

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS

In the Matter of:

APPLICATION FOR AMENDMENT OF CERTIFICATES
611-W AND 527-S TO EXTEND WATER AND
WASTEWATER SERVICE AREAS TO INCLUDE CERTAIN
LAND IN CHARLOTTE COUNTY BY SUN RIVER
UTILITIES, INC. (F/K/A MSM UTILITIES, LLC).



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PROCEEDINGS: TECHNICAL HEARING

BEFORE: COMMISSIONER KATRINA J. MCMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, January 16, 2008

PLACE: Cultural Center of Charlotte County
Conference Room C
2280 Aaron Street
Port Charlotte, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter

(850) 413-6732 DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION

FPSC-COMMISSION CLERK

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14 appearing on behalf of the Commission Staff.

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P R O C E E D I N G S

1
2 COMMISSIONER McMURRIAN: We will move into the
3 technical hearing. At this time we will take up preliminary
4 matters.

5 Mr. Jaeger.

6 MR. JAEGER: Yes, Commissioner. I think the first
7 preliminary matters are the stipulations. There are three
8 stipulations that the Commission may vote on at this time. And
9 I believe they are stipulations on which Sun River and staff
10 are in agreement and on which the County has taken no position.

11 COMMISSIONER McMURRIAN: Commissioners, do you have
12 that before you or do you need a couple of minutes?

13 COMMISSIONER ARGENZIANO: I think I had a question to
14 that. Since we have another public hearing slated for six
15 o'clock tonight, and the stipulations -- or at least one
16 regards quality of service, I wonder how we will handle that if
17 we approve the stipulations and then members of the public come
18 out later?

19 MR. JAEGER: I had discussed about this with both the
20 County and the utility, of course, and they are well aware that
21 you are able to reconsider and open it back up if there is
22 customer testimony that brings out these issues.

23 COMMISSIONER ARGENZIANO: Okay. Thank you.

24 COMMISSIONER McMURRIAN: Thank you. Continue.

25 MR. JAEGER: The first proposed stipulation is does

1 the applicant have the financial ability to serve the proposed
2 territory. The stipulation is that the utility has
3 demonstrated that it has the financial ability to serve the
4 proposed territory.

5 COMMISSIONER McMURRIAN: And your recommendation?

6 MR. JAEGER: And we are recommending -- yes, staff
7 agrees with all of these and are recommending approval.

8 COMMISSIONER McMURRIAN: You just went through Issue
9 2, though, right? Take them one at a time.

10 MR. JAEGER: One at a time.

11 COMMISSIONER McMURRIAN: Okay. Do you all wish to
12 take them up as a group or one-by-one?

13 MR. JAEGER: It's at the Commission's pleasure.

14 COMMISSIONER McMURRIAN: We are going to go
15 one-by-one, Mr. Jaeger. So your recommendation is to approve
16 the stipulation for Issue 2, does the applicant have the
17 financial ability to serve the proposed territory?

18 MR. JAEGER: Yes.

19 COMMISSIONER ARGENZIANO: I move that we approve it.

20 COMMISSIONER SKOP: Second.

21 COMMISSIONER McMURRIAN: Okay.

22 MR. JAEGER: Issue 3, does the applicant have the
23 technical ability to serve the proposed territory? The
24 stipulation is the utility has demonstrated that it has the
25 technical ability to serve the proposed territory. Staff is in

1 agreement with that stipulation.

2 COMMISSIONER SKOP: So moved.

3 COMMISSIONER ARGENZIANO: Second.

4 COMMISSIONER McMURRIAN: Mr. Jaeger.

5 MR. JAEGER: Issue 4, does the applicant have

6 sufficient plant capacity to serve the requested territory?

7 The stipulation is that the utility has demonstrated that it

8 either has sufficient plant capacity to serve the requested

9 territory or will construct a plant when it is needed. Again,

10 staff agrees with the stipulation and recommends its approval.

11 COMMISSIONER SKOP: So moved.

12 COMMISSIONER ARGENZIANO: Second.

13 COMMISSIONER McMURRIAN: Okay. We have voted on the
14 stipulations. All in favor?

15 (Simultaneous affirmative vote.)

16 COMMISSIONER McMURRIAN: We voted on the stipulations
17 on Issues 2, 3, and 4. And as Commissioner Argenziano
18 clarified with the staff, if we have customer testimony that
19 speaks particularly to one of the issues that perhaps might
20 deal with service quality, then we could entertain a motion at
21 that time to revisit it. But, otherwise, we will have approved
22 those stipulations and can move on with the other issues that
23 are pending.

24 MR. JAEGER: Yes, Commissioner.

25 COMMISSIONER McMURRIAN: Thank you, Mr. Jaeger.

1 MR. JAEGER: The next preliminary matter is witness
2 excusal. The Utility's witness, Allen B. Fisher, has been
3 excused from attending the hearing, and staff is recommending
4 that Mr. Fisher's testimony be inserted into the record as
5 though read, and he did not have any exhibits to his testimony.

6 COMMISSIONER McMURRIAN: Show that done.

7 MR. JAEGER: So his testimony has been inserted into
8 the record as though read?

9 COMMISSIONER McMURRIAN: Yes.

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 SUN RIVER UTILITIES, INC.

3 DOCKET NO. 070109-WS

4 DIRECT TESTIMONY OF ALLEN B. FISHER

5 Q. Please state your name and professional address.

6 A. Allen B. Fisher, Senior Vice President

7 SunTrust Bank, 777 Brickell Avenue, Miami, FL 33131

8 Q. Have you been asked by Sun River Utilities, Inc. to
9 provide testimony and assist in the preparation of
10 exhibits in this proceeding?

11 A. Yes.

12 Q. What is the purpose of this testimony?

13 A. To assist in demonstrating Sun River Utilities' financial
14 capabilities and access to financing through its parent
15 and grandparent corporations.16 Q. Who are Sun River Utilities' parent and grandparent
17 corporations?18 A. Sun River Utilities is a wholly owned subsidiary of North
19 Fort Myers Utility, Inc. North Fort Myers Utility, Inc.
20 is a wholly owned subsidiary of Old Bridge Park
21 Corporation, a Florida corporation.22 Q. Please describe your professional relationship with Old
23 Bridge Park Corporation and North Fort Myers Utility.24 A. I am a Senior Vice President of SunTrust Banks, Inc. and
25 the relationship manger to the Schenkman Family and its

1 related entities. I coordinate all of the SunTrust
2 financial services provided to them, personally and to
3 the various family owned entities. This includes
4 investment management, banking, credit and capital
5 markets services to North Ft Myers utility, its parent
6 and of course Sun River. I have been with SunTrust almost
7 six years and during that time we have experienced a
8 successful and mutually beneficial financial services
9 relationship. Prior to 2001, I provided investment
10 advisory services beginning in 1996 and prior to that
11 acted as a tax adviser.

12 Q. Please describe Old Bridge Park Corporation.

13 A. Old Bridge Park Corporation is currently a holding
14 company. It was created as the idea of an entrepreneur,
15 Jack Schenkman. It began as first class, high end
16 manufactured home community and then added a small
17 package wastewater treatment plant to service the
18 resident's needs. Subsequently, due to local needs
19 outside the community, North Fort Myers Utility was
20 formed to build a wastewater treatment plant large enough
21 to serve a specifically granted franchise area in and
22 underserved part of Lee County. In recent history the
23 residents of the community banded together and purchased
24 Old Bridge Park, the community, from Old Bridge Park
25 Corporation. The Corporation then became a holding

1 company, owning among others entities, North Fort Myers
2 Utility.

3 Q. Please briefly describe the financial strength of Old
4 Bridge Park Corporation.

5 A. As of December 31, 2006, Old Bridge Park Corporation and
6 its subsidiary Old Bridge Park, LLC had total assets of
7 \$84,467,521 and retained earnings of \$15,715,890.

8 Q. Please describe North Fort Myers Utility, Inc.

9 A. North Fort Myers Utility is a regulated public utility
10 with approximately 30 years experience in the water and
11 wastewater industry. North Fort Myers Utility started as
12 a small wastewater treatment facility for a mobile home
13 community and has since grown to one of the largest
14 privately owned utility systems in the State of Florida.
15 NFMU currently owns and operates a wastewater collection,
16 transmission, treatment, and effluent disposal system,
17 and a water supply, treatment, transmission, and
18 distribution system serving approximately 20,000
19 wastewater equivalent residential connections in North
20 Fort Myers, Florida. The utility has entered into
21 contracts that will double its customer base in the next
22 few years.

23 Q. Please briefly discuss the financial status of North Fort
24 Myers Utility.

25

1 A. For the year ended December 31, 2006, North Fort Myers
2 Utility had total assets in excess of \$44,000,000. North
3 Fort Myers Utility's revenues are more than sufficient to
4 satisfy its outstanding obligations.

5 Q. How has North Fort Myers Utility financed its growth?

6 A. The utility has financed much of its growth through the
7 issuance of utility system revenue bonds through the Lee
8 County Industrial Development Authority. North Fort
9 Myers Utility had \$30,125,000 in industrial revenue bonds
10 issued and outstanding as of December 31, 2006.

11 Q. Has SunTrust been involved in the financing of North Fort
12 Myers Utility's operations?

13 A. Yes.

14 Q. In what capacity?

15 A. SunTrust has enjoyed a long and favorable relationship
16 with NFMU. SunTrust has acted as the Trustee in several
17 of the bond issues. In fact, SunTrust has structured
18 NFMU's bond issues so that the actual bond payments are
19 made by SunTrust Bank in response to requisitions. NFMU,
20 then reimburses SunTrust for the stated bond payments.
21 Moreover, SunTrust has further guaranteed the bonded
22 indebtedness of NFMU by the posting of a direct pay
23 Letter of Credit on NFMU's behalf. Throughout our
24 relationship, North Fort Myers Utility has never missed
25 nor been late on a bond payment.

1 Q. Is it your opinion that North Fort Myers Utility's
2 financial backing will be an asset to the growth and
3 development of Sun River?

4 A. Yes. North Fort Myers Utility, as the parent entity, has
5 a favorable and successful history as an efficiently and
6 effectively operated utility both financially and
7 operationally. It is anticipated that the same approach
8 will apply to the operations and finances of Sun River.

9 Q. Would you expect that SunTrust would anticipate
10 developing a relationship with Sun River similar to the
11 one enjoyed with North Fort Myers Utility?

12 A. Yes. While every financing must be judged on its own
13 merits, based on the successful track record of the
14 Schenkman family and Sun River's parent corporations
15 SunTrust wants to participate and aid in the growth and
16 development of Sun River Utilities.

17 Q. Is there anything else you want to add?

18 A. I have advised and worked with the owners and managers of
19 North Fort Myers Utility and its parent entity in several
20 capacities since 1984. First, I was the tax advisor and
21 relationship partner while a practicing CPA for the
22 Family and its entities until 1995. As stated previously,
23 I continue to advise and provide investment management,
24 banking, credit and capital markets services to North Ft
25 Myers Utility, its parent and of course Sun River in my

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role as the relationship manager representing SunTrust
Banks, Inc.

In my years of experience with the Owners and Managers of
Sun River and its related entities, They have always
exhibited the desire, tenacity and skill necessary to
provide best of quality of service and invest that which
in necessary: time, capital and experience in all their
business endeavors.

1 MR. JAEGER: And then there was one other matter that
2 I was made aware of just recently. I think the utility has a
3 slight problem with a utility rebuttal witness, Mr. Dearden,
4 and I believe he needs to be taken up today if at all possible.

5 MR. FRIEDMAN: Either today or after 10:00 in the
6 morning. At the time we were concerned that we may need to get
7 that done today, but if we come back tomorrow, we can do it
8 after 10:00 in the morning, or what I was thinking was when we
9 come in at 6:00 for the customer testimony -- I don't think we
10 are going to have anybody, but I didn't think we would this
11 morning, either -- maybe we could put him on at that time.

12 COMMISSIONER McMURRIAN: He wouldn't be available
13 before 10:00 in the morning, if we were to start early?

14 MR. FRIEDMAN: That's the problem.

15 COMMISSIONER McMURRIAN: Okay.

16 MR. FRIEDMAN: He is available today after 2:00, but
17 he is up in -- he is in Lee County. We need to give him about
18 an hour's notice, and he can be here anytime after 2:00 today,
19 and I thought maybe doing him at 6:00. We could have him here
20 at 6:00.

21 COMMISSIONER McMURRIAN: I think we will be able
22 to -- we are hopeful we will be able to push through.

23 MR. FRIEDMAN: I'm optimistic that we can crank it
24 out and maybe make a little better progress the rest of the
25 day.

1 COMMISSIONER McMURRIAN: In fact, this is probably a
2 good time to talk about it. I understand we have this room
3 until 9:00 p.m., and we hope to try to push through, if there
4 is a chance to get done today. It looks like we will get close
5 to getting finished, and it's our preference to do that.

6 MR. FRIEDMAN: That would be better for this witness,
7 too.

8 COMMISSIONER McMURRIAN: Okay. Thank you.

9 Mr. Jaeger, any other preliminary matters before we
10 go into opening statements?

11 MR. JAEGER: That was the last preliminary matter I
12 had, Commissioner.

13 COMMISSIONER McMURRIAN: Okay. We will proceed to
14 opening statements. And, Mr. Jaeger, remind me who goes first.

15 MR. JAEGER: The utility.

16 COMMISSIONER McMURRIAN: The utility.

17 Mr. Friedman.

18 MR. FRIEDMAN: Thank you very much, Commissioner.
19 I'm going to be very brief, because I think the issues are
20 pretty limited to the three issues that are relevant and will
21 be easy to handle. But it is clear in our minds, and I think
22 when you hear the testimony of our witnesses and the
23 examination of the County witnesses that you will see that this
24 application is not, in fact, contrary to the Comp Plan. That,
25 in fact, the procedure that these developers are using is

1 exactly the procedure that the Comp Plan provides in getting to
2 the step where they ask the Board of County Commissioners for
3 the Comp Plan amendment, and then it goes to the DCA. So, what
4 we are doing in this case is following the steps that are
5 provided for in the Comp Plan. So we do not think there is any
6 inconsistency in the Comp Plan. If there is any perceived
7 inconsistency, we think that notwithstanding that
8 inconsistency, that the evidence is going to show you that the
9 Commission should approve it anyway.

10 The other issue that's out there is is there a need
11 for service? And that ties into the Comp Plan issue. But we
12 have -- one of the property owners is going to be here to
13 testify that there is a need. And he will again explain why he
14 had to come to the utility to get the service area amendment as
15 the first step in that process. And as everybody will tell
16 you, ultimately whether or not there is water and sewer service
17 available to this property, the Board of County Commissioners
18 are going to determine what the development rights are on this
19 property.

20 And the last issue that is here is whether there is
21 any duplication of facilities between what Sun River wants to
22 install and what the County has, and I think that is going to
23 be a simple issue. And I think it's going to be clear that
24 there are no duplication of facilities, and so we would assert
25 that the utility has met all of the statutory and rule

1 obligations to justify the Commission granting this certificate
2 amendment.

3 Thank you.

4 COMMISSIONER McMURRIAN: Thank you.

5 Mr. Engelhardt.

6 MR. ENGELHARDT: Thank you, Madam Chair. Good
7 morning, Commissioners, and welcome to Charlotte County.
8 Unfortunately, we are here today because Sun River Utilities
9 has decided to put Charlotte County's Comp Plan on trial. This
10 particular Comp Plan, as you may recall from the County's
11 previous motion in this case, was the result of a massive
12 collaborative effort between elected officials, the County
13 staff members, experts in the various disciplines, and the
14 County citizens themselves.

15 It took 115 public hearings to develop the Comp Plan.
16 And the state agency responsible for reviewing the Comp Plan,
17 the Department of Community Affairs, gave it its stamp of
18 approval. In fact, you will hear testimony from that agency
19 today asserting to you that Sun River's proposed action would
20 violate Charlotte County's valid Comp Plan.

21 You will also hear Sun River admit that its proposal,
22 indeed, violates the Comp Plan, and that it knew this when the
23 application was filed. You will hear Sun River tell you that
24 the people's Comp Plan doesn't matter because it interferes
25 with Sun River's business interests. Sun River wants you to

1 ignore the Comp Plan and to allow them to overrule the mandate
2 of the citizens of Charlotte County who have resoundingly and
3 clearly stated how they want their community to develop. Sun
4 River will claim that it is merely responding to an unaddressed
5 need, Comp Plan notwithstanding. You will hear Sun River claim
6 that the County is anticompetitive, despite the fact that this
7 isn't a question of competition, and the County isn't trying to
8 serve in the area in place of Sun River.

9 But here is what you will not hear. You won't hear
10 anyone tell you when the alleged need exists. You won't hear
11 anyone tell you how much need there is. You won't hear anyone
12 tell you what development is planned. And you won't see
13 anything in the exhibits that further explains what this need
14 is.

15 In the end we are confident that you will come to the
16 same conclusion that the residents of Charlotte County have,
17 that there is no immediate need for service in this area, and
18 to grant this amendment would run counter to the public
19 interest as clearly stated in the Charlotte County Comp Plan.

20 Thank you.

21 COMMISSIONER McMURRIAN: Thank you. Thank you both
22 for your brevity.

23 At this time we will begin calling witnesses. I
24 believe we swore most of the witnesses, at least, at the
25 earlier portion of the proceeding. Mr. Jaeger, should we go

1 through that again, since that was technically the public
2 portion of the testimony?

3 MR. JAEGER: I did not notice if my witness stood up.
4 I saw four, the two county and the two utility witnesses swear,
5 but I did notice -- did you swear them in?

6 WITNESS LEX: I did.

7 MR. JAEGER: Okay. She was blocked by Marty at the
8 time.

9 So they have all been sworn, when you swore them in
10 this morning.

11 COMMISSIONER McMURRIAN: Okay. So we can call our
12 first witness, and that witness is, I believe --

13 MR. JAEGER: A. A. Reeves.

14 COMMISSIONER McMURRIAN: Mr. Reeves.

15 THE WITNESS: Good morning.

16 COMMISSIONER McMURRIAN: Good morning.

17 A. A. REEVES

18 was called as a witness on behalf of Sun River Utilities, and
19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BRANNAN:

22 Q Good morning, Mr. Reeves.

23 A Good morning.

24 Q Even though we have just gone through that, would you
25 please state your name for the record?

1 A A. A. Reeves, III.

2 Q And what do you do, Mr. Reeves? What is your
3 position?

4 A I am the Vice-President and the Utility Director of
5 Sun River Utilities.

6 Q Okay. Did you file some direct testimony and
7 exhibits in this matter?

8 A Yes, I did.

9 Q Have you reviewed that testimony and those exhibits?

10 A Yes, I did.

11 Q Okay. If I asked you the same questions that were in
12 your prefiled testimony today, would you give the same answers?

13 A Yes, they would be the exact same.

14 Q Even though you would give the same answers, do you
15 have any corrections or changes that you would have made to
16 your testimony or the exhibits?

17 A I have two replacements of exhibits, Replacement
18 Exhibit B and C to Exhibit AAR-2. It replaces Pages 35 through
19 39 of 122, and replaces Pages 41 and 42 of Pages 122. And what
20 these replacements are is the legal description that was
21 originally filed was not consistent with the way the staff of
22 the Commission wanted it. And we went back and redid the legal
23 description to be consistent in what the staff wanted. There
24 has been no added -- it is the exact same area, just a
25 different legal description, and Exhibit C is a map showing

1 that.

2 Q And that map was plotted from that legal description?

3 A That's correct.

4 COMMISSIONER McMURRIAN: Mr. Brannan, may I just for
5 a second, it says it replaces Pages 41 and 42, but my second
6 page attached to Exhibit C is blank. Is that --

7 MR. BRANNAN: That's correct. That's correct. In
8 conversation with staff, in order that we don't change the page
9 numbering of the entire thing, we put the map on one page
10 instead of two so there is a blank page so that the page
11 numbering can remain consecutive throughout the rest of the
12 exhibits.

13 COMMISSIONER McMURRIAN: Thank you for that
14 clarification. Proceed on.

15 (REPORTER NOTE: Prefiled testimony inserted for the
16 convenience of the record.)

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1 Q. Please state your name and business address.

2 A. My name is A. A. Reeves, III, and my business address is 5660 Bayshore Road,
3 Suite 36, North Fort Myers, Florida 33917.

4 Q. By whom are you employed?

5 A. I am Vice President and Utility Director of Sun River Utilities, Inc. ("Sun
6 River").

7 Q. What are your primary duties with Sun River?

8 A. I basically oversee all aspects of the operations of Sun River. My primary
9 duties are to handle requests from potential customers for water and
10 wastewater service, including negotiating water and wastewater agreements
11 where appropriate, assisting with financings and accounting projects,
12 overseeing construction projects, and directing Florida Public Service
13 Commission proceedings.

14 Q. Please tell us about your experience in the utility industry.

15 A. Exhibit AAR-1, attached hereto, is a summary of my experience in the utility
16 industry.

17 Q. Was the application for authorization to extend water and wastewater service
18 in Charlotte County, Florida (the "Application") prepared by you or under your
19 direction and control?

20 A. Yes, it was prepared under my direction and control, and is attached as Exhibit
21 AAR-2 hereto.

22

1 Q. Is there a need for water and wastewater service in the territory?

2 A. Yes. There is currently no water or wastewater service in the proposed
3 territory and no plans or capacity on the part of Charlotte County to provide
4 such service. Several property owners have contacted the utility requesting
5 service to their respective properties in and around the proposed territory.
6 These requests are attached hereto as Exhibit AAR-3.

7 Q. Does Sun River have the financial ability to serve the proposed territory?

8 A. Yes. Sun River has the financial ability to render reasonably sufficient,
9 adequate and efficient service to its service territory and the proposed territory.
10 Sun River is a wholly-owned subsidiary of North Fort Myers Utility, Inc.
11 ("NFMU"). NFMU has sufficient cash flow to meet its financial obligations as
12 they become due, and the Commission has confirmed the financial ability of
13 NFMU numerous times in recent years. In addition, NFMU's corporate parent,
14 and Sun River's corporate grand-parent, Old Bridge Corporation, will provide
15 for any additional capital needs which may arise as a result of the expanded
16 service area.

17 Q. Does Sun River have the technical ability to serve the proposed territory?

18 A. Yes. I have over 35 years of experience in the operation and management of
19 water and wastewater utility systems. In addition, Sun River will benefit from
20 the knowledge, experience and management expertise of NFMU, which has
21 been certificated since 1977 and has successfully provided service in northern
22

1 unincorporated Lee County since that time.

2 Q. Does Sun River have sufficient capacity to serve the proposed territory?

3 A. Yes. Sun River will initially serve the expanded area with its existing water
4 and wastewater treatment plants. Expansions will be made as necessary and
5 financed through a combination of long-term debt financing and current
6 capacity fees collected from future customers.

7 Q. How will these financial arrangements affect Sun River's capital structure in
8 the short and long-term?

9 A. It is anticipated that there will be no material impact on Sun River's capital
10 structure in the short term. The long-term effect will be to increase long-term
11 debt, offset by CIAC from capacity fees.

12 Q. Please describe the envisioned developments in the proposed territory.

13 A. The territory to be served will consist of residential, commercial and industrial
14 development. The residential units will consist of single family homes, mobile
15 homes, duplexes and apartments. The commercial and industrial development
16 can be predicted as a result of the widening and improvement of US Highway
17 17 and the residential development in the area.

18 Q. How would expansion of Sun River's service territory affect monthly rates and
19 service ability charges?

20 A. There will be no material impact on Sun River's monthly rates or service
21 ability charges in the short term. The addition of the new customers in the

1 proposed service area would allow Sun River to take advantage of additional
2 economies of scale which will allow Sun River to continue to operate under its
3 existing rate structure. This will benefit both existing and future customers.

4 Q. Will the proposed amendment to Sun River's service territory duplicate or
5 compete with any other water or wastewater system?

6 A. No. Charlotte County does not currently have water or wastewater lines in
7 proximity to the proposed territory; neither does it have any plans to provide
8 water or wastewater service to the proposed territory, nor would they have the
9 capacity to serve such an area.

10 Q. Is the provision of water and wastewater service to the proposed territory
11 consistent with the Charlotte County Comprehensive Plan?

12 A. The portion of the proposed territory that lies outside the urban service area
13 may not comport with the Comprehensive Plan. The portion of the proposed
14 territory outside of the urban service area is needed to provide service to
15 property owners who have requested it and to provide continuity with other
16 portions of Sun River's system. Moreover, Section 367.045(5)(b) of the
17 Florida Statutes allows the Commission to grant the authority to expand the
18 service territory notwithstanding any inconsistent provisions of Charlotte
19 County's Comprehensive Plan.

20 Q. Would granting of the proposed expansion weaken the effectiveness of
21 Charlotte County's planning and guidelines for future development and
22

growth?

A. No. The availability of service to the proposed territory does not reduce the County's authority to control development and growth as it sees fit.

Q. Please summarize why the granting of the Application would be in the public interest.

A. Sun River has shown (1) that there is a need for water and wastewater services in the proposed territory and that the need for such services will likely grow in the future, (2) that the proposed territory will not be in competition with, or a duplication of, any other system, and (3) that it has the financial and technical ability to provide water and wastewater services to the proposed territory and has the ability to expand capacity as needed. Granting this application will not deprive Charlotte County of its ability to control development under its Comprehensive Plan. For these reasons, the application to expand Sun River's service territory is in the public interest.

1 BY MR. BRANNAN:

2 Q Mr. Reeves, would you summarize your testimony that
3 you have previously filed in this matter?

4 A Certainly. There is a need for water and sewer
5 service in the area, both in the existing area as well as the
6 requested area. That's number one. Sun River anticipates that
7 the development in the proposed territory will consist of
8 residential, commercial, et cetera, like all developments and
9 DRIs, et cetera, does and we all deal with every day as a
10 utility. Sun River has and will construct the facilities as
11 needed to serve both the expanded area and the existing area.
12 And we hope that granting this certificate will be approved by
13 this Commission.

14 MR. BRANNAN: Thank you.

15 I would like to have the testimony inserted in the
16 record as read and filed, and Exhibits AAR-1, 2, and 3 that are
17 attached to the exhibits along with the changed or corrected
18 exhibits.

19 COMMISSIONER McMURRIAN: Mr. Jaeger, I believe we
20 enter in the testimony as though read at this time, but we
21 enter in the exhibits, typically, at the end of the cross,
22 right?

23 MR. JAEGER: That is the normal procedure. We
24 usually wait until after all the cross, and then all the
25 exhibits are moved at one time.

1 COMMISSIONER McMURRIAN: We will show the prefiled
2 direct testimony entered into the record as though read.

3 Commissioner Argenziano.

4 COMMISSIONER ARGENZIANO: Mr. Reeves, I have a couple
5 of questions real quick. You indicated that there is a need.
6 One, can you tell me what the current need may be and how did
7 you derive your anticipated need, and when do you think that
8 would be? I guess it is incremental, but do you see a time
9 frame? Most importantly, what do you think is currently the
10 need?

11 THE WITNESS: I filed with the staff some information
12 that was requested of us, and we have currently in the existing
13 area several projects that need to be served that we do not
14 have the capacity to serve. And that is already on file with
15 the Commission staff and listing by the names, the number of
16 units, et cetera. That is in the existing certificated area.

17 The area that is on the east side of 17, it is still
18 in the planning stages of what's going to be constructed out
19 there in the future, what's going to be changed in the Comp
20 Plan, et cetera, and I can't address that. I can only tell you
21 from experiences what usually happens in these kind of things.
22 But how many units or anything, I can't do that. The land
23 planners does that.

24 COMMISSIONER ARGENZIANO: Thank you.

25 COMMISSIONER McMURRIAN: Commissioner Skop.

1 COMMISSIONER SKOP: One brief question. I think that
2 you spoke to the property west of U.S. 17, which I think is in
3 the urban service area. With respect to the rural service
4 area, has there been any direct request from the
5 representatives of the Schwartz property, Hudson Ranch, or
6 Zackariah properties for service?

7 THE WITNESS: Yes, they have requested service.

8 COMMISSIONER McMURRIAN: Mr. Engelhardt or
9 Mr. McLean.

10 MR. ENGELHARDT: Thank you, Madam Chair.

11 CROSS EXAMINATION

12 BY MR. ENGELHARDT:

13 Q Mr. Reeves, you don't live in Charlotte County, do
14 you?

15 A No, sir.

16 Q And how many of the 115 public hearings on the
17 Charlotte County Comp Plan held from 1995 to 1997, did you
18 attend?

19 A None.

20 Q And did you file any written comments on that Comp
21 Plan?

22 A None.

23 Q You are employed by North Fort Myers Utility, as
24 well, is that correct?

25 A That's correct.

1 Q And your job duties, your primary job duties at Sun
2 River are to handle requests from potential customers for water
3 and wastewater service, is that correct?

4 A That's correct.

5 Q The portion of the proposed service area that lies on
6 the west side of Highway 17, that's composed of 62-1/4 acres,
7 is that right?

8 A I don't know the exact acreage.

9 Q Would that not roughly match what you filed in your
10 prefiled testimony?

11 A I would assume that you are correct.

12 Q And the portion which lies on the east side of
13 Highway 17, that is composed of about six and a half miles, is
14 that correct?

15 A That's correct.

16 Q And where is the urban service boundary as
17 established by the Comp Plan?

18 A On the east side of 17.

19 Q So the boundary is 17, correct?

20 A As far as my knowledge, yes, it is, the east side of
21 17.

22 Q So you would admit that the overwhelming majority of
23 the land in your proposed service area falls outside of the
24 urban service boundary?

25 A That's correct.

1 Q Because the overwhelming majority of the land in your
2 proposed service area falls outside of the urban service
3 boundary, you would agree that the Charlotte County Comp Plan
4 prevents service to that area, correct?

5 A No, I don't know that.

6 Q Are you familiar with the Charlotte County Comp Plan?

7 A No. I'll leave that up to the land planners.

8 Q So you are not a land planner yourself?

9 A No, sir.

10 Q Sun River included the six and a half miles outside
11 of the urban services boundary in its application because it
12 needs to upgrade its facilities to serve the requests it
13 received from the 62-1/4 acres on the west side of 17, correct?

14 A That's correct.

15 Q On the east side of 17, have any developers contacted
16 you in regard to wanting to set up residential units of single
17 family homes?

18 A No. They are contacting me and said that they are
19 reviewing the area, doing their land planning, and requested
20 those areas be brought into our service area as part of their
21 land planning.

22 Q They didn't specifically mention single family homes?

23 A No.

24 Q On the east side of 17, have those developers
25 contacted you regarding wanting to set up commercial

1 development?

2 A No.

3 Q On the east side of 17, have any developers contacted
4 you in regard to setting up industrial development?

5 A No.

6 Q So your statement earlier and in your direct
7 testimony that the territory to be served will consist of
8 residential, commercial, and industrial development, the
9 residential units will consist of single family homes, mobile
10 homes, duplexes, and apartments, that's just speculation on
11 your part?

12 A Well, it is based on all of the 40 years I have been
13 doing utility work in the state of Florida, that land planners
14 do the commercial and industrial, multi-family, et cetera, when
15 they are planning for their community.

16 Q But that is not based on any specific knowledge that
17 you have of any specific plans?

18 A No, not at all.

19 Q So you haven't gotten anything in writing talking
20 about what specifically will go?

21 A No, I do not.

22 Q Do you have any idea how many ERCs would be
23 represented in the proposed service area?

24 A No, I do not. I leave that up to the land planners.

25 Q If you have no idea how many ERCs would be

1 represented, how can you be aware of how much capacity you will
2 have to serve that area?

3 A In the utility business you don't build capacity
4 until you have the people that ask for the service and tells
5 you how many ERCs that they need and what the flow is going to
6 be, and then you design your plants accordingly.

7 Q So, in other words, as of now since no one has given
8 you any indication of what the needs would be, you wouldn't
9 know what specifications you would need to expand your facility
10 to, correct?

11 A That's correct.

12 Q You said that you would leave the Comp Plan to the
13 land planners just a moment ago. Will Sun River be presenting
14 any land planners in this proceeding?

15 A Yes.

16 Q Who would that be?

17 A Mr. Feldman.

18 Q I'd like to address one of the exhibits you attached
19 to your testimony. It's Exhibit AAR-3, the supposed need
20 letter.

21 MR. ENGELHARDT: Commissioners, do you have a copy of
22 the need letters? It has been filed already.

23 COMMISSIONER McMURRIAN: AAR-3.

24 MR. ENGELHARDT: I would be happy to supply a copy of
25 just the need letters. Commissioners, do you all have copies,

1 as well?

2 COMMISSIONER McMURRIAN: That would be helpful.

3 Thank you, Mr. Engelhardt.

4 BY MR. ENGELHARDT:

5 Q Mr. Reeves, is it normal for utilities to solicit
6 letters from developers asking for service instead of just
7 receiving letters from developers who are requesting your
8 service?

9 A It depends. If you have got a franchise and/or a
10 certificate request that you want to extend it and file it in
11 front of the Florida Public Service Commission, and if you
12 jump across properties, and it is between the area that
13 requests the service and the existing service boundary, you go
14 to those customers, or clients, or landowners, and say do you
15 want to be included in this overall area, instead of hop,
16 skipping, and jumping with a certificate area. I have a
17 situation in Lee county right now where I am now doing it. So
18 you do that only.

19 Q So it is somewhat common practice where you would
20 contact the landowner and ask them?

21 A Yes. Not usually, but occasionally.

22 Q Let's look at the letters specifically. Do you have
23 a copy?

24 A Which one is that, sir?

25 Q I just want you to have a copy of the exhibit. We

1 will be going through all of them. We are going to start with
2 Mr. Keenan's letter. It would be Page 1 of 6, Exhibit AAR-3.

3 A Yes.

4 Q Looking in this letter, Mr. Reeves, where within this
5 letter does it say when Mr. Keenan will need service?

6 A When we purchased this utility, Mr. Keenan had
7 already made arrangements to ask for a franchise extension for
8 the commercial area in this area. So he was contacted and said
9 we're going to file for the franchise extension and that I
10 needed a letter requesting it.

11 Q But there is nowhere in this letter where he actually
12 states when he needs that service?

13 A No.

14 Q Is there any indication within this letter of what
15 Mr. Keenan needs the service for?

16 A No. It was verbal.

17 Q Is there anything within this letter that indicates
18 how much water or wastewater service will be used at the
19 property?

20 A No.

21 Q You stated that your communication with Mr. Keenan as
22 to the need was verbal, you just mentioned that. Was this
23 prior to your filing testimony in this case?

24 A It was before. It was before we even bought the
25 utility, quite frankly. He wants to build some commercial on

1 17, and he was given my name from the utility owner, and we
2 talked to him. I talked to him prior to filing the
3 certificate, really prior to purchasing the utility. And, in
4 fact, he calls me at least once a month wanting to know what is
5 happening with the certificate because he wants to construct
6 his shopping center on 17.

7 Q And did you include any of that information in your
8 prefiled testimony or in the application for amendment?

9 A No, I did not.

10 Q And is Mr. Keenan going to testify for Sun River
11 today?

12 A No.

13 Q Mr. Keenan's was the only letter included with your
14 testimony which asked for service on the west side of 17, is
15 that correct?

16 A That's correct.

17 Q Let's turn to the east side. Letter Number 2, Page 2
18 of 6, Exhibit AAR-3. That letter comes from Hudson Sun-River
19 LLC. Now, is that the same Sun River as your utility?

20 A No, it's not the same. It's the same group, but not
21 the same.

22 Q Can you explain that?

23 A Sun River Utility is owned by one of the partners of
24 Hudson Sun-River LLC, just one party.

25 Q Is there anything else in the area that is entitled

1 Sun River?

2 A Not to my knowledge.

3 Q So Hudson Sun-River LLC and Sun River Utility share
4 an owner?

5 A Yes, sir.

6 Q And that owner is a member of the ownership group of
7 North Fort Myers Utility?

8 A Correct.

9 Q Do you know if that owner, that shared owner was also
10 a partner of the Hudson Ranch property before it was
11 contracted?

12 A No, it was not.

13 Q So Hudson Sun-River LLC is really, to an extent, a
14 sister company of the utility and not a local individual
15 property owner who contacted you for service out of the blue?

16 A No, it is not a sister company.

17 Q But it does share an ownership interest?

18 A That's correct.

19 Q So it's more like a cousin?

20 A That's correct.

21 MR. FRIEDMAN: Distant. (Laughter.)

22 Q You had a previous association with Mr. Berger, the
23 author of this letter personally before you received this
24 letter, is that correct?

25 A Yes. I was in one meeting, yes.

1 Q You didn't have discussions with Mr. Berger at all in
2 regard to the expansion of your facility onto the east side of
3 17?

4 A We had no idea about this utility for sale when we
5 had that discussion.

6 Q So you did know Mr. Berger?

7 A Yes.

8 Q Did you have discussions with other people involved
9 in Hudson Sun-River LLC prior to their purchase of the Hudson
10 Ranch?

11 A No.

12 Q At what point did you decide to potentially build
13 your new facility on the Hudson Sun-River LLC contracted
14 property?

15 A Do you mean on the east side of 17?

16 Q That's correct.

17 A In planning of the utilities, you look at -- and this
18 utility that we purchased came up for sale after the Hudson
19 Sun-River LLC was executed, but not before. We didn't even
20 know about it. And we were planning on building our own
21 utility on that site, which is the east side of 17. The
22 utility became available. We made a decision that it would be
23 for the benefit for the ratepayers and everybody that if we
24 purchased that utility and expanded it for the whole area for
25 the regional facility, the economics of scale, et cetera.

1 Q So you had planned before Hudson Sun-River LLC
2 contracted for that property to build your facility on the east
3 side of 17?

4 A That's correct.

5 Q And that would have been on the Hudson Ranch
6 property?

7 A That's correct.

8 Q With whom did you have those discussions?

9 A With the people that bought the land.

10 Q These would be the people prior to Hudson Sun-River
11 LLC owning the property?

12 A No.

13 Q So your discussions were with members of Hudson
14 Sun-River LLC?

15 A That's correct.

16 Q Just not specifically Mr. Berger?

17 A After the purchase with Mr. Berger.

18 Q You testified that you had only spoken with
19 Mr. Berger once about extensions?

20 A That's correct.

21 Q Who were the other individuals that you spoke with
22 about that?

23 A The owners of North Fort Myers Utility.

24 Q So the uncle in this whole cousin relationship
25 between the business. You spoke with a fellow owner of your

1 utility and of Hudson Sun-River LLC?

2 A I don't know where you are going with this
3 conversation.

4 Q Well, I'll still ask the question. You spoke with
5 someone who has an ownership interest in both the property and
6 your utility, correct?

7 A That's correct.

8 Q What prompted the desire to build the facility on the
9 east side? Wasn't it that you knew you could not expand the
10 facility on the west side?

11 A That's correct. The existing facilities on the west
12 side of 17 are very small. They need to be expanded and they
13 are in the flood plain, and it cannot be expanded on the west
14 side of 17. So we wanted to build facilities on the east side
15 of 17 in an area that would be conducive to the community to
16 build a wastewater and water treatment facility, and it would
17 be -- part of the construction permit from DEP asked the
18 question is are you under the jurisdiction of the Florida
19 Public Service Commission; if so, what is your certificate
20 number, et cetera? And so that's the reason why we decided to
21 go ahead and expand in that area for both the existing service
22 area and the new proposed service area.

23 Q So what you are saying is you didn't know of a need
24 on the east side, you knew of a need on the west side, but
25 needed the six and a half miles on the east side to build your

1 facility in?

