IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT, LAKELAND, FLORIDA

Case No. 2D15-2105

GOLFROCK, LLC, a Florida Limited Liability Company,

Appellant,

v.

LEE COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Appellee.

On Appeal from the Circuit Court, 20th Judicial Circuit,
in and for Lee County, Florida
(Case No. 2013-CA-002838)

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLANT

MARK MILLER
Fla. Bar No. 0094961
CHRISTINA M. MARTIN
Fla. Bar No. 0100760
Pacific Legal Foundation
8645 N. Military Trail, Suite 511
Palm Beach Gardens, Florida 33410
Telephone: (561) 691-5000
Facsimile: (561) 691-5006
E-mail: mm@pacificlegal.org
cmm@pacificlegal.org

Counsel for Amicus Curiae
Pacific Legal Foundation

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Pursuant to Florida Rule of Appellate Procedure Rule 9.370, Pacific Legal Foundation (PLF) respectfully requests this Court's permission to submit this brief amicus curiae in support of Appellant, GolfRock, LLC.

INTEREST OF AMICUS CURIAE

Pacific Legal Foundation is a nonprofit, tax-exempt corporation organized for the purpose of litigating matters affecting the public interest in private property, individual liberty, and economic freedom. Founded over 40 years ago, PLF is the most experienced legal organization of its kind. PLF maintains offices in Florida, California, Washington, Hawaii, and the District of Columbia.

PLF attorneys have participated as lead counsel in many landmark United States Supreme Court cases in defense of the right of individuals to make reasonable use of their property, and the corollary right to obtain just compensation when that right is infringed. *See, e.g.*, *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725 (1997); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). PLF attorneys have also litigated in many state and federal courts, including in the Florida courts, in cases dealing with takings ripeness issues and takings law generally. *See, e.g.*, *Sansotta v. Town of Nags Head*, 724 F.3d 533 (4th Cir. 2013); *Clay v. Monroe County*, 849 So. 2d 363, 365 (Fla. 3d DCA 2003); *Trepanier v. County of Volusia*, 965 So. 2d 276 (Fla. 5th DCA 2007). PLF attorneys

accordingly have specialized expertise and experience in constitutional property rights law, including the law relevant to ripening takings claims.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case raises an issue of vital importance to every property owner in Florida: whether takings ripeness rules can be construed to require property owners to submit to a costly and pointless application process before they may judicially challenge land use regulations that clearly prohibit certain activities. The takings ripeness doctrine requires a final administrative decision to ensure that property owners come to court with a cleanly postured property rights claim. Unfortunately, local governments often manipulate that requirement to avoid any constitutional challenge to restrictive land use rules and policies. They do so by avoiding and stalling (or changing) administrative decisions and regulations, which might otherwise open the door to a constitutional challenge. *See* Patrick W. Maraist, *The Ripeness Doctrine in Florida Land Use Law*, 71 Fla. Bar J. 58, 60-61 (Feb. 1997).[1] This gamesmanship succeeds when courts fail to impose limits on the administrative process that property owners must navigate to ripen a takings challenge. Ripeness does not require applications for their own sake or when the government has no ability to grant them. Courts that fail to enforce this principle force landowners through long, expensive, and doctrinally

[1] http://www.floridabar.org/divcom/jn/jnjournal01.nsf/Author/5D7AB31F4854CA3485256ADB005D6105.

unnecessary administrative processes and give incentives to government officials to complicate and stall the process.

This case illustrates the dangers of an unbridled "final decision" ripeness doctrine. GolfRock initially sought a permit to mine and later develop a piece of land in Lee County, Florida, in 2005. Joint Statement of Stipulated Facts, R. at 297. After requiring five supplements to the application, passing a mining moratorium, and then changing the rules to forbid mining on GolfRock's land, the County finally demanded that GolfRock withdraw its application *eight years* later. *Id*. at 298-301. Now the County contends (and the lower court held) that GolfRock must file additional mining applications, under the new rules, and obtain a decision on those applications before it can claim that the County's restrictions on mining result in a taking—even though the County's regulations now explicitly and categorically bar GolfRock's proposed mining activity. *See* R. at 322-23, 331; Lee County Ordinance No. 10-20.

