

Board of County Commissioners
AGENDA REQUEST
Routing Slip

After Agenda Request has been reviewed by all appropriate staff, please make sure that it is initialed by your Group Director on the first page and then sent directly to Christine Coble, by noon on Thursday, which is 12 calendar days prior to the date of the Commission meeting. Agenda Items will not be accepted after that date and time unless specifically authorized and approved by a County Commissioner and/or the County Administrator.

BE SURE TO LIST FAX NUMBERS ON THIS FORM

Date Submitted:	June 4, 2008	Agenda Item For:	June 10, 2008
-----------------	---------------------	------------------	----------------------

Subject: Consideration of Ratification of Proposed Proportionate Share Traffic Mitigation Agreement and First Amendment to Settlement Agreement for the DeSantis Property

Public Hearing: **NO** Suggested For: **General Business** **Consent**

Reviewed By: (<input type="checkbox"/> Check all that apply)	Name (Signature)	Office	Fax
County Attorney	<input checked="" type="checkbox"/>	606-2500	606-2501
OMB	<input type="checkbox"/>	606-5100	606-5301
Purchasing	<input type="checkbox"/>	606-1600	606-1601
MBE	<input type="checkbox"/>	606-1660	606-1651
MIS	<input type="checkbox"/>	606-5500	606-5501
Human Resources	<input type="checkbox"/>	606-2400	606-2401
Facilities Mgmt.	<input type="checkbox"/>	606-5000	606-5001
Risk Mgmt.	<input type="checkbox"/>	606-5120	606-5103
Grants Coordinator	<input type="checkbox"/>	606-5328	606-5301

PREPARED BY: NAME

Typist	Emily Long	606-2500	606-2501
Writer	Herbert W. A. Thiele, Esq.	606-2500	606-2501
Reviewer Division	Herbert W. A. Thiele, Esq. County Attorney's Office		

Group Directors:

 Kim Dressel
 Management Services

 Tony Park
 Public Works

 David McDevitt
 Community Development

 Vincent Long
 County Administration

Contract Review: _____
 Herb Thiele, County Attorney

Administration Review: _____
 Christine Coble/Vincent Long

Board of County Commissioners

Agenda Request

Date of Meeting: June 10, 2008
Date Submitted: June 4, 2008
To: Honorable Chairman and Members of the Board
From: Herbert W. A. Thiele, Esq. 
County Attorney
Subject: Consideration of Ratification of Proposed Proportionate Share Traffic Mitigation Agreement and First Amendment to Settlement Agreement for the DeSantis Property

Statement of Issue:

This agenda item seeks Board ratification of changes to the previously approved Proportionate Share Traffic Mitigation Agreement and First Amendment to Settlement Agreement for the DeSantis Property (Attachment #1).

Background:

Peter A. DeSantis Jr. Revocable Trust ("DeSantis") owns approximately 27.4 acres of land (parcels #14-15-20-628-0000, 14-22-20-018-0000, 14-15-20-601-0000 and 14-22-20-005-0000) located between Bannerman Road and Kinhega Drive, approximately 500 feet northwest of Thomasville Road. This property is subject to a Settlement Agreement between Laird, Hirt, et al, and the County which was approved in 2002 and which provides that the property may now be developed with up to 75,000 square feet of commercial development. As a consideration in exchange for the development intensity conferred in the Settlement Agreement, Laird, Hirt, et al, agreed to dedicate a right-of-way to the County, between Kinhega Drive to Bannerman Road.

The original Settlement Agreement did not address traffic concurrency and, to develop the site, DeSantis needed to address the issue of transportation concurrency capacity. The Proportionate Share Traffic Mitigation Agreement and First Amendment to the Settlement Agreement ("Agreement") addresses those needs in that the property owner has proposed to offer infrastructure improvements pursuant to the Leon County Concurrency Management Polices and Procedures Manual, revised November 2006.

On April 24, 29007, the Board of County Commissioners directed staff to work with DeSantis to draft a proposed Proportionate Share Traffic Mitigation Agreement. On May 8, 2007, the first of two public hearing was held on said Agreement and the second public hearing was scheduled to for May 22, 2007. At the second public hearing held on May 22, 2007, the Board approved the Agreement, subject to certain changes and clarifications.

After the second public hearing and the Board's approval of the proposed Agreement, staff and the property owner entered into further discussions regarding the number of dwelling units and detailed traffic concurrency information, which has resulted in changes to the Agreement.

