comprehensive plan.

16. The City's comprehensive plan amendment 10-2, adopted by Ordinance No. 2010-7 on July 6, 2010, creates a Northwest Corridor Overlay Area (NCOA) in undeveloped areas of the City of Palm Coast. The stated goal of the overlay is to create a showcase community that provides for the protection of the natural environment. Footnote 1 of Exhibit B of the 10-2 amendment states, "The Conservation land use category shall be expanded on an incremental basis to ultimately designate at least 2,700 acres for Conservation pursuant to Policy 1.8.5.2(C), which sets forth the NCOA sequencing process to protect environmentally sensitive areas.

17. The Department reviewed Comprehensive Plan amendment 10-2 for compliance

with Chapter 163, Part II, Florida Statutes, Rule 9J-5, and Chapter 187, Florida Statutes. The Department determined the amendment is not in compliance and on August 28, 2010, published its Notice of Intent. Because the 10-2 amendment, which includes policies for the NCOA sequencing process to protect environmentally sensitive areas, is not in compliance, it is not in effect.

18. Part III, Specific Conditions, Vegetation and Wildlife 20(e), (f), and (h)(iii) and Wetlands 21(c) and (e) of the DO rely upon the NCOA sequencing process set forth in the City's 10-2 amendment to protect wildlife species classified as endangered, threatened, or a species of special concern; to protect conservation land; and for implementation of the Greenway Mitigation and Management Plan ("GMMP").

19. By relying on policies that are not in effect and therefore not in the comprehensive plan, the DO is inconsistent with the comprehensive plan and fails to adequately mitigate impacts to wildlife.

20. Based on the foregoing, the Old Brick Township Development Order is inconsistent with the City's comprehensive plan in violation of Section 380.07(3), Florida Statutes, and Rules 9J-2.040(3)(c) and 9J-2.041(3)(h), F.A.C.

Issue 3: Listed Plant and Wildlife Species

21. Rule 9J-2.041(3)(c), F.A.C., requires the Department to determine whether a DO makes adequate provision for the protection of listed plant and wildlife species and listed wildlife species habitats:

> A development order shall be determined by the Department to make adequate provision for the protection of listed plant and wildlife species and listed wildlife species habitats addressed by this rule, and shall not be appealed by the Department on the basis of inadequate listed plant and wildlife protection, if it contains the applicable preservation and mitigation standards and criteria set forth in this rule.

22. For lands requiring site protection, Rule 9J-2.041(9)(a), F.A.C. allows for the transfer of ownership to a management organization. Rule 9J-2.041(9)(a)6. F.A.C. requires that "the warranty deed shall be recorded by the developer in the Official Records of the county in which the preserved property is located within one year of the issuance of the development order."

23. In Paragraph 20(c), the DO provides for the option of a fee simple transfer to the St. John's River Water Management District to preserve gopher tortoise habitat, but does not provide a timeframe for the warranty deed to be recorded in the Official Records of Flagler County within one year of the issuance of the DO.

24. Rule 9J-2.041(9)(b), F.A.C. allows for a transfer of a conservation easement. In that circumstance, Subsection 9J-2.041(9)(b)8., F.A.C., requires that "in the transfer of a conservation easement, the real property instrument that establishes the conservation easement shall be recorded by the developer in the Official Records of the county in which the preserved property is located within one year of the issuance of the development order."

25. In Paragraph 20(h), the DO requires that the Developer shall implement the GMMP in a manner which includes the Florida Fish and Wildlife Conservation Commission's recommendation regarding the Florida Black bear and its habitat: (iii) conservation easements or other long-term management agreements. Paragraph 21(c) of the DO requires the developer to record conservation easements over the areas covering the proposed preserved wetlands and uplands areas, but the DO does not include a timeframe for the real property instrument that establishes the conservation easement to be recorded by the developer in the Official Records of Flagler County within one year of the issuance of the DO.

26. For lands that are to be protected through designation in a local comprehensive

plan as conservation lands, Rule 9J-2.041(9)(c)7., F.A.C. requires that the "conservation land use designation and the associated site specific protection policies shall be adopted as part of the Future Land Use Element of the local comprehensive plan within one year of the issuance of the development order."

