

**IN THE CIRCUIT COURT FOR THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

1000 Friends of Florida, 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, Susan A. Kennedy, an individual, and Maria Wise-Miller, an individual

CASE NO.: 50 2004 CA 010993 XXXX MB

Plaintiffs,

vs.

PALM BEACH COUNTY, FLORIDA,
a political subdivision of the State of Florida, and
SCRIPPS RESEARCH INSTITUTE, INC. a
California nonprofit public benefit corporation.

Defendant.

**FIRST AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs, 1000 Friends of Florida, Inc., the Florida Wildlife Federation (“FWF”), the Jupiter Farms Environmental Council, d/b/a the Loxahatchee River Coalition (“LRC”), Susan A. Kennedy, and Maria Wise-Miller (“Plaintiffs”) file this Complaint for Declaratory and Injunctive Relief against the Defendants, Palm Beach County and Scripps Research Institute, Inc. and state as follows:

NATURE OF THE ACTION

1. Plaintiffs challenge Palm Beach County’s approval of five (5) development orders, rezonings, waivers, and requested use approvals (“Development Orders”) for the Palm Beach County Biotechnology Research Park (“Biotech Park”) at the Mecca Farms location, as inconsistent with the Palm Beach County Comprehensive Growth Management Plan (“County

Plan”). Said Development Orders were rendered on October 22, 2004. This action is brought pursuant to §163.3215, Fla. Stat., to enjoin violations of the adopted and effective Palm Beach County Comprehensive Growth Management Plan. The Plaintiffs seek a declaration that said Development Orders are inconsistent with the Palm Beach County Comprehensive Plan, as well as state law, and a permanent injunction against any construction or related activity pursuant to said development orders.

2. Plaintiffs challenge the Development Orders as illegal contract zoning actions, and seek their invalidation on that ground, and a permanent injunction against any construction or related activity pursuant to said Development Orders.

PARTIES AND STANDING

3. Plaintiff, 1000 Friends of Florida, Inc. is a Florida not-for-profit corporation whose purposes include monitoring and ensuring the proper implementation of the State's growth management laws.

4. 1000 Friends has more than 150 members in Palm Beach County, which constitutes a substantial number of members.

5. 1000 Friends membership within Palm Beach County includes a substantial number of members who reside in close proximity to the parcels of land at issue and who regularly use the natural resources that will be degraded the subject development.

6. 1000 Friends maintains an office in Palm Beach County at 1029 North Lakeside Drive Lake Worth, 33460.

7. 1000 Friends' organizational purposes include the representation of its members in legal proceedings to enforce Florida's growth management laws. The type of relief sought by 1000 Friends in this case is appropriate for the organization to receive on behalf of its members.

8. 1000 Friends of Florida and a substantial number of its members are actively engaged in efforts to preserve and restore the Loxahatchee River. 1000 Friends 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.

9. Petitioner 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 in Palm Beach County.

10. FWF’s interests are affected by the challenged agency action because the challenged action jeopardizes its members use and enjoyment of 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 action jeopardizes its members use and enjoyment of the Corbett Wildlife Management Area for activities such as bird watching, camping, hunting and fishing.

11. Plaintiff Jupiter Farms Environmental Council, Inc. is a Florida non-profit, environmental and community organization incorporated in 2001, which has more than 50 members in Palm Beach County, and which does business as the Loxahatchee River Coalition (“LRC”).

12. 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 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.

13. 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 County's proposed development will degrade the rural character of several communities, and significantly harm LRC members quality of life.

14. Petitioner, Susan A. Kennedy, is an individual who resides at 16343 Jupiter Farms Road, Jupiter, Florida, in Palm Beach County.

15. Petitioner, Susan A. Kennedy, uses the Loxahatchee River corridor, the C-18 right-of-way, the Hungryland Slough, the Loxahatchee Slough and the Corbett Wildlife Management Area, for recreational purposes, including canoeing, kayaking, hiking, horseback riding and bird watching.