Analysis:

The proposed Agreement requires that DeSantis dedicate a right-of-way for and construction of an extension of Beech Ridge Trail from Kinhega Drive to Bannerman Road. As mitigation for the projected impact to the area street network from the traffic that would be created by the 75,000 square feet of commercial retail development allowed on the DeSantis property by the original Settlement Agreement. The Amended Agreement adjusts the project responsibilities and adds 32 dwelling units to the property covered by the Agreement.

Transportation modeling indicates that the development property will significantly impact the westbound segment of Bannerman Road between Thomasville Road and Tekesta Drive, and the westbound segment of Kihega Drive between Thomasville Road and Deer Lake Road.

In response to the projected adverse impacts upon these segments, the agreement requires that DeSantis dedicate sufficient right-of-way to accommodate the extension of Beech Ridge Trail, a public street, from Kinhega Drive to Bannerman Road; specifies design and construction parameters; and, specifies that DeSantis will coordinate with StarMetro to locate a transit stop and shelter on site or within the adjacent right-of-way.

Options:

1. Consider ratifying the changes to the previously approved Proportionate Share Traffic Mitigation Agreement and First Amendment to Settlement Agreement.
2. Consider the proposed Proportionate Share Traffic Mitigation Agreement and First Amendment to Settlement Agreement and do not ratify the changes.
3. Board Direction.

Recommendation:

Option # 1.

Attachments:

1. Proportionate Share Traffic Mitigation Agreement and First Amendment to Settlement Agreement, as modified.

HWAT: eal

**DeSANTIS PROPORTIONATE SHARE TRAFFIC MITIGATION AGREEMENT AND
FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into by and between James R. Clanton, Jr., Successor Trustee of the Peter A. DeSantis Jr. Trust ("Owner") and Leon County, Florida ("County"), a political subdivision of the State of Florida, subject to all other governmental approvals and solely at the risk of the Owner.

RECITALS

WHEREAS, the Owner owns approximately 27.4 acres of land (the "Property") located between Bannerman Road and Kinhega Drive, approximately 500 feet northwest of Thomasville Road (see map included as Exhibit #A); and the Owner is seeking Site and Development Plan approval for the Property identified as Tax Parcel Identification Numbers 14-22-20-018-0000, 1422-20-005-0000, 14-15-20-628-0000, and 14-15-20-601-0000, located in Leon County, Florida, more particularly described in Exhibit `B" to this Agreement which is attached hereto and made a part hereof ; and

WHEREAS, a Settlement Agreement (the "Settlement Agreement") was approved by the Leon County Board of County Commissioners on February 12, 2002, between the County and H.G. Laird and Margaret L. Hirt, James K. Godfrey and Kristen H. Godfrey, Karen S. Hanson as trustee of the Arlene L. Carter Revocable Trust, and the Bradfordville Hunt Club ("Prior Owners") pertaining to the development of the Property; and

WHEREAS, the Owner has acquired the Property from the Prior Owners, and thereby, as a successor in title, acquired those rights established in the Settlement Agreement; and

WHEREAS, Owner and County wish to amend certain terms of the Settlement Agreement as contained herein; and

WHEREAS, the Settlement Agreement states that the County will be responsible for the construction of the extension of Beech Ridge Trail; however, in order to mitigate the development impacts including concurrency, Owner has agreed to construct this extension; and

WHEREAS, it is the intent of the County and the Owner that any terms contained in this Agreement, during the duration of this Agreement, that may be contrary to the terms of the Settlement Agreement shall supersede those contrary terms in the Settlement Agreement; and

WHEREAS, as a consideration for the development intensity conferred in the Settlement Agreement, the Prior Owners agreed to dedicate right-of-way and drainage easements to the County, between the southern right of way of Kinhega Drive and the northern right of way of Bannerman Road (the "Dedicated ROW") with the intention that a roadway be constructed within the Dedicated ROW which will be an extension of Beech Ridge Trail, a public road, extending from the southern right of way of Kinhega Drive to the northern edge of the pavement of Bannerman Road (the "New Roadway"); and

WHEREAS, the Settlement Agreement does not address transportation concurrency and the Owner seeks to pursue development of the Property and will need to address the issue of transportation concurrency capacity to do so successfully. In response, the Owner has proposed to offer infrastructure improvements as outlined in this Agreement, fashioned pursuant to the Leon County Concurrency Management Policies and Procedures Manual, revised November, 2006 to address all transportation concurrency issues; and

WHEREAS, the County has agreed that when this Agreement has been complied with, the County will grant the Property traffic concurrency; and

