IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

TOWN OF YANKEETOWN, FLORIDA,
a municipality,
Plaintiffs,

v. CASE NO. _____

DEPARTMENT OF COMMUNITY AFFAIRS,
SECRETARY WILLIAM BUZZETT, STATE OF FLORIDA
(as the state land planning agency of the State of Florida),
and the
ADMINISTRATION COMMISSION, STATE OF FLORIDA
Defendant(s)
_____/

EXPEDITED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, by and through its undersigned counsel, files this Complaint for declaratory judgment pursuant to Chapter 86, Florida Statutes.

1. Plaintiff **is entitled to speedy hearing advanced on the court's calendar under 86.111 Florida Statutes (2010)** and seek an Order of this Court declaring that:

a. HB7207 (Chapter 2011-139 Laws of Florida) is unconstitutional because it contains more than one subject, was adopted in violation of the single subject rule and was read by an inaccurate, misleading title as an Act "related to trust funds" a subject matter unrelated to the actual subjects of the Act, including a preemption prohibition on certain referendum and initiatives in violation of the Florida Constitution Article III, Section 6 and Article III, Section 7;

b. HB7207 (Chapter 2011-139 Laws of Florida) is unconstitutional because it contains an unconstitutional delegation of authority to the agency to determine the undefined, vague terms "important state resources and facilities" and "important regional resources and facilities" in violation of the "non-delegation" doctrine of Florida Constitution Article II, Section 3, *See,* Askew v. Cross Key Waterways, 372 So.2d 913 (Fla., 1978); and

c. Plaintiffs also seek a declaratory judgment that specifically Section 7 of Chapter 2011-139 Laws of Florida was unconstitutionally adopted in violation of the single subject rule and was read by an inaccurate, misleading title as an Act "related to trust funds" a subject matter unrelated to the actual subject, or that Section 7 of Chapter 2011-139 Laws of Florida does not apply to pre-existing referendum requirements of the YANKEETOWN Town Charter §11 (currently requiring a referendum prior to approving of comprehensive plan amendments affecting five or more parcels).

JURISDICTION

2. The Court has jurisdiction to review and grant declaratory relief regarding unconstitutional statutory enactments under Section 86.011 Florida Statutes (2010). See, *Martinez v Scanlan*, 582 So. 2d 1167 (Fla. 1991); *Franklin v. State*, 887 So.2d 1063 (Fla., 2004).

VENUE

3. Venue is proper in Leon County because Defendant is located within the office of the state agency charged with implementation and enforcement of chapter 163 purportedly amended by HB 7207 (Chapter 2011-139 Laws of Florida) as enacted in Leon County, Florida.

PARTIES AND FACTS

4. Plaintiff TOWN OF YANKEETOWN, a Florida Municipality, is a local government subject to and directly affected by HB 7207(Chapter 2011-139 Laws of Florida), which became effective on the Governor's signature on or about June 2, 2011.

5. Plaintiff TOWN OF YANKEETOWN, has prepared a comprehensive plan amendment (affecting five or more parcels) resulting from an Evaluation and Appraisal Report previously approved by the Department prior to June 2, 2011 and is holding public hearing(s) beginning August 2, 2011.

6. The TOWN OF YANKEETOWN Town Charter §11 currently requires a referendum prior to approving of comprehensive plan amendments affecting five or more parcels. The YANKEETOWN Town Charter states:

> **Yankeetown Town Charter** - Section 11. "Voter approval is required for approval of comprehensive land use plan or comprehensive land use plan amendments affecting more than five parcels except for amendments to the Capital Improvements Element of the Comprehensive Plan, including annual updates to the capital improvement schedule. Amendments to the Capital Improvements Element of the Comprehensive Plan, including annual updates to the capital improvement schedule shall not require voter approval. A Comprehensive Plan or Comprehensive Plan Amendment, (both as defined in Florida Statutes Chapter 163), shall not be adopted by the Town Council until such proposed Plan or Plan Amendment is approved by the electors in a referendum as provided by Florida Statute Section 166.031 or by the Town Charter or as otherwise provided by general or special law. Elector approval shall not be required for any Plan or Plan Amendment that affects five or fewer parcels of land or as otherwise prohibited by Florida Statutes including but not limited to Florida Statute Section 163.3167 as may be amended from time to time."