16. Susan A. Kennedy, who is a resident in Jupiter Farms, a rural area of Palm Beach County, will be adversely affected by the County's proposed development due to increased traffic, roadway expansion, urbanization and the loss of rural character of her community and loss of rural aesthetic. 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. The density and intensity of the proposed development will cause roads throughout the County to be overburdened, including roads adjacent to the Jupiter Farms community.

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

18. Maria Wise-Miller will be adversely affected by this action 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 aesthetic, 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.

19. 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 Plaintiffs will be reduced and adversely affected by the Development Orders.

20. Plaintiffs have an interest in the Corbett Wildlife Management Area being maintained as conservation lands that will be adversely affected by the Development Orders. Because the Mecca Farms site is located within drainage the basin and historic headwaters of the Loxahatchee River, and is surrounded on three sides by environmentally sensitive lands, construction of the authorized development on that location would degrade the Loxahatchee Slough, the Corbett Wildlife Management Area, the Hungryland Slough, and the Loxahatchee River.

21. Plaintiffs 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.

22. 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 will negatively impact the use and enjoyment of these areas by Plaintiffs and their members.

23. Plaintiffs are an aggrieved or adversely affected party under Section 163.3215, Fla. Stat., in that they will suffer an adverse effect to an interest protected or furthered by the County's Comprehensive Plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, equipment or services, and environmental or natural resources, which exceed in degree the general interest in community good shared by all persons in the County.

24. Defendant, Palm Beach County ("County") is an unincorporated county (local government) that is statutorily required to adopt and implement a local comprehensive plan and to ensure that all development orders approved by the County are consistent with its adopted Comprehensive Plan under Chapter 163, Part II, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act.

25. Defendant, Scripps Research Institute, Inc. ("Scripps") is a California nonprofit public benefit corporation.

JURISDICTION AND VENUE

26. This Complaint for Declaratory and Injunctive Relief is filed pursuant to §163.3215(3), Fla. Stat., which authorizes actions for injunctive and other relief to prevent the issuance of development orders that are inconsistent with adopted local government comprehensive plans.

27. A Complaint pursuant to §163.3215, Fla. Stat., is the sole method available for challenging a development order for inconsistency with a local comprehensive plan.

28. The real property at issue is composed of approximately 1919 acres located within the unincorporated area of Palm Beach County.

29. Pursuant to §163.3215(3), Fla. Stat. this Complaint is filed within 30 days of the rendition of the final action on the development order.

30. The Circuit Court has jurisdiction of the subject matter of this action pursuant to Florida Constitution, Article V, Section 20 and §§163.3215(5), 26.012(3), and 26.012 (2)(a), Fla. Stat. Pursuant to §163.3215(5), Fla. Stat., venue in this action lies in Palm Beach County because the challenged action was taken by the Palm Beach County Board of County Commissioners and occurred within Palm Beach County, Florida.

31. This Court has jurisdiction to enter declaratory and injunctive relief pursuant to Chapter 86, Florida Statutes and Rule 1.610 Fla. R. Civ. P.

32. Scripps has sufficient minimum contacts, including contracting with the County, within the State Florida and is qualified to do business in the State of Florida as a foreign corporation which subjects them to the jurisdiction of this court.

PROCEDURAL HISTORY

33. On September 20, 2004, at a public hearing, the Palm Beach County Commission, approved on first reading Resolutions R-2004-2101, R-2004-2102, R-2004-2103, R-2004-2104, R-2004-2105 approving development orders, rezonings, waivers, and requested uses to accommodate the Biotech Research Park at Mecca Farms.

34. Second reading and final approval of these items was scheduled for October 5, 2004, however these items were continued to October 13, 2004 due to the effects of Hurricane Jeanne.

35. The aforementioned Resolutions were finally approved by the Palm Beach County Commission at a public hearing on October 13, 2004 and were filed with the Palm Beach County Clerk, and thus rendered, on October 22, 2004.

36. Also on October 13, 2004 Palm Beach County adopted six amendments to its comprehensive plan which attempt and purport to amend the plan in such a manner that would authorize the approval of said development orders. By operation of state law, those amendments are not yet legally effective, may not become legally effective, and cannot become legally effective unless and until the taking of subsequent formal action by the state of Florida and, depending upon such state action, the taking of a subsequent formal action by the Palm Beach County Board of County Commissioners. See sections 163.3184(9), (10), and (11), Fla. Stat.

