

TO THE GOVERNOR OF THE STATE OF FLORIDA

IN RE: MISCONDUCT IN

BAY COUNTY, FLORIDA

RELATING TO LOCAL

GOVERNMENT EXECUTIVE CASE NO. _____

REGULATION OF LAND

DEVELOPMENT AND

RELATED PROCESSES

_____ /

**PETITION FOR A WRITTEN DIRECTION TO THE FLORIDA DEPARTMENT
OF LAW ENFORCEMENT TO INVESTIGATE MISCONDUCT IN BAY
COUNTY, FLORIDA RELATING TO LOCAL GOVERNMENT REGULATION
OF LAND DEVELOPMENT AND RELATED PROCESSES, AND FOR OTHER
RELIEF**

Petitioner, PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY (PEER), by and through counsel, respectfully petitions the Honorable Jeb Bush, Governor of the State of Florida, for a written direction to the Florida Department Of Law Enforcement (FDLE) to investigate misconduct in Bay County, Florida relating to local government regulation of land development and related processes, and for other relief, on the following grounds:

I. Gubernatorial Responsibility

1. As set forth below upon information and belief, within the past two years, pro-developer individuals in Bay County, both in and out of local government, and encouraged at least indirectly by you, have conspired to acquire and maintain an aggressive, sophisticated, and well-organized enterprise with the ultimate purpose of dismantling impediments to unbridled growth in Bay County. This enterprise has increasingly manifested itself through local public official misconduct that at a minimum constitutes abuse of the public trust.

2. Under Article IV, Section 1(a), Florida Constitution, the governor "shall take care that the laws be faithfully executed" and commissions "all officers of the state and counties."
Id.

"A public office is a public trust." *See* Art. II, § 8(a), Fla. Const. Moreover, "The people shall have the right to secure and sustain that trust against abuse." *Id.*

3. Under Section 943.03(2), Florida Statutes:

Upon specific direction by the Governor in writing to the executive director [of FDLE], the department shall investigate the misconduct, in connection with their official duties, of public officials and employees and of members of public corporations and authorities subject to suspension or removal by the Governor.

4. As demonstrated below, laws have not been faithfully executed in Bay County, Florida in relation to local government regulation of land development and related processes. It is your ultimate responsibility to see that this harmful and embarrassing spectacle of misconduct is rectified.

5. As further described below, official misconduct in Bay County related to local government regulation of land development and related processes involves some or all of the following acts or omissions: abuse of the public trust (Article II, Section 8(a), Florida Constitution); breach of the public trust for private gain and inducing others to breach the public trust for private gain (Article II, Section 5, Florida Constitution); violations of the Sunshine Law (Section 286.011, Florida Statutes); violations of the Public Records Law (Section 119.07, Florida Statutes); Ethics Code violations (Sections 112.313, 112.3143, and 112.3145, Florida Statutes); willful violations of, and conspiracy to violate, the Local Government Comprehensive Planning and Land Development Regulation Act (Part II, Chapter 163, Florida Statutes); corruption by threat against public servants (Section 838.021, Florida Statutes); violations of Rules 4-1.7 and 4-1.10 Regulating the Florida Bar; and conspiracy to violate the Sunshine Law, the Ethics Code, and Rules Regulating the Florida Bar, and to corrupt by threat public servants (Section 777.04, Florida Statutes). Further, taken together, the pattern of pro-developer control and official misconduct has been so pervasive in Bay County's regulation of land development and related processes as to constitute part of an enterprise that should be the subject of an investigation for possible violations of Florida RICO (Racketeer Influenced and Corrupt Organization) Act, Sections 895.01-895.06, Florida Statutes.

II. Previous Gubernatorial Inaction

6. You have already failed in your duties at least once within the past year with respect to Bay County's need for independent scrutiny of programs intended to protect the public trust.