Yankeetown Town Charter § 11 was adopted in 2007 and amended in 2010 under Florida Statute §166.031 providing for municipal Charter Amendments.

7. Plaintiff TOWN OF YANKEETOWN, a municipality, desires to maintain the referendum requirement and is in doubt as to both whether the enactment of Section 7 of Chapter 2011-139 Laws of Florida is constitutional and whether Section 7 applies to previously adopted, pre-existing Town Charter provisions requiring a referendum prior to approving of plan amendments affecting five or more parcels. The municipal referendum preemption or prohibition contained in Section 7 of Chapter 2011-139 Laws of Florida (amending Florida Statutes 163.3167) was not listed within the title of HB 7207, was adopted in violation of the single subject rule and was read by an inaccurate, misleading title. Chapter 2011-139 Laws of Florida did not amend Florida Statute §166.031 providing for municipal Charters. Further, Chapter 2011-139 Laws of Florida, Section 4 amending Florida Statutes §163.3161(9) states the Act

"*shall not be interpreted to limit or restrict the powers of municipal* or county officials, but be interpreted as a recognition of their *broad statutory and constitutional power* to plan and regulate for the use of land…"

8. The TOWN OF YANKEETOWN is also in doubt as to whether HB 7207 (Chapter 2011-139 Laws of Florida) conflicts with Chapter 120, Florida Statutes because it requires YANKEETOWN rather than the DEPARTMENT defend the DEPARTMENT's compliance determination that the plan amendments are in compliance in any third party challenge administrative hearing without the benefit of the presence of the DEPARTMENT as the agency in the administrative hearing. HB 7207 (Chapter 2011-139 Laws of Florida) purports to delete requirements that the DEPARTMENT participate in any chapter 120 hearings brought by third parties challenging the DEPARTMENT's agency action "in compliance" determination. HB 7207 (Chapter 2011-139 Laws of Florida) requires the municipality to defend the DEPARTMENT's agency compliance determination even though municipalities are expressly excluded from the definition of "agency" subject to Chapter 120 under Florida Statutes §120.52(1)("This definition does not include any municipality").

9. The TOWN OF YANKEETOWN is affected by "*important state and regional resources and facilities*" as follows: The TOWN OF YANKEETOWN is located in Levy County on the northern banks of the Withlacoochee River, an Outstanding Florida Water (OFW). The TOWN OF YANKEETOWN shares wildlife corridors, watercourses, and natural resources with LEVY COUNTY including the Withlacoochee Gulf Preserve (owned by the Town) located near and to the south of Gulf Hammock Wildlife Management Area and Wacassassa State Preserve, both located in Levy County, and other lands designated as "Environmentally Sensitive Lands" under the Levy County Comprehensive Plan. The Town of Yankeetown shares wildlife

corridors, watercourses and natural resources with CITRUS COUNTY including lands along the southern bank of the Withlacoochee River located just across from YANKEETOWN in Citrus County. The Crystal River nuclear power facility is visible from YANKEETOWN and YANKEETOWN is within the evacuation area of the Crystal River nuclear power facility located in the adjacent Citrus County. YANKEETOWN is also located within the same Coastal High Hazard Area and is within the evacuation zone of Crystal River Nuclear Power Plant located in the adjacent Citrus County The TOWN OF YANKEETOWN is also located within the proposed evacuation zone of the proposed Progress Energy Nuclear Power Facility within Levy County. YANKEETOWN is located entirely within the Coastal High Hazard Area. YANKEETOWN is affected by comprehensive plan and land use decisions of other local governments that affect the Withlacoochee River and its tributaries because YANKEETOWN as a downstream from areas controlled by adjoining local governments on the Withlacoochee River. The TOWN OF YANKEETOWN is also affected by comprehensive plan and land use decisions of other local governments that can affect important facilities and coastal evacuation in YANKEETOWN. However, YANKEETOWN is in genuine doubt as to whether the Defendants will consider any or all of these resources and facilities to be "important statewide or regional resources and facilities" under HB7207 (Chapter 2011-139 Laws of Florida).