37. On November 22, 2004, Plaintiffs filed their initial complaint in this action.

38. On December 2nd, 2004, Defendant, County, filed their Answer with Affirmative Defenses.

THE DEVELOPMENT APPROVALS

39. The challenged development orders are as follows:

- a. **Resolution R-2004-2101** – a Resolution approving a development of regional impact for the Palm Beach County Biotechnical Research Park on Mecca Farms;
- b. **Resolution R-2004-2102** – a Resolution approving a Zoning Map amendment (rezoning) for a Research Park Assessorly Multi Use Site on land with a current Future Land Use designation as Conservation within the Corbett Wildlife Management Area;

- c. **Resolution R-2004-2103** – a Resolution approving requested uses within Biotechnical Research Park including one or more of the following: 1) college or university; 2) daycare general; 3) dog daycare (2); 4) financial institution (2); 5) hospital or medical center; 6) laboratory, research; 7) school, elementary or secondary; and, 8) removal of excess fill (excavation, type ii);
- d. **Resolution R-2004-2104** – a Resolution authorizing a waiver to reduce required separation of excavation from residential land use; and
- e. **Resolution R-2004-2105** – a Resolution approving a zoning map from the Agricultural Residential and Special Agricultural Zoning Districts to Planned industrial park development district.

THE LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT REGULATION ACT

40. Chapter 163, Part II, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act (“Act”), requires each local government in Florida to prepare and adopt a local comprehensive plan containing mandatory elements that govern future land uses, protection of natural resources, and other issues. §163.3161, et seq., Fla. Stat. The Act requires that, after a local government has adopted its comprehensive plan, all actions taken by the local government in regard to development orders and all development be consistent with the adopted local comprehensive plan and plan elements thereof. §§163.3161(5), 163.3184(7), and 163.3194(1)(a), Fla. Stat.

41. The Act defines “development order” as any order granting, denying, or granting with conditions an application for a development permit. §163.3164(7), Fla. Stat. The Act defines development permit as "any building permit, zoning permit, subdivision approval, rezoning,

certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land." §163.3164(8), Fla. Stat.

42. The challenged approvals constitute development orders under the Act.

43. The Act provides for citizen enforcement of the consistency requirement. §§163.3215(1) and (3), Fla. Stat., provide that "any aggrieved or adversely affected party" may bring a civil action for injunctive or other relief against any local government to prevent the local government "from taking action on a development order, as defined in s.163.3164, which materially alters the use or density or intensity of use" on a tract of property in a manner that is not consistent with the adopted local comprehensive plan.

THE DEVELOPMENT ORDERS ARE INCONSISTENT WITH PALM BEACH COUNTY'S
COMPREHENSIVE PLAN

44. The Development Orders are inconsistent with the duly adopted Palm Beach County Comprehensive Plan for the following reasons:

Inconsistent With Adopted, Effective Comprehensive Plan

45. The future land use designation of the Mecca Farms site is Rural Residential 10 (RR10) and the site is located within the County's Rural Tier.

46. Under the County's Comprehensive Plan, the Rural Tier is designated for the promotion and encouragement of the continuation of rural uses and agricultural uses and low intensity development, and for the provision of a rural level of service. The Comprehensive Plan discourages over-development in the Rural Tier by limiting the provision of services or infrastructure which is incompatible with a rural lifestyle. (PBC Comprehensive Plan, Future Land Use Element (FLUE Objective 1.1(3))).

47. The challenged development orders are inconsistent with the Plan because they fail to protect rural residential, equestrian, and agricultural areas within the rural tier by failing to

preserve and enhance the rural landscape, failing to provide facilities and services consistent with the character of the area, failing to preserve and enhance natural resources, and failing to ensure development is compatible with the scale, mass, intensity, height, and character of the rural community as required by Comprehensive Plan FLUE Objective 1.4.

48. The Comprehensive Plan prohibits the PIPD zoning district within the Rural Tier. (*PBC Comprehensive Plan FLUE Policy 1.4-a*). Resolution R-2004-2105 is inconsistent with this Policy because it grants PIPD zoning within the Rural Tier.

