

ORDINANCE 99-28

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, AMENDING, REVISING, AND REPLACING CERTAIN PORTIONS OF THE MARION COUNTY COMPREHENSIVE PLAN AS ADOPTED BY ORDINANCE 98-37 INCLUDING DATA, ANALYSIS, AND MAPPING SECTIONS AS WELL AS POLICY AND TEXT SECTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 125, Florida Statutes, empowers the Board of County Commissioners of the County of Marion to prepare and enforce comprehensive plans for the development of the county; and

WHEREAS, Sections 163.3161 through 163.3215, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act, empowers and requires the Board of County Commissioners of the County of Marion to (a) plan for the county's future development and growth; (b) adopt and amend comprehensive plans, or elements or portions thereof, to guide the future growth and development of the county; (c) implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations; and (d) establish, support, and maintain administrative instruments and procedures to carry out the provisions and purposes of the Act; and

WHEREAS, the Board of County Commissioners of Marion County, Florida, adopted amendments to its Comprehensive Plan on October 29, 1998 by Ordinance 98-37 after a duly noticed public hearing; and

WHEREAS, the Florida Department of Community Affairs (DCA) issued its Notice of Intent and Statement of Intent to find said amendments to the Marion County Comprehensive Plan "not in compliance" on December 23, 1998; and

WHEREAS, a Stipulated Settlement Agreement was approved by DCA and Marion County after a public hearing with due public notice held on Tuesday, August 24, 1999; and

WHEREAS, pursuant to Section 163.3184(16)(c) and (d), Florida Statutes, the Board of County Commissioners of Marion County, Florida held a public hearing on Tuesday, August 24, 1999 after due public notice to consider revised amendments to the Comprehensive Plan as agreed to in the Stipulated Settlement Agreement as described above; and

WHEREAS, the Board of County Commissioners of Marion County, Florida, further considered all oral and written comments received during said public hearing, including the data and analysis packages, now therefore

BE IT ORDAINED by the Board of County Commissioners of Marion County, Florida:

SECTION 1. PURPOSE AND INTENT. This Ordinance is enacted to adopt a revised comprehensive plan amendment consistent with the purpose, intent, and requirements of the Stipulated Settlement Agreement as described above.

SECTION 2. FUTURE LAND USE MAP SERIES AMENDMENT. The Future Land Use Map series amendment item 98-L10 (**Jurgens & Wilcox**) specified in the Stipulated Settlement Agreement described above, is hereby adopted. The property description is attached hereto as *Exhibit "A"*, Remedial Action (map) is attached hereto as *Exhibit "B"* and Addendum to Remedial Action is attached hereto as *Exhibit "C"*, and by this reference made a part hereof.

SECTION 3. APPLICABILITY AND EFFECT. The applicability and effect of the Marion County Comprehensive Plan shall be as provided by the Local Government Comprehensive Planning and Land Development Regulation Act, Sections 163.3161 through 163.3215, Florida Statutes, and this Ordinance.

SECTION 4. SEVERABILITY. It is hereby declared to be the intent of the Board of County Commissioners of Marion County that if any section, subsection, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 5. REPEAL. All ordinances, or parts of ordinances in conflict with this ordinance are to the extent of such conflict hereby repealed.

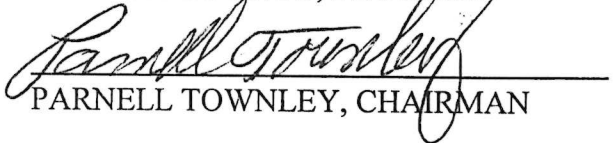
SECTION 6. COPY ON FILE.

- (a) A certified copy of the enacting ordinance, as well as certified copies of the Marion County Comprehensive Plan and any amendments thereto, shall be filed with the Clerk of the Circuit Court.
- (b) To make the Marion County Comprehensive Plan available to the public, a certified copy of the enacting ordinance, as well as certified copies of the Marion County Comprehensive Plan and any amendments thereto, shall be located in the Marion County Planning Department.

SECTION 7. EFFECTIVE DATE. Each Large Scale Comprehensive Plan Amendment shall not become effective until 22 days after publication of a notice by the Department of Community Affairs (DCA) finding the amendment in compliance in accordance with Section 163.3184, Florida Statutes. If any affected person files a petition challenging an amendment within 21 days after publication of a notice by DCA, the amendment shall not become effective until the date a final determination of in compliance is issued by DCA or the Administration Commission. No development orders, development permits, or land uses dependent on an amendment may be issued or commenced before it has become effective. A certified copy of this ordinance shall be filed with the Department of State by the clerk and shall take effect upon filing with the Department of State, subject to the limitation set forth above.

