

BEFORE THE STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

1000 FRIENDS OF FLORIDA, INC., a Florida not-for-profit corporation, FLORIDA WILDLIFE FEDERATION, a Florida not-for-profit corporation and the JUPITER FARMS ENVIRONMENTAL COUNCIL, Inc., a Florida not-for profit corporation d/b/a LOXAHATCHEE RIVER COALITION, AUDUBON SOCIETY OF THE EVERGLADES and MARIA WISE-MILLER, an individual,

Petitioners,

v.

STATE OF FLORIDA, DEPARTMENT OF
COMMUNITY AFFAIRS AND
PALM BEACH COUNTY,

DOAH Case No.: 04-4492GM
DCA Docket No.: 04-2EDP-NOI-5001-
(A)-(N) and
DCA Docket No.: 04-2-NOI-5001-
(A)-(I)

Respondents.

**CONSOLIDATED AMENDED PETITION FOR FORMAL ADMINISTRATIVE
HEARING**

1000 Friends of Florida, Inc., the Jupiter Farms Environmental Council, d/b/a Loxahatchee River Coalition, the Florida Wildlife Federation, the Audubon Society of the Everglades, and Maria Wise-Miller pursuant to Section 163.3184(9), Fla. Stat., and Rule 28-106.201, F.A.C., hereby file this Consolidated Amended Petition for Administrative Hearing with regard to two Department of Community Affairs' Notices of Intent to find Comprehensive Plan Amendments in Compliance and state as follows:

AFFECTED AGENCIES

1. The agencies affected by this Consolidated Amended Petition include the State of Florida Department of Community Affairs ("DEPARTMENT"), whose address is 2555

Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and whose file or identification numbers are Docket No. 04-2EDP-NOI-5001-(A)-(N) and Docket No. 04-2-NOI-5001-(A)-(I); and Palm Beach County (“COUNTY”), whose address is 301 North Olive Avenue, West Palm Beach, Florida, 33401, and whose file or identification numbers are Ordinance Nos. 2004-034, 2004-035, 2004-036, 2004-037, 2004-038 and 2004-039 and Ordinance Nos. 2004-63 and 2004-64.

PETITIONERS

2. 1000 Friends of Florida, Inc. is a Florida not-for-profit corporation created in 1986 for the purpose of advocating the effective implementation of the Local Government Comprehensive Planning and Land Development Regulation Act of 1985.
3. The main office of 1000 Friends of Florida is located in Tallahassee at 926 E. Park Avenue, P.O. Box 5948, Tallahassee, Florida.
4. 1000 Friends of Florida maintains an office in Palm Beach County at 1029 North Lakeside Drive, Lake Worth, Florida, 33460.
5. 1000 Friends of Florida Inc. operates a business in Palm Beach County
6. 1000 Friends of Florida, Inc. has approximately 200 members who reside in Palm Beach County.
7. 1000 Friends of Florida, Inc. and a substantial number of its members are actively engaged in efforts to preserve the Loxahatchee River. 1000 Friends of Florida has recently conducted an environmental education project on the Loxahatchee River, working with a local high school group. A substantial number of 1000 Friends’ members frequently engage in recreational, scientific, educational and other related field trips to the Loxahatchee River, Corbett Wildlife Management Area, Loxahatchee Slough and

Hungryland Slough.

8. 1000 Friends of Florida submitted written and oral comments to Palm Beach County on the comprehensive plan amendments contained within Docket No. 04-2EDP-NOI-5001-(A)-(N) and Docket No. 04-2-NOI-5001-(A)-(I).

9. By four separate letters dated June 26, 2004, 1000 Friends of Florida provided written comments which were entered into the record at transmittal hearing conducted by the Palm Beach County Commission on June 28, 2004. 1000 Friends of Florida also provided oral comments at the June 28th transmittal hearing.

10. By six letters dated September 30, 2004, prior to the scheduled adoption hearing of October 5 and 13, 2004, 1000 Friends provided written comments to the Palm Beach County Board of County Commissioners on the comprehensive plan amendments contained within Docket No. 04-2EDP-NOI-5001-(A)-(N).

11. 1000 Friends of Florida provided oral comments on the comprehensive plan amendments at the adoption hearings conducted by the Palm Beach County Commission on October 5 and October 13, 2004.

12. Florida Wildlife Federation, Inc. ("FWF") is a private, statewide, non-profit citizen's conservation education organization. FWF was formed in 1937 and incorporated in 1946, and has more than 25 members who either reside, own property or operate a business in Palm Beach County.

13. FWF's interests are adversely affected by the challenged plan amendments because they jeopardize its members' use and enjoyment of surrounding natural areas, including the Loxahatchee River, the Hungryland Slough, the C-18 Canal and right of way. FWF members use such areas for activities such as bird watching, hiking, fishing

and canoeing. FWF's substantial interests are also affected by the COUNTY's proposed development because the challenged plan amendments jeopardize its members' use and enjoyment of the Corbett Wildlife Management Area for activities such as bird watching, camping, hunting and fishing.

14. Florida Wildlife Federation submitted oral and/or written comments to Palm Beach County regarding the challenged plan amendments at the transmittal and adoption hearings.

15. Jupiter Farms Environmental Council, Inc. is a Florida non-profit, environmental and community organization incorporated in 2001, which has more than 50 members who either reside in, own property or operate a business in Palm Beach County, and which does business as the Loxahatchee River Coalition ("LRC").

16. LRC's members use and enjoy the Loxahatchee River and Estuary and other publicly owned natural areas near the project site for activities such as canoeing, kayaking, hiking, horseback riding, and other recreational activities. Members of LRC are also substantially involved in advocacy efforts to restore and preserve the Loxahatchee River. The project's construction is in close proximity to publicly owned natural areas, and the project's interference with the restoration of the Loxahatchee River jeopardizes its members' use and enjoyment of these areas and will adversely impact LRC members.

17. The LRC is dedicated to the preservation and restoration of the Loxahatchee River Watershed and the rural character of the Jupiter Farms community. Members of the LRC are substantially involved in advocacy efforts to preserve the rural character of communities in Palm Beach County. The challenged plan amendments will degrade the

rural character of several communities, and significantly harm LRC members' quality of life.