7. On June 14, 2000, PEER filed with you a detailed petition for an executive order appointing a special prosecutor for fulfilling duties of the state attorney to the grand jury in the Fourteenth Judicial Circuit, which includes Bay County, as concerns environmental matters. A fundamental point raised by PEER was that the State Attorney, Jim Appleman,

has the appearance of a conflict of interest because he employs two attorneys from a law firm that also represents some of the very alleged environmental violators in Bay County that need to be investigated, and because his daughter also works for that law firm.

8. You also then realized, or should now realize, that this law firm includes a prominent supporter of your campaign, one William G. Harrison, Jr., and has significant ties not only to Bay County local government, including law enforcement and agencies involved in land use regulation, but also major Bay County land development/construction interests. In addition to representing the Office of the State Attorney, the Bay County Sheriff's Office, the City of Panama City Beach, the City of Callaway, the City of Lynn Haven, the Bay County Bridge Authority, the Bay County Tourist Development Council, the Bay County School Board, and the Bay County Medical Center, members of this firm represent or have represented such major private development/construction interests as Arvida (the development arm of St. Joe Corp.), the former El Caribe Resort condominiums, and Phoenix Construction, among others.

9. You already are well familiar with Arvida from prior personal business dealings. You also may recall, from PEER's previous petition, that Phoenix Construction was responsible for the construction of the exposed raw sewage underwater pipeline across St. Andrew Bay that was placed into service by Bay County last July although it had knowingly been constructed without the required minimum 4-foot below-grade cover. The regular grand jury process overseen by Mr. Appleman and his assistants handed down not a single indictment for this outrageous and environmentally hazardous affair, despite the fact that it involved willful conduct in known violation of a DEP permit. Overwhelmingly, the respondents in a poll in Panama City's *The News Herald* indicated that you should appoint a special prosecutor to explore the handling of environmental issues in Bay County.

10. Nonetheless, in a six-sentence letter dated July 12, 2000, signed by your acting general counsel, you summarily, and improperly, denied the petition. You claimed that in the absence of a request from the State Attorney himself, who was the very subject of PEER's petition alleging the appearance of a conflict of interest, "[I]t is not appropriate to appoint an outside prosecutor to supplant the judgment of the elected State Attorney." Your reasoning in that case was fundamentally incorrect as a matter of law. *See* §27.14(1), Fla. Stat. ("If any state attorney is disqualified to represent the state in any investigation, case or matter pending in the courts of his or her circuit or if, for any other good and sufficient reason, the Governor determines that the ends of justice would be best served, the Governor may, by executive order filed with the Department of State, either order an exchange of circuits or of courts between such state attorney and any other state attorney or order an assignment of any state attorney to discharge the duties of the state attorney with respect to one or more specified investigations, cases, or matters, specified in general in the executive order of the Governor"). Further, as a result of your failure, justice probably will never be served as to the sewage pipeline matter, and numerous other major environmental threats in Bay County likely will continue. (*See* footnote 3 below.)

III. Background: Developer-Controlled Enterprise Takes Devolution Challenge

11. Bay County is a textbook case for why local governments need stronger, not weaker, state oversight in the area of growth management. Bounded to the south by the Gulf of Mexico and a fragile coastline, divided by the expansive St. Andrew Bay ecosystem, and surrounded by vast pine forests, Bay County has significant natural resources that historically have yielded to economic pressures. Home of renowned Panama City Beach, Bay County long has been a wildly popular Spring Break destination and the historic focal point for crowded beachfront development along the Florida Panhandle. Bay County also is home to a large commercial paper mill that has a history of serious pollution problems.

12. Thus, placing economic interests over the interests of the public in protecting its resources and communities has a long history in Bay County. Some of the serious environmental consequences were documented in PEER's above-cited petition for an executive order appointing a special prosecutor.

13. However, the instant petition is not about the well documented, environmentally degrading status quo described in the previous petition. Rather, the instant petition concerns the grim growth management realities of the past two years in Bay County. Pro-developer individuals in Bay County, both in and out of local government, and encouraged at least indirectly by you since you took office, have conspired to acquire and maintain an extremely aggressive, sophisticated, and well-organized enterprise. This enterprise has the ultimate purpose of dismantling impediments to unbridled growth in Bay County.

