



Public Service Commission  
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**-M-E-M-O-R-A-N-D-U-M-**

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COMMISSION CLERK

**DATE:** NOVEMBER 20, 2003

**TO:** DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

**FROM:** DIVISION OF ECONOMIC REGULATION (REDEMANN) *PRR*  
OFFICE OF THE GENERAL COUNSEL (BRUBAKER) *Tax Ppt JSB MATH*

**RE:** DOCKET NO. 030637-WS; PETITION FOR APPROVAL OF AMENDMENT OF CERTIFICATE NOS. 279-W AND 226-S FOR DELETION OF TERRITORY IN SEMINOLE COUNTY, BY FLORIDA WATER SERVICES CORPORATION.  
DOCKET NO. 030667-WS; APPLICATION FOR AMENDMENT OF CERTIFICATES NOS. 247-W AND 189-S FOR EXTENSION OF WATER AND WASTEWATER SERVICE AREA IN SEMINOLE, BY SANLANDO UTILITIES CORPORATION.

DOCKET NO. 030637-WS - FLORIDA WATER SERVICES CORPORATION  
DOCKET NO. 030667-WS - SANLANDO UTILITIES CORPORATION  
COUNTY: SEMINOLE

**AGENDA:** 12/02/2003 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\030667.RCM

**CASE BACKGROUND**

Sanlando Utilities Corporation (Sanlando or utility) is a Class A water and wastewater utility located in Altamonte Springs, Florida, which operates three water and two wastewater plants. Sanlando serves about 10,044 water customers and about 8,106 wastewater customers. Its 2002 annual report shows a total annual operating revenue of \$4,814,576 and a net operating income of \$279,394. Sanlando's service area lies within the St. Johns River

DOCUMENT NUMBER 11742

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FPSC-COMMISSION CLERK

Water Management District (SJRWMD), which has declared its entire district a water use caution area.

On July 29, 1998 an Application for Transfer of Majority Organizational Control of Sanlando Utilities Corporation in Seminole County to Utilities, Inc. was filed. On September 4, 1998, Florida Water Services Corporation (FWSC or Florida Water) timely filed an objection to the application and a demand for formal hearing on the matter. FWSC objected because the legal description contained in Sanlando's notices of application appeared to describe territory which overlapped FWSC's Commission-approved territory for its Apple Valley service area. By Order NO. PSC-98-1640-FOF-WS, issued on December 7, 1998 in Docket No. 980957-WS, Application for Transfer of Majority Organizational Control of Sanlando Utilities Corporation in Seminole County to Utilities, Inc., the Commission dismissed Florida Water's objection. As a result of the objection, Sanlando and Florida Water negotiated a Settlement Agreement and filed amendments to resolve the territory dispute. By Order No. PSC-99-0152-FOF-WS, issued on January 25, 1999, in Docket No. 980957-WS, the transfer was granted.

On July 22, 2003, Sanlando filed an application for amendment of Certificates Nos. 247-W and 189-S to add water territory and delete water and wastewater territory in Seminole County. The application includes a Settlement Agreement between Florida Water, Sanlando and Alafaya Utilities, Inc. (Alafaya). While Alafaya is listed in the Settlement Agreement, the territory of Alafaya is not affected. An amendment to Sanlando's application was filed on November 4, 2003, clarifying that there were no active customers in the deleted area, and that Florida Water will be responsible for serving any wastewater customers in the deleted area who may request wastewater service.

Florida Water Services Corporation, (Florida Water or FWSC) is a Class A water and wastewater utility. Florida Water provides water service to approximately 1,127 water customers in the Apple Valley system and 234 wastewater customers in the Chuluota Wastewater system. These systems are also located in the SJRWMD. In 2002, the Apple Valley water system and the Chuluota wastewater system had total annual operating revenue of \$374,764 and \$159,560, respectively with a net operating income of \$146,364 and \$31,213, respectively.

DOCKET NOS. 030637-WS, 030667-WS  
DATE: November 20, 2003

On July 16, 2003, Florida Water filed an application for amendment of Certificates Nos. 279-W and 226-S to delete territory in Seminole County which will be served by other providers. The application includes a Settlement Agreement between Florida Water, Sanlando and Alafaya. This system is also located in the SJRWMD.