2 A That's correct.

3 Q Let's look specifically at the letter to Mr. Berger,
4 Page 2 of 6. In this letter, it states that it doesn't
5 actually come from the actual owners of the property, isn't
6 that correct?

7 A Mr. Berger?

8 Q Correct.

9 A Owner of --

10 Q Hudson Sun-River LLC. This letter doesn't come from
11 the actual owners of the Hudson Ranch property at the time it
12 was written, does it?

13 A I don't know all the owners of it, so I can't tell
14 you that.

15 Q What I'm saying is, Mr. Reeves, that the letter only
16 states that Hudson Sun-River LLC has it under contract to
17 purchase. It doesn't say that they are the record owners of
18 that property, correct?

19 A That's correct.

20 Q So when Hudson Sun-River LLC sent this letter, there
21 were no guarantees that the contract would be completed.

22 A That's correct.

23 Q And when Hudson Sun-River sent this -- Hudson
24 Sun-River LLC sent this letter, there were no guarantees of
25 water or wastewater service for that area made, correct?

1 A That's correct.

2 Q You have seen the contract between Hudson Sun-River
3 LLC and the Hudson Ranch property?

4 A I've got it, but I haven't read it.

5 Q To your knowledge, the failure of this application to
6 provide for a certificated area on the east side would not
7 necessarily prevent Hudson Sun-River LLC from closing on that
8 contract?

9 MR. BRANNAN: I would object to that. He just stated
10 he has not read the contract and you are asking him to
11 interpret consequences flowing from the contract.

12 MR. ENGELHARDT: I'll rephrase the question.

13 COMMISSIONER McMURRIAN: Thank you.

14 BY MR. ENGELHARDT:

15 Q Because you have not read the contract, is it not
16 true, then, that you are unaware of any provision within that
17 contract that would cause the contract to fail should there not
18 be provision of services?

19 A I'm unaware of anything.

20 Q In this letter, does Hudson Sun-River LLC describe
21 what its development plans are?

22 A No.

23 Q Does Hudson Sun-River LLC indicate in this letter how
24 many ERCs it will need?

25 A No.

1 Q Does Hudson Sun-River LLC indicate in this letter
2 when its development plans would take effect?

3 A No.

4 Q Does Hudson Sun-River LLC indicate in this letter
5 when it would need services?

6 A No.

7 Q Let's move on to the next letter. Thank you.

8 The next letter at Page 3 of 6, Exhibit AAR-3, is a
9 letter from Mr. Schwartz. This letter was not sent to you at
10 your normal business address, but directly to your attorneys.
11 In your normal course of business handling requests for
12 service, do the landowners normally contact your attorneys when
13 they are looking for service?

14 A If that's the only contact they have, yes.

15 Q Would you not have availability through your own
16 office address or through the utility itself for a landowner to
17 contact you?

18 A Yes, but in this case they did not have it.

19 Q Pursuant to your primary job duties, how many times
20 have you spoken with Mr. Schwartz about his need in the area?

21 A I have not spoken to Mr. Schwartz at all.

22 Q And you earlier stated that your primary job duty is
23 to maintain contact with property owners seeking service within
24 your service area, correct?

25 A That's correct.

1 Q Looking more specifically at this letter, where
2 within this letter does it state the location of Mr. Schwartz'
3 property?

4 A It does not.

5 Q So as far as this letter is concerned, this letter in
6 and of itself does not support the idea that Mr. Schwartz has
7 property within the service area you're proposing and needs
8 service?

9 A You're correct.

10 Q Where in this letter does Mr. Schwartz state when he
11 will need service?

12 A He does not.

13 Q Does Mr. Schwartz mention in this letter how many
14 ERCs he will need?

15 A No, he does not.

16 Q Where in this letter does Mr. Schwartz describe what
17 he needs the service for?

18 A No, it does not.

19 Q Let's move on to the fourth letter from your exhibit,
20 Page 4 of 6, Exhibit AAR-3, from Dr. Zachariah. And Pages
21 5 and 6 are attachments that Dr. Zachariah included to you with
22 his letter.

23 The letter was written on April 16th, 2007. That's
24 more than two months after the original application with the
25 PSC was filed, is that not correct?

1 A That is correct.

2 Q So you didn't rely on this letter at all when you
3 were deciding to pursue the amendment of the certificate, did
4 you?

5 A Not at all.

6 Q So this letter is not evidence of the need that
7 prompted this application, is that not correct?

8 A Other than the possible need for the area.

9 Q But you didn't have this letter when you filed your
10 application?

11 A No, I did not.

12 Q Therefore, this letter cannot be an example of the
13 need that prompted you to file the application, can it?

14 A Not at all.

15 Q Not only was it received after the filing of the
16 application, but Washington Loop, the address listed in the
17 letter, isn't even in your proposed service area, is that not
18 correct?

19 A That's correct.

20 Q So what you are saying is that even if the PSC
21 granted the amendment you are seeking in this proceeding,
22 Dr. Zachariah's properties as represented in this letter still
23 wouldn't receive any service at all from Sun River?

24 A It would not.

25 Q So this letter is actually of absolutely no use in

1 proving that there is any need within the proposed service
2 area, is that not correct?

3 A That depends on the interpretation.

4 MR. ENGELHARDT: Thank you, Mr. Reeves. I have no
5 further questions.

6 COMMISSIONER McMURRIAN: Commissioners, this is
7 probably a good point for me to ask -- I was planning on trying
8 to take a lunch break probably somewhere around 1:00. I
9 believe the cafeteria closes at 2:00, and that is probably
10 going to be a good option for us all, but do we need a short
11 stretch now and come back?

12 Okay. We will a five-minute break and come back.
13 And, staff, do you have questions?

14 MR. JAEGER: A few questions.

15 COMMISSIONER McMURRIAN: And then we will break. We
16 will take a five-minute recess.

17 (Recess.)

18 COMMISSIONER McMURRIAN: Okay. We will call this
19 hearing back to order.

20 I think some of the Commissioners have questions.
21 Commissioners, do you want to ask your questions now or do you
22 want staff to ask -- okay.

23 Commissioner Skop, you're recognized.

24 COMMISSIONER SKOP: Thank you, Madam Chair.

25 Just a few questions for Mr. Reeves, to follow up.

1 This is for my own clarification. I guess there was some
2 discussion on Page 2 of the exhibit that was provided on AAR-3
3 with respect to Sun-River LLC, and I just kind of wanted to go
4 through to get the lay of the land from my perspective.

5 Now, it's my understanding from listening to the
6 testimony that Sun-River LLC has a contract to purchase the
7 Hudson Ranch property, is that correct?

8 THE WITNESS: That's correct.

9 COMMISSIONER SKOP: And that one of the owners or the
10 managing member of Hudson River LLC is also an owner of North
11 Fort Myers Utility, is that correct?

12 THE WITNESS: That is correct.

13 COMMISSIONER SKOP: I'm trying to articulate, so bear
14 with me for one second. And has the Hudson River property
15 actually been purchased to date by Hudson Sun-River LLC? Has
16 that transaction been consummated or completed?

17 THE WITNESS: I believe Mr. Feldman can answer those
18 questions a lot better than I can.

19 COMMISSIONER SKOP: Okay. I'll defer to that. And
20 I'm just trying to clarify that irrespective, initially Hudson
21 Sun-River LLC was looking to build its own new facility on the
22 east side of U.S. 17, is that correct?

23 THE WITNESS: That is correct.

24 COMMISSIONER SKOP: And subsequently, Sun River LLC
25 Utility became available for purchase, is that correct? Or the

1 utility -- you mentioned there was a utility that became
2 available for purchase?

3 THE WITNESS: It became available for -- it came to
4 our attention that it was available for purchase, and we made a
5 decision to negotiate a purchase.

6 COMMISSIONER SKOP: Okay. And I think one of the
7 other -- and that has actually been purchased to date, correct?

8 THE WITNESS: That's correct.

9 COMMISSIONER SKOP: And the name of that utility is
10 Sun River LLC?

11 THE WITNESS: Yes.

12 COMMISSIONER SKOP: And I think that you also
13 mentioned that Sun River LLC -- I mean, the existing utility
14 facility that was purchased that was located on the west side
15 of U.S. 17, was in the flood plain, correct?

16 THE WITNESS: That's correct.

17 COMMISSIONER SKOP: And those facilities cannot be
18 expanded, and that is correct, also?

19 THE WITNESS: That is correct. It's about a
20 hundred -- it is about 1,000 feet from the Peace River.

21 COMMISSIONER SKOP: And so some of the thinking or
22 the business acumen, if you will, in perhaps making that
23 decision was not only to address the flood plain issue where
24 you might have sewage or wastewater spilling into a water
25 tributary, but to do it on a different parcel of land to

1 address both problems kind of at once?

2 THE WITNESS: That's correct, and build a facility
3 economically to scale for the ratepayers.

4 COMMISSIONER SKOP: Okay. And like I say, the
5 questioning went pretty fast, so I was just trying to get it
6 clarified in my mind. And I can do that by reading the
7 transcript, but I think it is important for me to try to do it
8 on the fly so I can follow along with what is going on here.

9 COMMISSIONER ARGENZIANO: May I just -- I think what
10 I had heard that the owner, one of the owners of the Sun River
11 Utility was an owner of the Hudson Sun-River LLC, not the Fort
12 Myers, is that correct?

13 COMMISSIONER SKOP: I'm certainly willing to --

14 COMMISSIONER ARGENZIANO: There may be --

15 COMMISSIONER SKOP: I guess what I'm saying is there
16 may be some related affiliated or distant affiliated type
17 things, and I'm not really concerned with that. I'm just
18 trying to understand the sequence of events, for instance, when
19 the utility was purchased, when the contract -- I mean, I don't
20 really think that it's --

21 THE WITNESS: Well, maybe I can get it clarified.
22 There is a corporation called Old Bridge Park Corporation that
23 owns North Fort Myers Utility. Old Bridge Park Corporation is
24 owned by a family in Miami. Old Bridge Park Corporation became
25 part of the partners that entered into the contract that

1 purchased Hudson Ranch LLC, and just a small portion of it,
2 that's all.

3 COMMISSIONER SKOP: And I guess just moving real
4 quickly to Dr. Zachariah's letter, which is on Page 4 of 6 of
5 the exhibits, I think that it has been stated that that is not
6 in the proposed service area and didn't predicate a need for
7 the application as submitted, is that correct?

8 THE WITNESS: That's correct.

9 COMMISSIONER SKOP: Okay. But could this be perhaps
10 viewed as a further desire for service in the general area,
11 even though it is not being considered for certification now?

12 THE WITNESS: That's correct, Commissioner.

13 COMMISSIONER SKOP: All right. Thank you.

14 No further questions.

15 COMMISSIONER McMURRIAN: Commissioner Argenziano, any
16 at this time?

17 COMMISSIONER ARGENZIANO: No.

18 COMMISSIONER McMURRIAN: Mr. Jaeger?

19 MR. JAEGER: Yes, Commissioner. During the break I
20 had passed out a yellow-colored sheet. It's a map provided by
21 the utility in response to Staff Interrogatories 2 and 3, that
22 shows the location of the four properties for which the owners
23 have contacted the utility regarding service. I would like to
24 have that marked as Exhibit Number 19.

25 COMMISSIONER McMURRIAN: And a description for

1 staff's exhibit?

2 MR. JAEGER: I heard somebody say in real short terms
3 that it was the map showing the form letters, interest for
4 service.

5 (Exhibit 19 marked for identification.)

6 CROSS EXAMINATION

7 BY MR. JAEGER:

8 Q Mr. Reeves, could you take a moment and look over
9 that map?

10 A Yes, sir.

11 Q And I believe in reviewing the Utility's response to
12 staff's interrogatories -- first set of interrogatories, I
13 noted it said you were the one that provided the answers, is
14 that correct?

15 A That's correct.

16 Q And was this map provided in response to
17 Interrogatory 2 and 3, the corrected map?

18 A That's correct.

19 Q Does the map accurately portray the four areas that
20 you have referenced in your Exhibit AAR-3?

21 A Yes. I don't know if that has got Dr. Zachariah on
22 it.

23 Q It is at the bottom there, if you will look at the
24 map. That's in the light pink at the bottom that says
25 Zachariah in the middle of it.

1 A That's correct.

2 Q You are saying you are not sure if that is correct?

3 A I don't think it is in the corrected legal
4 description, because the legal description, AAR-3, is only for
5 the area that we are asking for extension.

6 Q What I'm referencing, though, is the four letters
7 that we just went over with Mr. Engelhardt.

8 A This represents the four letters, that is correct.

9 Q And clearly Zachariah is not part of your
10 application?

11 A That's correct.

12 Q For the area east of U.S. 17 requested by the utility
13 in this amendment proceeding, is that either owned by Schwartz
14 or Hudson Ranch?

15 A That's correct.

16 Q So no other owners are involved on the east side at
17 all?

18 A No.

19 MR. JAEGER: Could I get Mr. Walden to hand out
20 another exhibit?

21 Commissioners, I am handing out a document which
22 contains Staff's Interrogatory Number 5 and the Utility's
23 response to that interrogatory concerning the time frame for
24 the need for service. I would like to have that marked as
25 Exhibit Number 20, and it's the Utility's response to

1 Interrogatory Number 5.

2 COMMISSIONER McMURRIAN: Thank you. Show it marked.

3 (Exhibit Number 20 marked for identification.)

4 BY MR. JAEGER:

5 Q Again, you have already said that you answered those
6 interrogatories, is that correct?

7 A That's correct.

8 Q Would you take a moment and read the response to
9 Interrogatory Number 5?

10 A Okay.

11 Q Does that accurately state your response to
12 Interrogatory Number 5?

13 A Yes, it does.

14 Q Since that answer was prepared, does the utility have
15 any updated time frame at all?

16 A No, sir, I do not.

17 MR. JAEGER: I have no further questions of this
18 witness. Oh, one last question. I do have one last.

19 BY MR. JAEGER:

20 Q For the Keenan property west of U.S. 17, do you know
21 how many ERCs are estimated to be needed in the Keenan property
22 west?

23 A Not at this time.

24 MR. JAEGER: I have no further questions.

25 COMMISSIONER McMURRIAN: Redirect, Mr. Brannan.

1 MR. BRANNAN: Yes, please. Thank you.

2 REDIRECT EXAMINATION

3 BY MR. BRANNAN:

4 Q Okay. Mr. Reeves, you answered previously today that
5 you have not had any specific requests for certain amounts of
6 industrial, residential, and for commercial units east of 17,
7 correct?

8 A That's correct.

9 Q Prior to your filing of the application, did you have
10 any discussions with any of the developers formally or
11 informally that may have referenced in general that they may
12 seek those types of development?

13 A No.

14 Q Okay. We have also heard that the urban services
15 area, and I refer to this map over here, the demonstrative
16 exhibit over there, the urban services area, as has been said,
17 is bordered by 17. The urban services area on that map is in
18 purple, lavender, whatever. Does any of the urban services
19 area cross 17 to the east, and I refer to the map over here?

20 A It appears from that map that a small portion of it
21 does.

22 Q And that would be located just south of --

23 A South of the requested area.

24 Q Is that the piece, is that the small piece that abuts
25 the Zachariah property? Would you point to that, please?

1 A It would be this here.

2 Q Okay. Do you have any idea what land uses are north?
3 We have shown west of the requested territory and we have shown
4 a little bit south. Do you know what any of the land uses or
5 designations that might be bordering north of this property?

6 A No.

7 Q Okay. Earlier you were asked if the entire requested
8 territory east of 17 was requested solely for the purpose of
9 relocating your utility. Have you requested this 4,200 acres
10 just to build your utility there?

11 A No. Originally we were going to request a
12 certificate area to serve east of 17 to serve the folks that
13 asked for the service and requested the service. Then when we
14 bought the utility, it became apparent that we could not expand
15 or build the utility on the west side of 17, and it made a lot
16 more sense to put it on the east side of 17.

17 Q Okay.

18 A And I would like to, if I may, correct one statement
19 I made in the last question. There is development on the east
20 side of 17 just north of this property, and it's a major
21 industrial site, and one of the large distribution systems for
22 Wal-Mart. That is in Desoto County and adjacent to this
23 property.

24 COMMISSIONER McMURRIAN: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: I have a question, and

1 whoever can answer this. Is this property surrounded at least
2 on three sides by 70 percent of growth, either commercial,
3 residential, or --

4 MR. BRANNAN: (Indicating yes.)

5 COMMISSIONER ARGENZIANO: So it is an enclave?

6 MR. BRANNAN: Yes.

7 COMMISSIONER ARGENZIANO: Okay. Thank you.

8 COMMISSIONER McMURRIAN: Commissioner Argenziano, I
9 hate to interrupt, but I think we need to direct our questions
10 to the witness. I was looking at staff, but --

11 COMMISSIONER ARGENZIANO: Okay. Well, I could have
12 asked you that, also.

13 THE WITNESS: Yes.

14 COMMISSIONER ARGENZIANO: Thank you.

15 BY MR. BRANNAN:

16 Q With regard to the property requested to be added by
17 Mr. Keenan on the west side, is that within the urban services
18 area?

19 A Yes.

20 Q And to get back to Commissioner Skop's concern or
21 questions regarding the ownership interest. The ownership
22 interest by -- would you classify the ownership interest by the
23 common entity between the utility and Hudson Ranch as a
24 minority ownership interest in Hudson Sun-River?

25 A Minority interest in it. Very.

1 Q With regard to AAR-3, the letter from Mr. Schwartz
2 where there was some question as to you not knowing exactly
3 where that property was, did you receive a legal description
4 for that property prior to filing your application?

5 A I don't recall.

6 Q But the legal description of that property was part
7 of the legal description that you filed with the application?

8 A That's correct.

9 Q Now, you have talked about your ideas, you would have
10 to move the utility out of the flood plain over to the east
11 side of 17 to, you know, keep it away from the river and
12 whatnot, as you said. As vice-president and utility director
13 at North Fort Myers Utility, have you done this in the past
14 with other utilities along the rivers?

15 A I sure have. About 18 of them.

16 Q What precisely have you done with them?

17 A Well, what we have done in North Fort Myers is there
18 was about 35 package wastewater treatment plants that were
19 polluting, and not up to standards, et cetera, and we have over
20 time taken just about all of those plants out of service and
21 connected them to the regional facility, and treating the water
22 to reuse standards and using it for irrigation purposes in the
23 whole area. And that was what we would envision with this
24 utility.

25 Q And one more question on, I believe it's Exhibit 19,

1 the map, the colored map that was printed here. If you would
2 look at that map, Mr. Reeves. It appears that there is
3 significant neighborhood activity around the territory that you
4 have requested in your application. To your knowledge from
5 being in that part of Charlotte County in your travels there,
6 are those depictions of neighborhoods and development that
7 surround the proposed territory?

8 A Yes, and there is significant growth along that whole
9 corridor. And if you are just riding up 17 you can see all the
10 growth on both sides of 17. And we have even had people to
11 contact us as to possible service in Desoto County along that
12 corridor. So there is a significant interest in the growth in
13 that area.

14 Q And speaking of the 17 corridor, wasn't substantial
15 work done to improve Highway 17 in the not too distant past?

16 A Correct, all the way to the Desoto County line.

17 Q And what improvements were made to the road, do you
18 know? What type of improvements were made to that area?

19 A It is a four-lane highway.

20 MR. BRANNAN: I have no more questions.

21 COMMISSIONER McMURRIAN: Mr. Brannan, did you want to
22 move the exhibits as amended?

23 MR. BRANNAN: Yes, please.

24 COMMISSIONER McMURRIAN: Okay. Any objection?

25 Hearing none, we will show Exhibits 2, 3, and 4 as amended

1 moved into the record.

2 (Exhibits 2, 3, and 4 were admitted into the record.)

3 COMMISSIONER McMURRIAN: And, Mr. Jaeger, did you
4 want to move Exhibits 19 and 20?

5 MR. JAEGER: That is correct.

6 COMMISSIONER McMURRIAN: Any objection? Show those
7 moved into the record, also.

8 (Exhibits 19 and 20 were admitted into the record.)

9 COMMISSIONER McMURRIAN: And I believe Mr. Reeves can
10 be excused. But as we discussed earlier, perhaps Mr. Reeves
11 might be one of the witnesses that might come back if there
12 were any testimony with regard to --

13 MR. FRIEDMAN: He will be available tonight in case
14 there are any customers that testify on quality of service that
15 you want some feedback from him on, he will stay for the
16 duration.

17 COMMISSIONER McMURRIAN: Thank you, Mr. Friedman.
18 You can call your next witness.

19 MR. FRIEDMAN: We call Gerald Hartman.

20 GERALD CHARLES HARTMAN
21 was called as a witness on behalf of Sun River Utilities, Inc.,
22 and having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FRIEDMAN:

25 Q Would you please state your name?

1 A Gerald Charles Hartman.

2 Q And, Mr. Hartman, were you previously sworn when
3 everybody else was?

4 A Yes, I was.

5 Q Have you prefiled testimony in this proceeding?

6 A Yes, I have.

7 Q Do you have any changes or corrections to your
8 prefiled testimony?

9 A No, I do not, other than on my direct on the fifth
10 page, there's a typo. The answer, A, period, yes, and a colon,
11 as I testified in my deposition, was left out somehow.

12 Q What page was that?

13 A Page 5 of the direct, Line 8. There is a question,
14 the A for answer, the period, the word "yes" and a colon. That
15 line was left out, and then the rest of the answer is the same.

16 Q And did you propose any exhibits with your testimony?

17 A Yes, I did.

18 Q And we have identified those, I believe, as Exhibits
19 5 through 8, correct?

20 A That's correct.

21 COMMISSIONER McMURRIAN: Mr. Friedman, let me
22 interject a minute. Can you help me find exactly where in the
23 testimony? I'm not sure staff got it, either. It was Page
24 5 of his direct testimony?

25 THE WITNESS: Unfortunately, it doesn't have the

1 pages numbered. I apologize.

2 THE WITNESS: It is the fifth page in. It starts on
3 the top of the page with the word region.

4 COMMISSIONER McMURRIAN: Okay.

5 THE WITNESS: And if you go down to Line 8, there
6 should be an A, period, yes, and a colon. At the top.

7 MR. FRIEDMAN: There is a question, but there is no
8 answer.

9 THE WITNESS: Yes. The answer starts: One, two,
10 three, four.

11 COMMISSIONER McMURRIAN: Oh, I see what you are
12 talking about. It's on Line 8, where it says, before the one,
13 and "Charlotte County has no plans," there should be an A,
14 period.

15 MR. FRIEDMAN: There should be an A. And the A is
16 yes, I have the following comments, colon.

17 COMMISSIONER McMURRIAN: Mr. Jaeger, did you --

18 MR. JAEGER: Yes. Under the Q, there is a capital A,
19 representing the answer, yes, colon, and then it goes one, two,
20 three, four after that.

21 COMMISSIONER McMURRIAN: Thank you.

22 MR. FRIEDMAN: Sorry about that.

23 BY MR. FRIEDMAN:

24 Q Mr. Hartman, with that one minor change, if I were to
25 ask you the questions in your prefiled testimony, would the

1 answers in the prefiled testimony be the same?

2 A Yes, they would.

3 (REPORTER NOTE: For the convenience of the record,
4 the prefiled testimony is inserted.)

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- 1 Q. State your name and address.
- 2 A. Gerald Charles Hartman, P.E., Hartman Consulting & Design, GAI Inc., 301
- 3 E. Pine Street, Orlando, Florida, 32801
- 4 Q. Mr. Hartman, are you a registered professional engineer in the State of
- 5 Florida?
- 6 A. Yes. My registration number is 27703.
- 7 Q. Mr. Hartman, what is your area of specialty in your practice?
- 8 A. I specialize primarily in water and wastewater utility matters.
- 9 Q. Do you have a designation beyond your professional engineer's license?
- 10 A. Yes. I am a Diplomate in the American Academy of Environmental Engineers
- 11 with the water and wastewater specialty designation.
- 12 Q. Do you have a resume?
- 13 A. Yes, my resume is attached as GCH-1.
- 14 Q. Have you been accepted by the Florida Public Service Commission to render
- 15 testimony concerning utility management and engineering on original water
- 16 certificates and/or service area modifications?
- 17 A. Yes, I have on several occasions over the past 20 years
- 18 Q. In what areas are you going to provide testimony in this matter?
- 19 A. In utility management and engineering areas associated with the application of
- 20 Sun River Utilities, Inc., formerly known as MSM Utilities, LLC, for
- 21 amendment of certificates 611-W and 527-S to extend water and wastewater
- 22 service areas to include certain land in Charlotte County.
- 23 Q. Are the services proposed by Sun River Utilities, required to be
- 24 regulated by the Florida Public Service Commission under the provisions of
- 25 Chapter 367, Florida Statutes?

- 1 A. Yes, they are. That is why this application was filed.
- 2 Q. Are you providing supporting technical and management consulting testimony?
- 3 A. Yes, I am providing utility management consulting and engineering support relative
4 to FPSC application and service area expansion. Certain local
5 engineering services and coordination were conducted with another firm and are
6 accepted and sponsored by myself. See GCH-2 for my letter of engagement.
- 7 Q. Do you accept and sponsor the management consulting and engineering aspects
8 of the application?
- 9 A. Yes.
- 10 Q. Were there deficiencies and changes and corrections to that application as
11 originally submitted to the PSC which were later filed with the PSC?
- 12 A. No.
- 13 Q. In your opinion, does the Application provide a true, accurate and
14 appropriate representation regarding the Application of amendment of
15 Certificates Nos. 611-W and 527-S to extend water and wastewater service area
16 in Charlotte County by Sun River Utilities, Inc.?
- 17 A. Yes, it does.
- 18 Q. Is there a need for the services proposed and does MSM have the ability to
19 provide those services?
- 20 A. Yes. There is a current need for the services which is delineated in the application
21 for water, sewer services, as well as in GCH-3 (letters from Mr. Schwartz, Mr.
22 Kennan and Mr. Berger). I also served MSM Utilities prior to the acquisition by
23 Sun River Utilities, Inc. and am aware of the several requests for service along
24 U.S. Highway 17 north and south of the service area.
- 25 Q. Does Sun River presently serve the existing, and previous MSM, water and

DIRECT TESTIMONY OF GERALD C. HARTMAN, P.E.

1 wastewater service area?

2 A. Yes. The present service area is shown on GCH-4.

3 Q. Are there any adjacent utility systems to this existing service area?

4 A. No.

5 Q. Where are the nearest utilities?

6 A. In Desoto County, the Desoto County utilities which are stubbed out at the
7 Walmart Distribution Center in that county.

8 Q. Are you familiar with those utilities?

9 A. Yes, previously while at Hartman & Associates, Inc. our firm did the engineering
10 work for the interim and final utility facilities.

11 Q. Is there any capacity available from those facilities?

12 A. No. They are at the southern terminus of the County's system and all of the
13 available capacity is reserved or planned for customers in Desoto County.

14 Q. Is there an ability to serve by Desoto County?

15 A. Presently, the Desoto Board of County Commissioners have not authorized service
16 in Charlotte County in this area. There is an interlocal agreement between Charlotte
17 and Desoto Counties which I participated in which grants such rights only on a
18 specific and specialized basis (utility acquisitions and/or interconnections).
19 Otherwise both Counties have agreed to respect each other's County boundaries
20 for service.

21 Q. Did Desoto County propose to the PRMSRWSA and Charlotte County directly an
22 interconnect and utility facilities along U.S. 17 at the County line?

23 A. Yes, I was the Desoto County consultant making those requests on behalf of the
24 County.

25 Q. What happened?

1 A. First, the PRMSRWSA prepared a CIP project which was made upon the
2 request of Desoto. It was voted down, or rejected for funding or implementation
3 by the Board. They refused the project and service.

4 Q. How about Charlotte County?

5 A. They also refused to build facilities, provide service and interconnect with Desoto
6 County using the U.S. 17 corridor I believe in the 2003 time period.

7 Q. Who else has utilities in the region?

8 A. The City of Punta Gorda has the closest water service with a 6" water main
9 terminating at a small development on the west side of U.S. 17 a good distance
10 south of the expansion request area.

11 Q. Does Charlotte County have central community water and wastewater utility
12 Assets on the east side of the Peace River and north of Shell Creek?

13 A. No.

14 Q. Has Sun River provided notice of the requested certification in accordance with
15 PSC rules and status?

16 A. Yes, the required notice has been provided in accordance with those rules and
17 statutes and the proof of publication and required affidavits of such noticing are
18 on record.

19 Q. Have you reviewed other utility service areas in the region?

20 A. I have. I provided assistance and am knowledgeable about Charlotte County,
21 Desoto County, as well as City of Punta Gorda and the City of North Port. To my
22 knowledge, no utility other community central water and/or wastewater system
23 is within the requested expansion area. That is the reason for the several requests
24 for service from Sun River and historically MSM.

25 Q. Based on your review of the existing assets, service areas and facilities in the

1 region, do you believe that the proposed certification of the Sun River expansion
2 will be in duplication of any other system?

3 A. No. No other system serves the Sun River expanded service area. The expanded
4 service area does not duplicate assets of any other utility. Charlotte County has no
5 plans in their comprehensive plan for service to the proposed investor owned utility
6 area.

7 Q. Charlotte County is objecting to this application. Have you reviewed this matter?

8 A. Yes:

- 9 1. Charlotte County has no plans in their comprehensive plan for service to the
10 proposed Sun River utility area.
- 11 2. Charlotte County has historically excluded investor owned utility areas
12 from their service area as shown in their mapping which includes Town and
13 Country Utilities and others such as MSM.
- 14 3. Charlotte County Utilities is basically a system that was derived from
15 acquisitions of investor owned utilities and has not been a County
16 developed system (rather an integrations of investor owned systems) that
17 had been acquired.
- 18 4. There exists no water and/or wastewater service in the expansion service
19 area that the service area, the only utility (Sun River Utilities, Inc.) which
20 has facilities in the area is the logical choice for expansion. Moreover,
21 Charlotte County has no contracts with any of the landowners in the area for
22 service. In contrast, Sun River Utilities, Inc. has customer requests for
23 service and the landowners' wish this area to be certificated by Sun River.

24 Q. Does Sun River have the technical ability to serve the requested territory?

25 A. Yes, as provided in the application and supporting documents.

Q. Does Sun River have sufficient plant capacity to serve the requested territory?

1 A. The application shows the current maximum day capacity needed in the proposed
2 territory and, I believe, amply demonstrates that Sun River either has or is taking
3 appropriate measures to ensure sufficient plant capacity to provide the proposed
4 services as those demands for capacity mature.

5 Q. Approximately, what is the Maximum Day Capacity of the existing water supply
6 System?

7 A. 60,000 gallons per day.

8 Q. Does the existing water system have available capacity for future customers?

9 A. Yes. Approximately 100 to 200 additional customers.

10 Q. Can the exiting facility be expanded?

11 A. Yes. Much of the facilities are on site yet not installed or integrated at this time to
12 at least double (100% expansion) the existing water plan.

13 Q. Approximately, what is the Average Annual Daily Capacity of the wastewater
14 treatment plant?

15 A. 15,000 gallons per day.

16 Q. Does the existing plant and system have available capacity for future customers?

17 A. Yes, approximately 50 to 100 additional customers.

18 Q. Can the wastewater plant be expanded?

19 A. Yes. The existing percolation/evaporation ponds and WWTP could readily be
20 expanded.

21 Q. Would the existing combined water and wastewater treatment plant site be the
22 only central treatment plant site for the existing and expanded service area?

23 A. No, as demand dictates, we have conceptually planned a more eastern area for
24 this purpose in the future.

25 Q. Do you have personal knowledge of the financial strength and management

1 technical ability of North Fort Myers Utilities?

2 A. Yes. I have participated in financial and technical matters with this utility in the
3 past. The manager is Mr. Tony Reeves who has decades of utility management
4 experience, consults with others for that purpose, is qualified as an expert in the
5 arena and was a key management professional for AVATAR statewide. This is
6 a creditworthy and effective utility with significant experience in the region. It has
7 a proven track record. I evaluated this utility, Utilities, Inc., and Aqua America on
8 behalf of the owner of MSM Utilities. I was charged with the recommendation of
9 which utility to choose for service for this area by the owner. I concluded, that for
10 the MSM and expanded service area, that North Fort Myers Utilities was the
11 preferred provider. The owner concluded the sale with NFMU early this year.
12 Note, that the owner and myself considered several options for his and others
13 utility needs. It was and still is my opinion that Sun River Utilities, Inc. is the
14 most efficient and effective utility provider with the technical and financial
15 expertise and capability to meet the needs of the existing and potential utility
16 customers in the requested service area.

17 Q. Have you reviewed maps of the requested area?

18 A. Yes. Banks Engineering has provided aerial maps of the existing Sun River and
19 proposed expansion service area.

20 Q. Does this conclude your direct testimony?

21 A. Yes.

22 Q. Mr. Hartman, please provide the commission with a summary of your direct
23 Testimony.

24 A. Yes, Sun River prepared the application and exhibits. Our firm was involved in the
25 work associated with this application process. Sun River is the existing regulated

1 central community water and wastewater system in the area and the only one. I
2 believe the expansion requests meets all the requirements for certification. There is
3 a need for water and sewer services. I am knowledgeable of all the active
4 water/sewer service areas in the area. I believe my direct testimony summaries the
5 various service facilities. I think it is undisputed for the points of service from the
6 County's Utility. They are not duplicated. There are no other systems with the
7 services in this area. Sun River does have the technical ability. I have assisted
8 in many applications at the Public Service Commission in a similar state of
9 evolution. Sun River presently has the capacity for service for their existing
10 customers and can be expanded to meet future needs. Sun River adequate assurance
for continued use and the financial resources have been provided for full service.

1 BY MR. FRIEDMAN:

2 Q Would you briefly summarize your prefiled direct
3 testimony?

4 A Yes. I served MSM Utilities, the previous owner, Ben
5 Maltese, he hired me to consider the positioning of his
6 utility. At the time there was some discussion about a
7 potential university across the street as well as a lot of
8 commercial development. Mr. Keenan had talked to us, and that
9 is where the acreage on the west side of 17, he proposed an
10 apartment complex with over 100 units. He proposed a shopping
11 center and strip commercial to us. But that had changed over
12 time as the market has changed over time.

13 We went out soliciting bidders for the utility
14 because Ben felt that it wasn't appropriate to go ahead and run
15 a larger utility system. It was really a small system for him.
16 We evaluated North Fort Myers Utilities, Aqua America, and
17 Utilities, Inc. All three responded. I did due diligence on
18 all three. No other bidders responded. The City of Punta
19 Gorda did not respond and neither did the County.

20 Basically, from my due diligence I recommended North
21 Fort Myers Utilities for the acquisition of the system. The
22 agreement contemplates an estimate of 600 to a 1,200 units over
23 ten years, and that was the perspective of Ben Maltese at the
24 time. Also minor expansion of the existing facilities, and any
25 major expansion would be over on the east side of 17. In fact,

1 the 9.5 acres was not purchased and the well sites were allowed
2 to be used from Ben to this utility company until they could
3 relocate those facilities to the east side.

4 I was also the Desoto County Utility consultant
5 serving Desoto County. Our firm designed the facilities for
6 Wal-Mart where Mr. Bush, our Governor, created the Enterprise
7 Zone right at the County Line there. And we designed a
8 250,000-gallon-per-day reverse osmosis plant and a tie-in
9 regional pump station serving that Enterprise Center directly
10 and abutting the north end of this property.

11 Punta Gorda is the next utility to the south, and it
12 is pretty far south. And they really don't have a whole lot of
13 facilities up in this area. They have not been providing
14 service to developers in the area.

15 Really, Sun River, what used to be MSM, is the only
16 public utility in this area. There's no other public utility.
17 No other central public utilities, investor-owned or otherwise.

18 When U.S. 17 was being expanded, and we saw the plans
19 for that in Desoto County, as the Desoto County consultant, we
20 asked Charlotte County, as well as the Peace River Manasota
21 Regional Water Supply Authority to build utility infrastructure
22 through that corridor, because with that road you might as well
23 build the utilities at the same time. And that was rejected by
24 both parties. I was the utility consultant bringing that to
25 them, they rejected service. It was needed also for fire

1 protection service at the Wal-Mart Distribution Center.

2 I believe the application meets all the requirements.
3 There is a need. I am knowledgeable of that need. I am also
4 knowledgeable of all the active utility facilities in the area.
5 I know this area well from a utility standpoint. It is
6 undisputed that the County has no facilities in the area. It's
7 undisputed. And Sun River has the technical and financial
8 capability to do this. I certified to that as both a utility
9 appraiser and a professional engineer to the owner with the
10 transaction. And I believe that the expansion of central water
11 and sewer service versus septic tanks is compatible with the
12 Comprehensive Plan from a utility planning standpoint.

13 MR. FRIEDMAN: If I did not do so previously, I would
14 like to insert Mr. Hartman's testimony in the record as though
15 read.

16 COMMISSIONER McMURRIAN: Any objection?

17 MR. FRIEDMAN: If I could insert it back before he
18 made his summary, it might flow a little better when we read
19 this later.

20 THE WITNESS: I'm sorry.

21 COMMISSIONER McMURRIAN: Mrs. Faurot, can that be
22 done?

23 THE REPORTER: Yes, ma'am.

24 COMMISSIONER McMURRIAN: Okay. Thank you.

25 We will do that, and we have exhibits marked

1 5 through 8, and we will take those up at the conclusion of the
2 testimony.

3 Is Mr. Hartman tendered for cross?

4 MR. FRIEDMAN: Yes, he is.

5 Mr. Engelhardt.

6 MR. ENGELHARDT: Thank you, Madam Chair.

7 CROSS EXAMINATION

8 BY MR. ENGELHARDT:

9 Q Mr. Hartman, you also don't live in Charlotte County,
10 do you?

11 A No, I do not.

12 Q And your direct testimony was limited to the areas of
13 utility management and engineering in regard to this
14 application, is that right?

15 A That is the areas of my expertise, are utility
16 management and engineering. Utility management includes the
17 areas of utility planning. Lieutenant Governor Jim Williams
18 had me on the policy advisory committee when we developed the
19 utility element of the State Comprehensive Plan. So I had a
20 lot of input into that utility element of the Comprehensive
21 Plan, as well as I have served many cities and counties
22 throughout the state in developing their comprehensive plans.

23 Q Regardless, your testimony states that your testimony
24 is based on utility management and engineering areas associated
25 with the application of Sun River, is that not correct?

1 A That's correct, and that includes the areas that I
2 mentioned earlier.

3 Q Are you certified as an urban planner?

4 A No, I'm not.

5 Q Okay.

6 A I'm certified as a professional engineer and a
7 utility appraiser.

8 Q I noticed that in your summary of your testimony you
9 discussed what Mr. Keenan's plans would be. Can you point to
10 the part in your direct testimony where you refer to
11 Mr. Keenan's plans with the specificity that you have stated in
12 your summary?

13 A No. I just specified that generally in my direct,
14 and also that we had -- that I had discussed it. You know,
15 basically, we had discussed the need. And the need issue was
16 covered by the letters in the back of the testimony, the
17 request for service. We didn't get into any more detail than
18 that.

19 Q So, your discussion with the need is based on the
20 three letters, the exhibits that you have attached to your
21 testimony, is that correct?

22 A During the direct testimony that I submitted, yes.

23 Q Okay. I noticed that you didn't include the letter
24 from Dr. Zachariah along with your testimony. Can you explain
25 that?