14. The lives, rights, and welfare of citizens and conscientious public employees in Bay County have been placed at continuing and imminent risk. Recent events have included the forced resignation of Bay County's highly regarded, long time Planning Manager under a vendetta by developers and their supporters in Bay County government; the stacking of Bay County's land use regulation advisory committee with developers and their associates with direct financial interests in the committee's votes; the repeated and knowing ignoring of the Bay County Comprehensive Plan by Bay County officials who were directly advised of the problems by their own staff, including the now departed Planning Manager, and that of the Florida Department of Community Affairs (DCA); and continuing efforts to remove basic public and environmental safeguards, including, as only one example, a plan to eliminate all tree protection requirements, or at a minimum, to reclassify pine trees as "nuisance species" in order to evade the requirements.

15. Another of your prominent campaign supporters, L. Charles Hilton, Jr., comptroller of G.A.C. Contractors, Inc., is playing a prominent role in Bay County's growth management devolution. Under the banner of property rights, Mr. Hilton has led, or substantially participated in, a calculated effort to dismantle local land use regulations put in place to protect citizens and tourists threatened by hurricanes, citizens living near high rises and industrial mining operations, trees, and wetlands. If successful, this effort could

substantially redound to the financial profit and advantage of Mr. Hilton's company and others with whom he is closely associated.

16. A number of newspaper articles published in *The News Herald* within the last two years, as well as other public records, have documented increasingly widespread problems in Bay County relating to local government control of land development and related processes.

17. As further described below, some of these problems have manifested themselves in acts or patterns of "misconduct" by public officials and others vested with the public trust.

IV. Acts or Patterns of Misconduct in Bay County Local Government

18. Upon information and belief, facts and circumstances concerning several acts or patterns of official misconduct in Bay County local government pertaining to growth management and related processes are set forth below. Collectively and/or individually, the allegations warrant your ordering of the FDLE to conduct a thorough and proper investigation for misconduct, whether criminal or noncriminal in nature. Pertinent facts and circumstances are listed chronologically over approximately the past two years.

19. This chronology gives you detailed information of the rapid deterioration of the growth management infrastructure that has occurred in Bay County since you, personally and through your appointed DCA Secretary, Steve Siebert, began encouraging a statewide policy of growth management devolution.

20. In Bay County at least, your policy has been synonymous with "developer empowerment," to the great appreciation and financial advantage of some of your strongest campaign supporters. Thus, you bear at least some personal responsibility for the increasingly chaotic and hostile climate that has wreaked havoc on growth management processes in Bay County.

A. Mutual Aid and Comfort

21. In January of 1999, a free overnight stay and hunting trip was given to Bay County Commissioner Danny Sparks and Bay County Manager Jonathan A. Mantay at the hunting camp of the vice president of an engineering firm paired with Phoenix Construction in the quest for a multi-million-dollar construction contract for a drinking water pipeline from Bay County. The pipeline was sought to serve the needs of future anticipated high growth, including Arvida's huge "optional sector plan" development in the area north of West Bay (part of the St. Andrew Bay system) and future high-rise development on the western portion of Panama City Beach. Soon after the hunting trip, the venture was successful in winning the bid, with the vote of Mr. Sparks, after Mr. Sparks called for a change in award procedures at the Commission meeting when the vote took place.

B. Seeds of a Growth Management Rebellion

22. On December 14, 1999, the Board of County Commissioners of Bay County (Bay County Commission) approved a revised comprehensive plan. Michael S. Burke, an attorney who represents the Bay County Commission, provided advice to the Commissioners on the comprehensive plan revisions. Mr. Burke's firm, which includes the Bay County Attorney, also represents or has represented a number of major players in the Bay County land development community, including the Commodore and Sunbird Condominiums, Wes Burnham (a prominent developer), Peoples First Community Bank, whose board chairman is Joe Chapman (another prominent developer), and Sweetwater Village (another prominent developer), among others. In addition, an attorney with the firm is himself an officer in a development company.

