



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 20, 2006

The Honorable Tony Masilotti
Chairman, Palm Beach County
Board of County Commissioners
301 N. Olive Avenue
West Palm Beach, Florida 33401

Dear Chairman Masilotti:

The Department of Community Affairs has completed its review of the Palm Beach County Comprehensive Plan Amendment (DCA No. 06-1) adopted by Ordinance Nos. 2006-028 through 2006-035 on August 21, 2006, and determined the portions of the amendment adopted by Ordinance Nos. 2006-028, 2006-029, 2006-030, 2006-032, and 2006-032 do not meet the requirements of Chapter 163, Part II, Florida Statutes, for compliance and that the portions of the amendment adopted by Ordinance Nos. 2006-019 through 2006-027, inclusive, 2006-031, 2006-034, and 2006-035 do meet the requirements of Chapter 163, Part II, Florida Statutes, for compliance. The Department is issuing a Statement of Intent and Notice of Intent to find the Comprehensive Plan Amendment Not in Compliance for portions of adopted by Ordinance Nos. 2006-028, 2006-029, 2006-030, 2006-032, and 2006-033, and In Compliance for portions of adopted by Ordinance Nos. 2006-019 through 2006-027, 2006-031, 2006-034, and 2006-035. The Notice of Intent has been sent to the *Palm Beach Post* for publication on October 23, 2006.

Please note that a copy of the adopted County Comprehensive Plan Amendment, the Department's Objections, Recommendations and Comments Report dated June 23, 2006, the Notice of Intent and the Department's Statement of Intent to find the Comprehensive Plan Amendment Not in Compliance must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the County Administration Building, Planning, Zoning and Building Department, 2300 North Jog Road, West Palm Beach, Florida 33411-2741.

In addition, the Notice of Intent and the Statement of Intent will be forwarded to the Division of Administrative Hearings of the Department of Management Services for the scheduling of an administrative hearing pursuant to Section 120.57, Florida Statutes.

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The Honorable Tony Masilotti
October 20, 2006
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The Department's notice of intent to find a plan amendment in compliance shall be deemed to be a final order if no timely petition challenging the amendment is filed. Any affected person may file a petition with the agency within 21 days after the publication of the notice of intent pursuant to Section 163.3184(9), F.S. No development orders, or permits for a development, dependent on the amendment may be issued or commence before the plan amendment takes effect. Please be advised that Section 163.3184(8)(c)2, F.S., requires a local government that has an Internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the agency's notice of intent.

If this in compliance determination is challenged by an affected person, you will have the option of mediation pursuant to Subsection 163.3189(3)(a), F.S. If you choose to attempt to resolve this matter through mediation, you must file the request for mediation with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation will not affect the right of any party to an administrative hearing.

If you have any questions, please contact Richard W. Post, AICP, Senior Planner, at (850) 922-1813.

Sincerely,


Valerie J. Hubbard, AICP
Director, Division of Community Planning

VJH/jes

Enclosure: Notice of Intent
Statement of Intent

cc: Mr. Lorenzo Aghemo, AICP, Planning Director, Palm Beach County
Mr. Michael Busha, AICP, Executive Director, Treasure Coast Regional Planning Council

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND PALM BEACH COUNTY
COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY ORDINANCE
NOS. 2006-028, 2006-029, 2006-030, 2006-032 AND 2006-033
NOT IN COMPLIANCE AND THE COMPREHENSIVE PLAN
AMENDMENTS ADOPTED BY ORDINANCE NOS. 2006-019 THRU
2006-027, 2006-031, 2006-034 AND 2006-035
IN COMPLIANCE
DOCKET NO. 06-1-NOI-5001-(A)-(N)

The Department gives notice of its intent to find the Amendments to the Comprehensive Plan for Palm Beach County, adopted by Ordinance Nos. 2006-028, 2006-029, 2006-030, 2006-032 and 2006-033, on August 21, 2006, NOT IN COMPLIANCE, and Amendments adopted by Ordinance Nos. 2006-019 thru 2006-027, 2006-031, 2006-034 and 2006-035, on August 21, 2006, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.


The adopted Palm Beach County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Palm Beach County Planning, Zoning and Building Department, 2300 North Jog Road, West Palm Beach, Florida 33411.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the Amendments to the Palm Beach County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice, a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

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

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.