PASSED AND DULY ADOPTED, with a quorum present and voting, by the Board of County Commissioners of Marion County, Florida this 24th day of August, 1999.

**BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA**



PARNELL TOWNLEY, CHAIRMAN

ATTEST:



DAVID R. ELLSPERMANN, CLERK

RECEIVED NOTICE FROM SECRETARY OF STATE
ON AUGUST 30, 1999 THAT ORDINANCE WAS FILED
ON AUGUST 25, 1999

EXHIBIT "A"

98-L10 (Jurgens & Wilcox)

Parcel # 37905-001-00, containing 30.39 acres, more or less

The Northeast 1/4 of the Southwest 1/4 of Section 29, Township 16 South, Range 23 East, Marion County, Florida, EXCEPT the North 1/2 of the Northwest 1/4 of the Northeast 1/4 of the Southwest 1/4 of said Section 29 and EXCEPT commencing at the Southwest corner of the Northeast 1/4 of the Southwest 1/4 of said Section 29; thence N. 00°27'55"E., 100.00 feet; thence S. 56°02'50"E., 179.85 feet; thence S. 56°34'22" W., 180.70 feet; thence N. 00°27'55" E., 100.00 feet to the Point of Beginning.

AND EXCEPT commence at the Southwest corner of the Northeast 1/4 of the Southwest 1/4 of said Section 29; thence S. 89°49'38" E., along the South line of the Northeast 1/4 of the Southwest 1/4 of said Section 29, a distance of 332.93 feet for the Point of Beginning. Thence N. 00°28'42" E., 140.00 feet; thence S. 89°49'38" E., 135.00; thence N. 00°28'42" E., 60.00 feet; thence S. 89°49'38" E., 60.00 feet; thence N. 00°28'42" E., 105.00 feet; thence S. 89°49'38" E., 135.00 feet; thence N. 00°28'42" E., 70.00 feet; thence S. 89°49'38" E., 320.00 feet; thence S. 00°28'42" W., 235.00 feet; thence S. 89°49'38" E., 42.00 feet; thence S. 00°28'42" W., 140.00 feet to a Point on the said South line of the Northeast 1/4 of the Southwest 1/4 of Section 29; thence N. 89°49'38" W., along the said South line, 692.00 feet to the Point of Beginning.

Said parcel contains 30.39 acres more or less and subject to any easements, reservations or restrictions of record.

Parcel # 37905-002-00, containing 13.41 acres, more or less

The North 1/3 of the Northwest 1/4 of the Southwest 1/4 of Section 29, Township 16 South, Range 23 East, Marion County, Florida together with an easement for ingress and egress as described as follows:

The West 30 feet of the South 1/2 of the North 2/3 of the Northwest 1/4 of the Southwest 1/4 of Section 29, Township 16 South, Range 23 East, Marion County, Florida

AND

The West 30 feet of the South 1/3 of the Northwest 1/4 of the Southwest 1/4 of Section 29, Township 16 South, Range 23 East, Marion County, Florida.

Parcel # 37905-005-00, containing 5.02 acres, more or less

The North 1/2 of the Northwest 1/4 of the Northeast 1/4 of the Southwest 1/4 of Section 29, Township 16 South, Range 23 East.

Parcel # 37905-004-00, containing 13.33 acres, more or less

The South 1/3 of the NW 1/4 of SW 1/4 of Section 29, Township 16 South, Range 23 East.

Parcel # 37905-003-00, containing 13.33 acres, more or less

The South 1/2 of the North 2/3 of NW 1/4 of SW 1/4 of Section 29, Township 16 South, Range 23 East.