23. A few months later, the Bay County Commission formed a "Development Regulation Review Committee" to overhaul the County's land development regulations, ostensibly to make the regulations and the comprehensive plan "consistent."

24. In its implementation, this committee was stacked heavily in favor of the development community and its allies. The committee ultimately included such local pro-development heavyweights as Mr. Hilton (your campaign supporter) and another member of his company, both appointed by Bay County Commissioner Carol Atkinson, who also happens to be vice president of Mr. Hilton's company. By July, the only representative of the environmental community on the committee resigned after Mr. Hilton heatedly rejected his suggestion that the committee hear from more citizens over the issue of tree protection.

C. Predictable Results

25. The committee's composition and "ethics" seemingly dictated outcomes.

26. Trees were one of the obstacles to the committee's vision of developer paradise. Mr. Hilton was quoted in *The News Herald* as questioning whether the county should have any protection of trees whatsoever on private property:

I don't know why we're in that business. I really don't understand that[.] But maybe we should be. Maybe we should decide that government ought to own everything. They tried that one time over there in Russia. Didn't work too good. I recommend we don't screw around with the people's damn trees, period.

According to *The News Herald*, soon after the lone environmental committee member's departure, "The committee voted to recommend that pine trees be declared 'nuisance' trees, thereby exempting them from all provisions of the tree ordinance."

27. Citizen concern over the committee's agenda, and vested interests, mounted. In August, a citizen attending a Development Regulation Review Committee meeting mentioned that the committee members might wish to consider complying with Florida's ethics laws. The citizen's suggestion was not well received, and the committee continued to go about its pro-developer business.

28. By September, the committee completed its process by proposing the removal of numerous public interest protections from the land use code. Like trees, wetlands incurred the committee's particular wrath. The committee voted to recommend that Bay County amend the comprehensive plan to do away altogether with the requirement that wetlands be protected by 30-foot buffers. Mr. Hilton made the motion, and his co-worker at GAC Contractors seconded it.

29. As an interim recommendation, the committee voted, among other things, that all single-family residential homes be exempted from the buffer requirement. The committee voted in this manner even though it knew that such blanket exemptions would be a violation of comprehensive planning requirements.

30. According to *The News Herald*, the Bay County Planning Manager had recommended that the committee make no changes to the buffer requirement and instead hire a wetlands expert to evaluate the need for buffers and give advice on what size they should be. This conscientious recommendation, while consistent with the public duty of Bay County officials and staff, did not favorably impress the development community.

31. Removing tree and wetland protections may not have been the committee's prime motivations, however. The committee also voted to recommend eliminating any building height restrictions throughout the county. It also voted to recommend removing any density requirements on the beach, except density associated with parking.

D. High-Speed, Developer-Controlled, Sunshine Limited

32. Meanwhile, while the committee raced in the opposite direction, DCA continued to make some effort to rein Bay County in. On October 12, 2000, DCA staff recommended to the County Planning Manager that substantial changes be made to Bay County's proposed comprehensive plan revisions, raising serious questions about the County's plan to allow intensive high-rise developments to be built on traditionally low-rise portions of the beach. The proposed plan also was criticized because it might allow developers extra credit for filling in wetlands that were not permissible anyway under state and federal environmental law.

33. Even more troublesome, according to the DCA staff, Bay County's proposed revisions could allow highly dense development within the Coastal High Hazard Zone (CHHZ) without concern for hurricane evacuation time and shelter capacity:

Failure to address this basic public safety issue raises serious questions about the wisdom of adopting any density increases within the CHHZ.

34. On October 19, 2000, DCA staff further emphasized the hurricane and water quality concerns in a letter to architect Bayne Collins. DCA wrote Collins:

In response to your letter of October 17, 2000, any local government may amend its comprehensive plan as necessary to reflect changing conditions. However, any changes, such as increases in density and intensity, must be supported by data and analysis demonstrating the increase is appropriate for the area, consistent with other components of the comprehensive plan and, of course, consistent with statutory requirements.