While staff would normally process this application administratively if no protests had been filed, this case is being brought to the attention of the Commission to address the agreement between Sanlando and Florida Water. The Settlement Agreement is appended to this recommendation as Attachment A. Issue 1 addresses Sanlando's and Florida Water's proposed Settlement Agreement and the amendments of territory by Sanlando and Florida Water. Sanlando is currently serving customers in the proposed territory, which is addressed in Issue 2. The Commission has jurisdiction pursuant to Section 367.045, Florida Statutes.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission approve the Settlement Agreement, filed July 16, 2003, by Florida Water Services Corporation and Sanlando Utilities Corporation and the resulting amendments of water and wastewater certificates be granted?

**RECOMMENDATION:** Yes. The Commission should approve the Settlement Agreement (Attachment A), filed July 16, 2003, by Florida Water Services Corporation (FWSC) and Sanlando Utilities Corporation (Sanlando). Consistent with the Settlement Agreement, the Commission should approve the application of FWSC for amendment to Water Certificate No. 279-W and Wastewater Certificate No. 226-S to delete the territory described in Attachment B and the application of Sanlando for amendment to Water Certificate No. 247-W to add and delete territory and Wastewater Certificate No. 189-S to delete the territory described in Attachment C. Further, FWSC and Sanlando should charge the customers in the territory added herein the rates and charges contained in their respective tariffs until authorized to change by this Commission in a subsequent proceeding. (REDEMANN, BRUBAKER)

DATE: November 20, 2003

**STAFF ANALYSIS:** As stated in the case background, a written Settlement Agreement (Attachment A) was filed July 16, 2003, by Florida Water Services Corporation and Sanlando Utilities Corporation.

The Settlement Agreement states that the service areas granted to Sanlando overlap in several areas with that of FWSC, and in amicable resolution of the territory overlaps, the utilities propose that the Commission approve (1) deletion of certain portions of property from Sanlando's service area, (2) addition and deletion of territory from Sanlando and FWSC's respective service areas, and (3) deletion of a certain portion of the Chuluota wastewater service area from FWSC's certificate.

Staff believes that the Settlement Agreement (Attachment A) is a reasonable solution to the overlap of territory and is in the public interest. Based on the foregoing, staff recommends that the Commission approve the Settlement Agreement, filed July 16, 2003, by Sanlando and Florida Water.

#### Sanlando's Application

On July 22, 2003 Sanlando filed an application for amendment of its certificates. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains a check in the amount of \$2,100, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. The utility has provided copies of warranty deeds which provide for the continued use of the land as required by Rule 25-30.036(3)(d), Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3)(e), (f) and (i), Florida Administrative Code. A description of the territory is appended to this recommendation as Attachment C. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The local planning agency was provided notice

DATE: November 20, 2003

of the application and did not file a protest to the amendment. One objection was filed and after discussion with staff the objection was withdrawn. The Department of Community Affairs has identified no growth management concerns with the proposed expansion of the utility. The utility states that the provision of service will be consistent with the utility section of the local comprehensive plan.

Sanlando has three integrated water treatment systems, the Overstreet, the Des Pinar, and the Wekiva water treatment system, with a design capacity of 14.868 million gallons per day (mgd). The max day within the past twelve months was 12.692 mgd. The utility indicates that it has sufficient capacity to serve the revised service area. Sanlando has been providing water service continuously to customers in the extension area since it acquired the systems in 1998. Therefore, there will be no impact on the water system. Staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation issued for the water systems. The utility utilizes licensed operators to operate the system.

Sanlando has two separate wastewater treatment systems. The Des Pinar wastewater treatment system with a design capacity of 500,000 gallon per day (gpd) on an annual average daily basis (AADF), and the Wekiva wastewater treatment system with a design capacity of 2,900,000 gpd on an AADF. The average daily flow as of June 2003 for the Wekiva plant over the previous 12 months was 2,343,000 gpd. The utility indicates that it has sufficient capacity to serve an additional 2,500 customers. As stated earlier, an amendment to Sanlando's application was filed on November 4, 2003, clarifying that there were no active customers in the deleted area, and that Florida Water will be responsible for serving any wastewater customers in the deleted area who may request wastewater service. Staff has contacted the Department of Environmental Protection and learned that there are no outstanding notices of violation issued for the wastewater system. The utility utilizes licensed operators to operate the system.