1 A I did not have that.

2 Q You agree that Dr. Zachariah's letter covers
3 territory that is not within the proposed service area, do you
4 not?

5 A That's correct.

6 Q I think we are going to cover a lot of the ground
7 that we covered earlier, but I would like to hear your opinion
8 on these. Looking at the letters, this is Exhibit GCH-3, Page
9 1 of 3. The first one is the letter from Mr. Schwartz.
10 Mr. Hartman, looking at that letter, you have attached it as
11 proof of need within the proposed service area. Can you point
12 to where this letter shows where Mr. Schwartz's property is
13 located?

14 A Specifically responding to your question, of course,
15 the letter doesn't -- that letter on its face doesn't show
16 where that property is, yet I knew where it was, and that is
17 how -- there is a legal description there. So, yes, the writer
18 of the letter did not specifically attach a legal description,
19 but we knew where it was and how many acres it involved. It
20 was about 1,800 acres.

21 Q Is there anything in that letter that states how many
22 ERCs Mr. Schwartz will need?

23 A Under the current zoning, the request would allow for
24 at least 180 ERCs, one in ten.

25 Q Can you explain where in the letter it says that?

1 A Oh, excuse me. That's correct, in the letter itself
2 it doesn't say that; but when it was provided, I quickly
3 applied the present land use, and allowing for clustering, that
4 is typically done when we do these things, and it would provide
5 for about 180 units.

6 Q So that is based on your outside knowledge and not
7 based on the letter that you tendered as an exhibit proving
8 need?

9 A Not the words in the letter, but when you get a
10 letter like that, as an engineer, you look at the land area
11 that it goes with, the zoning it goes with, those kind of
12 things, and you convert the letter to a number of ERCs. That
13 is what we do.

14 Q All right. Let's return to the text of your prefiled
15 testimony. In your prefiled testimony you admit twice, by my
16 count, that Charlotte County has no plans in their
17 Comprehensive Plan for service to the proposed area. Do you
18 agree with that?

19 A That the County has not planned their facilities for
20 service in this area. In their comprehensive plan they provide
21 for urban services on the west side of 17 and also on the east
22 side of 17 south of the proposed service area. So you would
23 infer that urban services would be provided by someone else
24 other than Charlotte County.

25 Q So you are saying that Charlotte County has plans for

1 service in their service area? I'm not sure I understand what
2 you said.

3 A They have a designation for urban services, but no
4 plans. There is no plans or specifications that I have seen by
5 Charlotte County Utilities to build facilities in this area.
6 But because the Comprehensive Plan shows it for urban services,
7 and the people in the area are entitled to get urban services,
8 and because there is an investor-owned utility certificated in
9 the area -- MSM is an existing certificated utility accepted by
10 the County and its facilities were approved by the County in
11 this location, they would be then expanded and serve the
12 proposed service area to the south, and that is what we were
13 planning on doing before we sold the utility.

14 Q So you are referring to the area on the west side of
15 17?

16 A Or on the east side later. That's a potential, also.

17 Q But the east side is not within the urban service
18 area?

19 A On the east side there is a portion in the urban
20 services area.

21 Q Can you show us on the map where that portion is?

22 A Down here (indicating). This is east and it's in the
23 urban services area.

24 Q However, that is not in the proposed service area?

25 A No. When we were looking at the planning of the

1 utility, long-term, we were looking at units, and we were
2 planning on about 1,200 units over the next ten years.

3 Q You were planning on a specific number of units to
4 serve a specific area, correct?

5 A No, we were not allocating those units specifically
6 to specific areas, because it comes on -- development is highly
7 variable, and so you don't want to allocate assets in an area
8 until it's further along in the process. So we haven't
9 actually built any facilities or anything like that. They
10 wouldn't be used and useful.

11 Q So you were planning for a facility without knowing
12 how much need it was going to have?

13 A No, that's not true. We were planning a facility --
14 at MSM, we were planning -- that is why we have futures in the
15 purchase and sale contract. We are going to get paid for
16 future connections in this utility in the areas that we were
17 planning on serving.

18 Q I want to ask you about -- you mentioned Desoto
19 County. Aren't the Desoto County Utilities, which terminate at
20 the Wal-Mart Distribution Center, that is approximately 2,000
21 feet from the northern end of the proposed service area,
22 correct?

23 A That or less, yes.

24 Q And you have testified in your direct testimony that
25 there is no local agreement between Charlotte and Desoto

1 Counties, correct?

2 A There is an interlocal agreement between all the
3 parties. It is called the Peace River Manasota Regional Water
4 Supply Authority agreement, an interlocal agreement there.

5 Q And pursuant to that agreement, isn't it possible
6 that should a need arise within the proposed service area, that
7 Charlotte County could have access to the tap-in point in front
8 of the Wal-Mart Distribution Center?

9 A That's a hypothetical question. A hypothetical
10 question makes you assume facts that are not true. And so when
11 you provide a hypothetical, the answer then becomes a
12 hypothetical answer. I'm a little bit -- I hate to say it this
13 way. I served Desoto County for several years. We never got
14 an agreement with Charlotte County to get anything done. So I
15 guess it's a little embarrassing from my standpoint. I failed.
16 We wanted to have an agreement with them. We wanted to have an
17 interconnection. It just didn't occur. Could they in the
18 future? A lot of things can happen. It could happen in the
19 future.

20 Q You have stressed that that was a hypothetical
21 question, and I get where you get that. Let's bring it down to
22 this case then. Based on the need that you have testified
23 exists and supported by these letters that you claim establish
24 what that need is, is it not possible that Charlotte County
25 could fulfill that need by tapping into the Desoto County line

1 based on the interlocal agreements?

2 MR. FRIEDMAN: I object to the question, because it
3 is irrelevant. There is no issue. The County in this case --
4 there is not an issue as to whether the County should provide
5 service instead of Sun River. So that question is irrelevant
6 as to whether they can provide service and how they can provide
7 service. The issue is is there a duplication of services and
8 facilities by the amendment to their application. So that is
9 all you are looking at is does this amendment result in a
10 duplication of facilities and services. Whether or not the
11 County can provide service is totally irrelevant to this case.
12 There is no issue that says that they can. And, in fact, you
13 heard him say they don't want to. I think the question is
14 irrelevant.

15 MR. ENGELHARDT: I disagree. The question is not
16 necessarily is there duplication of current facilities, because
17 there certainly isn't, because the land that we are talking
18 about on the east side is outside of the urban services area,
19 so of course there are no facilities. The question that
20 Charlotte County has to answer and the question that ultimately
21 has to be answered by the Commission is who would be better
22 placed to serve it.

23 My question is based on would the County be able to
24 serve it should a need arise? I think that's extremely
25 relevant to this proceeding. Because if you don't determine

1 that Charlotte County could serve it, then Charlotte County
2 doesn't even need to be here.

3 MR. FRIEDMAN: I would challenge him to point out one
4 of these issues that that fits under, because you can't stretch
5 any of these issues to be that the County is able to provide
6 service and, therefore, Sun River shouldn't serve it. It's
7 just not there.

8 COMMISSIONER McMURRIAN: Okay. We are going to try
9 to avoid too much back and forth.

10 Mr. Engelhardt, I will let you answer. I was going
11 to ask you, too, are you talking about the area that is north
12 of the area that is shaded here?

13 MR. ENGELHARDT: You're asking me?

14 COMMISSIONER McMURRIAN: Yes.

15 MR. ENGELHARDT: Yes. Immediately north of the
16 County Line. Looking at the map, if I can stand up.

17 COMMISSIONER McMURRIAN: So what issue does that go
18 to?

19 MR. ENGELHARDT: Issues 6 and 7 dealing with who has
20 current right to serve this area, should the need arise?

21 MR. FRIEDMAN: It doesn't.

22 MR. ENGELHARDT: Issue 6 asks would the proposed
23 amendment to the application of territory duplicate or compete
24 with any other system? The proposed service area is within the
25 County's district number two. Therefore, it does compete with

1 the County, regardless of whether the facilities are in place
2 or not. The County currently has a certificate to serve that
3 area, regardless of whether the Comp Plan has allowed them to
4 pursue that. So the question is could the County do so should
5 the need arise in conjunction with its Comp Plan. Therefore,
6 the question to Mr. Hartman is could the County do that? It's
7 all over Mr. Pearson's testimony when Mr. Pearson testifies
8 later.

9 COMMISSIONER McMURRIAN: Mr. Jaeger.

10 MR. JAEGER: I believe it has a nebulous connection
11 to Issue 6, and that Mr. Engelhardt has showed the connection.
12 I think it should be allowed to pursue, but it is sort of
13 tenuous.

14 COMMISSIONER ARGENZIANO: Madam Chairman, isn't the
15 County saying that they see no need? I don't understand how
16 now the County sees a need where they didn't see one a few
17 minutes ago.

18 MR. ENGELHARDT: Can I answer the question, Madam
19 Chairman?

20 COMMISSIONER McMURRIAN: Absolutely.

21 MR. ENGELHARDT: It's not a question of whether the
22 County sees the need as of now. The question is would the
23 County be in a position to serve the need once it arises? We
24 don't believe there is currently a need, and that certainly has
25 been our posture today and will be throughout the rest of the

1 hearing. But another factor of that is should the need arise,
2 who is better suited to serve this area? It is not a question
3 of the County being in competition with Sun River. It's a
4 question of who can provide the service to that area. And one
5 of Sun River's claims is that they are best positioned. We
6 rebut that by saying 2,000 feet away from the proposed service
7 area is a connection that we have an agreement that we can tap
8 into at any time and lay the pipes.

9 COMMISSIONER McMURRIAN: Mr. Friedman, I will allow
10 you to respond, as well.

11 MR. FRIEDMAN: The issue being will the proposed
12 amendment to the applicant's territory duplicate or compete
13 with any other system? That phrase comes right out of the
14 statute. It's one of the issues that we address. That issue
15 is an issue of duplication of services and facilities. It
16 doesn't say and who is better able to serve? Now, I have had
17 territory extension cases, I don't think any of you all were
18 here when we had them, where the government came in and said,
19 oh, yeah, and we are better able to serve, and you litigate
20 those issues, and we put on evidence about who really can
21 provide it cheaper, faster, better.

22 That's not an issue in here. If they wanted to make
23 an issue of, well, and if there were a need, we should fulfill
24 that need, that's the issue that should be in here to meet the
25 questions that Mr. Engelhardt is asking. The question of

1 duplication of services and facilities deals with just that.
2 Does somebody else have facilities? And the reason for that is
3 because you don't want to duplicate the expense of capital
4 investment of water and wastewater facilities. That's the
5 reason the Legislature put that provision in there. So the
6 question is, is there duplication of facilities? Not, well,
7 and if there is need, we want to do it. There is no need. The
8 County is saying there is no need, but we want to do it. I
9 don't see that issue in here. And in spite of it -- you know,
10 I think a lot of Mr. Jaeger, but I think he is off base. I
11 don't think there is anything nebulous that could come into
12 that issue or that question.

13 COMMISSIONER McMURRIAN: Mr. Friedman, let me ask
14 you, he also mentioned Issue 7, so can you speak to that?

15 MR. FRIEDMAN: That says if there is a duplication.
16 Counsel just told you they don't have facilities there. He
17 just told you that. Issue 7 really is a nonissue. Counsel
18 just told you there is no duplication. There is no facilities
19 in there. Nobody has got facilities -- nobody has got
20 facilities there now, except MSM has a little on the west side
21 of the road. You could argue that maybe the County has got
22 them in the other county. It's just not there.

23 COMMISSIONER McMURRIAN: Mr. Jaeger.

24 MR. JAEGER: I believe what the County is saying is
25 they do have a facility, a water line within 3,000 feet of this

1 area, and they could use that. What they are saying is that
2 they just don't believe it should be developed or should be
3 going to water and wastewater. And if it was, then they should
4 have the opportunity. But I'm trying to figure out -- I think,
5 as I have said at the beginning, I think it still has some
6 connection to these two Issues 6 and 7, but I think it would be
7 given just the weight that it is due if you allow them to
8 respond.

9 COMMISSIONER McMURRIAN: Let's do this. I'll allow
10 the questions to proceed, but I think you need to move it
11 along. I think that Mr. Friedman made some good points about
12 whether or not this has relevance to Issues 6 and 7. But I
13 also agree with Mr. Jaeger, that it has some -- based on some
14 of the earlier testimony and discussion we have had, that it
15 has some relation to it. So I will allow it, but if we
16 could --

17 MR. ENGELHARDT: Commissioner, in response to that if
18 I may. Looking at what Sun River filed in response to the
19 prehearing statement they say, "If, for argument sake, one
20 assumes CCU is in competition with Sun River, it should be
21 noted that CCU is unwilling and unable to provide any service
22 to the proposed service territory." That is their answer to
23 Issue 7. I believe this testimony goes directly to combat that
24 statement. I will move it on, as well, though.

25 COMMISSIONER McMURRIAN: Okay. Thank you.

1 Commissioner Skop has a question.

2 COMMISSIONER SKOP: Thank you. Just one quick point
3 of clarification, I guess. The discussion has turned to some
4 interconnection point, either owned by Charlotte County or
5 another county. Could you just point to, specifically on the
6 map, where that interconnection point would be. And that is in
7 Desoto County?

8 THE WITNESS: Yes. You're asking me, the engineer?

9 COMMISSIONER SKOP: Yes.

10 THE WITNESS: About here is the entrance to the
11 Wal-Mart, and the facilities sit right here (indicating), and
12 they are owned by -- the facilities are partially owned. The
13 fire suppression systems are owned by Wal-Mart, because there
14 is inadequate capacity in that pipeline, that water main, to
15 meet Wal-Mart's fire demands. Desoto County owns the pipeline
16 facilities that serve here designed by Hartman and Associates.
17 That is my firm. Okay. We did the RO plan. We did the
18 design/build on it with Harn RO. Harn RO is the contractor.
19 These facilities were not designed to provide service to the
20 south, number one. And, number two, the facilities don't
21 have --

22 COMMISSIONER SKOP: I will just stop you there,
23 because I don't want to go outside the scope. I was just
24 trying to identify where that was. But just as a brief
25 follow-up, if that interconnection point is owned by Desoto

1 County --

2 THE WITNESS: Absolutely.

3 COMMISSIONER SKOP: -- does Charlotte County have
4 unilateral access to tap into that?

5 THE WITNESS: I know of no agreement between the
6 parties that may -- it's outside of my knowledge and outside of
7 the date possibly. Maybe it is a recent agreement that was
8 made. But, historically, there was no agreement that gave
9 Charlotte County the right to tap that line without Desoto
10 County's consent and agreement.

11 COMMISSIONER SKOP: Thank you.

12 BY MR. ENGELHARDT:

13 Q Does Desoto County own that line or does the Water
14 Authority own it?

15 A Desoto County owns all of those facilities and the
16 line right up to it. To the north of that the ownership
17 changes. The Peace River Water Supply Authority owns a piece
18 of that 16-inch that comes and ties into those facilities.

19 Q There are thirteen different water utilities
20 operating in Charlotte County, are there not?

21 A I don't know the exact number, but there are several.

22 Q And there are nine different wastewater utilities
23 operating within Charlotte County?

24 A Subject to check, I'll say yes.

25 Q So, in other words --

1 A Or more.

2 Q So, in other words, the County is not the only
3 provider of these services. There are privately owned
4 utilities?

5 A Absolutely. In fact, the County just recently got
6 into the utility business in the acquisition of General
7 Development Utilities, and then the Burnt Store facilities. As
8 you know, I represented the City of North Port in the
9 acquisition there. We have an agreement between North Port and
10 Charlotte County to do that acquisition. I testified in the
11 case. I was the valuation witness.

12 Q So it's fair to say that Charlotte County has not
13 historically excluded investor-owned utilities, as there are
14 22, at least, that you just agreed.

15 A Well, they are separate companies. I do not know if
16 there is 22 companies in the County, but there are --
17 historically, they weren't even in the utility business. They
18 have just recently come into the utility business through the
19 acquisition of utilities, and they acquired the investor-owned
20 utilities. Charlotte County Utilities was created by
21 acquisitions of investor-owned utilities. It's not a
22 home-grown utility.

23 MR. ENGELHARDT: I have no further questions at this
24 time.

25 COMMISSIONER McMURRIAN: Commissioner Argenziano has

1 questions.

2 COMMISSIONER ARGENZIANO: I have just a couple of
3 questions, I guess, for the County. First, let me ask is the
4 County aware of the agricultural enclave legislation that had
5 passed?

6 MR. McLEAN: Do we need to have a county witness on
7 the stand?

8 COMMISSIONER ARGENZIANO: Okay. All right.

9 COMMISSIONER McMURRIAN: I think perhaps we can ask
10 the witness and see if he can answer, and perhaps maybe he can
11 give us --

12 MR. ENGELHARDT: I would object to that as
13 Mr. Hartman is not a --

14 COMMISSIONER ARGENZIANO: Okay. We will just forget
15 the question at this time. I will find out on my own. And I
16 don't know, then, if it would be appropriate to ask the next
17 question. And I guess it's more out of curiosity at this
18 point. Is the current landowner of the Hudson Ranch or
19 Schwartz properties and, I guess, Zachariah for that matter,
20 have they in the past asked for or made application for land
21 use changes?

22 MR. ENGELHARDT: Commissioner, we will have a witness
23 testifying to that answer.

24 COMMISSIONER ARGENZIANO: Okay. I'll just reserve
25 until the next witness. Thank you.

1 COMMISSIONER McMURRIAN: Mr. Jaeger.

2 MR. JAEGER: Staff has just a couple of questions.

3 CROSS EXAMINATION

4 BY MR. JAEGER:

5 Q What is the full name of the water authority that has
6 that --

7 A The Peace River Manasota Regional Water Supply
8 Authority.

9 Q And who are members of that authority?

10 A The members of the authority are Desoto County,
11 Charlotte County -- gosh, I forgot -- Sarasota County and
12 Manatee County.

13 Q So four counties are in that authority?

14 A Yes. They excluded membership to the City of North
15 Port awhile ago. I represented North Port, and we tried to get
16 membership.

17 Q Now, you pointed on the map -- I would like for you
18 to testify on the record, if you will, how far north is that
19 water authority, where do their lines start, how far north is
20 that, how many feet?

21 A I believe that their line stops right up here.

22 Q About how far is that?

23 A Oh, it's several miles, I believe. We did
24 \$33 million in Desoto County of infrastructure, and we built
25 all the pipelines that connected up, that's subject to check.

1 There may have been be a dedication of a county line to the
2 authority for service following the improvement program. I am
3 going by the detailed plans. We designed all of those
4 pipelines, also, Hartman and Associates. So, you know, the
5 situation is I don't know if they have dedicated any lines over
6 to the Authority subsequent to the construction.

7 Q But from that point south to the Wal-Mart, who do you
8 think owns it?

9 A At one time it was Desoto County. That's who we
10 prepared the plans for.

11 Q Okay. So it is either through the Water Authority or
12 Desoto County that Charlotte County would have to get some kind
13 of permission to hook into that line to get water?

14 A That is correct. In that overall agreement, because
15 I'm knowledgable of it because of North Port as well as serving
16 Desoto County, historically, you don't serve, you don't put
17 facilities in another county, a member county without their
18 permission. So there are agreements that have yet to be made
19 to do that.

20 MR. JAEGER: I have no further questions.

21 COMMISSIONER McMURRIAN: Redirect?

22 MR. FRIEDMAN: I have no redirect. I would like to
23 move the exhibits into evidence before I forget.

24 COMMISSIONER McMURRIAN: Thank you. So we will show
25 Exhibits 5, 6, 7, and 8 as moved into the record without

1 objection.

2 (Exhibits 5, 6, 7, and 8 admitted into the record.)

3 MR. McLEAN: Madam Chair, I would like to make one
4 point. We will be sponsoring two county employees for
5 questions within the scope of their responsibility. I didn't
6 mean to cut you off, but we do have a witness to speak for the
7 County.

8 COMMISSIONER ARGENZIANO: Thank you.

9 COMMISSIONER McMURRIAN: Thank you. And 5, 6, 7, and
10 8, am I right?

11 MR. JAEGER: That is correct.

12 COMMISSIONER McMURRIAN: The rest of the exhibits are
13 for his rebuttal testimony.

14 MR. JAEGER: That is correct.

15 COMMISSIONER McMURRIAN: Okay. I believe Mr. Hartman
16 is excused.

17 MR. FRIEDMAN: Thank you.

18 COMMISSIONER McMURRIAN: Thank you.

19 MR. FRIEDMAN: That concludes our direct testimony.

20 COMMISSIONER McMURRIAN: Thank you.

21 Commissioners, I was going to try to go to about
22 1:30. Do you want to press ahead and break around 1:30, or are
23 you -- okay.

24 We will call the next witness. I believe that is
25 your witness, Mr. Engelhardt.

1 MR. ENGELHARDT: We call Jeff Ruggieri.

2 JEFFREY RUGGIERI

3 was called as a witness on behalf of Charlotte County, and
4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. ENGELHARDT:

7 Q Could you please state your name for the record?

8 A Jeffrey Ruggieri.

9 Q Mr. Ruggieri, have you been sworn?

10 A I have.

11 Q And would you please tell the Commission what your
12 job title and duties are?

13 A I am director for growth management for Charlotte
14 County, and my general duties include overseeing of the
15 County's comprehensive plan, it's maintenance, it's
16 implementation, also the County zoning code.

17 Q And have you prefiled testimony in this case along
18 with exhibits?

19 A I have.

20 COMMISSIONER McMURRIAN: Mr. Engelhardt, let me
21 interrupt just a second.

22 Mr. Ruggieri, if you could move a little closer to
23 the mike. They are having trouble hearing you on the other
24 side of the room. I would appreciate that.

25 THE WITNESS: Okay.

1 COMMISSIONER McMURRIAN: Thank you.

2 Go ahead, Mr. Engelhardt.

3 BY MR. ENGELHARDT:

4 Q Do you accept your testimony as it was filed?

5 A I do.

6 Q And if it were to be given today live, would you
7 testify in the same manner?

8 A I would.

9 Q So there are no changes to your testimony as
10 presented?

11 A Correct.

12 Q Could you give a short summary of your testimony?

13 COMMISSIONER McMURRIAN: Actually, Mr. Engelhardt,
14 are you moving the prefiled direct testimony into the record?

15 MR. ENGELHARDT: I'm sorry. We move the testimony as
16 filed.

17 COMMISSIONER McMURRIAN: Show it moved. Thank you.

18 MR. ENGELHARDT: Thank you. Sorry.

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1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. Jeffrey C Ruggieri, Charlotte County, 1800 Murdock Circle Room 201B, Port
3 Charlotte FL, 33948.

4 Q. BY WHOM ARE YOU EMPLOYED AND WHAT POSITION DO YOU
5 HOLD?

6 A. I am employed by the Charlotte County BCC as the Planning Services Manager.

7 Q. PLEASE DESCRIBE YOUR DUTIES AND RESPONSIBILITIES IN THAT
8 POSITION.

9 A. Management of current and long range planning staff and department, including:
10 administration, interpretation and amendment of the Charlotte County
11 Comprehensive Plan; also, through the County Zoning Official, administration,
12 interpretation and amendment of the Charlotte County Zoning Atlas.

13 Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL
14 EXPERIENCE.

15 A. I have a Bachelor's Degree in Marine Affairs from the University of Rhode Island
16 (1992), and a Masters Degree in City Planning from the Georgia Institute of
17 Technology (1999). I have approximately ten years of professional experience in
18 land development and current/long range planning from both the public and private
19 sectors.

20 Q. ARE YOU SPONSORING AN EXHIBIT IN THIS CASE?

21 A. Yes, I am sponsoring Exhibit No. JCR-1, which consists of the Objective 2.7; Policies
22 1.1.10, 1.3.1, 1.4.5, 2.2.22, 2.7.1, 2.7.10 of the Future Land Use Element and Policies
23 9.1.1 and 9.1.4 of the Potable Water and Sanitary Sewer Element of the Charlotte
24 County Comprehensive Plan.

25

1 Q. FROM CHARLOTTE COUNTY'S PERSPECTIVE, WHY IS THE
2 PLANNING FOR EXTENSION OF WATER AND WASTEWATER SERVICE
3 SO CRITICAL TO THE GROWTH MANAGEMENT OBJECTIVES
4 CONTAINED IN THE COUNTY'S COMPREHENSIVE PLAN?

5 A. The over-platting of land has made achieving growth management objectives very
6 difficult. For the most part, development has followed the extension of potable water
7 lines in Charlotte County. Therefore, the provision of infrastructure appears to be the
8 most effective tool for directing where, when, and at what intensity development will
9 proceed. The growth management strategy within the comprehensive plan utilizes the
10 provision of infrastructure as the primary tool for managing growth and development
11 in Charlotte County. It is referred to as the Urban Service Area strategy.

12 Q. PLEASE EXPLAIN HOW THE URBAN SERVICE AREA STRATEGY IS
13 USED TO MANAGE GROWTH AND DEVELOPMENT WITHIN THE
14 COUNTY.

15 A. Urban service areas are locations within Charlotte County representing an outer limit
16 for areas that will receive higher levels of publicly funded infrastructure and services
17 within the comprehensive plan's period until 2020. The Urban Service Area Overlay
18 District corresponds to the land area needed to support the county's population as
19 projected in the year 2020. In this manner, the Urban Service Area strategy serves as
20 the technique by which land uses are allocated in the Comprehensive Plan.

21 Specific criteria are needed for evaluating and determining the proper time and
22 location to adjust the urban service area. As mandated by the Comprehensive Plan,
23 the following information should be evaluated when making decisions regarding
24 adjustments to the urban service area:

25

- 1 (1) Percentage of buildout including analysis of density and intensity. Has the
2 Planning Analysis Zone (PAZ) reached the density threshold for
3 reclassification? Will the development intensity impact adjoining PAZs?
- 4 (2) Established growth patterns. Will adjustment represent a sequential growth
5 pattern?
- 6 (3) Location in proximity to existing urban infrastructure and services. Is the
7 adjacent PAZ being developed or has it received substantial development?
8 Where are existing infrastructure and services and can they be extended
9 efficiently?
- 10 (4) Development trends. What trends have occurred in the surrounding area in
11 the last several years? Do they warrant a change?
- 12 (5) Population projections. Is there enough land for development to meet the
13 needs of the future population? Does the county wish to channel growth in a
14 certain direction?
- 15 (6) Infrastructure funding. How will infrastructure be funded? Is there sufficient
16 funding to support development within the PAZ? How much funding is
17 needed?
- 18 (7) Concurrency. Are concurrency levels being met in developing areas prior to
19 designating more locations for development? How will this adjustment affect
20 concurrency in the surrounding PAZs? How will levels of service be
21 maintained?
- 22 (8) Geographic features. Are there geographic features, such as water or publicly
23 owned lands that prevent adjustments in this location?
- 24 (9) United States Census data and locally generated demographic information.
25 Do demographic data indicate that adjustments need to be made to sub-areas?

1 (10) Data and analysis provided for the local area market condition (such as real
2 estate and development trends or market research information).

3 Utility providers are encouraged not to extend services outside the Urban Service
4 Area Overlay District boundary, and new certifications should not be permitted
5 outside the boundary. Exceptions should only be made for self-supporting
6 developments, such as Developments of Regional Impact or for proposals that meet
7 the standards for "new towns" as defined by Chapter 163, Part II, Florida Statutes and
8 Rule 9J-5, Florida Administrative Code.

9 **Q. ARE YOU FAMILIAR WITH THE TERRITORY THAT SUN RIVER**
10 **UTILITIES, INC. IS REQUESTING TO BE ADDED TO THEIR PSC**
11 **CERTIFICATED TERRITORY IN THIS PROCEEDING?**

12 A. Yes, I am familiar with area.

13 **Q. WHERE IS THE PROPOSED TERRITORY LOCATED AND WHAT IS THE**
14 **LAND USE DESIGNATION FOR THIS TERRITORY IN THE COUNTY'S**
15 **COMPREHENSIVE PLAN?**

16 A. The area is located in Rural Service Area of West County and outside the Urban
17 Service Area. The proposed extension area is currently zoned Agricultural Estates
18 (AE) and has a Future Land Use category of Agriculture. Currently the land is
19 entitled to develop at one unit per 10 acres

20 **Q. DOES THE PROVISION OF WATER AND WASTEWATER SERVICE TO**
21 **THE TERRITORY SUN RIVER PROPOSES TO SERVICE CONSTITUTE**
22 **URBAN SPRAWL?**

23 A. Rule 9J-5.003(134)(c), Florida Administrative Code, characterizes "urban sprawl", in
24 part, as "The creation of areas of urban development or uses which fail to maximize
25 the use of existing public facilities or the use of areas within which public services are

1 currently provided." Adding the provision of water and wastewater service to the
2 territory Sun River utilities proposes to service would constitute urban sprawl.
3 Expanding the utility service to areas outside of the county's urban service area
4 would promote additional development in excess of demonstrated need to substantial
5 areas of rural Charlotte County. Furthermore, the expansion of Sun River's
6 certificated area would fail to maximize existing and future public facilities and
7 services. Finally, the expansion would allow for land use patterns which would
8 disproportionately increase the cost in time, money, and energy, of providing and
9 maintaining facilities and services, including roads, potable water, sanitary sewer,
10 storm water management, law enforcement, education, health care, fire and
11 emergency response and general government.

12 **Q. DO YOU HAVE AN OPINION AS TO WHETHER THE SUN RIVER**
13 **PROPOSED EXTENSION OF ITS SERVICE TERRITORY IS**
14 **INCONSISTENT WITH CHARLOTTE COUNTY'S COMPREHENSIVE**
15 **PLAN?**

16 **A.** It is very clear that the proposed Sun River extension is inconsistent with the
17 applicable Goals, Objectives, and policies of Charlotte County's Comprehensive
18 Plan.

19 **Q. WOULD YOU GIVE THE REASONS FOR YOUR OPINION?**

20 **A.** As previously explained, the County's primary growth management tool is an urban
21 service area strategy that uses public infrastructure and services as a means for
22 directing the timing, location, and intensity of development. The comprehensive plan
23 is very clear in its intention that the conversion of agricultural lands to more intensive
24 uses must occur in accordance with either the Urban Service Area Strategy, Rural
25 Community concept, New Community concept, or Development of Regional Impact

1 process. At this point Sun River has neither submitted the required information for
2 amendment of the Urban Service Boundary as required by the comprehensive plan
3 nor submitted a request for any land use change in the proposed certificated area.
4 Thus, at this point it is premature to amend the Urban Service Boundary without the
5 requisite analysis that should accompany the change.

6 **Q. WHAT IS THE COUNTY'S PROCESS FOR A CHANGE IN LAND**
7 **DESIGNATION OR REZONING OF PROPERTY WITHIN THE COUNTY?**

8 A. Any land owner in the county can apply for a future land use amendment, a rezoning
9 or a combination of both. Each application is reviewed for consistency with all goals,
10 objectives and policies of the County's Comprehensive Plan as well as many other
11 performance criteria such as compatibility with surrounding areas, and the impact to
12 public facilities, including parks, water and wastewater, fire, police, schools and solid
13 waste facilities.

14 Any application or proposal that is found to impact established minimum Level of
15 Service (LOS) standards is required to mitigate all impacts that cause the deficiency.

16 After land use entitlements are obtained any applicant requesting more than six
17 residential units or more than 6,000 square feet of non-residential building must
18 submit for site plan approval through the county's Development Review Committee
19 (DRC) process.

20 **Q. WHAT IS THE COUNTY'S DEVELOPMENT REVIEW COMMITTEE**
21 **(DRC)?**

22 A. The DRC is a recommending body and votes under a quasi-judicial process. Five
23 representative members of different County departments make up the DRC review
24 committee, including the Zoning, Land Development Engineering, Fire Prevention,
25 Utilities, and Traffic Engineering departments. Each project is reviewed for

1 compliance with all applicable LOS standards and land development regulations
2 during the review period.

3 **Q. HAS THERE BEEN A REQUEST FROM ANY LAND OWNERS IN THE SUN**
4 **RIVER PROPOSED AMENDMENT TERRITORY FOR REZONING OR**
5 **FUTURE LAND USE AMENDMENTS?**

6 A. As of October 26, 2007, there has been no formal request and, in fact, no request to
7 meet and discuss a proposal for land use change.

8 **Q. ARE YOU AWARE OF ANY TRAFFIC CONCERNS THAT WOULD**
9 **RESULT FROM DEVELOPMENT IN THE SUN RIVER PROPOSED**
10 **AMENDMENT TERRITORY?**

11 A. The portion of US Highway 17 adjacent to this site is currently functioning above the
12 minimum Level of Service criteria established by Charlotte County. All proposed
13 developments along this corridor will be reviewed for their impact to the
14 transportation system and their impact on the existing Level of Service. Any
15 development that drops the LOS of US Highway 17 below the adopted standard
16 would be required to either make the improvements necessary to bring the road back
17 to the adopted LOS or would be required to pay into the County Proportionate Fair
18 Share system for funding roadway improvements.

19 **Q. IS THE COUNTY IN THE PROCESS OF REVISING AND UPDATING ITS**
20 **COMPREHENSIVE PLAN?**

21 A. Yes. The current comprehensive plan has a planning horizon ending in 2010. The
22 county will be required to update the comprehensive plan by November of 2010. The
23 county has begun the process for a re-write of the comprehensive plan. In fact, on
24 October 15, 2007 the Request for Qualifications (RFQ) for the new comprehensive
25 plan was posted for bid on the County's purchasing website.

1 **Q. WHAT IS THE TIMELINE FOR COMPLETING THE PROCESS OF**
2 **UPDATING THE COMPREHENSIVE PLAN?**

3 A. The following is a list of important dates concerning the selection of the
4 comprehensive plan consultant:

5 10/15/2007 Posted Notice of Project Availability

6 10/29/2007 Pre-Submittal meeting

7 11/20/2007 Proposal due date

8 12/03/2007 Professional Services Committee short lists firms

9 The process will begin in January of 2008. We plan to transmit the new
10 Comprehensive Plan to the Department of Community Affairs in January of 2010.
11 The DCA will then have 60 days in which to issue an Objections, Recommendation,
12 and Comment (ORC) Report.

13 **Q. WILL GROWTH AND DEVELOPMENT IN THE SUN RIVER PROPOSED**
14 **TERRITORY BE ADDRESSED IN THE NEW COMPREHENSIVE PLAN?**

15 A. Yes. A major component of the new comprehensive plan will be the creation of a
16 'Rural Lands Development Strategy'. This strategy will address development issues
17 in rural east county and provide policy direction to guide growth in this area. Due to
18 the high degree of public input involved, the comprehensive planning process is the
19 best medium to analyze how to accommodate growth in the eastern portion of the
20 county in order to avoid unwanted land development patterns, such as sprawl, and the
21 impacts associated with them.

22 **Q. IS IT YOUR POSITION THAT IT IS PREMATURE TO GRANT THIS**
23 **EXPANSION OF TERRITORY TO SUN RIVER?**

1 A. In my opinion, based on the goals, objectives, and polices of Charlotte County's
2 1997-2010 Comprehensive Plan and applicable ordinances, it is premature to grant
3 this expansion of the territory to Sun River.

4 The expansion is in direct conflict with the Comprehensive Plan; Objective 2.7;
5 Policies 1.1.10, 1.3.1, 1.4.5, 2.2.22, 2.7.1, 2.7.10 of the Future Land Use Element and
6 Policies 9.1.1 and 9.1.4 of the Potable Water and Sanitary Sewer Element of the
7 Charlotte County Comprehensive Plan.

8 Furthermore, the Comprehensive plan describes the process for amending the Urban
9 Service Boundary and the analysis required to make an amendment. To date no
10 request and no analysis have been submitted.

11 Most concerning however is the fact that no change of land use entitlements has been
12 requested for the area in question. Current land use allows development at a base
13 density of 1 unit per 10 acres. To increase the density beyond this base any applicant
14 proposing to develop in the proposed expansion area would be required to submit a
15 future land use map amendment, accompanying rezoning, and a transfer of
16 development units (TDU) for any unit above 1 unit per 10 acres. The current TDU
17 ordinance prohibits any transfer of density units to areas in the rural service area
18 unless done in conjunction with a DRI, New Community, or Rural Community as
19 defined by the County's comprehensive plan. As a result, at this point in time there is
20 no mechanism to increase density above 1 unit per 10 acres in the proposed expansion
21 area and furthermore, it is prohibited by ordinance.

22 This request for expansion is premature, the execution of which would contribute to
23 'urban sprawl' as defined by Florida Administrative Code. The county has numerous
24 prohibitions against the expansion of utilities outside the existing Urban Service Area
25 and has ordinances in place that prohibit any increases in density in the Rural Service

1 Area. The Community Development Department has just issued an RFQ seeking
2 qualified consultant(s) to assist staff in the creation of a new, innovative and creative
3 comprehensive plan based on public interaction and comment. A comprehensive
4 strategy for managing development in rural east county will be created as part of this
5 process. The new comprehensive plan will be transmitted to the Department of
6 Community Affairs for an Objections, Recommendation, and Comment (ORC)
7 Report in January of 2010.

8 In conclusion, allowing the expansion of Sun River and any appended development
9 associated with it would require major policy changes made by the county. The new
10 comprehensive plan will generate policy recommendations based on public
11 engagement, interaction and input. As such, the correct venue to discuss these county
12 wide policy changes is during the creation of the new comprehensive plan which will
13 provide clear guidance on the build-out options provided to rural east county.

14 **Q. ARE YOU AWARE THAT THE PSC COULD AWARD THIS TERRITORY**
15 **TO SUN RIVER OVER THE COUNTY'S OBJECTION?**

16 A. Yes, I am aware that Florida law requires the PSC to consider the comprehensive
17 plans of local governments, but does not require the PSC to follow them. In other
18 words, as I understand, the PSC has discretion.

19 **Q. DO YOU BELIEVE THAT THE PSC SHOULD FOLLOW THE**
20 **COMPREHENSIVE PLAN?**

21 A. Absolutely.

22 **Q. WHY DO YOU TAKE THAT POSITION?**

23 A. The story of growth in Florida is one of real estate development, some good and some
24 bad. For decades Florida, its resources and citizens were often victims of helter
25 skelter development until such time as the Florida Legislature wisely imposed

1 requirements on local governments for comprehensive planning and established the
2 Department of Community Affairs to oversee the process. Charlotte County, along
3 with other counties, establish comprehensive plans at considerable public expense.
4 Citizens of our county, both corporate and private, expend their own resources in the
5 comprehensive plan process and develop a reasonable right to rely on its provisions.
6 Indeed, many substantial public and private investments are based upon a reliance on
7 its provisions. The comprehensive plan is the result of a great deal of effort by the
8 good citizens of this county and their elected leaders to establish a governmental
9 policy that we hope and believe provides a rational plan for both the development and
10 the preservation of our quality of life in Charlotte County.

11 **Q. WHAT RESULT DO YOU BELIEVE WOULD OCCUR IF THE PSC WERE**
12 **TO EFFECTIVELY IGNORE THE COMPREHENSIVE PLAN?**

13 A. I have full confidence in the PSC's ability to discharge their duties insofar as the
14 regulation of utilities. I also believe that the provisions of Section 367.045, Florida
15 Statutes, notwithstanding, the Legislature entrusted comprehensive planning to the
16 counties with oversight in the Department of Community Affairs. The effect of
17 granting the application, which is pending in this case, is to run roughshod over the
18 hard work of both the county that developed the plan and of the DCA's review
19 thereof; to effect a squander of the considerable investment of resources, both public
20 and private, that were dedicated to the development and approval of the
21 comprehensive plan; and to violate the good faith reliance on the comprehensive plan
22 by investors, both public and private.