The County has had a maximum density of 15 du/a for the Seasonal/Resort future land use category since plan adoption in 1991, yet the County recently had to increase its standard for hurricane evacuation roadway clearance time from 17 to 24 hours for category 4-5 storm events because the County could not maintain the 17 hour evacuation time. This indicates that the County has been unable to maintain the balance between development and supporting infrastructure needed to maintain one of the most important objectives the County set for itself in 1991. Further density increases, therefore, would exacerbate the problem of maintaining hurricane evacuation clearance standards unless other conditions change, such as the addition of more shelter facilities, and increases in highway evacuation capacity. Such changes should be considered in evaluating whether density increases are appropriate.

Each Future Land Use Map category should be examined to determine whether the plan currently allows an appropriate level of development. Changes would be appropriate only if the plan contains an error or if a change would more accurately reflect the County's vision of its future. All components of the plan should reinforce each other and provide a clear path to the future desired by the County. When considering whether allowed densities/intensities should be changed, the County should ensure that land use incompatibilities, which are often the basis of protracted local conflicts, are avoided. I am sure the County will also carefully consider whether increases in densities and intensities could have unintended negative

impacts on water quality in St. Andrew Bay, since increased amounts of pollutants in stormwater runoff seem to accompany increases in density and intensity.

35. The Bay County Planning Commission conducted a public hearing on the proposed changes to the land development regulations on October 19, 2000. The meeting was moved to a larger venue because of the anticipated crowd wishing to comment on the proposals.

The News Herald the next morning noted that the crowd at the public hearing "was a mix of environmental and development interests, but was slightly heavier on the environmental side."

36. Among the developer advocates before the Planning Commission was Mr. Hilton, who stated "the recommended changes to the code reflected an effort to protect property rights and limit the role of government in determining what people can do with land they own":

"[Property rights] might be a joke to some people but it's the foundation of every free society," he said. There is no question but that property rights accounts for the standard of living in our country."

The News Herald.

37. The meeting adjourned without discussion or action by the Planning Commission. Meanwhile, plans were afoot to ensure that the Planning Commission never conducted a full, public debate on the proposed changes.

38. During October and November 2000, Mr. Collins called other Planning Commissioners in private, out from under the Sunshine Law's open meeting requirements, to secure votes on moving the Development Regulation Review Committee's recommendations on to the County Commission without further public participation. This occurred even after Mr. Collins had been made aware of the fact that this action was a possible breach of the Sunshine Law.

39. Perhaps Mr. Collins was encouraged by an un-prosecuted alleged Sunshine Law violation from earlier that year. On October 3, 2000, *The News Herald* reported that State Attorney Appleman's office had concluded that it would not prosecute County Commission Chairman Marc Nolen in relation to his call to County Commissioner Danny Sparks on July 7, 2000. The call came in the midst of Mr. Appleman's grand jury process on the sewage pipeline fiasco--and approximately an hour and a half before a special County Commission meeting on the pipeline. Depending on who one believes, Mr. Nolen either called to discuss a planned motion to fire one of the chief witnesses appearing before the grand jury, i.e., the County Utilities Services Director, or to discuss Mr. Nolen's plan to direct pipeline-related questions to the County Utilities Director at the

meeting. Whether any grand jury witnesses learned of this potential threat to the County Utilities Director is not known. As a matter of the Sunshine Law, Mr. Appleman's office concluded:

Under these circumstances, it is debatable whether a criminal violation of the Sunshine Law occurred. Consequently, the evidence cannot sustain a criminal prosecution.

40. In any event, Mr. Collins' alleged effort was not the only action that may have affected the ability of the public to participate before the Planning Commission. On December 6, 2000, public notice was given in *The News Herald* that at a workshop on December 14 the Bay County Planning Commission would consider changes to two specified provisions of the Bay County Land Use Code relating to "nonconforming signs." The notice indicated, "A decision concerning these matters may or may not be made at this hearing...." The notice did not place the public on notice that the Commission might make decisions at the workshop concerning the proposed land use revisions as a whole. Instead, near the bottom of the notice it merely stated:

Also at the ... meeting, the Planning Commission will continue its Work Session on the draft Zoning and Development Code. The first item for discussion at the Work Session is determination of procedures to be used by the Commission in reviewing the draft code and determining its consistency with the adopted Bay County Comprehensive Plan.