18. The LRC submitted oral and/or written comments to Palm Beach County regarding the challenged plan amendments at the transmittal and adoption hearings.

19. Audubon Society of the Everglades is a Florida non-profit corporation with offices in Palm Beach County. Its corporate purpose is to promote the conservation of wildlife and the natural environment and to advance human understanding of our place in the total ecological system. The chapter has more than 50 members who either reside, own property or operate a business in Palm Beach County that have been very active in growth, development and environmental issues regarding the Loxahatchee River and its restoration and that will be affected by the challenged plan amendments.

20. Audubon's substantial interests are affected by the challenged plan amendments because they jeopardize the use and enjoyment of the surrounding publicly owned natural areas for bird watching and other recreational activities by Audubon members. Additionally, Audubon has a long involvement of advocacy in the implementation of the Comprehensive Everglades Restoration Plan ("CERP") at the program and project levels, and the challenged action jeopardizes the accomplishment of CERP's goals and harms Audubon and its members

21. Audubon Society of the Everglades submitted oral and/or written comments to Palm Beach County regarding the challenged plan amendments at the transmittal and/or adoption hearings.

22. Maria Wise-Miller owns property and resides at 16086 E. Stallion Drive in Loxahatchee, Palm Beach County.

23. Maria Wise-Miller will be adversely affected by the challenged plan amendments due to increased traffic, roadway expansion, urbanization and increased costs due to the provision of urban services, impacts to water quality and impacts to the aquifer which she relies on to provide potable water for her household, the loss of rural character of her community, loss of rural character and aesthetics, and impacts to her ability to use and enjoy equestrian and other recreational activities in and around her community, and on natural areas adjacent to the Mecca Farms site, including the Corbett Wildlife Management Area, and Dupuis Wildlife Area . The provision of infrastructure, such as water and sewer lines to the Mecca Farms site will not only spur high density development on adjacent parcels but has the likelihood of attracting additional uses incompatible with the surrounding rural community.

24. Maria Wise-Miller submitted oral and/or written comments to Palm Beach County regarding the challenged plan amendments at the transmittal and/or adoption hearings.

25. On December 13, 2004, Petitioners submitted written and oral comments at the adoption hearing for the amendments contained within Docket No. 04-2-NOI-5001-(A)-(I) (Palm Beach County Ordinances 2004-063 and 2004-064), which amended the tables 1-17 of the Capital Improvement Element.

26. The Loxahatchee River, Corbett Wildlife Management Area, Loxahatchee Slough and Hungryland Slough are natural areas and resources located in whole or in part in Palm Beach County. The use and enjoyment of Loxahatchee River, Corbett Wildlife Management Area, Loxahatchee Slough and Hungryland Slough by all Petitioners will be reduced and adversely affected by the challenged plan amendments.

27. All Petitioners have an interest in the Corbett Wildlife Management Area being maintained as conservation lands and will be adversely affected by the challenged plan amendments. Because the Mecca Farms site is located within drainage of the basin and historic headwaters of the Loxahatchee River, and is surrounded on three sides by environmentally sensitive lands, the challenged plan amendments would degrade the Loxahatchee Slough, the Corbett Wildlife Management Area, the Hungryland Slough, and the Loxahatchee River.

28. Petitioners and their members use and enjoy the Loxahatchee River and the C-18 Canal as waterways and trailways, and enjoy the use of the Hungryland Slough, the Loxahatchee Slough, the J.W. Corbett Wildlife Management Area and the Dupuis Wildlife Area.

29. The urbanization of rural areas, traffic, noise, light pollution, and intense infrastructure associated with the project will negatively impact the character and integrity of adjacent and nearby natural areas and existing rural communities, and will negatively impact the use and enjoyment of these areas by Petitioners and their members.

30. Petitioners or a substantial number of their members reside in, own property in, or operate a business in Palm Beach County.

31. Petitioners are “affected persons” pursuant to s. 163.3184(1), Florida Statutes, and persons whose substantial interests are affected pursuant to s. 120.569, and 120.57, Florida Statutes.

NOTICE OF AGENCY DECISION

32. Petitioners received notice of the agency decision on November 19, 2004 pursuant to publication in the Palm Beach Post of the DEPARTMENT’s Notice of Intent

to find the Palm Beach County Comprehensive Plan Amendments (Ordinances 2004-034 – 2004-039) NOT IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

33. Petitioners received notice of the agency decision on January 14, 2005 pursuant to Publication in the Palm Beach Post of the DEPARTMENT’s Notices of Intent to find the Palm Beach County Comprehensive Plan Amendments (Ordinances 2004-034 – 2004-039 and 2004-063 and 2004-064) IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.)

PROCEDURAL BACKGROUND

34. On August 31, 1989, the COUNTY adopted its Comprehensive Plan (the “Plan”) through Ordinance 89-17, which became effective on September 11, 1989.

35. On June 28, 2004, after conducting a public hearing, the COUNTY’s Board of County Commissioners approved the transmittal of the Plan Amendments contained in Docket No. 04-2EDP-NOI-5001-(A)-(N) to the DEPARTMENT.

36. On August 2, 2004, the DEPARTMENT issued its Objections, Recommendations and Comments (ORC) report for those Amendments. The ORC report “identifies objections regarding the COUNTY’s analysis and policy language related to urban sprawl, the need for capital improvements programming to support the temporary Constrained Roadway and Lower Level of Service (CRALLS) designation and adopted level-of-service (LOS) standards, the need for additional supporting analysis regarding water and sewer improvements and the need for additional policy guidelines to define the mix of uses and ensure a functional mixed-use design that supports multi-modal transportation options.

37. On October 13, 2004, after conducting a public hearing, the COUNTY's Board of County Commissioners adopted the Comprehensive Plan Amendments in Docket No. 04-2EDP-NOI-5001-(A)-(N) as Ordinances Nos. 2004-034, 2004-035, 2004-036, 2004-037, 2004-038 and 2004-039.