EXHIBIT "B"

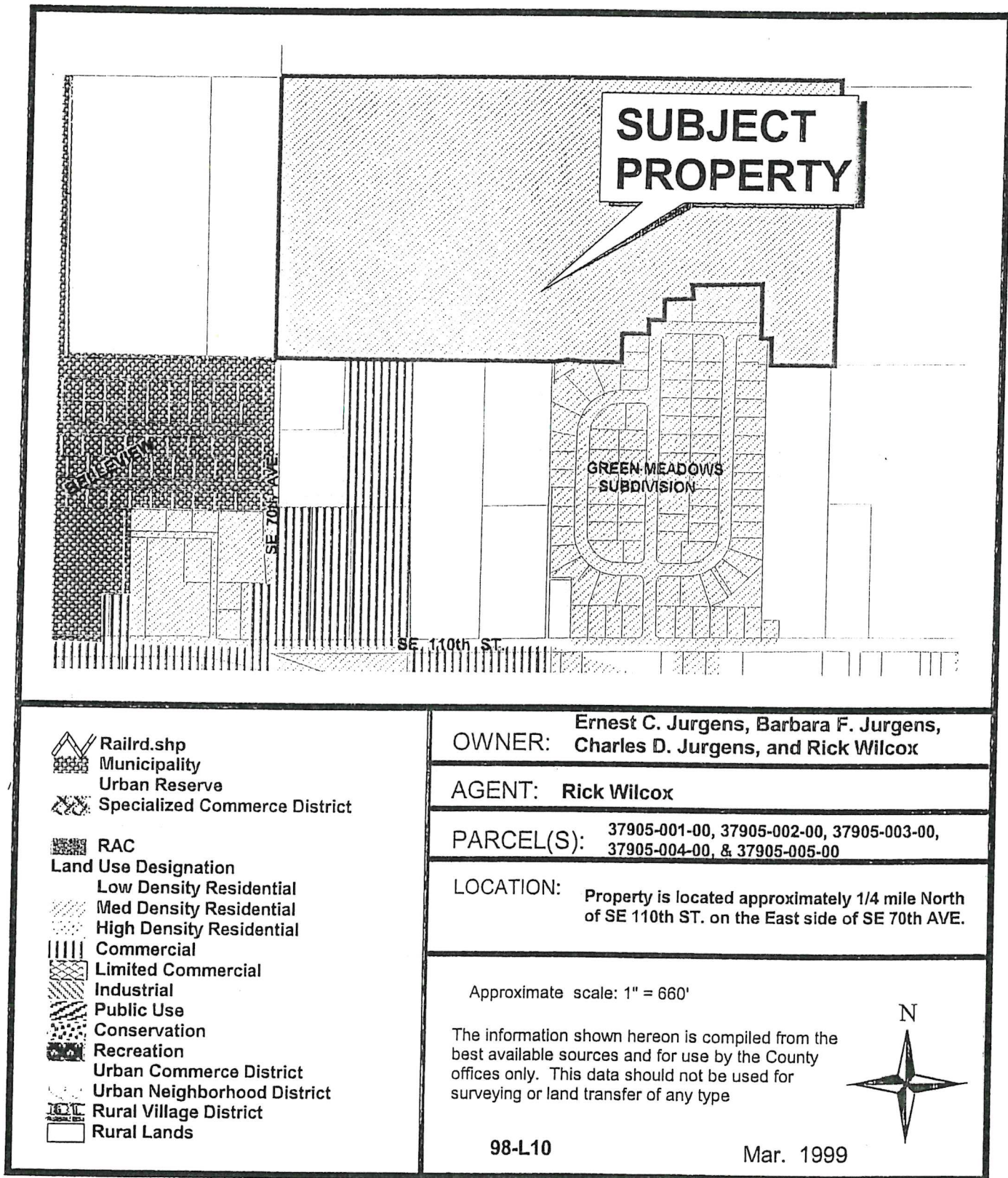


EXHIBIT "C"

ADDENDUM TO REMEDIAL ACTION

98-L10 (Jurgens & Wilcox)

The adopted change for 48.67 acres Medium Density Residential land use has been changed to 75.33 acres Medium Density Residential land use.

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

Marion County)	
Comprehensive Plan)	
Amendment 98-1)	Docket No. 98-1 - NOI - 4201 - (A) - (I)/(N)
Adopted By)	
Ordinance No. 98-37)	
On October 29, 1998)	

STATEMENT OF INTENT TO FIND A
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find Comprehensive Plan Amendment 98-1 of Marion County, adopted on October 29, 1998, by Ordinance 98-37 (Map Amendments: 98-L1, 98-L3, 98-L4, 98-L9, 98-L10, and 98-L13), Not In Compliance as defined in Section 163.3184(1)(b), Florida Statutes (F.S.), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan, and Rule 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

