



STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary

April 1, 2009

The Honorable Pam Iorio, Mayor
City of Tampa
306 East Jackson Street
Tampa, Florida 34602

Dear Mayor Iorio:

The Department has completed its review of the City of Tampa's EAR-based Comprehensive Plan Amendment; DCA Number 09-1AR adopted by Ordinance Number 2009-26, on February 9, 2009, and has determined that portions of it pertaining to compatibility with MacDill Air Force Base (Future Land Use Element Objective 19.7 and associated Policies 19.7.1 through 19.7.9, and 19.7.11 through 19.7.16) are not "in-compliance" with the requirements of Chapter 163, Part II, Florida Statutes (F.S.) and Rule 9J-5, Florida Administrative Code (F.A.C.). The Department finds the remaining portions of the Ordinance pertaining to other amendments "in-compliance." The Department is therefore issuing a Statement of Intent and Notice of Intent to find the Amendment partially not "in-compliance," and partially "in-compliance." The Notice of Intent has been sent to the Tampa Tribune for publication on April 2, 2009.

Please note that a copy of the adopted Amendment and the Department's Statement of Intent and Notice of Intent to find the Amendment not "in-compliance" must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the City of Tampa Municipal Building, 306 East Jackson Street Tampa, Florida 34602. Also, Section 163.3184 (8)(c)2, F.S., requires a local government that has an Internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the Notice of Intent.

Although the Notice of Intent and the Statement of Intent must be forwarded to the Division of Administrative Hearings of the Department of Management Services for the scheduling of an administrative law judge pursuant to Section 120.57, F.S., we are interested in meeting with you and your staff at your convenience for the purpose of developing an acceptable solution to the not "in-compliance" finding.

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100

850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: www.dca.state.fl.us

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7956 (p) 850-922-5623 (f) ♦

The Honorable Pam Iorio, Mayor
April 1, 2009
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If you have any questions, or are interested in discussing a compliance agreement, please contact Mr. Shaw Stiller, General Counsel at 850-922-1685.

Sincerely,

A handwritten signature in black ink that reads "Mike McDaniel". The signature is written in a cursive, flowing style.

Mike McDaniel, Chief
Office of Comprehensive Planning

MM/caw

Enclosure: Notice of Intent

cc: Mr. Manny Pumariega, Executive Director, Tampa Bay Regional Planning Council
Mr. Robert B. Hunter, FAICP, Executive Director, Hillsborough County Planning
Commission
Mr. Randy Goers, Growth Management and Development Services, City of Tampa

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: CITY OF TAMPA
COMPREHENSIVE PLAN AMENDMENT
09-1AR; PERTAINING TO THE TEXT OF
THE COMPREHENSIVE PLAN
REGARDING THE FAILURE TO UPDATE
THE PLAN TO INCLUDE ADEQUATE
CRITERIA TO ACHIEVE COMPATIBILITY
OF ADJACENT OR CLOSELY PROXIMATE
LANDS WITH MACDILL AIR FORCE
BASE, ADOPTED BY ORDINANCE 2009-
26, ON FEBRUARY 9, 2009

Docket No. 09-1AR-NOI-2903

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENTS
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes (F.S.), and Rule 9J-11.012(6), Florida Administrative Code (F.A.C), hereby issues this Statement of Intent to find portions of Ordinance Number 2009-26, for the City of Tampa amendment package (DCA Number 09-1AR) adopted on February 9, 2009, relating to Future Land Use Element Objective 19.7 and associated Policies 19.7.1 through 19.7.9 and 19.7.11 through 19.7.16, regarding criteria to achieve compatibility of adjacent or closely proximate lands with MacDill Air Force Base, Not In Compliance based upon the Objections, Recommendations and Comments Report (“ORC Report”) issued by the Department on October 10, 2008. The Department finds that the aforementioned objective and related policies are not “in compliance,” as defined in Section 163.3184(1)(b), Florida Statutes, and not consistent with Chapter 163, Part II, F.S., Chapter 9J-5, F.A.C. and the State Comprehensive Plan, Chapter 187, F.S., for the following reasons:

I. CONSISTENCY WITH CHAPTER 163, F.S., AND RULE 9J-5, F.A.C.:

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

1. Inadequate criteria for compatibility with military installation.

The City's comprehensive plan has not been updated to establish adequate criteria to achieve compatibility of adjacent or closely proximate lands with MacDill Air Force Base. The adopted Evaluation and Appraisal Report (EAR) plan update includes Objectives 19.7 and associated Policies 19.7.1 to 19.7.9, and 19.7.11 to 19.7.16 intended to address compatibility with MacDill Air Force Base. However, these policies do not include meaningful and predictable guidelines and standards as required by 9J-5.005(6), F.A.C. that will achieve compatibility of adjacent or closely proximate land uses with MacDill Air Force Base as required by Section 163.3177(6)(a), F.S.

2. Failure to implement the recommendations of the Evaluation and Appraisal Report (EAR) and update the Comprehensive Plan based on the best available data and analysis.

The City's plan has not been properly updated to implement the recommendations of the EAR with respect to achieving compatibility with MacDill Air Force Base. The City's EAR was adopted on June 22, 2006, and recognized that additional measures were needed in the comprehensive plan to adequately address compatibility with MacDill Air Force Base.