10. Plaintiffs have standing because Plaintiffs are subject to the Act and would be immediately affected by the unconstitutional enactment of HB 7207 Chapter 2011-139 Laws of Florida upon adoption of the TOWN OF YANKEETOWN's pending, noticed plan amendments. See Diaz v. State, 752 So.2d 105 (Fla. App., 2000) and existing Town Charter §11 requiring referendum prior to adoption of the plan amendment.

11. Defendant is the Secretary of the existing agency DEPARTMENT OF COMMUNITY AFFAIRS[1], and the ADMINISTRATION COMMISSION[2], both located in Tallahassee, Leon County, Florida, as the state agenc(ies) charged with implementation and enforcement of chapter 163, Part II, Florida Statutes.

12. Plaintiffs are in doubt as to whether HB7207 (Chapter 2011-139 Laws of Florida) is constitutional and was validly enacted and whether it conflicts with other statutes, including Chapter 166 (municipal government charters) and Chapter 120, Florida Statutes (Florida's Administrative Procedures Act).

13. There is a clear and actual case in controversy affecting plaintiffs that is of a sufficient immediacy and need, because HB7207 (Chapter 2011-139 Laws of Florida) became effective on June 2, 2011 upon signature of the Governor, and this action is not filed to obtain a prospective opinion or legal advice from the Court.

14. HB 7207 was introduced in the Florida Legislature as a bill related to state "trust funds." The noticed title of HB 7207 as it appeared and was read during the entire session of the Florida legislature stated that HB 7207 was a bill related to state "trust funds." HB 7207 was not actually noticed or read by title as an Act related to "growth management." The title as it was noticed and read related to state "trust funds" failed to inform Plaintiffs and legislators of the true subject of HB 7207 and as such was inaccurate, misleading and "cloaked" the true intent and actual subject of HB 7207, as enacted.

[1] Currently it is the Department of Community Affairs, however on October 1, 2011, the Department of Community Affairs as state land planning agency will transition into a new Department of Economic Opportunity under a separately enacted HB 2156.

[2] See Chapter 2011-139 Laws of Florida (p.111) Section 17 amending 163.3184(8)(~~11~~).

15. On May 5, 2011, Amendment 331967 to HB 7207, which included 343 pages of amendments and six (6) pages of title amendments, was filed thereby inserting new subjects instead of the previous noticed and read subject matter into the text of the title and body of HB 7207. However, this amendment was noticed, read and passed under the original title related to state "trust funds." On Friday May 6, 2011 in the last hour of the regular session, the Florida House voted on HB 7207 after it was read by a misleading and no longer correct title relating to "trust funds." The Senate also voted on HB 7207 as an act relating to "trusts." Not until after the session had concluded and the enrolled version of HB 7207 appeared one week after the session on Friday, May 13, 2011 did the new title reflect the changes in subject matter.[3]

16. Approximately three (3) weeks after the session, Governor Scott signed HB 7207 into law on June 2, 2011 and HB 7207 become effective immediately upon the Governor's signature. Chapter 2011-139 Laws of Florida, Section 81.

