

STATE OF FLORIDA  
DEPARTMENT OF HEALTH

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TORNELLO LANDSCAPE CORP.  
d/b/a 3 BOYS FARM,

Case No. \_\_\_\_\_

Petitioner,

v.

DEPARTMENT OF HEALTH,  
OFFICE COMPASSIONATE USE,  
and ALPHA FOLIAGE, INC.,

Respondents.

\_\_\_\_\_ /

**PETITION FOR FORMAL ADMINISTRATIVE PROCEEDING**

Petitioner, TORNELLO LANDSCAPE CORP. d/b/a 3 BOYS FARM ("Tornello/3 Boys Farm"), pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code ("F.A.C."), hereby petitions Respondent, Department of Health, for a formal administrative hearing to contest the Department of Health, Office of Compassionate Use's denial of Tornello/3 Boys Farm's Low-THC Cannabis Dispensing Organization Application, and to contest the Department's approval of the Low-THC Cannabis Dispensing Organization Application submitted by Alpha Foliage, Inc. ("Alpha Foliage"). In support of its Petition, Tornello/3 Boys Farm states:

**Preliminary Statement**

1. In 2014, the Florida Legislature passed Senate Bill 1030 entitled the "Compassionate Medical Cannabis Act of 2014," Chapter 2014-157, Laws of Florida (the "Act").

2. The Act represents an historic and momentous change for the State of Florida regarding the regulation and use of a certain form of medical cannabis, which was previously prohibited in all forms in the state. To provide relief for patients with debilitating diseases, the

Act allows for the medical use of low-THC cannabis when ordered by a Florida physician under specified conditions, primarily for patients suffering from cancer or severe and persistent seizures and muscle spasms.

3. The Act directed the Department of Health (the “Department”) to establish the Office of Compassionate Use (“OCU”) and work with the state university system to bring FDA-approved investigational new drugs for the treatment of refractory epilepsy to Florida. The Act also required the Department to authorize the establishment of five “dispensing organizations” to grow, refine, and dispense low-THC cannabis to qualified Florida patients.

4. As contemplated by the Act, one dispensing organization is to be licensed in each of five regions throughout the state. As discussed below, after the Department’s initial attempt to implement a selection process for Dispensing Organizations was successfully challenged, Chapter 64-4 was adopted setting forth an application process for entities seeking to be selected as a dispensing organization for one of the five designated regions.

5. Tornello/3 Boys Farm timely filed an application to serve as the Low-THC Cannabis Dispensing Organization for the Southwest Region (“Application”).

6. Alpha Foliage, which is located in the Southeast Region, filed applications to serve as the Low-THC Cannabis Dispensing Organization for both the Northwest and Southwest Region. Alpha Foliage’s application was denied in the Northwest region but it was approved in the Southwest Region where Tornello/3 Boys Farm is located.

7. As an applicant seeking to be selected to serve as the Low-THC Cannabis Dispensing Organization for the Southwest Region, Tornello/3 Boys Farm is substantially

affected by the Department's denial of its application and the Department's approval of Alpha Foliage's application for the Southwest Region.

8. Tornello/3 Boys Farm is entitled to an administrative hearing prior to finalization of the selection of the Dispensing Organization in the Southwest Region.

### **Parties**

9. Tornello/3 Boys Farm is duly incorporated and authorized to conduct business in Florida pursuant to Chapter 607, Florida Statutes, and holds a valid certificate of registration with the Department of Agriculture pursuant to Section 581.131, Florida Statutes. Tornello/3 Boys Farm's business address is 704 21st Avenue SE, Ruskin, Florida 33570; its mailing address is Post Office Box 789, Ruskin, Florida 33575, and its telephone number is 813-645-5445. For purposes of this Petition and proceeding, Petitioner's address and telephone number are that of its undersigned counsel. Service of pleadings in this case should be made on undersigned counsel whose e-mail address is set forth below.

10. The affected agency is the Respondent, Department of Health, Office of Compassionate Use ("Department") whose address is 4052 Bald Cypress Way, Bin A-02, Tallahassee, Florida 322399-1703. Petitioner has not been advised and has not been able to determine if there is a Department file number for this matter.