23 **Q. WHAT ACTION BY THE PSC IN THIS CASE DO YOU BELIEVE SERVES**
24 **THE PUBLIC INTEREST?**

1 A. The PSC should recognize that the approval of this application is adverse if not fatal
2 to the comprehensive plan insofar as it applies to the territory in question. It should
3 recognize that the comprehensive plan is the rational and lawful means by which the
4 county protects its resources and citizens where development is concerned, and
5 consequently, it should deny this application in all of its aspects.

6 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

7 A. Yes, it does.
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1 THE WITNESS: Can I proceed?

2 BY MR. ENGELHARDT:

3 Q Sure. Please, summarize your testimony.

4 A In summary, my testimony states that historically the
5 County has recognized that development has followed the
6 provision of water and sewer services throughout the County.
7 It is based on 20 years of comprehensive planning and planning
8 review.

9 The primary mechanism we use to manage growth in the
10 County is called the urban service strategy. We implement that
11 through an urban service boundary, which dictates a line where
12 it represents the uttermost investment in public infrastructure
13 and public services as a mechanism to direct growth into these
14 areas. Areas outside of the urban service area for the most
15 part they are one unit per ten acres. Inside those urban
16 service areas they are much higher densities.

17 At this point in time, the County has not seen any
18 applications for a comprehensive plan amendment or any
19 amendment to the urban service boundary from anybody in the
20 proposed certificated area. We have not had any conversations
21 with anybody about doing so, either.

22 In conclusion, essentially there is multiple policies
23 in the comprehensive plan that would be contrary to allowing
24 the certification that is outlined in my testimony.

25 Q Thank you, Mr. Ruggieri.

1 And you have filed an exhibit, as well, excerpts from
2 the Charlotte County Comprehensive Plan that is JCR-1, is that
3 correct?

4 A Correct.

5 MR. ENGELHARDT: At this point we tender the witness
6 for cross.

7 COMMISSIONER McMURRIAN: Mr. Friedman.

8 MR. FRIEDMAN: Thank you.

9 CROSS EXAMINATION

10 BY MR. FRIEDMAN:

11 Q Mr. Ruggieri, am I correct that you believe that for
12 the most part development follows the extension of water lines?

13 A In Charlotte County, that's correct, yes.

14 Q Isn't it also true that the availability of water and
15 wastewater service does not necessarily provide justification
16 for development approval?

17 A Correct.

18 Q And, in fact, isn't there a specific policy of the
19 Comp Plan that states that?

20 A That states what specifically?

21 Q That water and sewer availability will not
22 necessarily provide justification for development approval?

23 A I can't recall off the top of my head, but I know
24 that in practice, sure, that's a generally accepted statement.

25 Q Do you have a copy of the Comprehensive Plan with

1 you?

2 A All 1,700 pages?

3 Q Well, the part that deals, that relevant to this
4 case, water and sewer?

5 A I have what I submitted.

6 Q But you don't have other parts of it?

7 A No, sir.

8 Q Comprehensive Plans are subject to change, are they
9 not?

10 A Correct.

11 Q And isn't Charlotte County as we speak going through
12 the process of redoing its Comprehensive Plan?

13 A We have just -- the board just agreed to enter into
14 contractual negotiations with the short-listed firm, so I will
15 be meeting with them next week to begin the formulation of the
16 scope and the budget to enter into a new comprehensive planning
17 process.

18 Q And the Highway 17 corridor, in fact, is one of the
19 areas that's going to get special attention, is it not?

20 A It sure will.

21 Q Isn't it true that the County has also approved
22 comprehensive plan changes to increase the density of some
23 property in the Sun River service area?

24 A I don't know. I don't recall.

25 Q Hasn't the County entered into a stipulation with DCA

1 recently about a Comp Plan amendment for an area within the Sun
2 River service area?

3 A Within the certificated area, correct. It had
4 nothing to do with density, however. That was a commercial
5 land use.

6 Q It didn't have anything to do with density?

7 A Not residential density, no, sir.

8 Q All right. Do you recall when we talked about this
9 in your deposition?

10 A I do, yes. There were two. I remember there was a
11 lot of confusion on which one we were talking about.

12 Q You were confused?

13 A We were both confused.

14 Q I'm not sure I was confused about anything.

15 A Uh-huh.

16 Q So when we spoke about the amendment going forward
17 and there was a stipulation for approval, you said, "Correct,
18 but at least the County, Charlotte County has no objection to
19 it."

20 "Question: What was the nature of the amendment?
21 What was happening?

22 "Answer: I believe it was an increase in density to,
23 like, single family with 3.5 an acre."

24 A Okay.

25 Q So is this correct that it was a change in density?

1 A Okay. Sure. I'll accept that. The other one was
2 the commercial. But that was in the certificated area, in the
3 urban service area.

4 Q But it was, in fact, a comprehensive plan change, was
5 it not?

6 A Correct.

7 Q And you would agree, would you not, that in order to
8 get a comprehensive plan change approved by DCA that the
9 proponent is going to have to show that water and wastewater
10 services are available?

11 A I would not agree that that is, you know, required
12 all the time, no, sir.

13 Q Can you name any instance that you are aware of where
14 it wasn't required?

15 A No.

16 Q And this instance we just spoke about with the
17 comprehensive plan change, wasn't it, in fact, initially denied
18 because there was no showing that the property had availability
19 of water and sewer service?

20 A It was from the Department of Community Affairs
21 denied, correct.

22 Q And, so you would agree, would you not, that for a
23 Comp Plan change approval to get through the DCA, the proponent
24 of that change is going to have to show where water and
25 wastewater service is coming from?

1 MR. ENGELHARDT: I object to that question.
2 Mr. Ruggieri does not work for the Department of Community
3 Affairs.

4 MR. FRIEDMAN: He has to work with the Community
5 Affairs, I would guess, very frequently. And he is the person
6 that sends the Comp Plan changes to the DCA. And if DCA comes
7 back and says no, you know, he's the guy -- I think you ought
8 to ask him if has got knowledge of it. If he says, no, I don't
9 know anything about that, that's fair game. But if he has got
10 the knowledge he needs to tell us.

11 MR. ENGELHARDT: That doesn't mean that he is
12 knowledgable about the decision-making process as to what
13 weight the DCA gives to water and sewer availability.

14 COMMISSIONER McMURRIAN: Mr. Jaeger, have you got any
15 input on this?

16 MR. JAEGER: I would have to hear that question
17 exactly again. Could we have the court reporter read it back?

18 MR. FRIEDMAN: I will read it. It may be easier for
19 me to read it. That's the same question I asked him in his
20 deposition. "You would agree, would you not, that for a Comp
21 Plan change approval to get through the DCA, the proponent of
22 the change is going to have to show where water and wastewater
23 utility services are coming from?"

24 COMMISSIONER McMURRIAN: Mr. Jaeger.

25 MR. JAEGER: I believe that would be a valid .

1 question. If he submits plans and works with the DCA, then he
2 would know if that is a requirement or not. If he says he does
3 not know, then he can say that.

4 COMMISSIONER McMURRIAN: I agree. I will allow it.
5 I believe the witness can answer the question to the extent he
6 can. If he can't, he can say so.

7 THE WITNESS: Sure.

8 COMMISSIONER McMURRIAN: And perhaps someone can
9 follow up.

10 THE WITNESS: Sure. Every development is different.
11 We review each one of them on their own merits. We very seldom
12 require that people hook into water or, you know, have
13 essential water and sewer. We relegate that responsibility to
14 the state. And if somebody wants to request a well and a
15 septic system, if they get their state permits, that is
16 perfectly fine with us. When we transmit our amendments to
17 DCA, if that is part of their -- if that is part of their
18 statement from our ORC report, our objects, recommendations,
19 and conditions -- objections, recommendations and conditions
20 report, then we deal with it at that level. To say that every
21 single one requires that, I can't really answer that. They are
22 all very individual.

23 BY MR. FRIEDMAN:

24 Q But you testified that you don't know of any that did
25 not require a showing of the availability of water and

1 wastewater service?

2 A State that again, please.

3 Q Didn't you testify just a minute ago that you did not
4 know of any circumstance that a Comp Plan change had gotten
5 through DCA through Charlotte County without a showing of
6 availability of water and wastewater service?

7 A Like I said, each one of them is individual. We do
8 many. I'm not aware. I am not really prepared to answer the
9 question.

10 Q The County has got other tools other than the
11 availability of water and wastewater service to control growth,
12 does it not?

13 A Correct.

14 Q So whether or not water and wastewater service is
15 available, the County still has to approve the development,
16 does it not?

17 A Correct.

18 Q Now, you state in your testimony, do you not, that
19 urban services areas are locations within Charlotte County
20 representing the outer limit for areas that will receive a
21 higher level of publicly funded infrastructure and services?

22 A Correct.

23 Q And when you say that you are dealing with or you are
24 speaking in terms of publicly funded infrastructure and
25 services, are you not?

1 A Sure.

2 Q And this application, as you understand it, doesn't
3 involve any publicly funded infrastructure, does it?

4 A Correct.

5 Q Now, just because much of the territory in question
6 is outside of the urban services area does not necessarily mean
7 that it should not mean a private utility service area, does
8 it?

9 A We do have a policy in the Comp Plan that would
10 dictate certification of areas outside the urban service area
11 that are not specific as to public or private. It just says
12 utilities. Policy 9.14, correct. And I can read that into the
13 record, if you would like.

14 Q That's okay. So it would be okay for the area to be
15 in the County service area, but just not a private utility
16 service area, is that your testimony?

17 A If it was in an infill area or in the urban service
18 area, correct, it would have to go through an amendment to the
19 urban service boundary, then the County could then go in to
20 service it to be consistent with the comprehensive plan.

21 Q Let me ask the question again. Listen to it.

22 If the territory we are talking about here is -- do
23 you understand that it is within a service area that Charlotte
24 County has established?

25 A It is in Charlotte County's certificated area.

1 Q And so is it your belief, then, that being in Sun
2 River's certificated service area would be different than being
3 in -- would be contrary to the Comp Plan even though it
4 wouldn't be contrary to the Comp Plan for it to be in the
5 County service area?

6 A It would be an extension of Sun River's certificated
7 area. That's what the Comp Plan talks about, so, you know, it
8 would be in violation of that policy, sure.

9 Q But it is not in violation of that policy to be in
10 the County's service area?

11 A This policy deals with extended and expanded service
12 areas.

13 Q All right. Is it your position that it is not
14 contrary to the Comp Plan for the service area to be in the
15 County's -- for this property to be in the County's service
16 area?

17 A Can you restate state that, please?

18 Q Is it your belief or your testimony that it is not a
19 violation of the Comprehensive Plan for this property to be in
20 the County's service area?

21 A Correct.

22 Q Okay. Do I understand that it would be to be in Sun
23 River's service area?

24 A If it was an expansion of Sun River's certificated
25 area.

1 Q Is it a violation of the Comprehensive Plan for
2 Charlotte County to provide water and wastewater service
3 outside the urban services area?

4 A There is a lot more to it than just providing water
5 and service. So at this point in time, yes.

6 Q Do you think you can just --

7 A Well, it would have to be attached to a development.
8 That's typically how we go through it. There is mechanisms to
9 increase density and intensity outside the urban service area.
10 It's not just a blanket mandate that you shall not. We do have
11 mechanisms in our Comp Plan to allow that to happen. For the
12 County in to do such a thing they would come forward in a
13 different way than just certificating a piece of property. We
14 would go through a needs analysis. We would go through, you
15 know, the comprehensive plan amendment process to determine
16 what the property is going to look like and what the land uses
17 are going to be. So I can't answer that question. We do it a
18 different way.

19 Q My question was does Charlotte County today provide
20 water and wastewater service outside of the urban services
21 area?

22 A You could probably ask Jeff Pearson that, the
23 utilities director.

24 Q Does that mean you don't know?

25 A I don't know.

1 Q But you do acknowledge, do you not, that Charlotte
2 County may provide water and wastewater services outside of the
3 urban services area under certain circumstances?

4 A Sure.

5 Q And am I correct that policy is Policy 1.3.2?

6 A Let me look. 1.3.2? I don't have a copy of it.
7 What does that one say?

8 Q "In certain instances, Charlotte County may provide
9 higher levels of infrastructure and services to areas,
10 regardless of the urban services area designation in order to
11 protect the public health, safety, and welfare, or at the
12 request and the capital outlay of citizens in the area."

13 A I would agree.

14 Q And the infrastructure and services element of the
15 Comprehensive Plan addresses the provision of those services by
16 Charlotte County, does it not?

17 A What chapter are you referring to specifically?

18 Q I am again on Objective 1.3.

19 A That is in the future land use section, so I would --
20 is it Objective 1.3? I don't have a copy of these, so I
21 don't -- I don't have a copy of my Comp Plan, and that wasn't
22 in my prefiled testimony, so I don't know what you are talking
23 about.

24 Q Let me ask you if you are familiar with this.

25 COMMISSIONER McMURRIAN: Mr. Friedman, do you have a

1 copy?

2 MR. FRIEDMAN: I just figured he would have a copy of
3 the Comp Plan.

4 MR. ENGELHARDT: With the Commission's permission, I
5 will supply him with a copy of his prefiled testimony.

6 THE WITNESS: It's not in it.

7 MR. FRIEDMAN: Yeah. He only put the ones he liked
8 in his prefiled testimony.

9 MR. ENGELHARDT: Objective 1.3 appears on Page 4.

10 MR. JAEGER: I was going to say Page 4 of 10 of his
11 exhibit, it is in there.

12 BY MR. FRIEDMAN:

13 Q Now, my question was --

14 A I used 1.3.1, okay. I got you.

15 Q My question was doesn't Objective 1.3, which deals
16 with infrastructure and services, address the provision of
17 infrastructure and services by the County?

18 A Not specifically, no.

19 Q All right. Does Policy 1.3.1 not say Charlotte
20 County's provision of infrastructure and services shall be
21 guided by the following service areas, which are listed in
22 level of priority: First priority, infill; second priority,
23 suburban; third priority, rural service area?

24 A Yes, it does.

25 Q And so, in essence, Charlotte County's provision of

1 infrastructure and services, does that not mean Charlotte
2 County itself providing those?

3 A When Charlotte County provides infrastructure,
4 correct, that's the manner in which they will prioritize them.

5 Q Now, can you briefly describe for me the criteria for
6 expanding the urban services area?

7 A That's outlined in my testimony. It is a four-step
8 process. It is Policy 1.1.10. I will just read them into the
9 record.

10 The proposed expansion is contiguous to the urban
11 service, except for self-supporting, self-sustained type
12 developments. It is either a new community or a DRI
13 development of regional impact. Proposed land uses are
14 compatible or provide sufficient buffering from existing and
15 adjacent land uses. An enforceable agreement exists for the
16 extension of central potable water and sanitary sewer service
17 into the proposed expansion area. And the proposed expansion
18 will not interfere with agriculture or conservation activities.

19 So they would submit -- the applicant or anyone
20 requesting to amend the urban service boundary would submit a
21 report to us outlining these four items, and we would evaluate
22 that for merit.

23 Q And one of those four items was an enforceable
24 agreement for water and sewer service?

25 A Correct, Item C, Sub C.

1 Q So if a property owner were going to request an
2 extension of the urban services area, that property owner would
3 have to get an enforceable agreement before they came to the
4 County, would they not?

5 A Correct.

6 Q Isn't it true that development in Charlotte County is
7 trending toward developments of regional impact?

8 A Development of Charlotte County trending? We have
9 developments of regional impact in Charlotte County, sure.

10 Q Isn't the trend in -- isn't the development trend in
11 Charlotte County towards DRIs?

12 A We have seen an increase in DRIs. We have also seen,
13 you know, regular platted lots and building permits come
14 through for single family residential homes. So the trend, I
15 don't think -- they are not corollary. We have seen an
16 increase in DRIs. We have seen it across the region, so it is
17 nothing -- it is not just a Charlotte County increase.

18 Q Do you remember when I took your deposition and you
19 were talking about the Burnt Store area?

20 A Yes.

21 Q And you stated development in the County is trending
22 towards DRIs, Development of Regional Impacts?

23 A I probably didn't say development is trending. I
24 probably said there was an increase in DRIs coming to the
25 County.

1 Q So when you said development is trending towards,
2 that that was probably not accurate, then?

3 A Probably not. It was either transcribed incorrectly
4 or not taken down right. The wrong context.

5 Q Now, a DRI doesn't require a Comp Plan change, does
6 it?

7 A Correct, yes.

8 Q Correct that it does not?

9 A Excuse me?

10 Q Correct that it does not require a Comp Plan change?

11 A Oh, DRIs do require a Comp Plan change, yes.

12 Q But it's a different Comp Plan change than an
13 extension of the urban services area, is it not?

14 A Sure.

15 Q So those are two different methodologies for
16 development?

17 A Correct.

18 Q So at least theoretically the property we're talking
19 about could be developed as a DRI without extending the urban
20 services area, could it not?

21 A Sure, that is what the County would prefer.

22 COMMISSIONER McMURRIAN: Mr. Friedman, I was just
23 going to suggest when you get to a good breaking point --

24 MR. FRIEDMAN: Don't worry, I've got more than two or
25 three minutes, but, you know --

1 COMMISSIONER McMURRIAN: If it's a good place, we
2 could stop now and take a break. I mean, I don't want to cut
3 anyone's questioning off.

4 MR. FRIEDMAN: I stopped to take a breath, that's
5 good enough.

6 COMMISSIONER McMURRIAN: I think what we will do,
7 since we've got the convenience of the cafeteria, what we will
8 try to do is come back at 2:00 o'clock. If we can't all get
9 through the line and get through with lunch, then we might
10 start back a little bit late, but I would rather try to start
11 back than not have any.

12 MR. FRIEDMAN: Can somebody enlighten me as to where
13 it is? I have wandered around here and looked forever.

14 COMMISSIONER McMURRIAN: We will recess until 2:00
15 p.m.

16 (Recess.)

17 COMMISSIONER McMURRIAN: We will call this hearing
18 back to order.

19 And Mr. Friedman was crossing the witness.

20 MR. FRIEDMAN: Thank you very much.

21 BY MR. FRIEDMAN:

22 Q Mr. Ruggieri, is the property that we are talking
23 about, can it currently be developed with one house per ten
24 acres?

25 A Correct.

1 Q And if somebody wanted to -- and so if it were
2 developed one per ten acres, it wouldn't constitute urban
3 sprawl, would it?

4 A They would be entitled to develop that one unit per
5 ten acres whether it was urban sprawl or not. It's the effect
6 on the community as a whole.

7 Q And there wouldn't be a prohibition against putting
8 in water and sewer service to serve one per ten acres, would
9 it?

10 A By whom?

11 Q Well, is the County willing to do it?

12 A Not to my knowledge.

13 Q Okay. How about a private company, then?

14 A Sure.

15 Q All right. So if I understand that correctly, so the
16 provision of central water and sewer to the property in
17 question at its current densities would not be inconsistent
18 with the Comprehensive Plan, is that correct?

19 A Clarify that, please.

20 Q All right. Providing central water and wastewater
21 service to the property in question at current densities would
22 not be inconsistent with the Comprehensive Plan, would it?

23 A Correct.

24 Q Now, if you assume, if you would, that the
25 application were granted, and Sun River were required -- were

1 allowed to provide service to this area, does that mean that
2 when the property owners come in for a Comp Plan change that
3 the County could not deny the change?

4 A Restate the question, please.

5 Q Assuming this application is granted, the property
6 owner comes to the County for a Comp Plan change, the County
7 could deny the Comp Plan change, notwithstanding water and
8 wastewater service, could it not?

9 A Correct.

10 MR. FRIEDMAN: That's all the questions I have.

11 COMMISSIONER McMURRIAN: Commissioners or Mr. Jaeger.
12 Commissioner Argenziano.

13 COMMISSIONER ARGENZIANO: Thank you. I guess a
14 couple of questions. I was looking over your direct and
15 listening to some of the things that you have answered or the
16 questions that you have answered. And in your direct you
17 mention that the Legislature entrusted the comprehensive
18 planning to the counties with oversight of the DCA. And you
19 mentioned, and I guess you feel this way, that the effect of
20 granting the application by the PSC would be to run roughshod
21 over the hard work. And I guess you mentioned violating the
22 good faith.

23 And what I wanted to ask you, you ended by saying it
24 would be -- if the PSC should recognize that the approval of
25 this application is adverse, if not fatal, to the comprehensive

1 plan insofar as it applies to the territory in question,
2 whether we grant or not. I guess those words -- I guess the
3 question would be, is do you -- and I think you just answered
4 it really. Do you believe that the County, if we were to grant
5 the application, would not have any standing in denying the
6 planning change if it was applied for?

7 A If it was granted, sure. There is a whole process in
8 place that I explained in my testimony and tried to probably
9 touch on here today where we would be reviewing all of these,
10 any kind of development that came through. It would be
11 contrary to the Comprehensive Plan to increase the density. We
12 don't have a mechanism in place that would allow any transfer
13 of units, any density units to this piece of property. So it
14 is essentially stuck in one unit per ten acres, and that is
15 pretty much it.

16 That section that you were referring to was alluded
17 to by Commissioner Cummings in that in Charlotte County it is a
18 very unique situation where we do have documented areas where
19 we have gone in and put in water and sewer. And they are no
20 different than any other area around them, and yet those
21 developed at a density of 50, 60, 70 percent higher than the
22 areas right across the street. So, in Charlotte County's case,
23 and it's recognized in the Comprehensive Plan, that providing
24 water and sewer to areas is an impetus for increased intensity
25 and density of development.

1 COMMISSIONER ARGENZIANO: Is an impetus, but not, you
2 know, it's not just a foregone conclusion.

3 THE WITNESS: Sure. There are decisions that need to
4 be made to get to that point.

5 COMMISSIONER ARGENZIANO: There are decisions that
6 need to be made. And are you familiar with the Legislature's
7 ag enclave bill?

8 THE WITNESS: No, ma'am.

9 COMMISSIONER ARGENZIANO: You don't have any
10 knowledge of agricultural lands?

11 THE WITNESS: Not -- if I had more than a half hour
12 of lunch, I would have found out.

13 MR. FRIEDMAN: Touche. (Laughter.)

14 THE WITNESS: I would have ran back to the office and
15 found out what that was all about.

16 COMMISSIONER SKOP: This may be a little bit
17 redundant, and, if so, I apologize. But based on your opinion
18 that the County has adequate protection to protect against
19 additional growth outside or independent of whether a
20 certificate is granted in this case or not, is that correct?

21 THE WITNESS: That is correct, sure.

22 COMMISSIONER McMURRIAN: Mr. Jaeger.

23 CROSS EXAMINATION

24 BY MR. JAEGER:

25 Q I will try not to beat a dead horse, but I think

1 Marty Friedman started and sort of ended on the same question.
2 And I believe that the answer is found in Objective 9.2. It's
3 on Page 2 of 10 of Mr. Ruggieri's Exhibit JCR-1. And it says,
4 Objective 9.2, Charlotte County in making land use decisions
5 shall utilize the availability of central potable water and
6 sanitary sewer service. And could you read Policy 9.2.3, I
7 think was Marty Friedman's question. That's the second one
8 down.

9 A 9.2.3.

10 Q It is Page 2 of 10. It's the third paragraph from
11 the bottom.

12 A Are we in my testimony or are we --

13 Q In Exhibit JCR-1.

14 A In the exhibit, okay.

15 I'm getting there, so just bear with me. I don't
16 have 9.2.10. It wasn't an exhibit that I sponsored, just for
17 clarification, in my testimony, so I'm not familiar with other
18 things that may have been attached to the document that was
19 submitted. So I apologize for the confusion. Do you want to
20 find it for me?

21 MR. ENGELHARDT: Is that acceptable, if I point to
22 where it is?

23 THE WITNESS: I can't find it. Well, if you look on
24 my testimony on Page 2, it gives you the exhibits that I am
25 sponsoring and familiar with. This is not one of them, so I

1 need to look at it.

2 BY MR. JAEGER:

3 Q We are talking about your exhibit, Mr. Ruggieri.

4 A I understand. I understand. I fully understand.

5 But in my testimony I was confused on what the exhibit -- what
6 the relationship was between what I sponsored and what was
7 actually submitted, so I apologize for the confusion. I will
8 read it right now. So what policy again? I'm sorry.

9 BY MR. JAEGER:

10 Q 9.2.3.

11 A Sure. Okay.

12 Q Would you just read that?

13 A I just read it, yes, sir.

14 Q Read it out loud, I'm sorry.

15 A "Water and sewer availability will not necessarily
16 provide justification for development approval."

17 MR. JAEGER: I think that's what we have been
18 hammering on, that policy.

19 That's all I have.

20 THE WITNESS: Okay.

21 COMMISSIONER McMURRIAN: Redirect, Mr. Engelhardt?

22 MR. ENGELHARDT: Thank you, Madam Chair.

23 REDIRECT EXAMINATION

24 BY MR. ENGELHARDT:

25 Q Earlier you testified, you were asked about the

1 criterion for amending the urban service boundary, and you read
2 the four criterion of Policy 1.1.10.

3 A Uh-huh.

4 Q I would ask if you would look in your testimony at
5 Exhibit Page 3. That would be in the actual exhibit part.

6 A I'm getting there. I'm obviously not very good with
7 exhibits today. I have a copy of it here, so I know what it
8 says if you want to ask me the question.

9 Q I believe that the copy that you have is incorrect,
10 and that's why I'm asking the question.

11 A Okay.

12 Q It will be probably in the testimony that I handed
13 you earlier. That is a correct copy of your exhibit. It would
14 be on Page 3, and you will see it listed as Policy 1.1.10.

15 A Okay. There we go. I'm now looking at this one.

16 Q I believe you read -- in Policy 1.1.10 you read what
17 is listed here as A, B, C, and D?

18 A Uh-huh.

19 Q Am I correct in stating that you did not read E?

20 A That's correct.

21 Q Could you please add that into the record so that we
22 can recognize what Policy 1.1.10 actually states?

23 A "The proposed expansion does not constitute urban
24 sprawl or promote the expansion of urban sprawl in surrounding
25 areas."

1 Q So that is one of the criteria that is used in
2 determining whether the urban service boundary should be
3 amended, is that correct?

4 A Correct.

5 Q Thank you.

6 You also testified that services have been provided
7 outside of the urban services area before. Do you have any
8 details that you can provide about those areas?

9 A On how we went about doing so?

10 Q On where those locations are?

11 A That's specifically in the Burnt Store area. We went
12 through the area planning process as outlined by the state to
13 establish a special area plan for the Burnt Store area. In
14 doing so, we also amended our urban service boundary to provide
15 central utilities to the site to develop approximately 6,000
16 residential units and, you know, an appended amount of
17 commercial type of development to support that. So we have
18 done it in the past.

19 COMMISSIONER McMURRIAN: Commissioner Argenziano.

20 COMMISSIONER ARGENZIANO: Why would the County think
21 that that does not go against the Comprehensive Plan?

22 THE WITNESS: Well, we went through the whole process
23 of reviewing it to make sure that it is a self-sustaining type
24 development and that the need was there for it in that specific
25 area. So we went through the review that the comprehensive

1 plan dictates us and tells us to do to make sure that these
2 areas are not sprawl. So we went through that, went through
3 the special area planning, got it approved by DCA, and it is
4 now in a -- it's another land use that we have available to us
5 in our comprehensive plan.

6 COMMISSIONER ARGENZIANO: If I may ask, forgive my
7 ignorance, what made it different than the land in question?

8 THE WITNESS: Well, what made it different than the
9 land in question is that we went through the process of
10 figuring out if it really deserves the higher level of service.
11 So we haven't gone through that here, so that's a major
12 difference here.

13 COMMISSIONER ARGENZIANO: I guess to be more
14 specific, what was it that you found that made it more
15 acceptable? I know you went through a plan, because it seems
16 to me that the Comprehensive Plan says we really don't want to
17 build outside of this area, and yet this particular area that
18 the County, I guess, determined was acceptable. What was it
19 that really made it acceptable?

20 THE WITNESS: And, Commissioner, I apologize. That
21 was well before my tenure, so I don't know the details.

22 COMMISSIONER ARGENZIANO: Okay.

23 THE WITNESS: I just deal with the aftermath.

24 BY MR. ENGELHARDT:

25 Q You testified before that there are mechanisms that

1 exist to increase density outside the urban service area?

2 A Correct.

3 Q Are you aware of any applications that have been made
4 by anyone in this proposed service area?

5 A No. No applications have been made.

6 COMMISSIONER ARGENZIANO: Excuse me. For how long --
7 how far back have there been no applications?

8 THE WITNESS: In this area?

9 COMMISSIONER ARGENZIANO: Ten years?

10 THE WITNESS: I can't say ten years.

11 COMMISSIONER ARGENZIANO: Two years?

12 THE WITNESS: I know in the year and a half that I
13 have been here, but there is nothing that I had on file when I
14 reviewed it. So I really haven't looked specifically to the
15 time frame. If we have had any applications that are just
16 sitting there, I don't know.

17 COMMISSIONER ARGENZIANO: That would make a
18 difference to me if a year and a half ago or prior to that, two
19 years ago, there were applications, or three years ago. I
20 didn't know if staff or anyone could answer that question.

21 MR. JAEGER: I'm not sure if our witness can, Ms.
22 Lex.

23 COMMISSIONER ARGENZIANO: Okay.

24 MR. ENGELHARDT: That's all the questions I have on
25 redirect.

1 Thank you.

2 MR. JAEGER: There is one exhibit to his testimony.

3 MR. ENGELHARDT: I would like to move at this time
4 that the exhibit be admitted.

5 COMMISSIONER McMURRIAN: And it is marked as 9. We
6 will show that admitted into the record.

7 (Exhibit 9 admitted into the record.)

8 COMMISSIONER McMURRIAN: And, Mr. Ruggieri, I hope I
9 am pronouncing that right.

10 THE WITNESS: You are, thank you.

11 COMMISSIONER McMURRIAN: You may be excused.

12 THE WITNESS: Thank you.

13 COMMISSIONER McMURRIAN: And call your next witness.

14 MR. ENGELHARDT: We would call Jeff Pearson.

15 JEFFREY PEARSON

16 was called as a witness on behalf of Charlotte County, and
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ENGELHARDT:

20 Q Mr. Pearson, would you please state your name for the
21 record?

22 A Jeff Pearson, Charlotte County Utilities Director.

23 Q Mr. Pearson, have you been sworn?

24 A Yes, I have.

25 Q Did you file direct testimony and exhibits in this

1 case?

2 A Yes.

3 Q Have you reviewed your testimony and the exhibits
4 that you filed?

5 A Yes.

6 Q And are there any changes to your testimony or
7 exhibits?

8 A No, sir.

9 Q If you were to have testified in person today, would
10 the subject matter or the statements that you made in this
11 prefiled testimony be the same?

12 A Yes, sir.

13 MR. ENGELHARDT: I would like to move the testimony
14 into the record.

15 COMMISSIONER McMURRIAN: Thank you. Mr. Pearson's
16 testimony will be entered into the record as though read.

17 MR. ENGELHARDT: Thank you.

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1 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

2 A. Jeffrey L. Pearson, Charlotte County Utilities, 25550 Harborview Rd., Suite 1, Port
3 Charlotte, Florida 33980.

4 Q. BY WHOM ARE YOU EMPLOYED AND WHAT POSITION DO YOU
5 HOLD?

6 A. I am employed by the Charlotte County Utilities (CCU) as the Utilities Director.

7 Q. PLEASE DESCRIBE YOUR DUTIES AND RESPONSIBILITIES IN THAT
8 POSITION.

9 A. As the Director of the County's water and wastewater utilities operations, I oversee
10 and supervise the construction, operation and maintenance of all water and
11 wastewater facilities owned by Charlotte County. In this role, I supervise
12 approximately 240 employees within the Department and am responsible for the
13 development and management of an annual budget for capital improvements, as well
14 as operations and maintenance of the utilities' systems.

15 Q. PLEASE DESCRIBE YOUR EDUCATION AND PROFESSIONAL
16 EXPERIENCE.

17 A. I hold a Master of Science Degree in Management, a Bachelor of Arts Degree in
18 Management of Human Resources, an Associate Degree in Applied Science in Legal
19 Assistant, and an Associate Degree in Business Technology. I have four separate
20 Class C Water Operator certifications in the following areas: Water Plant Operator,
21 Wastewater Plant Operator, Water Laboratory Operator, and Wastewater Laboratory
22 Operator certified by the Oklahoma Dept. of Environmental Quality (ODEQ). I have
23 14 years experience with the City of Oklahoma City Water & Wastewater
24 Department, including 5 years as a Unit Operations Manager II, and 3 years of
25 experience with the City of Spencer Oklahoma Public Works Department as the

1 Public Works Director – Water, Wastewater, Parks, Stormwater and Street
2 Departments. I have been employed by CCU for 1.5 years serving as the Engineering
3 Services Manager, and currently as the Utilities Director.

4 **Q. DESCRIBE THE SERVICE PROVIDED BY THE CHARLOTTE COUNTY**
5 **UTILITIES.**

6 A. CCU provides water, wastewater and reclaimed water service throughout the urban
7 and suburban area as identified in Charlotte County’s most recent Comprehensive
8 Plan Evaluation Appraisal Report (EAR) update. CCU maintains 190 miles of water
9 transmission mains and 1,300 miles of water distribution pipes — almost 1,500 miles
10 in total. Charlotte County owns and maintains more miles of water mains than
11 Boston, Massachusetts (1,015 miles) or Pittsburgh, Pennsylvania (1,200 miles). CCU
12 serves more than 55,000 commercial and residential water connections, 34,000
13 wastewater connections and 12 bulk reclaimed water customers..

14 **Q. DESCRIBE THE WATER TREATMENT FACILITIES UTILIZED BY THE**
15 **CCU TO PROVIDE SERVICE TO YOUR CUSTOMERS.**

16 A. CCU obtains approximately 95% of the water it provides to its customers from the
17 Peace River Manasota Regional Water Supply Authority (PRMRWSA or Authority).
18 The other 5% comes from the Burnt Store RO plant. The Authority supplies water to
19 the county utilities in four adjacent counties including Charlotte, DeSoto, Manatee
20 and Sarasota. Each county has a voting representative on the Governing Board.
21 Operation of the Authority is governed by the Master Water Supply Agreement
22 (MWSA), which was negotiated in 2005. CCU is the largest customer of the
23 Authority, representing approximately 70% of the water produced by the facility.

1 The Authority is currently expanding its water treatment facility to 32.7 MGD and
2 constructing a 6 billion gallon reservoir. This expansion will be online in late 2008
3 and fully complete in 2009-2010.

4 **Q. DESCRIBE THE WASTEWATER TREATMENT FACILITIES OWNED OR**
5 **UTILIZED BY THE CCU TO PROVIDE SERVICE TO YOUR CUSTOMERS.**

6 A. Charlotte County Utilities owns and operates 4 water reclamation facilities (WRF).
7 The East Port WRF is currently permitted at 6.0 mgd with a planned expansion to 9.0
8 mgd in 2012. The Rotonda WRF is currently permitted at .645 mgd and is currently
9 under construction to expand the plant capacity to 2.0 mgd by 2009. The West Port
10 WRF is currently permitted to treat 1.2 mgd and is at less than 50% of capacity. The
11 next expansion of the West Port plant will not take place until 2014. The Burnt Store
12 WRF is currently permitted at .500 mgd and is currently at 30% design to expand the
13 facility to 2.5 mgd. The plant expansion will be completed by 2010.

14 **Q. WHAT IS CHARLOTTE COUNTY'S POLICY WITH REGARD TO**
15 **EXTENSION OF WATER AND WASTEWATER SERVICE?**

16 A. The Charlotte County Board of County Commissioners (Board) recognizes the
17 importance of providing for the expansion of adequate water and wastewater utility
18 services in a timely and cost-effective manner. The provision of new potable water,
19 reclaimed water and wastewater infrastructure requires a large investment in capital,
20 both from the public sector and private developers of property. In addition to the
21 costs associated with expanding water and wastewater services, the Board recognizes
22 the necessity to plan and coordinate the growth of utility services with demand.

23 Charlotte County, as owner and operator of CCU, established the Uniform Extension
24 Policy (UEP), which is designed to provide CCU and the community with a variety of
25 tools and options for meeting the financial and planning challenges associated with

1 the expansion of potable water, reclaimed water and wastewater utility services. This
2 policy sets forth the fees and charges applicable to those property owners, builders
3 and/or developers seeking to obtain an extension of, or new connection to, CCU
4 services. The UEP provides that each prospective customer of CCU services shall be
5 responsible for the cost, allocable to that customer, of water production and treatment;
6 wastewater treatment and disposal; water storage and distribution; and wastewater
7 collection facilities necessary to provide the required service to the property. The
8 UEP is attached as Exhibit No. JLP-1.

9 The general process for extending utility service is also defined in the UEP, along
10 with alternative options to provide for the ongoing extension of utility infrastructure
11 by allowing for various cooperative agreements with property developers. In
12 addition, this policy sets forth the non-monetary obligations of the service applicant
13 that are necessary to extend utility service to new customers, including items such as
14 engineering design information and provisions for easements and rights-of-way. The
15 UEP was recently revamped via an "Ad-Hoc" Committee. This process was made
16 possible with input from developers, local land-use attorneys and private engineering
17 firms. The UEP provides for a 10 year reimbursement for the oversized portion of
18 any new developer-funded facilities.

19 **Q. ARE YOU FAMILIAR WITH THE AREA THAT IS THE SUBJECT**
20 **MATTER OF THE SUN RIVER APPLICATION FOR AMENDMENT TO**
21 **THEIR SERVICE TERRITORY?**

22 **A.** Yes, the subject property is being used primarily for agricultural use.

23 **Q. AS THE UTILITIES DIRECTOR OF CCU, HAVE YOU BEEN CONTACTED**
24 **BY ANY OF THE LAND OWNERS OR DEVELOPERS TO DISCUSS THE**

1 **NEED FOR WATER OR WASTEWATER SERVICE WITHIN THE SUN**
2 **RIVER PROPOSED TERRITORY?**

3 A. No. I have not been contacted by any land owners or developers requesting water or
4 wastewater service within the territory requested by Sun River Utilities. Normally, a
5 developer would ask CCU to issue an "Availability Letter" which is a non-binding
6 statement whether CCU believes it can serve the area sought to be developed. The
7 developer then takes that letter to the Development Review Committee, which is
8 discussed in Jeff Ruggieri's testimony. No one has requested any "Availability
9 Letters."

10 **Q. WHERE IS THIS TERRITORY IN RELATION TO THE EXISTING**
11 **SERVICE AREA OF THE CCU'S WATER AND WASTEWATER SYSTEMS?**

12 A. The subject territory lies outside the Urban Service Area but within CCU's water and
13 sewer service area. It is about 4 miles as the crow flies from our existing water and
14 sewer system infrastructure.

15 **Q. DOES THE CCU HAVE PLANS TO PROVIDE WATER AND**
16 **WASTEWATER SERVICE IN THAT TERRITORY?**

17 A. Not at this time. The subject territory is outside the Urban Service Area; contrary to
18 the most recent updates to the County's comprehensive plan, as discussed in the
19 testimony of Jeffrey Ruggieri; the land use designation is not one that would warrant
20 utility service; and there have been no requests for service in the area.

21 **Q. DO YOU BELIEVE THERE IS A NEED FOR SERVICE IN THE SUN RIVER**
22 **PROPOSED TERRITORY?**

23 A. No. No one has ever contacted CCU for any extension of services into that area. If a
24 landowner or developer was seeking water or wastewater services, it seems pretty
25 obvious that the first thing they would do is contact the area provider of such services.