(Emphasis in original).

41. The County Planning Manager (who by then had been forced to resign, *see* the section immediately following) suggested that since the Planning Commission meeting was advertised as a workshop rather than a public hearing, no official action could be taken on the proposed regulation changes as a whole. Mr. Burke disagreed, and, as discussed further below, the Planning Commission proceeded to grant wholesale approval to the proposed revisions, with only minor housekeeping changes.

E. Paying the Price for Public Service

42. The day before the Planning Commission meeting, the Planning Manager, a highly regarded, long time public servant in Bay County, was forced to resign by County Manager Mantay and the Development Services Director, the Planning Manager's direct supervisor. His last day in service of the county was a mere two days after he was forced to resign. This forced resignation quickly sent shock waves through the offices of the already embattled local government planning professionals of the Florida Panhandle.

43. The forced departure of the Planning Manager came at the insistence of pro-developer forces in Bay County, including architect Bayne Collins and developer Charles Faircloth. Further, prior to the resignation, the Planning Manager's termination was discussed at a private meeting between a County Commissioner, Mr. Faircloth, and Mr. Hilton.

44. On November 29, the Planning Manager had been asked to speak at a City of Panama City Beach Planning Commission meeting regarding changes to the County Development Code. At that meeting, the Planning Manager stated that there were three newly elected County Commissioners and that he had no idea what direction the County Commission might go in on proposed land use changes. He then went on to restate certain comments made by the newly elected Commission Chairman involving slowing the process down and some other concerns that had been raised by citizens.

45. Mr. Collins complained to County management that, at the November 29 meeting, he was:

surprised at some of [the Planning Manager's] comments, particularly the revelation that the County Commission is considering appointing a new Code Review Committee.... If this is true, it is a slap in the face of those individuals who served for six months on the previous Ad Hoc Committee.

46. The day after the December 14 meeting, *The News Herald* observed:

Collins [] criticized [the Planning Manager's] suggestion at the [November 29] meeting that the continued review of the county code should be "slowed down," as well as [the Planning Manager's] comments about specific proposed changes to the code.

The issue of slowing down the process was discussed extensively at the county Planning Commission meeting [on December 14]. The commission, after two hours of discussion, voted 4-2 to send the proposed changes to the code to the County Commission with only minor, "housekeeping" changes to the ad hoc advisory committee's recommendations.

The commission did so on a motion by Collins and despite the urging of several audience members and one commission member to solicit further public comment about the proposed changes.

47. It also was revealed that County management had for the past two months been keeping a secret file on the Planning Manager. In this secret file, County management

was assembling trivialities to use against the Planning Manager as public cover for his dismissal at the behest of the development community in Bay County. The Planning Manager was given no opportunity to challenge or correct the record. Further, the documents kept in this secret file were not placed in the Planning Manager's official personnel file and were not available for inspection upon his request. The Planning Manager specifically had sought to review all his personnel records, after the documents were generated that were later produced by County management when they forced his resignation.

48. The next day *The News Herald* noted the comments of a dissenting Planning Commissioner on the procedural and substantive debacle resulting from the County's developer-controlled process for revising its land use regulations:

[The dissenting Planning Commissioner] said at the meeting, and again on Friday, that she did not believe the Planning Commission had given the proposed changes a thorough review.

"I could not in good conscience as one person on that commission say we've done what I think we ought to do," she said Friday. I don't think we did our job."

[She] said the Planning Commission has the responsibility, under Florida law, to ensure that the proposed changes are consistent with the county's comprehensive plan.

The Planning Commission held one public hearing on the proposed changes and discussed them at two subsequent meetings, but limited its focus almost entirely to procedural issues.

