

**STATE OF FLORIDA
NORTHWEST FLORIDA TRANSPORTATION CORRIDOR AUTHORITY
DEPARTMENT OF TRANSPORTATION**

CLEAN WATER NETWORK
OF FLORIDA, INC., LINDA L.
YOUNG

Petitioners

vs. CASE NO: _____

NORTHWEST FLORIDA
TRANSPORTATION CORRIDOR
AUTHORITY,
FLORIDA DEPARTMENT OF
TRANSPORTATION

Respondents

**PETITION FOR FORMAL ADMINISTRATIVE PROCEEDING
OF PROPOSED AGENCY ACTION**

Clean Water Network of Florida, Inc. and Linda L. Young, a pro se petitioner, hereby request a formal administrative hearing, pursuant to Sections 120.569 and 120.57, Florida Statutes, and Florida Administrative Code Chapter 28-106, concerning the Northwest Florida Transportation Corridor Authority Master Plan adopted on April 5, 2007 (See Attachment 1). Petitioners received notice of the Authority's Master Plan (agency action) at the April 5, 2007 meeting. In support thereof Petitioners state as follows:

GENERAL ALLEGATIONS

1. Petitioners' names, addresses, and phone numbers are as follows:
 - (a) Clean Water Network of Florida, Inc.
517 Beverly Street

Tallahassee, FL 32301
850/222-9188

- (b) Linda L. Young
7439 White Sands Blvd.
Navarre Beach, FL 32566
850/939-5152

2. The state agency affected by this action is :

- (a) The Northwest Florida Transportation Corridor Authority
Mr. Randall A. McElheney, Chairman
c/o HDR Engineering
109 Harrison Avenue
Panama City, Florida 32401
- (b) Florida Department of Transportation
Stephanie C. Kopelousos, Secretary of Transportation
605 Suwannee Street
Tallahassee, Florida 32399-0450

3. The proposed final agency action that is the subject of this petition is the adoption of Master Plan Phase II on April 5, 2007. Under Chapter 343.81, F.S. the Authority is an agency of the state. Furthermore, chapter 120.52(1)(b)(2) of the Florida APA defines “Agency” as each “Authority”. Under Chapter 120.52(2) the Master Plan Phase II meets the definition of an “agency action”. Nowhere is this Authority explicitly excluded from the application of Ch.120. The Master Plan Phase II will purportedly authorize the planning and engineering services required to develop and execute a comprehensive Corridor Master Plan for US 98 and its associated transportation network. While the adopted Master Plan Phase II does not establish final location or details of identified projects, there does not appear to be a more appropriate opportunity delineated by Respondents for substantially affected citizens to request an

administrative hearing pursuant to Chapter 120.569, F.S.¹ Petitioners nor the general public ever received proper public notice under chapter 120.54(3), F.S. prior to adoption of the Master Plan Phase II.

4. All agency actions taken under Chapter 120.52 are subject to change at the discretion of the Agency. Nevertheless, Petitioners assert that the Master Plan Phase II diverges so far from the authorizing legislation, that they will be adversely and substantially affected regardless of minor route changes.

5. The proposed agency action that is the subject of this petition is also legally equivalent to a rule adoption under Chapter 120.52(15). The definition of “Rule” in Ch. 120.52(15) includes, *“each agency statement of general applicability that implements, interprets... law or policy”*. The Master Plan is both implementing the law and interpreting it. The “implementation” includes assessing and designing transportation needs and routes as called for in the original legislation. Furthermore, the Master Plan “interprets” the statute insofar as the Authority interprets key provisions such as what its duties are under the legislation by implementing the Plan, what area the “corridor” defined in the original legislation is referring to, and to what extent public support is necessary.

6. Petitioners contend that this proposed and unpromulgated rule is an “invalid exercise of delegated legislative authority” under 120.52(8) in that:

- a The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;
- b The agency has exceeded its grant of rulemaking authority, citation to which is

¹ (1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574.

required by s. 120.54(3)(a)1.;

- c The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

7. Petitioners contend that the Master Plan considers much more to be included in the definition of “Corridor” than the original legislation does. This would fall under 120.52(8)(b) and 120.52(8)(c) above. FS 343.805(10) defines "U.S. 98 corridor" as “U.S. Highway 98 and any feeder roads, reliever roads, connector roads, bridges, and other transportation appurtenances, existing or constructed in the future, that support U.S. Highway 98”. By adopting this Master Plan, the Authority exceeded their legislatively-delegated powers and mandate in interpreting “corridor” to mean much more than just “feeder, reliever, and connector roads”.

8. Petitioners contend that several of the projects appear to move beyond the mandates of the NWFTCA and show no reasonable relationship to improvements related to U.S.98 (e.g., Projects numbered 8, 12, 38, 40, 78, and 79). In fact, several appear to only serve private development interests to open up currently undeveloped areas, encouraging an increased rate of urbanization/suburbanization without having taken time to understand the growth inducing effects that will like result (Projects numbered 8, 12, 38, 40, 78, and 79 may represent such situations).

