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December 21, 2006

VIA FEDERAL EXPRESS

Blanca S. Bayo, Director
Division of Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: ~~060860-WU~~ ^{060806-WU} application for Amendment of Certificate No. 347-W to
add Territory in Marion County by Marion Utilities, Inc.

Client-Matter No. 40200-86

Dear Ms. Bayo:

Enclosed are one original and 7 copies of the following documents for filing in
the above-referenced Docket:

1. Marion County Objection to Application By Marion Utilities to Amend
Certificate No. 347-W and Petition to Initiate Formal Proceedings.

If you have any questions, please do not hesitate to contact me.

Sincerely,

W. Christopher Browder, Esq.

Gray Robinson, PA

CMP _____

COM _____

CTR _____

ECR 1

GCL 1 WCB:kst

OPC _____ Enclosures- as stated above

RCA _____ cc: Flip Mellinger (w/enclosures)

SCR _____ Gerald Hartman (w/enclosures)

SGA _____

SGA _____

SEC 1

OTH WCB

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CLERK

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Application for amendment of)
Certificate No. 347-W to add)
territory in Marion County)
by Marion Utilities, Inc.)
_____)

Docket No. ~~060860-WU~~

060806-WU

(kf)

MARION COUNTY OBJECTION TO APPLICATION BY MARION UTILITIES TO AMEND CERTIFICATE NO. 347-W AND PETITION TO INITIATE FORMAL PROCEEDINGS

Marion County, Florida (hereafter "Marion County"), by and through its undersigned counsel, and pursuant to Florida Administrative Code Rules 25-30.031 and 25-22.036, Florida Administrative Code, and Sections 120.569 120.57, and 367.045, Florida Statutes (hereafter collectively "applicable procedural authority") and hereby files this Objection and Application to Initiate Formal Proceedings in opposition to the Application of Marion Utilities, Inc. (hereafter "MUI") for the amendment of water certificate number 347-W. In support thereof, Marion County states as follows:

1. Marion County is a political subdivision of the State of Florida whose official address is 601 S.E. 25th Avenue, Ocala, Florida, 34471-2690. For purposes of this Objection and Petition, all notices, pleadings and correspondence regarding this matter should be sent to Thomas A. Cloud, Esquire, Gray Robinson, P.A., 301 East Pine Street, Suite 1400, Orlando, Florida 32801.

2. Applicant MUI is a Florida corporation operating as a water-only utility supplying water to certain areas of Marion County, Florida, as authorized by the Florida Public Service Commission (hereafter "FPSC").

3. Marion County provides both water and wastewater service throughout areas of Marion County, Florida, and constitutes a "governmental Authority" as that term is used in Section 367.045(4), Florida Statutes.

4. MUI proposes to expand its certified water service territory to include a parcel of property more specifically described in Exhibit "A" hereto (the "Property"). MUI does not currently serve any property contiguous to the Property.

5. The Property is the subject of a request for a large scale, comprehensive land use plan amendment from Rural Land to Medium Density Residential ("Plan Amendment"). The Plan Amendment was approved by Marion County on August 8, 2006, for transmittal to the Florida Department of Community Affairs ("DCA"). In approving the transmittal, the County indicated that such approval was subject to "...a Developer's Agreement to include ¼ acre lots, the paving of S. Magnolia, *water and sewer*, and limiting the number of lots on the proposed site." [emphasis added]. These conditions are reflected in the Minutes of the Marion County Board of County Commissioners special session of Tuesday, August 8, 2006, Book I, Page 77. A copy of these pages from the minutes are attached as Exhibit "B" hereto and Developer Agreement is attached as Exhibit "C". As indicated in the BoCC Adoption Hearing Staff Report from those hearings, the developer indicated that water was currently available to the site from Marion County Utilities and that sewer service from Marion County Utilities would be brought to the site by an 8 inch line and lift station to be installed by the developer. A copy of the BoCC Adoption Hearing Staff Report of November 16, 2006, is attached hereto as Exhibit "D".

6. After transmittal, the DCA subsequently objected and recommended that the County not approve the Plan Amendment stating that the Plan Amendment was not consistent with the urban sprawl requirements of the County's Comprehensive Plan. A copy of the DCA Objections, Recommendations and Comments Report of October 27, 2006 is attached hereto as Exhibit "F".

7. The substantial interests of Marion County will be affected by the proposed service territory extension requested by MUI in that:

A. Granting the requested service territory amendment to MUI is contrary to the growth management requirements of Marion County and the comments of the DCA.

a. Granting the disputed Territory is contrary to the County's Comprehensive Plan and encourages urban sprawl.

b. The DCA has objected to the approval of the Plan Amendment for being in conflict the County's Comprehensive Land Use Plan.

c. On May 16, 2000, the DCA and the Florida Public Service Commission entered into a Memorandum of Understanding (the "Memorandum") pursuant to which the Commission agreed (among other things) to consider DCA comments regarding the relationship of an application for amendment of service territory to the local government comprehensive plan. Such information is to be presented by Commission staff for consideration in evaluating applications for

amendments to service territory. A copy of the above referenced Memorandum is attached hereto as Exhibit "G". Under the terms of the Memorandum, the Commission must consider DCA comments regarding the relationship of proposed certificate amendments to the County's Comprehensive Plan. DCA comments show that the Plan Amendment is not consistent with the County's Comprehensive Plan and granting the requested service territory to MUI would be contrary to the intent of the Memorandum.

B. Granting the requested service territory amendment is premature.

Granting the disputed territory to MUI is premature given that the Plan Amendment has not been approved by Marion County and the DCA has objected. Since there is no indication that the Plan Amendment will be approved at this time, there is no public need or benefit to granting the territory extension requested by MUI at this time.

C. Even assuming the Plan Amendment does comply with the County's Comprehensive Plan and is ultimately approved, Marion County already has an established service territory covering the Property and is more capable to serve the Property.

a. Marion County adopted its Water Resource Protection and Utilities Plan on May 21, 1996 ("Water Resource Plan") and amendments to its Comprehensive Plan in November of 1996 ("Comprehensive Plan"), directing the County to provide utility service to the area of the County in which the Property is located.

b. Pursuant to the Water Resources Plan and the Comprehensive Plan, the County adopted the Marion County Water and Wastewater Service Area by Ordinance No. 98-10 on April 21, 1998, which provides that Marion County is the exclusive provider of water and wastewater service to the area set forth in Exhibit "A" of that Ordinance, within which the disputed Property is located. A copy of Ordinance No. 98-10 is attached hereto as Exhibit "E". Marion County should therefore be the authorized water and wastewater service provider for the Property by earlier claim than MUI.

c. Marion County has the technical ability, financial capacity and resources to provide high quality, safe, sufficient and efficient water and wastewater services to the Property.

d. If MUI's request is granted, residents within the disputed Property may be precluded from obtaining water, wastewater and fire service at better quality and less cost.

e. If MUI is not technically or financially capable of providing the all of the utility services required for the Property, the residents there may be left

without a service provider.

f. Granting the disputed territory to MUI will prevent the utility customers located on the Property from enjoying the economies of scale offered by Marion County's utility systems.

8. The disputed issues of material fact known at this time include, but are not limited to, the following:

- a. If amending MUI's water certificate conflicts with or violates the Water Resources Plan, Comprehensive Plan and the Exclusive Service Area Ordinance of Marion County.
- b. If the request for extension of the MUI service territory is premature given that the Plan Amendment for the development of the Property has been rejected by the County and DCA.
- c. If there is any need justifying the extension of the MUI service territory given that the Plan Amendment for the development of the Property has been rejected by the County and DCA.
- d. If there is a need for water only service to be delivered to the Property.
- e. If MUI has the financial and technical capability to provide water service to the Property, including fire flow.
- f. If an extension of water service by MUI to the Property will cause duplication of or competition with existing utility systems.
- g. If MUI is in compliance with applicable rules of the Florida Public Service Commission and Florida Statutes in seeking to service the Property.
- h. If it is in the public interest to expand MUI's service territory to include the Property.
- i. If Marion County has already established its service territory to include the location of the Property.

9. The following ultimate facts are alleged by Marion County:

- a. MUI's request for extension of its water service territory is not in compliance with applicable rules of the Florida Public Service Commission and Florida Statutes.

- b. Granting the disputed territory to MUI is premature given that the Plan Amendment has not been approved by Marion County or the DCA.
- c. Amending MUI's water certificate will conflict with or violate the Water Resources Plan, Comprehensive Plan and the Exclusive Service Area Ordinance of Marion County.
- d. It is not in the public interest to expand MUI's service territory to include the Property.
- e. MUI is requesting an extension of its water service territory to an area that is already in the exclusive water and wastewater service territory of Marion County.
- f. Marion County possesses the earliest and only exclusive right to provide water and wastewater service to the disputed Property.
- g. There is no need for water-only service to the Property.
- h. MUI does not possess technical or financial capability sufficient to provide the required utility services for the Property.
- i. MUI does not have sufficient water and fire flows to service the Property.
- j. The water system proposed by MUI to service the Property would be duplicative of and in competition with Marion County's water system.

10. Marion County is entitled to the relief it seeks pursuant to applicable procedural authority outlined above and/or FPSC decisions, statutes, rules, and orders, as well as Florida case law relevant to the disposition of water and wastewater territorial disputes.

WHEREFORE, Marion County respectfully requests that the Florida Public Service Commission do the following:

- 1. Hold an administrative hearing on MUI's application for amendment to water certificate 347-W and Marion County's objection thereto;
- 2. Authorize the issuance of subpoenas and grant adequate time prior to the administrative hearing such that Marion County may conduct discovery to adequately prepare for the administrative hearing; and,

3. Deny MUI's application to amend water certificate of authority 347-W to provide water service to the disputed Property.

Respectfully submitted this 21st day of
December, 2006, by



THOMAS A. CLOUD, ESQUIRE
GRAYROBINSON, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801 407-244-5624

and

W. CHRISTOPHER BROWDER, ESQUIRE
GRAYROBINSON, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801 407-244-5648

Attorneys for Marion County, Florida

CERTIFICATE OF SERVICE

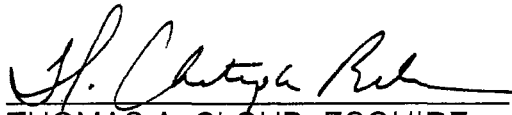
I certify that a true copy of this foregoing was filed this 21st day of December, 2006 by express mail or United States mail to the following:

Original and 7 copies by Federal Express:

Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
2540 Shumard Oak Boulevard Tallahassee,
Florida 32399-0850

With a copy by U.S. mail to:

Mr. Tim Thompson
Marion Utilities, Inc.
710 N.E. 30th Avenue
Ocala, FL 34470-6460



THOMAS A. CLOUD, ESQUIRE
GRAYROBINSON, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801 407-244-5624

and

W. CHRISTOPHER BROWDER, ESQUIRE
GRAYROBINSON, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801 407-244-5648

Attorneys for Marion County, Florida

EXHIBIT " A "

THE PROPERTY

Turning Point Phase 2
Parcel No. 41463-000-01

LEGAL DESCRIPTION

A tract of land situated in Section 7, Township 17 South, Range 22 East located in Marion County, Florida. More particularly described as follows:

Commence at the Northeast Corner of said Section 7, said Northeast corner being also the Point of Beginning (POB); thence S 01° 24' 22" E, along the East Line of said Section 7, 821.19'; thence S 88° 38' 05" W, 208.71'; thence S 01° 24' 22" E, 208.71'; thence S 88° 38' 05" W, 86.45'; thence S 01° 24' 22" E, 295.16'; thence S 88° 38' 05" W, 366.85'; thence N 01° 23' 33" W, 1330.79' to the North Line of said Section 7; thence N 88° 32' 42" E, along the North Line of said Section 7, 661.69' to the Point of Beginning (POB).

Contains 17.00 acres more or less.

Parcel No. 41463-003-01

A tract of land situated in Section 7, Township 17 South, Range 22 East located in Marion County, Florida. More particularly described as follows:

Commence at the Northeast Corner of said Section 7; thence S 01° 24' 22" E, along the East Line of said Section 7, 821.19'; thence S 88° 38' 05" W, 208.71'; thence S 01° 24' 22" E, 208.71'; thence S 88° 38' 05" W, 86.45'; thence S 01° 24' 22" E, 295.16'; thence S 88° 38' 05" W, 36.19' to the Point of Beginning (POB); thence S 01° 24' 53" E, 1221.91', to a point on a curve concave Southerly and having a radius of 12532.78' and central angle of 00° 22' 34" and chord bearing and distance of S 83° 26' 03" W, 82.30'; thence Westerly along the arc of said curve 82.30' to the Point of Reverse Curvature of a curve Northerly and having a radius of 12335.93' and central angle of 1° 09' 41" and a chord bearing and distance of S 83° 49' 36" W, 250.04'; thence Southwesterly along the arc of said curve 250.04'; thence N 01° 33' 17" W, 1243.56'; thence N 88° 38' 05" E, 330.66' to the Point of Beginning (POB).

Contains 9.83 acres more or less.

Parcel No. 41453-001-00

A tract of land situated in Section 6, Township 17 South, Range 22 East located in Marion County, Florida. More particularly described as follows:

Commence at the Southeast Corner of said Section 6; thence N 01° 21' 08" W, along the East Line of said Section 6, 331.13'; thence S 88° 32' 43" W, 661.63'; thence S 01° 20' 26" E, 331.13' to the South Line of said Section 6; thence N 88° 32' 42" E, along the South Line of said Section 6, 661.69'.

Contains 5 acres more or less.

EXHIBIT "B"

**MARION COUNTY BOCC
MINUTES – AUGUST 8, 2006**

August 8, 2006

to transmit the proposed change to DCA based on the Planning Commission recommendation and findings that the request would not adversely affect the public interest, was compatible with the surrounding land uses, was consistent with the identified goals, objectives, and policies in the proposed Marion County Comprehensive Plan, and was consistent with Chapter 163, FS, Rule 9J-5, FAC. The motion was unanimously approved by the Board.