Valerie J. Hubbard, AICP
Director, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

**STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS**

IN RE: PALM BEACH COUNTY COMPREHENSIVE PLAN AMENDMENTS ADOPTED BY ORDINANCE NOS. 2006-028, 2006-029, 2006-030, 2006-032, AND 2006-033 ON AUGUST 21, 2006	DOCKET NO. DCA 06-1-NOI- 5001
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**STATEMENT OF INTENT TO FIND
A PORTION OF THE PALM BEACH COUNTY
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE**

The Florida Department of Community Affairs hereby issues its Statement of Intent to find a portion of the Palm Beach County Comprehensive Plan Amendment 06-1 regarding five Future Land Use Map (FLUM) Amendments (LGA 2005-00034, LGA 2006-600010, LGA 2006-00014, LGA 2006-00002, and LGA 2006-00004), adopted by Ordinance Nos. 2006-28 through 2006-033 on August 21, 2006, Not In Compliance based upon the Objections, Recommendations, and Comments Report (“ORC Report”) issued by the Department on June 23, 2006, which is hereby incorporated by reference. The Department finds the amendments not “in compliance” because they are not consistent with Chapter 163, Part II, Florida Statutes, the State Comprehensive Plan (Chapter 187, F.S.), the Treasure Coast Strategic Regional Policy Plan (Chapter 186, F.S.), and Fla. Admin. Code R. Rule 9J-5, for the following reasons:

CONSISTENCY WITH FLORIDA STATUTES CHAPTER 163, FLORIDA STATUTES AND FLORIDA ADMINISTRATIVE CODE RULE 9J-5

I. FUTURE LAND USE MAP (FLUM) AMENDMENTS

A. Inconsistent provisions: The inconsistent provisions of the plan amendments under this subject heading follow:

1. Sections 163.3177(2) and 163.3187(2), F.S., require the several elements of the comprehensive plan to be consistent. Rule 9J-5.005(5), F.A.C., requires the required elements and any optional elements to be consistent with each other. The five FLUM amendments adopted by Ordinance Numbers 2006-28 through 2006-033 on August 21, 2006, are not consistent with adopted policies contained in the adopted comprehensive plan, specifically *Future Land Use Element (FLUE) Policy 1.1-b* because no study was performed as required to justify a change to a tier boundary (pertains to Ordinance Nos. 2006-028, 2006-029, and 2006-030), *FLUE Policies 1.4-f* and *2.2f* because the amendments do not comply with minimum road frontage requirements and would create piecemeal or residual parcels (pertains to Ordinance Nos. 2006-

028, 2006-029, and 2006-030), *FLUE Section III.G.10 Implementation* because the amendment is inconsistent with the Western Northlake Corridor Land Use Corridor Study (pertains to Ordinance Nos. 2006-028), *FLUE Policy 2.2-c* and *FLUE Section 1—Introduction, A. Purpose, B. Assessment and Conditions*, and *C. County Directions* because the amendments are not shown to discourage urban sprawl and encourage infill development, compatible densities, neighborhood integrity, *FLUE Policies 2.2-d* and *2.2.1-b* because the amendments allow encroachment of incompatible land uses into rural areas thereby creating land use incompatibilities, *FLUE Policy 2.2-e* because the amendment would allow the encroachment of strip commercial along SR 7 (pertains to Ordinance No. 2006-030 only), *FLUE Policy 2.2-b* because the amendments have not met the plan’s justification of need requirement as required (all amendments), *FLUE Policy 2.6-b* because the amendments did not show that the current land use was inappropriate or why the plan’s Transfer of Development Rights provisions were not utilized (pertains to Ordinances Nos. 2006-00002 and 2006-00004), and *Capital Improvements Element Policy 1.1-a*, *Transportation Element Policies 1.1-b* and *1.1-e*, and *Public School Facilities Element Policies 1.1-a* and *1.1-d* because the amendments were not shown to be meeting adopted levels of service standards.

Citations: In addition to the internal inconsistencies cited immediately above, the Department finds that the plan amendments are inconsistent with the following rules, statutory, and SRPP provisions: *Regional Goal 1.1*, *Regional Strategy 1.1.2*, *Regional Policy 1.1.2.3*, *Regional Strategy 2.1.2*, *Regional Goal 4.1*, and *Regional Goal 6.1* of the Treasure Coast Strategic Regional Policy Plan, Sections 163.3161(2), 163.3177(6)(a), and 163.3187(2), Fla. Stat. (2006), and Fla. Admin. Code R. 9J-5.005(5), 9J-5.006(2)(b), (2)(c), (3)(b)8 and 5, 9J-5.025, and 9J-5.019(4)(b)2.

2. Sections 163.3177(1), (3)(a), and 163.3164(32), F.S., require that amendments address the need for and the location of public facilities in order to encourage the efficient utilization of needed facilities and to program them as needed to ensure that adopted level-of-service standards are achieved and maintained. The map amendments do not demonstrate through adequate data and analysis that the impacts of the development will not cause a level of service failure as a result of the amendments in the short-range planning timeframe or if improvements are necessary to achieve and maintain adopted levels of service. and if needed, when and how these improvements will be made and funded. Thus, the adopted amendments do not show the ability of the County to meet and maintain minimum levels of service through the short-range five-year planning timeframe or that these amendments are financially feasible. The amendments defer all short range facility analyses to the land development regulations and concurrency.