I. FUTURE LAND USE MAP AMENDMENTS

The Department finds the above referenced Future Land Use Map amendments to be not "in compliance" for the following reasons:

1. Data and Analysis - Need and Internal Inconsistency Issues

A. Inconsistent Provisions:

Amendments 98-L1, 98-L3, 98-L4, 98-L9, 98-L10, and 98-L13 are not consistent with Section 163.3177, F.S., Rule 9J-5.005(2), F.A.C., and Rule 9J-5.006(2)(c) and (5)(g)1., F.A.C.,

because they are not supported by adequate and relevant data and analysis to justify the need for additional Low Density Residential, Medium Density Residential, Commercial and Industrial land uses to accommodate the projected population of the County. These amendments are not consistent with Section 163.3177, F.S., and Rule 9J-5.005(5), F.A.C., because they are internally inconsistent with the goals, objectives and policies of the Marion County comprehensive plan.

B. Recommended Remedial Actions:

Provide adequate and relevant data and analysis to demonstrate the need for each of the Future Land Use Map amendments and to demonstrate that they are internally consistent with the goals, objectives and policies of the Marion County comprehensive plan. Revise amendments to be consistent with the relevant data and analysis.

2. Urban Sprawl

A. Inconsistent Provisions:

Amendments 98-L1, 98-L3, 98-L4, 98-L9, 98-L10, and 98-L13 are not consistent with Section 163.3177, F.S.; Rules 9J-5.006(3)(b)8 and 9J-5.006(5), F.A.C., and Future Land Use Element Policy 1.1. because they do not discourage the continuation of the existing urban sprawl development patterns in Marion County. The plan amendments exacerbate several of the indicators of urban sprawl including: promotes development in excess of demonstrated need; promotes urban development in rural areas at substantial distances from existing urban areas; results in poorly planned and premature conversion of rural land to urban uses; fails to protect adjacent natural resources and agricultural areas; allows for land use patterns or timing which

disproportionately increases the cost in time, money and energy of providing and maintaining services, fails to provide clear separation of urban and rural use; fails to encourage an attractive and functional mix of uses; and results in the loss of significant amounts of functional open space.

B. Recommended Remedial Actions

Supply adequate and relevant data and analysis to demonstrate the consistency of these amendments with the provisions in Rule 9J-5, F.A.C., and the Marion County comprehensive plan for discouraging the proliferation of urban sprawl. Revise amendments to be consistent with the relevant data and analysis.

3. Suitability and Compatibility Issues

A. Inconsistent Provisions:

Amendments 98-L1, 98-L4, 98-L10, and 98-L13 are not consistent with Section 163.3177, F.S., and Rule 9J-5.005(2) and 9J-5.006(2)(b), F.A.C., because the amendments are not supported by adequate and relevant data and analysis to demonstrate that the sites are suitable for the new land use. In addition, the amendments are not consistent with Section 163.3177, F.S., Rule 9J-5.005(2) and 9J-5.006(3)(c)2., F.A.C., and Marion County Future Land Use Element Policies 1.1 and 4.16 because they are not supported by adequate and relevant data and analysis to demonstrate that the new land uses are compatible with adjacent land uses.

B. Recommended Remedial Actions:

Provide adequate and relevant data and analysis to demonstrate that each of these sites are suitable for the new land use, including an evaluation of impacts to wildlife and wetlands where appropriate. In addition, provide adequate and relevant data and analysis to demonstrate that the land use changes are compatible with the surrounding area. Revise amendments to be consistent with the relevant data and analysis.

4. Availability of Public Facilities

A. Inconsistent Provisions:

Amendments 98-L3, 98-L4, 98-L9, 98-L10, and 98-L13 are not consistent with Section 163.3177, F.S., Rule 9J-5.005(2), 9J-5.006(2)(a) and 9J-5.011(1)(f) and (2)(b)2., F.A.C., and Marion County Future Land Use Element Policy 1.1 because adequate and relevant data and analysis to demonstrate the availability of public facilities, including the provision of potable water and/or sanitary sewer to accommodate the new land use, has not been provided. Additionally, these amendments are not consistent with Marion County Future Land Use Element Policies 1.1 and 2.18, because they are inconsistent with the public facilities analysis because of a lack of capacity or planned service in these areas.

B. Recommended Remedial Actions:

Provide adequate and relevant data and analysis to demonstrate these amendments will be provided with adequate public facilities. The data and analysis needs to include the provider of the public facility, a facility capacity analysis, indicating facility capacity, surplus and

deficiencies to support the land use change, and the availability of facilities to serve these sites.