27. Paragraph 20(h)(i) of the DO provides that a total of at least 2,700 acres of uplands and wetlands that include the highest quality black bear habitat on-site will be designated as proposed future conservation lands, but the DO does not include a timeframe for the conservation land use designation and the associated site specific protection policies to be adopted as part of the Future Land Use Element of the City's comprehensive plan within one year of the issuance of the DO.

28. The 10-2 amendment's intent to expand the Conservation land use category on an incremental basis to ultimately designate at least 2,700 acres for Conservation pursuant to the NCOA Policy 1.8.5.2(C), were it in effect (which it is not), does not require timely adoption of Conservation land into the City's comprehensive plan. Thus, the DO cannot rely on comprehensive plan policies to meet the requirements of Rule 9J-2.041(9)(c)7., F.A.C.

29. By failing to provide the timeframes addressed above, the DO fails to make adequate provisions for the protection of listed plant and wildlife species and listed wildlife species habitats.

30. Based on the foregoing, the DO is in violation of Rule 9J-2.041(3)(c), F.A.C., because it does not made adequate provision for the protection of listed plant and wildlife species and listed wildlife species habitats as addressed by Rule 9J-2.041(9), F.A.C.

De Novo Hearing

31. The City Commission is not an "agency" as defined by Chapter 120, Florida

Statues, "The Administrative Procedure Act," and therefore is not required to conduct hearings in the manner prescribed by Chapter 120. The record created during the proceedings below, including the public hearing conducted by the Board of County Commissioners prior to issuing the development order, was not full and complete regarding the issues raised herein by the Department and does not comply with the requirements for ensuring procedural due process. The Department respectfully requests that the instant appeal be heard *de novo*.

Conclusion

32. For all of the above reasons, the Department respectfully requests that:

A. The Florida Land and Water Adjudicatory Commission accept jurisdiction over this appeal pursuant to Section 380.07, Florida Statutes; and

B. The Florida Land and Water Adjudicatory Commission refer this appeal to the Division of Administration Hearings for the assignment of an Administrative Law Judge and for a hearing pursuant to Sections 120.569 and 120.57, Florida Statutes; and

C. The Administrative Law Judge enter an order recommending that the Resolution adopting the Development Order be declared inconsistent with Chapter 380, Florida Statutes, and Rule 9J-2, Florida Administrative Code; and

D. The Administrative Law Judge enter an order recommending that permission to proceed under the Resolution be denied, and setting forth conditions and restrictions, if any, on which development may be allowed; and

E. The Florida Land and Water Adjudicatory Commission enter an order declaring that the Resolution is inconsistent with Chapter 380, Florida Statutes, Rule 9J-2, Florida Administrative Code; and

F. The Florida Land and Water Adjudicatory Commission enter an order

denying permission to proceed under the Resolution and specify conditions consistent with the law and intent of Chapter 380, Florida Statutes, under which development may be allowed; and

G. The Florida Land and Water Adjudicatory Commission grant such other relief as may be necessary and appropriate to effectuate the intent and provisions of Chapter 380, Florida Statutes, and Rule 9J-2, Florida Administrative Code.

RESPECTFULLY SUBMITTED this **5th** day of **November, 2010**.

Lynette Norr
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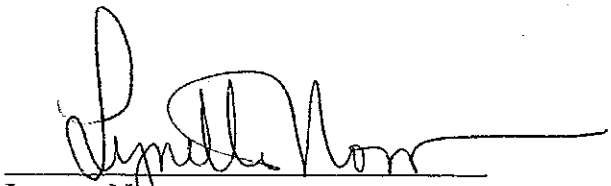
(850) 488-0410 Office
Lynette.Norr@dca.state.fl.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing were furnished to the persons listed below by the method indicated this **5th** day of **November, 2010.**



Lynette Norr

BY INTER-AGENCY MAIL:

The Honorable Charlie Crist, Governor
Office of Governor
PL-05 The Capitol
Tallahassee, FL 32399-0001
(By way of filing original with FLWAC)

The Honorable Bill McCollum, Attorney General
Department of Legal Affairs
PL-01 The Capitol
Tallahassee, Florida 32399-1050

The Honorable Alex Sink, Chief Financial Officer
Department of Financial Services
PL-11 The Capitol
Tallahassee, Florida 32399-0300

