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April 4, 2010

VIA HAND DELIVERY

Morgan County Board of Commissioners
Morgan County Planning Commission
150 East Washington Road
Madison, GA 30650

Re: Application dated February 5, 2010, to Rezone Approximately 518 Acre Property Located at the Northeast Corner of Aqua Road (County Road 116) and Indian Creek Road (the "Subject Property") from AR (Agricultural and Residential) to I-2 (Heavy Industrial)

Dear Ladies and Gentlemen:

My firm represents Citizens To Preserve Morgan County, Inc., a non-profit organization formed by citizens of Morgan County who are opposed to the referenced Application. I am writing in regard to such Application which proposes the development of a regional landfill on the Subject Property. The Application materials contain several misstatements that cannot be allowed to stand unrebutted. In addition, such inaccurate and incomplete information provides cause for denial of the Application pursuant to Section 29.2.4 of the Zoning Ordinance. As discussed more extensively below, the Application should be denied for numerous and substantial reasons.

The Application states the Subject Property is suitable for a landfill in light of the County's Comprehensive Plan designation of the Subject Property as an "industrial mega-site." This statement is demonstrably false. It is important to analyze the term "industrial" at the outset. The American Heritage Dictionary defines "industrial" as "of, pertaining to, or derived from industry." The word "industry" is then defined as "the commercial production and sale of goods and services." A landfill does not fit this definition. While the Zoning Ordinance provides that a landfill may be constructed in the I-2 Heavy Industrial zoning district after obtaining a conditional use permit, it merely reflects the need to place landfills under some zoning district. It does not, however, indicate a landfill was contemplated within the Industrial Mega-Site classification in the Comprehensive Plan. The Comprehensive Plan outlines

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specifically what is envisioned for the Industrial Mega-Site classification, and it is clear a landfill does not fit that vision. The Comprehensive Plan provides on page 282 as follows:

Two different classifications of industrial land use are indicated on the Future Land Use Map. The *Industrial* classification is intended to accommodate general industrial uses ranging from distribution to manufacturing in an industrial park setting. The *Industrial Mega-Site* classification specifically identifies a new industrial development area that should be reserved as a “mega-site” for one or more very large industrial developments. There are several such mega-site industrial areas identified in the State of Georgia that have similar characteristics to this area of Morgan County (more than 500 acres of land, water/sewer infrastructure capability, rail access, interstate access, etc.). For the area classified as *Industrial Mega-Site*, it is important to restrict future industrial development to only that which is consistent with the mega-site designation. Piecemeal development of this area with smaller industries will detract from the unique mega-site potential and will result in undesirable land use patterns. Additionally, zoning requirements for mega-site development should include very large setback or buffer areas from surrounding streets and/or properties and access to mega-site development should be designed so as to minimize conflicts with local traffic.

The language quoted above from the Plan demonstrates a landfill would be inconsistent with the Industrial Mega-Site. Reference is made to “several such mega-site industrial areas identified in the State of Georgia that have similar characteristics to this area of Morgan County.” Certainly, this comparison is intended to reflect this area’s competitiveness with those other areas around the State who vie for large industrial projects, like automobile manufacturing plants, that generate jobs. Those other areas of the State are decidedly not competing for regional landfills.

The above-quoted language also emphasizes the importance of restricting development “to only that which is consistent with the mega-site designation.” In this case, the proposed regional landfill will comprise 518 acres of this approximately 2,500 acre mega-site. Such would per se constitute “piecemeal development” that will undoubtedly “detract from the unique mega-site potential.” It is difficult to imagine a more “undesirable land use” than a regional landfill. This section of the Comprehensive Plan closes by referencing the need for “very large setback or buffer areas.” Yet the Application acknowledges the necessary buffers cannot be met and variances will be required.