Where public facility deficits are projected to occur, the plan amendment must provide for increases in capacity to meet future needs. Revise amendments to be consistent with the relevant data and analysis.

5. Transportation

A. Inconsistent Provisions:

Amendments, 98-L3, 98-L4, 98-L9, 98-L10, and 98-L13 are not consistent with Section 163.3177, F.S., Rules 9J-5.005(2) and (5), 9J-5.006(2)(a), F.A.C., and 9J-5.019, F.A.C., and Marion County Future Land Use Element Policy 1.1 and Traffic Circulation Element Policy 6.3 because there has not been adequate and relevant data and analysis to ensure adequate transportation facilities to serve the new land uses. Specifically, Amendment 98-L3 has not been properly analyzed to determine the impacts of the land use change on C.R. 464 and S.R. 35. Amendments 98-L4 and 98-L9 will both impact U.S. 441 which is expected to have a level of service (LOS) below the adopted standard. Amendment 97-L10 has not been analyzed to determine the impacts of the land use change on U.S. 441 and/or S.R. 35. Amendment 98-L13 will impact C.R. 35 which is projected to operate below the adopted level of service standard.

B. Recommended Remedial Actions

Rescind the plan amendment. Alternatively, supply relevant and appropriate data and analysis to demonstrate that the availability of transportation facilities to serve these land use changes. Identify planning activities to address the deficiencies in level of service standards as a

result of these land use changes. Where transportation deficits are projected to occur, the plan amendment must coordinate the extension, and increase in transportation capacity to meet the adopted level of service standard and future needs generated by the proposed land use. Revise amendments to be consistent with the relevant data and analysis.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

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

187.201(6)(b)1. and (6)(b)2a., b., and c., F.S., Regulate growth activities which impact the quality of the State's water to prevent adverse affects on health.

187.201(8)(a) and (8)(b)2., 4., 5., 9., 10., 12, F.S., Protect aquifer recharge areas and groundwater quality and quantity.

187.201(10)(a) and (10)(b)1. 2., 3., 6., 7., and 10., F.S., Protect unique natural habitats and prohibit destruction of endangered species and their habitats, and maintain ecologically intact systems in all land planning.

187.201(16)(a) and (16)(b)1., 2., and 6., F.S., Develop areas with capacity to serve new population and commerce, separating urban and rural land uses while protecting water supplies, and wildlife habitats. Consider the impact of land use on water quality and quantity, the availability of land, water and other natural resources to meet demands.

187.201(18)(a), and (b)1., 3., 4., 5., 7., F.S., Maximize existing facilities, identify providers and allocate costs, and coordinate with the capital improvement element.

187.201(20)(b)3., and 9., F.S., Promote comprehensive transportation planning and

ensure a timely and efficient transportation system.

187.201(26)(b)7., F.S., To ensure the development of comprehensive plans that implement and accurately reflect state goals and policies and that address programs, issues and conditions that are of particular concern in a region.

CONCLUSIONS

1. The plan amendment adopted by Ordinance 98-37, on October 29, 1998, is not consistent with the State Comprehensive Plan.
2. The plan amendment adopted by Ordinance 98-37, on October 29, 1998, is not consistent with Chapter 9J-5, Florida Administrative Code.
3. The plan amendment adopted by Ordinances 98-37, on October 29, 1998, is not consistent with the requirements of Section 163.3177, Florida Statutes.
4. The plan amendment adopted by Ordinances 98-37, on October 29, 1998, is not "in compliance," as defined in Subsection 163.3184(1)(b), Florida Statutes.
6. In order to bring the plan amendment adopted by Ordinance 98-37, on October 29, 1998, into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 23rd day of December, 1998, at Tallahassee, Florida



for

J. Thomas Beck, Chief
Bureau of Local Planning
Division of Resource Planning
And Management
2555 Shumard Oak Drive
Tallahassee, Florida 32399

**Addendum to the Exhibit B for the Stipulated Settlement Agreement for
Marion County Comprehensive Plan Amendments 97-1 and 98-1**

In addition to the Future Land Use Map (FLUM) portion of the Exhibit Bs, the following changes or conditions apply to the following amendments:

97-L5 (Albert Peek) - the adopted land use change for a total of 685.26 acres, in 42 parcels in the Silver Springs Subdivision has been changed to 386.16 acres and 33 parcels.