38. The Comprehensive Plan Amendments adopted by Palm Beach County as part of Docket No. 04-2EDP include the following:

Ordinance 2004-034

Ordinance 2004-034 amends the text of a number of elements of the Palm Beach County Comprehensive Plan to establish the "Scientific Overlay" on the Mecca Farms site. The ordinance amends:

- A. The "Introduction and Administration Element", to change the definition of a "Limited Service Area";
- B. The Future Land Use Element, to create the Scientific Community Overlay ("SCO") on the Mecca site and define allowable uses; identify the SCO as a Limited Urban Service Area ("LUSA"); modify the definition of a Planned Industrial Park Development District ("PIPD"); and allow the SCO to serve as a receiving area for the Transfer of Development Rights Program.
- C. The Economic Element, to add "Science and Technology" to the definition of cluster industries;
- D. The Map Series, to identify the Scientific Community Overlay and depict the Scientific Community Overlay as a Limited Urban Service Area (LUSA).

Ordinance 2004-035

Ordinance 2004-035 modifies Future Land Use Element (FLUE) Policy 3.5-d to exempt the Scientific Community Overlay from the policy which prohibits the COUNTY from approving a change to the Future Land Use Atlas (FLUA) which results in an increase in density or intensity of development generating additional traffic that significantly impacts any roadway segment projected to fail to operate at the adopted level of service standard “D” based upon the adopted Long Range Transportation Plan.

Ordinance 2004-036

Ordinance 2004-036 amends the Future Land Use Atlas (FLUA) to change the land use designation of a 1919 acre parcel of land know as Mecca Farms from Rural Residential, 1 unit per 10 acres, to the land use classification of Economic Development Center (EDC), with an underlying density of 2 units per acre (EDC/2). The amendment also removes the parcel from the rural tier of the Palm Beach County Comprehensive Plan.

Ordinance 2004-037

Ordinance 2004-037 amends the Future Land Use Atlas to change the designation of a 28.37 acre site located on the west side of Seminole Pratt Whitney Road, approximately one-half mile north of Northlake Boulevard, from Conservation (CON) to Transportation and Utility Facilities (U/T).

Ordinance 2004-038

Ordinance 2004-038 amends the Transportation Element to designate 37 road segments and 6 intersections as “Constrained Roadway at Lower Level of Service (“CRALLS”) Facilities for the purposes of concurrency for the proposed Scientific

Community Overlay Project.

Ordinance 2004-039

Ordinance 2004-039 amends the Thoroughfare Right-of-Way Identification Map (Figure TE 14.1) and 2020 Roadway System Map (Figure TE 1.1) to proposed road widening and construction changes to accommodate the proposed Scientific Community Overlay.

39. On November 16, 2004, the DEPARTMENT informed the COUNTY that the DEPARTMENT was issuing a Statement of Intent and Notice of Intent to find the Comprehensive Plan Amendments Not in Compliance.

40. The Statement of Intent finds that the plan amendments are not consistent with Section 163.3177, F.S., and Chapter 9J-5, Florida Administrative Code (F.A.C.) because:

a. For transportation links not designated as CRALLS, the COUNTY has not demonstrated that the five year Capital Improvement Schedule (CIS) includes a financially feasible schedule for the improvements necessary to maintain the adopted level-of-service standards through 2010, at the level of development allowed by the Future Land Use Map change.

b. The analysis does not address transmission capacity required for the water and sewer distribution system. The COUNTY has not demonstrated that the five-year Capital Improvement Schedule includes a financially feasible schedule for the improvements necessary to maintain the adopted level-of-service standards through 2010. The amendment does not include an amended Capital Improvements Schedule

to demonstrate how the required distribution improvements will be funded.

41. On November 19, 2004, the DEPARTMENT published its notice of intent to find the above described comprehensive plan amendments not in compliance.

42. On December 10, 2004, Petitioners filed a petition with the DEPARTMENT's agency clerk joining the DEPARTMENT in its finding of non-compliance and raising additional issues for finding the amendments not in compliance.

43. That Petition has since been forwarded to the Division of Administrative Hearings, assigned a case number, and an order granting a stay has been entered .

44. On or about December 13, 2004 the DEPARTMENT and the COUNTY entered into a Compliance Agreement/Stipulated Settlement Agreement which obligated the COUNTY to adopt additional amendments to its comprehensive plan to address the DEPARTMENT's finding of non-compliance, specifically, amendments to the Capital Improvement Element.

45. Palm Beach County had previously transmitted amendments to its Capital Improvement Element to the DEPARTMENT on July 19, 2004 as part of Palm Beach County amendment round 04-2. These amendments have since been memorialized as Ordinances 2004-063 and 2004-064.

Ordinance 2004-063

Ordinance 2004-063 revised and updated tables 1-16 of the Palm Beach County Capital Improvement Element.

Ordinance 2004-064

Ordinance 2004-064 revised and updated table 17 of the Palm Beach County Capital Improvement Element.

46. On November 15, 2004 the DEPARTMENT issued its Objections, Recommendations and Comments report for Palm Beach County Amendment 04-2. With regard to the amendments which constitute Ordinances 2004-063 and 2004-064, the DEPARTMENT raised an objection due to a lack of data and analysis, finding – “The proposed changes to the Capital Improvements Element have not demonstrated through adequate data and analysis that the COUNTY will maintain its adopted LOS [level of service] for roadways based on existing and planned development.”

47. On December 13, 2004, after a public hearing, the COUNTY adopted the amendments that the DEPARTMENT identified as being necessary to address its findings of non-compliance, specifically Ordinances 2004-063 and 2004-064.

48. On January 14, 2005 the DEPARTMENT published notices of intent to find all of the above-referenced plan amendments (Ordinances 2004-034 – 2004-039 and 2004-063 and 2004-064) IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

DISPUTED ISSUES OF MATERIAL FACT AND ULTIMATE FACTS ALLEGED

49. Petitioners disagree with the DEPARTMENT’s position in its Notices of Intent, asserting that the Plan Amendments are “in compliance” and submit that the plan amendments (Ordinances 2004-034 – 2004-039 and 2004-063 and 2004-064) are “not in compliance” as defined by Chapter 163, Part II, Florida Statutes and Rule 9J-5, F.A.C., for the reasons set forth below.

Urban Sprawl

50. The Plan Amendments and the plan as amended are inconsistent with Section 163.3177(11)(c), Florida Statutes, which requires that “local government comprehensive plans and implementing land development regulations shall provide strategies which maximize the use of existing facilities and services through redevelopment, urban infill development and other strategies for urban revitalization.”