1 The UEP has procedures to follow for extending water and wastewater services to
2 areas not previously being serviced. These are outlined specifically in Sections 6.2,
3 6.2.1, 6.2.2, and 6.2.3. Informally, those seeking services generally contact CCU to
4 discuss their options and plan accordingly prior to following the formal UEP steps.
5 This is a process that the local developers are more than aware of, and have utilized in
6 the past. As no one has ever come to CCU to ask for any extension of service into
7 this area, there is no need to provide them utility service at this time.

8 **Q. REALIZING THAT YOU BELIEVE IT IS PREMATURE TO SERVE THE**
9 **SUN RIVER PROPOSED TERRITORY AT THIS TIME, HAVE YOU GIVEN**
10 **ANY THOUGHT TO HOW THE CCU WOULD PROVIDE WATER AND**
11 **WASTEWATER SERVICE TO THIS TERRITORY AT SOME POINT IN**
12 **THE FUTURE?**

13 A. In answering this question, it is important to reiterate that I believe it is premature to
14 make specific plans for serving the territory since the area is outside of the County's
15 urban service area and, thus, in violation of the comprehensive plan, and we have not
16 had any contact from land owners or developers regarding the provision of service.
17 Therefore, we have no information concerning the capacity requirements or other
18 specific needs of potential customers. However, at the right time we would provide
19 water service through an agreement with the Peace River Manasota Regional Water
20 Supply Authority, which has a 20-inch pipeline on the border of Desoto and Charlotte
21 County about 2,000 to 3,000 feet from the edge of the property lines. At this point,
22 we have not engaged in discussions with the Authority since we believe it is
23 premature. Given that we are the largest of four members of the Authority, we are
24 confident that a bulk agreement could be worked out to provide water service to the
25 area.

1 With regard to wastewater service, we have had initial discussions with the City of
2 Punta Gorda, which has facilities approximately 4 miles from the property. We
3 envision that we would provide this service through a bulk service agreement with the
4 City, and the developer or land owner would fund the construction of the wastewater
5 collection line and lift stations in accordance with the County's UEP, which is
6 discussed earlier in my testimony.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 **A.** Yes, it does.
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1 BY MR. ENGELHARDT:

2 Q Mr. Pearson, can you give a summary of the testimony
3 that has been entered?

4 A Yes. I'd be glad to. Charlotte County Utilities
5 provides water, wastewater, reclaimed water service, and fire
6 suppression service throughout our urban and suburban areas of
7 Charlotte County in compliance with our County Comp Plan. We
8 receive approximately 95 percent of our water from the Peace
9 River Manasota Regional Water Supply Authority, of whom we are
10 the largest customer and a voting member on the governing
11 board. We own and operate four water reclamation facilities
12 with available capacity at each plant and plans to increase
13 capacity, as well.

14 Developers who seek to expand water and wastewater
15 facilities or services are bound by our uniform extension
16 policy which sets forth the general process for how expansion
17 is to be completed, what fees and costs are associated with it,
18 and how those costs are allocated. This uniform extension
19 policy was created through input from local developers,
20 attorneys, and private engineering firms, along with county
21 staff.

22 Generally, when someone is seeking service, they
23 contact the County to obtain an availability letter, which is a
24 nonbinding statement as to whether or not we can serve the
25 utility or the area sought to be developed. No one from the

1 area that Sun River is proposing has ever contacted us in
2 regard to serving the area, even though it is in our
3 certificated area and our District Number Two. If a need was
4 ever shown to the County, we are confident we could make the
5 necessary arrangements to serve the area through our
6 relationship with the Water Supply Authority and with the City
7 of Punta Gorda. That's all.

8 MR. ENGELHARDT: Thank you, Mr. Pearson.

9 I tender the witness.

10 COMMISSIONER McMURRIAN: Mr. Friedman.

11 MR. FRIEDMAN: Thank you.

12 CROSS EXAMINATION

13 BY MR. FRIEDMAN:

14 Q Mr. Pearson, am I correct in my understanding that
15 the County's position is that the proposed amendment of the Sun
16 River certificate would duplicate or compete with the County's
17 water and wastewater system?

18 A It could, yes, because of the fact that we have a
19 20-inch line, that as a member of the Authority, the largest
20 member of the Authority, we own a certain percentage of that
21 capacity in the line that is up near the Wal-Mart Distribution
22 Center. Therefore, we have immediate ability to request to the
23 authority to -- we are currently -- we have
24 12.758 million gallons per day allocated to Charlotte County
25 under a master water supply contract. And of that our current

1 annual average daily flow is around 9.88 MGD, or million
2 gallons per day. Therefore, we have plenty of reserve capacity
3 to serve developments.

4 Q And where is the nearest point to this property as a
5 water system that is owned by Charlotte County?

6 A As a member of the Water Authority, we have the right
7 to a certain amount. We have the ability to approach the
8 Authority, because DeSoto County does own some hydraulic
9 capacity in that line, approximately 3 million gallons.
10 However, a 20-inch line can push a lot of water through there.
11 Therefore, the remaining members, Sarasota, Manatee, and
12 Charlotte own the rest of the remaining hydraulic capacity as
13 being a member of the Authority.

14 Q Where is that point?

15 A That point is approximately -- I have the -- I can
16 pull it up on my computer, but I don't have a copy of it, the
17 agreement with Desoto County and the Authority.

18 Q All I want to know -- maybe I will just say point on
19 the map where the nearest point is and try to identify --

20 A Okay. Sure.

21 Q -- where it is, like feet, miles or whatever.

22 A Sure.

23 COMMISSIONER McMURRIAN: Mr. Pearson, this may be a
24 good time for me to tell you, someone reminded me, you have a
25 pointer there in front of you, and you might want to use that

1 so the court reporter can hear you.

2 THE WITNESS: Oh, great.

3 A (Continuing) The Wal-Mart Distribution Center is in
4 this general area right here. The Peace River in the agreement
5 purchased all the facilities up to -- that were previously
6 owned by DeSoto County, all the way up to this general vicinity
7 right here. That's approximately this distance -- from the
8 edge of the Charlotte County/DeSoto County line is
9 approximately two to 3,000 feet, linear feet.

10 BY MR. ENGELHARDT:

11 Q And that line is not owned by Charlotte County, is
12 it?

13 A It is owned by the members of the Water Authority.

14 Q It's owned by the members or it is owned by the
15 Authority itself?

16 A It is owned by the -- well, we are the Authority.
17 Charlotte County is a part of the Authority. We are the
18 Authority.

19 Q You are a member of the Authority?

20 A Right.

21 Q It's owned by the Authority, is it not?

22 A Yes.

23 Q And what Charlotte County owns, is it not, is just
24 some hydraulic capacity in that line, not the line itself?

25 A Charlotte County does not directly own that line,

1 that's correct.

2 Q So in order to provide service from that line, the
3 County would need to work with the Authority to take some of
4 that capacity from its allocation, would it not?

5 A Yes.

6 Q And the County, as of this date, hasn't taken any
7 steps to do so, has it?

8 A We have talked to them, and they said that they would
9 oblige us preliminarily. They said that they would work with
10 us if there was a need, a demand there, and it wasn't in
11 violation of the Comp Plan.

12 Q Where is the nearest wastewater main that the County
13 owns?

14 A The County owns, probably as the crow flies, about
15 four miles.

16 Q So would you show on the map where that -- that crow
17 is flying to the west, though, isn't it, across the Peace
18 River?

19 A That's correct. It would be on the opposite side.
20 It would be on the west of the river. Here is King's Highway.
21 I would -- let's see. No, that is DeSoto. We have lines in
22 the Deep Creek Subdivision, so it would be approximately in
23 this area right here. That is Deep Creek Boulevard right here,
24 and we have lines in the Deep Creek all throughout this area
25 right here.

1 Q So you have got nothing to the east of the Peace
2 River up in that area?

3 A Sewer?

4 Q Sewer.

5 A No, sir, we don't.

6 Q Now, it would be possible, would it not, for the
7 owners of this property to construct their own water and
8 wastewater facilities and operate it themselves?

9 A Can you repeat that?

10 Q Yes.

11 Wouldn't it be possible for the property owners to
12 develop their own water and wastewater facilities in this
13 service area?

14 A If it were their desire, or they could do cluster
15 septic.

16 Q Now, you mentioned earlier that nobody from this area
17 had asked for an availability letter, is that correct?

18 A That's correct.

19 Q Now, if the property owner wasn't going to get water
20 and sewer service from the County, they wouldn't come to the
21 County and ask for an availability letter, would they?

22 A I wouldn't think so.

23 Q And I think you did state earlier, did you not, that
24 the availability letter is not an enforceable agreement to
25 provide service?

1 A That's correct.

2 MR. FRIEDMAN: That's all the questions I have.

3 COMMISSIONER McMURRIAN: Commissioners?

4 Commissioner Skop.

5 COMMISSIONER SKOP: Thank you, Madam Chair.

6 Just one point of clarification. I guess I heard
7 testimony, I guess varying testimony this morning about where
8 that line stops. One witness, I guess, indicated that the
9 Authority's pipeline was up kind of by the road, as you pointed
10 to right there. Whereas, I guess your testimony indicates
11 there has been some further acquisition or arrangements which
12 brings it closer to the Wal-Mart facility. Which of those two
13 assessments is correct?

14 THE WITNESS: The Authority has in their agreement
15 between DeSoto County and the Water Authority purchased all of
16 the facilities all the way up to where the Wal-Mart
17 Distribution Center is. I can show it to you on a computer.

18 COMMISSIONER SKOP: That is fine. I was just trying
19 to flesh out what I perceived to be an inconsistency. I don't
20 really think that it is germane one way or another. But,
21 again, it seems to me that it is not automatic that Charlotte
22 County just has the absolute right to turn a valve and water
23 flows into Charlotte County from this existing interconnection
24 point. Is that correct?

25 THE WITNESS: No, we don't. But we could, at the

1 Authority Board, as long as the other members all agreed, they
2 could, in fact, extend the line. As a matter of fact, there
3 already is a set of engineering plans to extend that line as
4 Phase I of the regional water interconnect system all the way
5 down to the Shell Creek plant, running right past the property.
6 And that still is a plan of the Peace River Authority to extend
7 that line.

8 MR. FRIEDMAN: No further questions.

9 COMMISSIONER ARGENZIANO: Of course, you would have
10 to have interlocal agreements with the Water Supply Authority
11 to enable Charlotte County to use the existing Authority's
12 connections. But to go back to the question asked before, to
13 tie up to wastewater or sewer, Charlotte County would have to
14 cross the river. That would be the closest connection to
15 service that proposed area, cross the river to the west in
16 order to be able to service that area?

17 THE WITNESS: There is one other option. If, in
18 fact, this weren't a violation of the Comp Plan, and there was
19 a demonstrated demand there, the City of Punta Gorda has excess
20 capacity at their wastewater plant, which is not that far.
21 It's a few miles down 17 from this facility. And Charlotte
22 County could enter into, if that was the desire of the parties,
23 could enter into an interlocal agreement with the City of Punta
24 Gorda, which we have a number of them, and they could provide
25 bulk wastewater service to this. It's a pretty good sized

1 wastewater plant there with over -- I know right now, over two
2 million gallons of reserve, or excess capacity at their plant
3 with plans to expand that facility.

4 COMMISSIONER ARGENZIANO: And where would that be in
5 relationship to the proposed property?

6 THE WITNESS: It's off the map. It's south of here.

7 COMMISSIONER ARGENZIANO: I got you. But, now,
8 wouldn't that increase the cost to the consumer?

9 THE WITNESS: Well, it would depend on what the
10 engineering firms came back with the cost as. Really, to
11 expand an existing plant is much cheaper, historically, than
12 trying to build a plant from scratch, because you have got all
13 your existing trunk lines and infrastructure already in place.
14 And you are just maybe expanding your clarifiers, and your
15 aeration basins, or whatever technology that you are going
16 with.

17 COMMISSIONER ARGENZIANO: But the distance and the
18 acquisition of land to expand?

19 THE WITNESS: To build a new plant it would be a much
20 costlier proposition as far as the land acquisition costs,
21 the infrastructure required, than upgrading an existing
22 facility.

23 COMMISSIONER ARGENZIANO: And to the distance, also.

24 THE WITNESS: Actually, piping can be expensive.
25 However, if I had my choice, personally I would much rather go

1 to an existing facility that had existing permitting and
2 the ability to expand an existing plant than try to develop a
3 brand new one, because the permitting and regulatory
4 environment in the state of Florida, especially in the
5 Southwest Florida Water Management District, is very unique
6 compared to other water management districts within the state
7 of Florida.

8 This area is contained in the Southern Water Use
9 Cautionary Area for groundwater withdrawals on the water side.
10 And, of course, protecting that water on the wastewater side is
11 an area that is watched very closely.

12 COMMISSIONER ARGENZIANO: If I may, with all due
13 respect, even in the SWUCA area, the ground withdrawal would be
14 the same whether it was from the other plant or that plant
15 because it is not a separate basin. But my real concern was
16 the cost to the consumer from a plant that is further away.

17 THE WITNESS: Preliminarily speaking, I normally
18 don't like giving out numbers, but to develop six square miles
19 at, you know, like a single family residential type
20 subdivisions with pretty high density, you're probably looking
21 in the neighborhood for expansion of water and wastewater
22 facilities in the range of anywhere -- it's a pretty broad
23 range. It could be anywhere between 50 and \$100 million,
24 because you have deep well injection, you have got a tremendous
25 Mount Everest of permitting that you are going to have to try

1 to get through SWFWMD, unless you are doing it through surface
2 water.

3 COMMISSIONER ARGENZIANO: If I can, and maybe I'm not
4 being specific, isn't it more costly to move the sewage and
5 water longer distances?

6 THE WITNESS: Yes. It is more cost-effective to do
7 that than try to build new -- I'm sorry, I must have missed --

8 COMMISSIONER ARGENZIANO: You are saying it would be
9 cheaper instead of building a new plant to ship the water a
10 longer distance?

11 THE WITNESS: Absolutely. And our uniform extension
12 policy provides a 10 percent over ten-year, 100 percent payback
13 on all oversized facilities. So whatever size line they needed
14 for their development, the County would reimburse that
15 developer over a period of ten years at 10 percent each year
16 for the oversized portion of those lines. So it's really a
17 win-win situation for most developers. They don't have to do a
18 line just at the will -- you know, the County is saying you
19 will build this size line and you won't get anything out of it.

20 But yet the utility is getting a benefit. We
21 recognize that. Therefore, we think that they should be
22 reimbursed for that, because there is a significant amount of
23 dollars that are going to have to go out to extend those lines.
24 And we worked with the development community and the
25 engineering community to develop that policy.

1 COMMISSIONER ARGENZIANO: Thank you.

2 COMMISSIONER McMURRIAN: Commissioner Skop.

3 COMMISSIONER SKOP: Thank you. Just to follow up. I
4 believe that, Mr. Pearson, you mentioned that there was some
5 talk about extension of the Peace River Authority's existing
6 lines. Could you just generally, with the laser pointer,
7 articulate what direction and what that might cross, or where
8 it would start and where it would -- I mean, just
9 hypothetically where it would go to, to your knowledge, sir?

10 THE WITNESS: The 20-inch that runs down to this
11 facility here for the Wal-Mart Distribution Center, runs up 17
12 and all the way up, and then it ties into the Peace River
13 Plant, which is off the King's Highway. It would be off the
14 board up here. That's where the plant is. But the line
15 extends all the way down there.

16 COMMISSIONER SKOP: But I believe you said, or I
17 thought I understood that you said that there is some
18 discussion to a plan that extends it further south?

19 THE WITNESS: Oh, I'm sorry, yes, sir. It picks up
20 right here to the existing line. It extends it, also, a
21 contiguous 20-inch all the way down 17 and ties into the Shell
22 Creek Water Plant, which is actually located in our District
23 Number 2.

24 COMMISSIONER SKOP: Okay. Now, is that just water or
25 water and wastewater capability?

1 THE WITNESS: Water and wastewater.

2 COMMISSIONER SKOP: Okay.

3 THE WITNESS: But that line --

4 COMMISSIONER SKOP: Where is this coming from? Good.
5 Okay.

6 I guess, would you agree, though, that development
7 typically follows extension of water lines?

8 THE WITNESS: Generally.

9 COMMISSIONER SKOP: Okay. So, I guess the problem I
10 am grappling with -- again, I have had the luxury and I know
11 you probably haven't, we haven't invoked the rule, so maybe you
12 have heard. I have heard various witness testimony say what
13 seemed to be contradictory things. And that's what I'm having
14 trouble grappling with. Because, again, on one instance we are
15 being asked as Commissioners to respect the Comprehensive Plan.
16 And I have heard two witnesses now say development follows
17 extension of water lines, yet we seem to be antidevelopment to
18 some extent, yet we are putting a proposed water line right
19 through there. Doesn't that promote urban sprawl?

20 THE WITNESS: That new water line that I was
21 discussing, what that was designed to do is not necessarily be
22 a distribution line. It's a transmission line that allows the
23 Authority to purchase up to two million gallons per day from
24 the Shell Creek Plant if and when it's available. But in the
25 latest interconnect that replaced that project, that jumped

1 ahead of it, which is the Charlotte County/Punta
2 Gorda/Authority interconnect that is going to have a Peace
3 River crossing, that line, which is under design right now, it
4 is a 24-inch line, has approximately four to five
5 interconnections into our distribution system. And that's why
6 we picked it over this line.

7 COMMISSIONER SKOP: So, just as a point of
8 clarification on my part. Basically, this through pipe is
9 designed to take from the Shell facility northward to -- is a
10 transport mechanism, not necessarily as distribution?

11 THE WITNESS: That's correct. But there is not --
12 there is nothing out there, so there wasn't any discussions
13 about having any interconnections with any customers that might
14 come forward.

15 COMMISSIONER SKOP: Just as one final question and I
16 will turn it over to my colleagues. Irrespective of whether
17 this Commission decides to issue a certificate extension or
18 not, under the existing comprehensive plan for the rural areas
19 where the densities are, I think, one residence per ten acres,
20 under the existing comprehensive plan, it would not be a
21 violation of that plan if those residences under that density
22 were served by water and sewer by a private provider, is that
23 correct?

24 THE WITNESS: I don't think that it would be a
25 violation of our Comprehensive Plan, because they should

1 certainly have the right to a centralized water and sewer
2 facility. I'm not the planning person, but I don't think so.

3 COMMISSIONER SKOP: Thank you. No further questions.

4 COMMISSIONER ARGENZIANO: One other question
5 pertaining to the scenario you have described as far as the
6 transportation of water, not the distribution. Was that done
7 for a well field rotation?

8 THE WITNESS: They were actually discussing that
9 because the City of Punta Gorda, under a CUP, or consumptive
10 use permit, they are going to -- they needed some additional
11 capacity at their plant. So the Authority, hand-in-hand with
12 the Authority members and the City of Punta Gorda, who is not
13 an Authority member, went hand-in-hand to develop an additional
14 two MGD from their plant to re-rate their plant, because it was
15 8 MGD rated, and then they upgraded it to a 10 million gallon
16 per day upgrade. They had to add some more clarifiers and some
17 other ancillary equipment to get there, and, of course, get the
18 appropriate regulatory permitting.

19 The Authority and the City of Punta Gorda entered
20 into an agreement to provide the Authority, or us, because if
21 you put it directly into our distribution system, you reduce
22 the demand at the plant for Sarasota County, Desoto County,
23 manatee currently does not purchase any water from the
24 Authority. So it reduces their demand to send to us. And that
25 is why the other interconnect that is moving forward right now

1 was done the way it was, because it's going to reduce that
2 demand by injecting directly into our distribution system
3 instead of shipping that water up to the Authority and then
4 shipping it back.

5 COMMISSIONER ARGENZIANO: Thank you.

6 COMMISSIONER McMURRIAN: Mr. Jaeger.

7 MR. JAEGER: I have just a couple of questions.

8 CROSS EXAMINATION

9 BY MR. JAEGER:

10 Q About that allocation of that 20-inch line from the
11 Water Authority, I think you said you had 12.78 million gallons
12 per day allocated to Charlotte County, is that correct?

13 A It is actually 12.758, and our master water supply
14 contract, as soon as the RAP is completed, will go up to
15 16.1 million gallons per day by 2009.

16 Q You are saying you are using 9.88. That's the
17 maximum daily --

18 A That is our annual average daily flow. Our max day
19 is around 14.2 million gallons per day.

20 Q So that would leave about -- on an annual average
21 daily flow basis you have about 2.9 excess in that line, is
22 that correct?

23 A That's correct.

24 Q Is there any restrictions for using that to take it
25 down to Sun River, or is there other restrictions on that 2.9?

1 A No, sir. We can use that however we need to that we
2 deem needed for development in Charlotte County within our
3 service area.

4 MR. JAEGER: That's all the questions I have,
5 Commissioner.

6 COMMISSIONER McMURRIAN: I actually do have one, and
7 I hope you are the right person, Mr. Pearson. Can you tell me
8 if the County has ever served need that was not consistent with
9 the comprehensive plan, to your knowledge?

10 THE WITNESS: Not to my knowledge, no.

11 COMMISSIONER McMURRIAN: So it's the County's
12 position, and your position, that there has to be a need
13 established and it would have to be consistent with the
14 comprehensive plan for the County to serve customers in the
15 proposed service area?

16 THE WITNESS: Yes, that's correct. Normally they
17 would go through the regular process of getting their DRC
18 approval, which is the development review committee. If it was
19 a DRI less than 1,000, then they would have to go through the
20 DRI process. We work very closely with the other county
21 departments in making sure that water and sewer is available,
22 and letting the developer know what's needed to get them their
23 utility services.

24 COMMISSIONER McMURRIAN: Thank you.

25 Are there any other questions from the Commissioners?

1 MR. FRIEDMAN: I do have a follow-up, if I could, to
2 a question that Commissioner Argenziano asked about Punta Gorda
3 and that connection with the wastewater in Punta Gorda.

4 COMMISSIONER McMURRIAN: Okay.

5 FURTHER CROSS EXAMINATION

6 BY MR. FRIEDMAN:

7 Q As we sit here today, you don't know whether an
8 agreement could be reached with Punta Gorda to provide service
9 to the County for resale at Sun River, do you?

10 A I cannot answer as far as what their counsel and what
11 our Board would approve.

12 Q You are talking about -- if I am correct, you are
13 talking about the developer building a line down to Punta
14 Gorda, oversizing it, and then buying bulk from the County, is
15 that correct?

16 A That's correct.

17 Q If they were going to do that, why wouldn't they just
18 connect to the city and get service directly from the city and
19 cut out the middleman?

20 A Who would do that?

21 Q The developers up there.

22 A Well, they would have to be a utility.

23 Q Okay.

24 A Because just a developer can't, they're not --

25 Q What's to stop Sun River from doing that? Why would

1 they want the County as a middleman if they could build the
2 line to Punta Gorda themselves?

3 A I don't know what would stop them.

4 MR. FRIEDMAN: That's all the questions I have.

5 COMMISSIONER McMURRIAN: Mr. Engelhardt, redirect?

6 MR. ENGELHARDT: I just have one question.

7 REDIRECT EXAMINATION

8 BY MR. ENGELHARDT:

9 Q The proposed service area, is that in Punta Gorda's
10 district?

11 A Can you repeat that?

12 Q Absolutely. I'll rephrase it.

13 In whose service district is the proposed service
14 area?

15 A That is of issue today?

16 Q Yes.

17 A That would be Charlotte County Utilities' service
18 area.

19 Q And that is not the City of Punta Gorda's service
20 area, correct?

21 A That's correct.

22 Q So if anyone was going to be involved in that
23 process, as it stands now, they would have to go through CCU,
24 since it is in CCU's service area, correct?

25 MR. FRIEDMAN: I object to the extent that calls for

1 a legal conclusion.

2 COMMISSIONER McMURRIAN: Would you like to rephrase
3 it?

4 MR. ENGELHARDT: I'll rephrase it. Actually, I will
5 just withdraw the question. Thank you.

6 COMMISSIONER McMURRIAN: Is that all you have,
7 Mr. Engelhardt?

8 MR. ENGELHARDT: Yes. Thank you.

9 COMMISSIONER McMURRIAN: Okay. I guess we need to
10 take up the exhibits. I have that we have two marked for
11 Mr. Pearson, Numbers 10 and 11.

12 MR. ENGELHARDT: Correct. We would move that they be
13 entered into the record.

14 COMMISSIONER McMURRIAN: Without objection, those are
15 moved into the record.

16 (Exhibits 10 and 11 admitted into the record.)

17 COMMISSIONER McMURRIAN: And, Mr. Pearson, you will
18 be excused.

19 THE WITNESS: All right. Thank you.

20 COMMISSIONER McMURRIAN: Thank you.

21 Mr. Jaeger, I guess the next witness is the staff
22 witness.

23 MR. JAEGER: Yes. Staff calls Suzanne K. Lex. She
24 has been previously sworn.

25 SUZANNE K. LEX

1 was called as a witness on behalf of the Florida Public Service
2 Commission, and having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. JAEGER:

5 Q Could you please state your name and business address
6 for the record, please?

7 A My name is Suzanne K. Lex. My business address is
8 22555 Shumard Oak Boulevard, Tallahassee, Florida.

9 Q By whom are you employed and in what capacity?

10 A I am a Community Planner with the Department of
11 Community Affairs.

12 Q Have you prefiled direct testimony in this docket
13 consisting of four pages?

14 A I have.

15 Q Do you have any changes or corrections to your
16 testimony?

17 A No changes or corrections.

18 Q If I were to ask you the same questions today, would
19 your testimony be the same?

20 A I would hope even a little better.

21 MR. JAEGER: Commissioner, may we have Ms. Lex's
22 testimony inserted into the record as though read?

23 COMMISSIONER McMURRIAN: Show it done.

24

25

1 DIRECT TESTIMONY OF SUZANNE K. LEX

2 Q. Please state your name and business address.

3 A. My name is Suzanne K. Lex. My business address is 2555 Shumard Oak Boulevard,
4 Tallahassee, Florida 32399-2100.

5 Q. By whom are you employed?

6 A. I am employed by the Florida Department of Community Affairs (DCA), in the Bureau
7 of Comprehensive Planning.

8 Q. Could you please summarize your educational background and work responsibilities?

9 A. My educational background includes several degrees from the University of Delaware:
10 Bachelor of Arts in History – 1984, Bachelor of Arts in Sociology – 1990, and Secondary
11 Education Certification in Social Studies – 1990. I also have taken some masters courses in
12 Business Administration – Troy State University (6 Credit Hours) and Gifted and Talented
13 Education - Barry University (9 Credit Hours).

14 My work experience in the area of planning includes employment as a Senior
15 Development Review Planner with the Monroe County Planning Department from 1991-1995;
16 a Planner with the Monroe County Growth Management Division from 2003-2005; and a
17 Community Planner with the State of Florida Department of Community Affairs from 2006 to
18 the present. In my current position my responsibilities include the review of comprehensive
19 plan amendments for three counties in northeast Florida and two counties in southwest
20 Florida, including Charlotte County. I conduct compliance reviews of proposed and adopted
21 amendments in accordance with the Florida Statutes and the Florida Administrative Code.
22 Other duties include the preparation of written reports, completion of oral presentations,
23 internally, as well as to local governments. As necessary I provide technical assistance to
24 citizens, local governments and agencies.

25 Q. Are you familiar with the utility's filing in this docket?

1 A. Yes, it is my understanding that Sun River Utilities, Inc. (former MSM Utilities, LLC)
2 has applied to the Public Service Commission to extend water and wastewater utilities in the
3 northern part of Charlotte County.

4 Q. What is the purpose of your testimony in this proceeding?

5 A. Pursuant to a Memorandum of Understanding executed between the Department of
6 Community Affairs and the Public Service Commission the Department provides comments
7 on information from the local comprehensive plan and the need for services in the requested
8 territory.

9 Q. Could you address the utility's amendment application and the Charlotte County
10 Comprehensive Plan?

11 A. First some background regarding the Charlotte County Comprehensive Plan. The
12 Charlotte County Comprehensive Plan generally classifies lands as inside of the Urban
13 Service Boundary and those outside of the Urban Services Boundary. Within the Urban
14 Service Boundary is the service area that will support urban services such as roads, water and
15 sewer systems, parks, schools and fire and police protection and that create flourishing places
16 to live, work and play. The Urban Service Boundary is one of the tools used to protect farms
17 and forests from urban sprawl and to promote the efficient use of land, public facilities and
18 services inside the boundary.

19 Sun River Utilities has applied for a utility service area in Charlotte County. The
20 proposed service area is located in the northern part of the County and is divided by US 17
21 (Duncan Road). A small portion of the proposed service area is on the west side of US 17 and
22 is located within the Urban Service Area. The majority of land within the proposed service
23 territory is adjacent to and East of US 17, and is contiguous but outside of the northern
24 boundaries of the Charlotte County Urban Service Area. In addition, the amount of proposed
25 development which the utility would support has not been quantified. The area which Sun

1 River Utility has applied to serve is not an area which Charlotte County has identified to
2 expand services and allow for increases in development. The applicant states there is an
3 immediate and growing need for potable water and wastewater service in the proposed service
4 territory, but insufficient supporting documentation was provided. The County wants to
5 encourage development of higher density, residential, commercial and industrial uses so that
6 public facilities may be provided in an efficient and economical manner. The lack of
7 infrastructure within the proposed development area and the expansion of services outside the
8 designated service area are not consistent with the County's Comprehensive Plan. An
9 incremental expansion of the Urban Service Boundary would contribute to the proliferation of
10 urban sprawl.

11 Q. Can you be more specific?

12 A. Chapter 9, Potable Water and Sanitary Sewer, of the adopted 2010 Charlotte County
13 Comprehensive Plan, states that the provision of water and wastewater facilities is an integral
14 part of the Charlotte County's Urban Service Area strategy identified in the Future Land Use
15 Element. Policies adopted within Chapter 1, the Future Land Use Element, of the 2010
16 Charlotte County Comprehensive Plan, support the Department conclusion that the granting of
17 a new utility service outside of the designated Urban Service Area is not consistent with the
18 adopted Plan.

19 The following objectives and policies support the Department's conclusion that the
20 extension of utilities beyond the existing Urban Boundary is premature and may promote
21 urban sprawl.

22 Objective 1.1 (Urban Service Area): The Urban Service Area strategy will direct the
23 timing, location, density and intensity of development and through the provision of
24 infrastructure throughout Charlotte County so that urbanized development is directed towards
25 the Urban Service Infill Areas. This Objective is further defined by Policy 1.1.1 which

1 identifies the two infill sub-areas: Urban Service Area and Suburban Service Area, as shown
2 on Exhibit SKL-1 which is attached to my testimony. In addition, this Policy identifies that
3 development in the Suburban Sub-Area is expected to receive a higher level of urban services
4 and infrastructure once a need develops beyond the 2020 planning horizon. Policy 1.1.3
5 establishes that capital improvements within the Infill Area are a priority to promote infill.
6 Furthermore, Policy 1.1.10 requires that any increase in the Urban Service Area does not
7 constitute or promote the expansion of urban sprawl.

8 The following policies contained in Chapter 8, Potable Water and Sanitary Sewer, of
9 the Charlotte County 2010 Comprehensive Plan, support the County's growth strategies
10 detailed in the Future Land Use Element. Policy 9.1.1 states that utilities are encouraged to
11 extend central potable water and sanitary sewer to Infill Areas in accordance with the Urban
12 Service Area strategy. Pursuant to Policy 9.1.4, certified areas will not be extended or
13 expanded for potable water or sanitary sewer service outside of the Infill Area boundaries.
14 Exceptions shall be made in the case of New Communities or Developments of Regional
15 Impact in West County, Mid County or South County or Rural Communities in East County;
16 or in the case where utilities will provide both central potable water and sanitary sewer service
17 in tandem manner within the Urban Service Area.

18 Q. Has the county proposed any amendments to the Comprehensive Plan which would
19 expand the Urban Services boundary to include the area East of US 17 encompassed by this
20 application for amendment of Certificate filed by Sun River?

21 A. No.

22 Q. Does this complete your testimony?

23 A. Yes, it does.

24

25

1 BY MR. JAEGER:

2 Q Ms. Lex, did you also file Exhibit Number SKL-1?

3 A I did.

4 Q Do you have any changes or corrections to that
5 exhibit?

6 A No, sir.

7 MR. JAEGER: Chairman, pursuant to the Comprehensive
8 Exhibit List, Ms. Lex's SKL-1 has been identified as Exhibit
9 12. The witness has decided not to give a summary, and so I
10 tender the witness for cross.

11 MR. FRIEDMAN: Who do you want to go first?

12 COMMISSIONER McMURRIAN: I'm not sure.

13 Mr. Jaeger.

14 MR. JAEGER: I believe she is more in line with the
15 County than she is with the utility, but I'm not sure that
16 that's -- I would think that it would be more appropriate for
17 the County to go first.

18 COMMISSIONER McMURRIAN: Any problems with that,
19 Mr. Friedman?

20 MR. FRIEDMAN: No.

21 COMMISSIONER McMURRIAN: Mr. Engelhardt?

22 MR. ENGELHARDT: I have no problems with that.

23 CROSS EXAMINATION

24 BY MR. ENGELHARDT:

25 Q Ms. Lex, it is your testimony, is it not, that Sun

1 River's application would violate the Comp Plan?

2 A The Charlotte County Comprehensive Plan makes
3 provisions for development within the urban service area
4 identifying it as infill areas, suburban areas. This is where
5 they have identified within their comprehensive plan for the
6 provision and planning of infrastructure of public facilities
7 over their planning time frame. The provision of
8 infrastructures outside of the urban service area, without a
9 development plan in place, would be inconsistent with the
10 Charlotte County Comprehensive Plan.

11 Q And who would submit that development plan?

12 A The development plan would be submitted to the
13 County.

14 Q And then the County would submit that to DCA?

15 A Correct. If it required a comprehensive plan
16 amendment.

17 Q And you said that no such development plan has been
18 submitted?

19 A At this time the department does not have a
20 development plan or it does not have an application for a
21 comprehensive plan amendment as it pertains to this parcel.

22 Q And the DCA has found that the Charlotte County Comp
23 Plan is consistent with its goals and objectives, correct?

24 A Correct.

25 MR. ENGELHARDT: I have no further questions.

1 COMMISSIONER McMURRIAN: Mr. Friedman.

2 MR. FRIEDMAN: Thank you.

3 CROSS EXAMINATION

4 BY MR. FRIEDMAN:

5 Q Ms. Lex, you state in your prefiled testimony, do you
6 not, that an incremental expansion of the USB would contribute
7 to the proliferation of urban sprawl, do you not?

8 A I do.

9 Q Isn't it true that water and wastewater service could
10 be provided to this property in question without the expansion
11 of the USB?

12 A If I may, may I get the Charlotte County
13 Comprehensive Plan? There is a policy I would like to
14 reference. Is that possible?

15 MR. FRIEDMAN: I have no objection.

16 THE WITNESS: Okay.

17 In reviewing this, the Charlotte County Comprehensive
18 Plan has a policy that says to ensure the availability of
19 suitable land for public services facilities necessary to
20 support proposed development. If there were a proposed
21 development plan, it seems that their plan would consider it to
22 be consistent if they are willing to expand utilities into this
23 area or services into this area. That's policy number --
24 excuse me, Objective 1.5, and it further states that public
25 utility services and facilities shall be allowed in all future

1 land use map designations. That is an implementing policy.
2 But, yes, you could in this land use designation have
3 one-to-ten, but for the provision of those services it is
4 generally done in conjunction with the proposed development
5 plan.

6 BY MR. FRIEDMAN:

7 Q But it wouldn't have to be?

8 A To be consistent with their Comprehensive Plan it
9 appears that it would need to be. A development plan would
10 either be in place for the services to be there, and they would
11 either come in with the development plan, and also the
12 expansion of those services into that area. If a utility
13 wanted to service a one-to-ten, yes, I assume at this time they
14 could. A private utility at that time could.

15 Q Without being in violation of the Comprehensive Plan?

16 A It would not violate the Comprehensive Plan.

17 COMMISSIONER McMURRIAN: Mr. Friedman, Commissioner
18 Argenziano has a question.

19 COMMISSIONER ARGENZIANO: Just carrying through a
20 train of thought. How often can the Comprehensive Plan be
21 amended and changed?

22 THE WITNESS: A local government has the right to
23 submit to the Department of Community Affairs a comprehensive
24 plan amendment two times a year. The rule, which we don't even
25 know sometimes why there is a rule, has a number of exceptions.

1 I think it is up to 35 exceptions that can be made for other
2 circumstances that would allow comprehensive plan amendments to
3 come through.

4 COMMISSIONER ARGENZIANO: As a follow-up. Let's say
5 there is a scenario that the landowners would apply to the
6 County for comp changes and they are granted by the County.
7 Then all of a sudden that would become consistent, I guess,
8 with -- if the amendment is allowed, a new comp amendment is
9 allowed, then it would become consistent with the Comprehensive
10 Plan, right?

11 THE WITNESS: Correct. Again, we would review it for
12 consistency with the State Growth Management Act and
13 consistency with the Charlotte County Comprehensive Plan. If
14 it were, of course, found in compliance, then increased
15 development could be allowed, yes.

16 COMMISSIONER ARGENZIANO: Thank you.

17 BY MR. FRIEDMAN:

18 Q And isn't it also true that in lieu of extending the
19 USB, could not this property be developed as a DRI?

20 A At 2,500 acres, 250 -- you would have to, and forgive
21 me, I use the USB, which you are using, because that was the
22 terminology, that is the boundary that surrounds the urban
23 service area just for clarification, because I wasn't
24 consistent in my terminology. You could apply for a
25 development of regional impact and proceed with the application

1 for DRI, but it would also then come through with a
2 comprehensive plan amendment at some later time. Generally,
3 the DRI process is started prior to the comprehensive plan
4 amendment process. But the statute contemplates that they will
5 both be approved simultaneously.

6 Q What I'm trying to point out is that the DRI process
7 for amending the Comp Plan is a different process, is it not,
8 than the process for extending the urban services area?

9 A They are both comprehensive plan amendments, and the
10 process would be the same. The criteria would be different.

11 Q I'm sorry. Thank you.

12 A You're welcome.

13 Q In other words, they are two separate processes. You
14 have the extension of the USA process and it has these
15 criteria, and you have the DRI process that has these criteria?

16 A But for the development of regional impact, the DRI
17 process for -- and let's take this parcel because this is what
18 we are talking about, this service area. It would also be a
19 comprehensive plan amendment, and that process for the -- a
20 DRI-related comprehensive plan amendment would be the same
21 process they would go through for an extension of the urban
22 service boundary.

23 Q The criteria would just be different?

24 A The criteria would be different, correct. But both
25 criteria, may I clarify, in my role is for consistency with the

1 Growth Management Act and for consistency with the Charlotte
2 County Comprehensive Plan.

3 Q There is nothing that would prohibit these property
4 owners in this area from applying to the County for
5 comprehensive plan changes, is there?

6 A Not that I am aware of.

7 Q Now, are you familiar with the County's Comprehensive
8 Plan as it relates to an extension of the urban services area?

9 A I am familiar with Policy 1.1.10.

10 Q And isn't it true that one of those requirements is
11 that there be an enforceable agreement for water and wastewater
12 services before the USB would be extended?