97-L12 (Loccisano) - The adopted change was for Commercial land use. The agreed change is for Limited Commercial land use.

97-L15 (Dinkins) - the adopted change for 20 acres Residential, 20 acres Commercial and 52 acres Industrial land uses has been changed to 20 acres Limited Commercial and 72 acres of Industrial land uses and a commitment to central water and sewer service.

97-L19 (Wagner) - the adopted change was for 469.66 acres Medium Density Residential land use. The agreed to change is for 125 acres of medium Density land use with a cap of 450 residential units.

98-L4 (Clotfelter) - The adopted change was for 14.85 acres of Commercial land use. The agreed to change is for 14.85 acres of Limited Commercial land use and a commitment to central water and sewer service.

98-L9 (DLJ Associates) - The adopted change was for 25.841 acres Industrial and 18.374 acres Commercial land uses. The agreed to change is for 25.841 acres Industrial and 18.374 acres Limited Commercial land use, with a land use blending overlay.

98-L10 (Wilcox) - The adopted change for 48.67 acres Medium Density Residential land use has been changed to 75.33 acres Medium Density Residential land use.

98-L13 (Wood) - The adopted land use designation was for 20 acres Commercial land use. The agreed to change is for 15 acres Limited Commercial land use.

97-L22 (On Top of the World) - The following condition shall apply:

a. Policy 2.5 of the Land Use Element of the Marion County Comprehensive Plan shall be deleted in its entirety.

b. The proposed Future Land Use Map, attached hereto as Part of Exhibit B depicts the agreed upon changes to the Future Land Use Map of the Land Use Element of the Marion County Comprehensive Plan ("FLUM"). The areas shown as "Conservation" on Exhibit B have previously undergone review pursuant to Chapter 380.06, Florida Statutes (F.S.), and are the subject of a Habitat Management Plan approved by the Department and the Florida Game and Fresh Water Fish Commission and accordingly are not subject to further review and conditions.

c. A portion of the areas depicted in High and Medium Density Residential on Exhibit B that are not currently in the On Top of the World ("OTOW") Development of Regional Impact (DRI) will be added to the OTOW DRI through the Notice of Proposed Change (NOPC) procedure set forth in Section 380.06(19), F.S. Said areas will be removed from a portion of the areas which are vested from

DRI review (BLIVR 574-018; 78 BLIVR 577-016 and BLIM 578-002) through the Binding Letter of Interpretation set forth in Section 380.06(4), F.S. The addition of the land to the OTOW DRI is presumed to create a substantial deviation pursuant to Section 380.06(19)(e)(3), F.S. The determination of whether or not this change constitutes a substantial deviation shall be governed by Section 380.06(19), F.S.

d. The Future Land Use Map (FLUM) identified in Paragraph B, above and the amendment to the OTOW DRI development order are to be adopted by Marion County concurrently.

e. The OTOW DRI development order may be amended as follows:

i) The total number of acres to be added to the OTOW DRI would not exceed 5,600.

ii) The OTOW DRI would be modified so that the areas within the OTOW DRI which are designated on the proposed Future Land Use Map as: a) Rural Land, will be at a density that would not exceed one dwelling unit per 10 gross acres; b) Medium Density Residential, will be at a density of one to four dwelling units per gross acre; and c) High Density Residential will be at a density of four to eight dwelling units per gross acre.

iii) Only OTOW DRI approved and OTOW DRI vested units would be developed in the area to be added to the OTOW DRI (no additional development rights will be sought). The vested units (3,282 units under BLIVR 574-018 and 3600 units under BLIVR 577-016 and BLIM 578-002) and the vested commercial (88 acres of commercial under BLIVR 577-016 and BLIM 578-002) will be developed outside the area to be added to the DRI.

iv) Lands to be added to the OTOW DRI which are required by the comprehensive plan to be designated as conservation shall be designated "Conservation" on the FLUM. In addition, lands to be added to the OTOW DRI which are designated as Conservation pursuant to 9J-2.041, F.A.C. under the amended DRI development order, shall be designated "Conservation" on the FLUM.

v) The DRI amendment may contain other changes provided they are reviewed in accordance with Section 380.06(19), F.S., and Rule 9J-2, Florida Administrative Code. The determination of whether or not the change constitutes a substantial deviation shall be governed by Section 380.06(19), F.S.