Comprehensive Plan/Contracts & Agreements - Senior Planner Hammons presented Amendment No. 06-L55 by Murphy Development of Ocala, Inc., owner, and Landis V. Curry, Jr., Esquire, agent, for a land use change from Low Density Residential to Medium Density Residential on 16.06± acres located on the west side of SE 105th Avenue approximately 200 feet south of the intersection with SE Sunset Harbor Road. It was noted Medium Density Residential land use designation would allow residential uses with a maximum density of four (4) dwelling units per gross acre for a maximum of 64 units. Mr. Hammons advised the Planning Department recommended approval and the Planning Commission did not have a recommendation due to a tie vote of 3-3.

Landis Curry, NE 1st Avenue, attorney representing the applicant was present and provided an ariel map of the property. He advised the property was located in an Urban area and had a Low Density designation. Mr. Curry advised that in 2005, the Board approved a Land Use change to Medium Density Residential for the adjoining 61 acre property. He noted that within the area there had been a designation for a proposed Regional Marion County Lift Station for sewer services for properties in the vicinity. Mr. Curry stated the area was heavily developed with small lot subdivisions on septic tanks. He provided a copy of a Developers Agreement which provided for central water and sewer, and met all County concurrence requirements. Mr. Curry stated the 16 acre site provided for a secondary access to the 61 acre parcel so that all of the traffic did not exit onto Highway 441. He noted there had been extensive traffic studies conducted on the 61 acre parcel and that even if the maximum density was used, there were no system failures.

Upon call for public comment, Doug Shearer, SE 85th Street, stated he did not realize this was a continuation of a previous project and advised he had no objection.

A motion was made by Commissioner Harris, seconded by Commissioner Stone, to transmit the proposed change to DCA based on the Planning Department recommendation and findings that the request would not adversely affect the public interest, was compatible with the surrounding land uses, was consistent with the identified goals, objectives, and policies in the proposed Marion County Comprehensive Plan, and was consistent with Chapter 163, FS, Rule 9J-5, FAC. The motion was unanimously approved by the Board.

Chairman Payton passed the gavel to Commissioner Harris who assumed the Chair. Commissioner Payton out at 5:15 p.m.

Comprehensive Plan/Contracts & Agreements - Senior Planner Hammons presented Amendment No. 06-L57 for Good Apple Development Corporation, owner/agent, for a land use change from Rural Land to Medium Density Residential on 31.83± acres located on the north side of SE CR 484 between Turning Pointe Estates subdivision and S. Magnolia Avenue. Medium Density Residential allowed for a variety of residential units with a maximum density of four (4) dwelling units per acre for a maximum of 127 units. Mr. Hammons advised the Planning Department recommended denial and the Planning

August 8, 2006

Commission also recommended denial.

Jeff Gutapfel, SW 20th Place, stated that part of the reason Staff recommended denial was due to inaccurate information regarding the school zone in the area, which would be Belleview Elementary, Belleview Middle and Belleview High Schools, which had capacity for more students. He presented a site plan of the proposed development and advised it was a proposed continuation of Turning Pointe Estates to add 83 lots. Mr. Gutapfel advised there would be a minimum 1/4 acre lot size and the developer would agree to provide the water system, providing fire flow to the existing subdivision, and to extend the eight inch force main another 3,000 feet to the Summerglen Water Treatment Facility.

Commissioner Payton returned at 5:17 p.m., Chairman Harris passed the gavel back to Commissioner Payton who assumed the Chair.

Mr. Gutapfel advised that the paving stopped on South Magnolia on the south side of CR 484 and stated that the developer would continue the paving up to the subdivision. He noted that the State was in the process of expanding CR 484 to four lanes and that the road plans included a full median cut at South Magnolia which would allow Turning Pointe Estates to enter and exit off the proposed development. Mr. Gutapfel presented a copy of a petition with 67 signatures supporting the addition to the development.

Mr. Massey advised that an additional reason for the Planning Departments denial was the availability of vacant units in the Planning District, particularly the Marion Oaks subdivision.

Commissioner Stone questioned if there had been a prior land use change request made by the applicant for the development. Mr. Massey advised there had been a prior request in 2005 but in regard to this request the applicant had addressed a more specific need and was offering the water and sewer. He also advised the previous request was for High Density Residential, Medium Residential and Professional Office.

Upon call for public comment, Joseph Chiesa, SW 3rd Court, advised he was a resident of Turning Pointe Estates and presented a petition in support of the proposed development. He noted the expansion by the Florida Department of Transportation (FDOT) of CR 484 would cut off the residents access to go east bound to Belleview, which was the only entrance and exit into the development. Mr. Chiesa advised it would cause residents to turn right (west) 400 feet and then make a U-Turn and go east to Belleview. He advised this made hauling a trailer or boat extremely difficult. Mr. Chiesa commented that Good Apple Development had offered to pave Magnolia from the proposed development to CR 484, which would enable the residents of Turning Pointe to go through the new development and make a left turn directly towards Belleview. He also advised that with the agreement to increase the water flow into Turning Pointe Estates, it would enable the subdivision to put in fire hydrants which they currently did not have in place.

Vincent Pendolino, SW 3rd Court, advised he was a retired police officer. He noted that he had a boat and trailer and could not safely turn onto CR 484 when pulling his boat. Mr. Pendolino stated the speed limit on CR 484 was 55 miles per hour and heavily traveled by trucks. He advised that their homeowners insurance rates were high because of the lack of fire hydrants in the subdivision. He stated he was in favor of the amendment.

Doug Shearer, SE 85th Street, advised this would be a good solution for the residents of Turning Pointe Estates.

Mr. Gutapfel advised if the Board approved the Land Use change, he would have his attorney draw up a Developer's Agreement .

A motion was made by Commissioner Kesselring, seconded by Commissioner Stone, to transmit the proposed change to DCA subject to a Developer's Agreement to include the 1/4 acre lots, the paving of S. Magnolia, water and sewer, and limiting the number of lots on the proposed site, and based on Planning Department recommendation and findings that it would not adversely affect the public interest, was compatible with the surrounding land uses, was consistent with the identified goals, objectives and policies in the Comprehensive Plan, and was consistent with Chapter 163, Florida Statutes, Rules 9J-5, F.A.C. The motion was approved by the Board by a vote of 4-1, with Commissioner Harris voting nay.

Comprehensive Plan/Contracts & Agreements - Senior Planner Kokoski presented Application No. 06-L58 by Joyce Phillips, owner, and Cindy Steinemann, agent, for a land use change from Rural Land to Limited Commercial on 3.82± acres located on the west side of US 441 approximately 1/4 mile northwest of SE 135th street. Limited Commercial allowed for a variety of commercial uses with a maximum floor area ratio of 30%. He advised that the Planning Department recommended denial and the Planning Commission also recommended denial by a vote of 4-3.

Mr. Massey expanded on the basis for denial and stated the applicant failed to demonstrate a need, particularly on the CR 484 extension, just north of the property. He further stated the land use change was not compatible with the surrounding Rural Land.

Dan Hicks, S. Pine Avenue, attorney representing the applicants was present. He noted that the Policy 120 property was not shown on the map and that across from the property was Russo's Auto Air. Mr. Hicks noted that about 250 yards from the ingress/egress which was 40 ft off of Highway 441 and US 27, was the CR 484 extension. He advised the applicant would leave the tail end of the property as agricultural and not commercial. Mr. Hicks stated that the property was close to the highway and was compatible with the surrounding areas. He advised the maximum development that could be constructed on Limited Commercial would be a 9,000 square foot building on 3 acres. Mr. Hicks commented that the business would not affect the school system and would have a well and septic service.

Upon call for public comment, Doug Shearer, SE 85th Street, stated this was a good proposal.

A motion was made by Commissioner Harris, seconded by Commissioner McClain, to transmit the proposed change to DCA, with an amendment that the leg portion of the property would be eliminated from the property description, and based on the findings that it would not adversely affect the public interest, was compatible with the surrounding land uses, was consistent with the identified goals, objectives and policies in the Comprehensive Plan, and was consistent with Chapter 163, Florida Statutes, Rules 9J-5, F.A.C. The motion was unanimously approved by the Board.

Comprehensive Plan/Contracts & Agreements - Senior Planner Kokosky presented Amendment No. 06-L59 by International Associates Development Corp., owner, and William A Cobb, agent, for a land use change from Commercial to Multi-family Medium Density Residential on approximately 27.1± acres and located on the northwest corner of the intersection of SW 80th Avenue and SW 103rd Street Road. It was noted that Multi-family Medium Density Residential land use designation would allow for various residential uses with a minimum density of eight (8) dwelling units per gross acre to a maximum density of

EXHIBIT "C"
DEVELOPER AGREEMENT

062-51

DEVELOPER'S AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2006, by and between Marion County, a political subdivision of the State of Florida, whose address is 601 SE 25th Avenue, Ocala, Florida, 34471, (hereinafter referred to as "Marion County") and Good Apple Development Corporation, whose address is 13161 SW 2nd Court, Ocala, FL 34473 (hereinafter referred to as "Owner").

WITNESSETH:

WHEREAS Owner holds title to the property described on Exhibit "A", attached hereto and by reference made a part hereof, and enters into this agreement for the expressed purpose of limiting development and setting forth terms and conditions which will govern development of this property; Now therefore,

IN CONSIDERATION of the payment of \$10.00 and other good and valuable consideration acknowledged by both parties, the parties do mutually covenant and agree as follows:

1. All future development of and on said property by the Owner, owner's heirs, successors or assigns, shall be initiated and completed in accordance with the terms and conditions contained herein and the terms and conditions of this agreement shall run with the title to the property described on Exhibit "A" attached (hereinafter referred to as "the property").
2. All development on the property shall be served by central water and central sewer systems. The systems capable of servicing the development shall be in place prior to, or in conjunction with each phase of development. Marion County shall be under no obligation to participate in any costs associated with providing these systems for this development.
3. If the complete development of the property has the potential of generating 100 or more p.m. peak hour trips, prior to commencing any development on the property, Owner shall have prepared and presented to Marion County, a traffic study identifying the potential impact of the complete development of the property. Complete development of the property being defined as the issuance of certificate of occupancies for all residential units within the project. Owner shall, prior to initiating the study, obtain agreement from the County Engineer and County Planning Director, or their designees, as to the methodology for the study, including an agreement on the process for establishing the time period to be utilized in the traffic study for complete development of the property. The study shall identify all roadways, roadway segments and intersections which would potentially be impacted by the development. The study shall include consideration of committed development projects and vested projects, including, but not limited to, those existing subdivisions of record recognized by Marion County for the issuance of building permits. The study shall identify roadways, roadway segments and intersections which fall or exceed the adopted Level of Service at any point in time prior to complete development of the property. The traffic study shall be subject to acceptance by the County Engineer and County Planning Director, or their designees. Upon acceptance of the study, the County shall determine the required transportation improvements and shall provide the timeframe when those improvements must be completed. Marion County shall be under no obligation to participate in any costs associated with providing these improvements.

06-257

4. In addition to providing the initial traffic study described above, for those developments consisting of 300 or more potential residential units the following shall also apply:

If in the event complete development of the property exceeds the time period agreed upon in the accepted traffic study, Marion County may require, and the Owner shall provide, an updated traffic study acceptable to Marion County. Upon acceptance of the updated study, the County shall determine if any additional transportation improvements are required and the timeframe when those improvements must be completed. Marion County may withhold and further development approval, including but not limited to the issuance of building permits, until the updated study is completed and accepted, and any additional transportation improvements are assured for completion. Marion County shall be under no obligation to participate in any costs associated with providing these improvements.

5. Marion County may require those developments with the potential of 500 or more residential units to be phased. Phasing of the development may, at the option of Marion County, require interim traffic studies. In addition to the initial traffic study, Marion County may require an updated study be prepared and submitted between issuance of the 300th and 400th certificate of occupancy issued in each phase. Upon acceptance of the updated study, the County shall determine if any additional transportation improvements are required and the timeframe when those improvements must be completed. Marion County may withhold any further development approval, including but not limited to the issuance of building permits, until the updated study is completed and accepted, and any additional transportation improvements are assured for completion. Marion County shall be under no obligation to participate in any costs associated with providing these improvements.
6. The foregoing provisions shall supplement the County's Concurrency Management System (currently codified in Article 11 of the County's Land Development Regulations). In the event that the Concurrency Management System imposes more stringent requirements than those set forth herein, such requirement shall apply.
7. All development of the property shall provide for reasonable water conservation techniques and shall be developed by the reasonable use and preservation of native vegetation and xeriscaping.
8. Owner acknowledges that pursuant to the provisions of Florida Senate Bill 350 (2005) and its amendments to Chapter 183 of the Florida Statutes, school concurrency shall be established and shall be applicable with respect to the development of the Property by Owner. Owner agrees that Owner shall satisfy the School Concurrency requirements of Chapter 183 in accordance with the provisions of the Interlocal Agreement to be entered into between Marion County and the School Board of Marion County, determining or establishing a proportionate fair share contribution for the purpose of providing funds to the School Board for the construction of required school district infrastructure expansion or improvements. Prior to adoption of the Public School Facilities Element, the development may apply for exemption from School Concurrency required under this agreement, provided the development meets the definition and requirements for exemption as provided for in the Marion County Educational System Impact Fee Ordinance.
9. Development of the Property shall be limited to a maximum of eighty-three (83) residential units.
10. Development of the Property shall include a connection to South Magnolia Avenue and the paving of South Magnolia Avenue from the connection to Highway 484. All cost associated with the connection to and paving of South Magnolia Avenue shall be the sole responsibility of the Owner. Said costs including, but not being limited to right of way and land acquisition costs, and costs associated with engineering, design, permitting and construction and inspections.

11. Any violation by owner, owner's heirs, successors or assigns of any provision contained herein shall be considered as a violation of this agreement and may result in the suspension, cancellation or termination of development orders and permits by Marion County.
12. Any amendments to the conditions or provisions contained herein, exclusive of local land development codes, shall require an amendment to this agreement and shall require review and consent to the amendment by the State of Florida Department of Community Affairs.
13. In the event any of the above listed provisions are less than the minimum requirements of the Marion County Land Development Code at the time of development, the requirements of the Marion County Land Development Code shall be met. In addition to the requirements and limitations contained herein, future development of the property shall comply with all applicable County Codes, regulations and ordinances in effect at the time of development.
14. Upon execution of this agreement, Owner shall provide funds to Marion County for recording of this agreement in the public records. The agreement shall be recorded upon approval and completion of the associated land use amendment process. Any conveyance of any interest in the property described on Exhibit "A", attached, after execution of this agreement and prior to recording of the agreement in the public records shall be subject to the terms and conditions of this agreement. The Owner shall be responsible for the disclosure of the existence of this agreement.