The county planning staff had identified at least 16 instances in which the proposed code was inconsistent with the comprehensive plan. [She] said the Planning Commission did not even review those sections.

... Environmentalists charged that the committee was weighted in favor of development interests.

But Collins, who also served on the advisory committee, said that was the design of the committee.

"The purpose of that ad hoc committee was to invite those people being regulated by the code to have some input in it," he said.

But [the dissenting Planning Commissioner] said those people would not be the only ones affected by the code.

"I think we have totally forgotten the other stakeholders," she said. "I think we need to be listening to them."

49. In early January 2001, *The News Herald* continued to look into the circumstances associated with the Planning Manager's departure:

A former county commissioner said Tuesday he believes county staff may have been under pressure to fire [the Planning Manager] or force his resignation.

"I was aware of what I considered to be very nit-picky things that had been put in [the Planning Manager's] file by Mr. Mantay," [the former county commissioner] said. "I felt like Mr. Mantay was picking on him, as far as my understanding, on instructions from certain citizens of the community."

Mantay declined to respond to those charges on Tuesday.

50. To the developer-controlled enterprise of Bay County, the fact that a conscientious public servant has lost his job by attempting to have the County comply with comprehensive planning requirements, and the express direction of the Florida Department of Community Affairs, is not cause for concern, or even pause. To the developer-controlled enterprise of Bay County, with its friends in high places in local, and state, government, a conscientious government land planning professional is the enemy, a threat to property rights and the American way.

51. In point of fact, the developer-controlled enterprise of Bay County is continuing to keep the pressure high on the Bay County Commission to move forward quickly on land use revisions, particularly those affecting beach development. At least one beach developer, Howard Shelton, has gone so far as to threaten a lawsuit against the County if it does not accept developer demands. This developer may be in an excellent position to have his threat taken seriously. He is represented by a prestigious local law firm with excellent connections in Bay County local government: the same law firm that employs Mr. Burke and the County Attorney.

V. Provisions of Law

52. Several legal provisions should be examined in assessing the propriety of the above acts and omissions. First, "A public office is a public trust." *See* Art. II, § 8(a), Fla. Const. Moreover, "The people shall have the right to secure and sustain that trust against abuse." *Id.* Further, "Any public officer or employee who breaches the public trust for private gain and any person or entity inducing such breach shall be liable to the state for all financial benefits obtained by such actions." *See* Art. II, § 5, Fla. Const.

53. Second, subsection (1) of the Sunshine Law, Section 286.011, Florida Statutes, requires all meetings of any board or commission of any authority of any county, except as otherwise provided in the Constitution, at which official acts are to be taken to be open to the public at all times. No commissioner or staff member may act as a liaison between board members to circumvent the open meeting requirement. This subsection also provides that no resolution, rule, or formal action may be binding except as taken or made at an open meeting. It also requires the board or commission to provide reasonable notice of all such meetings.

54. Third, under the Public Records Law, Section 119.07(1)(a), Florida Statutes, any person has the right to inspect any public record, including personnel records, which must be kept open and accessible.

55. Fourth, under Section 112.313(7), Florida Statutes, no public officer or employee shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

56. Fifth, under Section 112.3143(3)(a), Florida Statutes, no county public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. A disclosure memorandum must also be filed within 15 days after the vote occurs.

57. Sixth, under Section 112.3143(4), Florida Statutes, no appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

58. Seventh, effective January 1, 2001 (*see* Chapter 243, Section 14, Laws of Florida), disclosure of financial interests is not required for citizen advisory committees who only have the power to make recommendations to planning or zoning boards. *See* § 112.3145(1)(a)2e, Fla. Stat. (2000 Supp.). However, prior to January 1, 2001, disclosure

of financial interest was required by July 1 of each year by members of advisory bodies with land-planning, zoning, or natural resources responsibilities. *See* § 112.3145(1)(a)(2), Fla. Stat. (1999).