51. The Plan Amendments and the Plan as amended fail to discourage the proliferation of urban sprawl and, in fact, substantially contribute to the creation of urban sprawl, which is inconsistent with Rule 9J-5.006(5), Florida Administrative Code.

52. The Plan Amendments remove the Mecca site from the rural tier of the Palm Beach County Comprehensive Plan and authorize an urban level of density and intensity of development, including the provision of urban levels of infrastructure services. Thus, Ordinance 2004-034 also authorized areas outside the urban service area to receive full urban services. The Plan Amendments and the plan as amended promote, allow or designate 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, which is inconsistent with Rule 9J-5.006(5)(g)2, Florida Administrative Code.

53. The COUNTY evaluated five potential alternative sites within Palm Beach County for the location of the Palm Beach County Bioscience Research Park and subsequently narrowed the list to three sites: Parcel 19, located in Jupiter; Briger, located in Palm Beach Gardens; and the Park of Commerce, located in unincorporated Palm Beach County. A COUNTY report dated August 12, 2004 concludes that each of the

three alternative sites, in addition to the Mecca site, are feasible for the siting of the Palm Beach County Bioscience Research Park. The Briger and Parcel 19 sites are located within the existing urban service areas of municipalities. Accordingly, undeveloped land, which is located within urban areas, is available and suitable for the development contemplated for the Palm Beach County Bioscience Park without siting the project in a rural area.

54. The proposed amendments and the plan as amended fail to adequately protect and conserve natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, . . . rivers... and other significant natural systems, which is inconsistent with Rule 9J-5.006(5)(g)4, Florida Administrative Code. Ordinance 2004-037 changes the land use designation of a 28.37 acre site located within the J.W. Corbett Wildlife Refuge from Conservation to Transportation and Utility Facilities (U/T), in order to build an electric power substation and right-of-way for the extension of Seminole Pratt-Whitney Road through a portion of the site. The perceived need to site infrastructure associated with the Palm Beach County Bioscience Park on conservation land invokes this sprawl indicator. The United States Fish & Wildlife Service is currently conducting an Environmental Assessment of the use of the 28.37 acres for utility rather than conservation purposes.

55. The Plan Amendments and the plan as amended fail to maximize the use of existing and future public facilities and services, which is inconsistent with Rule 9J-5.006(5)(g)(6) and (7), Florida Administrative Code. Instead, the amendments require the expenditure of substantial public funds to provide infrastructure to a low-density area within the COUNTY's rural service area.

56. The Plan Amendments and the plan as amended allow 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. This is inconsistent with Rule 9J-5.006(5)(g)8, Florida Administrative Code.

57. The Plan Amendments and the plan as amended fail to provide a clear separation between rural and urban uses, which is inconsistent with Rule 9J-5.006(5)(g) 9, F.A.C.

58. By directing unprecedented county resources to support intense urban development in a remote rural region of the County, the Amendments and the Plan as amended discourage infill development or the redevelopment of existing neighborhoods and communities in violation of Rule 9J-5.006(5)(g)(10), F.A.C.

Capital Improvements

59. The Plan Amendments and the plan as amended are inconsistent with Section 163.3177(2), Fla. Stat. which requires, among other things that the comprehensive plan “shall be economically feasible.”

60. The Plan Amendments and the Plan as amended are inconsistent with Section 163.3177(3)(a), Florida Statutes, which provides in pertinent part: “The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient utilization of such facilities...” In order to provide water and sewer to the Palm Beach County Biotechnology Park, the COUNTY proposes to extend water and sewer lines approximately 20 miles through the rural service area to reach the Mecca site. The

COUNTY has failed to demonstrate how the extension of such facilities is efficient or that the extension of such lines will not contribute to urban sprawl.

61. By failing to include standards to ensure the availability of public facilities and the adequacy of those facilities including acceptable levels of service, as well as by failing to adequately establish and abide by reasonable principles for construction, extension or increase in capacity of public facilities and by failing to establish and abide by principles for correcting existing public facility deficiencies, the Amendments and the Plan as amended fail to comply with the requirements of Section 163.3177(3), Fla. Stat.

62. The Plan Amendments and the Plan as amended are inconsistent with Rule 9J-5.016(2), F.A.C., which requires a Capital Improvements Analysis that requires, among other things the use of timing and *location* of capital improvements to public facilities to support efficient land development and goals, objectives, and policies in the future land use element.

63. The Amendments and the Plan as amended are inconsistent with Rule 9J-5.016(3)(b), F.A.C., which provides, among other criteria, that the capital improvements element provide for the “coordination of land use decisions and available or projected fiscal resources with a schedule of capital improvements which maintains adopted level of service standards and meets the existing and future facility needs.” The COUNTY has not demonstrated that the five-year Capital Improvements Schedule includes a financially feasible schedule for the improvements necessary to maintain the adopted level-of-service standards through the year 2010.

Transportation Concurrency

64. The Plan Amendments and the Plan as amended are inconsistent with s. 163.3180,

F.S., which requires that transportation facilities are subject to the concurrency requirement of the Local Government Comprehensive Planning and Land Development Regulation Act.

65. Ordinance 2004-038, amending the Transportation Element to designate 37 road segments and 6 intersections as “Constrained Roadway at Lower Level of Service” (CRALLS) Facilities for the proposed Scientific Community Overlay Project, creates an exception from transportation concurrency that is not authorized by s. 163.3180, F.S., or Rules 9J-5.0055 and 9J-5.019(4)(c)(1) F.A.C.

66. Section 163.3180(9), F.S., authorizes local governments to adopt as part of its comprehensive plan:

“a long-term transportation concurrency management system with a planning period of up to 10 years for specially designated districts where significant backlogs exist. The plan may include *interim* level-of-service standards on certain facilities and may rely on the local government’s schedule of capital improvements for up to 10 years as a basis for issuing development permits in these districts. It must be designed to correct existing deficiencies and set priorities for addressing backlogged facilities. It must be financially feasible and consistent with other portions of the adopted local plan, including the future land use map.” (emphasis added).