Citations: The Department specifically finds that the plan amendments are inconsistent with the following rule and statutory provisions: Section 163.3164(32), 163.3177((1), (2), (3)(a)5 and 6, (3)(b)1 and 2, (5)(a) (6)(a), (c), (e), and (j), (8) and (12), and 163.3180(12) and (16), F.S., and Rule 9J-5.005(6) and 9J-5.0055(2)(c), 9J-5.006(3)(c)3, 9J-5.011, and 9J-5.016(1) and (2), and (3)(a), (b), and (c), and (4) F.A.C.

B. Recommended Remedial Action(s): The above inconsistencies may be remedied by taking the following actions:

1. Palm Beach County should follow its own plan requirements and demonstrate that each amendment is consistent with all of the policies and text provisions cited above that are

contained in the adopted comprehensive plan. Specifically, the County should perform a Tier Analysis Study to determine the viability of modifying the tier boundary and if found to be premature, to not change the Tier. The County should follow its policies and procedures regarding County Directions and urban infill and sprawl, neighborhood integrity, encroachment of incompatible land uses into a rural area, compatibility, required commercial frontage requirements as appropriate, and justification of need. Evidence or documentation of these studies or analyses should be submitted with the amendments. The County should follow its own plan in all regards including school concurrency and perform an appropriate analysis that demonstrates that the adopted LOS can be met. Regarding the Lantana/SR 7 Residential amendment, the County should not create an irregular-shaped tier boundary in conflict with *Policy 2.2-f*. Pertaining to the Northlake Residential/Coconut—NE II amendment, the County should take into consideration its Special Areas studies, such as the WNCLUS, and follow its recommendations.

2. Prepare and include with the amendment sufficient data and analysis to demonstrate the proposed amendment impacts upon necessary public facilities, such as required to provide transportation (such as, Northlake Blvd., Lantana Road, SR 7, Okeechobee Blvd., and Jog Road), water, sewerage, and school facilities to serve the expected population increase and land uses being changed at adopted levels of service. This should be done for both the short-range planning horizon and if any deficiencies are noted, the measures to correct the deficiencies should be provided along with the timing and sources of funding to demonstrate financial feasibility as indicated above and previously raised in the objection. If, after adequate data and analyses are prepared, any needed improvements are necessary which are not currently programmed, then these facility improvements should be coordinated with other elements or facilities as needed and for the short-range planning horizon. Any necessary remedial revisions to accommodate needed facility improvements should be made to the CIS and CIE accordingly to incorporate such facilities and funding for the appropriate timeframe.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

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

1. The amendment is inconsistent with the State Comprehensive Plan, including the following provisions:

Florida Statutes Section 187.201(15) Land Use, Goal (a) and Policy (b)6.

Florida Statutes Section 187.201(17) Public Facilities, Goal (a) and Policy (b)1.

Florida Statutes Section 187.201(19) Transportation, Goal (a) and Policies (b)13, (b)14, and (b)15.

B. Recommended Remedial Action: These inconsistencies may be remedied by taking the following actions:

Revise the plan amendment as described in the recommended remedial actions described above.

III. CONSISTENCY WITH THE STRATEGIC REGIONAL POLICY PLAN

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

1. Ordinance Nos. 2006-028 and 2006-029 are inconsistent with the Strategic Regional Policy Plan (SRPP), including the following provisions:

- SRPP Regional Goal 1.1;*
- SRPP Regional Strategy 1.1.2;*
- SRPP Regional Policy 1.1.2.3;*
- SRPP Regional Strategy 2.1.2;*
- SRPP Regional Goal 4.1;*
- SRPP Regional Goal 6.1.*

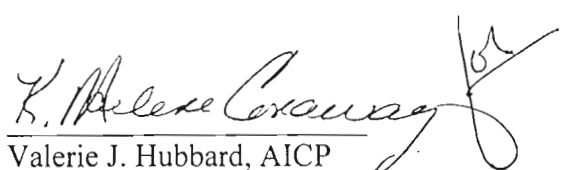
B. Recommended Remedial Action: These inconsistencies may be remedied by taking the following actions:

Revise the plan amendment as described in the recommended remedial actions described above.

CONCLUSIONS

1. The plan amendment is not consistent with the State Comprehensive Plan;
2. The plan amendment is not consistent with Rule 9J-5, Florida Administrative Code;
3. The plan amendment is not consistent with Chapter 163, Part II, Florida Statutes;
4. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes; and
5. In order to bring the plan amendment into compliance, the City may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 20 day of October, 2006, at Tallahassee, Florida.


Valerie J. Hubbard, AICP
Director, Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100