49. Each of the development orders are incompatible with surrounding uses and are inconsistent with a primary tenet of the Comprehensive Plan, to focus and redirect all growth as much as possible to the eastern portions of the county. (PBC Comprehensive Plan, Administration Element, page 1.)

50. Resolution R-2004-2105, which rezones the Mecca Farms site to the PIPD zoning category, and the each of the related Development Orders, will significantly increase the density and intensity on the site, and will require major new public investments in capital facilities and related services in the Rural Tier. This is inconsistent with Comprehensive Plan FLUE Policy 1.4-k, which prohibits future land use decisions that increase density and/or intensity which would require major new public investments in capital facilities and related services in the Rural Tier.

51. Each of the challenged development orders fail to result in a logical and orderly development pattern as required by the Plan. (PBC Comprehensive Plan, FLUE, Page 1-IA)

52. Each development order is inconsistent with Comprehensive Plan FLUE Policy 2.1-f, which requires that future land use designations, and corresponding density and intensity assignments, 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.

53. The proposed rezoning for the Research Park Accessory Multi-use Site (Z2004-351) from the Preservation / Conservation Zoning District to the Public Ownership Zoning District is not consistent with the existing Conservation land use designation of the Comprehensive Plan and is not compatible with surrounding land uses.

Development Order Approved Based on Comprehensive Plan Amendments Not Yet In Effect

54. The Development Orders are inconsistent with the Comprehensive Plan. They were evaluated and approved based upon plan amendments which were not in effect at the time the development orders were approved, which have yet to go into effect, and which may not ever become effective. Development Order R-2004-2101 contains as clause as follows¹: “This Development Order shall become effective upon the effective date of the amendments to the Palm Beach County Comprehensive Plan adopted in amendment round 2004-04 ERP.” (App. Ex. 1).

55. State law does not provide for such “contingent” consistency with comprehensive plans. Regarding the legal effect of comprehensive plans and plan amendments, Section 63.3189(2)(a), Fla. Stat. provides that:

“Plan amendments shall not become effective until the state land planning agency issues a final order determining the adopted amendment to be in compliance..., or until the Administrative Commission issues a final order determining the plan amendment to be in compliance.”

56. The Comprehensive Plan Amendments adopted by the County Commission on October 13, 2004 are not yet effective because the state land planning agency has not issued a final order determining the plan amendments to be in compliance with state law. See §163.3189(2)(a), Fla.

¹ None of the other four Development Orders contains this language.

Stat.

57. To the contrary, the State of Florida, Department of Community Affairs, under its authority under the Local Government Comprehensive Planning and Land Development Act, (Ch. 163, Part II, Fla. Stat.) issued a Notice of Intent to find the proposed amendments not in compliance on November 16, 2004.

58. Under state law, other affected persons, have 21 days after that date to intervene in support of that administrative challenge and raise issues of non-compliance beyond those raised by the state. S. 163.3184(10), Fla. Stat.

59. Until such time as the plan amendment challenge is resolved by the issuance of a final order by the state of Florida determining the Plan Amendments to be “in compliance” with the Act, the Amendments will not be effective, and thus the development orders are not consistent with the County’s comprehensive plan, as required by Section 163.3194.

60. The County is not permitted to rely upon a not yet adopted comprehensive plan when making a decision on a development order. See, *Gardens County Club v. Palm Beach County*, 590 So.2d 488, 491 (Fla.4th DCA 1992). Development order decisions made prior to the adoption of necessary comprehensive plan amendments are inconsistent with the Comprehensive Plan. Florida courts require strict compliance with the statutory requirement that all development orders be consistent with the comprehensive plan. *Pinecrest Lakes, Inc. v. Shidel*, 795 So. 2d 191 (Fla 4th DCA 2001).

Count 1

Declaratory and Injunctive Relief

The Development Orders Are Inconsistent with the Palm Beach County Comprehensive Plan and Violate Section 163.3215 et al. Fla. Stat.