Signed, sealed and delivered in the presences of witnesses this _____ day of _____, 2008.

Good Apple Development Corporation

Signed, sealed and delivered
in the presences of:

Witness

Print Witness Name

Witness

Print Witness Name

By: _____

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by _____, who is personally known to me or who has produced _____ as identification and who did _____ take an oath.

(SEAL)

OFFICER TAKING ACKNOWLEDGMENT

NAME OF OFFICER - PRINTED
My commission Expires:

657-90

COUNTY ATTORNEY

Approve as to Form
and Legal Sufficiency

DAVID R. ELTSFERMANN, CLERK

JAMES T. PAYTON, JR., CHAIRMAN

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

Approved and accepted by Marion County, Florida this _____ day of _____ 200__

EXHIBIT "A"

Parcel #41463-000-00, containing 17.00 acres, more or less.

A tract of land situated in Section 7, Township 17 South, Range 22 East located in Marion County, Florida. More particularly described as follows:

Commence at the Northeast corner of said Section 7, said northeast corner being also the Point of Beginning (POB); thence S01°24'22"E along the east line of said Section 7, 821.19'; thence S88°38'05"W 208.71'; thence S01°24'22"E 208.71'; thence S88°38'05"W 86.45'; thence S01°24'22"E 295.16'; thence S88°38'05"W, 366.85'; thence N01°23'33"W 1330.79' to the north line of said Section 7; thence N88°32'42"E along the north line of said Section 7, 661.69' to the Point of Beginning (POB).

Parcel #41463-003-01, containing 9.83 acres, more or less.

A tract of land situated in Section 7, Township 17 South, Range 22 East located in Marion County, Florida. More particularly described as follows:

Commence at the northeast corner of said Section 7; thence S01°24'22"E along the east line of said Section 7, 821.19'; thence S88°38'05"W 208.71'; thence S01°24'22"E, 208.71'; thence S88°38'05"W 86.45'; thence S01°24'22"E 295.16'; thence S88°38'05"W 36.19' to the Point of Beginning (POB); thence S01°24'53"E 1221.91' to a point on a curve concave southerly and having a radius of 12532.78' and central angle of 00°22'34" and chord bearing and distance of S83°26'03"W, 82.30'; thence westerly along the arc of said curve 82.30' to the Point of Reverse Curvature of a curve northerly and having a radius of 12335.93' and central angle of 1°09'41" and a chord bearing and distance of S83°49'36"W 250.04'; thence southwesterly along the arc of said curve 250.04'; thence N01°33'17"W 1243.56'; thence N88°38'05"E, 330.66' to the Point of Beginning (POB).

Parcel #41453-001-00, containing 5 acres, more or less.

A tract of land situated in Section 6, Township 17 South, Range 22 East located in Marion County, Florida. More particularly described as follows:

Commence at the southeast corner of said Section 6; thence N01°21'08"W along the east line of said Section 6, 331.13'; thence S88°32'43"W 661.63'; thence S01°20'26"E 331.13' to the south line of said Section 6; thence N88°32'42"E along the south line of said Section 6, 661.69'.

06-L57 Jeff Gutapfel

06-L57

EXHIBIT "D"

**MARION COUNTY BOCC
TRANSMITTAL HEARING STAFF REPORT
OF NOVEMBER 16, 2006**

Marion County Comprehensive Plan – 2006 Large Scale Amendment	
Case Number: 06L-57	PC Hearing: June 15, 2006
Amendment Type: Map	BoCC Hearings: August 8, 2006 November 16, 2006

I. EXECUTIVE SUMMARY

The applicant requests a change to the Marion County Comprehensive Plan, Future Land Use Map from Rural Land to Medium Density Residential. The subject property is 31.83 ± acres in size and is located on the north side of SE CR 484 between Turning Pointe Estates subdivision and S. Magnolia Avenue. Medium Density Residential allows for a variety of residential units with a maximum density of four (4) dwelling units per acre for a maximum of 127 units.

Planning Department's Recommendation and Basis for Recommendation:

The Planning Department recommends **DENIAL** of CPA 06L-57, for the Future Land Use change from **Rural Land** to **Medium Density Residential**, on the following basis:

1. The proposed amendment does not demonstrate any need for the proposed change.
2. Central water and sewer utility facilities and capacity are not currently available to serve the site.

Table 1 – Existing and Proposed FLU and Zoning for Site

Acres	Existing FLU	Existing Zoning	Proposed FLU
31.83 ±	Rural Land	A-1, General Agriculture	Medium Density Residential

Source: Marion County Property Appraiser's Office, Marion County Planning Department, CPA Application

Table 2 – Future Land Use Descriptions

Existing FLU	Proposed FLU
Rural Land - permits a range of agricultural and/or agriculture related uses and low density residential development to a max. density of one (1) unit to ten (10) acres.	Medium Density Residential - allows residential uses to a max. density of four (4) units per gross acre in single-family, duplex, triplex, quadruplex and manufactured housing formats.

Source: Marion County Comprehensive Plan Future Land Use Element, Policy 1.24.

Parcel Number(s): 41463-000-00, 41463-003-01, and 41453-001-00

Location: Property is located in Sections 06 and 07, Township 17S, Range 22E, on the north side of CR 484 between Turning Pointe Estates subdivision and S. Magnolia Avenue.

Owner/Agent: Good Apple Development Corp.

Applicant's Justification from Application:

1. *The proposed amendment is contiguous to like kind development at 4 units per acre.*
2. *At just one mile from I-75, this amendment preserves the county's rural areas as it is in an existing urban area and commercial hub.*
3. *The proposed amendment plans to use existing resources and adds to an existing, built-out subdivision.*
4. *The proposed amendment has no impact on adjacent agricultural areas.*
5. *During the last year, two new service stations were built and there is now a 60,000 sq. ft. grocery store coming to within one-half mile.*
6. *The proposed amendment is infill and finishes an existing development.*

II. ANALYSIS OF COMPATIBILITY

Existing Future Land Use and Zoning

The subject property has a Future Land Use of Rural Land with A-1 zoning. Despite some of the existing uses, the entire area surrounding the subject property is currently designated Rural Land.

Table 3 - Adjacent Property Characteristics (Within One-Quarter (1/4) mile of the Site)

Direction	Current Use	Future Land Use	Zoning
North	Single-family homes and agriculture uses on acreage.	Rural Land	A-1
South	Single-family homes on acreage with agriculture uses, vacant, some heavy commercial uses further southeast.	Rural Land	A-1, B-4, R-C, B-5
East	Single-family home and agriculture uses.	Rural Land	A-1
West	Residential subdivision of about 54 medium-density lots, single-family homes on acreage with agriculture uses beyond.	Rural Land	A-1

Source: Marion County Planning Department

Proposed Future Land Use

The proposed land use is Medium Density Residential which allows residential uses with a maximum density of four (4) dwelling units per acre. This is not consistent with and not compatible to those properties surrounding the subject property.

Environmental Conditions

The subject property has a variety of natural resources and features. Development of this property will be required to comply with the Marion County Comprehensive Plan and Land Development Regulations.

Table 4 - Natural Features and Resources

Site Analysis	Feature/Resource	Soil Information	Soil Features
Historic/Archeological	None	Soil Association	Arredondo-Gainesville
Mineral Resources	Limestone	Soil Limitations	Slight
Wetland Areas	None	Openland Wildlife	Fair
Flood Prone Areas	None	Woodland Wildlife	Fair
Aquifer Recharge Area	High	Wetland Wildlife	Very Poor
DRASTIC Index	High to Very high		
Significant Farmland	Yes		
Environmentally Sensitive Overlay Zone (ESOZ)	None		
Natural Reservation	None		
Natural Areas Inventory	None	Proposed Site Analysis	Proposed Feature/Resource
Receiving Area	None	Spring Protection Zones	Silver Springs Secondary SPZ
Farmland Preservation Area	None	Military operating Area	No

Source: Florida Area Natural Inventory, Soil Survey of Marion County Area, Florida; Marion County Planning Department.

III. PUBLIC FACILITIES AND SERVICES

Public Safety (Fire, Sheriff, EMS)

Table 5 - Public Safety Service (Fire, Sheriff, EMS)

Service	Station/District and Location	Distance from Site
Fire/EMS	#23 Pedro, 16500 SE CR 475, Summerfield	4.1 miles
Sheriff	South Marion, 8230 SE 165 th Mulberry Lane, The Villages	9.8 miles
	South Multi-district Office, 3620 SE 80 th Street, Ocala	9.5 miles

Source: County and/or City Public Safety Departments

School Facilities (Public and Charter Schools)

The request will increase the number of students attending the schools.

Table 6 - School Capacity

Name of School	Student Enrollment/Capacity	% Capacity	Distance of Site from School
Belleview-Santos Elementary School	651 / 825	107.39%	7.5 miles
Belleview Middle School	1,329 / 1,493	78.77%	6.1 miles
Belleview High School	1,624 / 2,064	79.31%	6.1 miles

Source: Marion County School Board

Potable Water and Sanitary Sewer

The subject property is located within the Marion County Utilities Service Area, but water and sewer is currently not available. The LOS for water and sewer shall be in accordance to the Potable Water Sub-Element, Policy 1.2 and Sanitary Sewer Sub-Element, Policy 2.1 of the Comprehensive Plan.

The applicant indicates that water is currently available at the site from existing facilities owned by Marion County Utilities. The applicant also indicates that sewer service from Marion County

Utilities exists 3,000 feet from the site and will be brought to the site by an 8 inch line and lift station to be installed by the developer.

Table 9 Water and Sanitary Sewer Capacity

Utility Service LOS Standard (Gallons per Day – GPD)	Max. Existing Demand	Max. Proposed Demand	Net Change
Residential (Number of Units)	3 Units	127 Units	+124 Units
Water (150 GPD/unit per person ¹)	1,062 GPD	44,958 GPD	+43,896 GPD
Sewer (110 GPD/unit per person ¹)	779 GPD	32,969 GPD	+32,190 GPD

Source: Marion County Planning Department

Note: ¹ Florida Statistical Abstract states the average number of person per dwelling unit is 2.36 in Marion County.

Drainage

The Marion County Land Development Code Requires that all development hold on site all storm water in excess of the twenty-five (25) year, twenty-four (24) hour storm up to and including a storm of hundred (100) year frequency (Design and Improvement 9(d)(1)).

Recreation

The Comprehensive Plan’s Recreation and Open Space Element, Policy 2.4 states a LOS of two (2) acres per 1,000 persons. Marion Oaks Community Center and Marion Oaks Ballfields, both Community Parks, are the closest County parks and are 4 ½ miles from the site, but are MSTU intended to serve the residents of Marion Oaks. The nearest park to the site is the Florida Horse Park (State of Florida) approximately 3.2 miles north of the site. The proposed amendment will not adversely impact the County’s recreation facilities.

Solid Waste

The Comprehensive Plan’s Infrastructure Solid Waste Sub-Element, Policy 1.2 states that the LOS standard shall be 6.2 pounds of solid waste generation per person per day. The proposed amendment will not adversely impact the County’s solid waste facilities.

Transportation Network and Traffic Circulation

Access is provided by County Road 484. County Road 484 from County Road 475A to Southeast 47th Avenue is scheduled for widening to four (4) lanes in FY 2007/08 and FY 2008/09.

Table 8 - Traffic Level of Service (LOS) (Existing and Projected)

Road	From/To	LOS Standard	Capacity	2004 AADT Volume	Current LOS	Current Impact	Proposed Impact	Average Growth ¹	Year 2005	Year 2009	Year 2014
CR 484	CR 475A/CR 467	C	40,800	13,057	A	29 (100%)	1,216	4.23%	13,609	16,670	20,367
I-75	SR 200/CR 484	C	85,300	78,815	C	3 (10%)	122	3.27%	81,392	92,633	108,791
I-75	CR 484/Sumter County Line	B	54,300	65,500	C	3 (10%)	122	3%*	67,465	75,984	88,088
CR 475A	CR 475B/CR 484	D	13,800	4,848	B	3 (10%)	122	6.7%	5,173	6,766	9,334
CR 475A	CR 484/CR 475	D	13,800	5,030	B	3 (10%)	122	4.82%	5,272	6,426	8,115
CR 475	SW 80 th St./CR 484	D	13,800	5,297	C	3 (10%)	122	3.8%	5,498	6,444	7,753
CR 475	CR 484/Sumter County Line	D	13,800	5,145	C	3 (10%)	122	5%*	5,402	6,627	8,442

Source: Marion County Comprehensive Plan, Ocala/Marion County TPO, Florida Department of Transportation, Marion County Planning Department.

Note: ¹ Based on a straight line average over the last 5 years

Table 9 - PM Peak Hour Analysis

Road	From/To	LOS Standard	PM Peak Hr Capacity	2004 PM Peak Hr Volume	Current LOS	Current Impact	Proposed Impact
CR 484	CR 475A/CR 467	C	4,000	1,306	A	3	122
I-75	SR 200/CR 484	C	8,270	7,882	C	1	12
I-75	CR 484/Sumter County Line	B	5,650	655	C	1	12
CR 475A	CR 475B/CR 484	D	1,190	485	C	1	12
CR 475A	CR 484/CR 475	D	1,190	503	C	1	12
CR 475	SW 80 th St./CR 484	D	1,190	530	C	1	12
CR 475	CR 484/Sumter County Line	D	1,190	515	C	1	12

Source: 2002 Quality/Level of Service Handbook, 2004 Florida Traffic Information

IV. NEEDS ANALYSIS

The proposed amendment is located within Planning District 4. This residential land use request is for Medium Density Residential, which allows for a variety of housing types up to a maximum of four (4) dwelling units per acre on 31.83 ± acres for a maximum of 127 units.

Presently, there are 177 acres currently designated Medium Density Residential within this planning district. Of this total, there are roughly 114 acres (64%) developed and 63 acres (36%) vacant.

The latest population estimate for this planning district is 20,714. Historically, this planning districts' population has grown at an annual rate of 0.28%. Building permit information indicates that 5,857 residential permits have been issued within this district from 2000 to 2006 (January to April).