The Comprehensive Plan itself does not reference particular zoning districts in discussing mega-sites. But the County’s Zoning Ordinance does, though not in I-2 Heavy Industrial which is the zoning designation sought in the Application. Instead, it is under I-3 Large Site Industrial

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where the Industrial Mega-Site is discussed. Section 9.3.3 of the Zoning Ordinance states as follows: "Only those properties that lie within the area designated for Industrial Mega-Site on the Future Land Use Map of Morgan County are appropriate for rezoning to Large Site Industrial (I-3) Districts. The Large Site Industrial Zoning District may be applied to an area that contains no less than 500 acres." Such language demonstrates that the Industrial Mega-Site classification under the Comprehensive Plan and the I-3 Large Site Industrial zoning district are intended to work together. The substantial requirements and application procedures provided under I-3 zoning recognize that Mega-Site Developments are unique and special. Traditional I-2 zoning developments are not consistent with the Industrial Mega-Site classification, and certainly a landfill also requiring a conditional use permit is further not consistent with such classification.

To equate a landfill with large site industrial development defies common sense. A landfill does not attract other complementary development. Instead it repels development. The County's Comprehensive Plan Industrial Mega-Site vision for this area will be both literally and figuratively trashed if a regional landfill is permitted, because the remaining acreage in the area under the Industrial Mega-Site designation will no longer be attractive for development. Quality development simply does not locate next to a regional landfill. If such a landfill were permitted, it would establish a negative development pattern for this entire section of the County for decades, not to mention that a landfill produces very few jobs.

Not only would other industrial development be repelled, but also quality commercial and residential development needed to sustain the County's future growth. Section 9.3.1 of the Zoning Ordinance speaks directly to the purpose and intent of a Mega-Site as created under the relatively new I-3 zoning classification: "The intent of the district is to achieve development which is consistent with the land use goals of Morgan County, to provide for a review process which facilitates the development of new sites allowing for the flexibility to achieve the best possible development, both in terms of achieving the site's economic development potential and in terms of protecting and enhancing the quality of life of the citizens of Morgan County." Again, it is impossible to read this statement of intent and conclude that a landfill falls within it. The I-3 zoning district was created in anticipation of a Ford Motor Company manufacturing plant in 2003 that would employ a large workforce and attract the various support businesses complementary to automobile plants, just as has occurred with the Kia plant near West Point. Simply because I-2 zoning is located immediately before I-3 zoning in the Zoning Ordinance does not mean the districts are synonymous. In fact, an automobile manufacturing plant would not be permitted in I-2 zoning, and a landfill is not permitted in I-3 zoning. In short, the Subject Property's proposed I-2 zoning for a landfill is not only inconsistent with the County Comprehensive Plan designation of this area, it is diametrically at odds with the intent of the Industrial Mega-Site classification and would destroy future development potential for the surrounding area.

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The Application goes on to state that the Subject Property has been marketed for development purposes by various entities to no avail. It defies logic to suggest that because Ford Motor Company opted not to build a manufacturing plant on this site that any other use is now fair game. An automobile plant is a unique development. Indeed there is only one other active plant in Georgia, the above-mentioned Kia facility near West Point. Two others have recently closed: the GM plant in Doraville and the Ford plant in Hapeville. States compete mightily for such plants, and the County was very fortunate to have been on a short-list of potential sites. The Subject Property would have accommodated such a plant. But simply because that use did not come to fruition does not mean the owners of the Subject Property are now entitled to an economic return founded upon that 2003 experience. Being able to accommodate a large development does not mean one is entitled to a large development. The AR zoning designation that applies to the Subject Property is the same designation that applies to countless other properties in this section of the County. The Subject Property is no more entitled to intense development than neighboring properties. Certainly the Subject Property would be more valuable if rezoned for a landfill. But the issue is whether it has a reasonable economic use as currently zoned. The current AR zoning is presumptively constitutional and such presumption may only be overcome by clear and convincing evidence of a significant detriment to the landowner and insubstantial relationship to public health, safety, morality, or general welfare. We do not believe such a showing can be made for this property or for the countless other properties in this area that presumably would be similarly entitled to rezoning.

The Application contends the site is "well-suited" for the proposed landfill and goes on to claim the Subject Property is included in the State's Guaranteed Ready for Accelerated Development ("GRAD") program. However, the Subject Property in fact is not on the State's GRAD program list. Review of the GRAD program website and discussions with GRAD personnel confirm there are no sites in Morgan County on the GRAD program list. Importantly, criteria have been adopted for the GRAD site program, and the Subject Property does not meet those criteria. Specifically, the criteria state that "an industrial zoning designation is an absolute requirement for GRAD application." We know what the meaning of "is" is, and the current AR zoning is not industrial.

