

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 18, 2010

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: approve a Settlement Agreement with the Florida Department of Community Affairs ("DCA") and others to resolve the compliance issues raised in the Florida Department of Administrative Hearings case styled, Department of Community Affairs, et al. vs. Palm Beach County, et al., DOAH Case No. 09-6006GM.

Summary: This Settlement Agreement will resolve challenges by the DCA and 1000 Friends of Florida, Inc. ("1000 Friends"), to County Ordinance No. 2009-026, which designated a 318-acre parcel in the Everglades Agricultural Area adjacent to the Okeelanta agricultural industrial complex owned by Florida Crystals Corporation, Okeelanta Corporation, New Hope Sugar Company, and S.D. Sugar Corporation (collectively, "FCC"), as Agricultural Production ("AP") with an underlying land use of Industrial ("IND"), and a Limited Urban Service Area designation, for the purpose of developing an Inland Logistics Center, and modified the County's Comprehensive Plan accordingly ("Okeelanta Plan Amendment"). District 6 (AJM)

Background and Policy Issues: On August 25, 2009, the County adopted Ordinance No. 2009-026, the Okeelanta Plan Amendment. DCA and 1000 Friends challenged the Okeelanta Plan Amendment, contending that it is not in compliance with applicable State laws and rules. DCA based its objections, in part, on comments from the Florida Department of Environmental Protection ("DEP"). FCC intervened in the case, aligned with the County. After extensive negotiations, DCA and 1000 Friends declined to drop their objections, regardless of any further proposed modifications or conditions to the Okeelanta Plan Amendment. Instead, DCA, DEP, and 1000 Friends identified an alternative site they preferred for the Inland Logistics Center, owned by an entity affiliated with FCC, and consisting of approximately 850 acres.

Continued on Page 3

Attachments:

- 1. Settlement Agreement.

Recommended by: _____


County Attorney

5/8/10

Date

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

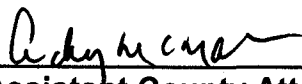
C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

_____	_____
OFMB	Contract Development and Control

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Policy Issues: The Settlement Agreement provides that FCC will request that the County rescind the Okeelanta Plan Amendment and will cause its related entity, Closter Farms, Inc., to submit an application to change the future land use designation for the alternative site preferred by DCA and 1000 Friends. The Settlement Agreement provides that the Comprehensive Plan amendments for the alternative site will be submitted and processed in the County's second round Comprehensive Plan amendments for 2010. The Settlement Agreement specifies the reasons that DCA, DEP, and 1000 Friends prefer the alternate site, and requires that DCA, DEP, and the County provide written support to the Port of Palm Beach ("PPB"), encouraging it to locate its proposed inland terminal site at the alternate site. 1000 Friends is required by the Settlement Agreement to provide written support for the alternate site and also to speak in support at public hearings of the PPB and the County.

Staff recommends this Settlement Agreement as in the best interests of the County.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), an agency of the State of Florida ("DCA"); the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, an agency of the State of Florida ("DEP"); PALM BEACH COUNTY, a political subdivision of the State of Florida ("County"); FLORIDA CRYSTALS CORPORATION, OKEELANTA CORPORATION, NEW HOPE SUGAR COMPANY, and S.D SUGAR CORPORATION (collectively "FCC"); and 1000 FRIENDS OF FLORIDA, INC., a Florida not-for-profit corporation ("1000 Friends") [collectively "Parties"].

PREAMBLE

Whereas, DCA is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes ("F.S."); and

Whereas, the County is a local government with the duty to adopt comprehensive plan amendments that are "in compliance" as defined in Section 163.3184(1)(b), F.S.; and

Whereas, on August 25, 2009, the County adopted Ordinance No. 2009-026, which designated a 318-acre parcel in the Everglades Agricultural Area adjacent to FCC's Okeelanta agricultural industrial complex as Agricultural Production ("AP") with an underlying land use of Industrial ("IND"), and a Limited

Urban Service Area designation, for the purpose of developing an Inland Logistics Center ("Okeelanta Plan Amendment"); and

Whereas, on October 9, 2009, DEP submitted to DCA its formal comments on the Okeelanta Plan Amendment and contended that the Okeelanta Plan Amendment is not "in compliance"; and

Whereas, on October 30, 2009, DCA filed a petition with the Division of Administrative Hearings ("DOAH") to initiate a formal compliance proceeding with respect to the Okeelanta Plan Amendment, alleging that it is not "in compliance", and identified the County as the Respondent; and