The Honorable Charles H. Bronson, Commissioner
Department of Agriculture and Consumer Services
The Capitol
Tallahassee, Florida 32399-0810

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED:

The Honorable Jon Netts
Mayor
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

Wilson Green, LLC
c/o Fletcher Management Company
1548 The Greens Way, Suite 4
Jacksonville Beach, Florida 32250

BY FIRST CLASS MAIL:

The Honorable Holsey Moorman
Council Member, District 1
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

The Honorable Frank Meeker
Council Member, District 2
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

The Honorable Mary DiStefano
Council Member, District 3
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

The Honorable Bill Lewis
Council Member, District 4
City of Palm Coast
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

Brian Teeple
Chief Executive Officer
Northeast Florida Regional Council
6850 Belfort Oaks Place
Jacksonville, Florida 32216

William E. Reischmann, Jr., Esquire
City of Palm Coast City Attorney
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

EXHIBIT “C”

EXHIBIT "B"
ORDINANCE No. 2010-____

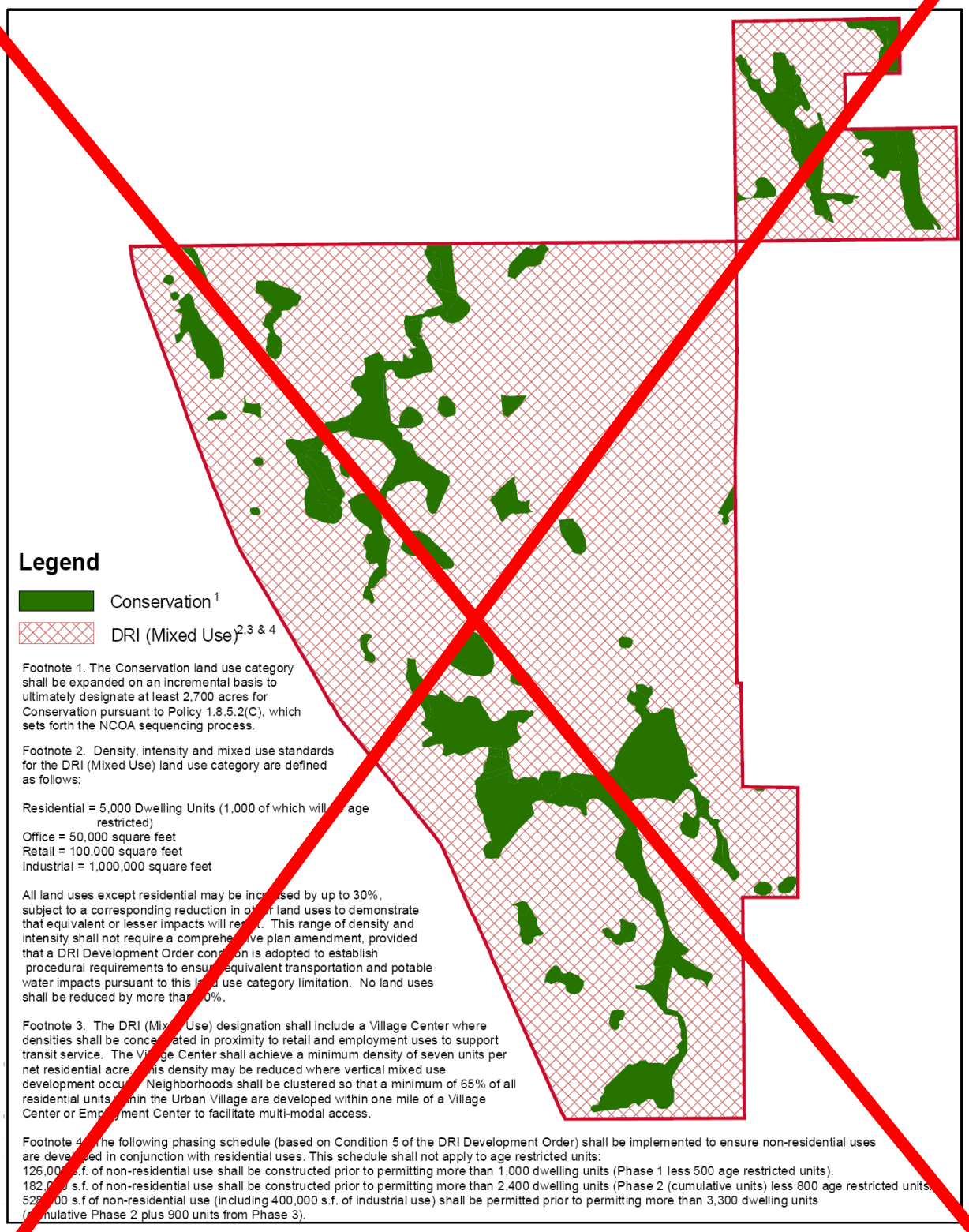
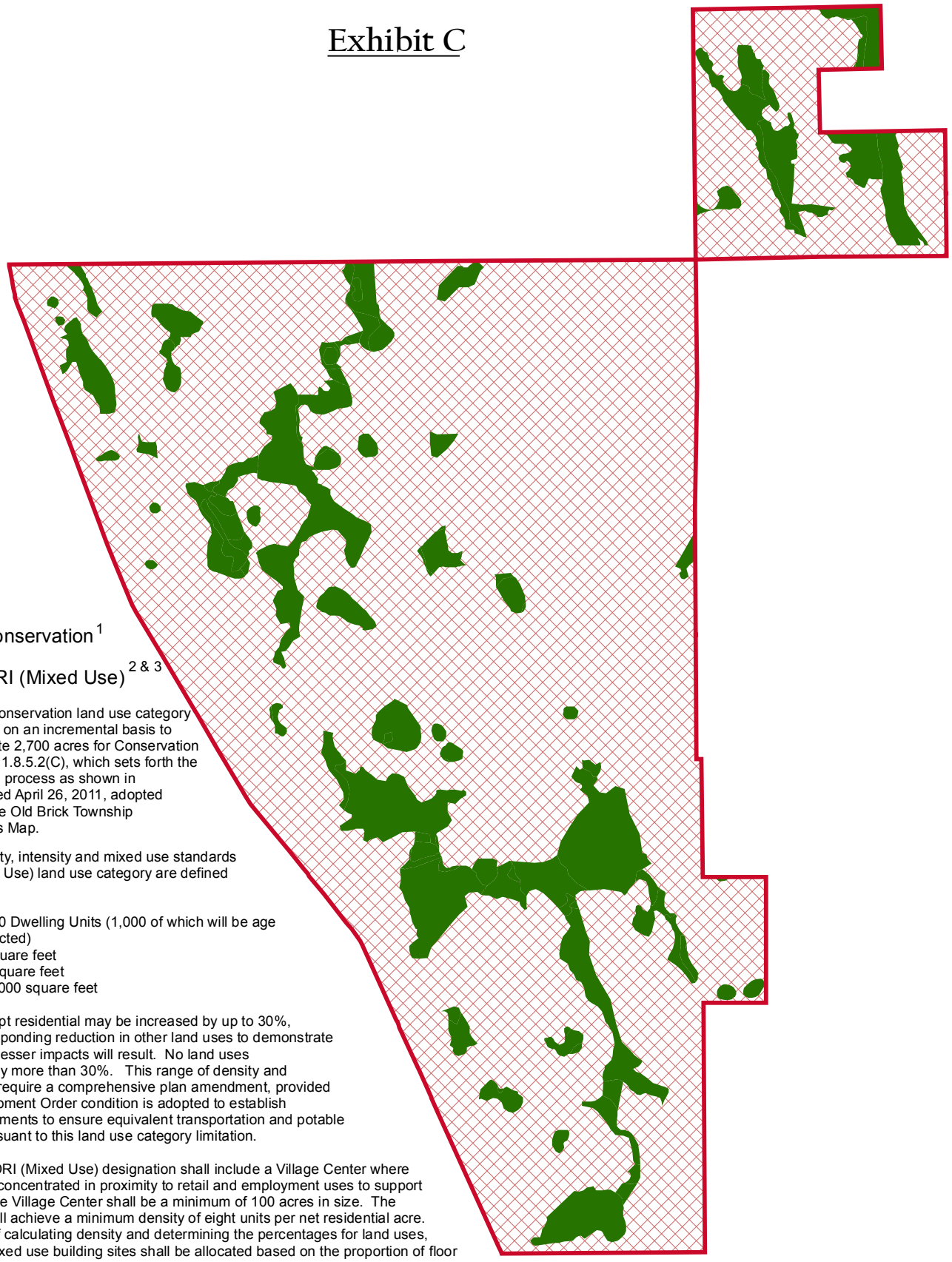