11. Respondent, Alpha Foliage, Inc.'s address is 2700 SW 217<sup>th</sup> Avenue, Homestead, Florida and its telephone number is 385-245-2220.

### **Notice of Agency Decision**

12. Tornello/3 Boys Farm received notice of the Department's denial of its application to serve as the Low-THC Cannabis Dispensing Organization for the Southwest

Region via electronic mail on November 23, 2015. That same day, Tornello/3 Boys Farm learned that the Department approved Alpha Foliage, Inc.'s application to serve as the Low-THC Cannabis Dispensing Organization in the Southwest Region. This Petition is timely filed to challenge those decisions.

13. The instant proceeding involves a competitive licensure process conducted by the Department pursuant to Sections 381.986, Florida Statutes, and Chapter 64-4, F.A.C. to award one license to a qualifying nursery within one of the five regions around the state. The selected entity will serve as the dispensing organization for low-THC, medical use cannabis for the Southwest Region.

14. Because the process adopted by the Department results in the selection of one applicant for a license to the exclusion of others, due process considerations must be followed in order to ensure that a competitive process exists. See Costa Farms, LLC v. Dep't. of Health, 2014 WL 6537375 DOAH Case No. 14-4296RP; Ashbacker Radio Corp. v. FCC, 326 U.S. 327, 66 S.Ct. 148, 90 L.Ed. 108 (1945) (involving the award of broadcast licenses). These due process considerations, commonly referred to as the "Ashbacker Doctrine," establish the right of a competitor to seek a comparative hearing when a governmental entity selects between competing applicants for award of a limited number of licenses that is less than the number of applicants. The Final Order issued on the administrative challenges to the Department's initial proposed rules which sought to implement the Act expressly recognized that the Ashbacker Doctrine compels a process which allows competing applicants to challenge the merits of other applications before final selection.



15. Tornello/3 Boys Farm's challenge is directed to the qualifications of Alpha Foliage and the accuracy of information provided to the Department in order to obtain preliminary selection. In order to meet the requirements for competitive process and to satisfy the due process requirements of the Ashbacker Doctrine, Tornello/3 Boys Farm, is entitled to challenge the information submitted by other competing applicants, including specifically the qualifications of the proposed awardee, Alpha Foliage. In addition, this challenge is directed to the basis for the scoring and evaluation of the responses, the discrepancy in the scoring and evaluation between regions and the Department's failure to protect against conflicts of interest and bias in the selection process.

### **Procedural Background**

#### **Statutory Framework**

16. Prior to 2014, cannabis in any form was prohibited in Florida as a Schedule-1 drug. In 2014, the Florida Legislature enacted the "Compassionate Medical Cannabis Act" which has been codified as section 381.986, Florida Statutes.

17. Low-THC, medical use cannabis is "a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight" See §381.9896(a)(b), Fla. Stat. Low-THC, medical use cannabis has been shown to provide relief to patients with debilitating diseases, including children suffering from cancer and uncontrollable seizures.

18. Section 381.986, Florida Statutes, contains enabling language for the Department to regulate and authorize dispensing organizations for the compassionate use of low-THC cannabis. A "Dispensing Organization" is "an organization approved by the Department to

cultivate, process, and dispense low-THC cannabis.” Section 381.986(5), Florida Statutes, outlines the duties of the Department and lists the criteria an applicant must meet to be approved as a Dispensing Organization.

19. The Department’s responsibilities associated with implementing the Act include establishment of a compassionate-use registry, establishment of the OCU within the agency and the selection of five Dispensing Organizations, one in each of the following regions of the state: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida. The selection of the five Dispensing Organizations is intended to ensure reasonable statewide accessibility and availability of the low-THC cannabis as set forth in the Act. See §381.986(5), Fla. Stat.

20. An applicant to serve as an authorized Dispensing Organization must demonstrate that it meets the following criteria:

1. The technical and technological ability to cultivate and produce low-THC cannabis. The applicant must possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131 that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, and have been operated as a registered nursery in this state for at least 30 continuous years.
2. The ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization.
3. The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.
4. An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department.
5. The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department. Upon approval, the applicant must post a \$5 million performance bond.

6. That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04.

7. The employment of a medical director who is a physician licensed under chapter 458 or chapter 459 to supervise the activities of the dispensing organization.