The CRALLS road and intersection facilities authorized by the Plan Amendments do not qualify for this statutory concurrency exception because improvements are not scheduled that will correct deficiencies on the designated facilities.

67. The amendments are inconsistent with Rule 9J-5.0055(4), F.A.C., which authorizes local governments to establish Long Term Transportation Concurrency Management Systems and to establish interim level of service standards that are linked to achieving specified improvements in the interim level of service standards for specific intervals of time.

68. Nor do the amendments comply with the other concurrency strategies authorized by Rule 9J-5.0055, F.A.C., namely Transportation Concurrency Management Areas or Transportation Concurrency Exception Areas both of which are only applicable to infill or redevelopment.

69. Rather than adopt a Long Term Transportation Concurrency Management System or other concurrency strategy authorized by Rule 9J-5.0055, F.A.C., the Amendments and the Plan as amended permanently lower the transportation level of service standard applicable to the 37 road segments and 6 intersections to associated trip caps.

70. The Amendments and the Plan as amended are inconsistent with Rule 9J-5.019(4)(c), F.A.C, which requires local governments to adopt adequate level of service standards that “ensure that adequate facility capacity will be provided to serve the existing and future land uses as demonstrated by the supporting data and analysis in the comprehensive plan” and fail to ensure that the public facilities needed to support development are available concurrent with the impacts of such development and are thus inconsistent with the concurrency requirements of Chapter 163.3180 and Rule 9J-5.0055, F.A.C.

71. By designating numerous roadway segments (the majority of major roadways in northern Palm Beach County) as CRALLS for the purposes of this project, the Amendments and the Plan as amended failed to comply with the clear legislative intent expressed in Sections 163.3177(10)(h) and 163.3180 that public facilities and services needed to support development shall be available concurrent with the impacts of such development, and with the requirements of Rule 9J-5.005(3), F.A.C. that levels of service be established to ensure that adequate facility capacity be provided for future

development.

72. At least two of the roadways which the Amendments designate as CRALLS (P.G.A. Boulevard and Indiantown Road) are designated hurricane evacuation routes, and it can be expected that as a result of these Plan Amendments, hurricane evacuation time on these will be increased in contravention of the Coastal Management and hurricane evacuation goals of Section 163.3178, Fla. Stat. and Rule 9J-5.012, F.A.C.

73. By establishing CRALLS for roadway segments for an individual project basis, the Amendments and the Plan as amended fail to establish meaningful and predictable standards for the use and development of land as required by Rule 9J-5.005(6), F.A.C. and fail to comply with the requirements of Rule 9J-5.005(3), F.A.C. that levels of service be set for each individual facility or facility type.

74. For transportation links not designated as CRALLS, the COUNTY has failed to demonstrate that the five-year Capital Improvement Schedule includes a financially feasible schedule for the improvements necessary to maintain the adopted level-of-service standards through 2010, at the level of development allowed by the Future Land Use Map change.

Data and Analysis

75. The Amendments and the Plan as amended are not clearly based on the relevant and appropriate and professionally – accepted data and analysis regarding: impacts to adjacent natural areas; compatibility with adjacent land uses; impacts to the Loxahatchee River and the restoration thereof; the Comprehensive Everglades Restoration Plan and components thereof; impacts to rural communities; the availability and necessity of infrastructure and the provision thereof to support the project; the necessity for and the

amount of land needed to accommodate the project; the availability and suitability of alternative sites for the project; the character of the undeveloped land and the surrounding community, the economic impacts of the proposed plan amendments; the likelihood of developing an economically significant biotech industry as result of the plan amendments; the overall financial feasibility of the project as required by sections 163.3177(6)(a), (8) and (10)(e), Fla. Stat. and Rule 9J-5.005(2) and (5) and 9J-5.006(2) and 9J-5.013(1)F.A.C.

76. The Future Land Use Map amendments and the Plan as amended fail to comply with the requirements of Rule 9J-5.006(3), F.A.C. as they are not appropriately based on an analysis of the availability of facilities and services to serve existing and planned land uses or on an analysis of the character and magnitude of existing vacant, undeveloped land in order to determine its suitability for use and the other land use analysis requirements identified in this section.

77. The Amendments and the Plan as amended fail to establish meaningful and predictable standards for the use and development of land as required by Rule 9J-5.005(6), F.A.C.

Internal Consistency

78. The Plan Amendments and the Plan as amended are internally inconsistent with, and fail to reflect numerous provisions of the County's comprehensive plan goals, objectives and policies detailed below. Due to these inconsistencies, the Plan Amendments render the County Comprehensive Plan internally inconsistent as a whole, in violation of s. 163.3177(2), Florida Statutes and Rule 9J-5.005(5)(b), F.A.C.

- The proposed amendments are inconsistent with the Future Land Use Element Section B3, 4, 5, 8, 10, 11, 12 &13.
- The proposed amendments are inconsistent with Goal 1 of the Future Land Use Element – Tier System – which is intended to, inter alia, provide strategies to direct the location and timing of future development to preserve, protect, and improve the quality of natural resources, environmentally sensitive lands and systems by guiding the location, type, intensity, and form of development; prohibit further urban sprawl, enhance existing communities, facilitate and support infill development, protect agricultural land for farm uses, including equestrian uses; and provide development timing and phasing mechanisms in order to prioritize the delivery of adequate facilities and services to correct deficiencies in existing communities and accommodate projected growth in a timely and cost effective manner.
- The proposed amendments are inconsistent with Future Land Use Element Policy 1.1-b – regarding redesignation of a Tier to respond to changing conditions and Policy 1.1-d prohibiting modification of the Tier System where the redesignation exhibits the characteristics of urban sprawl.
- The proposed amendments are inconsistent with Future Land Use Element Objective 1.4 regarding the Rural Tier and the maintenance and protection of rural residential, equestrian, and agricultural areas and Policy 1.4-k prohibiting future land use decisions which increase density and/or require major new public investment in capital facilities and related services in the Rural Tier.
- The proposed amendments are inconsistent with Future Land Use Element Goal 2, Land Planning, Objective 2.1 Balanced Growth requiring the Future Land Use Atlas

to direct future development to appropriate locations to achieve balanced growth while providing for the continuation of agriculture and the protection of the environment and natural resources; and Policy 2.1-f requiring that future land use designations, and corresponding density and intensity assignments, shall not exceed the natural or manmade constraints of an area, considering assessment of soil types, wetlands, flood plains, wellfield zones, aquifer recharge areas, committed residential development, the transportation network, and available facilities and services and that assignments shall not be made that underutilize the existing or planned capacities of urban services.