V. CONSISTENCY WITH THE COMPREHENSIVE PLAN

The proposed Medium Density Residential Future Land Use designation **IS NOT CONSISTENT** with the goals, objectives, and policies of the Comprehensive Plan as follows:

- The proposed amendment is not compatible with the existing adjacent uses and does not encourage compact, contiguous development in the Urban Area (FLUE Policy 1.1).
- Need for the proposed change has not been demonstrated (FLUE Policy 12.3 (1)).
- The proposed change is not timed and staged in conjunction with the provision of supporting public facilities (FLUE Policy 1.8).

VI. CONSISTENCY WITH FS, CHAPTER 163 AND FAC, 9J-5

The proposed Medium Density Residential FLUM designation for this property **IS NOT CONSISTENT** with Chapter 163, Florida Statutes and Rule 9J-5, Florida Administrative Code. The Planning Department, based on analysis of the site, has determined that Medium Density Residential development of this property promotes urban sprawl because:

- The proposed amendment encourages a land use pattern that disproportionately increases the local government's fiscal burden of providing necessary public services.

VII. MARION COUNTY BOARD ACTIONS

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission recommends **DENIAL** of **CPA 06L-57** by a vote of 7-0, to change the Future Land Use from **Rural Land** to **Medium Density Residential**, based on the findings that the request:

1. The proposed amendment will adversely affect the public interest.
2. The proposed amendment is not compatible with the surrounding land uses.
3. The proposed amendment is not consistent with the identified goals, objectives, and policies in the Marion County Comprehensive Plan.
4. The proposed amendment is not consistent with Chapter 163, FS, Rule 9J-5, FAC.

Transmittal Hearing

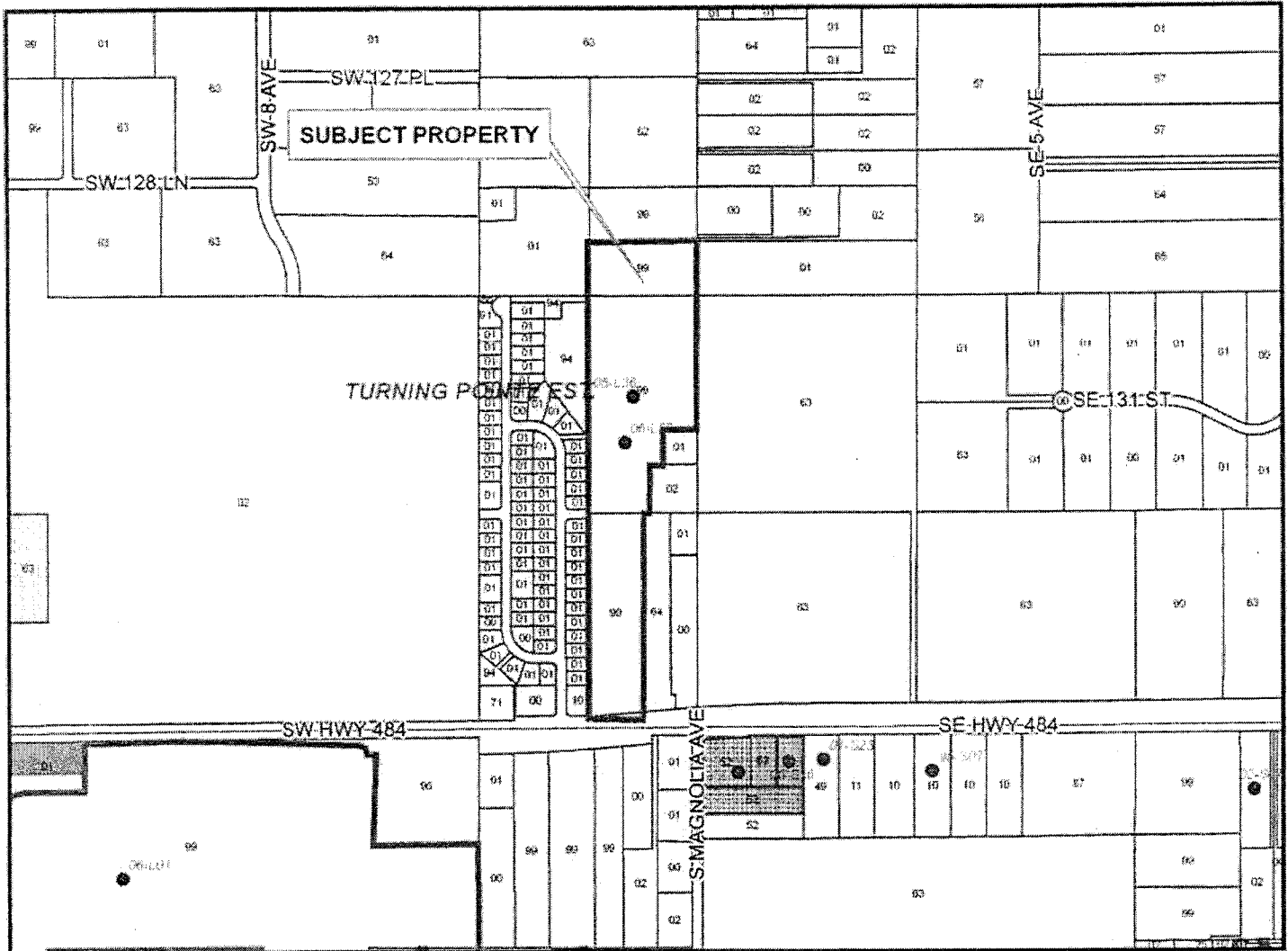
The Board of County Commissioners recommends **APPROVAL** of **CPA 06L-57** by a vote of 4-1, to change the Future Land Use from **Rural Land** to **Medium Density Residential**, based on the findings that the request:

1. Will not adversely affect the public interest.
2. Is compatible with the surrounding land uses.
3. Is consistent with the identified goals, objectives, and policies in the Marion County Comprehensive Plan.
4. Is consistent with Chapter 163, FS, Rule 9J-5, FAC.

Attachments

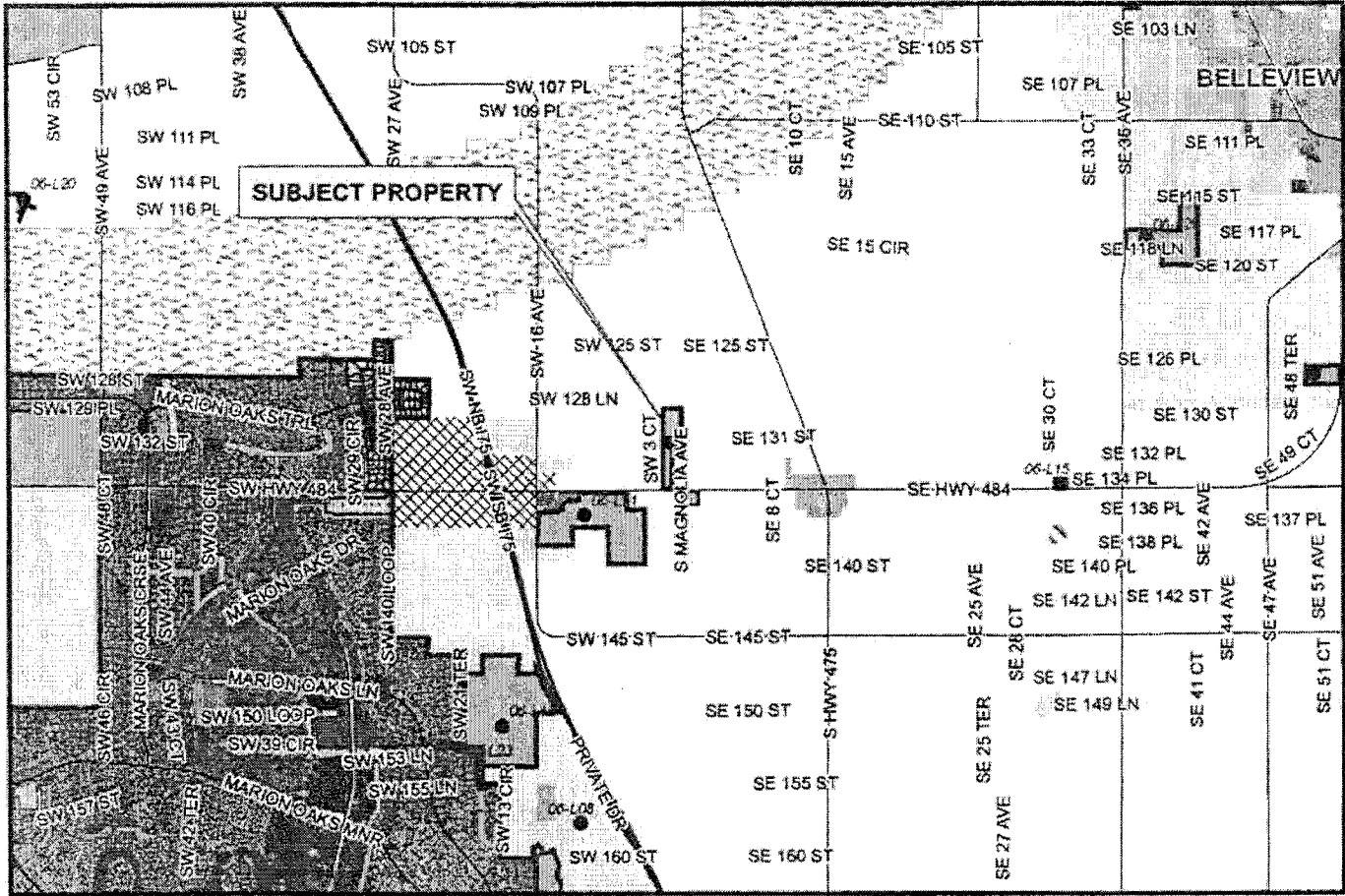
Traffic Analysis Map
Aerial Photograph
Existing Future Land Use Map
Proposed Future Land Use Map
Photographs of Site and Surrounding Properties from Applicant

EXISTING LAND USE DESIGNATION



01	SINGLE FAMILY RESIDENTIAL	Legend ● All Amendments Policy 1.20 ☆ Municipalities Commercial Conservation Commercial Recreation DRI Boundaries High Density Residential Industrial Low Density Residential Limited Commercial Medium Density Residential Multi-Family HDR Multi-Family HDR Natural Reservation Professional Office Public Rural Activity Center Recreation Rural Lands Rural Preservation Rural Village District Specialized Commerce District Urban Commerce District Urban Neighborhood District Urban Reserve	OWNER: Good Apple Development Corp.
50-69/99	AGRICULTURAL		AGENT: Jeff Gutapfel
00/10/40/70	VACANT		PARCEL(S): 41463-000-00, 001-00, & 003-01
71	CHURCH		LOCATION: Located approx. . 1 mile west of CR-475 on the north side of of SR-484.
02	MOBILE HOME		Approximate Scale: 1" = 1000' The information shown hereon is compiled from the best available sources and for use by the County offices only. This data should not be used for surveying or land transfer of any type. 06-L57 Prepared by: The MARION COUNTY PLANNING DEPARTMENT
06-07/10-39	COMMERCIAL		
41-49	INDUSTRIAL		
83-98	PUBLIC		
82	RECREATION		
03-05/08	MULTI-FAMILY		

FUTURE LAND USE DESIGNATION



01	SINGLE FAMILY RESIDENTIAL	Legend ● All Amendments Policy 1.20 ★ Municipalities Commercial Conservation Commercial Recreation DRI Boundaries High Density Residential Industrial Low Density Residential Limited Commercial Medium Density Residential Multi-Family MDR Multi-Family HDR Natural Reservation Professional Office Public Rural Activity Center Recreation Rural Lands Rural Preservation Rural Village District Specialized Commerce District Urban Commerce District Urban Neighborhood District Urban Reserve	OWNER: Good Apple Development Corp.
53-69/99	AGRICULTURAL		AGENT: Jeff Gutapfel
00/10/40/70	VACANT		PARCEL(S): 41463-000-00, 001-00, & 003-01
71	CHURCH		LOCATION: Located approx. . 1 mile west of CR-475 on the north side of of SR-484.
02	MOBILE HOME		Approximate Scale: 1" = 6250'
06-07/10-39	COMMERCIAL		The information shown hereon is compiled from the best available sources and for use by the County offices only. This data should not be used for surveying or land transfer of any type.
41-49	INDUSTRIAL		06-L57
83-98	PUBLIC		Prepared by: The MARION COUNTY PLANNING DEPARTMENT
82	RECREATION		
03-05/08	MULTI-FAMILY		



LARGE SCALE COMPREHENSIVE PLAN MAP AMENDMENT APPLICATION PACKET

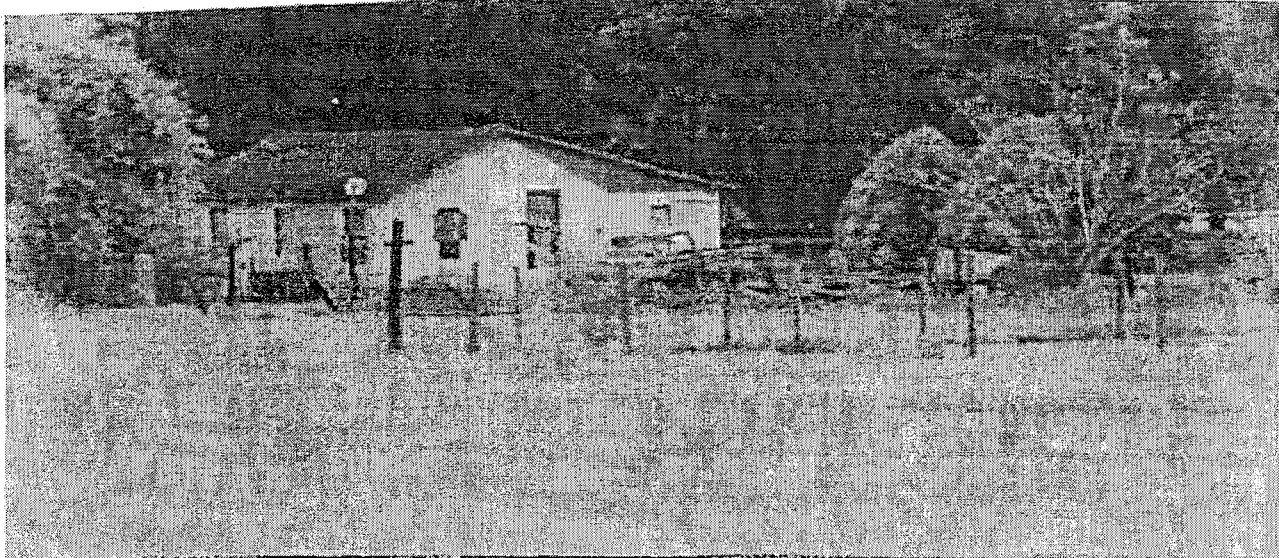
PHOTOGRAPH
DISPLAY SHEET

PRINT OR TYPE ALL INFORMATION

Owner: Good Apple Development Corp. Applicant: Jeff Gutapfel/President G.A.D.Co. Sheet Number 1 of 2