§381.986(5)(b), Fla. Stat.

21. Initially, the Department proposed rules that would have resulted in the five Dispensing Organizations being chosen through a lottery system. The proposed rules were challenged and the proposed lottery system was rejected. During that rule challenge, Administrative Law Judge Watkins emphasized the need to select the most dependable and qualified Dispensing Organizations noting that the “citizens of the State of Florida, including sick and vulnerable children, deserve approval of the most qualified growers, processors and dispensers of low-THC cannabis.” See Costa Farms, LLC v. Dep’t. of Health, 2014 WL 6537375 Para. 95 DOAH Case No. 14-4296RP.

#### Application Process

22. After its initial lottery proposal was rejected, the Department appointed a committee of interested parties to participate in the development of a selection process. Five potential applications were selected to work with the Department to develop a selection process. Those efforts led to the adoption of Chapter 64-4, F.A.C., which sets forth the application process that was used for the decisions at issue in this proceeding. As discussed below, four of the five entities that were chosen to assist in development of the selection process were selected to be Dispensing Organizations. These results confirm the disparate and unjustified advantage accorded to the few entities selected to serve on the Committee.



23. Pursuant to Rule 64-4.002, F.A.C., a nursery that met the requirements of Section 381.986(5)(b) could make application to be approved as a Dispensing Organization by completing Form DH8006-OCU-2/2015, “Application for Low-THC Cannabis Dispensing Organization Approval” which is incorporated into Rule 64-4.002, F.A.C. The Rule further outlines the criteria contained within the application form

24. The Application Form states as guidance that:

This Application for Low-THC Cannabis Dispensing Organization Approval (Application) is designed to allow the Florida Department of Health, Office of Compassionate Use (OCU) to fulfill its statutory duty to select the five Dispensing Organizations meeting the requirements of section 381.986(5)(b), F.S. (Statute), best able to further the statutory objective of ensuring accessibility and availability of Low-THC cannabis to patients. This has been further clarified to mean that OCU must choose the most dependable, most qualified dispensing organizations that can consistently deliver high-quality Derivative Products. It is important for each Applicant to remember that the Applicant is competing with other Applicants, not with any mandatory minimum criteria set by the OCU. The criteria used to determine which Applicants are selected are drawn directly from the Statute. The items requested in Rule 64-4.002, F.A.C., Initial Application Requirements for Dispensing Organizations (Rule) and this Application are designed to guide OCU in its determination of the most qualified Applicants that can ensure accessibility and availability of Derivative Products by dependably and consistently delivering high-quality Derivative Products. [Emphasis in original.]

25. All applications were required to be submitted to the Agency Clerk no later than 5:00 PM Eastern Time, twenty-one calendar days after the effective date of the rule – July 8, 2015. See Rule 64-4.002(5), F.A.C.

#### Evaluation Process

26. Rule 64-4.002(4), F.A.C., sets forth, as a threshold matter, that failure of an applicant to provide the required application fee or “documentation sufficient to establish the Applicant meets the requirements of Section 38.986(5)(b), F.S., shall result in the application



being denied prior to any scoring as contemplated in Section (5) of this rule.” (emphasis added).

The application form further states, in pertinent part:

The following information must be submitted and is required by the Statute. A failure to submit the information required by Part II will result in the application being denied prior to any scoring as contemplated in rule 64-4.002(5), F.A.C.

A. Please submit documentation sufficient to establish the Applicant meets the requirements of Section 381.986(5)(b)1., F.S., specifically:

1. Certification by the Florida Department of Agriculture and Consumer Services for the cultivation of more than 400,000 plants; and
2. Operation as a nursery in this state for at least 30 continuous years.  
[Emphasis added.]

27. Pursuant to Rule 64-4.002(5)(a), F.A.C., after the initial review to ensure all documentation required to comply with Section 381.986(5), Florida Statutes, was provided, the Department was to substantively review, evaluate and score the applications based on the “Scorecard for Low-THC Cannabis Dispensing Organization Selection” (the “Score Card”). The Department’s review was to be conducted by three person evaluation team: (1) Director of the Office of Compassionate Use; (2) a member of the Drug Policy Advisory Council appointed by the State Surgeon General; and (3) A Certified Public Accountant appointed by the State Surgeon General.