61. Plaintiffs reallege and incorporate the allegations in paragraphs 1 – 56 above.

62. The Parties to this Count are Plaintiffs and Palm Beach County.
63. This is an action for a declaratory judgment and for permanent injunctive relief under Section 163.3215 et al, Fla. Stat.
64. Resolutions R-2004-2101, R-2004-2102, R-2004-2103 R-2004-2104, and R-2004-2105 are development orders under Section 163.3215 et al., Fla. Stat.
65. Plaintiffs are entitled to declaratory and injunctive relief to invalidate the development orders as a matter of law because the development orders are inconsistent with the local government comprehensive plan and thus violate state law. 163.3215, Fla. Stat.

WHEREFORE, for all of the reasons above, Plaintiffs ask that the Court:

- A. Declare that the Development Orders are invalid and inconsistent with the Palm Beach County Comprehensive Plan.
- B. Declare that the Development Orders are invalid and inconsistent with Sections Section 163.3194 and 163.3215 et al., Fla. Stat.
- C. Permanently enjoin the Defendant, Palm Beach County from implementing the Development Orders by any means, including the issuance of any further, additional or subsequent development orders related to or based upon said development orders.
- D. Enjoin Defendant Palm Beach and all persons acting under it, from using the Mecca Farms property or making improvements thereon, for development of it in any manner except as permitted under the applicable provisions of the Palm Beach County Comprehensive Plan;
- E. Award costs of this action to Plaintiffs; and,
- F. Grant Plaintiffs such other and further relief as the Court may deem just, proper, and necessary.

COUNT 2.

DECLARATORY AND INJUNCTIVE RELIEF
THE DEVELOPMENT ORDERS ARE INVALID CONTRACT ZONING

66. The Plaintiffs reallege and incorporate the allegations in paragraphs 1 – 56.
67. The Parties to this Count are Plaintiffs, Palm Beach County and Scripps Research Institute, Inc.
68. The Board of County Commissioners of Palm Beach County is party to a Contract with the Scripps Research Institute.
69. On or around February 9, 2004, Palm Beach County entered into a Grant Agreement with The Scripps Research Institute, a California nonprofit public benefit corporation. A copy of the “Grant Agreement” is attached as Exhibit A.
70. The Grant Agreement obligates Palm Beach County to deliver Scripps the Scripps Campus by January 3, 2005. The Scripps Campus is defined as One hundred acres of land located within the Mecca Site to be identified by mutual agreement of the parties in accordance with Part V(B), or the Alternative Location to be identified by mutual agreement of the parties in accordance with Part V(M)(2).
71. On February 17, 2004, Palm Beach County entered an Assignment and Modification of Contract for Sale and Purchase between the Business Development Board of Palm Beach County, Inc, Palm Beach County, and Lantana Farm Associates, Inc. The Assignment is for the purchase of property located in the northwest quadrant of Northlake Boulevard and Grapeview Boulevard in unincorporated Palm Beach County, Florida, containing not less than One Thousand Nine Hundred Twenty acres of land. This property is identified in the Grant Agreement as the “Mecca site.”. The Assignment and Modification of Contract for Sale and Purchase is attached as Exhibit C.

72. The Grant Agreement obligates the County to obtain an assignment of the Mecca Contract to the County and to Close the transaction contemplated by the Mecca Contract on or before January 3, 2005.

73. The Grant Agreement requires the County to apply for various changes to its comprehensive plan, zoning map and development code to accommodate the development of the Scripps Campus on the Mecca Farms site. These obligations include the following:

- a. Prepare and file complete applications for a DRI Development Order, Comprehensive Land Use Atlas amendment, and rezoning required to construct Two million square feet of Gross Floor for laboratory, office and ancillary uses on the Scripps Campus and to “use its best efforts” to prepare and file , at no cost to Scripps, complete applications for all other Development Orders required to construct Two Million square feet of Gross Floor Area for laboratory, office and ancillary uses on the Scripps Campus, as soon as reasonable practicable.
- b. Prepare amendments to the Comprehensive Plan and Palm Beach County Unified Land Development Code necessary to permit the development of the Mecca Site, including, but not limited to the extension of PGA Boulevard to the Mecca site.
- c. Prepare, file and process a concurrency application and request a concurrency reservation for Two Million square feet of Gross Floor Area for laboratory, office and ancillary uses on the Scripps Campus “to ensure that sufficient Infrastructure is available to serve the buildout of the Scripps Campus.
- d. The applications to be prepared by County staff shall “ permit a sufficient intensity of uses so as to enable Scripps to meet the obligations and goals of Scripps as set forth in this Agreement.”