Viewpoint: Northerly View



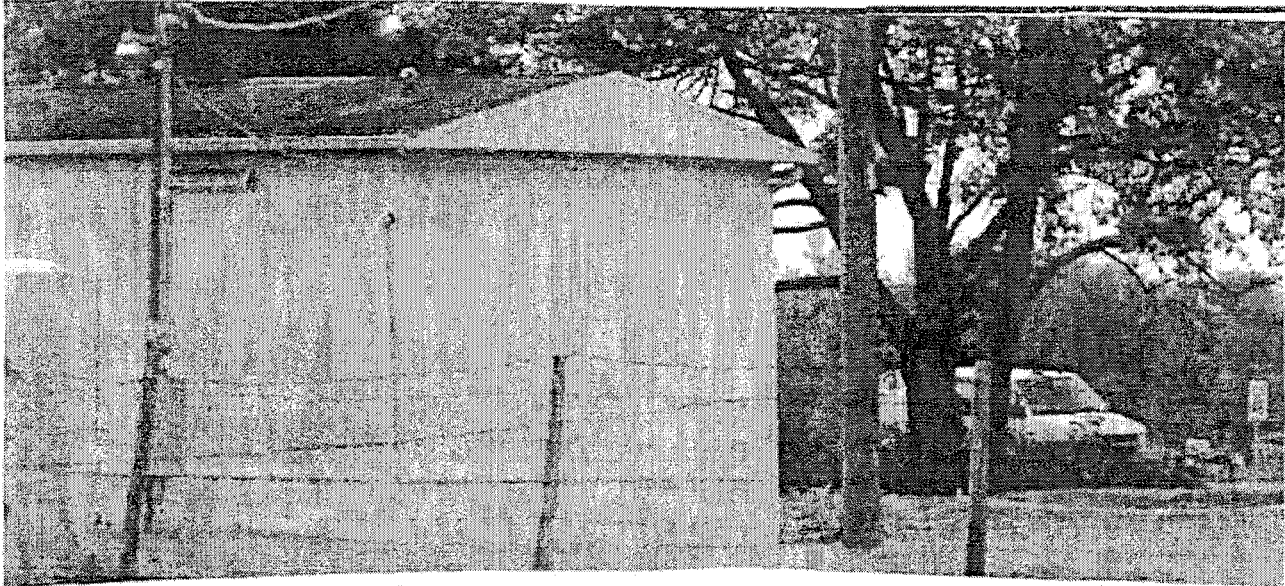
Viewpoint: Easterly View "frame structure encroaching on subject Property"

LARGE SCALE COMPREHENSIVE PLAN MAP AMENDMENT APPLICATION PACKET

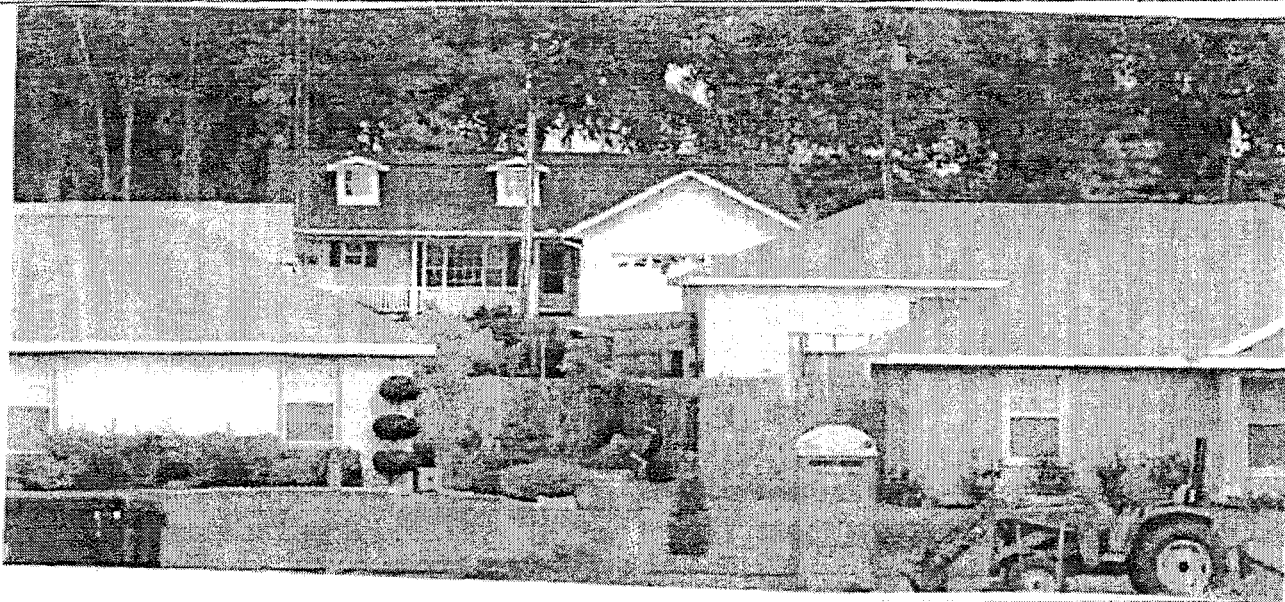
PHOTOGRAPH
DISPLAY SHEET

PRINT OR TYPE ALL INFORMATION

Owner: Good Apple Develop. Corp. Applicant: Jeff Gutapfel/President G.A.D. Co. Sheet Number 2 of 2



Viewpoint: Southern View "Tax Office"



Viewpoint: Western View "last house in Turning Point"

EXHIBIT "E"

**MARION COUNTY ORDINANCE
NO. 98-10**

4/21/98

ORDINANCE NO. 98-10

AN ORDINANCE OF MARION COUNTY, FLORIDA, AMENDING ORDINANCE NO. 96-35 RELATING TO UTILITIES; AMENDING SECTION 1 OF ORDINANCE NO. 96-35 BY MODIFYING THE SHORT TITLE; AMENDING SECTION 2 OF ORDINANCE NO. 96-35 BY MAKING ADDITIONAL FINDINGS; AMENDING SECTION 4 OF ORDINANCE NO. 96-35 BY MODIFYING THE SERVICE AREA DESIGNATION AND APPLICATION REQUIREMENTS; AMEND SECTION 24 OF ORDINANCE NO. 96-35 REGARDING EXISTING AGREEMENTS; ADDRESSING FLORIDA PUBLIC SERVICE COMMISSION MATTERS; PROVIDING FOR AN EFFECTIVE DATE.

THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY HEREBY ORDAINS:

Section 1. Section 1 of Ordinance No. 96-35 is hereby repealed and a new Section 1 is created to read as follows:

"Section 1. Short Title. This Ordinance shall be known and maybe cited as the "Marion County Utility Service Territory Availability, Concurrency, and Extension Rules."

Section 2. Amendment to Section 2 of Marion County Ordinance No. 96-35. Section 2 of Ordinance No. 96-35 is repealed and a new Section 2 is created to read as follows:

"Section 2. Commission Findings. In adopting this Ordinance, the Board of County Commissioners of Marion County, Florida, hereby makes the following findings:

(1) Based on the projections set forth in their respective Comprehensive Plans, the County and adjacent neighboring counties are expected to experience population increases within the next twenty years.

(2) As this population increases, the demand for central water and wastewater services will increase.

(3) Pursuant to Section 1(g), Article VIII, Florida Constitution, and Section 125.01(1)(k), Florida Statutes, and other applicable general and special acts, but excluding

specifically Chapter 153, Florida Statutes, the Board is authorized to provide, regulate, purchase, construct, improve, extend, enlarge and reconstruct water and wastewater facilities; and operate, manage and control water and wastewater facilities within the County.

(4) The Board has previously recognized in its support documents, objectives and policies of the Marion County Comprehensive Plan (the "Plan") that it must utilize its police power in order to protect water resources located in Marion County.

(5) In 4.7.1.6 on page I-74 of the Part I Support Document for the Future Land Use Element, the County has recognized the necessity of providing central water and wastewater service to its residents.

(6) Specific policies within Part II of the Future Land Use Element call for the protection of well fields and aquifer recharge areas within Marion County.

(7) Future Land Use Element Policy 1.4 and other policies of the Comprehensive Plan authorize the Board to adopt certain rules and performance standards related to the provision of central water and wastewater services within Marion County.

(8) Policy 1.9 of the Future Land Use Element requires that public facilities and utilities shall be located to maximize the efficiency of services provided, minimize their costs, minimize their impacts on the natural environment, and minimize their impact on adjacent land uses.

(9) Demands for potable water are increasing inside Marion County, just as demands for potable water are increasing outside Marion County.

(10) Stringent state and federal water and wastewater treatment and operation standards have been promulgated, and with these increasing costs of constructing central water and wastewater facilities, the County's ability to provide central water and wastewater service within Marion County may be limited.

(11) Marion County has already determined in its Comprehensive Plan that there has been a proliferation of small, inefficient water and wastewater treatment plants.

(12) If the County does not provide adequate central water and wastewater service within its designated service area to meet increased demand, it will be faced with private sector pressure to allow the continued construction and installation of substandard, privately financed, and operated water and wastewater treatment plants and septic tanks.

(13) The proliferation of privately financed and operated water and wastewater treatment plants will contribute to higher user rates.

(14) The potential for the County to have to assume operation of these privately financed and operated facilities in the future is great.

(15) Furthermore, the unique water resources of Marion County have previously been determined to be susceptible to harm through contamination from the proliferation of package treatment plants and over-exploitation of the water resources.

(16) The proliferation of such package water and sewer treatment plants where there is no provision for the later transfer of customers and flows from such plants to a regional, subregional or area-wide plant is hereby declared to be a public harm detrimental to the citizens of Marion County.

(17) Policy 1.5 of the Sanitary Sewer Subelement of the Infrastructure Element of the Marion County Comprehensive Plan requires the County to develop guidelines for requiring existing, interim or package sewage treatment plants to connect to a regional or subregional sewer system when these systems are available and to require such plants to treat wastewater to a standard no less than that established pursuant to the Florida Department of Environmental Protection.

(18) Objective 2 of the Sanitary Sewer Subelement, and Objective 1 of the Potable Water Subelement, both of the Infrastructure Element of the Marion County Comprehensive Plan provide for the County to update

its Water and Wastewater Master Plan from time to time as deemed necessary by the Board.

(19) Policy 2.2 and 2.3 of the Potable Water Subelement of the Infrastructure Element of the Marion County Comprehensive Plan require the County to develop guidelines for requiring existing water treatment plants to connect to a regional or subregional system when these systems are available and are economically feasible.

(20) Objective 5 of the Capital Improvements Element of the Marion County Comprehensive Plan provides for the County to manage the land development process so that public facility needs created by previously issued development orders and future development do not exceed the ability of local government to fund and provide or require provision of needed facility capital improvements and to maintain the adopted facility level of service standards.

(21) Policy 5.1 of the Capital Improvements Element of the Marion County Comprehensive Plan requires the County to adopt a concurrency management system in accordance with and authorized by Section 163.3180, Florida Statutes, in order to insure that the public facilities and services needed to support new development are available concurrent with the impacts of such development.

(22) Policy 1.1 of the Future Land Use Element of the Marion County Comprehensive Plan requires the County to adopt land development regulations that contain specific and detailed provisions to prevent harm to the levels of service of public facilities and to prevent harm to the water resources of Marion County.

(23) The County has previously accepted in June of 1993 a Water Supply and Wastewater Master Plan for Marion County, Florida.

(24) The County adopted the Marion County Water Resource and Protection Plan, dated May 21, 1996, which has been incorporated into its Comprehensive Plan and which calls for, among other things, the protection of the public health, safety, and welfare, the protection of Marion County water resources, the unification of fragmented utility services, the establishment of fair and cost effective rates for utility

service, the promotion of conservation of water resources, the adoption of rules governing the construction, operation, and transfer of privately financed "subregional" systems to the County as part of the County system, and the development and implementation of various subregional service area programs, including without limitation the State Road 200 Corridor Subregional Program.

(25) Implementing these policies will enable the County to discourage urban sprawl as required by the Marion County Comprehensive Plan and applicable Rules of the Florida Department of Community Affairs.

(26) The financing of subregional water and wastewater facilities is complex, requires extensive planning and engineering, and calls for advanced participation by the development community so that adequate public facilities can be provided to meet the impacts of that development.

(27) Therefore, to protect groundwater resources, prevent sprawl, implement water and wastewater service concurrency, enable financing of County facilities, and provide for the most cost effective and environmentally acceptable central water and wastewater facilities, the County has determined the need to establish a just and equitable system for financing and selling water and wastewater service capacities in its subregional systems and to establish and designate its service area so that public funds are not wasted.

(28) The County, then deems it necessary to establish its service area rules so that water and wastewater service may be made available from the County and extended to new customers on an equitable basis.

(29) The County declares that these service territory, availability, and extension rules have, as their goal, the establishment of a uniform method of determining contributions in aid of construction such that all such contributions shall be non-discriminatory against consumers in the service area of the utility and shall be applied as nearly as possible with uniformity to all consumers and prospective consumers in the service area of the County.

(30) The County has full and exclusive authority over the management, operation, and control of all of the

County's utilities and the authority to prescribe rules and regulations governing the use of such facilities whenever such are provided by the County, and to make such changes from time to time in such rules and regulations as it deems necessary.