28. Each of the three evaluation team members was to independently review each application using the Score Card. “The Applicant with the highest aggregate score in each dispensing region shall be selected as the region’s Dispensing Organization.” Rule 64-4.002(5)(b), F.A.C. From the information produced to date, it appears that the entities that were chosen to serve on the Committee were disproportionately scored higher than other applicants based on non-objective, undisclosed and unsupported factors.

### Instant Applications

29. The Department received twenty-eight applications seeking to be selected as a Low-THC Dispensing Organization. For the Southwest Region, six applications were received: from Tornello/3 Boys Farm, Alpha Foliage, Plants of Ruskin, Sun Bulb Company, Tropiflora and Perkins Nursery.

30. Alpha Foliage also submitted an application in the Northwest Region, but did not submit an application in the Southeast Region where it is located. Based upon the information currently available, the Alpha Foliage application in the Northwest Region was substantially similar to the Alpha Foliage Application in the Southwest Region. However, the Alpha Foliage Application in the Northwest Region received a significantly lower score from the same evaluation team as compared to its Southwest Region application

31. In the Southwest region, the scoring records appear to indicate that Alpha Foliage received the highest ranking score. Tornello/3 Boys Farm received the second highest ranking score such that if Alpha Foliage's application is denied, Tornello/3 Boys Farm would be awarded the license to serve as the Dispensing Organization for the Southwest Region.

32. On November 23, 2015, the Department sent letters to all applicants informing them whether the application was approved or denied. Tornello/3 Boys Farm's November 23, 2015, letter from the Department stated:

3 Boys Farm's Application to become a Low-THC Cannabis Dispensing Organization for the Southwest region has been substantively reviewed, evaluated and scored by a panel of evaluators according to the requirements of Section 381.986, Florida Statutes and Chapter 64-4, of the Florida Administrative Code. As 3 Boys Farm was not the highest scored applicant in the Southwest region, your application for the Southwest region is denied.

The letter included a Notice of Rights advising that the notice constituted agency action and that a party whose substantial interests were affected by the action could petition for an administrative hearing.

33. On November 23, 2015, the Department sent a letter to Alpha Foliage regarding the Southwest region which stated, in pertinent part:

I am pleased to inform you Alpha Foliage, Inc.'s Application to become a Low-THC Cannabis Dispensing Organization for the Southwest region has been substantively reviewed, evaluated, and scored by a panel of evaluators according to the requirements of Section 381.986, Florida Statutes, and Chapter 64-4, of the Florida Administrative Code. As your application received the highest score for the Southwest region, your application is granted. Alpha Foliage, Inc. is approved as the dispensing organization for the Southwest region of Florida.

34. As expressly recognized on the Application Form, the applicants in each Region were competing with the other applicants in the Region. Consequently, finalization of the selection of the Dispensing Organization in the Southwest Region cannot occur until the issues raised in this Petition are finally resolved.

#### **Concise Statement of Ultimate Facts**

35. As a matter of ultimate fact, Tornello/3 Boys Farm asserts that Alpha Foliage does not meet the minimum qualifications to be selected and the Tornello/3 Boys Farm Application best satisfies the applicable statutory and rule criteria and warrants approval in the Southwest Region.

36. The specific facts warranting reversal of the Department's preliminary proposed denial, include, but are not limited to, the following facts.

37. Alpha Foliage's application for the Southwest Region fails to satisfy the applicable statutory and rule criteria. As a threshold matter, Alpha Foliage did not provide



sufficient evidence to demonstrate compliance with all requirements of Section 381.986(5)(b), Florida Statutes, such that its application should have been disqualified prior to scoring.

38. Section 381.986(5)(b), Florida Statutes, requires, in pertinent part, that an applicant must demonstrate:

The technical and technological ability to cultivate and produce low-THC cannabis. The applicant must possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131 that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011 and have been operated as a registered nursery in this state for at least 30 continuous years.

Section 381.986(5), Florida Statutes, places the responsibility to demonstrate compliance on the applicant. Further, the Department of Agriculture and Consumer Services is not tasked with or authorized to determine whether an applicant meets the requirements of Section 381.986(5), Florida Statutes. Such responsibility ultimately lies with the Department of Health, Office of Compassionate Use, and cannot be delegated to the Department of Agriculture.