13 A What kind of agreement, enforceable agreement?

14 Q For water and wastewater, for the extension of water
15 and wastewater service?

16 A Again, what the County's criteria may be for that, I
17 would have to say an agreement could be an agreement, an
18 enforceable agreement between Punta Gorda and the developer or
19 the applicant for the comprehensive plan amendment. It could
20 be an enforceable development agreement. Again, there needs to
21 be some type of agreement, but what it is is not expressly
22 stated in the comprehensive plan.

23 Q As long as it is enforceable?

24 A Yes.

25 Q And, in fact, isn't it true that the DCA requires

1 before they approve a Comp Plan change that the property owners
2 show that there is availability of water and wastewater
3 services?

4 A It depends on the comprehensive plan amendment. It
5 doesn't have to be potable water and sanitary sewer. You don't
6 have to demonstrate that that is available. You do have to
7 have water to any development that you have. So it could be
8 wells, and you could have septic. So, again, it depends on the
9 amendment.

10 Q But you have to show where it's coming from, whether
11 it is wells, central water, or some place, you have still got
12 to show to get a Comp Plan change approved by DCA that there is
13 water and wastewater service available, do you not, from some
14 source, even if it is well and septic?

15 A For well and septic, you don't actually show it is
16 available, because, again, that's a permitting. We would
17 examine that for suitability and other different criteria for
18 that. We look for consistency with state law and, then, again,
19 the density would allow that type of water and sewer to serve.
20 If it were wells and septic, you would not do that in an
21 intensely developed area. But say, for example, if this
22 current rural designation of 1-to-10, if it were to go to
23 1-to-5, then it would be very viable for that comprehensive
24 plan amendment to come through if it was suitable and
25 consistent. If the site was suitable, and it was consistent

1 with the Growth Management Act and the Comp Plan, then they
2 could come through the comp plan amendment and be on well and
3 septic.

4 Q But my point is when that application gets to your
5 desk, one of the things you look at, do you not, or think about
6 is where is the water and wastewater coming from?

7 A Correct. We do look for coordination.

8 Q So if the developer has got to show where water and
9 wastewater services are going to come from in order to get a
10 comprehensive plan change, and it is dense like you said, isn't
11 it true that they would have to have an enforceable agreement
12 then to get the Comp Plan change approved by you all?

13 A Generally, what we find is we want an enforceable
14 development agreement. You don't have to show that you have
15 actually been granted that utility service. We often have
16 comprehensive plan amendments which are DRI sized come through,
17 and they will also be going through the Public Service
18 Commission simultaneously. So at that point in time they are
19 showing to us that they have the financial wherewithal and
20 there are enforceable development agreements between the County
21 and the developer, that this developer is committed to finding
22 these things. But we don't have in hand a certificate from the
23 Public Service Commission accompanying that saying, well, they
24 have actually been granted these services. So, I mean, you
25 don't have to actually have that in hand to get a comprehensive

1 plan amendment.

2 Q You just have to say I promise to do it?

3 A You have to promise to pay for it or have some
4 mechanism which you can do it. If you have a development
5 agreement, for example, with, you know, Punta Gorda to expand
6 their services and to run the lines, that would be
7 satisfactory.

8 COMMISSIONER ARGENZIANO: Can I --

9 COMMISSIONER McMURRIAN: Yes.

10 COMMISSIONER ARGENZIANO: In Senate Bill 360 that
11 passed, wasn't there something, and it may have been amended
12 out. I don't remember the final version. Wasn't there
13 something that said that there had to be a concurrency or
14 demonstrated -- what word am I looking for?

15 THE WITNESS: Availability?

16 COMMISSIONER ARGENZIANO: Availability of that water?

17 THE WITNESS: Correct.

18 Availability of water is a different issue. That is
19 in coordination with the Water Management District, and that is
20 a very serious criteria or very serious point at this time, you
21 know, with the way the state is in terms of becoming a critical
22 issue in our review. So availability of water would be
23 demonstrated with the coordination with the water management
24 district.

25 COMMISSIONER ARGENZIANO: Thank you.

1 BY MR. FRIEDMAN:

2 Q In your prefiled testimony you talk about Objective
3 1.1, that it directs infrastructure throughout Charlotte County
4 so that urbanized development is directed toward the urban
5 infill areas, is that what you said?

6 A Correct.

7 Q Isn't it true that that same objective does not
8 prohibit central water and wastewater service to rural areas?

9 A Please repeat that question.

10 Q Isn't it true that that same objective does not
11 prohibit central water and sewer service to rural areas?

12 A No, it just makes it a very low priority.

13 Q So it's not a prohibition, it's a priority?

14 A Correct. It says it is a low priority in terms of
15 expansion of those types of services.

16 Q And isn't this objective really telling Charlotte
17 County how to prioritize the expenditure of its funds?

18 A No, it's not just funds. It's a critical policy that
19 relates also to the development for population centers and
20 where they have determined in their planning time frame what
21 land area do they need to service the future population. And
22 so this goes not just to infrastructure, but to density and
23 intensity of development, as well.

24 Q Isn't it true that goal one is the growth management
25 title to all these subsections you just talked about, the 1.1s,

1 correct?

2 A Correct.

3 Q All right. And doesn't it say Charlotte County will
4 manage growth and development in a manner which safeguards
5 public investment?

6 A It says that and other things.

7 Q Okay. Balances the benefits of economic growth with
8 the need for environmental protection and prohibits potential
9 urban sprawl?

10 A Correct.

11 Q So what you are talk about as it relates to the
12 services, as it relates to the expenditure of public funds,
13 does it not?

14 A That is one component of that policy, yes.

15 Q Now, again, in your prefiled testimony you address
16 the potable water and sanitary sewer element, Policy 9.1.1.
17 Doesn't that policy merely encourage the expansion of
18 wastewater and water service to infill areas? Again, it
19 doesn't prohibit providing water and wastewater service outside
20 of the infill areas, does it?

21 A Excuse me for one second. To answer that I would
22 have to say it does not prohibit, but it's an implementing
23 policy for Objective 9.1. And I don't think -- I actually
24 should not have removed it from the full context of the
25 objective, which says that the County will ensure a provision

1 of potable water and sanitary sewer to new and existing
2 development in conjunction with previously certified areas and
3 the urban service area strategy.

4 So, again, it's within the context of the County's
5 strategy to promote its utility services in the infrastructure
6 within that urban service boundary. But their plan does not
7 prohibit it outside.

8 Q Okay. Could you point out where the infill areas are
9 that would apply to Sun River Utilities, as far as this policy
10 applies to Sun River?

11 A Well, your infill area would be your hatched area.
12 Actually, they are not the infill areas; they are the suburban
13 component of the urban service area. So their infill is the
14 interior or the core of their population centers, and there is
15 a peripheral suburban boundary around that, but all of it
16 composes the urban service area.

17 Q But there is no real infill area within the area
18 adjacent to Sun River Utilities, it is all suburban?

19 A Correct, it is suburban.

20 Q Now, having this property within the service area of
21 Sun River Utilities in and of itself doesn't violate the
22 comprehensive plan, does it?

23 A No, I would not say it violates it.

24 MR. FRIEDMAN: I have no further questions.

25 MR. JAEGER: Staff has no redirect.

1 MR. ENGELHARDT: I have a redirect, if I may.

2 COMMISSIONER McMURRIAN: Any objection?

3 MR. FRIEDMAN: I don't think it would be fair for me
4 to object. He didn't object when I did that. (Laughter.)

5 COMMISSIONER McMURRIAN: That's what I was thinking,
6 Mr. Friedman.

7 Go ahead, Mr. Engelhardt.

8 MR. ENGELHARDT: Thank you. I have just a couple of
9 questions.

10 FURTHER CROSS EXAMINATION

11 BY MR. ENGELHARDT:

12 Q One question you were asked was about the investment
13 of public funds, and the implication was made that because Sun
14 River is a private utility that that does not apply. Is it not
15 true that the Comp Plan by discussing the expenditure of public
16 funds is referring more to -- or to more than just the
17 provision of water and wastewater in terms of police, fire,
18 schools, roads, things of that nature?

19 A Yes. They have to look at all the capital facilities
20 planning. I mean, there is level of service requirements, so
21 they would have to meet level of service and look for public
22 infrastructure in terms of recreation and parks, schools. So
23 it would be a larger component in the capital facilities
24 planning infrastructure.

25 Q So any development outside of the urban services

1 boundaries as established by the Comp Plan would lead to an
2 expenditure of public funds, even if not just for the provision
3 of water or wastewater service?

4 A There would be a greater cost associated with an
5 expansion of the urban service boundary, correct.

6 Q Just one more question. You were asked specifically
7 about Policy 9.1.1. The question was whether it prohibits the
8 extension of central water and sewer outside of the infill
9 areas.

10 Wouldn't the Comp Plan read as a whole prohibit those
11 services outside the urban services boundary if it is at a
12 ratio greater than 1-to-10?

13 A Repeat that again.

14 Q I'm sorry for the question. I'm sure I have confused
15 you. I confused myself.

16 The question you were asked by Mr. Friedman was
17 whether 9.1.1, which states that utilities are encouraged to
18 extend water and sewer to the infill areas --

19 A In accordance with the urban service area strategy.

20 Q Correct. So my question to you is, therefore, any
21 provision outside of the urban service boundaries would, in
22 fact, be prohibited if they were adding greater density than
23 1-to-10?

24 A I believe the Comprehensive Plan makes provisions for
25 services outside of the urban service boundary, if a proposed

1 development plan came in that showed consistency with that
2 criteria of the Comprehensive Plan. The absence of any
3 development plan accompanying this that demonstrates that it
4 intends to comply with the Charlotte County Comprehensive Plan,
5 it's just the absence of it. I mean, if it were a DRI, then
6 they could come in in a self-sustaining community. If they
7 demonstrated that outside the urban services area, then it
8 would not be inconsistent.

9 Q So it would be your testimony, then, that until a
10 development plan was submitted, it would be premature?

11 A I think it's premature at this time, correct.

12 MR. ENGELHARDT: Thank you.

13 THE WITNESS: You're welcome.

14 COMMISSIONER McMURRIAN: Commissioners? I believe
15 Commissioner Skop has a question.

16 COMMISSIONER SKOP: Thank you.

17 Ms. Lex, with respect to -- I guess we spoke
18 extensively about the Comprehensive Plan and how the petition
19 in some aspects may or may not in be violation of that, but
20 would you agree that the County has additional mechanisms for
21 limiting growth outside of whether or not this Commission were
22 to entertain extending the certificated service area?

23 THE WITNESS: Yes. The Comprehensive Plan is -- I
24 mean, they have the Comprehensive Plan, that is their primary
25 tool.

1 COMMISSIONER SKOP: Okay. And in that same regard,
2 there has been a lot of discussion about the purpose of the
3 Comprehensive Plan is to address more of a global service
4 providing, rather than just limited to water and wastewater,
5 such as schools and other things that perhaps cost the
6 taxpayers money, or taxpayers would have to bear the burden of.
7 Wouldn't impact fees from future development fund that
8 mechanism, or is that a fair analogy, or am I missing something
9 here again? Land use is not my forte, so I am trying to learn
10 on the fly.

11 THE WITNESS: Impact fees, of course, help to offset.
12 If you were to -- but an impact fee is a one-time fee. I mean,
13 you pay -- you know, if I build a house, and I pay the County
14 \$20,000 when I build that house, that's a one-time fee. The
15 lifetime of that house is still there, and you are still
16 required over the lifetime to provide fire, teachers, and all
17 other services that go with that. So there are other
18 mechanisms and, of course, their taxation structure, and so
19 forth. But that is their mechanism to try to provide -- it is
20 their capital facilities planning mechanism as well as their
21 mechanism for determining what the need is based upon
22 population within that county.

23 COMMISSIONER McMURRIAN: Commissioner Argenziano.

24 COMMISSIONER ARGENZIANO: To the point of the impact
25 fee being a one-time fee, that house now is also there for the

1 rest of its life paying taxes and ad valorem --

2 THE WITNESS: That is what I said, yes. I said then
3 their next revenue source would then be the taxes.

4 COMMISSIONER ARGENZIANO: And just going back to
5 something I asked before, if a county can amend its
6 comprehensive plan up to maybe 35 times in a two-year period,
7 then let's say that this application wasn't granted and two
8 months from now a developer went to the county and said, you
9 know, we plan to develop out here and it gets amended, and
10 then -- I mean, if everything falls into place, then all of a
11 sudden the comprehensive plan could be changed to include that
12 area, couldn't it?

13 THE WITNESS: A comprehensive plan amendment can be
14 applied for at any time, all right? I mean, that is your right
15 to do so.

16 COMMISSIONER ARGENZIANO: But I think what I mean is
17 it happens all the time.

18 THE WITNESS: Actually, the Department -- it does
19 happen and it happens -- the exceptions are too many, was the
20 point I was making, all right? Is that we very much want the
21 comprehensive plan to be the controlling mechanism, and the
22 changes to it should not occur as frequently as some counties
23 or municipals may do.

24 COMMISSIONER ARGENZIANO: Right.

25 THE WITNESS: Okay. We try to discourage that.

1 COMMISSIONER ARGENZIANO: Right. And I think what I
2 am looking at, what I have seen over the years is that a lot of
3 times a county and we will have certain county commissioners at
4 one time, and then a few years later there are different county
5 commissioners who have a different train of thought, and things
6 change from one year to the next as far as allowing a service
7 area to be expanded or the community to be expanded in a
8 different way.

9 So regardless of what we do today, next month or the
10 month after there could be something that is amended at the
11 County level, and the County then could decide to provide the
12 services. So it's not like --

13 Thank you, Madam Chair.

14 What I'm saying is I don't think the County is saying
15 we never are going to allow any kind of building there ever,
16 ever, ever. So it could ultimately happen anyway.

17 THE WITNESS: No, I think it will be something that
18 would be contemplated in the long-term. I mean, at this point
19 in time Charlotte County is very much grappling with working
20 their infill area trying to ensure that they address adequately
21 their platted lot problem. And in a long-term, of course, you
22 would look for this to be perhaps a logical extension for
23 development to go. But as I said before, I believe it is
24 premature at this time.

25 COMMISSIONER ARGENZIANO: Madam Chair.

1 To that point it could not be premature maybe three
2 months from now or a year from now?

3 THE WITNESS: Without any facts or other evidence --

4 COMMISSIONER ARGENZIANO: Right.

5 THE WITNESS: -- in place --

6 COMMISSIONER ARGENZIANO: There is no way of knowing.

7 THE WITNESS: -- nobody knows.

8 COMMISSIONER ARGENZIANO: Right.

9 THE WITNESS: Because the demonstrated need that we
10 would look for has not been supplied. I mean, in terms of data
11 and analysis.

12 COMMISSIONER ARGENZIANO: Thank you.

13 COMMISSIONER McMURRIAN: Mr. Jaeger.

14 MR. JAEGER: Staff would move Exhibit 12.

15 COMMISSIONER McMURRIAN: Show it moved without
16 objection.

17 (Exhibit 12 admitted into the record.)

18 COMMISSIONER McMURRIAN: Ms. Lex, you may be excused.

19 THE WITNESS: Thank you very much.

20 COMMISSIONER McMURRIAN: Thank you.

21 And I have a request for a five-minute break, so we
22 will take a five-minute recess, and be back at -- I guess,
23 let's just make it twenty till.

24 (Recess.)

25 COMMISSIONER McMURRIAN: We will call this hearing

1 back to order. And I think we are at the point of rebuttal
2 witnesses. And, Mr. Friedman or Mr. Brannan, I think you can
3 call your first rebuttal witness.

4 MR. BRANNAN: Thank you.

5 I would like to call as our first rebuttal witness
6 Mr. Steve Feldman.

7 STEPHEN J. FELDMAN

8 was called as a rebuttal witness on behalf of Sun River
9 Utilities, and having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BRANNAN:

12 Q Good afternoon, Mr. Feldman.

13 A Good afternoon.

14 Q You were previously sworn this morning?

15 A I was, yes.

16 Q Would you state your name for the record?

17 A Stephen J. Feldman.

18 Q And what is your position?

19 A I am co-managing partner of Hudson Sun-River.

20 Q Did you file some rebuttal testimony and/or exhibits
21 in this matter?

22 A I did.

23 Q And have you reviewed those materials?

24 A I have.

25 Q If I were to ask you the same questions today, would

1 you respond in the same way to those questions?

2 A Yes.

3 Q Do you have any corrections, additions, or comments
4 to make with regard to those?

5 A No, sir, not at this time.

6 MR. BRANNAN: I would like to submit his testimony as
7 if read.

8 COMMISSIONER McMURRIAN: Show Mr. Feldman's testimony
9 inserted into the record as though read.

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TESTIMONY OF STEVEN J. FELDMAN
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
ON BEHALF OF
SUN RIVER UTILITIES, INC. (f/k/a/ MSM Utilities, LLC)
DOCKET NO. 070109-WS

1 Q: State your name and address.

2 A: Steven J. Feldman, 2127 Brickell Ave., Suite 2002, Miami, FL 33129.

3 Q: Please briefly describe your educational background and professional
4 experience.

5 A: I have an MBA in Finance and Management from Duquesne University. I
6 am currently involved in land investment, development, and financing
7 opportunities. Earlier in my career I was the Vice President and CFO of
8 Green International, an international architectural, planning, engineering
9 and construction management firm. Subsequent to working at Green
10 International I served as a senior officer with four major national
11 homebuilder/developers. For a more detailed history and list of projects I
12 have attached a copy of my resume as Rebuttal Exhibit SJF-1.

13 Q: Are you familiar with the property that is the subject of this proceeding?

14 A: Yes I am. I am a managing member of Hudson Sun River, LLC, one of the
15 entities that requested the extension of Sun River Utilities' service area in
16 Charlotte County, east of Hwy. 17.

17 Q: What is Hudson Sun River, LLC?

18 A: Hudson Sun River, LLC is a highly experienced, well-capitalized, large-
19 scale community development team. The members of Hudson Sun River,
20 LLC have developed residential and commercial properties from Florida to
21 New England. My company is also currently developing an

1 environmentally enriching, super-ecological, completely sustainable
2 community in Costa Rica.

3 Q: What is the purpose of your testimony today?

4 A: The purpose of this testimony is to provide substantive, verifiable
5 support for Sun River Utility's annexation of adjacent property
6 controlled by Hudson Sun River, LLC. into its current service area
7 because of our urgent and compelling need for water and sewer
8 service.

9 Q: Do you own the property for which you have requested the extension of
10 the service territory?

11 A: No. However, on April 26, 2006, Hudson Sun River, LLC acquired control
12 of 2458 (+/-) acres in Charlotte County east of Hwy. 17. This action
13 occurred after a comprehensive analysis of all potential growth corridors
14 in Charlotte and DeSoto Counties that either had current actual growth
15 initiatives underway or completed; or had the real potential for near-term
16 growth. It became obvious to the Hudson Sun River principals and our
17 consultants that the Hwy.17 corridor was indeed the leading candidate for
18 property of interest. Over the following several months, the Hudson Sun
19 River team successfully negotiated a Purchase and Sale Agreement with
20 the owners which effectively grants to Hudson Sun River ownership
21 and/or control of the properties through 2013.

22 Q: Can you give a brief summary of the factors that influenced your group's
23 decision to invest in this property?

1 A: While the Hudson Sun River investigation was exhaustive, certain
2 essential attributes drove our acquisition decision:
3 With property located on Hwy. 17 at the border of DeSoto and Charlotte
4 Counties, distances and travel times to existing and/or planned facilities
5 are outstanding, such as I-75/Hwy.17 Interchange (8 minutes), Downtown
6 Punta Gorda (10 minutes), Port Charlotte (15 minutes), Arcadia (12
7 minutes), central and coastal counties, shopping, entertainment,
8 commercial and regional airports, rail, schools, employment centers, etc.
9 Hwy.17, with its existing four lanes and sidewalks from I-75 to our
10 property and with an ambitious, already-approved plan to continue the
11 expansion to the northern DeSoto County line. (Ultimate 6 lane section)
12 Existing water and sewer availability across Hwy. 17 nearly at our property
13 line.
14 FP&L substation with abundant capacity adjacent to our property,
15 phone/internet service.
16 Neighboring Fire/EMS facility with response time of 3 minutes.
17 Elegant preserves/wetlands, green space and open areas with very
18 workable environmental and habitat corridor conditions.
19 Abundance of potable water supplies (artesian sourced, ag permitted
20 wells) throughout the entire property.
21 Favorable hurricane/storm/wind conditions.
22 Existing, established surrounding neighborhoods from high-end to
23 moderately priced homes.

1 More-than-sufficient critical land mass to establish a self-sustainable
2 “village community” with multiple land uses, including, but not limited to,
3 a variety of residential types and uses from workforce housing to more up-
4 scale housing, retail, commercial, office, industrial, preserves and open
5 space...a genuine “live, work, shop, play” sustainable environment by
6 anyone’s determination.

7 Adjacency to the existing Charlotte County Urban Service Area.

8 Easterly adjacency to approximately 30,000 acres of rural and agricultural
9 land to accommodate enormous open space, agriculture, bio-corridors,
10 pristine habitat and preserves, low density, rural development

11 Q: Has there been any interest in the property from other parties?

12 A: Absolutely. Sometime after our Closing on our property, HSR became
13 aware of Florida Gulf Coast University’s (“FGCU”) interest in expanding
14 their university from Lee County to a satellite learning facility in Charlotte
15 County. Their published ultimate plan was to grow the chosen site to
16 accommodate approximately 10,000 students. FGCU solicited developers
17 to submit an Invitation to Negotiate (ITN) for consideration. A selection
18 committee of 12 leading Charlotte County citizens and members of the
19 FGCU administration and faculty were empanelled to select the best
20 developer and the best overall location for this facility. Five major
21 development opportunities were proposed. An ensuing intense selection
22 process eliminated 4 of the 5 locations thus resulting in the selection of the
23 Hudson Sun River site at Hudson Ranch as their first choice. Our
24 proposed comprehensive master plan offered the FGCU an entire

1 sustainable, master-planned “university village” with multiple land uses
2 and with plenty of land to grow sensibly. Our plan embraces many of the
3 principles utilized by Ave Maria University in Collier County, FGCU in Lee
4 County and Lakewood Ranch in Sarasota.

5 Q: Can you list some of the principles utilized by these projects that you
6 intend to include in any development proposal for the property?

7 A: We intend to develop and deliver an extraordinary Master Planned
8 sustainable community. A mixed-use, job producing, complete village
9 community utilizing contemporary, cutting-edge, ecologically sound
10 planning and development techniques.

11 Q: Would you have been able to develop this project under the zoning and
12 density currently associated with the Hudson Ranch?

13 A: No, we would have had to file for a comprehensive plan amendment.

14 Q: Do you intend to file an amendment application for the Hudson Ranch
15 property?

16 A: Absolutely.

17 Q: Do you know who owns the remainder of the proposed service territory
18 east of Hwy. 17, between the Hudson Ranch property and Hwy. 17?

19 A: I believe it is all owned by Mr. Eugene Schwartz, or entities associated with
20 or controlled by him.

21 Q: Do you know if Mr. Schwartz has expressed his intent to seek an
22 amendment to the comprehensive plan for his property?

23 A: Yes, it is my understanding that he intends to begin that process.

1 Q: Is there anything that your group is waiting for prior to investing the time
2 and money necessary to produce a viable comprehensive plan amendment
3 application for the Hudson Ranch property?

4 A: Only one major element surfaces as obviously missing but extremely
5 necessary to the successful execution of our master plan, entitlements and
6 permits...sewer and water services.

7 Q: Why is that?

8 A: Without water and sewer service, Hudson Sun River is summarily stopped
9 in its efforts to move forward with our plan to be annexed into the Urban
10 Service Area even though we meet all of the criteria except for utility
11 service. The same condition precludes our ability to move forward with
12 our required D.R.I., or rural community designation and zoning process.

13 Q: Do you have any experience in the water and/or wastewater field?

14 A: Yes.

15 Q: Can you explain that experience?

16 A: In 1987, I led a team to a successful acquisition of Royal Utility, Inc.
17 located in Coral Springs, FL. The utility was in dire financial straits,
18 poorly managed, in need of major repairs and rehabilitation,
19 permit/licensing renewals, revised service upgrades for customers,
20 wellfield expansion, qualified management and more. The team
21 recapitalized the operation, engaged top consultants; hired qualified staff
22 to manage and operate the utility; secured all of the required permits and
23 licenses and rehabilitated all of its assets. Royal Utility remains today as a
24 respected, well managed, profitable utility proudly serving its customer

1 base. Of course as a community developer for many years, I have had
2 many more experiences in the utility field.

3 Q: So, based on your experience as both a developer and utility owner, a
4 commitment for such service is an initial step in the development process?

5 A: Yes. The Charlotte County comprehensive plan would require it as an
6 element for redesignation. Moreover, the State agencies require it before
7 they will approve any amendment. Proceeding with the planning, designs,
8 studies, legal work, and the application without a binding enforceable
9 commitment for water and sewer service once the project is finally
10 approved is a colossal waste of time and money.

11 Q: Have you sought a commitment from Charlotte County to provide water
12 and sewer service to the property?

13 A: No.

14 Q: Why is that?

15 A: We are acutely aware that Charlotte County has no plan to provide water
16 and sewer service to our Charlotte property.

17 Q: Is that the only reason?

18 A: No. We have heard horror stories from other developers in the County
19 regarding the County's inability to provide service after completion of the
20 entitlement process leading to substantial financial losses.

21 Q: How did you plan on securing the necessary services?

22 A: Hudson Sun River respectfully requested that Sun River Utilities annex all
23 of Hudson Sun River's Charlotte property into its Service Area to meet our
24 urgent, compelling need and requirement to provide sewer and water

1 service to all of the future industrial, retail, commercial businesses and
2 residents who will locate and populate this sustainable community area.
3 Sun River Utilities is located directly across HWY. 17 from a portion of our
4 property.

5 Q: Is there any other reason that you chose to approach Sun River Utilities?

6 A: Yes. When we approached Sun River Utilities it was regulated by the
7 Public Service Commission. As such, should our property be within its
8 certificated service area, and we sought a commitment for service, the
9 utility would be required to serve our project as needed once we completed
10 securing our development entitlements. This provides our team, and any
11 financing entity, with a much higher degree of comfort and certainty than
12 is available from the County.

13 Q: And why is that?

14 A: The County will only supply a developer with a non-binding letter of
15 availability during the entitlement stage. Only after a developer has gone
16 through the lengthy process and expense of securing a comprehensive plan
17 amendment will the County Utility Department actually sit down and
18 negotiate if, how, when, and at what cost it may provide the necessary
19 utility service. The costs could involve the construction of entire water and
20 sewer treatment plants that would then be given to the County. If the
21 developer does not agree with the County's demands, it gets no service and
22 the project is forced into dormancy. Such dormancy causes severe
23 financial hardship after compliance with all local and state development
24 requirements.

1 Q: Can you explain in more detail where the Hudson Ranch property located?

2 A: The Hudson Ranch property controlled by our team consists of
3 approximately 2,458 acres in Charlotte County, east of Hwy. 17 abutting
4 the DeSoto County line. The property also extends into DeSoto County for
5 an additional 429 (+/-) acres which abuts the Wal-Mart distribution
6 center in DeSoto County. Both of the Hudson Sun River parcels are
7 adjacent and contiguous properties.

8 Q: Where is the Wal-Mart Distribution Center?

9 A: The Wal-Mart Distribution Center is located in DeSoto County on the
10 eastern side of Hwy. 17 and abuts the Charlotte County/DeSoto County
11 border and our Charlotte and DeSoto properties.

12 Q: Can you describe the Wal-Mart Distribution Center?

13 A: It is a fully operational, massive structure (28 acres under-roof, 100 feet
14 high structure on 127 acres), located within an Enterprise Zone and
15 Industrial Campus that stretches along the northerly side of the
16 DeSoto/Charlotte County border. With over 800 employees and hundreds
17 of daily truck visits, this remarkable facility services Wal-Mart stores in 8
18 counties and strongly demonstrates distribution as one of the most viable
19 growth opportunities associated with our location and properties.

20 Q: How do you believe this facility impacts the surrounding area?

21 A: As an existing industry, it truly supports wide spread public belief that this
22 area as we envision its rationally expanding master, multi-use
23 development plan can easily become the "poster child" for sensibly
24 managed growth that is completely and genuinely sustainable.

1 Q: Does your group own the Hudson Ranch property in DeSoto County?

2 A: Yes.

3 Q: What type of activities are you engaged in on that property?

4 A: Our 429 acres in DeSoto is within a 600 acre Enterprise Zone with a
5 boulevard styled entry to our property line. Our property was recently re-
6 zoned to "Heavy Industrial." We are actively marketing our industrial
7 property nationally.

8 Q: Has there been any interest in the property?

9 A: Yes. We are working closely with a very large, multi-national user who will
10 eventually employ over 400 well-paid white and blue collar workers on a
11 100 acre (+/-) parcel.

12 Q: How do you believe that the activities in DeSoto County will impact your
13 property in Charlotte County?

14 A: We are confident that our efforts to secure large and moderately sized
15 industrial users and their resulting workers to our adjacent industrial site
16 that growth can easily expand into our Charlotte property.

17 Q: Would you agree that the current certificate amendment proceeding is
18 concerned with property located solely within Charlotte County?

19 A: Yes.

20 Q: Why then do you feel that a discussion of the previously mentioned activity
21 in DeSoto County is relevant to this proceeding?

22 A: The activity in DeSoto County's Enterprise Zone and Industrial Campus is
23 relevant because it abuts most of the property that is the subject of this

1 proceeding. Therefore, this activity is relevant to any discussion of need or
2 as a demonstration of the character of the lands surrounding the property.

3 Q: Can you elaborate?

4 A: Yes. The Hudson Ranch property in Charlotte County is currently
5 designated as rural or agricultural as is the remainder of the proposed
6 expanded service territory east of Hwy. 17. However, Charlotte County's
7 Urban Services Area stretches to the western side of Hwy. 17 thereby
8 abutting the territory's western boundary. As I mentioned earlier, Hwy. 17
9 is a recently improved four-lane highway with commercial and residential
10 development in various stages. Immediately to the north of and abutting
11 the subject property is the DeSoto County Enterprise Zone and the Wal-
12 Mart Distribution Center. Finally, to the South of the subject property are
13 residential developments. When viewed in such light the requests for
14 service and the intent of the landowners appear very reasonable.

15 Q: Does this conclude your rebuttal testimony?

16 A: Yes.

17

1 BY MR. BRANNAN:

2 Q Could you give your summary of your testimony?

3 A Yes.

4 I am a managing member of Hudson Sun-River LLC, which
5 is one of the entities that requested the extension of Sun
6 River's territory. Hudson Sun-River LLC has the Hudson Ranch
7 property under agreement. Prior to taking the property under
8 contract, we conducted extensive due diligence and research
9 into the actual and potential growth in the Highway 17
10 corridor, proximity to the border of DeSoto and Charlotte
11 Counties, I-75, Highway 17, Punta Gorda, Port Charlotte, and
12 Arcadia, high end and moderately priced neighborhoods.

13 Wal-Mart Distribution Facility abuts the northern
14 border of the property in Desoto County. We have already
15 closed on 429 acres of the Hudson Ranch in Desoto County
16 adjacent to the Wal-Mart site. This property is included in an
17 Enterprise Zone that was championed by former Governor Bush.

18 We are currently working with a very large
19 multi-national corporation who will employ over 400 workers and
20 utilize about 100 acres of our DeSoto Industrial Park. In
21 Charlotte County our property is adjacent to the urban services
22 area, to the west and just north of another border of the urban
23 service area.

24 We competed for and were selected by Florida Gulf
25 Coast University for a satellite learning center on 150 acres

1 within our Charlotte property. We intend to create a master
2 plan development on the property either through the extension
3 of the urban services area, a DRI, or a rural community. We
4 intend to file for an amendment to the comp plan for this
5 purpose.

6 I have had extensive discussions with other
7 landowners in the area in attempts to develop a comprehensive
8 sector plan for the area. While we are working in conjunction
9 with Mr. Schwartz on the studies and reports necessary for
10 planning the development of our property and the Schwartz
11 property, the one major element we must secure prior to
12 proceeding with our plans is a binding commitment for water and
13 wastewater service. It is the normal practice to secure this
14 necessary element prior to making the large commitment of funds
15 and the time to achieve the development process.

16 The Charlotte County Comprehensive Plan requires a
17 binding commitment for water and wastewater service for
18 extension of the urban services territory, and the Department
19 of Community Affairs will require a binding commitment to grant
20 an approval of an amendment to the Comprehensive Plan. If we
21 were included in Sun River's service territory, the utility
22 would provide a binding commitment. Charlotte County will not
23 provide a binding commitment. That is my summary.

24 COMMISSIONER McMURRIAN: Thank you.

25 Do you tender him for cross?

1 MR. BRANNAN: Yes.

2 COMMISSIONER McMURRIAN: Mr. Engelhardt.

3 MR. ENGELHARDT: Thank you.

4 CROSS EXAMINATION

5 BY MR. ENGELHARDT:

6 Q Good afternoon, Mr. Feldman.

7 A Good afternoon.

8 Q Mr. Feldman, you yourself don't live in Charlotte
9 County, do you?

10 A I do not.

11 Q And you didn't attend any of the 115 public hearings
12 on the Charlotte County Comp Plan?

13 A I did not.

14 Q And you didn't file any written comments on that plan
15 either?

16 A I did not.

17 Q You are here representing Hudson Sun-River LLC. Is
18 that the same Sun River as the utility?

19 A No.

20 Q Is there an ownership interest that is the same
21 between your company and the utility?

22 A There is one common owner that has a minority
23 interest in Hudson Sun-River.

24 Q You have stated that you have the Hudson Ranch
25 property under contract?

1 A Yes.

2 Q You are not currently the owners of the property, the
3 title owners?

4 A That is correct, yes.

5 Q How long do you have control of the property?

6 A I don't remember the month, but it is to the year
7 2013.

8 Q And what happens at the year 2013 to the ownership of
9 the property?

10 A Well, we have not as yet closed. That would be the
11 outside closing date for us to acquire title to the property.

12 Q So, in other words, you have about five years to sell
13 the property for development, is that what you are saying?

14 A Correct.

15 Did you say sell to -- I'm sorry, can you restate.

16 Q You have about five years to develop the property, is
17 that correct?

18 A I have five years to entitle the property and achieve
19 all of the permits and goals required by the contract.

20 Q What happens if you do not achieve those goals?

21 A I would lose the contract.

22 Q You admit that the Hudson Ranch property itself is
23 outside the current urban service boundary?

24 A Yes.

25 Q And you have mentioned that the property is adjacent,

1 is that not what you just testified to, that it is adjacent to
2 the urban service area?

3 A It is adjacent to the urban service area.

4 Q Looking at the map, is that map an accurate
5 reflection of where the Hudson Ranch property is?

6 A Yes.

7 Q So the urban service boundary runs down 17, does it
8 not?

9 A Yes.

10 Q Therefore, Hudson Ranch doesn't actually touch any
11 part of the urban service area, does it?

12 A It does, yes.

13 Q Looking at the map it appears that Mr. Schwartz'
14 property is the one that touches 17.

15 A Hudson Sun-River has a 150-foot wide parcel leading
16 from 17 back to the mass parcel. We also own a -- I believe
17 it's a 225-foot wide parcel that starts at 17 and travels east
18 to the mass parcel.

19 Q So it would frame Mr. Schwartz' property?

20 A That is correct, yes.

21 Q If Mr. Schwartz was not to develop his property, do
22 you believe that that amount of land is sufficient to run lines
23 to your property from the urban service boundary?

24 A Oh, yes; absolutely.

25 Q Have you had an engineering company make that

1 determination?

2 A We have.

3 Q You stated that Charlotte County will not provide a
4 binding commitment to serve the area?

5 A That is our understanding.

6 Q Have you asked Charlotte County for a binding
7 commitment?

8 A We have not.

9 Q Are you familiar with the uniform extension policy?

10 A I'm not.

11 Q Earlier you were referred to by Mr. Reeves as the
12 land planner. Do you have any certification in urban planning,
13 or is that based on being a developer?

14 A It is mostly pain and suffering for about 50 years,
15 actually. I do not have a degree, no, in planning.

16 Q In your direct testimony, you refer to the contract
17 that you had with Florida Gulf Coast University for a satellite
18 facility.

19 A I don't believe I ever reported a contract -- you
20 said a contract? We do not have a contract with Florida Gulf
21 Coast University.

22 Q You said you do not have a contract, I'm sorry,
23 correct?

24 A We do not.

25 Q Did you have an arrangement whereby you pursued an

1 arrangement with Florida Gulf Coast University to build the
2 satellite branch on the Hudson Ranch property?

3 A We were selected through an invitation-to-negotiate
4 process as the developer on our site, meaning Hudson Ranch, to
5 locate the Florida Gulf Coast University's Charlotte Campus.
6 If you would like, I can elaborate on that.

7 Q What I would ask is that is no longer in place,
8 correct?

9 A I'm not certain what's in place, but I think
10 officially it is not would be the best answer.

11 Q Are you aware of any official statements as to the
12 reason that that agreement was terminated?

13 A I think mostly what I have read in the press as an
14 information source.

15 Q Would it be fair to say that the Florida Board of
16 Governors decided that there was a lack of broad-based
17 community support among Charlotte County for the plan?

18 A I don't think that's the case at all, actually. I
19 think it had much more to do with individual political agenda.

20 Q Would it be fair to say that the Florida Board of
21 Governors had the ability to and did, in fact, quash the
22 agreement?

23 A No question about it, a resounding quash.

24 Q So the only actual contract or agreement that you had
25 to actually develop the property within a specific time frame

1 with a specific need that has been reported didn't come about?

2 A That is correct, it did not.

3 Q Are you familiar with the county's TDU ordinances?

4 A Yes. Not intimately, but clearly to some degree.

5 Q That would be Transfer of Density Units. Where are
6 the density units going to come from in your property?

7 A I'm not certain at this moment.

8 Q Does the area qualify as a receiving zone?

9 A I don't know if that's the case or not. I don't
10 think so, but I don't know that technically.

11 MR. ENGELHARDT: That's all the questions I have.

12 Thank you.

13 COMMISSIONER McMURRIAN: Thank you, Mr. Engelhardt.

14 Mr. Jaeger.

15 MR. JAEGER: Staff has no questions.

16 COMMISSIONER McMURRIAN: Do the Commissioners have
17 any questions?

18 Redirect.

19 MR. BRANNAN: Yes, please.

20 REDIRECT EXAMINATION

21 BY MR. BRANNAN:

22 Q Mr. Feldman, you told us that you received your
23 degree in land planning school of hard knocks, basically?

24 A Yes.

25 Q Could you give us a brief summary of your experience

1 in the building and development industry?

2 A Well, I was born into it. It was my family's
3 business in Pennsylvania, and I don't ever remember not being
4 involved in some fashion. I have been president of some
5 national building companies in my career. I'm currently
6 developing super-ecological communities in Costa Rica,
7 cutting-edge technologies in Costa Rica.

8 I'm basically a community developer. I have done
9 very large scale communities. I have done small neighborhoods.
10 I don't remember how many, and I don't remember where they all
11 are, and I'm not even certain I could remember the names of
12 them anymore. But I know that I could walk back to any one of
13 them and knock on a door and feel very good about what we've
14 done.