(31) The construction of water and wastewater system improvements and extensions is an essential utility service.

(32) The County has provided the required public notice and held the necessary public hearing(s) in order to adopt these rules.

Section 3. Amendment to Section 4 of Ordinance No. 96-35. Section 4 of Ordinance No. 96-35 is hereby repealed and a new Section 4 is created to read as follows:

"Section 4. Application for Service.

(1) It shall be unlawful for any person to use County water and/or wastewater services without first making application in writing for a water permit and/or wastewater permit and paying all charges incident to said application. Application shall be made on forms furnished by the County, shall constitute an agreement by the customer to abide by the utility rules in regard to its service, and shall be in accord with the County's Rate Ordinance. Applications for services requested by firms, partnerships, associations and corporations shall be tendered only by their duly authorized agents, and the official title of the agent shall be shown on the application.

(2) All applications for an extension of the County's Water and/or Wastewater System shall be addressed to the County stating the location, beginning and termination thereof, with plans and specifications in triplicate attached where such plans and specifications are required.

(3) The Board of County Commissioners hereby establishes its exclusive water and wastewater service area as that area described in Exhibit "A" attached to and incorporated in this ordinance exclusive of those areas certificated by Public Service Commission, those areas served by existing water or wastewater systems, those areas served or planned to be served within existing lawfully created

community development districts, or those areas served or to be served pursuant to territorial agreement by a municipality as of April 21, 1998. The Board of County Commissioners may enlarge or reduce this area by amendment to this Ordinance.

(4) The County may designate a period of time (hereinafter referred to as an "allocation period") when all those persons or entities who own land within all or a portion of the County's Water and Wastewater System service area shall apply and pay applicable fees to the County for water and wastewater service capacity in the County's Water and Wastewater System. The Board of County Commissioners by resolution may offer water and/or wastewater service capacity to certain portions of said service area in advance of or at differing times than other portions. The Board of County Commissioners may by resolution designate all or any portion of its service area and offer water and/or wastewater service capacity to certain portions of said service area in advance of other portions. The County shall publish notice of the times and location for acceptance of applications and payment of applicable fees in a newspaper of general circulation in Marion County, Florida at least five (5) days prior to the beginning of an allocation period. The County may require all information on said application that it deems reasonable and necessary, and may reject applications it determines are incomplete. Any application for a permit shall contain a legal description of the land constituting the service area for which such permit is to be issued. The legal description shall include only those lands owned by the applicant for which the permit is to serve. The County shall permit applicants to purchase water and wastewater service capacities by phases of development if the applicant's development has been approved for more than one phase, but applicants must purchase a minimum of water and wastewater capacities necessary to accommodate one phase or 50 ERCs of their respective development, whichever is less. Once that applicant's phase of development has been completed, then water and wastewater capacities for any additional remaining phases must be purchased on a phase-by-phase basis until water and wastewater service capacities have been purchased for the entire development. If any such person described hereinabove fails to apply for and purchase water and wastewater service capacity in the minimum capacities set forth above under these rules, the County may consider such failure in determining whether or not to grant or

deny any development or construction permit or approval or rezoning application filed by such person.

(5) If an application is approved, a written agreement in duplicate containing all terms and conditions relating to such system extensions, approved by the County or its designee, shall be made and executed by and between the applicant property owner and County.

(6) If any property owner, its successors or assigns within an area designated by the County pursuant to subsection 4(4) hereof fails to apply for and purchase water and wastewater service capacity under these rules, the County may deny any land use, development, or construction order, permit, or approval or any comprehensive plan amendment or rezoning application filed by said person based upon said failure to purchase.

(7) When cost effective, consistent with the Marion County Comprehensive Plan, and in the best interests of the customers, the County may at any time negotiate with other utilities that meet County standards to enlarge, expand, or modify the County's service area."

Section 4. Amendment to Section 24 of Ordinance No. 96-35. Section 24 of Ordinance No. 96-35 is hereby repealed and a new Section 24 is created to read as follows:

"Section 24. Prior Agreements. Notwithstanding anything to the contrary contained in this Policy, all those parties who claim water and/or wastewater capacity pursuant to any developer's agreement or service agreement between Marion County and other parties, predating the effective date of this Ordinance (hereafter "said agreements") shall be entitled to receive service pursuant to the terms of said contracts, so long as the party claiming rights under said agreement has fully performed all conditions precedent and subsequent such that the agreement is binding on all parties. The terms of these rules shall be applied and interpreted consistent with Florida law, and the provisions of any Marion County, Florida agreements. Should any such contract require the delivery of a financial commitment in order to invoke or effectuate the provisions of the agreement before the County's obligation for service is to arise, parties to any such agreement shall have thirty (30) days from the date of the effective date of

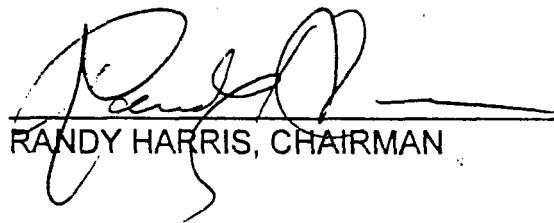
this Ordinance to deliver the financial commitment. Failure by all parties to any such agreement to deliver their respective financial commitment in full accordance with the agreement shall be deemed to terminate the agreement and all said parties shall be subject to the terms of this Ordinance. Nothing contained in this provision shall be construed, however, to contract away the County's ability to otherwise amend or enforce this or any other Ordinance or Resolution in the same manner in which its predecessors in interest, had the ability to modify said agreements or the rates, fees, charges, and policies, rules, and regulations set forth therein or contemplated thereby in accordance with the reserved powers doctrine set forth in H. Miller & Sons v. Paula Hawkins and the FPSC, 373 So.2d 913 (Fla. 1979)."

Section 5. Florida Public Service Commission Matters. Nothing contained in this ordinance or Ordinance No. 96-35, is intended to affect existing certificates of authorization or the ability of utilities to seek certificates or amend existing certificates pursuant to Chapter 367, Florida Statutes, nor shall either ordinance be construed to affect the powers granted by the Florida Legislature to the Florida Public Service Commission with regard to fairly processing and conducting certification proceedings consistent with applicable state law.

Section 6. Effective Date. This ordinance shall take effect immediately upon receipt of official acknowledgment from the Department of State of the State of Florida that this ordinance has been filed with said Department.

PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of County Commissioners of the County of Marion, Florida, this 21st day of April, 1998.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA


RANDY HARRIS, CHAIRMAN

ATTEST:


DAVID R. ELLSPERMANN, CLERK

EXHIBIT A

**APPROXIMATE BOUNDARY DESCRIPTION OF MARION COUNTY
WATER AND WASTEWATER UTILITY PLANNING AND SERVICE AREA**

Begin at the SE corner of 32-17S-22E

Generally west and northwest along County line to western boundary of 14-17S-19E

North to SW corner of 35-16S-19E

West to the SW corner of SE 1/4 of 34-16S-19E

North to the NW corner of the NE 1/4 of 34-16S-19E

East to SW corner of 26-16S-19E

North to the State Highway 40 right-of-way

Generally northeast along right-of-way to the intersection of State Highway 40 right-of-way and northern boundary of 36-15S-19E

East to the SW corner of 27-15S-20E

North to the NW corner of S 1/2 of 10-14S-20E

East to the NE corner of S 1/2 of 11-14S-22E

South to the SE corner of 11-14S-22E

West to the NE corner of the NW 1/4 of NE 1/4 of 14-14S-22E

South to the SE corner of the NW 1/4 of NE 1/4 of 14-14S-22E

West to the SW corner of the NW 1/4 of NE 1/4 of 14-14S-22E

South to southern boundary of 14-14S-22E

West to the NW corner of 23-14S-22E

South to the northern boundary of the south 1/10 of 22-14S-22E

West to the western boundary of the east 1/4 of 22-14S-22E

EXHIBIT A
(Continued)

**APPROXIMATE BOUNDARY DESCRIPTION OF MARION COUNTY
WATER AND WASTEWATER UTILITY PLANNING AND SERVICE AREA**

North approximately 2,900 feet along the western boundary of the east 1/4 of 22-14S-22E

West to the railroad right-of-way

Generally SE along railroad right-of-way to northern boundary of 35-14S-22E

East to the NW corner of the NE 1/4 of 36-14S-22E

South to the SW corner of the NE 1/4 of 36-14S-22E

East to the NW corner of the E 1/2 of the SE 1/4 of 36-14S-22E

South to the southern boundary of 36-14S-22E

East to the SE corner of 36-14S-22E

North to the NW corner of 30-14S-23E

East to the NE corner of 30-14S-23E

South to SE corner of 31-14S-23E

East to NE corner of NW 1/4 of NW 1/4 of 5-15S-23E

South to State Highway 40 right-of-way

Generally west along right-of-way to intersection of State Highway 40 right-of-way and eastern boundary of 6-15S-23E

South to SE corner of 6-15S-23E

Generally SE to the NE corner of SW 1/4 of 8-15S-23E

South to NW corner of SE 1/4 of 20-15S-23E

Generally SE to the NE corner of S 1/2 14-16S-23E

Generally SE to the NW corner of SE 1/4 of SE 1/4 of 19-16S-24E

EXHIBIT A
(Continued)

**APPROXIMATE BOUNDARY DESCRIPTION OF MARION COUNTY
WATER AND WASTEWATER UTILITY PLANNING AND SERVICE AREA**

South to railroad right-of-way

Generally SE along railroad right-of-way to intersection of right-of-way with the northern boundary of 5-17S-24E

East to NE corner of 5-17S-24E

South to shore of Lake Weir

Generally south along shore of Lake Weir to the northern boundary of 21-17S-24E

Generally SE to the intersection of CR 25 right-of-way and the northern boundary of the S 1/2 of 21-17S-24E

Generally SW along CR 25 right-of-way to the Marion County line

West to the SW corner of SE 1/4 of 34-17S-23E

North to the NW corner of SE 1/4 of 34-17S-23E

East to the NE corner of SE 1/4 of 34-17S-23E

North to the CR 42 right-of-way

Generally west along CR 42 right-of-way to U.S. Highway 301 right-of-way

Generally south along U.S. Highway 301 right-of-way to County line

West to the SE corner of 32-17S-23E

LESS

Start at SW corner of 4-17S-23E

North to NE corner of 32-16S-23E

West to SW corner of SE 1/4 of 29-16S-23E

EXHIBIT A
(Continued)

**APPROXIMATE BOUNDARY DESCRIPTION OF MARION COUNTY
WATER AND WASTEWATER UTILITY PLANNING AND SERVICE AREA**

North to NE corner of SE 1/4 of 29-16S-23E

West to SW corner of NE 1/4 of 29-16S-23E

North to NE corner of 29-16S-23E

East to SW corner of E 1/2 of 20-16S-23E

North to NW corner of SW 1/4 of SW 1/4 of SE 1/4 of 17-16S-23E

East to NE corner of SE 1/4 of SW 1/4 of SE 1/4 of 17-16S-23E

North to railroad right-of-way

Generally NW along railroad right-of-way to intersection with eastern boundary of 1-11S-22E

North approximately 1/2 mile

West approximately 0.4 miles

South to northern boundary of S 1/2 of 12-16S-22E

West to west boundary of 11-16S-22E

South to intersection with U.S. Highway 301 right-of-way

Generally southwest to SW corner of the SE 1/4 of the SE 1/4 of 15-16S-22E

South to northern boundary of S 1/2 of 22-16S-22E

West to NE corner of SE 1/4 of 22-16S-22E

South to southern boundary of 27-16S-22E

East to NE corner of 27-16S-22E

South to SE corner of 3-17S-22E

East to SE corner of 4-17S-23E

EXHIBIT A
(Continued)

**APPROXIMATE BOUNDARY DESCRIPTION OF MARION COUNTY
WATER AND WASTEWATER UTILITY PLANNING AND SERVICE AREA**

AND LESS

The City of Ocala Service territory

AND LESS

The On Top of the World Community Development District

AND LESS

Those areas now certificated by the Florida Public Service Commission

EXHIBIT "F"

**DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS REPORT
OF OCTOBER 27, 2006**



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

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

JEB BUSH
Governor

Thaddaus L. Cohen
Secretary

MEMORANDUM

TO: Jim Quinn, DEP
Susan Harp, DOS
Wendy Evans, AG
Mary Ann Poole, FWC
Susan Sadighi, FDOT 5
Michael Moehlman, Withlacoochee RPC
Richard Owen, Southwest Florida WMD
Jeff Cole, St. Johns River WMD

Date: October 27, 2006

Subject: Proposed Comprehensive Plan Amendment Review Objections,
Recommendations and Comments Reports

Enclosed are the Departments Objection, Recommendations and Comments Reports on the proposed amendments to the comprehensive plan(s) from the following local government(s):

Marion Co 06-2

These reports are provided for your information and agency files. Following the adoption of the amendments by the local governments and subsequent compliance review to be conducted by this agency, we will forward copies of the Notices of Intent published by each local government plan.

If you have any questions, please contact Mr. Ray Eubanks at Suncom 278-4925 or (850) 488-4925.

RE/lp

Enclosure

2555 SHUMARD OAK BOULEVARD TALLAHASSEE, FLORIDA 32399-2100
Phone: 850.488.8466 Suncom 278.8466 FAX: 850.921.0781 Suncom 291.0781
Internet address: <http://www.dea.state.fl.us>

CRITICAL STATE CONCERN FIELD OFFICE
2796 Overseas Highway, Suite 212
Marathon, FL 33050-2227
(305) 289-2402

COMMUNITY PLANNING
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-2356

EMERGENCY MANAGEMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 413-8869

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100
(850) 488-7956



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
"Dedicated to making Florida a better place to call home"

JEB BUSH
Governor

THADDEUS L. COHEN, AIA
Secretary

October 24, 2006

The Honorable Andy Kesselring, Chairman
Marion County Board of County Commissioners
2631 S.E. Third Street
Ocala, Florida 34471-9101

Dear Chairman Kesselring:

The Department has completed its review of the proposed Comprehensive Plan Amendment for Marion County (DCA No. 06-2), which was received on August 25, 2006. Based on Chapter 163, Florida Statutes, we have prepared the attached report that outlines our findings concerning the amendment. It is particularly important that the County address the "objections" set forth in our review report so that these issues can be successfully resolved prior to adoption. We have also included a copy of local, regional and state agency comments for your consideration. Within the next 60 days, the County should act by choosing to adopt, adopt with changes or not adopt the proposed amendment. For your assistance, our report outlines procedures for final adoption and transmittal.