I. Single Subject and Misleading, Inaccurate Title Violations

17. Article III, section 6 of the Florida Constitution provides, in pertinent part, that "[e]very law shall embrace but one subject and matter properly connected therewith, and the subject **shall be briefly expressed in the title**." This portion of the Florida Constitution is referred to as "the single subject rule." In Martinez v. Scanlan, 582 So.2d 1167 at 1172 (Fla.1991), the Florida Supreme Court stated: "The purpose of this constitutional prohibition against a plurality of subjects in a single legislative act is to prevent "logrolling" where a single enactment becomes a cloak for dissimilar legislation having no necessary or appropriate connection with the subject matter. The act may be as broad as the legislature chooses provided

[3] The Florida Senate also voted on a growth management bill, SB 7129 after amendment as a replacement for SB 1122, a bill related to growth management, on May 6, 2011. The House did not vote on the growth bill SB 7129 after it was amended by the Senate, thus leaving SB 7129 to die in messages.

the matters included in the act have a natural or logical connection." HB 7207 violates single subject rule. See, Franklin v. State, 887 So.2d 1063 (Fla., 2004)

18. The title and text sections of HB 7207 related to "trusts" a subject that is unrelated to "growth management" because the subject of state "trusts" funds are contained in a completely different subject of the Florida Statutes which was purportedly amended by HB 7027 as enacted and the topics are not encompassed by any common subject.

19. The Court has consistently held that the purpose of the title to a legislative act is to prevent deception, surprise or fraud, and to apprise the people of the subject of the legislation. The title as read relating to "trusts" did not give fair notice of what was to be debated and enacted relating to "growth management."

20. The purpose of reading a bill by title and publishing a list of bills being considered by title is to provide "fair notice" of the subject of the bill, to prevent cloaking by use of misleading titles that hide the true subject matter from the view of interested legislators or interested constituents and public in general and prevent or hinders discourse and debate.

21. On reading on May 6, 2011, in both the House and the Senate, the title of the bill was read and adopted as "An Act relating to Trust Funds". HB 7207 was not "duly considered and agreed to in the Legislature with reference to the subject, and with the particular title, under which it now appears published as a "law enacted by the Legislature."

22. Even if the title of an act relating to "growth management" has been read as required by Section 7, it is still too broad and encompasses more than a single legislative subject. See State v. Leavins, 599 So.2d 1326 (Fla. 1st DCA 1992), which held that Chapter 89-175 read and enacted under the title "an act relating to environmental resources" violated the single subject rule because of the range of topics addressed in the forty-eight section as follows:

> This phrase ["an act relating to environmental resources"] is so broad, and potentially encompasses so many topics, that it lends little support to the State's attempt to fend off a single subject challenge. . . .Although each individual subject addressed [in chapter 89-175] might be said to bear some relationship to the general topic of environmental resources, such a finding would not, and should not, satisfy the test under Article III, Section 6. If a purpose of the constitutional prohibition [is] to insure, as nearly as possible, **that a member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic**, the reviewing court **must examine each subject in light of the various other matters affected by the act**, and not simply compare each isolated subject to the stated topic of the act.

Similarly, HB 7207 addressed more than one subject and is so broad and encompasses too many topics for a "member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic" even if properly noticed and titled.

23. Among other topics, the enactment of HB 7207 purports to:

a. Repeals Florida Administrative Code Chapter 9J-5 and 9J-11.023, which were previously adopted pursuant to Chapter 120, Florida Statutes (Florida's Administrative Procedures Act) and established standards and criteria for review of plan amendments removing the ability of YANKEETOWN's staff and elected and appointed officials to determine with any degree of certainty whether any particular plan amendment is in compliance or not in compliance with state statute;

b. Amend procedures, standards and criteria for state review of local comprehensive plan amendments incorporating vague and undefined terms such as "important state resources and facilities" and "regionally significant resources and facilities" and "regionally significant water courses and wildlife corridors";

c. **Prohibits local referendums and initiatives on plan amendments and development orders;**

d. Deletes requirements that comprehensive plan, public facilities capitol improvement schedule be financially feasible;

e. Repeals "concurrency" provisions that required local governments maintain adopted levels of service for schools, transportation, and parks and recreation;

f. Amends "proportionate fair share" requirements under which development was required to pay its fair share of the cost to the community of development impacts;

g. Amends the definition of "urban sprawl";

h. Adopts certain prohibitions and preemptions regarding "agricultural enclaves";