According to the EAR, in mid-2005 the City and MacDill Air Force Base conducted a Joint Land Use Study (JLUS), which is based on the 1998 MacDill Air Force Base AICUZ Study, to make policy recommendations to best manage the increasing

residential and commercial infill development occurring proximal to the Base. As stated in the City's EAR, the existing criteria in the Plan to achieve compatibility with the MacDill Air Force Base were to be amended based on the recommendations of the JLUS study. Specifically, the EAR states: "the criteria in the plan will be amended based on the recommendations of the JLUS". The JLUS was completed on June 21, 2006 and accepted by the City Council on July 20, 2006. However, the City's Comprehensive Plan has not responded to this best available data and analysis regarding compatibility with MacDill Air Force Base, since it has not been revised to incorporate the recommendations of the JLUS, as recommended by the EAR. The JLUS and the AICUZ study for MacDill Air Force Base are the best available, relevant, and appropriate data and analysis to determine appropriate criteria to achieve compatibility with MacDill Air Force Base. Thus, the City's plan has not complied with the requirements of Section 163.3177(6)(a), F.S, and Section 163.3191(10), F.S.

Authority: Sections 163.3175; 163.3177(6)(a), (8), (10)(e), (i) and (l); and 163.3191(10), F.S., Rules 9J-5.005(2) and (6); 9J-5.006(3)(c)2; and 9J-5.019(4)(c)(21), F.A.C.

B. Recommended remedial actions. The above inconsistencies may be remedied by taking the following actions:

1. Revise the plan to include adequate criteria, standards and guidelines that will achieve compatibility of adjacent or closely proximate land uses with the MacDill Air Force Base, utilizing the best available data and analysis, such as the MacDill Air Force Base Compatible Use Zone Study (AICUZ) and the Joint Land Use Study (JLUS) for MacDill

Air Force Base. The standards for noise attenuation, structure height, and the types of uses, including density of residential uses and intensity of non-residential uses, in the Noise Contour Zones, and Accidental Potential Zones (APZ) I and II should be consistent with the recommendations of JLUS and AICUZ, and should prohibit any type of development in the Air Force Base Clear Zone. The Noise contour Zones, Clear Zone, and the APZ I and II must be clearly defined in the plan and identified on the Future Land Use Map or Map series. Existing non-residential land uses in the APZ-1 should not be allowed to convert to residential uses, as recommended in the AICUZ study.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. The proposed amendment does not adequately address the State Comprehensive Plan with regard to the following goals and policies;

Goal (5)(b), Health, Policy (2)c; ensuring that future growth does not cause the environment to adversely affect the health of the population;

Goal (6)(a), Public Safety; concerning that the State shall protect the public by preventing and protecting lives and property from natural and man-made disasters;

Goal (15)(a), Land Use, Policy (b) 4; regarding developing a system of intergovernmental coordination for siting locally unpopular land uses; and

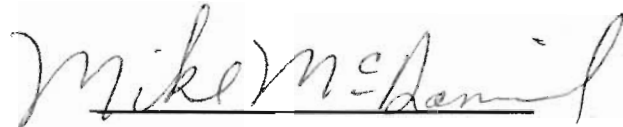
Goal (25)(a) Plan Implantation, Policy (b) 7; concerning the development of local plans that implement and accurately reflect state goals and policies that address problems, issues, and conditions that are of particular concern in a region.

- B. Recommended Remedial Action: Revise the amendment to address the inconsistent provisions contained in this statement of intent in order to be consistent with the provisions of Chapter 187, F.S.

CONCLUSIONS

1. The Amendment is not consistent with the State Comprehensive Plan.
2. The Amendment is not consistent with Chapter 9J-5, *Florida Administrative Code*.
3. The Amendment is not consistent with the requirements of Chapter 163, Part II, *Florida Statutes*.
4. The Amendment is not "in compliance," as defined in Section 163.3184(1)(b) *Florida Statutes*.
5. In order to bring the Comprehensive Plan amendment into compliance, the City may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 1st day of April 2009, at Tallahassee, Florida.



Mike McDaniel, Chief
Division of Community Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS
NOTICE OF INTENT TO FIND THE
CITY OF TAMPA
AMENDMENTS ADOPTED BY ORDINANCE NO. 2009-26
PERTAINING TO COMPATIBILITY WITH MACDILL AIR FORCE BASE (OBJECTIVE 19.7 AND
THE ASSOCIATED POLICIES 9.7.1 THROUGH 19.7.9, AND 19.7.11 THROUGH 16), OF THE
COMPREHENSIVE PLAN UPDATE
NOT IN COMPLIANCE,
AND THE REMAINING AMENDMENTS ADOPTED PURSUANT TO ORDINANCE NO. 2009-26
IN COMPLIANCE
DOCKET NO. 09-1AR-NOI-2903-(A)-(I)-(N)

The Department gives notice of its intent to find the Amendment(s) to the Comprehensive Plan for the City of Tampa amendments adopted by Ordinance No. 2009-26 pertaining to the compatibility with MacDill Air Force base (Objective 19.7 and the associated policies 9.7.1 through 19.7.9, and 19.7.11 through 16), of the comprehensive plan update on February 9, 2009 Not In Compliance, and the remaining amendments adopted pursuant to Ordinance No. 2009-26 on February 9, 2009 In Compliance, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

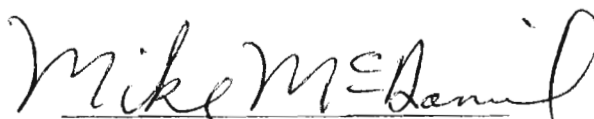
The adopted City of Tampa Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Hillsborough County Planning Commission, 601 East Kennedy, 18th Floor, Florida 33601-1110.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the City of Tampa Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399 2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendment(s) found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184 (10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.



Mike McDaniel, Chief
Office of Comprehensive Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100