The amendment package consists of a 33 proposed Future Land Use Map (FLUM) amendments and text amendments to the Future Land Use Element to modify the County's policies regarding hamlets. The Department is objecting to all of the proposed FLUM amendments on the bases of springs and aquifer protection, and public facilities; 25 FLUM amendments based on transportation, 1 FLUM amendment based on urban sprawl, 1 amendment based on surface water and wetlands protection, and 12 FLUM amendments based on school coordination. The Department is not objecting to the proposed changes to the Future Land Use Element regarding Hamlets.

In most cases, these types of objections are addressed through the Department and the local government working together to ensure that appropriate changes will address these concerns. The Department is prepared and is looking forward to working with Marion County to resolve these issues prior to the adoption of the 06-2 amendment.

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.dca.state.fl.us>

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2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

COMMUNITY PLANNING
2555 Shumard 2727 Oak
Tallahassee, FL 32399-2100

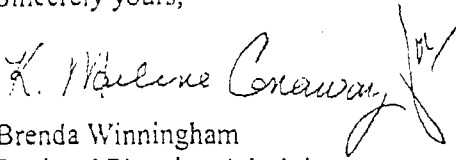
EMERGENCY MANAGEMENT
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Tallahassee, FL 32399-2100

HOUSING & COMMUNITY DEVELOPMENT
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

The Honorable Andy Kesselring, Chairman
October 23, 2006
Page Two

If you or your staff have any questions or if we may be of further assistance as you formulate your response to this Report, please contact Brenda Winningham, Regional Planning Administrator at (850) 487-4545 or Ron Horlick, Planner at (850) 922-1801.

Sincerely yours,


Brenda Winningham
Regional Planning Administrator

BW/rh

Enclosures: Objections, Recommendations and Comments Report
Review Agency Comments

cc: Mr. Michael Moehlman, Executive Director, Withlacoochee Regional Planning
Council
Mr. Dwight Gano, Director of Planning, Marion County

TRANSMITTAL PROCEDURES

Upon receipt of this letter, Marion County shall have sixty (60) days within which to adopt, adopt with changes, or determine that the County will not adopt the proposed amendment. The process for adoption of local comprehensive plan amendments is outlined in s.163.3184, Florida Statutes, and Rule 9J-111.011, Florida Administrative Code. The County must ensure that all ordinances adopting comprehensive plan amendments are consistent with the provisions of Chapter 163.3189(2)(a), F.S.

Within ten working days of the date of adoption, Marion County must submit the following to the Department:

1. Three copies of the adopted comprehensive plan amendment;
2. A copy of the adoption ordinance;
3. A listing of additional changes not previously reviewed;
4. A listing of findings by the local governing body, if any, which were not included in the ordinance; and
5. A statement indicating the relationship of the additional changes to the Department's Objections, Recommendations and Comments Report.

The above amendment and documentation are required for the Department to conduct a compliance review, make a compliance determination and issue the appropriate notice of intent.

In order to expedite the regional planning council's review of the amendment, and pursuant to Rule 9J-11.011(5), F.A.C., please provide a copy of the adopted amendment directly to Mr. Michael Moehlman, Executive Director, Withlacoochee Regional Planning Council.

Please be advised that the Florida legislature amended Section 163.3184(8)(b), F.S., requiring the Department to provide a courtesy information statement regarding the Department's Notice of Intent to citizens who furnish their names and addresses at the local government's plan amendment transmittal (proposed) or adoption hearings. In order to provide this courtesy information statement, local governments are required by the law to furnish to the Department the names and addresses of the citizens requesting this information. This list is to be submitted at the time of transmittal of the adopted plan amendment (a sample Information Sheet is attached for your use). **Please provide these required names and addresses to the Department *when you transmit your adopted amendment package for compliance review.* In the event no names/addresses are provided, please provide this information as well.** For efficiency, we encourage that the information sheet be provided in electronic format.

DEPARTMENT OF COMMUNITY AFFAIRS
OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR
MARION COUNTY
AMENDMENT 06-2

October 24, 2006
Division of Community Planning
Bureau of Local Planning

This report is prepared pursuant to Rule 9J-11.010, F.A.C.

INTRODUCTION

The following objections, recommendations and comments are based upon the Department's review of Marion County's proposed amendment to their comprehensive plan (DCA number 06-2) pursuant to Chapter 163, Florida statutes (F.S.)

The objections relate to specific requirements of relevant portions of Chapter 9J-5, Florida Administrative Code (F.A.C.), and Chapter 163, Part II, F.S. Each objection includes a recommendation of one approach that might be taken to address the cited objection. Other approaches may be more suitable in specific situations. Some of these objections may have initially been raised by one of the other external review agencies. If there is a difference between the Department's objection and the external agency advisory objection or comment, the Department's objection would take precedence.

Each of these objections must be addressed by the local government and corrected when the amendment is resubmitted for our compliance review. Objections, which are not addressed may result in a determination that the amendment is not in compliance. The Department may have raised an objection regarding missing data and analysis items, which the local government considers not applicable to its amendment. If that is the case, a statement justifying its non-applicability pursuant to 9J-5.002(2), F.A.C., must be submitted.

The comments, which follow the objections and recommendations section, are advisory in nature. Comments will not form bases of a determination of non-compliance. They are included to call attention to items raised by our reviewers. The comments can be substantive, concerning planning principles, methodology or logic, as well as editorial in nature dealing with grammar, organization, mapping, and reader comprehension.

Appended to the back of the Department's report are the comment letters from the other state review agencies and other agencies, organizations and individuals. These comments are advisory to the Department and may not form bases of Departmental objections unless they appear under the "Objections" heading of this report.

Marion County Amendment 06-2

Objections, Recommendations and Comments Report

Florida Department of Community Affairs

1. CONSISTENCY WITH CHAPTER 163, PART II, FLORIDA STATUTES, AND RULE 9J-5, FLORIDA ADMINISTRATIVE CODE

Future Land Use Amendments

A. The Department raises the following objection to proposed Future Land Use Map (FLUM) amendments 06L-05, 06L-06, 06L-07, 06L-08, 06L-09, 06L-10, 06L-11, 06L-12, 06L-13, 06L-14, 06L-15, 06L-18, 06L-25, 06L-26, 06L-28, 06L-30, 06L-31, 06L-32, 06L-33, 06L-35, 06L-37, 06L-38, 06L-44, 06L-48, 06L-50, 06L-51, 06L-52, 06L-53, 06L-55, 06L-57, 06L-58, 06L-59, and 06L-60

1. Objection: The County's comprehensive plan does not contain adequate goals, objectives and policies for the protection of springs. No amendments increasing density should be approved until adequate goals, objectives and policies are adopted into the County's comprehensive plan. All of the above Future Land Use map (FLUM) amendments lie in either the High DRASTIC index area (a measure of vulnerability to groundwater pollution) Index area or in an area of high recharge to the Floridan Aquifer, and all but two of the amendment sites lie in a springs protection zone; ten amendment sites are located in the Silver Springs Primary Protection Zone; fourteen amendment sites are located in the Silver Springs Secondary Protection Zone; and seven amendment sites are located in the Rainbow Springs Primary Protection Zone. The County's analysis has not demonstrated that the proposed increased densities and intensities were suitable for the amendment sites and will adequately protect natural resources including Silver Springs and Rainbow Springs because of the impact of increased residential and commercial land uses and from septic tanks and stormwater. In addition, the sites and densities and intensities have not been demonstrated to be suitable for standard septic systems.

Those amendments specifically proposed to be placed on septic tanks, amendments 06L-25 and 06L-37 are on soils that have severe limitations to septic tanks and the remainder of those amendments proposed to be placed on septic tanks, including amendments 06L-07, 06L-11, 06L-15, 06L-31, 06L-32, 06L-58, and 06L-60 all are on soils that are sandy and highly permeable, so that septic tank effluent could travel to the aquifer before the effluent is sufficiently treated, and all but the 06L-07 amendment are in springs protection areas. The remaining amendments did not state specifically that well and septic systems would be used at the amendment site, however, the amendments were worded in such a way that there was no assurance that the amendment sites would be served by central water and sewer and the data and analysis given to support the amendment was deficient in that it did not provide sufficient information to determine if it was feasible to serve the site with central water and sewer or if there was capacity to serve the site.

Although the majority of the amendments lie on the Ocala Ridge, a karstic geological feature that runs in a north/south direction through the center of Marion County. Karstic features can act as direct conduits to the aquifer such as sink holes, limestone pillars, lineaments and fractures were not discussed by the County, thus, the effect of the development of the proposed amendment sites to the karstic features and to the underlying aquifer is unknown. Thus the amendments are inconsistent with Conservation Objective 2.0 and its Policies requires environmentally sensitive areas to be conserved, protected, and enhanced and to minimize the effects of development upon the environmentally sensitive areas.

Rules 9J-5.005(6), 9J-5.005(5), 9J-5.006(3)(b), 9J-5.006(4), 9J-5.011(2)(b)5, 9J-5.011(2)(C04), 9J-5.011(2)(c)5, 9J-5.013(2)(b)3 and 4, 9J-5.013(2)(c)1,3,5,6, and 9, and 9J-5.013(3), Florida Administrative Code, and Sections 163.3177(6)(a), 163.3177(6)(d), 163.3177(8), and 163.3187(2), Florida Statutes.

Recommendations: Revise the comprehensive plan to include policies for springs protection. Adopt a policy to require all development using septic systems to use advanced septic systems. Provide data and analysis showing that the proposed amendment sites are suitable for the proposed land uses. Provide data and analysis that the proposed amendments not specifically slated for well and septic systems will be on central water and sewer systems with sufficient capacities to serve them.

2. Objection: The proposed amendments are not supported by a public facilities analysis (including assumptions, data sources, and description of methodologies used) for the five year and long term planning timeframes addressing the following: (1) the available uncommitted capacity of potable water, and sanitary sewer facilities that would serve the amendment parcel; (2) the impact of the demand for potable water, and sanitary sewer facilities on the projected operating level of service and available capacity of these facilities for the five year and long term planning timeframes; (3) a cumulative analysis which identifies the combined impact of all of the amendments on potable water and sanitary sewer facilities for those amendments which will be served by the same facility; (4) the need for potable water, and sanitary sewer facilities improvements (scope, timing and cost of improvements) or other planning alternatives to maintain the adopted level of service standards for the facilities; and (5) coordination of any needed facilities improvements or other planning alternatives with the Future Land Use Element, Infrastructure Element, and Capital Improvements Elements, including implementation through the Five-Year Schedule of Capital Improvements. The amendment is not consistent with the following provisions of the County's Comprehensive Plan: Future Land Use Element Policies 1.1, 4.9, and 4.13; Sanitary Sewer Sub-Element Policies 2.1, and Objective 4; Potable Water Sub-Element Policies 1.1, 1.2, and 4.1, and Objective 5; Capital Improvements Element Objectives 1 and 2, and Policies 1.1, 2.1, and 2.2.

Rules 9J-5.005(2 and 5); 9J-5.006(3)(b)1; 9J-5.006(3)(c); 9J-5.006(4); 9J-5.011(1)(a through f); 9J-5.011(2)(b)2; 9J-5.011(2)(c)1; 9J-5.016(1)(a); 9J-5.016(2)(b, c, and f); 9J-5.016(3)(b)1; 3, and 5; 9J-5.016(3)(c)1.d, 1.e, 1.f, and 1.g; 9J-5.016(4)(a), F.A.C.; and Sections 163.3177(2 and 3); and 163.3177(6)(a, c and j), F.S.

Recommendation: Revise the amendment to include the required analysis necessary to support the FLUM amendment and demonstrate coordination of land use with the planning and provision of public facilities, including coordination with the Capital Improvements Element and Infrastructure Element, and to demonstrate consistency with the Comprehensive Plan goals, objectives and policies. Revise the amendments as necessary to be consistent with and supported by the analysis.

B. The Department raises to following objection to proposed FLUM amendments: 06L-05, 06L-06, 06L-07, 06L-08, 06L-09, 06L-10, 06L-11, 06L-12, 06L-13, 06L-14, 06L-18, 06L-25, 06L-30, 06L-31, 06L-32, 06L-33, 06L-37, 06L-38, 06L-44, 06L-48, 06L-51, 06L-55, 06L-57, 06L-58, and 06L-60

3. Objection: The proposed amendments are not supported by an adequate transportation analysis for the five-year and long term planning timeframes addressing the following: (1) the number of peak hour vehicle trips generated by the maximum development potential allowed by the FLUM amendments; (2) the need for road improvements (scope, timing and cost of improvements) or other planning alternatives to maintain the adopted level of service standards for roadways including I-75 (amendments 06L-05, 06L-07, 06L-08, 06L-11, 06L-12, 06L-25, 06L-30, 06L-32, 06L-44, 06L-48, 06L-51, and 06L-57); U.S. 27 (amendments 06L-05, 06L-07, 06L-09, 06L-10, 06L-11, 06L-14, 06L-18, 06L-25, 06L-30, 06L-48, 06L-51, 06L-55, 06L-58, and 06L-60); U.S. 301 (amendments: 06L-06, 06L-07, 06L-11, 06L-13, 06L-14, 06L-25, 06L-30, 06L-48, and 06L-58); U.S. 441 (amendments: 06L-06, 06L-07, 06L-11, 06L-13, 06L-14, 06L-18, 06L-25, 06L-30, 06L-32, 06L-48, 06L-51, 06L-55, 06L-58, and 06L-60); S.R. 25 (amendments 06L-06), S.R. 35 (amendments 06L-06, 06L-13, 06L-14, 06L-18, and 06L-60), S.R. 40 (amendments 06L-07, 06L-11, 06L-25, 06L-30, 06L-32, 06L-48, and 06L-60); S.R. 200 (amendments 06L-38, and 06L-44); S.R. 326 (amendments 06L-05, 06L-11, 06L-25, 06L-30, 06L-31, and 06L-33); S.R. 464 (amendments 06L-07, 06L-32, 06L-51 and 06L-60), N.W. 60th Ave. (amendment 06L-07), C.R. 484 (amendments 06L-08, 06L-28, and 06L-38), S.W. 60th Ave. (amendment 06L-44), C.R. 25 (amendment 06L-18), C.R. 326 (amendment 06L-30), and C.R. 200A (amendment 06L-31) and (3) coordination of the road improvements with the Transportation and Capital Improvements Elements, including the Future Transportation Map and implementation through the Five-Year Schedule of Capital Improvements. Therefore, the amendments are not consistent with the following provisions of the County's comprehensive plan: Marion County Future Land Use Element Objectives 1 and 2, and Policies 1.1, 1.7, and 2.15; Future Land Use Element Objective 12, and Policies 12.1, 12.2, 12.3, 12.4, and 12.5; Transportation Element Objectives 1 and 5 and Policies 1.1, 1.4, and 5.3; Capital Improvements Element Objectives 1 and 2, and Policies 1.1, 2.1, and 2.2; and Intergovernmental Coordination Element Objective 1, and Policy 1.1.