This is not mandated by the "final decision" ripeness doctrine. The extent of the County's mining restrictions became clear, and GolfRock's claim became ripe, when the County decided to outright ban limerock mining on GolfRock's land, thereby removing all discretion to grant the desired mining permit. *See Suitum*, 520 U.S. at 738; *Palazzolo*, 533 U.S. at 620. Alternatively, GolfRock's claim became ripe under futility principles when it became apparent that the County would not grant GolfRock a mining permit under the new County rules. *See Gardens Country Club,*

Inc. v. Palm Beach County, 712 So. 2d 398, 401 (Fla. 4th DCA 1998). This Court should accordingly hold that GolfRock's claim is ripe and reverse the decision below.

ARGUMENT

I

GOLFROCK'S CLAIM IS RIPE WITHOUT FURTHER APPLICATIONS

An as-applied regulatory takings claim becomes ripe for review when it is clear how the regulation that allegedly gives rise to a taking will be applied to the property at issue. *Palazzolo*, 121 S. Ct. at 2459; *Suitum*, 520 U.S. at 738. Often this requires a development application, but when government officials do not have discretion to grant the use, the landowner need not apply to ripen his claim. *See id.* Likewise, the landowner need not apply when denial is inevitable. *Gardens Country Club*, 712 So. 2d at 402. Here, the comprehensive plan and the County's action make it clear the government cannot and will not grant GolfRock's permit, and thus the claim is ripe.

A. The Framework of Finality Ripeness Analysis

1. *Williamson County* and Origin of the "Final Decision" Requirement

Florida's takings ripeness doctrine is coextensive with the federal ripeness doctrine. *See, e.g., Lost Tree Vill. Corp. v. City of Vero Beach*, 838 So. 2d 561, 570 (Fla. 4th DCA 2002) ("Florida courts have adopted the federal ripeness policy."); *Collins v. Monroe County*, 999 So. 2d 709, 715-16 (Fla. 3d DCA 2008) (Florida

courts adopted federal ripeness requirement articulated in *Williamson County*); *St. Johns River Water Mgmt. Dist. v. Koontz*, 77 So. 3d 1220, 1222 (Fla. 2011), *rev'd on other grounds*, 133 S. Ct. 2586 (2013) (Florida courts "interpret[] the takings clause of the Fifth Amendment and the takings clause of the Florida Constitution coextensively."). And federal ripeness doctrine emanates from the Supreme Court's decision in *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985).

In *Williamson County*, the Supreme Court held that an as-applied regulatory takings claim is not ripe until "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." 473 U.S. at 186. This "final decision" requirement is based on the substantial discretion land use law often grants government officials, as well as the fact-specific nature of regulatory takings law. *Palazzolo*, 121 S. Ct. at 2459 ("*Williamson County*'s final decision requirement 'responds to the high degree of discretion characteristically possessed by land-use boards in softening the strictures of the general regulations they administer.'" (quoting *Suitum*, 520 U.S. at 738)). The underlying rationale is that a court cannot know whether a regulation "goes too far" and causes a taking until it knows to a "reasonable degree of certainty" how officials will apply the subject regulation to the property. *Palazzolo*, 533 U.S. at 620. In *Williamson County*, the court held the plaintiff's taking claim was unripe because

county officials had the authority to approve the plaintiff's development through a variance, but the plaintiff had not applied for a variance. *See Williamson County*, 473 U.S. at 190. The Court could not tell whether the regulations prohibited all development unless this final process was utilized—or whether it was futile.

2. Finality Typically Requires Applications—When the Government Has Discretion To Approve Projects

The rationale underlying the final decision rule gives rise to the default principle that a landowner must utilize available application processes and give the government a chance to exercise its discretion to permit the requested use before asserting that the land use restrictions deprive the owner of the use and value of property. *See Glisson v. Alachua County*, 558 So. 2d 1030 (Fla. 1st DCA 1990), *rev. denied*, 570 So. 2d 1304 (Fla. 1990); Maraist, *supra*, *The Ripeness Doctrine in Florida Land Use Law* at 58; *Lost Tree*, 838 So. 2d at 573.[2]

The point of the application requirement is not, however, to force a landowner to prove that the government will deny all economically beneficial use of the subject property. It is simply to coax the government to a "final, definitive position regarding how it will apply the regulations at issue to the particular land in question." *Williamson County*, 473 U.S. at 191. Decisions on applications show how restrictive

[2] When it comes to takings law, there are "few invariable rules," because there are a "nearly infinite variety of ways in which government actions or regulations can affect property interests." *Arkansas Game & Fish Comm'n v. United States*, 133 S. Ct. 511, 518 (2012).

a regulation is with regard to particular land. When the reach of land use regulation become clear, a court can apply takings standards, and a challenge to the regulation is ripe. *Palazzolo*, 533 U.S. at 620.