9. Petitioners contend that the rule “contravenes” the legislation in violation of 120.52(8)(c) in that it does not seek public involvement or support as the original legislation called for. In the minutes of NWFTCA meetings from 6/15/06, Mike Duncan² stated that no public approval is required for these projects. Petitioners contend that little attempt was made to educate or involve citizens, local governments or state or federal agencies affected by the

² Attorney for the Authority

multiple road project plans. The adoption hearing itself involved less than one minute of discussion by board members regarding the recommended plan, and was adopted unanimously without debate. This was after dozens of citizens and several representatives of state and federal agencies spoke against the proposed Master Plan Phase II and only one person spoke in support.

10. Petitioners contend that the ability of the public to even understand what was being proposed for adoption was limited at best to those with computer access, and few, if any, maps appeared in local papers showing the project routes, comparative graphics of resources affected and new areas opened up for intensified development.

SUBSTANTIAL INTERESTS - GENERAL

11. Among other things, Petitioners contend that the Master Plan Phase II affects the substantial interests of the PETITIONERS, and the general public and is deficient in the following ways:

- (a) Several of the proposed roadways threaten private and public conservation easements worth millions of dollars (e.g., Projects numbered 8, 35, 38, 40)
- (b) The entire plan is strictly a road building exercise with no consideration given to development of alternative modes of transportation. In the heavily developed beach community areas along U.S. 98 significant investments in alternative modes, such as light rail trolleys, should be assessed.
- (c) Little consideration was given to the very sensitive environmental features and wildlife pathways that several of the proposed roads would cross. Projects numbered 38, 40, 53, 54, 57 and 62 stand out in this respect in particular.
- (d) Growth management implications have not been assessed, especially for new road

development. A slower more deliberative approach should be taken for each project, especially new road development in areas that heretofore have had low road density, limited habitat fragmentation and existing rural lands and linked economies

- (e) The adopted plan appears to have been developed without adequate coordination and integration with comprehensive plans, metropolitan planning organization plans, FDOT corridor plans, and land holdings controlled by the Trustees of the Internal Improvement Trust Fund, and leaves little or no opportunity for the public to challenge anything.
- (f) The adopted plan does little or nothing to alleviate traffic safety issues on U.S. Hwy 98.
- (g) The adopted plan will unnecessarily affect private property rights.

PETITIONERS' SUBSTANTIAL INTERESTS

12. Petitioners are individually substantially and adversely affected by the adoption of this Master Plan Phase II in the following ways:

- (a) Petitioner Clean Water Network of Florida, Inc. is a not-for-profit corporation registered in the state of Florida. The Network has 155 group members and almost 5000 individual members throughout the state of Florida. These members will be adversely and substantially affected by the pollution that will affect the waters they currently use for swimming, canoeing, diving, kayaking, and boating. They will be adversely and substantially affected by the woods that will be destroyed which they currently use for hunting and bird-watching.
- (b) The Clean Water Network of Florida is committed to full implementation and

enforcement of the Clean Water Act and all statutes and rules promulgated there under, including Chapter 403 Florida Statutes to the extent that it is at least as protective as the Clean Water Act. The primary mission of the Network is to help communities effectively participate in decision-making that affects the waters in their communities.

(b) Petitioner Linda L. Young is a home-owner and resident of Santa Rosa County. Her property is located at 7439 White Sands Blvd, Navarre Beach. She is a frequent driver on the Hwy. 98 corridor and every road that currently exists within the Authority's Master Plan, with the exception of the bridge between Hwy. 98 and Garcon Point. Ms. Young is acutely aware of the traffic problems and safety hazards present along large sections of Hwy. 98.

Petitioner Young is a frequent user of natural resources that will be impacted by the new roads proposed in the Master Plan Phase II. She is an avid hiker, kayaker, canoeist and swimmer. Ms. Young's use of these waters and protected lands will be adversely affected by the construction of the proposed roads.

STATEMENT OF MATERIAL FACTS DISPUTED BY PETITIONERS

13. Petitioners dispute whether the Master Plan Phase II is reflective of the Legislature's intent in Florida Statute Section 343.80. The enabling legislation states "the primary purpose of the authority is to improve mobility on the U.S. 98 corridor in Northwest Florida, to enhance traveler safety, identify and develop hurricane evacuation routes, promote economic development along the corridor, and implement transportation projects to alleviate current or anticipated traffic congestion." Chapter 343.82(1) F.S.

14. Petitioners dispute whether Projects #8, #12, #76, #18, #24, #30, #33, #38, #43, #54 and #40 will improve mobility and/or traffic safety along the U.S. 98 corridor.