Exhibit C



Legend

Conservation [1]

DRI (Mixed Use) [2 & 3]

Footnote 1. The Conservation land use category shall be expanded on an incremental basis to ultimately designate 2,700 acres for Conservation pursuant to Policy 1.8.5.2(C), which sets forth the NCOA sequencing process as shown in Attachment 1, dated April 26, 2011, adopted as Map CP-1.7, the Old Brick Township Developable Areas Map.

Footnote 2. Density, intensity and mixed use standards for the DRI (Mixed Use) land use category are defined as follows:

Residential = 5,000 Dwelling Units (1,000 of which will be age restricted)
Office = 50,000 square feet
Retail = 100,000 square feet
Industrial = 1,000,000 square feet

All land uses except residential may be increased by up to 30%, subject to a corresponding reduction in other land uses to demonstrate that equivalent or lesser impacts will result. No land uses shall be reduced by more than 30%. This range of density and intensity shall not require a comprehensive plan amendment, provided that a DRI Development Order condition is adopted to establish procedural requirements to ensure equivalent transportation and potable water impacts pursuant to this land use category limitation.

Footnote 3. The DRI (Mixed Use) designation shall include a Village Center where densities shall be concentrated in proximity to retail and employment uses to support transit service. The Village Center shall be a minimum of 100 acres in size. The Village Center shall achieve a minimum density of eight units per net residential acre. For the purpose of calculating density and determining the percentages for land uses, the acreage for mixed use building sites shall be allocated based on the proportion of floor area for each land use within the mixed use building. The mix of uses in the Village Center shall comprise the following ranges: 10-40% for retail/office, 5-20% for civic/institutional and 40-85% for residential. Neighborhoods shall be clustered so that a minimum of 65% of all residential units within the Urban Village are developed within one mile of a Village Center or Employment Center to facilitate multi-modal access. Neigborhood Centers shall be a minimum of 2 acres in size. A minimum of 20% of the total number of dwelling units within the Urban Village shall be comprised of the following housing types: single-family attached, townhouse or multi-family. Prior to authorizing future roadway alignments connecting the Old Brick Township property to contiguous areas in St. Johns County, the City shall review the proposed roadway alignment pursuant to Policy 1.8.5.10, and require as appropriate, wildlife crossings for those sections of the roadway alignment located within a wildlife corridor to facilitate the continued movement of wildlife through the corridor.

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Source: ERS, Prosser Hallock