WHEREAS, the County has the power and duty to exercise general supervision of the administration and enforcement of the Leon County Code of Laws pertaining to the Tallahassee-Leon County 2010 Comprehensive Plan, Land Development Regulations, Concurrency Management Ordinance, and the Leon County Concurrency Policies and Procedures Manual; and,

WHEREAS, the County is authorized to enter into this Agreement pursuant to the Leon County Concurrency Policies and Procedures Manual and all applicable laws.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and premises set forth herein, the parties agree as follows:

1. The recitals set forth above are true and correct and are incorporated herein by reference as though they were specifically set out. Herein.
2. The commercial portion of the development to be constructed on the Property will not exceed 75,000 square feet of commercial retail use and any non-commercial retail development to be constructed shall be equivalent to the traffic concurrency impact of 32 residential units, in accord with the existing zoning and Comprehensive Plan requirements, and in accordance with the Settlement Agreement (the "Project").
3. Based on utilization of the ITE Trip Generation (7th Edition) software, and the ITE Trip Generation Handbook (2nd Edition), both compiled by the Institute of Traffic Engineers, and are professionally accepted standard referenced utilized for estimating projected traffic generation based on proposed land use, it has been determined that the net number of new vehicular trips that would be created by a mixed use development consisting of 75,000 square feet of commercial retail land use and 32 residential dwelling units on the Property would be appropriately 232 trips during the PM peak hour of generation, as shown in Exhibit "C".

4. The Project will significantly impact the westbound segment of Bannerman Road between Thomasville Road and Tekesta Drive, Segment 13561 as identified in the County's Concurrency Management System (CMS), and Segments 43550 and 43580 of the County's CMS, more specifically, the westbound segment of Kinhega Drive between Thomasville Road and Deer Lake Road. (These three segments will hereinafter be referred to as the "Impacted Road Segments")

5. The Impacted Road Segments are located inside of the Project's Comprehensive Traffic Analysis Network and are operating below the adopted Level of Service in the Leon County Concurrency Management System, and are capacity-constrained roadways, as defined by the Leon County Concurrency Management Policies and Procedures Manual, adopted on November 14, 2006, as shown in Exhibit "D."

6. In response to the projected adverse impacts upon the Impacted Road Segments, and as required in the Settlement Agreement, Owner agrees to dedicate to the County the Dedicated ROW and also such portion of the Property required for the construction, operation and maintenance of facilities for stormwater treatment, including drainage easements, for the runoff generated by the New Roadway. The Dedicated ROW shall be no less than sixty (60) feet in width, which may also require that a governmental subdivision be approved. The length of the Dedicated ROW shall be determined by provision of the connections to Bannerman Road at the existing median cut at the eastern side of the Property and the northern property line of the Property aligned with the intersection of Beech Ridge Trail and Kinhega Drive.

7. The Owner commits to fully fund and construct the New Roadway. The amount of costs associated with the construction of the New Roadway is in lieu of funding the pro-rata share of construction of the above described improvements identified in the concurrency review process in order to construct the Project. Funding and construction shall include all design, permitting,

testing, construction management or other costs associated with the construction of the New Roadway and the associated stormwater facility. The design process shall include submittal of design documents to Leon County Public Works for review, comment (which comments shall be implemented by the Owner) and approval, as appropriate, at the customary points of design completion: 30%, 60%, 90% and 100% of design completion. Leon County shall be afforded adequate time for this review, including not less than 30 days for review of final plans for final approval at 100% completion. The County must approve or reject the final plans within 60 days or it shall be deemed that the County has approved the final plans as submitted.

8. The Owner agrees to waive those provisions under Section 2, Grant of Right of Way, enumerated on pages 5 and 6 of the Settlement Agreement that would otherwise require the County to bear the cost of designing, permitting, conducting evaluations and investigations in support of, the acquisition of right of way and the construction of the New Roadway. The Owner agrees to bear the cost of surveying, engineering, designing, permitting and construction of the Dedicated ROW and the New Roadway. Owner further agrees to contribute to the County one-half ($\frac{1}{2}$) of the cost, on a reimbursement basis, not to exceed a total contribution by the Owner of \$100,000.00, for surveying, engineering, designing, and permitting a roundabout at Kinhega Drive and of the acquisition of needed right-of-way to access the roundabout from the subject property and construction of said roundabout. The County shall be responsible for the costs of permitting, design, construction, and additional right of way acquisition for the roundabout at Kinhega Drive and Beech Ridge Trail that exceed the contribution by the Owner.