Whereas, DCA attached to its Petition a Statement of Intent which relied, in part, upon statements from the DEP comment letter for some of the allegations that the Okeelanta Plan Amendment is not "in compliance"; and

Whereas, the compliance proceeding regarding the Okeelanta Plan Amendment has been identified as DOAH Case No. 09-6006GM; and

Whereas, on November 13, 2009, 1000 Friends was granted intervention in DOAH Case No. 09-6006GM, in alignment with DCA; and

Whereas, on November 13, 2009, FCC was granted intervention in DOAH Case No. 09-6006GM, in alignment with the County; and

Whereas, in DOAH Case No. 09-6006GM, the County and FCC have alleged that the Okeelanta Plan Amendment is "in compliance"; and

Whereas, on December 17, 2009, the Port of Palm Beach, an independent special taxing district organized and existing under the laws of the State of Florida ("PPB"), designated the proposed Inland Logistics Center at

Okeelanta as the site for PPB's inland terminal for freight shipments in-coming and out-going through the Port of Palm Beach, subject to completion of negotiations with FCC on various business matters; and

Whereas, the Parties have engaged in settlement discussions, including consideration of alternative locations for an Inland Logistics Center on land owned by FCC, as identified on **Exhibit "A"**, which is attached to and made a part of this Agreement by this reference ("Alternative Sites"); and

Whereas, on April 9, 2010, senior representatives of DCA conducted a visit and tour of the Alternative Sites and surrounding areas, by both air and ground transportation; and

Whereas, it is the intent of the Parties to relocate the Inland Logistics Center from the Okeelanta site to alternative "Site A" as identified on Exhibit "A" hereto, which site is within the existing Urban Services Area of the Glades Tier of Palm Beach County and which site will be presented by FCC to the PPB as a proposed location for the PPB inland terminal; and

Whereas, PPB is not a party to DOAH Case No. 09-6006GM and has not participated in the settlement discussions among the Parties; and

Whereas, the Parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve DOAH Case No. 09-6006GM under the terms set forth in this Agreement, and agree it is in their respective best interests to do so.

Now, therefore, in consideration of the mutual covenants and promises set forth below, and in consideration of the benefits to accrue to each of the Parties,

the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

W I T N E S S E T H

1. The averments in the Preamble are true and correct and are incorporated into this Agreement and constitute a material part of it.

2. The Parties agree that the County's definition of an "Inland Logistics Center", as adopted in Ordinance No. 2009-026 and set forth in **Exhibit "B"**, which is attached to and made a part of this Agreement by this reference, is reasonable and appropriate for the purpose of defining and limiting the land uses for such a facility in the vicinity of South Bay, Belle Glade and Pahokee ("Tri-Cities Area").

3. FCC agrees:

A. Within 10 business days of the Effective Date of this Agreement, to request in writing that the County rescind the Okeelanta Plan Amendment for a proposed Inland Logistics Center at Okeelanta (except for the definition of an Inland Logistics Center); and

B. To cause Closter Farms, Inc., the record title holder to Site "A" and an FCC affiliate, to submit an application to change the future land use designation for Site "A", containing 850 acres, more or less, as identified on Exhibit "A", from Low Density Residential ("LR-3") to Industrial ("IND"), as established by the Future Land Use Element of the County's comprehensive plan, with uses further limited as prescribed by the definition of an Inland Logistics Center, for development of an Inland Logistics Center. It is the intent of

the Parties for said application to be submitted and processed in the County's second round of plan amendments for 2010.

4. The County agrees:

A. Within 45 days of receipt of FCC's written request to rescind the Okeelanta Plan Amendment (except for the definition of an Inland Logistics Center), that the County staff will present to the Board of County Commissioners an agenda item to act upon the rescission request. If the Board of County Commissioners does not rescind the Okeelanta Plan Amendment (except for the definition of Inland Logistics Center) within this time period, this Agreement and all commitments and obligations herein will immediately lapse and be deemed null and void unless otherwise agreed to in writing.

B. Upon receipt of a complete application to change the future land use designation on Site "A" from LR-3 to IND, with uses further limited as prescribed by the definition of an Inland Logistics Center, for the purpose of development of an Inland Logistics Center in the Tri-Cities Area, the County will consider the application as part of the County's second round of plan amendments for 2010.