OLD BRICK TOWNSHIP

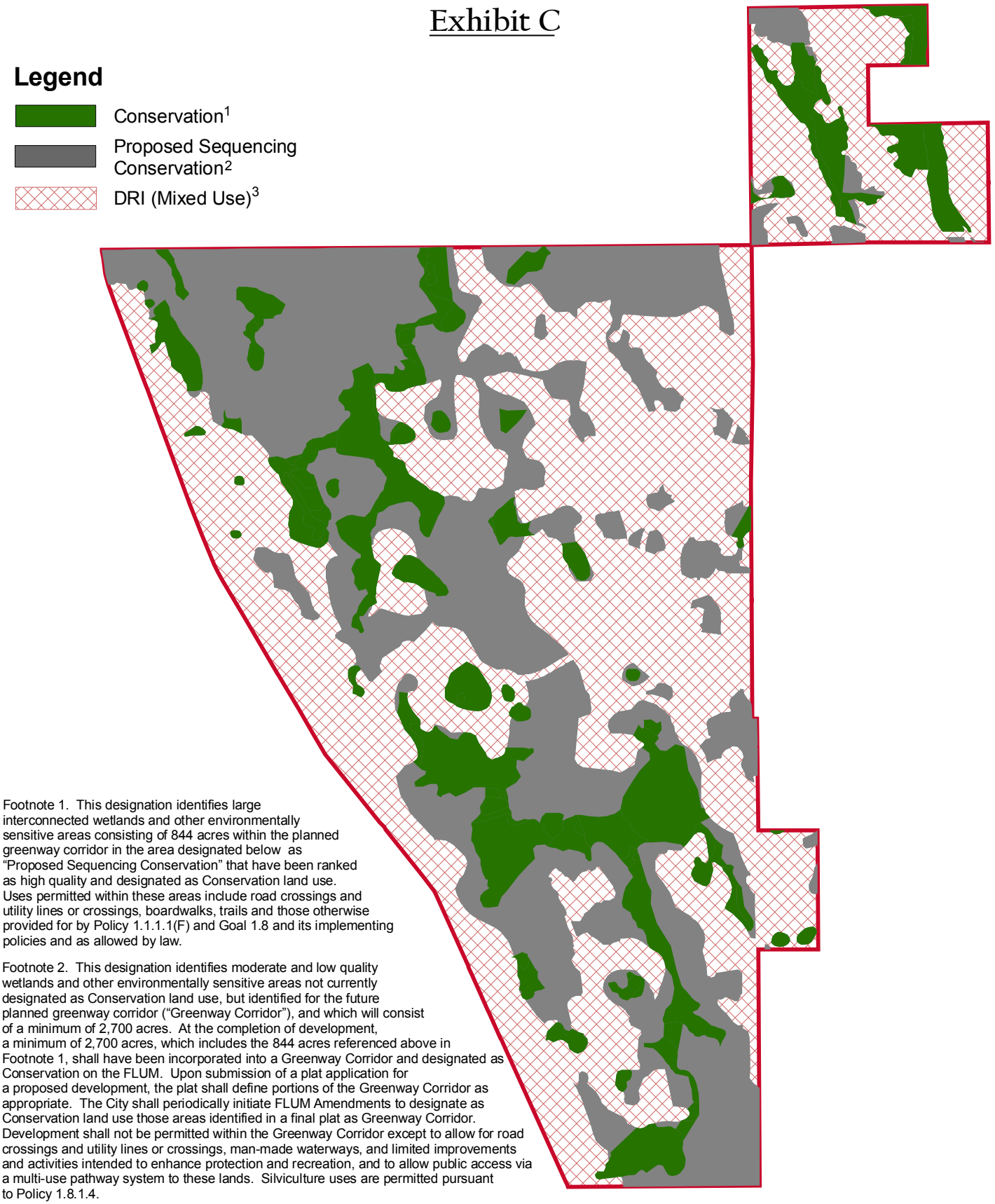
Map A - Proposed Future Land Use Map Amendment

0 1,500 3,000 Feet

April 26, 2011

Prosser Hallock
PLANNERS & ENGINEERS

Exhibit C



Footnote 1. This designation identifies large interconnected wetlands and other environmentally sensitive areas consisting of 844 acres within the planned greenway corridor in the area designated below as "Proposed Sequencing Conservation" that have been ranked as high quality and designated as Conservation land use. Uses permitted within these areas include road crossings and utility lines or crossings, boardwalks, trails and those otherwise provided for by Policy 1.1.1.1(F) and Goal 1.8 and its implementing policies and as allowed by law.

Footnote 2. This designation identifies moderate and low quality wetlands and other environmentally sensitive areas not currently designated as Conservation land use, but identified for the future planned greenway corridor ("Greenway Corridor"), and which will consist of a minimum of 2,700 acres. At the completion of development, a minimum of 2,700 acres, which includes the 844 acres referenced above in Footnote 1, shall have been incorporated into a Greenway Corridor and designated as Conservation on the FLUM. Upon submission of a plat application for a proposed development, the plat shall define portions of the Greenway Corridor as appropriate. The City shall periodically initiate FLUM Amendments to designate as Conservation land use those areas identified in a final plat as Greenway Corridor. Development shall not be permitted within the Greenway Corridor except to allow for road crossings and utility lines or crossings, man-made waterways, and limited improvements and activities intended to enhance protection and recreation, and to allow public access via a multi-use pathway system to these lands. Silviculture uses are permitted pursuant to Policy 1.8.1.4.

Footnote 3. This designation identifies areas suitable for urban development.