15 Q In addition to that experience, have you had any
16 experience in the utilities industry?

17 A Well, it's hard not to be in my industry and not have
18 utility experience, but I have had some remarkable utility
19 experience. By way of example, in 1987, I acquired a piece of
20 property in Coral Springs. And it was a -- there was utility
21 serving about a half section of property. And the utility
22 owner, not a very nice kind of guy, basically held us up and
23 just made lives miserable. We finally got him into court, and
24 we got standing in court, and we were able to proceed with the
25 acquisition and control of that utility. And it was in dire

1 straits. It was in terrible condition, obviously not
2 capitalized well at all. The surrounding users were being very
3 much abused, and we basically rebuilt, revamped, remodeled.
4 And today that utility, its name is Royal Utility, is a very
5 strong, very reputable small utility, operating very well.

6 Q And currently certificated?

7 A And currently certificated by the PSC.

8 Q Now, you just explained that when Hudson Sun-River
9 purchased the Hudson Ranch property, you have closed on a
10 portion of that in Desoto County?

11 A That's correct.

12 Q While you haven't closed on the purchase in Charlotte
13 County yet, do you have in your contract the right to commit
14 that territory, that property to this certificate proceeding?

15 A Absolutely. We have a clear concise right to do it.
16 In fact, we have a very stringent obligation to provide water
17 and sewer as one of the requirements under the contract.
18 Typical issues like zoning entitlements, quasi-government
19 approvals, all of those things need to be done before the
20 closing of the property between Hudson Sun-River and the owners
21 occurs.

22 Q So in the unlikely event, as Mr. Engelhardt pointed
23 out, that you did not receive all of your development
24 entitlements by the outside closing date, the owners would
25 still want to be included to receive the water and wastewater

1 utility service?

2 A I think if that were available to them at this moment
3 they would be here with pen in hand signing whatever they had
4 to sign and achieving that goal, yes, absolutely.

5 Q The university that was mentioned, was that only one
6 of the proposed economic engines that you basically reviewed
7 for this property?

8 A It's one of them, and obviously one that would be
9 remarkably meaningful to us, to our surrounds, and certainly to
10 the community as well. We are very active in the marketplace
11 today because we have the adjacent property. We own the
12 adjacent property, 429 acres of industrial property, and we are
13 marketing that nationally. We were just recently rezoned to
14 heavy industrial, and that property is immediately adjacent to
15 our property. So each time we have a user who comes, or a
16 potential user, or a prospect comes to our property to see the
17 industrial park, obviously the conversation turns a bit south
18 to Charlotte County, and we point out that. And there has been
19 some interest.

20 I'm certainly not saying we have somebody on the
21 hook. We certainly think we do on our DeSoto property, but
22 clearly not on Charlotte, but there has been budding interest.
23 The problem is it is very difficult to convey to somebody the
24 certainty of commitment that we could achieve on the Charlotte
25 side.

1 The best example of that I think is probably the
2 Wal-Mart Center, which my understanding originally went to
3 Charlotte County looking for a home. And the story is told
4 that while Charlotte was, I guess, arguing amongst themselves
5 about what time of the day it was, DeSoto stepped in, ran, took
6 the football down the field and scored a touchdown. That is
7 something we surely don't want to have happen again. We feel
8 an allegiance to both counties, indeed, and think we will do a
9 very, very strong job for both.

10 Q So it's your opinion that regardless of the
11 university, whether that comes out of abeyance or not, that
12 this property is economically viable for your purposes?

13 A We certainly believe that is the case. We have done
14 numerous pro formas. But until, you know, the final numbers
15 are in, that feasibility element is always being tested. It's
16 hard to sit here today and say, yes, it is absolutely,
17 positively no matter what ever happens that it is a feasible
18 deal. We'll run feasibilities and pro formas until my
19 grandchildren, I guess, come and see it. I don't know.

20 Q What type of development would you envision out there
21 in a general sense? I know that you can't -- you would have to
22 do an envisioning, because you would have to get whatever you
23 did approved anyway. What are you looking at doing out there?

24 A We have consistently characterized it as a university
25 village which meets much of contemporary planning needs and

1 wants. I characterize it -- well, I guess Andreas Diwani
2 (phonetic), the noted Cuban planner sort of coined it. He
3 said, "Live, work, play." We say "Live, work, shop, play."
4 And the notion that there are five-minute walks, ten-minute
5 walks that you don't have to get into your car, go out on the
6 highway to get a quart of milk, that it is, indeed, in every
7 sense of the word a self-sustaining live, work, play, shop
8 environment.

9 Q And this type of envisioned development is something
10 that you and/or your partners have actually had experience with
11 in the past?

12 A Oh, yes. Yes.

13 Q You mentioned in your summary that you had had
14 extensive discussions with neighboring landowners?

15 A I have.

16 Q Have any of those neighboring landowners expressed to
17 you their intention to file an amendment to the comp plan, or
18 investigate, or begin the process to file an amendment?

19 A About -- I think it's certainly in the last four
20 weeks, Gene Schwartz' attorney, who is from Sarasota, his name
21 is Jeff Russell, told me that Mr. Schwartz has required him to
22 hire the appropriate consultants and make application for a
23 comprehensive plan amendment for his property. That is the
24 1,800 acres green hashed property. And the purpose of our
25 meeting about three weeks ago was to -- much of what he will

1 need we will need, and, therefore, we can probably join forces
2 and share costs and results and maybe even the placement of
3 assets at some point in time. Doctor Zachariah has expressed
4 to me certainly from time to time -- let me back up a second.

5 The original plan, if you will, of those three
6 properties and all of the subsequent property to the east,
7 which there is about 30,000 acres sort of behind us, was to
8 create a super-sector group, and we started out with an
9 enormous amount of enthusiasm. I mean, when our land use
10 attorney blew the whistle, some 28,000 acres showed up at the
11 first meeting, and the second meeting, and the third meeting.

12 We created an operating committee, and we put budgets
13 together, and we did a whole host of things. And then for some
14 reason the wheel came off the bus. I think much to do with
15 what was happening out on 31, and some of the -- they believed
16 they had the university, and we ended up with the nod from the
17 selection committee and the board of trustees, and there were
18 some other plans that fell through over there and the thing
19 sort of just disintegrated.

20 And we subsequently found out that the county wasn't
21 really interested in looking at a sector that potentially
22 overwhelmingly large, some 30,000-plus acres. So we really
23 took a good hard look, that is, us, Gene Schwartz and Doctor
24 Zachariah, took a look at, well, we are here on 17, we are
25 surrounding by all of this infrastructure. You know, let's see

1 if we can't do something collectively amongst the three of us.
2 And there has been great interest. We have been working that
3 angle for quite sometime now, and we are poised to go.

4 MR. BRANNAN: I don't think I have any other
5 questions for you. I would like to -- he has got one exhibit,
6 and I would like to move that.

7 COMMISSIONER McMURRIAN: Show Exhibit 13 moved into
8 the record.

9 (Exhibit 13 admitted into evidence.)

10 COMMISSIONER McMURRIAN: You may be excused, Mr.
11 Feldman.

12 THE WITNESS: Thank you.

13 COMMISSIONER McMURRIAN: Call your next rebuttal
14 witness.

15 MR. BRANNAN: I would like to call Craig Dearden.
16 Mr. Dearden was not here when everyone was sworn.

17 COMMISSIONER McMURRIAN: Thank you.

18 Raise your right hand with me.

19 (Witness sworn.)

20 CRAIG DEARDEN

21 was called as a rebuttal witness on behalf of Sun River
22 Utilities, and having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BRANNAN:

25 Q Good afternoon.

1 A Good afternoon.

2 Q Would you state your name for the record, please?

3 A Craig Dearden.

4 Q And what is your position, Mr. Dearden?

5 A My position is the CFO/CO for the Realmark Group and
6 various affiliates associated with that.

7 Q And did you file some prefiled testimony, rebuttal
8 testimony in this matter?

9 A I did.

10 Q And have you had a chance to review that testimony?

11 A I have.

12 Q If I were to ask you the same questions today, would
13 you respond in the same manner to those questions?

14 A Yes, I would.

15 MR. BRANNAN: I would like to move his testimony as
16 if read.

17 COMMISSIONER McMURRIAN: The prefiled rebuttal
18 testimony of Mr. Dearden will be entered into the record as
19 though read.

20 MR. BRANNAN: Thank you.

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- 1 Q. Please state your name and business address.
- 2 A. My name is Craig A. Dearden, and my business address is 5789 Cape
3 Harbour Dr. # 201, Cape Coral, FL 33914.
- 4 Q. By whom are you employed?
- 5 A. I am the Vice President, CFO, COO of Realmark Development LLC
6 ("Realmark").
- 7 Q. What are your primary duties with Realmark?
- 8 A. I am charged with managing all corporate activities.
- 9 Q. Please tell us about your experience in the development industry.
- 10 A. I have been a CFO for the last 15 years in two capacities. I was the
11 controller for a roadway engineering firm for nearly eight years that
12 employed over 150 employees and operated seven offices throughout the
13 State of Florida. I subsequently joined the Realmark team in 2000 as the
14 CFO and have become the Chief Operating Officer. My educational
15 background is I hold a BS degree in Finance and a BS degree in
16 Accounting.
- 17 Q. What are Realmark's holdings?
- 18 A. Realmark is a multifaceted company in that we operate marinas that are
19 surrounded by residential living. In this capacity, we have planned
20 approximately one thousand residential units around the waterfront

1 basins. We are also in the business of acquiring un-entitled lands and
2 working the tracts through the County development processes to add
3 value in the form of planned communities or commercial centers.
4 Presently we own and control over 1950 acres of property in all forms of
5 development, in Florida and North Carolina. Tuckers Grade, more fully
6 described below, is one of eight large projects that we are presently trying
7 to ready for the market.

8 Q. Does Realmark have any development interests in Charlotte County?

9 A. Yes. Realmark owns the site at Tuckers Grade, located between US
10 Highway 41 and Interstate 75, north of Tuckers Grade Road in Charlotte
11 County. Contiguous to Charlotte County we operate the largest Marina on
12 the west coast named Burnt Store Marina.

13 Q. Please describe your experience with Charlotte County Utilities ("CCU") in
14 connection with Tuckers Grade.

15 A. Realmark has received very little cooperation from CCU. Realmark entered
16 into a contract to purchase the Tuckers Grade land in December of 2003.
17 Realmark went through the process of due diligence in obtaining
18 necessary approvals for development and, most importantly, obtaining a
19 Letter of Availability of water and sewer service from CCU in March of
20 2004. It should also be noted is that Tuckers Grade is designated to be
21 within their Urban Service Area by the County. With substantial reliance
22 upon CCU's assurances of utility availability, Realmark closed on this

1 purchase in July of 2004. In early 2005, Realmark entered into a contract
2 to sell the property to a NYSE-listed developer with the closing scheduled
3 for January of 2007. From that date on, Realmark has incurred hundreds
4 of thousands of dollars in costs while submitting four separate alternative
5 utility routes to serve the site. In March of 2006, CCU sent a short letter to
6 Realmark stating that water and sewer service would not be made
7 available to the property notwithstanding the March 2004 Letter of
8 Availability.

9
10 Subsequent to this notice, Realmark has incurred more and more capital
11 to find alternative utility sources that have the capacity and are willing to
12 extend their franchises to serve the property. Yet in every instance, the
13 actions of CCU have obstructed our ability to provide the property with
14 utility service. Given the CCU's sudden and unexplained reversal of its
15 Letter of Availability, Realmark was unable to close on the sale of the
16 property at Tuckers Grade. Further, CCU has given notice to several other
17 developers on Burnt Store Road that the availability of services may not
18 be ready until 2010.

19 Q. Do you have an opinion as to the value of relying upon CCU for water and
20 sewer services?

21 A. Yes. It is my opinion that it would be imprudent for developers of raw
22 land to purchase property without the ability to provide utility services.

1 Based on Realmark's development order (mixed use), we are required to
2 hook up to municipal service. For the County to designate this tract to be
3 within its Urban Service Area and to have a Letter of Availability dated
4 2004, I can tell you our inability to obtain service has cost our firm \$48
5 million in revenues.

6 Q. Do you have an opinion as to the value of obtaining a Letter of Availability
7 from CCU?

8 A. Yes. Based on my experience with the CCU, it is my opinion that the
9 County does not place the same value on honoring its written
10 commitments, such as Letters of Availability, as the developers who rely
11 on such commitments. My experience and the past track record of CCU
12 has been that a Letter of Availability from the County is not reliable in
13 South Charlotte County.

14 Q. What would be a prudent course of action to obtain a reliable commitment
15 that water and sewer service will be available?

16 A. There may be more than one prudent course of action, but it would be
17 prudent obtain a binding commitment, such as a developer agreement, to
18 serve the property from a utility that has the financial and technical ability
19 to provide service to the property in question or to allow outside
20 municipal or private utility providers extend their franchise areas within
21 South Charlotte County. The County should not be able to prohibit the

1 open market in acquiring utility services for zoned and entitled property
2 for the purpose of guarding its utility franchise areas when they have no
3 ability to provide services when needed.

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1 BY MR. BRANNAN:

2 Q Would you summarize your testimony briefly for us?

3 A Certainly.

4 Back in 2004, Realmark started doing some due
5 diligence on a tract of land that is on Tucker's Grade Road
6 right of I-75, between I-75 and 41 on the north side. And part
7 of that purchase decision was the fact that that site was in
8 the urban service area with Charlotte County, and we received
9 as part of our due diligence package a Letter of Availability
10 from CCU. With those decisions in hand, we proceeded to
11 purchase the property with the assurance of utility service in
12 that area.

13 In 2005, we entered into a contract with a New York
14 Stock Exchange company to close on the property, basically two
15 years later, provided such that utility service could be
16 brought to the property line. During that period from the
17 purchase decision on forward, lots of things had occurred, and
18 one of them, obviously, was Hurricane Charley. And Hurricane
19 Charley came through and really had a great impact on Charlotte
20 County. We understood that, and that accounted for a portion
21 of the delays, but certainly not two years worth of delays.

22 From that period of our first discussions with
23 Charlotte County, we had gone through, when I say numerous,
24 more than you can count on one hand, variations on how we could
25 solve the problem on providing utility service to our site.

1 Those options were everything from extending lines from the
2 shortest route to what we perceived to be the largest route,
3 the longest route, to where we entered into interlocal
4 agreements with the City of Punta Gorda, to where we talked
5 with Peace River Authority to add volume to the water permit to
6 enable Punta Gorda to just be a pass-through entity. We
7 contacted North Fort Myers Utilities to see whether or not they
8 could do a franchise extension. And the list goes on and on
9 and on. And here I stand today, and we still do not have
10 utilities. We still haven't come back to an agreement.

11 I think it's fair to say we recognized we had a
12 problem. I have almost four pages of notes here. Back in
13 early 2006 is when our company figured out we had a real
14 problem, and so we went out and hired a utility attorney that
15 we thought would be the solution to our problems and have had
16 him on the payroll since. And even with his services and their
17 knowledge we have been unsuccessful.

18 So as a result, we had almost a \$50 million contract
19 walk. The market has changed. And here our company is holding
20 the note, carrying the interest, and have not been able to sell
21 the property because it is not marketable. Even though it's in
22 the urban service area. Even though the county designated it
23 as a commercial center right next to the interstate, we have
24 been unable to get utilities to it.

25 Notwithstanding the fact that there has been offers

1 on the table for the county, I happened to be listening on some
2 of your questions regarding uniform extension policies, and the
3 transfer of development units, and stuff like that, those kind
4 of -- the uniform extension policy actually came to life in
5 between the period when we have owned the property. And the
6 uniform extension policy as Charlotte County has implemented,
7 in our opinion, isn't really set up -- let me back up. It is
8 actually set up, in our minds, to be a very short extension
9 where a developer would come in and maybe run a line for a mile
10 or maybe a mile and a half.

11 In our case, the line extensions that they have
12 requested, I think the shortest line was almost seven miles,
13 and we had been asked at one time to run it 12 miles. And so
14 obviously for a single project to be burdened with what we call
15 looping the south county is far and beyond what any reasonable
16 person would expect a developer to do. And so, in our minds,
17 the uniform extension policy doesn't really apply.

18 I guess that summarizes my comments.

19 MR. BRANNAN: Thank you. He can be crossed.

20 COMMISSIONER McMURRIAN: Okay. Mr. Engelhardt.

21 MR. ENGELHARDT: Thank you.

22 CROSS EXAMINATION

23 BY MR. ENGELHARDT:

24 Q Good afternoon, Mr. Dearden.

25 A Good afternoon.

1 Q You are listed as a witness to Issue 1, which goes to
2 need, so I wanted to ask you, you don't own any territory
3 within the proposed service area, do you?

4 A The service area for this? No, sir.

5 Q You haven't contracted with any of those owners to
6 develop the property within the proposed service area in this
7 application, is that right?

8 A That's correct.

9 Q So basically your testimony is to make the county
10 look bad, is that the essence of the relevance is to show that
11 their policies didn't work?

12 A It was my understanding that I was asked to come and
13 tell the facts of my case, whether they may be relevant or not
14 for Sun River (inaudible).

15 Q A very frank answer. Thank you.

16 You were related to Sun River Utilities, you
17 mentioned, through an attorney, is that not correct?

18 A I guess the use of related is a very loose use of the
19 word. However, I can tell you that the utility business is a
20 relatively small family of professionals, that there are
21 arguably three or four people that know that business so well
22 that for a developer that is intending on constructing, it
23 would be silly to go outside of those services. So, yes, it's
24 my understanding Mr. Sundstrom has done services from
25 everywhere from West Palm to Lauderdale to -- actually it was

1 heavily involved in Charlotte County for a significant period
2 of time prior to our services, so we thought his resume was the
3 best resume in the state, and, therefore, we chose him.

4 Q We don't question Mr. Sundstrom's abilities. I just
5 wanted to point out that it is the same law firm that is
6 involved in this case with Sun River, is that not correct?

7 A That's my understanding.

8 Q You mentioned the uniform extension policy. Were you
9 not a part of the committee that was -- the ad hoc committee
10 that was asked to review the uniform extension policy and to
11 make recommendations as to how it would work going forward?

12 A If my notes are accurate, the first time that I
13 saw -- the first time that the Realmark Company saw the uniform
14 extension policy -- let me check my notes here -- I believe
15 that was November of '05 when the first draft came out. And
16 then the final draft, I don't think, came out until June of
17 '06. Does that sound about right?

18 My notes say August 16th CCU handed me a standard
19 developers agreement, which included the uniform extension
20 policy, and that would be August of 2006. So I believe my
21 recollection and what my notes reflect was November of 2005
22 Charlotte County had finally figured out that, or had made the
23 interpretation that there was enough development going up and
24 down Burnt Store Road that they needed to get the groups of
25 developers that were intending on building up and down Burnt

1 Store Road, which is on the path to my project, if we were to
2 do our line extension. That group was well attended, and I
3 have notes of around eight different properties that that line
4 extension would go through.

5 At that point in time I believe that is when the
6 uniform extension policy group was getting together. I chose
7 not to be part of that. And the reason I had not was that I
8 was naive to think that I was far enough along that I had a
9 separate agreement, and that the uniform extension policy
10 wouldn't apply to someone that was essentially putting in south
11 Charlotte County utilities lines. And obviously I was proved
12 wrong. So that uniform extension policy, the first time that
13 we got it in written form in a contractual negotiation was
14 August of 2006.

15 Q After you received that, you did appear at an ad hoc
16 committee meeting where you made a presentation with regard to
17 that, is that correct?

18 A I made several presentations. I believe that there
19 was a second meeting that was held almost roughly a year later
20 that I did have, I did make a presentation, and that was to the
21 committee. And I recollect that because I had drawn a board,
22 and I had shown five different routes to where I had gone to
23 that point.

24 Q Your complaint about the extension policy was based
25 on the idea of compensation for upfront costs as opposed to

1 reimbursement, is that not correct?

2 A Yes.

3 Q Did Charlotte County work with you to arrange for
4 payment outside of the uniform extension policy to provide you
5 with a reimbursement schedule different than the UEP?

6 A Never to the point where it was executed. We had
7 lots of negotiations about it. The net effect of it was that
8 the line itself, and I'll use the numbers that are in my head
9 that I recollect, the line was going to be a five to six-mile
10 run and it was going to run around \$7 million, and that was
11 properly sized for our project.

12 The county then had asked me to oversize the line,
13 which took the prices up to around \$13 million. One of the
14 problems with that uniform extension policy is that there is a
15 timetable on when you can get paid back. And in that case,
16 that had a term limit. And once that term limit ran out, which
17 was very short, if my memory serves me right, it was seven
18 years, anything that had not been remitted back we were to eat.

19 And because of the extent and the length of that
20 line, that was unacceptable to us. And it was our opinion that
21 we would probably get back, because the entitlement process
22 takes so long to get a project off the shelf, if you were to
23 decide today in this area and decide to build, you're looking
24 at, at best, almost a three-year cycle before you can build
25 your first house. So in our minds, we have lost three of the

1 seven to start with, and we only had an opportunity to have
2 three years of payback with only the transmission fees. So as
3 they paid their impact fees, the transmission fees were
4 obviously 1,200 bucks a shot. And to get back 7 million bucks
5 at 1,200 bucks a pop, I think most people would make the same
6 decision that we made, it was unwise. It was something that we
7 couldn't enter into and stay in business.

8 Q So you withdrew from negotiations last August?

9 A That's not correct. At that point we then went to
10 several other opportunities. We tried bulk service, and we had
11 two issues running at the time, we had one wastewater service
12 and then water service, and I won't separate those two. But we
13 tried to run parallel tracks on finding sources of the water
14 through an interlocal agreement through Punta Gorda which could
15 buy bulk service through Peace River. We also came back to the
16 county and said, well, how about if we build an RO plant, and
17 we'll just give you the RO plant.

18 That kind of went sideways because our needs were
19 half a million gallons a month, I guess, is what it is, and the
20 county insisted that we take that plant and have it expandable
21 to 3 million. We said that was fine. And then it lead on to,
22 well, we want ten acres of land to go with it, and we want you
23 to pull all the deep wells in, and we want you to give it to
24 us. And the number went from arguably a \$3 million number to a
25 \$15 million number for water in and of itself.

1 On the wastewater side, we brought to the county an
2 agreement that in our minds was such a good deal that it
3 shouldn't have even been said in a public forum, where they
4 were buying -- they could purchase bulk water from North Fort
5 Myers at a third of the cost it cost them to deliver. That we
6 would put the lines in and that they could keep the excess
7 revenue. And in our estimation that was almost a half a
8 million dollars worth of revenue per year forever.

9 In addition to the impact fees were significantly
10 higher. When I say significantly, roughly three times, if my
11 memory serves me right, three times higher than what North Fort
12 Myers was. So we had almost essentially gifted them an income
13 stream business that cost them zero dollars because we were
14 going to install it and finance it. All we had asked for was
15 to get out money back, and the deals basically fell apart.

16 Q I want to ask you a different question. I want to
17 ask you, the property that your company was dealing with is
18 not -- it's located in entirely one part of the county, is that
19 not right?

20 A Yes, sir.

21 Q And you mentioned that you were talking about
22 seven miles or 12 miles of pipe. That's not that we are
23 talking about here, is it?

24 A To be honest with you, I'm not familiar with this
25 project.

1 MR. ENGELHARDT: I have no further questions at this
2 time.

3 COMMISSIONER McMURRIAN: Commissioners?

4 Mr. Jaeger.

5 MR. JAEGER: Staff has no questions.

6 COMMISSIONER McMURRIAN: Redirect.

7 MR. BRANNAN: Yes, I have a couple of questions.

8 REDIRECT EXAMINATION

9 BY MR. BRANNAN:

10 Q One clarification, in case anybody didn't get it.
11 Your reference to CCU early on in your summary was to Charlotte
12 County Utilities?

13 A That's correct.

14 Q Okay. You mentioned earlier also that you tried to
15 work to receive some capacity from Punta Gorda. Was that for
16 wastewater?

17 A Water only.

18 Q Water only. And so the beginning -- and another
19 clarification would be, when you mentioned running a line up
20 for bulk service from North Fort Myers, that would be for
21 wastewater?

22 A Wastewater only.

23 Q You began this process and purchased the property and
24 everything, did you get a service availability letter?

25 A Yes, sir.

1 Q And then your actions subsequent to that, including
2 the purchase of the property and the rest of your due
3 diligence, all of that work was based upon reliance on that?

4 A Yes, sir.

5 Q What do you think that letter was worth?

6 A Well, they say hindsight is 20/20. I can tell you
7 this, although we -- I'm doing my dead level best not to be too
8 adversarial, but we have been -- all along the Realmark Group
9 has endeavored not to go to litigation, not to go into the
10 utility business, not to have an extension of a franchise area,
11 and up to now we have tried that route. And, in hindsight,
12 that might not have been the proper way to go. In hindsight,
13 if I was going to create a utility and deed it over to
14 somebody, I should have just deeded it over to myself.

15 In hindsight, four years from now, or four years ago
16 I would have been in the utility business as we speak today.
17 Unfortunately, I'm here. I still have nothing, and I'm still
18 paying for property taxes and our property is still for sale.
19 And, unfortunately, the market has changed. Hindsight is 20/20
20 all the time. That piece of paper, what was it worth?
21 Nothing. In fact, it should have been a red flag for us not to
22 purchase the property.

23 Q One final question. Realmark is -- this project over
24 there by Tucker's Grade, Realmark is not a neophyte or new in
25 this industry. You have other projects that are within

1 Charlotte County and in surrounding counties?

2 A That's correct. Presently we have got around
3 2,000 acres of land everywhere from Easley County (phonetic) to
4 Charlotte County. We own property in North Carolina. We
5 actually have a piece of property adjacent to the utility
6 plant, Burnt Store Marina, which is the largest marina on the
7 west coast. It has almost 1,000 boats. We have developed Cape
8 Harbor and other communities.

9 The owner, Will Stout, has been in this business all
10 his life. Unfortunately, I have not been. Or, fortunately.
11 But, no, we actually are not neophytes at this, and have been
12 it at for quite some time.

13 MR. BRANNAN: Thank you very much. I have no further
14 questions.

15 COMMISSIONER McMURRIAN: Mr. Dearden, you can be
16 excused.

17 THE WITNESS: Thank you.

18 COMMISSIONER McMURRIAN: There are no exhibits for
19 Mr. Dearden, right?

20 MR. BRANNAN: That's correct.

21 COMMISSIONER McMURRIAN: I believe that brings us to
22 our last rebuttal witness.

23 MR. FRIEDMAN: That's correct. That is Mr. Hartman.

24 COMMISSIONER McMURRIAN: Let me ask, does anyone need
25 a short break? Actually, let's take a five-minute break.

1 (Recess.)

2 COMMISSIONER McMURRIAN: Everybody ready? I think we
3 will go back on the record. Mr. Friedman or Mr. Brannan.

4 MR. FRIEDMAN: Yes, we call Mr. Hartman.

5 GERALD C. HARTMAN

6 was called as a rebuttal witness on behalf of Sun River
7 Utilities, and having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FRIEDMAN:

10 Q Mr. Hartman, you testified previously, did you not?

11 A Yes, I did.

12 Q And did you prepare prefiled rebuttal testimony in
13 this matter?

14 A Yes, I did.

15 Q Did you have any exhibits to your rebuttal testimony?

16 A Yes, I did.

17 Q And am I correct that those have been marked 14
18 through 18, is that correct?

19 A I would assume so, yes.

20 Q Mr. Hartman, if I were to ask you the questions in
21 your prefiled rebuttal testimony, would your answers be the
22 same as in that testimony?

23 A Yes.

24 Q Do you have any corrections or additions to that
25 testimony?

1 A No, sir.

2 MR. FRIEDMAN: I would like to ask that Mr. Hartman's
3 prefiled rebuttal testimony be inserted into the record as
4 though read.

5 COMMISSIONER McMURRIAN: Mr. Hartman's rebuttal
6 testimony will be inserted into the record as though read.

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1 Q. Are you the same Gerald C. Hartman who provided pre-filed direct testimony
2 in this case?

3 A. Yes.

4 Q. What's the purpose of your rebuttal testimony?

5 A. I will be commenting on the pretrial testimonies of the DCA witness, Charlotte
6 County Director of Utilities, and Charlotte County Planner.

7 Q. Could you provide an overview of your comments?

8 A. Yes. In general the direct testimonies of the three witnesses provide the opinions of
9 those witnesses that the Sun River application for expansion of its water and
10 wastewater certificate are not: (1) timely, (2) consistent with the comprehensive
11 plan, (3) contribute to urban sprawl, (4) if utility service is provided it should be
12 provided by Charlotte County who is not ready, willing, and able to provide such
13 services with existing facilities capacity or by any other means presently.

14 Q. Would you address the timeliness of the application?

15 A. Yes. The application is timely and due to the fact that the utility facilities on the
16 west side of U.S.17 have limited present and available capacity for additional units
17 and the requests for services exceed the capacity that could be derived from that
18 existing location.

19 Q. Does that mean the existing facilities would have to be expanded and a new plant
20 in the future built on a new location?

21 A. Yes. The new water and wastewater facilities to meet demand into the future
22 would be required to be constructed on the east side of U.S. 17 to ultimately serve
23 the service area demands.

24 Q. You have served both MSM and Sun River on utility matters, haven't you?

25 A. Yes.

1 Q. The owners of MSM indicated that there were requests for service as well as that
2 they had development plans for and development interests for additional capacity
3 needs. Isn't that correct?

4 A. Yes. Ben Maltese in his development ventures has a desire for additional capacity
5 which he expressed. In addition, development interests on the west side of U.S. 17
6 generally north and south of the MSM service area have expressed interest to
7 Mr. Maltese for potential service from the only central water and wastewater
8 facility in the area.

9 Q. Were you made aware of requests for service from property owners east of
10 U.S. 17?

11 A. Yes, there has been development interest relative to future educational facilities
12 and other facilities on the east side of U.S. 17 in this area. In addition, both the
13 firm of Rose, Sundstrom & Bentley and Mr. Tony Reeves, the Manager for Sun
14 River Utilities have provided letters and have communicated to me that there has
15 been interest on the east side of U.S. 17 for central water and wastewater service.

16 Q. Typically, do the development interests prefer to secure water and wastewater
17 service prior to going through the land development process?

18 A. Yes. Water and wastewater capacity and the ability to get central water and
19 wastewater service is a component of a planned development. Such planned
20 developments prefer to establish these relationships first and then later go
21 through the development process and develop their properties.

22 Q. There have been statements that until the urban services boundary is moved to the
23 east of U.S.17 development should be limited to the west of U.S. 17 in this
24 corridor. In other words, on one side of the road and not on the other side of the
25 road during the previous testimonies. Have you seen similar instances where

1 investor owned utilities have been certificated outside of the urban services
2 boundary?

3 A. Yes. In Orange County, where one of the first urban services area boundaries was
4 established in the State of Florida, you find several investor-owned utilities
5 outside of the urban services boundary serving major planning developments.
6 Wedgefield is but one that comes to mind.

7 Q. Do you know of any other similar situations?

8 A. Yes, in Marion County there are at least a dozen investor owned utilities both
9 within and outside of the urban land use designations in that County and
10 overlapping the utility service area.

11 Q. Any other instances?

12 A. Yes, in Flagler and Volusia Counties Plum Creek Timber Company has its utilities
13 certificated prior to obtaining all of the land use and zoning approvals. Similarly,
14 in Baker and Union Counties the same situation exists; similarly, again in Volusia
15 Brevard County the same situation exists. Similarly, in the Osceola, Brevard, and
16 Orange County areas the same situation exists in the same process. I could
17 continue around the state.

18 Q. I believe Mr. Hartman you have delineated a few and can elaborate extensively
19 upon the topic of investor owned service areas established prior to receiving
20 all of the land use approvals and going through the extensive and expensive land
21 use process throughout the State and therefore would you state that it is the typical
22 process which occurs?

23 A. Yes.

24 Q. In conclusion, relative to the timeliness issue, does your above referenced rebuttal
25 testimony then address the aspects that were generally raised?

- 1 A. Yes.
- 2 Q. Have you participated in utility planning in Florida?
- 3 A. Yes.
- 4 Q. For how long have you practiced in this area?
- 5 A. In excess of 30 years.
- 6 Q. Did you have any involvement in the Utility Element of the State Comprehensive
- 7 Plan?
- 8 A. Yes. I was on the policy advisory committee when we originally prepared and
- 9 recommended the Utility Element for the State Comprehensive Plan.
- 10 Q. Who appointed you?
- 11 A. Lieutenant Governor Jim Williams.
- 12 Q. Who did you represent?
- 13 A. The American Society of Civil Engineers statewide.
- 14 Q. Typically, what is the time horizon for utility planning?
- 15 A. At least the average service life of the assets and/or renewal and
- 16 replacement service lives as they are extended.
- 17 Q. What does that mean?
- 18 A. Generally in excess of 30 years or longer.
- 19 Q. Have you been involved in water resource planning?
- 20 A. Yes, I have.
- 21 Q. Do you have national papers in the area of water resource planning?
- 22 A. Yes.
- 23 Q. Could you give us an example of one of your regional water resource planning
- 24 efforts?
- 25 A. Yes, I wrote the original master water resource plan and the 5-year, 20-year, and

REBUTTAL TESTIMONY OF GERALD C. HARTMAN, P.E.

1 50-year water resource documents for the West Coast Regional Water Supply
2 Authority as the Project Engineer and later Project Manager for the Authority's
3 Consultant.

4 Q. What areas does this cover?

5 A. From a service area standpoint it covers Pasco, Pinellas, and Hillsborough
6 Counties, as well as the Cities of St. Petersburg and Tampa. From a water
7 resource standpoint it covers a significant portion of the western side
8 of the State of Florida.

9 Q. Do water resource plans change?

10 A. Yes.

11 Q. Do comprehensive plans change?

12 A. Yes.

13 Q. From the information that you received during this case can you comment on the
14 Charlotte County comprehensive plan?

15 A. Yes, it is in the process of being updated which means it is in the process of
16 being changed.

17 Q. Have you read the direct testimony with exhibit of Suzanne K. Lex?

18 A. Yes.

19 Q. What are your comments?

20 A. Ms. Lex accurately reflects that the application for expanded service area has
21 a good portion of the area within the urban services boundary and a larger
22 portion outside the urban services boundary. This conflicts with the County's
23 witnesses on the west side of U.S. 17. Generally, in the request for the proposed
24 franchise expansion those areas to the west of U.S. 17 are within the urban service
25 area; those areas to the east of U.S. 17 are not.

1 Q. Do you have any other comments concerning Ms. Lex's testimony?

2 A. Yes, I have attached GCH-1 which I believe shows the service areas a little bit
3 better than her exhibit, which is attached. Also I have attached GCH-2 which
4 shows the Charlotte County and general service areas with the note that this
5 proposed franchise area is not within those areas shown. I have also included
6 the map prepared by Charlotte County Utilities which is copyrighted 2007
7 as of 3/19/07 shown as GCH-3 depicting the proposed extension of the
8 Sun River service area. I have also expanded the consideration in providing
9 complementing existing land use maps from Desoto County to the Charlotte
10 County maps which are in the record. The Desoto County existing land use
11 map is shown as GCH-4 and the future land use map is depicted as GCH-5.

12 Q. Ms. Lex comments on infrastructure on page 3. Do you have any response?

13 A. Yes. On page 3 lines 6 and 7 she states that the area lacks infrastructure. That is
14 not true. All of the customers that needed service are getting service. The request
15 for service are future items which are scheduled to be provided as the demand is
16 realized. Nonetheless, her comment also means that Charlotte County lacks any
17 infrastructure in the area as an independent witness. Finally, she comments that the
18 expansion area lacks infrastructure and my comment is that of course it does; first
19 one would need to get the certificate, then the land use, then the developer
20 agreements, and then the facilities. On page 4 line 11 she states that in-fill is
21 encouraged and expansion is encouraged where there are central water and sewer
22 facilities. Of course Sun River's assets are central water and sewer facilities,
23 so in-fill within the service area and expansion of the service area would be
24 encouraged.

25 Q. Does Ms. Lex comment on the exceptions to development in the comprehensive

REBUTTAL TESTIMONY OF GERALD C. HARTMAN, P.E.

1 plan?

2 A. Yes, see page 4 lines 14 through 17 which delineates the exceptions for
3 development in the County for new communities, developments for regional
4 impact, or in cases where utilities will provide central potable water and sanitary
5 sewer service in tandem with the urban services area. Such exceptions can
6 apply in the proposed Sun River expanded service area.

7 Q. Ms. Lex states that there are no proposed amendments to the comprehensive plan
8 which would expand the urban services boundary east of U.S. 17. Do you have
9 any comment?

10 A. Yes. The witness knows that the comprehensive plan is in the process of being
11 updated and the witness also knows that abutting and directly to the north in
12 Desoto County, east of U.S. 17, Desoto Count's land use classification is for
13 general mixed use. Specifically, there is a regional Wal-Mart complex abutting
14 the northern portion of the service area on the east side of U.S. 17. Finally,
15 within a mile to the south of the service area the urban service area extends
16 to the east of U.S. 17 on the south side of the Washington Loop Road.
17 Therefore, abutting and directly north land use designation is for general
18 mixed use which provides for intensive use and the commercial Wal-Mart
19 distribution center development as well as other developments and there is an
20 urban center mixed use directly north of that all of which is on the eastern
21 side of U.S. 17. Finally the urban services area does extend east of U.S. 17
22 within a mile south of the proposed service area.

23 Q. Have you reviewed Jeff Pearson's direct testimony?

24 A. Yes.

25 Q. Do you have any comments?

REBUTTAL TESTIMONY OF GERALD C. HARTMAN, P.E.

1 A. Yes. He admits in his direct testimony that Charlotte County has no facilities
2 in the area. He also admits that Charlotte County makes the developer pay for
3 the necessary infrastructure and would require that developer to dedicate it to the
4 County. He also admits that he has no Board of County Commissioners approved
5 plans and agreements at this time to serve in the area. He states that his only way
6 to serve the area would be to develop contracts and facilities into the future from
7 the Peace River Manasota Regional Water Supply Authority for water and from
8 the City of Punta Gorda for sewer and such arrangements have not been put in
9 place; neither have the facilities and there has been no analysis of whether there
10 is capacity for service from these facilities.

11 Q. Have you had experience in the Peace River Manasota facilities where the
12 Utility Director hypothetically suggests potential future wholesale service?

13 A. Yes, at Hartman & Associates, Inc. we were the utilities consultant to Desoto
14 County and provided for the reverse osmosis facilities on the east side of U.S. 17
15 serving the Wal-Mart facilities as well as the pipeline infrastructure associated
16 therewith. Concern in the water system was the ability to meet fire flows and
17 peaking capacities from the pipeline. Due to that fact supporting facilities were to
18 be made available.

19 Q. In your prior role serving Desoto County has Charlotte County Utilities refused
20 service or refused interconnection with Desoto County historically?

21 A. Yes, in the 2002- 2004 time period when Desoto County was
22 desirous of emergency interconnection to support the fire flow requirements for
23 Wal-Mart and to provide for a looped type of water service. Charlotte County
24 refused to construct such facilities, refused the interlocal agreement, and refused
25 service.

1 Q. Did Mr. Pearson comment on the need issue?

2 A. Yes he did. He stated that there was no need because no one had called him which
3 appears in his testimony to be his only basis. Typically developers do not call
4 utilities that do not have facilities in the area. They typically call those utilities
5 which have facilities or have service areas adjacent or would be locally expanded
6 to provide service to them. Just because developers in the area did not call
7 Charlotte County Utilities for service that does not mean the requests for service to
8 MSM and Sun River Utilities are not valid since they are the central and
9 certificated public utility system for water and wastewater in the area.