5. DCA, DEP, and 1000 Friends agree that they prefer Site "A" to the Okeelanta site as the location for an Inland Logistics Center in the Tri-Cities Area because it is:

A. Located within an existing Urban Services Area as designated in the comprehensive plan; and

- B. Located within the Glades Economic Development Overlay designated in the comprehensive plan; and
- C. Located within a Rural Area of Critical Economic Concerns designated by the Governor of Florida in Executive Order 06-34; and
- D. Not inconsistent with and does not interfere with current Everglades restoration strategies and program (including but not limited to projects in the Comprehensive Everglades Restoration Program or projects proposed for consideration in the "River of Grass" project planning) or Lake Okeechobee restoration; and
- E. Compatible with existing and planned land uses in the vicinity; and
- F. Within .2 mile of connections to central water and sewer; and
- G. Proximate to regionally significant road and rail transportation facilities; and
- H. Proximate to existing residential areas and public facilities and services of the Tri-Cities Area.

6. DCA, DEP, and the County agree to submit written letters of support to PPB encouraging PPB to locate its proposed inland terminal at Site "A", subject to the County's future land use designation of Site "A" as IND, with uses further limited as prescribed by the definition of an Inland Logistics Center. 1000 Friends agrees to submit written correspondence to Palm Beach County and the PPB and speak at a public hearing of each body at which the proposed comprehensive plan amendment or Inland Logistics Center siting decision is being considered, to express its agreement thereto.

7. DCA, DEP, the County, FCC, and 1000 Friends further agree:

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

B. As to the County, this Agreement has been approved by the County's governing body at a public hearing advertised in the manner prescribed by law. This Agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

C. Nothing in this Agreement shall be construed to relieve any party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this Agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

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

E. Each party shall bear its own costs, including attorney fees, incurred in connection with DOAH Case No. 09-6006GM and this Agreement.

F. This Agreement shall become effective immediately upon execution by all of the Parties, following any required public hearing ("Effective Date").

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

H. This is the entire agreement between the Parties. No verbal or written assurance or promise is effective or binding unless included in this document.

I. This Agreement is not intended to bind DCA, DEP, the County or any other governmental entity in the exercise of its governmental authority in accordance with applicable laws and regulations.

J. Any plan amendment to change the land use designation for Site "A" is subject to all substantive and procedural requirements of the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, F.S. After the required public hearings, it must be found "in compliance" in order to take legal effect. This Agreement is not intended to waive or abridge any requirement of law that is otherwise applicable.

K. This Agreement shall not be construed to limit the rights of 1000 Friends, in the event that it meets the conditions precedent as an "affected person", in any proceeding with respect to the plan amendment described above in Section 3.B.

L. This Agreement shall not be recorded.

M. This Agreement may be executed in multiple counterparts, all of which represent only one agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

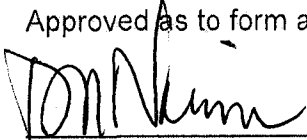
FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

By: _____ Thomas G. Pelham Secretary	Approved as to form and legality: _____ Assistant General Counsel
Date: _____	Date: _____

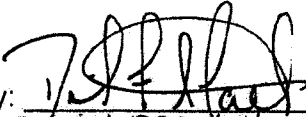
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____ Michael W. Sole Secretary	Approved as to form and legality: _____ Assistant General Counsel
Date: _____	Date: _____


PALM BEACH COUNTY, FLORIDA

By: _____ Burt Aaronson, Chair Board of County Commissioners	Approved as to form and legality:  Denise Nieman, County Attorney
Date: _____	Date: <u>5/8/10</u>

FLORIDA CRYSTALS CORPORATION

By: 
Daniel Martell
Its: Vice President
Date: 5/4/10

Approved as to form and legality:


Armando Tabernilla, Esq.
General Counsel

Date: 5/4/10

1000 FRIENDS OF FLORIDA, INC.

By: _____
Its: _____
Date: _____

Approved as to form and legality:

Richard Grosso, Esq.

314806.3

EXHIBIT "A"



4-29-2010

EXHIBIT "B"

Adopted Definition of "Inland Logistics Center" for Palm Beach County

INLAND LOGISTICS CENTER – an inland multimodal facility, receiving / sending cargo to / from south Florida ports, that provides off-port cargo storage, consolidation, repackaging, and transfer of goods. The facility may include other intermodal terminals, and related transportation facilities, warehousing / distribution, and associated office, light industrial, manufacturing, and assembly uses. Structures and uses not accessory to the foregoing facilities and allowed uses are prohibited in an Inland Logistics Center. Transportation modes to and from the center may include roads, rail and air.