39. Alpha Foliage failed to submit sufficient evidence to establish that it has been operated as a registered nursery in this state for at least 30 continuous years. While much of the information submitted is currently [and arguably improperly] redacted, the unredacted portion of Alpha Foliage's shows that Alpha Foliage stated in its application that:

Alpha Foliage began business 34 years ago in 1981 as a partnership and was then incorporated in 1991 as Alpha Foliage, Inc., a Florida corporation. During August 1992, Alpha's headquarters, located in southern Florida suffered a complete loss during Hurricane Andrew. While Alpha continued to operate full steam during this time, unfortunately, all records were destroyed. In light of this fact, in order to supply sufficient proof that Alpha Foliage has operated as nursery in Florida for at least thirty (30) years, we have provided the following items:

- List from the Department of Agriculture and Consumer Services of confirmed 30 Year and 400,000 Plant Nurseries;
- Finance Documents from 1984 and 1986;

- Email confirmation from Florida's Department of Agriculture verifying eligibility;
- Florida Secretary of State document evidencing the 1991 incorporation of Alpha Foliage, Inc., previously Alpha Foliage Partnership.

40. This documentation is not sufficient to demonstrate compliance with Section 381.986(5)(b)1., Florida Statutes.

41. The list from the Department of Agriculture on its face states that it is not determinative of eligibility. The list states:

The following information is based on the Department's best available records and was prepared in response to media inquiries and public records requests. The inclusion of a nursery on this list is NOT a determination of eligibility for licensure as a medical marijuana dispensary pursuant to Section 381.986, Florida Statutes. [Emphasis added.]

Further, the email from Florida's Department of Agriculture included as purportedly confirming eligibility appears to rely on the above-reference list which, as noted above, is not determinative of eligibility. As such, the email is not evidence of anything other than what is contained on the referenced list which was compiled for purposes of responding to media inquiries and public records requests. The Department of Agriculture does not have reliable or authenticated records to establish that Alpha Foliage has been in operation as a registered nursery for 30 continuous years.

42. The Finance Documents from 1984 and 1986, which Alpha Foliage stated are included in the application, have been completely redacted. Regardless, Finance Documents from 1984 and 1986, do not demonstrate that Alpha Foliage has been in operation as a registered nursery in Florida for 30 continuous years.

43. Although Alpha Foliage states that it included a "document from the Florida Secretary of State document evidencing the 1991 incorporation of Alpha Foliage, Inc.,

previously Alpha Foliage Partnership,” such document is not available for viewing. In Alpha Foliage’s application for the Northwest Region, it included the same documents. The 1991 Department of State Document is not redacted in that application. While that document may show that Alpha Foliage was incorporated in 1991, there is no reference on that document that Alpha Foliage, Inc. was previously Alpha Foliage Partnership. In fact, there is no reference to any documentation being included in Alpha Foliage’s application evidencing its alleged status as Alpha Foliage Partnership. Based on search and inquiry, Tornello/3 Boys Farm cannot locate any information on Alpha Foliage Partnership in the Department of State’s records.

44. The Alpha Foliage Northwest Region application also contains a reference to a letter from an attorney purporting to represent Alpha Foliage. Due to the almost complete redaction of the application for the Southwest Region, it is unknown if this letter is also included in the Southwest application. The letter is not available for viewing. In any event, an unverified letter from counsel is nothing more than hearsay and is not sufficient documentation to demonstrate compliance with the requirement that Alpha Foliage must have operated as a registered nursery for 30 continuous years.

45. Based upon the publicly available information, Tornello/3 Boys Farm asserts that Alpha Foliage has not operated as a registered nursery for 30 continuous years and its application should not have been scored by the Department and should be denied as not complying with Section 381.986(5)(b)1., Florida Statutes. The records of the Department of State, Division of Corporations, evidence Alpha Foliage, Inc. was not incorporated until 1991. Tornello/3 Boys Farm cannot locate any documents in the records of the Department of State, Division of Corporations, evidencing the existence of an Alpha Foliage Partnership. Further, Alpha Foliage,



Inc. is a separate corporate legal entity separate and apart from any prior partnership. Section 381.986(5)(b)1., Florida Statutes, requires that the “applicant” demonstrate that it meets the requirements of that section. The applicant here is Alpha Foliage, Inc. Alpha Foliage, Inc. did not, and cannot demonstrate that it has operated as a nursery in Florida for at least 30 continuous years.