i. Adopts procedures regarding "rural agricultural industrial areas;"

j. Removes the requirement for public school facilities element;

k. Amends DRI requirements contained in Chapter 380, Florida Statutes;

l. Amends permit extensions;

m. Amends procedures for municipal annexations;

n. Requires unanimous approval of the Administration Commission to impose sanctions;

o. Amends the separate "Florida Local Government Development Agreement Act" (Florida Statutes 163.3220-163.3243) allowing development agreements to 30 years and deleting reporting requirements;

p. Repeals and prohibits executive agency rulemaking in implementation of the legislature's statute;

q. Requires guidance on Department website and exempts guidance from 120.54(1)(a);

r. Repeals provisions regarding Affordable Housing Needs Assessment, Energy Efficiency, and Community Visioning provisions;

s. Amends the administrative hearing standard of review for plan amendments that the DEPARTMENT finds "not in compliance' with state requirements;

t Deletes requirements that the DEPARTMENT participate in chapter 120 hearings challenging the agency action of the DEPARTMENT regarding comprehensive plan amendments found to be "in compliance" by the DEPARTMENT, substantially altering the existing procedure by requiring YANKEETOWN as a municipality to defend the agency's compliance determinations[4];

u. Amends Florida Statutes 70.51(Land Use Environmental Dispute Resolution);

v. Amends the Miami River Commission powers and duties;

x. Amends the Century Commission for Sustainable Florida;

y. Creates new Rural Land Stewardship Areas; and

z. Extends expiration dates on existing permits and approvals.

[4] Even though municipalities are expressly excluded from the definition of "agency" subject to Chapter 120 under Florida Statutes §120.52(1)("*This definition does not include any municipality*")

24. The reviewing court must examine each subject in light of the various other matters affected by the act, and not simply compare each isolated subject to the stated topic of the act.

25. In this case, so many topics are contained in the 81 sections of HB 7207 (some of which do not even appear in the 6 page title section of the bill) that the Bill did not insure, as nearly as possible, that a member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic. For example, a legislator may wish to vote for certain subject contained in the Bill but against other subjects, making a vote on each individual subject contained in the Bill impossible and forcing a Hobbsian choice. Even more difficult to follow is the failure to properly notice and read by title the actual subject matters of a Bill titled and read as an unrelated subject related to "trusts."

II. Unconstitutionally Vague Terms and Improper Delegation

26. The terms "*important state resources and facilities*" and "*regionally significant resources and facilities*" contain no standards or criteria and are not defined and are therefore unconstitutionally vague and result in an improper delegation of authority.

27. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including the limitation of state agency review of comprehensive plan to those impacting "important state resources or facilities" under HB 7207 **Section 4.** Section 163.3161, Florida Statutes, which is amended to read:

> 163.3161 Short title; intent and purpose.
>
> (1) This part shall be known and may be cited as the "Community Planning Act."
>
> (2) It is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of

comprehensive planning programs to guide and manage future development consistent with the proper role of local government.

(3) It is the intent of this act to focus the state role in managing growth under this act to protecting the functions of **important state resources and facilities**[5]. (emphasis added)

28. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including HB 7207 **Section 8**: Section 163.3168, Florida Statutes, is created to read:

163.3168 (3) "The state land planning agency shall help communities find creative solutions to fostering vibrant, healthy communities, while protecting the functions of important state resources and facilities. The state land planning agency and all other appropriate state and regional agencies may use various means to provide direct and indirect technical assistance within available resources. **If plan amendments may adversely impact important state resources or facilities**, upon request by the local government, the state land planning agency shall coordinate multi-agency assistance, if needed, in developing an amendment to minimize impacts on such resources or facilities."

29. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including HB 7207 Section 17 amending Section 163.3184, Florida Statutes, to read:

163.3184 (3) EXPEDITED STATE REVIEW PROCESS FOR ADOPTION OF 4664 COMPREHENSIVE PLAN AMENDMENTS.