P:\06052-52\GIS\OBT Developable Areas 3 8x11.mxd

OLD BRICK TOWNSHIP

Attachment 1 - Developable Areas Map (CP-1.7)

0 1,500 3,000 Feet

April 26, 2011

Source: ERS, Prosser Hallock

Prosser Hallock
PLANNERS & ENGINEERS

EXHIBIT “D”

TAL 451,593,656v6 4-13-11

EXHIBIT "D"

General Condition No. 5 is hereby amended and replaced in its entirety with the following provision:

5. **Phasing, Buildout and Expiration**. The Old Brick Township DRI shall be developed in three phases as shown on the following schedule:

Land Use	Phase 1 2011-2015	Phase 2 2016-2020	Phase 3 2021-2025	Total Units
Residential	1,500 DU	1,700 DU	1,800 DU	5,000 DU
Office	10,000 SF	20,000 SF	20,000 SF	50,000 SF
Retail	0 SF	50,000 SF	50,000 SF	100,000 SF
Industrial Park	200,000 sf	0 sf	800,000 sf	1,000,000 sf
Schools	School	-	-	1 School

Each phase shall last at least 5 years unless extended pursuant to Section 380.06(19), *Florida Statutes*, or unless Developer elects to accelerate the beginning date of a subsequent phase, provided that all mitigation requirements for the particular phase to be affected are met. The end date of a phase shall not be affected by an acceleration of the beginning date. Unused development rights from a particular phase shall carry over into the next phase until buildout. Although the Old Brick Township DRI is phased through 2025, buildout may not occur by that date. As a result, the DRI termination date and the expiration date of this Development Order are both established as of December 31, 2030. Any extensions of the build-out, termination or expiration dates shall be governed by the provisions of Section 380.06(19)(c), *Florida Statutes*. The commencement date for construction shall be five (5) years from the later of the following: (i) Effective Date of this Development Order, or (ii) the acquisition of the MWP Extension ROW as described in Specific Condition 29(d) below. The time period for commencement of physical development, build-out, phasing dates, the downzoning protection date, and any other such deadlines shall be tolled during the period of any appeal pursuant to Section 380.07, *Florida Statutes*, or during the pendency of any administrative or judicial proceedings relating to: this DRI Development Order, the approval of the companion comprehensive plan amendment pursuant to Chapter 163, *Florida Statutes*, any subsequent development orders issued pursuant to this DRI Development Order, any development permits including the St. Johns River Water Management District ("SJRWMD") and the United States Army Corps of Engineers ("ACOE") permits, any agreements required by this Development Order, and any decision related to right-of-way acquisition for the roads in the transportation mitigation plan for the DRI.

Subject to the Development Order becoming effective pursuant to General Condition 6 below, the Developer will file an application to rezone the Property within

three (3) months from the later of the following: (i) Effective Date of this Development Order, or (ii) the acquisition of the MWP Extension ROW as described in Special Condition 29(d) below.

~~To promote an appropriate jobs to housing mix, no permits for Phase 2 residential development may be issued unless 60% of Phase 1 non-residential development, has been constructed. No permits for Phase 3 residential development shall be issued unless 80% of Phase 2 non-residential development, has been constructed. Within Phase 3, no more than 900 Phase 3 units may be permitted unless at least 50% of the Phase 3 industrial development has been permitted. This requirement does not apply to the phasing or issuance of permits for the age-restricted residential component of the development.~~

The Developer and the City shall cooperate throughout the DRI development period to evaluate economic development incentive programs available through federal programs and the State of Florida, which might be applicable to prospective employers within the DRI. The Developer will also undertake a marketing program to encourage job generation within the Employment Center lands which shall include information about State of Florida and other applicable economic development incentive programs available to prospective employers. In order to facilitate employment center development at the earliest opportunity, the Developer shall identify, as part of the first MPD zoning application, the approximate location of an Employment Center site with sufficient acreage to accommodate at least 200,000 square feet of employment center development. Transportation access and utilities shall be made available to the site prior to the issuance of Certificates of Occupancy for residential units within the DRI. The Developer shall identify, as part of the first MPD zoning application for Phase 3 development, the approximate location of an additional employment center site with sufficient acreage to accommodate at least 200,000 square feet of employment center development. Transportation access and utilities shall be made available to this site prior to the issuance of Certificates of Occupancy for residential units within Phase 3.