59. Eighth, compliance with the Bay County Comprehensive Plan, adopted pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act, Part II, Chapter 163, Florida Statutes, is a public duty of all Bay County officials and staff. It is not an option but rather a "minimum" requirement. § 163.3161(7), Fla. Stat.

60. Ninth, Rule 4-1.7 Regulating the Florida Bar ("Conflict of Interest") states in pertinent part:

(a) **Representing Adverse Interests.** A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and

(2) each client consents after consultation.

(b) **Duty to Avoid Limitation on Independent Professional Judgment.** A lawyer shall not represent a client if the lawyer's exercise of independent professional judgment in the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person or by the lawyer's own interest, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation.

61. Tenth, carrying this rule one step further is Rule 4-1.10 ("Imputed Disqualification"), which provides in pertinent part,

(a) **Imputed Disqualification of All Lawyers in Firm.** While lawyers are associated in a firm, none of them shall knowingly represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7, 4-1.8(c), 4-1.9, or 4-2.2.

62. Eleventh, under Section 838.021(1), Florida Statutes, no person may unlawfully harm or threaten unlawful harm to any public servant with the intent or purpose:

(a) To influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(b) To cause or induce the public servant to use or exert, or procure the use or exertion of, any influence upon or with any other public servant regarding any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

63. Twelfth, under Section 777.04(3), Florida Statutes, a person who agrees, conspires, combines, or confederates with another person or persons to commit any offense commits the offense of criminal conspiracy.

64. Finally, under Section 895.03, Florida Statutes:

(1) It is unlawful for any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

An FDLE investigation could determine whether one or more predicate acts have been committed that could constitute racketeering activity. Predicate acts can include, but are

not limited to, misuse of public office, obstruction of justice, tampering with or retaliation against a witness, victim, or informant, and tampering with evidence. *See* § 895.02(1)(a)32, 33, 39, and 40, Fla. Stat.

VI. Other Information

65. In further support of this petition, Petitioner provides the following additional information as to its substantial interests in the subject matter of this petition:

(a) PEER's name, address, and telephone number are:

Public Employees for Environmental Responsibility

2001 S. Street, N.W.

Suite 570

Washington, D.C. 20009

(202) 265-PEER (265-7337)

(b) PEER is a non-profit tax-exempt organization whose membership includes local, state, and federal employees working within governmental agencies involved with natural resource protection and growth management. PEER has been working with, and to protect, public employees in Florida for more than four years. On behalf of its members, PEER's work in Florida has included substantial review and comment concerning natural resource and growth management problems in Florida, including problems associated with Northwest Florida and Bay County. Substantial numbers of PEER's members are harmed by the atmosphere of fear, repression, and ineffectiveness engendered within the Florida planning community by the herein described acts and omissions, and are beneficiaries of natural resources and growth management within Florida, including Northwest Florida and Bay County, and substantially interested in, and substantially and adversely affected by, misconduct that could actually and imminently threaten or result in harm to these interests, such as properly would be the subject of the requested FDLE investigation.

REQUEST FOR RELIEF

WHEREFORE, Petitioner PEER respectfully petitions the Honorable Jeb Bush, Governor of the State of Florida:

A. for a written direction to the Florida Department Of Law Enforcement (FDLE) to investigate misconduct in Bay County, Florida relating to local government regulation of land development and related processes;

B. to conduct a formal hearing on this petition in the event you do not forthrightly grant this request;

C. to appoint a special prosecutor pursuant to Section 27.14(1), Florida Statutes, to pursue criminal or noncriminal action, as appropriate, in the event the FDLE investigation determines that one or more violations may have occurred; and

D. for such other relief as is just.

Respectfully submitted this 6th day of February 2001.

FOR PETITIONER

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Steven A. Medina, P.A.

/S/

By: Steven A. Medina

Fla. Bar No. 370622

P.O. Box 247

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Beach, Florida

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by facsimile and U.S. mail to the Honorable Jeb Bush, Governor, The Capitol, Tallahassee, FL 32399-0001, on this 6th day of February 2001.

/S/ _____

Steven A. Medina