…

(b) 2. The reviewing agencies and any other local government or governmental agency specified in subparagraph 1. may provide comments regarding the amendment or amendments to the local government. **State agencies shall only comment on important state resources and facilities** that will be adversely impacted by the amendment if adopted. Comments provided by state agencies shall state with specificity how the plan amendment will adversely impact an important state resource or facility and shall identify measures the local government may take to eliminate, reduce, or mitigate the adverse

[5] Further, the definition of "Sector Plan" in new sub (42) refers to "regionally significant resources and facilities" indicating that the terms are likely intended to mean different things.

impacts. Such comments, if not resolved, may result in a challenge by the state land planning agency to the plan amendment.

…

(b)4. Comments to the local government from state agencies **shall be limited to the following subjects as they relate to important state resources and facilities** that will be adversely impacted by the amendment if adopted:

…

h. The state land planning agency **shall limit its comments to important state resources and facilities** outside the jurisdiction of other commenting state agencies and may include comments on countervailing planning policies and objectives served by the plan amendment that should be balanced against potential adverse impacts **to important state resources and facilities.**

Beyond lack of delineation of important state resources, upon what will the DEPARTMENT base its comments? The term "important state resources and facilities" is so vague and without legislative guidance as to be an unconstitutional delegation.

30. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including amendments to the following section of Florida Statutes:

163.3184(4) STATE COORDINATED REVIEW PROCESS.—

…

(d) "If the state land planning agency elects to review a plan or plan amendment specified in paragraph (2)(c)(a), the agency shall issue a report giving its objections, recommendations, and comments regarding the proposed plan or plan amendment within 60 days after receipt of the complete proposed plan or plan amendment. Notwithstanding the limitation on comments in sub-subparagraph (3)(b)4.g., the state land planning agency may make objections, recommendations, and comments in its report regarding whether the plan or plan amendment is in compliance and whether the plan or plan amendment **will adversely impact important state resources and facilities.** Any objection regarding an important state resource or facility that will be adversely impacted by the adopted plan or plan amendment shall also state with specificity how the plan or plan amendment will adversely impact the **important state resource or facility** and shall identify measures the local government may take to eliminate, reduce, or mitigate the adverse impacts."

This gives the state land planning agency complete discretion with no guidance to make a decision as to important state resources and facilities and whether or not to review or find not in compliance proposed plan amendments will adversely impact "important state resources and facilities" for example, an Outstanding Florida Water, lands adjoining OFWs, the Everglades, proposed rural land stewardship areas, proposed sector plans, updates of comprehensive plans based on an evaluation and appraisal, and even new plans for newly incorporated municipalities. This gives the state land planning agency unconstitutional discretion with no guidance to make its decision and rulemaking to implement this language is prohibited.

31. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including amendments to the following section of Florida Statutes:

> 163.3184(5)(b) "The state land planning agency may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57, with a copy served on the affected local government, to request a formal hearing to challenge whether the plan or plan amendment is in compliance as defined in paragraph (1)(b). The state land planning agency's petition must clearly state the reasons for the challenge.
>
> 1. The state land planning agency's challenge to plan amendments adopted under the expedited state review process shall be limited to the comments provided by the reviewing agencies pursuant to subparagraphs (3)(b)2.-4., upon a determination by the state land planning agency that an **important state resource or facility** will be adversely impacted by the adopted plan amendment. The state land planning agency's petition shall state with specificity how the plan amendment will adversely impact the **important state resource or facility."**

This gives the state land planning agency unconstitutional discretion with no guidance to make its decision as to "important state resources and facilities" and rulemaking to implement this language is prohibited.

32. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including amendments to the following section of Florida Statutes:

> 163.3184(5)(c)(3) "In challenges filed by the state land planning agency that require a determination by the agency that an **important state resource or facility** will be adversely impacted by the adopted plan or plan amendment, the local government may contest the agency's determination of **an important state resource or facility**. The state land planning agency shall prove its determination by **clear and convincing evidence**."