Rules 9J-5.005(2 and 5); Rules 9J-5.006(2 and 5), 9J-5.006(3)(b)1, 9J-5.006(4), 9J-5.019(3)(a, b, f, g, h, and i); 9J-5.019(4)(b)1, 2, and 3; 9J-5.019(4)(c)1; 9J-5.019(5)(a and b); 9J-5.016(1)(a); 9J-5.016(2)(b, c, and f); 9J-5.016(3)(b)1, 3, and 5; 9J-5.016(3)(c)1d, 1e, 1f, and 1g; 9J-5.016(4)(a)1, and 2; 9J-5.015(3)(b)1 and 2; 9J-5.015(3)(c)1, and 11, Florida Administrative Code (F.A.C.); and Sections 163.3177(2 and 3); 163.3177(6)(a and j); 163.3177(6)(h)1 and 2; and 163.3177(8), Florida Statutes (F.S.).

Recommendation: Revise the amendments to include the required analysis necessary to support the FLUM amendments and demonstrate coordination of land uses with the provision of transportation facilities and the Capital Improvement Element. The County should indicate what roadway improvements are being anticipated to address the potential roadway deficiencies. Revise the Transportation Element and Capital Improvements Elements, as necessary, to be consistent with and supported by the data and analysis and to achieve internal consistency with the FLUM.

C. The Department raises the following objection to proposed FLUM amendment 06L-57.

4. Objection: The proposed amendment is not supported by data and analysis demonstrating the need for additional residential density in order to accommodate the County's proposed population growth within the planning timeframe of the County's comprehensive plan. The amendment does not discourage the proliferation of urban sprawl. The proposed 06L-57 FLUM amendment is located in a rural part of the County and is in an area of significant farmland. The amendment is proposed to be placed on central water and sewer that is 3,000 feet from the amendment site.

The amendment is not consistent with the following urban sprawl requirements of the Marion County Comprehensive Plan: Future Land Use Element Policy 1.1, Goal 2, Objective 2 and its policies, Goal 4, Objective 12, and Policies 12.1 – 12.5. The amendment has the following indicators of urban sprawl and is, therefore inconsistent with Rule 9J-5.006(5)(g), F.A.C.:

- Promotes, allows or designates for development substantial areas of the jurisdiction to develop as low-intensity, low-density, or single-use development or uses in excess of demonstrated need.
- Promotes, allows, or 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.
- Promotes, allows or designates urban development in radial, strip, isolated or ribbon patterns generally emanating from existing urban developments.
- Fails adequately to 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. (06L31, and 06L-37 only)
- Fails to maximize use of existing public facilities and services
- Fails to maximize use of future public facilities and services.
- Allows for land use patterns or timing which disproportionately increase the cost in time, money and energy, of providing and maintaining facilities and services, including roads, potable water, sanitary sewer, stormwater management, law enforcement, education, health-care, fire and emergency response, and general government.
- Fails to provide a clear separation between rural and urban uses.

Rules 9J-5.005(2 and 5), 9J-5.006(2), 9J-5.006(3)(b)8, and 9J-5.006(3)(c), 9J-5.006(4), 9J-5.006(5), F.A.C., and Sections 163.3177(6)(a), and 163.3177(8), F.S.

Recommendation: Do not adopt the proposed FLUM amendment. Alternatively, revise the amendment to include an urban sprawl analysis that considers the proposed amendments in relation to the urban sprawl criteria identified above. Revise the amendment as necessary to be consistent with and supported by the data and analysis.

D. The Department raises the following objection to proposed FLUM amendment 05-L55.

5. Objection: The proposed amendment has not been supported by an analysis demonstrating that the proposed densities and intensities are suitable for the site regarding protection of water quality and quantity. The proposed amendment does not effectively address impacts to Lake Weir or to listed species that may be on-site

Therefore, the amendment is not consistent with the following provisions of the County's Comprehensive Plan: Future Land Use Element Policies 1.1, and 4.9; and Conservation Element Policies 1.1, and 2.1, and Objective 3.

Rules 9J-5.005(2 and 5); 9J-5.006(2)(a and b); 9J-5.006(3)(b); 9J-5.006(3)(c)4; 9J-5.006(4); 9J-5.011(1)(h); 9J-5.011(2)(b)5.; 9J-5.011(2)(c); 9J-5.013(1); 9J-5.013(2)(b); 9J-5.013(2)(c) and 9J5-013(3), F.A.C.; and Sections 163.3177(2 and 8); and 163.3177(6)(a, c and d), F.S.

Recommendation: Do not adopt the proposed amendment. Alternatively, provide an environmental analysis for the site which addresses the potential for impacts to Lake Weir and to listed species consistent with the requirements of Rule 9J-5, F.A.C., and the County's Comprehensive Plan. Revise the amendment as necessary to be consistent with and supported by the analysis.

E. The Department raises the following objection to proposed FLUM amendments 06L-05, 06L-08, 06L-09, 06L-10, 06L-26, 06L-35, 06L-38, 06L-50, 06L-51, 06L-55, 06L-57, and 06L-59.

6. Objection: The data and analysis supplied regarding the provision of adequate school facilities is not sufficient to determine school needs for the proposed FLUM amendments that concerned residential densities. The data and analysis did not indicate future school need based upon the number of school age children at project buildout based on the maximum densities and intensities allowed by the proposed land uses as compared to the number of school age children anticipated to be in the local school system at project buildout. The proposed amendments are not supported by data and analysis demonstrating coordination with the Marion County School Board regarding the potential population and how the amendments reflect consideration of comments from the School Board regarding the proposed amendments consistency with the school planning and intergovernmental coordination requirements of the County's comprehensive plan.

Sections 163.3164(24), 163.3177(6)(a), 163.3177(6)(h)1 and 2; and 163.3177(8), F.S.

Recommendation: A school facilities analysis based on five and ten-year projections should be done to determine the need for additional school facilities. Include data and analysis demonstrating that it has coordinated with the local school board regarding the proposed increase of residential units due to the proposed amendment based upon the projected need for school age children at project buildout compared to the projected school population at project buildout. The analysis needs to indicate whether there will be adequate capacity available to meet the increased demand.

Comment: A solution to the issue of the need for justifying additional development, in all land use categories, should be addressed by the County as soon as possible. The County should arrive at a viable solution to the problem in their upcoming Evaluation and Appraisal Report (EAR) and in their EAR-based amendments.

Comment: Regarding archaeological and historical sites, the Department of State has stated that sites 06L-10, 06L-18, and 06L-58 may have structures in excess of 50 years of age on the property and that sites 06L-50, 06L-51, 06L-52, 06L-53, 06L-55, and 06L-57 have a moderate or better chance of archaeological site probability. The above mentioned sites need to be evaluated for archaeological and historical sites before any development is allowed on the site, including land clearing. The Department of State should be contacted for further assistance and information.

III CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

The proposed plan amendment is not consistent with the following goals and policies of the State Comprehensive Plan:

187.201(7)(b)2. - Identify and protect the functions of water recharge areas and provide incentives for their conservation.

187.201(7)(b)5. - Ensure that new development is compatible with existing and regional water supplies.

187.201(7)(b)10. - Protect surface and groundwater quality and quantity in the state.

187.201(9)(b)3. - Prohibit the destruction of endangered species and protect their habitats.

187.201(15)(b)1 - Promote state programs, investments, and development and redevelopment activities which encourage efficient development and occur in areas which will have the capacity to service new population and commerce.

187.201(15)(b)2 – Develop a system of incentives and disincentives which encourages a separation of urban and rural land uses while protecting water supplies, resource development, and fish and wildlife habitats.

187.201(15)(b)6.- Consider in land use planning and regulations, the impact of land use on water quality and quantity, the availability of land, water, and other natural resources to meet demands, and the potential for flooding.

187.201(17)(b)1.- Provide incentives for developing land in a way that maximizes the use of existing public facilities.

187.201(17)(b)4.- Create a partnership among state government, local governments, and the private sector which would identify and build needed public facilities and allocate the costs of such facilities among the partners in proportion to the benefits accruing to each of them.

187.201(17)(b)7. – Encourage the development, use, and coordination of capital improvement plans by all levels of government.

187.201(19)(b)3. – Promote a comprehensive transportation planning process which coordinates state, regional, and local transportation plans.

187.201(19)(b)9. – Ensure that the transportation system provides Florida Citizens and visitors with timely and efficient access to services, jobs, markets, and attractions.

187.201(19)(b)13. – Coordinate transportation improvements with state, local and regional plans.

Department of Community Affairs
Division of Community Planning

PREPARED BY: Ben Henrick DATE: 10/24/00

SUBJECT: revision County Code MAILOUT DATE 10/24/00

* REFERRAL	INIT.	DATE	* REFERRAL	INIT.	DATE
SECRETARY			DIVISION DIRECTOR-DCP		
CHIEF OF STAFF			CHIEF COMP. PLAN		
LEGAL			ADMINISTRATOR		
PERSONNEL			PLANNER		

COMMENTS: see with objections

*****PLEASE INDICATE SEQUENCE OF ROUTING*****

EXHIBIT "G"

MEMORANDUM BETWEEN FPSC AND DCA

MEMORANDUM OF UNDERSTANDING

FLORIDA PUBLIC SERVICE COMMISSION
AND
FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

HISTORY

The Legislature has recognized that growth in Florida should be managed so that it occurs in an orderly manner, and enacted Chapter 163, Florida Statutes, to address comprehensive planning in the state. The Department of Community Affairs (DCA), as the state's planning agency, is responsible for the review of local government comprehensive plans and plan amendments. The Legislature also enacted Chapter 367, Florida Statutes, and declared the regulation of investor-owned water and wastewater utilities to be in the public interest. The Legislature gave the Public Service Commission (PSC) exclusive jurisdiction over these utilities with respect to their authority, service, and rates, in those counties which opt to give jurisdiction of those utilities to the PSC.

Section 163.3167(s), Florida Statutes, provides that "(e)ach local government shall prepare a comprehensive plan of the type and in the manner set out in this act or shall prepare amendments to its existing comprehensive plan to conform it to the requirements of this part in the manner set out in this part." Pursuant to Section 163.3177(6)(c), Florida Statutes, the plan is required to contain a "general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use" and must indicate "ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area."

The comprehensive plan is also required to include "a future land use plan element designating proposed future general distribution, location, and extent of uses of land..." and that each category of land use "shall be defined in terms of the types of uses included and specific standards for the density and intensity of use." The future land use plan must be based upon "data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land; the availability of public services; and the need for redevelopment..." (Section 163.3177(6)(a), Florida Statutes). Section 163.03(1)(e), Florida Statutes, directs the DCA to "conduct programs to encourage and

promote the involvement of private enterprises in the solution of urban problems."

Chapter 367, Florida Statutes, requires water and wastewater utilities regulated by the PSC to obtain a certificate of authorization from the PSC. Section 367.045(5)(b), Florida Statutes, provides that:

(W)hen granting or amending a certificate of authorization, the Commission need not consider whether the issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan of a county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the Commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

By enacting Chapter 163, Florida Statutes, the Legislature did not add criteria to Chapter 367, Florida Statutes, nor did the Legislature intend to allow local governments to use comprehensive plans to designate the specific utility providers for each geographic area. Pursuant to Chapter 367, Florida Statutes, the authority to designate investor-owned utility certificated territories, for utilities in counties where the county has not exercised its option to regulate, is within the sole discretion of the PSC. However, a PSC certificate does not negate an investor-owned utility's duty to comply with local government future land use designations and other aspects of an approved local comprehensive plan.

It is the intent of this Memorandum of Understanding (MOU) to establish the guidelines under which the PSC and the DCA will work together in PSC certificate cases in order for both agencies to facilitate the intent of Chapters 163 and 367, Florida Statutes with respect to the regulation of investor-owned water and wastewater utilities and local comprehensive planning.

AGREEMENT

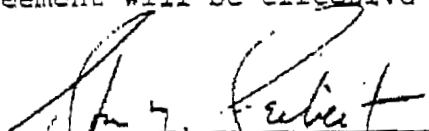
The PSC and the DCA agree to implement the following guidelines:


1. The PSC agrees to inform DCA when an original certificate case or an amendment of territory case is filed. The DCA will provide information to the PSC including comments regarding the relationship of the certificate application and the local government

comprehensive plan. The DCA comments will include information from the local government comprehensive plan such as, the land use categories, the densities and intensities of use, and other information regarding the land uses, patterns of development, and need for service in the requested territory. The PSC staff will present the information provided by the DCA to the Commission for consideration in evaluating the application.

- 2. The PSC will inform the DCA of certificate cases that have been protested by a local government because of a comprehensive plan issue; The DCA agrees to consult with the PSC to determine the appropriate role of the DCA in the certificate case and any subsequent PSC administrative proceeding. This role may include, at the request of the PSC staff, the DCA sponsoring testimony to complete the record regarding the DCA comments about the related comprehensive plan(s).

This MOU may be amended by mutual agreement of the DCA and the PSC. It shall remain in effect until it is dissolved by mutual agreement of the agencies or terminated by an agency after giving written 30-day advance notice to the other agency. This agreement will be effective upon the date of the last signature.


 Steven M. Seibert, Secretary
 Department of Community Affairs


 Joe Garcia, Chairman
 Public Service Commission

5-16-00

 Date

5/16/2000

 Date