Furthermore GRAD personnel confirm that the GRAD program has not been used for landfills but rather is designed to attract traditional industry that brings jobs to Georgia. This proposed landfill simply does not qualify as a GRAD program site. For the Application to claim the Subject Property is on the GRAD list, therefore, raises substantial questions about the credibility of other assertions in the Application. At a minimum, the Application's substantial and repeated erroneous references to the GRAD program constitute cause for denial under Section 29.2.4 of the Zoning Ordinance, which provides as follows: "The submission of inaccurate or incomplete information may be cause for denial of the request, or if said discrepancies are realized after approval of the petition or issuance of relevant local permits, cause the revocation of the approval and any related permits by the Board of Commissioners."

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In addition, we note with great curiosity that the Application somehow concludes the Subject Property's designation of "Limited Suitability" for a landfill under the Northeast Georgia Regional Solid Waste Management Plan supports the Application. Section 9.7.3 of this Plan states that 76% of the County is considered unsuitable or of limited suitability for siting a landfill, which includes the Subject Property. One would think a landfill of the magnitude proposed here should be sited on land designated "Potentially Most Suitable." Moreover, a landfill of this magnitude should not be located in a Seismic Impact Zone having a 12% horizontal acceleration. Basically, simply having over 500 acres, access to water/sewer, a rail line, and frontage on a road that even the Application acknowledges must be improved is a far cry from a conclusion that the site is "well suited" for a landfill.

The Application claims the County needs this landfill for the County's own solid waste disposal needs. Certainly having access to a nearby landfill that can handle the County's waste stream conveniently is a desirable goal during these stressful economic times. But to meet that goal by constructing a decades-long blight on a large section of the County places short-term economics above the long-term interests of the County. Furthermore, in 2009 the Oak Grove landfill in Barrow County, currently contracted to handle the County's waste, received a 30 acre expansion permit toward the original 60 acres which will extend the life of the landfill an additional 8-10 years. In addition, a new waste-to-energy incinerator at the Elberton landfill in Elbert County has just been approved. The Applicants acknowledge this proposed mega-landfill would handle not only the County's waste needs but also the solid waste generated by other counties and indeed other states. In fact, for the County to see a "profit" in the near future, trash would have to be hauled in from elsewhere to achieve a profitable return. The Application references the Norfolk Southern rail line as a possible means of waste removal. The more realistic expectation is that this rail line would bring solid waste to the site, not take it from the site. Indeed there would be no reason for a landfill to have a height approaching 250 feet height, requiring a maximum variance from the County 60 foot height limit, unless a regional landfill were planned. Frankly, it is shocking that Morgan County, with its history and culture, would even contemplate transforming its reputation from one of rich cultural and historical attractions to that of a regional solid waste destination. Surely the County can manage and handle its solid waste needs as many other local governments are doing without becoming home to a huge regional landfill.

The Application asserts the site's environmental features are suitable for a landfill. Again the Application claims that the previous proposed Ford plant and the alleged GRAD site designation suggest the site is now suitable for a landfill. This claim ignores the fundamental differences between the environmental operational characteristics of an automobile factory and a landfill. The Applicant's own expert's conclusion that the site is suitable environmentally is inherently suspect. It must be noted that this site is at the confluence of Four Mile Branch and Little Indian Creek, which is a drinking water source for neighbors to the south in the City of

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Eatonton and Putnam County. There are many wetlands and springs on the site that render it unsuitable for a mega-landfill. Section 3.3 of the Comprehensive Plan makes it clear that wetlands protection ordinances and enforcement of wetlands protection through the development review process must be given a high priority in local policy. Plus, as referenced above, this site lies in a Seismic Impact Zone.