- The proposed amendments are inconsistent with Future Land Use Element Policy 2.2-b in that the County has failed to provide an adequate justification and a demonstrated need for the proposed future land use, and for residential density increases failed to demonstrate that the current land use is inappropriate and has failed to adequately and appropriately evaluate the impact of the Plan Amendments and the Plan as amended on the natural environment, including topography, soils and other natural resources; the availability of facilities and services; the adjacent and surrounding development; the future land use balance; the prevention of urban sprawl as defined by 9J-5.006(5)(g), Florida Administrative Code (F.A.C.); Community Plans and/or Planning Area Special Studies recognized by the Board of County Commissioners; and Municipalities in accordance with Intergovernmental Coordination Element Objective 1.1.
- The proposed amendments are inconsistent with Future Land Use Element Policy 2.2-d which requires: that no development permits will be issued to a development whose

impact may degrade adopted levels of service, pursuant to the Concurrency Management Program contained in the Capital Improvement Element; compatibility with adjacent future land uses; and protection of residential areas from adverse impacts and undesirable effects from adjacent land uses.

- The proposed Amendments and the plan as amended are inconsistent with various policies of Objective 2.6 of the Future Land Use Element regarding the transfer of development rights including: Policy 2.6-b, Policy 2.6-f, Policy 2.6-h, and Policy 2.6-i.
- The proposed amendments and the plan as amended are inconsistent with Future Land Use Element Goal 3 and various objectives and policies there under, including Objective 3.1 Service Areas regarding the establishment of graduated service areas to distinguish the levels and types of services needed within a Tier, consistent with sustaining the characteristics of the Tier, based on the land development pattern of the community and services needed to protect the health, safety and welfare of residents and visitors; and, the need to provide cost effective services based on the existing or future land uses and Policy 3.1-a providing factors for the establishment of the various service areas.
- The proposed amendments and the plan as amended are inconsistent with Objective 3.4 requiring the establishment of a rural level of service which meets the needs of rural development and uses without encouraging the conversion of rural areas to more intense uses and Policy 3.4-a: requiring the Rural Service Area to include those areas of the County where the extension of urban levels of service is neither foreseen during the long range planning horizon nor warranted by the development patterns or

densities or intensities allowed and requiring its depiction on the Service Areas Map and the Future Land Use Atlas in the Map Series; and Policy 3.4-c prohibiting the County from providing or subsidizing the provision of centralized potable water or sanitary sewer in the Rural Service Area, unless urban levels of service are required to correct an existing problem, prevent a projected, public health hazard or prevent significant environmental degradation.

- The proposed amendments are inconsistent with Future Land Use Element Objective 3.5 and the policies thereunder regarding levels of service required for development, which requires the availability of services concurrent with the impacts of development, as provided by Section 163.3177(10)(h), F.S and requires that decisions regarding the location, extent and intensity of future land use in Palm Beach County, particularly urban-type expansion, shall ensure consistency with the type of uses and development established within each Tier, and further requires that future land use decisions be based on the physical constraints and financial feasibility of providing areas with services at levels of service (LOS) that meet or exceed the minimum standards adopted in the Comprehensive Plan.
- The proposed amendments are inconsistent with Future Land Use Element Objective 4.1 and policies thereunder regarding Community and Neighborhood Planning, specifically Policy 4.1-c which requires the County to consider the objectives and recommendations of all Community and Neighborhood Plans, including Planning Area Special Studies, recognized by the Board of County Commissioners, prior to the extension of utilities or services, approval of a land use amendment, or issuance of a development order for a rezoning, conditional use or Development Review

Committee approval, and with Policy 4.1-d which required the County by 2002, to initiate an amendment to the Future Land Use Atlas and the Future Land Use Element to incorporate a Conceptual Plan Overlay, through the Optional Sector Planning process for the central western portion of the County, including the areas west of the Urban Service Area Boundary, north of Southern Boulevard, east of Twenty Mile Bend, and south of Beeline Highway, excluding the J.W. Corbett Wildlife Management Area.

- The proposed amendments are inconsistent with Goal 5 of the Future Land Use Element to provide for the continual protection, preservation, and enhancement of the County's various high quality environmental communities for the benefit of its current and future residents and visitors, and with Policy 5.1-a requiring the County to ensure the protection and stewardship of natural resources and systems, including quality uplands and wetlands, environmentally sensitive lands, wildlife habitats and regional water management areas.
- The proposed amendments are inconsistent with Goal 1 of the Utilities Element, Potable Water and Wastewater Sub-Element which limits the provision of service for water and wastewater services to the urban service area and requires that the provision of such services be in accordance with growth management guidelines.
- The proposed amendments are inconsistent with Policy 1.12 regarding the financial feasibility of the transportation system needed to maintain the adopted level of service standards.
- To the extent the proposed amendments authorize or require the construction of transportation facilities or other necessary infrastructure through or adjacent to

environmentally sensitive lands or county owned or managed natural areas, or convert conservation lands to other land uses, the proposed amendments are inconsistent with Conservation Element Objective 2.1 requiring the county to preserve and protect native communities and ecosystems to ensure that representative communities remain intact and Policy 2.1-g: requiring the County to limit uses of County-owned or County-managed natural areas to those uses that are compatible with and preserve the natural character of the natural area (e.g., passive recreation, environmental education, scientific research) and with Policy 2.3-b which requires the County to continue to designate as Conservation on the County's Land Use Plan Map any acquired conservation areas within the area defined as the "Corridor" by the South Florida Water Management District, as well as all slough and river natural areas acquired or managed by the County, and with Policy 1.11-a of the Transportation Element which requires the development of new transportation facilities or the expansion of existing facilities to address environmental impacts consistent with the goals, objectives, and policies contained in other elements of the County's comprehensive plan

- Ordinance 2004-037 is also inconsistent with Objective 2.4 of the Conservation element regarding the protection of listed species and their associated habitats.
- The proposed amendments are inconsistent with various goals, objectives, and policies of the Capital Improvement Element, including Objective 1.1 regarding the maintenance of minimum level of service standards for traffic circulation; Objective 1.4 and Policy 1.4a regarding prioritizing for capital improvements, and Policy 1.5c regarding the provision of services within the Rural Service Areas.