9. The Owner agrees to waive those provisions under Section 5, Cost of Surveying, Design, Permitting and Construction, enumerated on page 7 of the Settlement Agreement that would otherwise require the County to bear the proportionate costs of surveying, engineering,

designing, permitting, acquisition of right of way and constructing the stormwater management facility, to be constructed on the Property, based on the proportionate share of stormwater volume coming from the New Roadway.

10. The New Roadway shall be designed and constructed as a connector street, consistent with the parameters established by and in coordination with Leon County Department of Public Works, and shall include the following design elements: two eleven-foot wide travel lanes; curb and gutter along each side of the street; four-foot wide bicycle travel lanes along each side of the street; a sidewalk of no less than five feet of width to be provided along the side of the street; conveyances for stormwater; a stormwater detention or retention facility, with adequate access thereto; a traffic signal at the intersection of Beech Ridge Trail and Bannerman Road, including associated support structures, signal box, pedestrian crossing signals, and wiring.

11. Upon final completion of the New Roadway and stormwater facilities construction, and acceptance of that construction by Leon County Public Works, Owner shall dedicate or convey the ownership of the Dedicated ROW to Leon County and shall grant an easement for the stormwater facilities and access to said stormwater facilities and any necessary drainage easements, subject to the Board of County Commissioners' acceptance. The dedication of the Dedicated ROW to Leon County and construction of the New Roadway qualify as "Significant Benefits" under the provisions of Section 6.2.5.3.b. of the Leon County Concurrency Management Policies and Procedures Manual, adopted on November 14, 2006.

12. The parties agree and understand that the commitments for the dedication of the Dedicated ROW by the Owner and for the construction of the New Roadway and final inspection and acceptance of the New Roadway, in its entirety, shall be pre-requisites for the issuance of any certificate of occupancy for any building constructed on the Property. Except, however, should the

County fail to construct its portion of the road and roundabout which lie to the north of the Property, that is the portion lying north of the southern right of way of Kinhega Drive, such failure shall not affect the Owner's right and ability to obtain building permits for the development of the Project.

13. As a condition of any development order or environmental permit, pursuant to the Settlement Agreement, or as amended by this Agreement, the Owner shall provide a surety device for the construction of the New Roadway and associated improvements as specified in this Agreement which have not been constructed. The surety device shall:

(a) Be acceptable to and approved by the County Engineer and the County Attorney; and, Cover 110 percent of the cost of any uncompleted road, storm water management conveyance improvements, or other required infrastructure as estimated by the engineer of record and approved by the County Engineer; and,

(b) Be conditioned upon completion of construction and dedication of roads and storm water management conveyances as shown on the approved construction plans within 18 months, or as extended by the county engineer; and,

(c) Be payable solely to and for the indemnification of Leon County.

14. As condition of any development order pursuant to the Settlement Agreement, as amended by this Agreement, the Owner shall provide a surety device, payable solely to and for the indemnification of Leon County, in the amount of ten percent of the total cost of all required improvements as approved in the site and development plan to cover defects in materials and/or workmanship for two years.

15. Owner also agrees to coordinate with Star Metro to locate a transit stop and shelter on the Property or within the adjacent right-of-way. The costs of construction, installation and

maintenance of said transit stop and shelter to be borne by Star Metro.

16. This Agreement shall remain in full force and effect for a term of five (5) years from the effective date hereof; or until buildout is complete, whichever occurs first.

17. The rights and obligations of this Agreement shall remain in full force and effect in the event that the Property, or any portion thereof, is annexed into the City of Tallahassee. The burdens and benefits of this Agreement shall be binding upon and shall inure to all successors in interest to the County and Owner.

18. If reasonable adjustments in the Agreement are required to complete the Project in a satisfactory manner, this Agreement may be amended if agreed to in advance by the Owner or its successor and Leon County.

19. This Agreement shall be effective upon the date all parties hereto have executed the same. Within fourteen (14) days of approval of this Agreement, the Owner shall record it in the Public Records of Leon County.

20. The rights and obligations of this Agreement shall be binding upon and shall inure to the benefit of the parties to the agreement and their lawful heirs, successors, and assigns, and any future owners of the Property.

21. If any word, phrase, clause, section, or portion of this Agreement shall be held invalid by a court of competent jurisdiction, such portion or word shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions of this Agreement.

22. In the event of a breach of this Agreement by a party, the other may sue to enforce this Agreement and the prevailing party shall be entitled to payment of attorney's fees and costs by the non-prevailing party.