46. Failure to provide sufficient written documentation that demonstrates Alpha Foliage complies with Section 381.986(5)(b), Florida Statutes, is grounds to deny Alpha Foliage’s application.

47. After the applications were filed and while the evaluation process was ongoing, the Department, without authorization from Tornello/3 Boys Farm, released the entire Tornello/3 Boys Farm Application to representatives of Alpha Foliage. During this time period, the Department was allowing some of the applicants to amend, clarify or correct their applications. The unauthorized and improper release of confidential/trade secret information from the Tornello/3Boys Farm application to competitors during the evaluation process provided those competitors with an undue competitive advantage which taints the evaluation process conducted by the Department.

48. Tornello/3 Boys Farm is best qualified to serve as the Low-THC dispensing organization for the Southwest region.

- a. Tornello/3 Boys Farm has a superior medical team with extensive hands-on backgrounds in neurology and pharmacology. The Tornello/3 Boys Farm team has published, both domestically and internationally, a large body of respected and oft-cited works pertaining to neurology and the human endocannabinoid

system in general, and the value of cannabis as medicine in particular and is demonstrably more qualified than the Alpha Foliage team.

- b. Tornello/3 Boys Farm also has extensive nursery experience and, by virtue of being a USDA-Certified Organic produce grower, a demonstrated ability to grow products designated for human consumption. Tornello/3 Boys Farm has extensive experience with food safety and traceback compliance protocols, which are required in growing Low-THC medical cannabis in accordance with applicable statutory and rule criteria which exceed the qualifications that can reasonably be claimed by Alpha Foliage, whose experience is in the realm of an ornamental plant grower.
- c. Proper application of the appropriate statutory authority and rule criteria in the evaluation of Tornello/3 Boys Farm's application results in Tornello/3 Boys Farm achieving the highest scores. Tornello/3 Boys Farm should be approved as the dispensing organization for the Southwest Region.

49. There are significant inconsistencies in the scoring that call into question the accuracy and reliability of the scores recorded on the Score Cards. For example, Alpha Foliage filed an application in both the Northwest and Southwest regions. While both applications are heavily redacted, it appears there are extensive commonalities between the two applications. For example, the same entity (Alpha Foliage) is the applicant in both applications and Alpha Foliage submitted the same information in both applications in response to Section (e) relating to the employment of a medical director. The scoring of Alpha Foliage Northwest Region and

Southwest Region Applications varies greatly, even though the information in the applications was apparently the same or very similar.<sup>1</sup>

50. In the scoring records that have been produced to date, there are several unexplained instances of changed scores for both Tornello/3 Boys Farm and Alpha Foliage. There is no indication on the Score Cards as to the reasons why the scores were changed or whether the scores were changed prior to or after the time the Score Cards were combined for totaling.

51. Tornello/3 Boys Farm reserves the right to amend this Petition in light of the fact that it has made a public records request to the Department but the requested information has not yet been provided. Once received, the requested documents may reveal additional facts or bases for challenge. Petitioner also reserves the right to amend this Petition to include any additional necessary facts or bases for challenge that may be revealed in the course of discovery.

#### **Specific Statutes and Rules**

52. The specific statutes and rules which require reversal of the Department's denial of Tornello/3 Boys Farm's application and which required reversal of the Department approval of Alpha Foliage's application include, but are not necessarily limited to: Sections 120.569, 120.57, 120.60, and 381.986, Florida Statutes, and Chapter 64-4, F.A.C.

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<sup>1</sup> The number of instances of disparate scoring of criteria in the Alpha Foliage's responses cannot be conclusively identified at this time due to the fact the copies of the unredacted copies of Applications available on-line are almost entirely redacted, 3 Boys Farm was not able prior to submitting this Petition to compare the two applications. 3 Boys Farms reserves the right to Amended its Petition to include other facts, issues and allegations once the unredacted applications are made available.



