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COMMENTS TO THE SOUTH MIAM -DADE WATERSHED STUDY COMMITTEE

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I offer the following comments and observations to the Committee.

Over-arching Observation and Comment

Last week's County Commission vote denying all but 1 proposed UDB amendment, and the compelling facts, policy considerations, public attitude and legal requirements related to growth management have important implications for this Committee and this Study. The way things have always been done in the past is not the way they can be done now or in the future. Indeed, the premise of this study understands that, and the Study is intended to help the County get out in front of current trends – hopefully in time to prevent the old ways from bankrupting the County in many ways.

In my view, the study team has been up to the task, putting together the information and analysis needed to meet the Study's objectives. But, in my view, too many of the folks involved in this process have unwisely insisted on turning back the clock to the days when the economic desires of landowners was the dominant or sole factor in land use decisions. The underlying and seemingly pervasive premise that the Study's report and recommendations must recommend use and density increases to substantial areas threatens to make the Committee's work irrelevant. One would hope that is not the intent.

Yet, as recent events have shown elected officials from the County Commission to the Governor and beyond, have realized that sub-urbanizing farmland has devastating impacts on local taxpayers and residents. At some point, the overwhelming evidence of multi-billion dollar fiscal deficits, unacceptably over-crowded roads and schools, obviously and seriously degraded wilderness areas, and quality of life, and other realities of the development patterns advocated by some can no longer be ignored. The consultants have brought forward much of this information, and so much is available from other sources. It all speaks strongly in favor of strict limits on further suburban sprawl.

On the other hand, the arguments in support of a Watershed Study that recommends significant use and density increases outside of the current UDB are based almost exclusively of claims of "need" and "property rights." The need claim is refuted

by the facts and the law. The notion that a property right exists to increase use and density was soundly rebuffed by the lawyer brought in to advise the Committee on that subject – a lawyer who regularly represents landowners. This is not a “grey” or disputed area of law. There is simply no property right to increase existing use and density restrictions and there is no right to realize the greatest potential of a speculative investment in land. No credible property rights lawyer would claim otherwise. Thus, for example, Mr. Torcise’s inflammatory comments about private property rights are way off base. The notion “*that your property rights are being trampled unconscionably*” because *the study is not recommending an increase in existing densities* is not credible. If the Committees’ work is dominated by a view that what is good for individual land values is necessarily good for the entire community, all involved will surely have wasted much time and effort. What’s more, the notion that the way to keep farm land in agricultural production is to change the land use plan to allow more urban development on and near that farmland is refuted by common sense.

This Committee stands at important cross roads. It can become as irrelevant as the Agricultural Retention Study committee, or it can be the forum for crafting a creating, smart way to protect property rights, protect farmers from the threats posed by urban encroachment, and preserve what is special about the Biscayne Bay and Everglades ecosystems.

Substance of the Draft Maps and Work Product

1. Mr. Swakon has argued that your final work product not identify proposed Urban Expansion Areas, but instead that “[m]arket forces should then be allowed to dictate where and when movement outside the UDB should occur.” That is how development happened before planning and planning laws. Since at least 1985 state law has required local governments in Florida to direct the market into the locations that are most appropriate for development from a community perspective. Obviously the market will always play some role in land use decisions, but it has thus been at least 20 years since it was acceptable to just let the market dictate where to build.
2. Mr. Swakon has also argued that “the area being filled on ACI property has been determined by both the SFWMD and the COE that this area will not interfere with either the BBCW or the C111 projects....” We must disagree with this characterization. Indeed, at a previous Committee meeting where the agencies briefed the Committee on the relevant restoration projects, it was clear that the increased groundwater levels intended to result from restoration projects, particularly the restoration of wetlands, is incompatible with urban development there. That land also serves important functions in terms of the water recharge and surface sheet flow. While the land may not be needed for structures or other features of the project, it is indeed Everglades’ land which should be restored as part of the critical effort to restore this ecosystem. Thus, it is entirely appropriate not to plan to urbanize the land, particularly given the fact that its urbanization would be inconsistent with so many other issues that are germane to Florida’s

growth management laws and the County's comprehensive plan. Many of those issues were identified at length in the document entitled *Watershed Study Advisory Committee Comments and Responses March 17, 2006*

3. Florida City's written comments expressed great concern that the Model Lands area recently annexed by that city is not slated for urban development in the preferred scenario. This seems at odds with Mayor Wallace's statements during the annexation process that the City did not intend to urbanize the newly – annexed area.
4. The agenda for tomorrow's meeting includes an item on Krome Avenue. By way of full disclosure, I represent clients who oppose a Miami-Dade County comprehensive plan amendment to plan for 4-laning Krome Avenue even prior to the completion of the FDOT planning process that will determine if 4 lanes are actually needed over some or all of the road's 33 – mile length. That case is the subject of pending litigation. Also, there are two ongoing FDOT studies of the 2 separate segments of Krome Avenue (north and south), which are designed to answer the question of how best to accomplish the improvements needed on the various segments of that road. Both the South Florida Regional Planning Council and the Florida Department of Community Affairs have recommended making the minimal improvements needed to address the safety and other issues, so as not to provide traffic capacity that would encourage development that is otherwise discouraged by the County's comprehensive plan. A few years ago, the state, Monroe County, and community interests in the Keys resolved a decades-old controversy over a proposal to 4-lane the "18 mile stretch" from Florida City into the Keys. The result was an "improved two-lane" project which responds to all community, environmental, safety and evacuation issues. It is currently under construction. We think an "18 mile stretch" type of solution should strongly be considered for Krome Avenue.

Conclusion

I thank the Committee members, staff, and all involved for their willingness to engage in this process and for their time in considering these views.