Whether the owner has alternative property use options (under regulatory policies) is immaterial. While the alternative use issue may go to the merits of a takings claim, it does not effect the ripeness of finally applied regulations. *Lauderbaugh v. Hopewell Township*, 319 F.3d 568, 574 (3d Cir. 2003) ("The [finality] ripeness doctrine prevents judicial interference 'until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.' " (quoting *Abbott Labs., Inc. v. Gardner*, 387 U.S. 136, 149 (1967)); *see also*, J. David Breemer, *Ripening Federal Property Rights Claims*, 10 Engage: J. Federalist Soc'y Prac. Groups 50, 51 (2009) ("Final decision ripeness is not concerned with whether a property owner has a winning [denial of all use] claim; it is simply concerned with ensuring that a land use decision is concrete enough to allow a court to even consider whether it [causes] a taking."). Accordingly, GolfRock did not need to apply for additional permits, just as it does not have to complete the application process on its first permit.

3. When the Government Lacks Discretion To Approve Development, Finality Exists Without Applications

The default final decision analysis outlined above hinges entirely on the assumption that the government has discretion to approve a landowner's proposed land use. *Palazzolo*, 533 U.S. at 620 (*Williamson County*'s final decision requirement is based on the high degree of discretion government officials typically wield). It does not apply, however, in all circumstances. Specifically, the finality ripeness analysis is truncated (1) where the impact of land use regulations are already known to a "reasonable degree of certainty" or (2) where the government has no meaningful discretion to reduce a land use law's impact. *Palazzolo*, 533 U.S. at 620 ("[O]nce it becomes clear that the agency lacks the discretion to permit any development, or the permissible uses of the property are known to a reasonable degree of certainty, a takings claim is likely to have ripened."); *Suitum*, 520 U.S. at 726 ("Because the agency has no discretion to exercise over her right to use her land, no occasion exists for applying *Williamson County*'s requirement that a landowner take steps to obtain a final decision about the use that will be permitted on the particular parcel.") Indeed, in these situations, a "final decision" exists, and a takings claim is ripe for review. *Palazzolo*, 533 U.S. at 620; *Suitum*, 520 U.S. at 738.

4. The Futility Exception Applies When Permit Applications Would Be Pointless

There is an additional exception to the final decision requirement that a landowner file an application. When submitting a proposal to the government would be futile, it is not required. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1012 n.3 (1992) (a request for a decision granting a regulatory exemption is not required when it would be "pointless"); *Alachua Land Investors, LLC v. City of Gainesville*, 107 So. 3d 1154, 1158 (Fla. 1st DCA 2013) ("[T]he ripeness doctrine does not require a landowner who alleges a regulatory partial taking to file a meaningless, futile application to the governmental agency.").[3] The reason for this exception is apparent: requiring applications when they will not or cannot be approved would force landowners to go through meaningless procedures for ripeness and would do nothing to crystalize a takings claim for the courts. *See Palazzolo*, 533 U.S. at 622. *Gardens Country Club*, 712 So. 2d 398, aptly illustrates the nature and application of the futility exception. There, the Gardens Country Club applied for

[3] *See also Lost Tree*, 838 So. 2d at 574 (where comprehensive plan banned particular use and government defended the ban in comprehensive planning process, plaintiff was excused from filing an application before bringing claim); *Taylor v. City of Riviera Beach*, 801 So. 2d 259, 263 (Fla. 4th DCA 2001) (previous rejection of amendment to comprehensive plan excused plaintiff from asking for a similar amendment); *Gardens Country Club*, 712 So. 2d at 402 (county's change of comprehensive plan relieved plaintiff of submitting an application); *see also Benchmark Resources Corp. v. United States*, 74 Fed. Cl. 458, 466 (2006) (federal agency's designation of area as unsuitable for mining supported futility exception of applying for permit within that area, without necessity of even one application).

development approval when the comprehensive plan allowed up to one housing unit per two acres. *Id.* at 401. But after the application was filed, the county passed an ordinance putting a moratorium on such applications. *Id*. Subsequently, it amended the comprehensive plan to decrease the permissible housing density—allowing only one unit per twenty acres. The amendment effectively decreased the value of the Gardens Country Club's land by 62.5 percent. *Id.* at 402 ($8,000 per acre to $3,000 per acre). Under no circumstances could the county approve the developer's application, because it conflicted with the new comprehensive plan. *Id*. Though the Court could have held the claim ripe without the exception, the Fourth District Court of Appeal easily concluded that submission of a development plan after adoption of the new comprehensive plan would have been futile, and thus was unnecessary for ripeness. *Id*.