This gives the state land planning agency unconstitutional discretion with no guidance to make its decision at to important state resources and facilities "by clear and convincing evidence" and rulemaking to implement this language is prohibited.

36. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including HB 7207 Section 28, which allows approval of sector plans without sufficient standards or criteria to guide the determination of "**regionally significant**" resources and facilities by the agency:

> 163.3245 Optional Sector plans.—
>
> (1) "In recognition of the benefits of long- range planning for specific areas, local governments or combinations of local governments may adopt into their comprehensive plans a plan an optional sector plan in accordance with this section. This section is intended to promote and encourage long- term planning for conservation, development, and agriculture on a landscape scale; to further the intent of s. 163.3177(11), which supports innovative and flexible planning and development strategies, and the purposes of this part, and part I of chapter 380; to facilitate protection of **regionally significant resources,** including, but not limited to, **regionally significant water courses and wildlife corridors**; and to avoid duplication of effort in terms of the level of data and analysis required for a development of regional impact, while ensuring the adequate mitigation of impacts to applicable **regional resources and facilities**, including those within the jurisdiction of other local governments, as would otherwise be provided."

The use of the phrase "regionally significant resources" and the examples provided strongly suggest, under applicable rules of statutory construction, the Legislature meant for the phrase

"important state resources or facilities" to mean something different than "important state resources or facilities"…otherwise the Bill would have used the same phrase. It was not impractical for the Legislature to provide adequate statutory guidance or definition. There is no reason why the Legislature could not have identified specific geographic areas, types of issues or resources, or factors that would guide a determination as to what is an "important state resource or facility" and an "important regional resource or facility." HB 7207 gives the state land planning agency unconstitutional discretion with no guidance to make its decision and rulemaking to implement this language is prohibited.

37. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including substantive requirements for approval of sector plans:

> 163.3245 (3)(a) "In addition to the other requirements of this chapter, a long-term master plan pursuant to this section must include maps, illustrations, and text supported by data and analysis to address the following:
>
> 5. "A general identification of **regionally significant natural resources** within the planning area based on the best available data and policies setting forth the procedures for protection or conservation of specific resources consistent with the **overall conservation and development strategy for the planning area**."

Nothing in HB 7207 governs or guides the agency with regard to the "protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area;" which "specific resources" that are to be conserved; or the "overall conservation and development strategy for the planning area." This gives the state land planning agency unconstitutional discretion with no guidance to make its decision and rulemaking to implement this language is prohibited.

38. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including amendments to Florida Statutes Section:

> 163.3245 (3) (b) "In addition to the other requirements of this chapter, the detailed specific area plans shall be consistent with the long-term master plan and must include conditions and commitments that provide for:
>
> 7. "Detailed analysis and identification of specific measures to ensure the protection and, as appropriate, restoration and management of lands within the boundary of the detailed specific area plan identified for permanent preservation through recordation of conservation easements consistent with s. 704.06, which easements shall be effective before or concurrent with the effective date of the detailed specific area plan of **regionally significant natural resources** and **other important resources** both **within and outside the host jurisdiction**."

HB 7207 vests unbridled discretion to approve a detailed specific area plan without any substantive guidelines as to the amount or quality of lands that must be preserved as a condition of approval. This gives the state land planning agency unconstitutional discretion with no guidance to make its decision and rulemaking to implement this language is prohibited.

39. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including amendments to Florida Statutes Section:

> 163.3245 (3) "In its review of a long-term master plan, the state land planning agency shall **consult with** the Department of Agriculture and Consumer Services, the Department of Environmental Protection, the Fish and Wildlife Conservation Commission, and the applicable water management district regarding the design of areas for protection and conservation of **regionally significant natural resources** and for the protection and, as appropriate, restoration and management of lands identified for permanent preservation."

The language is unconstitutionally vague and there are no standards or criteria in HB 7207 to guide the agency as to the amount or quality of lands that must be preserved as a condition of approval vesting unbridled discretion in the agency. This gives the state land planning agency unconstitutional discretion with no guidance to make its decision as to what constitutes "regionally significant natural resources" and rulemaking to implement this language is prohibited.