Additionally, for the Application to assert that it will “substantially comply” with the County’s 500 foot buffer requirements while in the same sentence admit variances are needed is simply incredulous. First, either the buffer is met or it is not. Second, the 500 foot buffer was based upon a 60 foot height. Here we know that a height of approximately 250 feet or more is sought. Increasing the height by a factor of four should result in a commensurate fourfold increase in the buffer to 2,000 feet. The very purpose of the 500 foot vegetated buffer is to screen the operations of a 60 foot high landfill from view. Obviously such a buffer will not screen a 250 foot high landfill.

The Application states that “existing residences on nearby properties with AR zoning predominantly tend to be older developments.” It is beyond curious to attempt to comprehend why “older” homes are somehow less deserving of protection, particularly here in Morgan County. The Application also apparently would have you ignore the approximately 125 new homes in the Madison Lakes subdivision and on Pierce Dairy Road, Aqua Road, and Indian Creek Road within a one to two mile radius. Morgan County’s reputation for valuing and protecting both older and newer homes cannot be understated or forgotten.

As noted in the opening paragraph of this letter and discussed above, the Application is replete with inaccurate and incomplete information that constitute cause for denial of the Application under Section 29.2.4 of the Zoning Ordinance. In addition to the erroneous references to the State’s GRAD program, following are several other obvious flaws in the Application:

- (1) The Application’s confirmation of public and private wells within a one-half to two mile radius is incorrect and confirmed to be more than 20 years old;
- (2) The hydro geologic assessment is based on frivolous GRAD program acceptability and no information is provided;
- (3) The landfill suitability composite map identifies Madison County, not Morgan County;
- (4) The supporting soils report and map identify property to the north of the proposed site which does not address the soil type where Big Indian Creek and Little Indian Creek meet; and

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(5) The line of sight pictures included in the Application are not accurate.

Finally, this Application's request for I-2 zoning for development of a regional landfill must be reviewed with the understanding that applications for a conditional use permit and height and buffer variances are required. The Application already states that a buffer variance will be required, yet provides no clear understanding of the scope of the variances being sought. More specifically, Section 15.14.12 of the Zoning Ordinance addresses additional criteria for siting a landfill that make the conditional use permit a mandatory part of the application in determining the compatibility of a use with adjacent properties and the overall community. The Application itself alludes to the need for those subsequent applications; therefore, it would be irresponsible to consider this rezoning Application in isolation. Moreover, no local government in this day and age would rezone property adjacent to other AR property to an I-2 Heavy Industrial classification without imposing extensive conditions. Such conditions should not include reference to a site plan that in this case plainly shows the Zoning Ordinance requirements are not met.

In conclusion, the Application contains boilerplate constitutional objections to the current zoning designation of the Subject Property that are basically identical to the objections routinely submitted with countless zoning applications submitted across Georgia. The Application cloaks itself with "planning-speak" in an effort to paint a prettier picture but at the end of the day is the equivalent of putting lipstick on a pig. As stated earlier, under Georgia law, the current zoning of the Subject Property is presumed valid. Gradous v. Board of Commissioners of Richmond County, 256 Ga. 469 (1986). This presumption of validity may only be overcome by clear and convincing evidence of a significant detriment to the landowner and insubstantial relationship to the public health, safety, morality, or general welfare. Gwinnett County v. Davis, 268 Ga. 653 (1997). The Georgia appellate courts in recent years have been deferential to zoning decisions of local governments. The courts recognize that zoning is legislative in nature. Gradous, supra. Local elected officials accordingly are given great discretion in determining whether rezoning property for a use such as a landfill is consistent with the public interest and reflective of the support or opposition of citizens in the community. Further, even if the local government decides to rezone property, it is not required to rezone the property to the zoning classification requested by the landowner. Otherwise, numerous landowners would constantly request rezoning to more intense zoning classifications that generally increase property values.

We would respectfully submit that whether viewed in the context of this Application alone or in light of the entire package of applications to come, rezoning the Subject Property to I-2 Heavy Industrial for purposes of a landfill is diametrically opposed to the interests of the citizens of this area and further to the interests of the County as a whole. Consequently, we urge

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the County to deny the rezoning sought in the Application. We appreciate your consideration of the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Palmer', written over the word 'Sincerely,'.

Charles F. Palmer

cc: Department of Planning & Development
County Manager