B. GolfRock's Takings Claim Is Ripe Due to the County's Lack of Discretion To Approve Mining

In this case, GolfRock need not submit applications to ripen a takings claim against the County's regulation of its property, because there is no question that, under the County's new plan and policies, the County lacks discretion to approve GolfRock's intended mining activity. Joint Statement of Stipulated Facts, R. at 301 (plan does not allow mining on GolfRock's property); *Bay County v. Harrison*,

13 So. 3d 115, 118 (Fla. 1st DCA 2009) ("a local government may not authorize any development that would be inconsistent with the applicable comprehensive plan").

It is undisputed the new comprehensive plan does not allow mining on GolfRock's property. Joint Statement of Stipulated Facts, R. at 301. By amending the comprehensive plan to forbid mining, the County eliminated its own discretion to grant a permit. *See Town of Ponce Inlet v. Pacetta, LLC*, 120 So. 3d 27, 30 (Fla. 5th DCA 2013), *rev. denied*, 139 So. 3d 299 (Fla. 2014) (officials lack discretion to violate or amend comprehensive plan and landowner cannot in good faith hope for favorable comprehensive plan amendments, even where County officials make promises to fix the plan); § 163.3194(1)(a), Fla. Stat. ("After a comprehensive plan . . . has been adopted . . . all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan . . . shall be consistent with such plan . . . as adopted."). As a result, the County cannot demand that GolfRock submit an application to ripen its takings claim; the claim is already fit for review due to the fact that the regulations are clear and categorical in banning mining. *See* Joint Statement of Stipulated Facts, R. at 301 (recognizing property is outside of area where mining allowed); Lee County Ordinance No. 10-20.

The leading case in this area is *Suitum*, 520 U.S. at 738. There, the Supreme Court held a property owner's claim as ripe, without submission of applications, due

to the clear nature of the land use restrictions governing her property. Mrs. Suitum and her husband purchased a residential lot near Lake Tahoe, before the Tahoe Regional Planning Agency adopted severe land use restrictions that allowed development on the basis of a point and lottery system. *Id*. at 728-29. They could only develop their lot if they won an allocation through the lottery and if they had a sufficient parcel score under the regulatory system. When Mrs. Suitum received an allocation through the annual lottery, the government denied her permission to construct a house, because it was located in an environmentally sensitive area. *Id*. at 731. Suitum filed a takings claim. *Id*. Even though regulations forbade building on her property, the government argued that her claim was not ripe, because she had failed to file applications "to obtain a final decision" by the government about "the amount of development allowed" on her land. *Id*. Moreover, it argued that her claim could not be ripe until the value of her transferable development rights could be determined through an approved sale. *Id*. at 732. The lower courts held her claim unripe for lack of a final decision. *Id*. at 732-33. But the Supreme Court reversed, holding that Suitum's claim satisfied the "demand for finality" because—unlike the claim in *Williamson County*—there was "no question . . . about how the 'regulations at issue [apply] to the particular land in question.' " *Id*. at 739. The regulations did not give government officials "discretion to exercise over Suitum's right to use her land." *Id*. at 738.

The same analysis applies here. Because the County government has no meaningful discretion to waive or modify the plan's ban on mining, a "final decision" exists, and GolfRock's taking claim is ripe for review on the merits. *Palazzolo*, 533 U.S. at 620; *Suitum*, 520 U.S. at 738; *Maritrans Inc. v. United States*, 342 F.3d 1344, 1359 (Fed. Cir. 2003) (lack of discretion sufficient to ripen a claim); *Cienega Gardens v. United States*, 265 F.3d 1237, 1245-46 (Fed. Cir. 2001) (same). Put another way, the impact and reach of the County's plan and regulatory scheme is known to a reasonable degree of certainty: GolfRock cannot mine; therefore, its takings claim based on this restriction is ripe. *Palazzolo*, 533 U.S. at 622 (holding claim ripe despite the landowner's failure to seek a development permit because the value of the property was nonetheless reasonably certain).