Regarding the financial impact of these customers to the utility, the customers are already connected to Sanlando. The application states that this extension area will not have any impact on Sanlando's rates or service availability charges.

DATE: November 20, 2003

Consequently, staff believes that Sanlando has demonstrated the financial and technical ability to provide quality service to these customers. Staff recommends the rates and charges approved by the Commission be applied to customers in the new service territory. The utility has filed revised tariff sheets incorporating the addition and deletion of territory into its tariff and returned its certificates for entry reflecting the addition and deletion of territory.

#### Florida Water's Application

On July 16, 2003 Florida Water filed an application for an amendment to delete territory. The application is in compliance with the governing statute, Section 367.045, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for amendment of certificate. The application contains a check in the amount of \$300, which is the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code.

Adequate service territory and system maps and a territory description have been provided as prescribed by Rule 25-30.036(3) (e), (f) and (i), Florida Administrative Code. A description of the territory is appended to this recommendation as Attachment B. The utility has submitted an affidavit consistent with Section 367.045(2)(d), Florida Statutes, that it has tariffs and annual reports on file with the Commission.

In addition, the application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code. The local planning agency was provided notice of the application and did not file a protest to the amendment. No objections were filed and the time for filing such has expired. The Department of Community Affairs has identified no growth management concerns with the deletion of service area by the utility.

The application states that the proposed deletions for Florida Water' service area are in the public interest, because they resolve the issue of which utility serves the territories in question. The proposed deletions do not affect the ability of any customer, or potential customer, to receive water and/or wastewater service, since the territories will be served by another utility. Florida Water has filed revised tariff sheets incorporating the

DOCKET NOS. 030637-WS, 030667-WS

DATE: November 20, 2003

deletion of territory into its tariff and returned its certificates for entry reflecting the deletion of territory.

Conclusion

Based on the above information, consistent with the Settlement Agreement, the Commission should approve the application of FWSC for amendment to Water Certificate No. 279-W and Wastewater Certificate No. 226-S to delete the territory described in Attachment B and the application of Sanlando for amendment to Water Certificate No. 247-W to add and delete territory and Wastewater Certificate No. 189-S to delete the territory described in Attachment C. Further, FWSC and Sanlando should charge the customers in the territory added herein the rates and charges contained in their respective tariffs until authorized to change by this Commission in a subsequent proceeding.

DATE: November 20, 2003

**ISSUE 2:** Should Sanlando be ordered to show cause in writing within 21 days why it should not be fined for its apparent violation of Section 367.045, Florida Statutes?

**RECOMMENDATION:** No. A show cause proceeding should not be initiated. (BRUBAKER)

**STAFF ANALYSIS:** The November 4, 2003 Amendment to Sanlando's amendment application states that Sanlando has been providing water and wastewater service to customers in the proposed extension area and will continue to do so without any changes in connections, interruption or curtailment of service. The area to be added to Sanlando's territory is in part the same for which Florida Water seeks deletion. Although there are currently no active wastewater customers in the area to be deleted (the customers currently use septic systems), FWSC will be responsible for providing wastewater service to any of those customers who may, in the future, request wastewater service.

Sanlando has been serving water customers outside of its certificated territory. Section 367.045(2), Florida Statutes, states, in part:

A utility may not . . . extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission.

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In serving outside of its certificated territory without obtaining an amended certificate of authorization, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating to Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order the utility to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."



Although Sanlando's failure to obtain Commission approval prior to serving outside of its certificated service area is an apparent violation of Section 367.045(2), Florida Statutes, there are circumstances which appear to mitigate the utility's apparent violation. The customers Sanlando is serving outside of its territory are located immediately adjacent to Sanlando's service area. When the customers were connected, Sanlando believed they were within its service area due to their location. In addition, the Settlement Agreement appears to satisfactorily resolve any dispute which may have existed as to the right to serve these customers as between Sanlando and FWSC.