40. HB 7207 contains unconstitutionally vague language and is an unlawful delegation of legislative authority including amendments to the following section of Florida Statutes:

> 163.3245 (3)(a) "In addition to the other requirements of this chapter, a long-term master plan pursuant to this section must include maps, illustrations, and text supported by data and analysis to address the following:
>
> 6. General principles and guidelines **addressing** the urban form and the interrelationships of future land uses; the protection and, as appropriate, restoration and management of lands identified for permanent preservation through recordation of conservation easements consistent with s. 704.06, which shall be phased or staged in coordination with detailed specific area plans to reflect phased or staged development within the planning area; achieving a more clean, healthy environment; limiting urban sprawl; providing a range of housing types; protecting wildlife and natural areas; advancing the efficient use of land and other resources; and creating quality communities of a design that promotes travel by multiple transportation modes; and enhancing the prospects for the creation of jobs."

Further, Rule 9J-5 F.A.C. establishing standards and criteria for review of such plan amendments was repealed by HB 7207 Chapter 2011-139 Laws of Florida Section 72. The substitution and use of the word "addressing" without implementing regulations is virtually meaningless and is so vague as to be unconstitutional because it fails to contain standards or criteria that can be applied with any degree of certainty and vests unbridled discretion in the DEPARTMENT to approve or deny a long-term master plan without any substantive guidelines as to the type, amount or quality of lands that must be preserved as a condition of approval. This gives the state land planning agency unconstitutional discretion with no guidance to make its decision and rulemaking to implement this language is prohibited.

41. The Florida Supreme Court has held that "a corollary of the doctrine of unlawful delegation is the availability of judicial review. In the final analysis it is the courts, upon a challenge to the exercise or non-exercise of administrative action, which must determine whether

the administrative agency has performed consistently with the mandate of the legislature. When legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law" Cross Keys Waterways at 918-919.

42. Further definition, perhaps through executive branch rulemaking, would be necessary to implement the vague legislative statutory language. However, HB 7207 also repeals and prohibits rulemaking interfering with the separation of powers between the legislative and executive branch of government. Chapter 2011-139 Laws of Florida Section 8 creates a *new* Section 163.3168(4), Florida Statutes to wit:

> (4) "The state land planning agency shall provide, on its website, guidance on the submittal and adoption of comprehensive plans, plan amendments, and land development regulations. Such **guidance shall not be adopted as a rule** and is exempt from s. 120.54(1)(a)"

and HB 7207 repeals Section 163.3177(9) & (10) which were DCA's specific authority to adopt rules[6]. See Chapter 2011-139 Laws of Florida pp. 46-47. HB 7207 Chapter 2011-139 Laws of Florida as adopted unconstitutionally interferes with and violates the Florida Constitution's separation of powers, *Id*, and impermissibly blurs the separation of powers and upsets the checks and balances between branches of government. Art. II, Section 3, Florida Constitution[7].

[6] Specific statutory authority is required for rulemaking, Section 120.536, Florida Statutes (2010). Section 120.57(1)(e)(1), Florida Statutes prohibits agency's from basing an agency action that determines the substantial rights of a party upon an un-adopted rule.

[7] Article II, Section 3, Florida Constitution: "Branches of government. The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

RELIEF REQUESTED

WHEREFORE, Plaintiff requests the Court enter an Order under Florida Statutes Chapter 86 and § 86.061 and 86.011 Florida Statutes (2010):

1. Declaring HB 7207 Chapter 2011-139 Laws of Florida to be unconstitutional;
2. Striking and enjoining the amendments contained in HB 7207 Chapter 2011-139 Laws of Florida;
3. And any other relief the Court deems appropriate.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via US Mail or delivery on this Friday July 29, 2011 to:

DEPARTMENT OF COMMUNITY AFFAIRS,
SECRETARY AND GENERAL COUNSEL
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