Moreover, ripeness in this takings case does not depend on GolfRock submitting multiple applications designed to discover whether the County will permit any use of the property. *Id*. at 625. The "denial of all economically beneficial use" inquiry is standard used to assess certain takings claims on the merits; not a ripeness test. *See id*. at 623-24; *Lucas*, 505 U.S. at 1015 (per se taking occurs when landowner denied all economically beneficial use of property). The County formally and finally barred mining. That is enough to create a ripe takings claim against the restriction. *See Williamson County*, 473 U.S. at 190 (purpose of the "final decision" requirement is to ensure that the Court can ascertain "how [the takings plaintiff] will be allowed

to develop its property"); *Suitum*, 520 U.S. at 739 ("[D]emand for finality is satisfied" where there is "no question . . . about how the 'regulations at issue [apply] to the particular land in question.' " (quoting *Williamson County*, 473 U.S. at 191)).

C. GolfRock's Claim Is Ripe Under a Basic Application of the Futility Exception

Even if the claim weren't ripe under the "lack of discretion" rule, it is still ripe under the futility exception. The County made it abundantly clear through its actions and regulations that it would not approve GolfRock's development application. *See* Joint Statement of Stipulated Facts, R. at 298-301. GolfRock submitted and supplemented its application under a previous comprehensive plan that would have allowed its intended mining development. *Id.* at 298. Rather than reach a decision on that application, the County responded with five subsequent requests for information, stalling the processing of the application by a couple of years. *Id.* at 298-301. It then passed a moratorium halting consideration of the application just like the government did in *Gardens Country Club*. *Compare id*. *with Gardens Country Club*, 712 So. 2d at 402. Then it passed a new comprehensive plan and insisted that GolfRock's application, like the Gardens Country Club, would be subject to the requirements of the new comprehensive plan. *See id*. Not only does the comprehensive plan prohibit GolfRock's development, the County's actions demonstrate its clear opposition to the plan. It would be unreasonable to think that the County would, after directly opposing

GolfRock's plans with its moratorium and comprehensive plan amendments, amend the plan again after it made the moratorium and amendment in the face of GolfRock's pending application. It would be futile for GolfRock to pursue its development application. *See Lucas*, 505 U.S. at 1012 n.3 (a request for a decision granting a regulatory exemption is not required when it would be "pointless" because there is no such procedure). Accordingly, GolfRock's claim is ripe. *Gardens Country Club*, 712 So. 2d at 402.

II

COURTS UNDERMINE CONSTITUTIONAL PROPERTY RIGHTS WHEN THEY REQUIRE UNNECESSARY APPLICATIONS

Requiring applicants to submit applications even when the government lacks discretion to approve them or when they are futile is not only wrong as a matter of law, it is bad policy because it unnecessarily burdens property rights. Ripeness does not require applications for their own sake. *Palazzolo*, 533 U.S. at 622. A contrary rule invites government agencies to create a long, costly application process, with unstable application requirements. Today, "the cost of even a routine land use application (with the attendant engineering and architectural submissions) is substantial";[4] *see also* Maraist, *supra*, *The Ripeness Doctrine in Florida Land Use*

[4] Amy Brigham Boulris, *Ripeness and Exhaustion of Remedies: Getting to the Merits*, CLEI Regulatory Takings at G-3 (Feb. 2005), http://www.brighammoore.com/library/ (continued...)

Law at 61 ("One commentator has noted that some takings cases have taken up to six years to litigate with costs exceeding $500,000."). Indeed, the cost of pursuing a development application may exceed the value of the property itself. *See, e.g., McKee v. City of Tallahassee*, 664 So. 2d 333, 334 (Fla. 1st DCA 1995) ("the substantial cost of the preparation of a complete development plan, $28,000 to $50,000 according to this record, might well exceed the value of the property under the uses allowed by the City's ordinance").

It can also take years—sometimes decades— to secure a final decision on some permit applications. *See, e.g., Corn v. City of Lauderdale Lakes*, 95 F.3d 1066, 1067 (11th Cir. 1996) (19-year takings dispute over permit denial for warehouse, including 10 years to secure ripeness holding). In *Villas of Lake Jackson, Ltd. v. Leon County*, 796 F. Supp. 1477 (N.D. Fla. 1992), developers spent 17 years trying to secure permits for a multi-family housing project. While the permit applications were pending, the county passed more restrictive regulations, and ultimately denied the permits. *Id*. at 1479. Then the county changed the comprehensive plan to allow for only a limited number of single-family homes. *Id*. at 1480. When the permit applicants claimed inverse condemnation, the court denied the developers' takings claim as unripe because they had not "requested approval of single family

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[4] (...continued)
Ripeness%20and%20Exhaustion%20of%20Remedies%20Getting%20to%20the%20Merits.pdf.

development." 796 F. Supp. at 1481. Similarly, GolfRock spent several years pursuing a costly development application, only to see the County ban the intended use in a new comprehensive plan and finally demand withdrawal of the application eight years after the application was first submitted. Joint Statement of Stipulated Facts, R. at 297-301.