Believing that the customers were located within its service area, Sanlando has paid all the necessary regulatory assessment fees for the additional area. Furthermore, upon becoming aware that the customers were not located within its certificated territory, Sanlando filed an application for amendment of its certificate to include the additional area.

Staff does not believe that the apparent violation of Section 367.045, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Sanlando to show cause for failing to obtain an amended certificate of authorization prior to serving outside of its certificated territory.

DOCKET NOS. 030637-WS, 030667-WS  
DATE: November 20, 2003

**ISSUE 3:** Should Docket Nos. 030637-WS and 030667-WS be closed?

**RECOMMENDATION:** Yes. These dockets should be closed. (BRUBAKER)

**STAFF ANALYSIS:** These dockets should be closed.

AGREEMENT

THIS AGREEMENT is made and entered into as of the \_\_\_ day of February, 2003, by and among Sanlando Utilities Corporation, 200 Weathersfield Avenue, Altamonte Springs, FL 32714 ("Sanlando") and Alafaya Utilities, Inc., 200 Weathersfield Avenue, Altamonte Springs, FL 32714 ("Alafaya") and Florida Water Services Corporation, 100 Color Place, Apopka, FL 32703 ("Florida Water").

WITNESSETH

WHEREAS, the Florida Public Service Commission ("FPSC") has granted Sanlando Certificate Nos. 189-S and 247-W to provide water and wastewater service in Seminole County, Florida; and

WHEREAS, the FPSC has granted to Alafaya Certificate No. 379-S to provide wastewater service in Seminole County, Florida; and

WHEREAS, the FPSC has granted Florida Water Certificate Nos. 226-S and 279-W to provide water and wastewater service in Seminole County, Florida; and

WHEREAS, the service areas in the Certificates granted by the FPSC to Sanlando and Alafaya overlap in several areas with that of Florida Water; and

WHEREAS, Sanlando, Alafaya and Florida Water desire to resolve the territory overlaps in an amicable manner;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, Sanlando, Alafaya and Florida Water agree as follows:

1. The foregoing recitations are true and correct and incorporated herein by reference.

2. Sanlando shall delete from its FPSC certificated service area the following described property:

Township 21 South, Range 29 East.  
Section 3. Southwest 1/4 of the Southeast 1/4 of Section 3 lying South of State Road 434.

3. Sanlando shall delete from its FPSC certificated service area the following described property:

Township 21 South, Range 29 East  
Section 11. That portion of the West 1/2 of Section 11 lying West of Interstate 4.

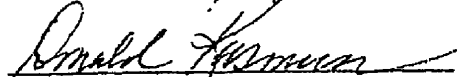
4. Sanlando and Florida Water shall add and delete from their respective service areas the property in Sections 1 and 2, Township 21 South, Range 29 East, as more fully described on Exhibit "A" hereto.

5. Florida Water will delete from its Chuluota wastewater service area that area which is depicted on the map attached hereto as Exhibit "B", and described as follows:

The West 1/2 of the East 1/2 of Section 20, Township 21, Range 32 lying to the South of County Road 419 less and except the East 1/2 of the Southeast 1/4 of the Northwest 1/4 of the Southeast 1/4 lying southerly of County Road 419

6. Within sixty days of the date of the Agreement, Sanlando and Florida Water shall file applications with the FPSC to amend portions of their respective water and wastewater service areas in accordance with this Agreement.

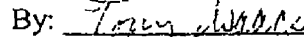
Sanlando Utilities Corporation



By: DONALD RASMUSSEN

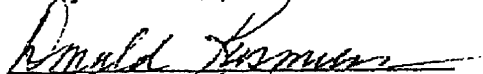
Its: Vice President

Florida Water Services Corporation



Its: Vice President Customer Services

Alafaya Utilities, Inc.