**DRAFT OF JUNE 2, 2008
INCORPORATING ALL CHANGES MADE
TO DATE AS AGREED TO BY THE COUNTY
ATTORNEY'S OFFICE**

LEON COUNTY, FLORIDA

ATTESTED BY:
CLERK OF THE COURT FOR
LEON COUNTY, FLORIDA

By: _____
Jane G. Sauls, Chairman
Board of County Commissioners

By: _____
Bob Inzer, Clerk of the Court

Date: _____

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
FOR LEON COUNTY, FLORIDA

By: _____
Herbert W. A. Thiele, Esq.
County Attorney

NAME OF OWNER

By: _____
Designated Agent for:
Property Owner(s)

Dated: _____

ATTESTED BY:
(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____
_____, 2008, by _____, who is
personally known to me and who did not take an oath.

Signature of Notary
Print, Type or Stamp Name of Notary Title or Rank

Exhibits

Exhibit A: Map of PROPERTY

Exhibit B: Legal Description of PROPERTY

Exhibit C: ITE Traffic Generation Analysis

Exhibit D: List of Street Segments Located Within the Comprehensive Traffic Analysis Network

Exhibit C
 ITE Trip Generation Analysis

DeSantis Property Proposal (75,000 sq. ft. retail and 32 dwelling units)

Input	Unit Type	# of Units	Gen. Rate	% Enter		% Exit		Trips		IC Rate		External		Pass-By		New		
				Enter	Exit	Enter	Exit	Total	Enter	Exit	Rate	Rate	Enter	Exit	Rate Tol.	Trips	Enter	Exit
Proposed																		
Shopping Center (820)	Sq. Ft.	75	T=4.75(75)	48%	52%	165	178	6%	5%	326	157	169	34%	110	216	103	113	
Condominium/Townhouse (230)	DU	32	T=52(32)	67%	33%	17	6	5%	5%	16	10	5	0%	0	16	10	6	
														Total New	232			

**DRAFT OF JUNE 2, 2008
 INCORPORATING ALL CHANGES MADE
 TO DATE AS AGREED TO BY THE COUNTY
 ATTORNEY'S OFFICE**

**Exhibit D
 Trip Distribution/Assignment Roadway Segments within the Comprehensive Traffic Analysis Network (CTAN) of the DeSantis Property**

Roadway Segment Number	Road Name	From	To	# of Trips Shopping Ctr & 32 MFR	% Impact	Available Capacity (Trips) at the Adopted Level of Service (LOS)	Significantly Impacted
13541	Bannerman	Tekesta	Bull Headley	23	6.03%	195	No
13540	Bannerman	Bull Headley	Tekesta	11	4.60%	532	No
13560	Bannerman	Tekesta	Thomasville	80	34.48%	566	No
13561	Bannerman	Thomasville	Tekesta	62	26.72%	-142	Yes*
16830	Bradfordville	Thomasville	Velda Dairy	11	4.60%	371	No
16831	Bradfordville	Velda Dairy	Thomasville	25	10.92%	849	No
43580	Kinhega	Beech Ridge	Deer Lake	13	5.46%	-176	Yes*
43581	Kinhega	Deer Lake	Beech Ridge	11	4.90%	294	No
43551	Kinhega	Thomasville	Beech Ridge	22	9.48%	-199	Yes*
81200	Thomasville	Beech Ridge	Thomasville	10	4.31%	296	No
81201	Thomasville	Foxcroft	Kerry Forest	39	16.95%	639	No
81300	Thomasville	Kerry Forest	Foxcroft	53	22.70%	1401	No
81301	Thomasville	Bannerman/Bradfordville	Bannerman/Bradfordville	59	25.29%	919	No
81330	Thomasville	Bannerman/Bradfordville	Kerry Forest	63	27.01%	941	No
81360	Thomasville	Kinhega	Kinhega	15	6.32%	980	No
81361	Thomasville	Kinhega	Bannerman/Bradfordville	9	3.74%	1218	No
82900	Velda Dairy	Kerry Forest	lamonia Lake	7	2.87%	936	No
82901	Velda Dairy	Bradfordville	Bradfordville	7	2.87%	1391	No
	Rhea Road	Thomasville	Kerry Forest	4	1.72%	109	No
	Lawton Chiles	Thomasville	Lawton Chiles	11	4.60%	1045	No
		Rhea	Kinhega	8	3.45%	N/A	N/A**
				8	3.45%	N/A	N/A**

* The segment is operating below the adopted LOS as established in the Comprehensive Plan for the roadway noted.
 ** An LOS has not been established for the roadway segments based on its current classification.

Reference: Leon County Concurrency Management System. Analysis performed utilizing the QRS II Model and machine traffic counts adjusted for seasonal variations.