The high costs of development, combined with the difficulty of getting a final application decision and thus judicial review, can turn the application process into high-stakes gambling, enough to cause many property owners to call it quits at the first sign of resistance. Maraist, *supra*, *The Ripeness Doctrine in Florida Land Use Law* at 61 (ripeness determinations increase the cost of enforcing property rights, and cause "many landowners decide to forego a takings claim"). Pursuing a final agency decision on a doomed application often requires landowners to leave their property unused "while mortgage or other overhead expenses accumulate." *Id*. A strict ripeness interpretation, with its attendant costs and delays generally precludes anyone but the most wealthy from persevering long enough to bring a regulatory taking claim. *See* Timothy V. Kassouni, *The Ripeness Doctrine and the Judicial Relegation of Constitutionally Protected Property Rights*, 29 Cal. W. L. Rev. 1, 11 (1992) ("The time and money required to comply with myriad ripeness requirements will prevent most middle class property owners from pursuing their constitutional right to just compensation [and] make substantive review virtually impossible."); Gregory M.

Stein, *Regulatory Takings and Ripeness in the Federal Courts*, 48 Vand. L. Rev. 1, 43 (1995) ("Practically speaking, the universe of plaintiffs with the financial ability to survive the lengthy ripening process is small.").

In light of the expense and difficulty of applying for development permits, courts should only demand applications for ripeness when they are truly needed to clarify how challenged land use regulations apply to private property. Decisions that force landowners to submit applications when the regulatory effect on their land is already clear—requiring them to pursue futile permit applications—means many valid regulatory takings claims will never be heard. Courts properly balance property rights and ripeness requirements when they refuse to engage in the charade of demanding futile of meaningless applications before a property owner may challenge land use restrictions.

Here, no doctrinal, legal, or logical reason requires GolfRock to apply for a permit the County cannot and will not approve to ripen a takings claim. Its case is ripe now. *See Gardens Country Club*, 712 So. 2d at 402.

CONCLUSION

The lower court's decision would force GolfRock to complete development permit applications that the County, by virtue of its own ordinances and plans, cannot legally approve. The entire process would require an unproductive expenditure of

time and money in an unsteady economic climate. This Court should reverse the decision below.

DATED: October 8, 2015.

Respectfully submitted,

By /s/ Christina M. Martin
CHRISTINA M. MARTIN
Fla. Bar No. 0100760

MARK MILLER
Fla. Bar No. 0094961
CHRISTINA M. MARTIN
Fla. Bar No. 0100760
Pacific Legal Foundation
8645 N. Military Trail, Suite 511
Palm Beach Gardens, Florida 33410
Telephone: (561) 691-5000
Facsimile: (561) 691-5006
E-mail: cmm@pacificlegal.org
mm@pacificlegal.org

Counsel for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE

I certify that the font used in this brief is Times New Roman 14 point and in compliance with Fla. R. App. P. 9.210(a)(2).

DATED: October 8, 2015.

/s/ Christina M. Martin
CHRISTINA M. MARTIN
Florida Bar No. 0100760

CERTIFICATE OF SERVICE

I hereby certify that the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF APPELLANT has been electronically filed with the Clerk of Court using the E-Filing Portal on this 8th day of October, 2015, which will send a notice of electronic filing to the following:

Gregory S. Rix, Esq.
S. W. Moore, Esq.
Moore Bowman & Rix, P.A.
300 W. Platt Street, Suite 100
Tampa, FL 33606
grix@mbrfirm.com
bmoore@mbrfirm.com

GolfRock, LLC
711 Hale Avenue North
Oakdale, MN 55128
lyons@lyons-law.com

Jay J. Bartlett, Esq.
Jeffrey L. Hinds, Esq.
Smolker, Bartlett, Loeb
Hinds & Sheppard, P.A.
100 North Tampa St., Suite 2050
Tampa, FL 33602
JayB@smolkerbartlett.com
JeffreyH@smolkerbartlett.com
kristenf@smolkerbartlett.com
zulmar@smolkerbartlett.com

/s/ Christina M. Martin
CHRISTINA M. MARTIN
Florida Bar No. 0100760