Natural Resources

79. The location of the project authorized by the challenged amendments is in a rural area of the County and the amendments and the plan as amended result in the conversion of conservation and agricultural lands to urban uses within the watershed of the Loxahatchee River. The Loxahatchee River suffers from saltwater intrusion due in part to decreased water flows caused by development within the River's watershed. Planning efforts, namely the Comprehensive Everglades Restoration Plan ("CERP") are underway to restore the Loxahatchee River. Urbanization of this rural area and conversion of agricultural and conservation lands, as authorized by the amendments, to intense urban uses threatens the Loxahatchee River and the restoration thereof as well as successful implementation of the CERP, and will harm adjacent environmentally sensitive lands which provide habitat for endangered and threatened wildlife.

80. The Amendments and the Plan as amended are not consistent with Section 163.3177(6)(d), Fla. Stat. because they do not provide for the conservation, appropriate use, and protection of natural resources in the area.

81. The Amendments and the Plan as amended are inconsistent with Rule 9J-5.006, F.A.C. because they fail to: coordinate future land uses with the appropriate topography and soil conditions and the availability of facilities and services, ensure the protection of natural resources, and discourage the proliferation of urban sprawl.

82. The Amendments and the Plan as amended fail to conserve and protect natural resources, wildlife habitat, and could adversely affect the quality and quantity of water available to the Loxahatchee River and other adjacent natural resources as required by Rules 9J-5.006(3)(b)(4); 9J-5.011(2)(b)(5) and (2)(c)(4) F.A.C.

83. By urbanizing agricultural, rural and conservation lands, the Amendments and the Plan as amended fail to protect environmentally sensitive lands and wildlife habitat, and fail to restrict activities affecting endangered and threatened wildlife and fail to limit the specific and cumulative impacts of development upon wetlands, water quality, water quantity and wildlife habitat, and fail to provide for the compatibility of adjacent uses, in violation of Rules 9J-5.006(3)(b)(9) and (3)(c)(2), 9J-5.011(2)(b)(5), 9J-5.013(2)(b)(4) and (2)(c)(6), F.A.C.

Community Character and Compatibility with Adjacent Land Uses

84. By urbanizing a rural area adjacent to environmentally sensitive lands and by converting conservation lands to non-conservation uses, the Plan Amendments and the Plan as amended fail to protect, conserve, and appropriately use natural resources; fail to coordinate land uses with topography, soils and the availability of infrastructure, and fail to provide for the compatibility of adjacent land uses as required by Section 163.3177(6)(d), Fla. Stat. and Rule 9J-5.006(3)(b)(1) and (c)(2), F.A.C.

85. By vastly increasing urban densities in a remote, rural region of the county, where the COUNTY, through the Sector Planning process and the Tier system seeks to maintain rural densities the Amendments and Plan as amended violate Rule 9J-5.005(6), F.A.C. in that they fail to ensure that the COUNTY's comprehensive plans will be implemented in a consistent manner. Sections 163.3161(5) and 163.3194 Fla. Stat.

Treasure Coast Regional Policy Plan

86. The Plan Amendments and the Plan as amended are inconsistent with various goals and strategies of the Treasure Coast Regional Planning Council Strategic Regional Policy Plan (the "Regional Plan").

87. The Plan Amendments and the Plan as amended are inconsistent with Future of the Regional Goal 3.4, to plan “patterns of development which are proportionately less costly to provide with public services and facilities, and the redevelopment and revitalization of older communities into important and viable economic centers of the Region” and Strategy 3.4.1, which “Promote(s) patterns of development which allow public services and facilities to be provided more cost effectively.”

88. The Plan Amendments and the Plan as amended are inconsistent with Future of the Regional Goal 3.6, Strategy 3.6.1.3, which “identifies(s) locations for and encourage development of economic clusters for business that would benefit from being located near related industries in the Region.”

89. The Plan Amendments and the Plan as amended are inconsistent with Future of the Region Goal 4.1, Strategy 4.1.1, Policy 4.1.1.1, which provides that future development should be part of existing or proposed cities, towns, or villages and that the preferred locations of a new city, town or village shall be determined via comprehensive regional planning which has not been conducted.

90. The Plan Amendments and the Plan as amended are inconsistent with Future of the Region Goal 4.1, Strategy 4.1.2, Policy 4.1.2.3, which requires the determination of “preferred locations for new cities, towns and villages” and that urban design and architectural studies should be performed when evaluating development proposals.

91. The Plan Amendments and the Plan as amended are inconsistent with Future of the Regional Goal 9.1, Strategy 9.1.1, Policy 9.1.1.1, which “Encourage(s) patterns of development and programs which reduce dependency on the automobile, encourage and accommodate public transit, and reduce the overall use of fossil fuels.”

92. The Plan Amendments and the Plan as amended are inconsistent with Regional Transportation Goal 7.1, Strategy 7.1, Strategy 7.1.3, Policy 7.1.3.1, which “Encourage(s) patterns and forms of development and redevelopment that maximize public transportation alternatives, minimize the use of the Region’s collector and arterial roadway network, and reduce the total amount of daily vehicle miles traveled.”

93. The Plan Amendments and the Plan as amended are inconsistent with Regional Goal 6.9 and Strategy 6.9.1 to manage and restore the Everglades ecosystem to ensure a sustainable future.

State Comprehensive Plan

94. The proposed amendments and the Plan as amended are inconsistent with a number of the goals and policies of the State Comprehensive Plan (SCP), Chapter 187, Florida Statutes, and are inconsistent with the SCP as a whole.