- e. Prepare and record any plat necessary for Scripps to receive the building permits necessary to construct the “Permanent Facilities.”

74. The Grant Agreement obligates Palm Beach County to design and construct certain Infrastructure to serve the Mecca site.

75. Part V Paragraph D of the Grant Agreement states Palm Beach County’s obligation to provide Infrastructure to the Mecca site:

Scripps acknowledges that construction of particular Infrastructure improvements, including, but not limited to, extension of PGA Boulevard, may be contingent upon adoption of amendments to the Palm Beach County Comprehensive Plan and other Palm Beach County Ordinances; provided, however, *the County acknowledges that Scripps has relied on representations made by the County that it will use its reasonable best efforts, to the extent permitted by law, to provide sufficient Infrastructure: (i) by January 3, 2005 to commence construction of the Permanent Facilities on the Scripps Campus. . .*

76. The Board of County Commissioners of Palm Beach County interprets the Contract as requiring it to build the biotech park on the Mecca Farms location. According to the County’s legal counsel, “Scripps and Palm Beach County are contractually bound to one another to build the proposed biomedical research park on the 1900 acre Mecca Property.” Memo attached as Exhibit B.

77. County Commissioners were advised prior to the public hearing at which the Development Orders were approved that the County was contractually obligated to provide the Mecca Farms site to Scripps, and that should the County breach the contract, it, “would risk a major claim for damages from Scripps and would open the door to the County losing the opportunity to have Scripps locate in Palm Beach County.”

78. As a result of the Contract, the Board of County Commissioners had contracted its police power away and was unable to exercise that power based on the facts and the law at the hearings

at which it approved the Development Orders. Instead, the decision resulting from the proceeding was the implementation of a previous decision to develop the Biotech Park on Mecca Farms, and the County was both applicant / proponent and decision-maker.

79. The Plaintiffs are in doubt as to their rights, status and legal relations with regards to the actions of the County.

80. There is a bona fide, actual, present practical need for this Court's declaration of rights, without which the Plaintiffs will suffer irreparable injury.

81. There is no adequate remedy at law and Plaintiffs/Petitioners have no administrative remedy.

82. The Contract and the Development Orders are *ultra vires* and invalid contracts that delegate the County's police powers to a private person. See, Morgran Company v. Orange County, 818 So. 2d 640 (Fla. 5th DCA 2002)(a municipality cannot contract away the exercise of its police powers), Chung et al. v. Sarasota, et al., 686 So. 2d 1358 (Fla. 2nd DCA 1996), quoting Hartnett v. Austin, 93 So. 2d 86 (Fla. 1956), as follows:

“If each parcel of property were zoned on the basis of variables that could enter into private contracts then the whole scheme and objective of community planning and zoning would collapse. The residential owner would never know when he was protected against commercial encroachment. . . . The adoption of an ordinance is the exercise of municipal legislative power. In the exercise of this governmental function a city cannot legislate by contract. If it could, then each citizen would be governed by an individual rule based upon the best deal that he could make with the governing body.”

83. The County has a legal obligation under Chapter 163, Part II, Fla. Stat., to apply its comprehensive plan, codes and ordinances equally to all persons and all properties and in a uniform fashion and not to abrogate this obligation by contract.

WHEREFORE, Plaintiffs, seek the following relief:

- A. That this Court declares that Contract and the Development Orders *ultra vires* and invalid.
- B. That this Court permanently enjoin the Defendants, Palm Beach County and Scipps, from implementing the Contract and the Development Orders.
- C. That this Court quash the Contract and the Development Orders.
- D. That this Court issue such further orders as it deems just and practicable and award Plaintiffs costs.

RESPECTFULLY SUBMITTED this 23rd day of December 2004

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