15. Petitioners dispute whether Projects #8, #12, #18, #33, #38, #40 and #76 will “promote economic development along the corridor”. Much of the land adjacent to these proposed roads is private conservation land and state forest where no economic development will be allowed along the roadway.

16. Petitioners dispute whether seasonal variations in volume were taken into account in the traffic projection studies? It appears that the Plan projects full volume use of the roads of the Apalachicola Basin as the standard for future road building and growth. By the Authority’s own projections, population growth in Franklin County, Florida will be relatively modest, negating the need for maxed out traffic volumes.

17. Petitioners dispute whether Goal D in the Master Plan where the Authority states that one of its objectives is to “Improve transportation access to rural and economically distressed counties and communities in the northwest Florida region ...*in a manner that reflects regional and community visions*” has been attempted, much less accomplished.

**STATEMENT OF ULTIMATE FACTS ALLEGED AND A STATEMENT OF THE
SPECIFIC FACTS THE PETITIONER CONTENDS WARRANT REVERSAL OR
MODIFICATION OF THE AGENCY'S PROPOSED ACTION**

18. The Master Plan claims to balance technical solutions with other public factors such as environment and public input. Petitioners contend this is an unfounded claim and warrants reversal or modification of the agency’s proposed action.

19. The Master Plan asserts that it is an attempt to satisfy the Legislature’s goals and objectives. Goal A of the Master Plan is to improve the mobility of people and goods throughout the US 98 corridor area. Petitioners contend that this has not been a primary goal of the

Authority or the Master Plan and that the failure to accomplish this goal warrants modification of the Authority's proposed action.

20. The Master Plan asserts that it is an attempt to satisfy the Legislature's goals and objectives. Goal B of the Master Plan is to enhance traffic safety along the US 98 corridor for all modes of travel. Petitioners contend that this goal will not be accomplished and the Master Plan may in fact exacerbate the traffic problems along the US 98 corridor. Therefore Petitioners contend that this fact warrants reversal or modification of the Authority's proposed action.

21. The Master Plan asserts that it is an attempt to satisfy the Legislature's goals and objectives. Goal D of the Master Plan is to identify transportation strategies that enhance the region's economic development potential. Petitioners contend that this goal will not be accomplished and the facts warrant reversal or modification of the authority's proposed action.

**RULES OR STATUTES PETITIONERS CONTEND
REQUIRE REVERSAL OR MODIFICATION OF AGENCY ACTION**

22. Chapter 120.57(1)(3)2. Requires that the "Agency" must demonstrate that an unadopted rule is:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority derived from the State Constitution, is within that authority; Petitioners contend that the Authority's "rule" or Master Plan is outside its delegated authority and therefore warrants reversal.

23. Chapter 120.57(1)(3)2. Requires that the "Agency" must demonstrate that an unadopted rule is:

b. Does not enlarge, modify, or contravene the specific provisions of law implemented; Petitioners contend that the Authority's "rule" or Master Plan does enlarge, modify and contravene the specific provisions of law implemented and therefore warrants reversal.

24. Chapter 120.57(1)(3)2. Requires that the "Agency" must demonstrate that an unadopted rule is:

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

Petitioners contend that the Authority’s “rule” or Master Plan does not establish adequate standards for agency decisions and does vest unbridled discretion in the agency and therefore warrants reversal.

25. Chapter 120.57(1)(3)2. Requires that the “Agency” must demonstrate that an unadopted rule:

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

Petitioners contend that the Authority’s “rule” or Master Plan is both arbitrary and capricious and therefore warrants reversal.

26. Chapter 120.57(1)(3)2. Requires that the “Agency” must demonstrate that an unadopted rule:

e. Is not being applied to the substantially affected party without due notice; and Petitioners contend that the Authority’s “rule” or Master Plan is being applied to the

substantially affected parties without due process or due notice being followed and therefore warrants reversal.

RELIEF SOUGHT BY PETITIONERS

27. Petitioners respectfully seek:

(a). that this matter be transferred to the Division of Administrative Hearings (DOAH) for the conducting of a formal administrative hearing after the conducting of a reasonable period of discovery;

(b). that DOAH enter a recommended order of denial of the proposed Master Plan Phase

II:

(c). that the Authority develop methods of building partnerships with local governments, other state and federal entities, the private-sector business community, and the public in **support** of corridor improvements;

(d). that the Authority create an initiative where the Florida Department of Community Affairs, the regional planning councils, the local governments, the Authority and most important, the citizens of the region come together to create a collaborative vision of how road building fits into a well conceived “regional and community vision” before going forward with a Final Master Plan.

Respectfully submitted,

April 19, 2007

Linda L. Young, director
Clean Water Network of Florida, Inc.
517 Beverly Street
Tallahassee, FL 32301
850-222-9188

Linda L. Young
7439 White Sands Blvd.
Navarre Beach, FL 32566
850/939-5152
llyoung2@earthlink.net