95. The proposed amendments authorize the siting of the Palm Beach Biotechnology Park dramatically increasing the density and intensity of development allowed on a parcel that is currently located in the Rural Tier in an area that surrounded by environmentally sensitive lands and is part of the watershed of the Northwest Fork of the Loxahatchee River, a designated National Wild and Scenic River and where the need has been identified for additional water storage in the watershed. Accordingly, the Plan Amendments are inconsistent with 187.201 (15)(a) Fla. Stat. Land Use Goals of the Florida Comprehensive Plan which provides that “In recognition of the importance of preserving the natural resources and enhancing the quality of life of the state, development shall be directed to those areas which have in place, or have agreements to

provide, the land and water resources, fiscal abilities, and service capacity to accommodate growth in an environmentally acceptable manner.”

96. The Plan Amendments are further inconsistent with Section 187.201(15)(b), Fla. Stat. Land Use policies of the Florida comprehensive plan which provides that Florida: 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)(1) Fla. Stat.; development of and directs 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)(2) Fla. Stat.; and requires consideration in land use planning and regulation of 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 (15)(b)(6) Fla. Stat.

97. Because of their likelihood to negatively impact restoration of the Loxahatchee River and successful implementation of the CERP, and because of their negative impact on surrounding conservation lands, the Plan Amendments are inconsistent with 187.201(7)(a) Fla. Stat. Water Resources Goals of the Florida comprehensive plan which provides that “Florida shall assure the availability of an adequate supply of water for all competing uses deemed reasonable and beneficial and shall maintain the functions of natural systems and the overall present level of surface and ground water quality. Florida shall improve and restore the quality of waters not presently meeting water quality standards.”

98. The Plan Amendments are further inconsistent with 187.201 (7)(b) Fla. Stat. Water Resources Policies of the Florida comprehensive plan which provides that Florida identify and protect the functions of water recharge areas and provide incentives for their conservation; 187.201 (7)(b)(2) Fla. Stat.; protect and use natural water systems in lieu of structural alternatives and restore modified systems 187.201 (7)(b)(4) Fla. Stat.; encourage the development of a strict floodplain management program by state and local governments designed to preserve hydrologically significant wetlands and other natural floodplain features; 187.201 (7)(b)(8) Fla. Stat.; and protect surface and groundwater quality and quantity in the state. 187.201 (7)(b)(10) Fla. Stat..

99. The Plan Amendments are inconsistent with Section 187.201 (9)(a) Fla. Stat. Natural Systems and Recreational Lands Goals of the Florida comprehensive plan which provides that “Florida shall protect and acquire unique natural habitats and ecological systems, such as wetlands, tropical hardwood hammocks, palm hammocks, and virgin longleaf pine forests, and restore degraded natural systems to a functional condition.”

100. The Plan Amendments are inconsistent with 187.201 (9)(b) Fla. Stat. Natural Systems and Recreational Lands policies of the Florida comprehensive plan which provides that Florida protect and restore the ecological functions of wetlands systems to ensure their long-term environmental, economic, and recreational value; 187.201 (9)(b)(7) Fla. Stat.; and promote restoration of the Everglades system and of the hydrological and ecological functions of degraded or substantially disrupted surface waters. 187.201 (9)(b)(8) Fla. Stat.

101. The proposed amendments and the Plan as amended are inconsistent with Transportation Goal (19), and the following underlying policies:

1. Policy (b) 7, which is to “[d]evelop a revenue base for transportation which is consistent with the goals and policies of this plan;
2. Policy (b) 9, which is to “[e]nsure that the transportation system provides Florida’s citizens and visitors with timely and efficient access to services, jobs, markets, and attractions; and
3. Policy (b) 12, which is to “[a]void transportation improvements which encourage or subsidize increased development in coastal high-hazard areas or in identified environmentally sensitive areas such as wetlands, floodways, or productive marine areas.”

102. The plan amendments and the Plan as amended are inconsistent with Section 187.201(17)(a), Public Facilities, which provides:

Goal.-Florida shall protect the substantial investments in public facilities that already exist and shall plan for and finance new facilities to serve residents in a timely, orderly, and efficient manner.

103. The plan amendments are inconsistent with Public Facilities Policy (17)(b)1, which is to: “[p]rovide incentives for developing land in a way that maximizes the uses of existing public facilities.” The creation of the Scientific Overlay to allow the construction of the Palm Beach County Biotechnology Park at Mecca Farms requires an enormous investment by the County in new infrastructure, including road construction and the construction of new water and sewer lines to an area previously designated as within the Rural Tier.

RULES OR STATUTES REQUIRING REVERSAL OF
THE DEPARTMENT'S PROPOSED ACTION

104. The rules and statutes which require reversal of the Department's proposed action are Sections 163.3177, 163.3178, 163.3180, 163.3191 and 163.3245, the State Comprehensive Plan, the Strategic Regional Policy Plan and Chapter 9J-5, Florida Administrative Code and as further identified in paragraphs 39 through 81 above.

RELIEF SOUGHT

105. For the reasons stated above, Petitioners request the following relief pursuant to Section 163.3184, Florida Statutes;

- a. That this Petition be forwarded to the Division of Administrative Hearings.
- b. That a formal administrative hearing be scheduled and conducted by an Administrative Law Judge of the Division of Administrative Hearings.
- c. That the Administrative Law Judge enter an order recommending that the Department determine that the Plan Amendments are "Not in Compliance" and recommending that the Amendments not become effective.
- d. That the Department determine that the Plan Amendments are "Not in Compliance" and submit the recommended order to the Administrative Commission for final agency action.
- e. That the Administration Commission enter a Final Order finding that the Plan Amendments are "Not in Compliance" and recommending

that the Plan Amendments not become effective and identifying all sanctions allowed by law.

Respectfully submitted on this 4th day of February, 2005.

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by United States mail to all parties on the attached service list on this 4th day of February, 2005.

/s/

Lisa Interlandi, Esq.
Florida Bar No. 0146048

1000 FRIENDS OF FLORIDA, INC., FLORIDA WILDLIFE FEDERATION,
JUPITER FARMS ENVIRONMENTAL COUNCIL, INC., d/b/a LOXAHATCHEE
RIVER COALITION, AUDUBON SOCIETY OF THE EVERGLADES and MARIA
WISE-MILLER
vs. DEPARTMENT OF COMMUNITY AFFAIRS and PALM BEACH COUNTY
State of Florida, Division of Administrative Hearings Case No. 04-4492 GM
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