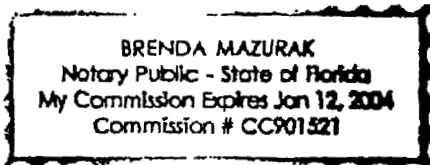
By: DONALD RASMUSSEN

Its: Vice President

Attachment to Agreement by and among  
Sanlando Utilities Corp. and Alafaya Utilities, Inc.  
and Florida Water Services Corp.

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2003, by Brenda Mazurak, as Vice President of Florida Water Services Corporation, a Florida corporation, on behalf of the corporation.



Expires: 1-12-04  
AFFIX NOTARY STAMP  
No.: CC901521

Brenda Mazurak  
Signature of Notary Public  
Brenda Mazurak  
(Print Notary Name  
My Commission

Commission

Personally known, or  
 Produced Identification  
Type of Identification Produced

Attachment to Agreement by and among  
Sanlando Utilities Corporation and Alafaya Utilities, Inc.  
and Florida Water Services Corp.

STATE OF FLORIDA

COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of March, 2003, by DONALD RASMUSSEN, as Vice President of Sanlando Utilities Corporation and Alafaya Utilities, Inc., on behalf of both entities, who is personally known to me or has produced \_\_\_\_\_ as identification.

KAREN L. SASIC  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # DD013845  
EXPIRES 4/1/2005  
BONDED THRU 1-888-NOTARY1

  
\_\_\_\_\_  
NOTARY PUBLIC - STATE OF FLORIDA

Printed Name: Karen L. Sasic  
My Commission Expires: 4/1/2005

Exhibit "A"

Sanlando Utilities shall add the following described property to its certificated water territory:

**Township 21 South, Range 29 East, Seminole County, Florida.**

**Section 1**

The North 175 feet of the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 1 and the North 50 feet of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 1.

**Section 2**

The Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of said Section 2.

Sanlando Utilities shall delete the following described property to its certificated sewer territory:

**Township 21 South, Range 29 East, Seminole County, Florida.**

**Section 1**

The North 1/2 of the Northwest 1/4 of the Southwest 1/4 of said Section 1, less and except: The North 175 feet of the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 1 and the North 50 feet of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 1.

**Section 2.**

The North 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 2 less and except: The North 50 feet of the Northeast 1/4 of the Southeast 1/4 of said Section 2.

Florida Water Services shall delete the following described property from its APPLE VALLEY SYSTEM certificate Water and Sewer territory:

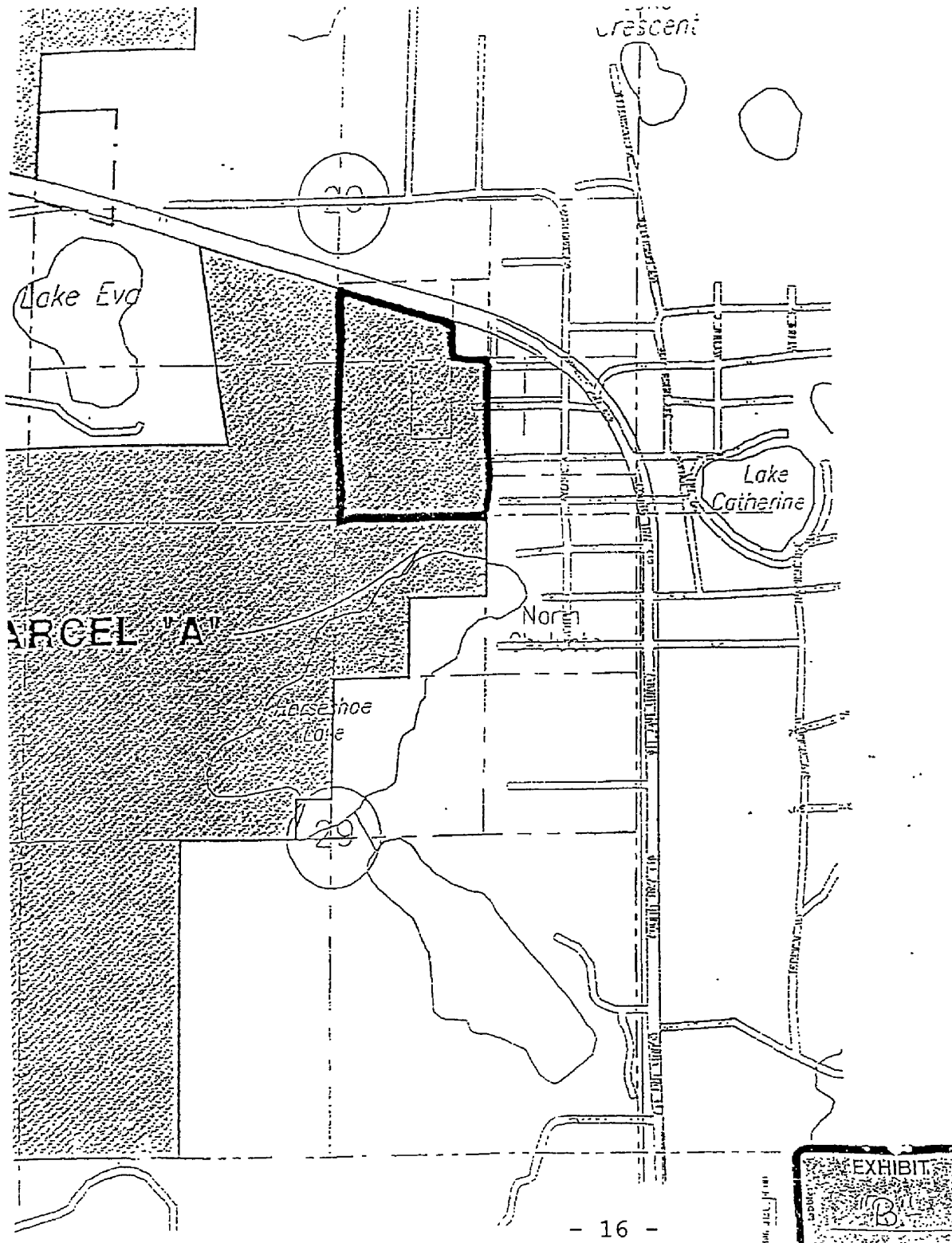
**Township 21 South, Range 29 East, Seminole County, Florida.**

**Section 1**

The North 175 feet of the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 1 and the North 50 feet of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 1.

**Section 2**

The Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of said Section 2.





**Florida Water Services**

**Seminole County**

**Territory to be deleted**

Apple Valley Water Territory

Township 21 South, Range 29 East, Seminole County, Florida.

Section 1

The North 175 feet of the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 1, and the North 50 feet of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 1.

Section 2

The Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of said Section 2.

Chuluota Wastewater Territory

Township 21 South, Range 32 East, Seminole County, Florida.

Section 20

The West 1/2 of the East ½ of said Section 20 lying to the South of County Road 419, less and except the East 1/2 of the Southeast 1/4 of the Northwest 1/4 of the Southeast 1/4 lying southerly of County Road 419.

**Sanlando Utilities Corporation**

**Seminole County**

**To Be Added to Water Territory**

Township 21 South, Range 29 East, Seminole County, Florida.

Section 1

The North 175 feet of the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 1 and the North 50 feet of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 1.

Section 2

The Northeast 1/4 of the Northeast 1/4 of the Southeast 1/4 of said Section 2.

**To Be Deleted from Wastewater Territory**

Township 21 South, Range 29 East, Seminole County, Florida.

Section 1

The North ½ of the Northwest 1/4 of the Southwest 1/4 of said Section 1, less and except:

The North 175 feet of the Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of Section 1 and the North 50 feet of the Northwest 1/4 of the Northwest 1/4 of the Southwest 1/4 of said Section 1.

Section 2

The North 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 2 less and except:

The North 50 feet of the Northeast 1/4 of the Southeast 1/4 of said Section 2.

**To Be Deleted from Water Territory**

Township 21 South, Range 29 East, Seminole County, Florida.

Section 3

The Southwest 1/4 of the Southeast 1/4 of Section 3 lying South of State Road 434.

Section 11

That portion of the West 1/4 of Section 11 lying West of Interstate 4.