### **Disputed Issues of Material Fact**

53. Disputed issues of material fact include, but are not limited, to:
- a. Whether Alpha Foliage is in compliance with all applicable statutory criteria set forth in Section 381.986, Florida Statutes, and Chapter 64-4, F.A.C.
  - b. Whether Alpha Foliage's satisfies the applicable criteria in Section 381.986, Florida Statutes.
  - c. Whether Alpha Foliage satisfies the applicable criteria in Chapter 64-4, F.A.C.
  - d. When, how and why the Department determined that Alpha Foliage's application provided the requisite documentation required by Section 381.986(5)(b) such that it was qualified pursuant to Rule 64-4.002(3), F.A.C., to proceed to scoring.
  - e. Whether Alpha Foliage has been a registered nursery for 30 continuous years.
  - f. Whether the Department failed to disqualify one or more applicants who failed to meet the statutory requirements.
  - g. Whether the Alpha Foliage application should be disqualified.
  - h. The ability of Alpha Foliage to ensure accessibility and availability to have THC Cannabis in the Southwest Region as compared to Tornello/3 Boys Farm.
  - i. The correct score for the Tornello/3 Boys Farm Application based on the applicable criteria in Section 381.986, Florida Statutes, and Chapter 64-4, F.A.C.

- j. The correct score for the Alpha Foliage Application in the Southwest Region based on the applicant's criteria in section 381.98, Fla. Stat. and Chapter 64-4, F.A.C.
- k. All facts and reasons relied on by the Department in reaching its scoring decisions in the Southwest Region.
- l. Whether Tornello/3 Boys Farm's application in the Southwest Region should be approved and/or whether Tornello/3 Boys Farm's application best satisfies the applicable statutory and rule criteria.
- m. Whether the Department's competitive scoring for the Tornello/3 Boys Farm and Alpha Foliage Applications was based on the statutory and rule criteria.
- n. Whether the Department's score for the Alpha Foliage application was based on the statutory and rule criteria.
- o. Whether the Department properly weighed and balanced the applicable statutory and rule criteria in evaluating the Southwest Region applications.
- p. Whether there is a justifiable basis for the disparate scoring of the substantially similar Alpha Foliage applications in the Northwest and Southwest Regions.
- q. The proper weight and balancing to be applied to the Southwest Region applications based on applicable statutory and rule criteria.
- r. Whether, in a comparative review, Tornello/3 Boys Farm's application is superior to that of Alpha Foliage's Application for the Southwest Region.

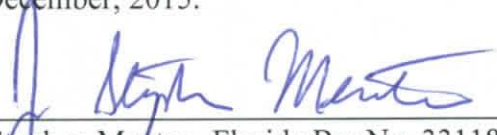
- s. Such other matters relating to the merits of Alpha Foliage's application as may be appropriate for consideration in a de novo formal administrative hearing.
- t. Such other matters related to the qualifications of the applicants and the competitive merits of the applications in the Southwest Region that may be revealed after the Department has produced the unredacted applications and all of the records related to the scoring and evaluation process.

**WHEREFORE,** Petitioner TORNELLO LANDSCAPE CORP. d/b/a 3 BOYS FARM respectfully requests that:

- a. The Department stay all licensing and approval activity related to low-THC cannabis dispensing organizations in the Southwest Region until this proceeding is resolved;
- b. The Department forward this matter and Petition to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct a formal administrative proceeding in accordance with Chapter 120, Florida Statutes, affording a comparative review of Tornello/3 Boys Farm and Alpha Foliage's applications for the Southwest Region;
- c. That Recommended Orders and Final Order be entered approving Tornello/3 Boys Farm's application and denying Alpha Foliage's application; and
- d. That such other and further relief as may be deemed just and appropriate be granted.



Respectfully submitted this 14<sup>th</sup> day of December, 2015.



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J. Stephen Menton, Florida Bar No. 331181

Tana D. Storey, Florida Bar No. 0514772

Rutledge Ecenia, P.A.

119 South Monroe Street, Suite 202

Tallahassee, FL 32301

850-681-6788 (Telephone)

850-681-6515 (Facsimile)

Attorneys for Petitioner

Tornello Landscape Corp.

d/b/a 3 Boys Farm