10 Q. Have you reviewed Mr. Ruggieri's direct testimony?

11 A. Yes.

12 Q. What specific comments do you have?

13 A. Mr. Ruggieri on page 3 line 16 says that the urban services area represents the
14 outer limits for "publically funded infrastructure." In this case Sun River Utilities
15 is not publically funded so his comments are not valid.

16 Q. Any other comments on page 3?

17 A. Yes. Page 3 lines 21 and 22 he admits that the urban services area gets adjusted
18 with certain criteria or Board of County Commissioner approval. Basically he
19 admits that the urban services area can change over time.

20 Q. Does Mr. Ruggieri comment on development and how that development would
21 be getting service?

22 A. Yes. On page 5 lines 5 and 6 he states that this is not a self-supporting
23 development. Obviously it is; there are no needs from the County for water,
24 wastewater, stormwater, and/or reuse infrastructure; therefore it is not a
25 dependent development, it is an independent investor owned public utility

1 corporation. Moreover, a utility service area is not a development. It is simply
2 a utility service area.

3 Q. Any more comments on the urban services area boundary?

4 A. Yes, on page 7 line 1, for the record MSM, never submitted for an urban services
5 area boundary change when they certificated. An investor-owned utility does not
6 have a need to actually do that. On line 7 the witness admits that the County does
7 change land use designations and historically they have. They admit that land use
8 designations which are presently in place do have the ability to change. On page 8
9 this witness admits that the County is in the process of revising its Comp Plan and
10 has had to hire a consultant to do it and finally on page 8 line 21 he admits that
11 the planning horizon ends in 2010 in the Comp Plan which is insufficient in public
12 utility infrastructure planning.

13 Q. Does this conclude your pre-filed rebuttal testimony with Exhibits 1-1 through 1-5.

14 A. Yes.
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1 BY MR. FRIEDMAN

2 Q And, Mr. Hartman, would you give us a brief summary
3 of your rebuttal testimony?

4 A Yes. I'll focus on the rebuttal summary.

5 Q Please do.

6 A The application in my rebuttal summary was that it
7 was timely, and I can state that because in serving MSM
8 Utilities and their development interest today, as well as
9 circling around the area, somebody needs to serve the area.
10 And service in this area has been being considered for at least
11 seven or eight years. DeSoto County, when I was up there, we
12 were looking at things and, yes, I do want to stand corrected
13 if they sold their assets to the Peace River Manasota Regional
14 Water Supply Authority after we designed and built them, then,
15 yes, then the Authority would own them at that time.

16 But we designed those facilities, and there is a fire
17 flow requirement for the Wal-Mart project, and fire protection
18 was a major issue associated with that. You can't build a
19 water system like that without having more than one connection.
20 Because if you just have that one connection down there, then
21 Wal-Mart had to go and build their own fire suppression. They
22 are like limbs of a tree coming together. It would be like,
23 you know, whatever tree you want to pick, oak, elm, whatever,
24 the limbs of the tree come together to get that service. So,
25 at that location, that's what we had to do.

1 Developers must have water and sewer service
2 commitments before going through the complete development
3 process. I work as an appraiser for several banks, and banks
4 don't like to loan money on projects without the entitlements
5 put in place, without signed enforceable contracts put in
6 place, and those types of things.

7 In my experience, the urban service areas and comp
8 plans have changed over time. I put in my rebuttal testimony
9 several different counties where I have experience where they
10 have changed, and I think that has been nonrefuted here.

11 Regarding urban services and the probable future
12 development in the area, when I served Ben and we sold the
13 utility, we understood we were -- there is a sea, if you will,
14 around this area. And we had planned out 1,200 units. So
15 whether the urban services areas were expanded or not, for
16 4,300 acres, one unit per ten acres density is 430 additional
17 units. Taking those units, plus the units on the west side,
18 combining them with a couple hundred units on the south
19 60 acres gave us our 1,200 units that we were looking at for
20 ERC payments over the next ten years.

21 So, through clustering, and you look at those kind of
22 things when you are looking at real money and getting paid, and
23 that's what we looked at. So that contract provided for
24 performance even under the existing zoning one-to-ten, if you
25 did cluster. So the comp plan uses USA's limitation for

1 publicly funded infrastructure and, of course, Sun River is not
2 publicly funded.

3 The existing service area build out, just the
4 existing service area build-out -- I believe you have coffee,
5 if you want to take a break for coffee.

6 (Off the record briefly.)

7 A (Continuing) But the existing service area
8 build-out, and the present zoning across to the east would
9 require more than just a minor expansion in the purchase and
10 sales stock agreement that I helped Ben negotiate with -- Rose
11 Sundstrom and Bentley on the other side, Jerry Beuer was on our
12 side. And after that agreement was negotiated, there was only
13 a minor amount of expansion that could possibly happen at the
14 existing site. We knew that.

15 So in the future for the build-out of the service
16 area as well as the present land use and zoning, we captured
17 that in our future ERC requirement in futures payback to
18 minimize the up-front purchase price, and thereby the
19 capitalization, and thereby the cost in rate base, if you will,
20 of the acquisition of the utility. So, see, it all fits
21 together. So that's what we laid out.

22 I do want to mention that, you know, the 20-inch line
23 coming down and serving to Wal-Mart, Wal-Mart's fire flow
24 requirement is 4,500 gallons per minute. And it's 6.48 MGD, to
25 give you some feel. Three MGD is provided for, you know, for

1 DeSoto County's use, and a 20-inch water main. The capacity of
2 that main is not 20 MGD as was testified earlier. There is
3 hydraulic tables, Hayes and Williams -- they haven't changed,
4 they have been well used -- but if you turn to a 20-inch pipe,
5 you can see at the manual practice velocities of 7 feet per
6 second, you only have 10 MGD, and that is just simple
7 hydraulics. So the representations made before, you know,
8 there isn't a whole lot of excess capacity in that line during
9 a fire flow event.

10 So, as I testified earlier, and as what was confirmed
11 by the county's witness, one option was to run a 20-inch main
12 from the Punta Gorda water treatment plant. Now, understand,
13 that's on the south -- their transmission facilities are coming
14 off Shell Creek, and you have to cross over that long bridge
15 across Shell Creek. That is a major crossing. And then it has
16 to go up and tie in to Wal-Mart. And that was the project we
17 asked to get done to get the backup supply, but the flow was
18 going north, it wasn't coming south. And the testimony here
19 today confirmed the flow was going north to back up the needs
20 in DeSoto County. So, you know, that's the situation there.

21 The wastewater from Punta Gorda, we tried to get
22 wastewater capacity for Wal-Mart from Punta Gorda which, again,
23 the Wal-Mart enterprise area is right here, so it's not a whole
24 lot different from right in here, and they would not --
25 Wal-Mart could not get service from the City of Punta Gorda for

1 wastewater, and the line was very, very long. You're talking
2 tremendous crossings, and a very, very expensive line. We
3 couldn't get regional participation on it, and we couldn't get
4 acceptance by the City of Punta Gorda to do it back then. And
5 this terminates -- those negotiations were no longer going as
6 of 2004, but we tried from 2000 to 2004 to do that.

7 So to say that it's possible, yes, it's possible, but
8 our experience is it hasn't happened and hasn't been
9 implemented. And when we mentioned that the county has a
10 certified service area, or certificate for the service area,
11 it's actually a county created utility service area that I
12 believe this Commission has not certificated. Most county
13 service areas are self-legislated, and so it's not the same
14 thing as a certificate. And I have heard that term being used
15 quite a bit, and that is not the case.

16 COMMISSIONER ARGENZIANO: May I have a question?

17 COMMISSIONER McMURRIAN: Commissioner Argenziano.

18 COMMISSIONER ARGENZIANO: So let me just get this
19 straight. So what you're saying is that the line coming down
20 from DeSoto to Punta Gorda --

21 THE WITNESS: It only comes down -- from DeSoto
22 County it comes down to right here.

23 COMMISSIONER ARGENZIANO: Well, if it were to go all
24 the way down to DeSoto Utility --

25 THE WITNESS: Down to Punta Gorda, which is down

1 here.

2 COMMISSIONER ARGENZIANO: I mean Punta Gorda, I'm
3 sorry, yes.

4 First of all, it would require a larger line,
5 wouldn't it?

6 THE WITNESS: Well, it's a 20-inch -- we had planned
7 it out as a 20-inch water main.

8 COMMISSIONER ARGENZIANO: But you said that the water
9 is -- there is a substantial amount of that water going to the
10 Wal-Mart.

11 THE WITNESS: Well, that is coming out of this
12 20-inch main.

13 COMMISSIONER ARGENZIANO: Okay. All right.

14 THE WITNESS: And its full capacity. To clarify,
15 this full capacity, this line between the Desoto County
16 take-off and meeting a fire flow condition without storage
17 here -- in other words, you could take water in off-peak
18 periods, but not during peaking periods. That would be
19 utilizing up the existing line. Off-peak periods you could get
20 service from that line with storage. But what this second line
21 was, was to give you the backup, because we didn't want to have
22 to build the fire protection system in Wal-Mart and have
23 Wal-Mart try to operate a fire suppression system for
24 7 million gallons per day. That's a big system.

25 Ultimately what happened, the County and Peace River

1 did not go with this project. Wal-Mart had to go back in and
2 build the fire suppression system and storage and high service
3 pumping at multi-millions dollars of cost. And, more recently,
4 the last time I saw the Peace River planning documents, this is
5 still in their plan, because a member entity, DeSoto County,
6 when I was serving DeSoto County, we suggested -- it has never
7 been cut out of the plan, it is always in the plan, but the
8 option that was given the higher proprietary for service to
9 Charlotte County was not this pipeline, it was a pipeline that
10 came across with (inaudible).

11 COMMISSIONER ARGENZIANO: Thank you.

12 COMMISSIONER McMURRIAN: You tender the witness for
13 cross?

14 MR. FRIEDMAN: I thought we had already done that.
15 I was dozing over here and thought we had already done that.

16 Yes, I tender the witness for cross.

17 COMMISSIONER McMURRIAN: Mr. Engelhardt.

18 MR. ENGELHARDT: I have no questions for this
19 witness.

20 COMMISSIONER McMURRIAN: You surprised me, Mr.
21 Engelhardt.

22 MR. JAEGER: I'm not going to break the train here.
23 No questions.

24 COMMISSIONER McMURRIAN: Commissioners, any further
25 questions?

1 MR. FRIEDMAN: I don't have any redirect, either.

2 COMMISSIONER McMURRIAN: Well, I guess what we can do
3 is take a recess.

4 MR. JAEGER: We need to move the exhibits.

5 COMMISSIONER McMURRIAN: Oh, there are the exhibits.
6 I'm sorry.

7 MR. FRIEDMAN: We do have four exhibits for
8 Mr. Hartman. Five, I'm sorry.

9 COMMISSIONER McMURRIAN: Mr. Friedman, do you move
10 his exhibits?

11 MR. FRIEDMAN: Yes, I would move Exhibits 14, 15, 16,
12 17, and 18.

13 COMMISSIONER McMURRIAN: Without objection, those are
14 moved into the record.

15 (Exhibits 14 through 18 admitted into the record.)

16 MR. FRIEDMAN: That concludes our witnesses.

17 COMMISSIONER McMURRIAN: Okay. We have a customer
18 hearing or another opportunity for public testimony at 6:00
19 p.m. So I guess the best thing to do would be to, perhaps,
20 take a break until 6:00 p.m., and then come back and see if we
21 have anyone here to give testimony, and at least wait around.

22 Mr. Jaeger, do I need to adjourn the technical
23 portion of the hearing, or do we just do that at the end of the
24 public testimony portion, as well?

25 MR. JAEGER: I think you can say that concludes the

1 technical portion, and we will reconvene the service hearing at
2 6:00 o'clock.

3 COMMISSIONER McMURRIAN: Thank you. So moved.

4 We are on a recess until 6:00 p.m.

5 (Technical hearing concluded.)

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STATE OF FLORIDA)

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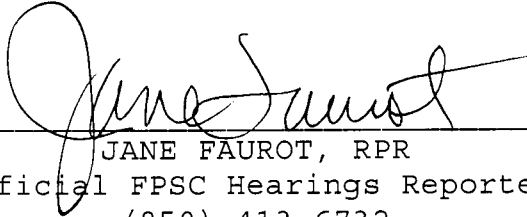
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 24th day of January, 2008.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732

Comprehensive Exhibit List for Entry into Hearing Record

Hearing I.D. #	Witness	I.D. # As Filed	Exhibit Description	Entered
<i>Staff</i>				
1		Exhibit List- 1	Comprehensive Exhibit List	
<i>Testimony Exhibit List</i>				
<i>SUN RIVER UTILITIES, INC. (f/k/a MSM Utilities LLC) (Direct)</i>				
2	A. A. Reeves III	AAR-1	Summary of Experience	
3	A. A. Reeves III	AAR-2	Application for Amendment to Certificates	
4	A. A. Reeves III	AAR-3	Requests for service in the requested service territory	
5	Gerald C. Hartman	GCH-1	Summary of Experience	
6	Gerald C. Hartman	GCH-2	Letter of Engagement	
7	Gerald C. Hartman	GCH-3	Requests for service in the requested service territory	
8	Gerald C. Hartman	GCH-4	Map of Present Service Territory	
<i>CHARLOTTE COUNTY (Direct)</i>				
9	Jeffrey C. Ruggieri	JCR-1	Excerpts from Charlotte County's Comprehensive Plan	
10	Jeffrey L. Pearson	JLP-1	Uniform Extension Policy adopted by Charlotte County	
11	Jeffrey L. Pearson	Late Filed Exhibit 1	Map showing CCU's Service Districts #1 & #2	
<i>STAFF (Direct)</i>				
12	Suzanne K. Lex	SKL-1	Urban Service Area Overlay Map	

FLORIDA PUBLIC SERVICE CO

DOCKET NO. 070109-WS EXHIBIT

COMPANY FPSC Staff

WITNESS Exhibit List

DATE 01-16-04

Comprehensive Exhibit List for Entry into Hearing Record

Hearing I.D. #	Witness	I.D. # As Filed	Exhibit Description	Entered
<i>SUN RIVER UTILITIES, INC. (Rebuttal)</i>				
13	Stephen J. Feldman	SJF-1	Resume of Stephen J. Feldman	
14	Gerald C. Hartman	GCH-1	Additional Map of Present Service Territory	
15	Gerald C. Hartman	GCH-2	Map of Charlotte County and general service areas	
16	Gerald C. Hartman	GCH-3	Charlotte County Utilities Map of Proposed Territory Extension	
17	Gerald C. Hartman	GCH-4	Desoto County Existing Land Use Map	
18	Gerald C. Hartman	GCH-5	Desolo County Future Land Use Map	

Exhibit #	Witness	Counsel	Description	Moved In/Due Date of Late Filed
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Exhibit #	Witness	Counsel	Description	Moved In/Due Date of Late Filed
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HEARING EXHIBITS

Exhibit #	Witness	Counsel	Description	Moved In/Due Date of Late Filed
34				
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EXHIBITS

NUMBER:		ID.	ADMTD.
2, 3 and 4	AAR-1, 2 and 3		61
19	Map Showing Location of Four Properties	53	61
20	Utility's Response to Staff's Interrogatory Number 5	55	61
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SUMMARY OF EXPERIENCE

A.A. REEVES III
6730 Ashley Court
Sarasota, Florida 34241
PHONE: (813) 925-4514

My experience in the utility field includes water, wastewater, gas, electric and cable television.

I began my career in 1958 at Georgia Power Company in the Central Billing Office located in Atlanta, Georgia. Over the next ten years, I worked in every position in the Department regarding the overall customer billing and accounting system for approximately 1 million customers.

In 1968, I moved to Ft. Myers, Florida, and worked at Fort Myers Construction ("FMC"), a unit of Gulf American Corporation. FMC was the land development company for the Florida communities of Cape Coral, Golden Gate and Barefoot Bay and Rio Rico in Arizona, all of which included land clearing, canal dredging, drainage, road construction, water mains and wastewater collection systems.

In January of 1969, General Acceptance Corporation ("GAC") purchased Gulf American Corporation. In July of 1969, the decision was made to set up a separate corporation for the utilities for regulation purposes and to build a professional utility team. Because of my prior utility experience, I was transferred from FMC to the new GAC Utilities Inc. ("GUI") as controller. My first assignment was to set up the books and records of all of the utilities which GAC owned, including Cape Coral in Lee County, Golden Gate and Remuda Ranch in Collier County, Barefoot Bay in Brevard County, Poinciana Utilities Inc. and River Ranch in Polk and Osceola Counties and North Orlando Utilities located in Orange County.

In 1971, GUI purchased Consolidated Water Company ("CWC"). CWC is a utility holding company which owned Northern Michigan Water Company, Indiana Cities Water Corporation, Missouri Cities Water Company, Ohio Suburban Water Company, California Cities Water Company, and Florida Cities Water Company ("FCWC"). FCWC had four operating divisions, South and North Lee County, Sarasota County, Hillsborough County and Polk County. In addition, FCWC also had a subsidiary company, North Florida Water Company, which owned the water system in the City of Marianna. Because of the number of corporations and

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS EXHIBIT 2

COMPANY Sun River Utilities, Inc.

WITNESS A.A. Reeves, III; (AAR-1)

DATE 01-16-08

divisions in Florida, we combined and centralized the management and accounting offices of the Florida companies in Sarasota County. I functioned as Controller and Chief Financial Officer of all Florida Divisions. In addition to the water and wastewater companies, I was responsible for the control of Barefoot Bay Propane Gas Company, a propane gas distribution system located in the Barefoot Bay Project. I also had charge of the accounting for American Cablevision Company, a cable television company with five divisions.

As Controller of the Florida Operations, I reported to the General Manager and was responsible for the books and records of the six (6) corporations which had a total of 16 divisions in 10 counties in Florida and one in Arizona.

My responsibilities included monthly financial reports, budgets, accounting, customer billing, reports to the Florida Public Service Commission ("PSC"), financing, banking, rate case administration, purchasing, accounts payable, quarterly and annual reports to bondholders, intangible tax preparation, gross receipts tax reporting, etc.

In 1977, I was promoted to Vice President and Assistant General Manager. During that time, I set up a computer service company, Aqua Utility Consultants, Inc. ("AUCI"). AUCI was set up to provide computerized utility accounting customer billing for this corporation as well as outside clients.

In 1979, I was promoted to Executive Vice President and Chief Operating Officer. I held this position for twelve years.

As the Executive Vice President and Chief Operating Officer, I was responsible for the complete control of the Florida companies. In this capacity, I was heavily involved with engineering companies, rate consultants, developers, regulatory agencies (Environmental Protection Agency ("EPA"), Department of Environmental Regulation ("DER"), Water Management Districts, County Commissions, Public Service Commission, Department of Natural Resources, etc.).

FCWC was the fourth largest private utility in the State of Florida. FCWC was the most profitable of the CWC subsidiaries. Because of their superior operating performance, two FCWC plants were awarded the E.L. Phelps Award for the Best Operated Advanced Wastewater Treatment Plants in the State 13 out of the last 15 years. FCWC was featured as a profile company in the Water Magazine in 1991.

In October of 1991, I resigned from FCWC to pursue activity in the utility consulting area.

Over the last 47 years in the utility management business, I have been involved in many rate cases and sales of water, wastewater and cable television systems.

I have been involved in the investigation of the purchase of several water/wastewater utilities. My involvement included analyzing the books and records, employee complement, rate orders, financial statements, annual reports, PSC reports, operating reports, on-site visits, preparation of Purchase Agreements, etc.

While I was with FCWC, I negotiated the sale of several companies and divisions. My first was when Florida Gas Corp. purchased the assets of North Orlando Water Company. Then, I was involved with the sale of our water and wastewater operations in Cape Coral to the City of Cape Coral. FCWC then sold three small water divisions in Polk County to a developer by the name of John Wood. FCWC then sold the subsidiary, North Florida Water Company, to the City of Marianna. In each of these sales, I prepared the entire sales package which included the Purchase Agreement, receivables and invoices.

Since resigning from FCWC, I have been managing a wastewater utility, North Fort Myers Utility Inc., located in North Lee County and am also currently managing Sun River Utilities.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109W EXHIBIT 3

COMPANY Sun River Utilities, Inc.

WITNESS A. A. Reeves, III (AAR-2)

DATE 01-16-08

ORIGINAL

RECEIVED REC

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

67 FEB -8 PM 4:22

COMMISSION
CLERK

IN RE: Application of)
MSM UTILITIES, LLC.)
for extension of water and)
wastewater service in)
Charlotte County, Florida.)

Docket No. 070109-WS

APPLICATION FOR AMENDMENT TO
CERTIFICATES OF AUTHORIZATION

MSM UTILITIES, LLC ("MSM"), by and through its undersigned attorneys, and pursuant to Section 367.045(2), Florida Statutes, and Rule 25-30.036, Florida Administrative Code, files this Application for Amendment of Certificates 611-W and 527-S to extend its service area, and in support thereof states:

1. The exact name of the Company and the address of its principal business office is:

MSM UTILITIES, LLC
5660 Bayshore Road, Suite 36
North Fort Myers, Florida 33917
(239) 543-1005

2. The name and address of the person authorized to receive notices and communications in respect to this application is:

*Original Tariffs, MAPs forwarded
to ECR.*

Consent to publish this document
to the public is hereby given by the
applicant.

Utility of person named herein:

1
RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER DATE

01348 FEB-88

FPSC-COMMISSION CLERK

Robert C. Brannan, Esquire
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850)877-6555
(850)656-4029 fax
rbrannan@rsbattorneys.com

3. To the best of Applicant's knowledge, the provision of water and wastewater service to portions of this property by MSM is consistent with the Charlotte County Comprehensive Plan at the time the application is filed. The portions that are not consistent with Charlotte County's Comprehensive Plan are necessary to add continuity to MSM's service area.

4. A copy of the lease to the water and wastewater plant site is attached hereto as Exhibit "A".

5. A description of the territory proposed to be served, using township, range and section references is attached hereto as Exhibit "B".

6. MSM will initially serve this property with its existing water and wastewater treatment plants. Expansions to the plants will be made as necessary to meet demands.

7. MSM uses percolation ponds as its primary method of effluent disposal. The expanded wastewater treatment plant will utilize a combination of several methods of effluent disposal which may include percolation ponds, drainfields and non-public

access irrigation. The plant size will initially be too small to allow public access reuse under current FDEP rules, but as the plant expands, this type of reuse may also be utilized.

8. Detailed maps showing township, range and section with the proposed territory plotted thereon are attached as Exhibit "C". A full size map will be provided to the appropriate Staff.

9. A detailed map showing existing lines and facilities is attached hereto as Exhibit "D". A full size map will be provided to the appropriate staff.

10. MSM operates its wastewater system pursuant to DER Permit No. FLA014062-004-DWF.

11. MSM has both the financial and technical ability to render reasonably sufficient, adequate and efficient service. MSM has recently been purchased by Sun River Utilities, Inc. ("Sun River"). The Application for Authority to Transfer Majority Organizational Control of MSM Utilities, LLC, and Certificates 611-W and 527-S to Sun River Utilities, Inc., is currently pending under Docket No.: 060820-WS. Sun River is a wholly-owned subsidiary of North Fort Myers Utility, Inc. ("NFMU"). NFMU was first certificated by the Commission in Order No. 8025 in 1977 and has undergone a steady and controlled growth and is now the primary wastewater utility provider in

unincorporated northern Lee County. NFMU has funded this expansion with a combination of debt and equity. NFMU has sufficient cash flow to meet its financial obligations as they become due. In addition, NFMU's parent corporation, Sun River's corporate grandparent, Old Bridge Corporation, will provide for any additional capital needs which may arise as the result of the expanded service area. This Commission on numerous occasions in recent years has confirmed NFMU's financial ability.

With response to its technical ability, Tony Reeves, who handles the day-to-day management of NFMU, will also handle the day-to-day management of MSM. Mr. Reeves has over 30 years experience in the operation and management of water and wastewater utility systems. MSM's regulatory accountants are Cronin, Jackson, Nixon & Wilson, CPAs, and its attorneys are the law firm of Rose, Sundstrom & Bentley, LLP. Both of these entities are the preeminent firms in their respective disciplines in the regulation of water and wastewater utilities.

12. MSM plans to arrange for long-term debt financing for the construction of the water and wastewater expansions necessary to serve the expanded territory and to utilize current capacity fees collected from future customers as an offset to

that debt. The projected impact on the utility's capital structure will be to increase long-term debt, offset by CIAC from capacity fees. However, it is anticipated that there will be no material impact in MSM's capital structure in the short term.

13. The territory to be served will consist of residential, commercial and industrial development. The residential units will consist of single family homes, mobile homes, duplexes and apartments. The commercial and industrial development can be predicted due to the widening of US 17 to a four-lane divided highway.

MSM has received letters from the property owners in the proposed service territory requesting inclusion in the expanded territory. Upon investigation, there are no present known plans for Charlotte County Utilities to provide water and wastewater services to the proposed area.

14. There will be no material impact as MSM's monthly rates or service availability charges in the short term. The addition of these new customers will allow additional economies of scale which will allow MSM to continue to operate under its existing rate structure.

15. Attached as Exhibit "E" to the original Application ~~are the original and two copies of the~~ revised tariff sheets reflecting the additional service area. A copy of the revised tariff sheets is attached to each copy of the Application. The original Certificate was submitted to the Commission in connection with its transfer application in Docket No. 060820-WS and a new Certificate has yet to be returned to MSM.

16. Attached as Exhibit "F" is an affidavit that the notice of actual application was given in accordance with Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, by regular mail to the following:

- (1) the governing body of the municipality, county or counties in which the system or territory proposed to be served is located;
- (2) the privately owned water utility that holds a certificate granted by the Public Service Commission and that is located within the county in which the utility or the territory proposed to be served is located;
- (3) if any portion of the proposed territory is within one mile of a county boundary, the utility shall notice the privately owned utilities

located in the bordering counties and holding a
certificate granted by the Commission;

- (4) the regional planning council;
- (5) the Office of Public Counsel;
- (6) the Public Service Commission's Director of
Records and Reporting;
- (7) the appropriate regional office of the Department
of Environmental Protection; and
- (8) the appropriate water management district;

Copies of the Notice and a list of entities
noticed shall accompany the affidavit.

17. Attached Exhibit "G" is an affidavit that the notice
of actual application was given in accordance with Rule 25-
30.030, Florida Administrative Code, by regular mail or personal
delivery to each property owner in the proposed territory.

18. Late Filed Exhibit "H" will be an affidavit that the
notice of application was published once a week in a newspaper
of general circulation in the territory in accordance with Rule
25-30.030, Florida Administrative Code. A copy of the proof of
publication will accompany the affidavit.

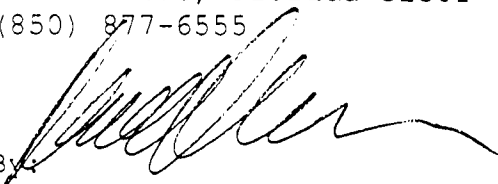
19. In accordance with Section 367.045(2)(c), Florida Statutes, attached hereto as Exhibit "I" is an Affidavit that MSM has on file with the PSC a tariff and annual reports.

20. MSM's rates and current service availability charges were established by Order No. PSC-06-0684-PAA-WS on August 8, 2006, in Docket No. 050587-WS.

21. The area subject to this extension has the capacity under current zoning to serve between 201 and 500 ERCs, so the appropriate filing fee is \$1,000.00, which is attached.

Respectfully submitted on this
8th day of February, 2007, by:

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555



BY: ROBERT C. BRANNAN

EXHIBIT "A"

COPY OF LEASE TO THE WATER AND WASTEWATER PLANT SITE

file

★ #209
OLMSTED & WILSON



FILE 1088604 OR BK 02307 PG 0331 RECD 09/18/2003 03:36:01 PM BARBARA T. SCOTT, CLERK, CHARLOTTE CO
REC 55.50 INDEX 3.00

99-YEAR LEASE AGREEMENT
FOR
WATER AND WASTEWATER TREATMENT FACILITIES

This 99-Year Lease for water and wastewater treatment facilities (the "Lease") is made and entered into between Zola MacLachlan and Janice Fader, successor Trustees of the Ernest E. MacLachlan Revocable Trust and Zola M. MacLachlan, Trustee of the Zola M. MacLachlan Revocable Trust (the "Lessor") and Rivers Edge Utilities, LLC (the Lessee), dated as of the 28th day of August, 2003.

RECITALS

1. Lessor is the owner of the real property in Charlotte County, Florida operated as The Oaks at Rivers Edge located at 1601 Hunter Creek Drive, Punta Gorda, Florida 33982.
2. Lessee is the owner of certain water facilities including a water treatment plant, two water wells, six storage tanks, a transmission and distribution system (the "Water Plant") and certain wastewater facilities including wastewater collection mains, transmission facilities, pumping stations, a treatment plant and disposal system (the "Wastewater Treatment Plant"). The Water Plant and the Wastewater Treatment Plant are sometimes hereafter collectively referred to as the "Systems". The Systems are located within the boundaries of the water and wastewater certificated area granted by the Florida Public Service Commission and service. Lessee's service area is more particularly described as Township 40 South, Range 23 East, Section 12, The NE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East. And The SE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East. And The NW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East. And That portion of Government Lot 2, Section 12, Township 40 South, Range 23 East, lying South of Lee Branch Creek. And The Westerly 30 feet of the SW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East. And Township 40 South, Range 23 East, Section 11, All of Government Lot 5, lying South of Lee Branch Creek in Section 11, Township 40 South, Range 23 East. And The NE 1/4 of the SE 1/4 of Section 11, Township 40 South, Range 23 East, lying East of Hunters Creek.
3. The Leased Premises upon which the water and wastewater treatment facilities, the well, the effluent pond and the spray fields are located within The Oaks at Rivers Edge are more particularly described as the NE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, lying and being in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (WATER AND SEWER PLANT, Parcel I.D. Number 0070972-000100-6, 2.5 acres more or less);

THIS INSTRUMENT PREPARED BY
REGULATORY CONSULTANTS, INC.
C/O OLMSTED & WILSON, P.A.
18501 MURDOCK CIRCLE, SUITE 101
PORT CHARLOTTE, FL 33948

IMAGED
MC

12

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And The SE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, lying and being in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (POND, Parcel I.D. Number 0070973-000000-6, 2.5 acres more or less);

And TRACT 3 of unrecorded Plat of PUNTA GORDA RANCHES, being more particularly described as: Commence at the NE Corner of the NW 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida; thence North 88°25'30" West along the North line of said Section 13, 293.0 feet; thence North 3°04'30" East along the Westerly right of way of A.C.L.R.R., 1573.36 feet for a Point of Beginning; thence continue North 3°04'30" East 360.32 feet; thence North 88°25'30" West 606.14 feet; thence South 0°16'35" West 360.0 feet; thence South 88°25'30" East 588.45 feet to the Point of Beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (SPRAYFIELD, Parcel I.D. Number 0070966-000100-4, 4.94 acres more or less);

And TRACT 4 of unrecorded Plat of PUNTA GORDA RANCHES, being more particularly described as: Commence at the NE corner of the NW 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida; thence North 88°25'30" West along the North line of said Section 13, 293.0 feet; thence North 03°04'40" East, along the Westerly right of way of A.C.L.R.R., 1203.04 feet for a point of Beginning; thence continue North 3°04'30" East, 370.32 feet; thence North 88°25'30" West, 588.45 feet; thence South 0°16'35" West, 370.0 feet; thence South 88°25'30" East, 570.27 feet to the Point of Beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (SPRAYFIELD, Parcel I.D. Number 0070966-000000-5, 4.92 acres more or less)

4. Lessor has agreed to lease the Leased Premises to Lessee pursuant to a Lease Agreement, the terms of which grant Lessee the right to lease the Leased Premises from Lessor; to grant a separate non-exclusive perpetual easement and rights of way through, under, over, on and across The Oaks to patrol, inspect, alter, improve, repair, rebuild, remove, replace, construct, reconstruct, operate and maintain Systems and other attachment, fixtures, equipment, and accessories desirable in connection therewith over, under, through, upon and across The Oaks at such places, streets, parcels and lots as may be necessary for efficient delivery of utility services to all occupants in The Oaks, and to assign such existing easements to Lessee as may be necessary for the foregoing purposes.
5. Lessor acknowledges that Lessee is the sole and exclusive provider of water and wastewater utility service to The Oaks and Lessee acknowledges that it is capable of providing utility services to the residents and the common areas of The Oaks.
6. Lessor and Lessee desire to set forth herein the terms and conditions under which the Lessee shall be granted the sole and exclusive right to use the Leased Premises to operate and maintain the Systems so that Lessee can continue to provide water and wastewater utility services to the residents of The Oaks.

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7. The Parties have negotiated in good faith and are empowered to be bound by the terms and conditions set forth in this Agreement.

ACCORDINGLY, for and in consideration of the sum of Ten (\$10.00) Dollars, the above Recitals and benefits to be derived from the mutual observation of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. AGREEMENT TO LEASE. Subject to the terms and conditions hereinafter set forth, Lessor hereby demises and leases the Leased Premises exclusively to Lessee and Lessee does hereby hire and take the Leased Premises from Lessor.
2. TERM. To have and to hold for a term of ninety-nine (99) years, unless sooner terminated, as provided hereinbelow. The term of this lease shall commence on the date on which the last of the parties executes the Agreement below ("Effective Date") and shall expire ninety-nine (99) years from that date.
3. RENTAL. The rent reserved under this Agreement shall be as follows:
 - (a) Annual rental of \$3,600.00 per year, payable in equal monthly installments of \$300.00 per month, payable the first day of each month.
 - (b) The annual rental amounts in subparagraph (a) above shall increase based upon the Consumer Price Index (as hereinafter defined) commencing on the thirty-seventh (37) month from the date of this Agreement. Every three (3) years thereafter, rental amounts shall be increased to an amount equal to the increase in the Consumer Price Index which shall be determined every three (3) years and paid at the new rental rate adjusted by the cumulative increase over the prior three (3) years. "Consumer Price Index" shall mean the Consumer Price Index which is presently designed as the United States City Average for All Urban Consumers, All Items, with a base period equaling 100 in 1982-84. In the event the statistics are not available or in the event that publication of the Consumer Price Index is modified or discontinued in its entirety, the adjustment provided for herein shall be made on the basis of an index chosen by Lessor as a comparable and recognized index of the purchasing power of the United States consumer dollar published the United States Department of Labor or other governmental agency.
 - (c) Real estate taxes (both ad valorem taxes and non ad valorem taxes) and special assessments, if any, shall be paid by Lessee.
 - (d) Personal property taxes on the Systems, and necessary license and occupational fees, insurance, repair, maintenance and compliance costs for the Systems shall be paid by Lessee.

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4. **CONDITION OF PREMISES.** The Premises are leased subject to any and all conditions that an accurate examination of the Premises would disclose, Lessee agreeing to indemnify Lessor against any and all claims for personal injury or property damage to Lessee's property caused by any defects in the Premises.
5. **SUBORDINATION.** This Lease shall be subject and subordinate at all times to the lien of any mortgage or mortgages, now encumbering the Premises, or which Lessor may at any time place against the Premises. Lessee agrees to execute such documents as may be requested by any mortgagee to evidence the subordination contained herein; provided, however, that as a condition of such subordination, the holder of such mortgage shall be required to agree with Lessee that, notwithstanding the foreclosure of such mortgage, Lessee's occupancy of the Premises shall not be disturbed so long as Lessee is not in default hereunder and attorns to such Mortgagee and agrees to perform all obligations owed to Lessor hereunder for the benefit of such Mortgagee.
6. **REPAIR OF PREMISES.** Lessee will keep the Premises in a clean and sanitary condition during the term of this Lease and any renewal terms, at Lessee's expense, and will comply with all governmental ordinances and directions of proper public officers in connection with such maintenance during the term of this Lease.
7. **NET LEASE.** It is the intent of Lessor and Lessee that this Lease be a "Triple Net Lease", meaning that Lessee shall be responsible for the payment of all insurance, utilities, repairs, maintenance, replacement, sales and use taxes, property taxes and charges and impositions relative to the Premises and/or Lessee's use and occupancy thereof, except that Lessee shall not be responsible for the payment of any mortgages or other liens placed upon the premises by Lessor nor for the payment of any income taxes of Lessor.
8. **ALTERATIONS BY LESSEE.** Lessor agrees that Lessee may make, at its own expense, any alterations, repairs, replacements or additions to the improvements on the Premises, provided:
 - (a) Lessee shall perform such alterations, repairs, replacements or additions, in accordance with the statutes, ordinances, rules, regulations and orders of all public or quasi-public authorities having jurisdiction thereof and in accordance with the rules and regulations of the local board of Fire Insurance Underwriters; and,
 - (b) The Premises shall at all times be kept free and clear of all mechanic's, materialmen's, labor or other liens or claims of liens, and Lessee agrees to indemnify and save harmless Lessor from all claims, demands and liability, including damage to person or property arising out of or in connection with any such work; and,

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Nothing in this Lease shall be construed as in any way constituting a consent or request by Lessor, expressed or implied, by inference or otherwise, to any contractor, sub-contractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific or general improvement, alteration or repair of or to the Premises or to any buildings or improvements thereon or to any part thereof. Pursuant to Florida Statute §713.10, it is the intent of the parties hereto that Lessor's interest in the Premises shall not be subject to any liens filed because of Lessee's failure to make payments in connection with any buildings or improvements installed or constructed on the Premises.

9. UTILITIES. Lessee shall pay for all utility services supplied to the Premises for the benefit of Lessee and shall pay all charges for the collection of refuse from the Premises.
10. LICENSES, FEES AND TAXES. Lessee shall pay all state, county, municipal, occupational or other licenses, fees and taxes which may be imposed upon the business or occupation of Lessee conducted on or from the Premises and shall pay any tax imposed by the State of Florida on rentals. Lessee covenants to promptly pay when due all real property taxes and tangible personal property taxes relating to the Premises. If the term hereof shall end before rendition of a tax bill for such year, Lessee will pay to Lessor Lessee's pro-rata portion of such taxes based upon the assessments for the prior year.
11. USE. The Premises may be used for any and all legal purposes so long as such use does not change the character of the Premises. Except as hereinafter provided, Lessee shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances, in or upon, or connected with, Lessee's use of the Premises. Lessee will not permit the Premises to be used for any purpose or in any manner which would render the insurance thereon void.

In the event Lessee contaminates the Premises or any adjacent property with hazardous waste in connection with its use of the Premises, Lessee agrees to hold harmless and indemnify Lessor, and Lessor's successors and assigns from any and all claims, suits, actions, debts, damages, costs, charges, and expenses, including attorneys' fees, paralegals' fees, legal assistants' fees and costs, and against all liability, losses and damages of any nature whatsoever, that Lessor may at any time sustain by reason of any such contamination.

12. REPRESENTATIONS OF LESSOR. Lessor represents that as of the Commencement Date, the Premises complies with all applicable laws, ordinances, statutes, regulations, orders, rules and restrictions relating thereto (the "Applicable Laws"), and that the Premises and the existing and prior uses thereof (including any uses by its former Lessees) has not prior to the Commencement Date and does not currently violate the provisions of any Applicable Laws relating thereto. If the Premises at any time fails to be in compliance with the Applicable Laws based upon the actions or inactions of Lessor prior to the Commencement Date, Lessee shall notify Lessor of such lack of compliance

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and, within seven (7) days of such notice, Lessor shall take all necessary measures to bring the Premises into compliance with the Applicable Laws.

13. **INSURANCE.** At all times subsequent to the commencement date of the term of this Lease and during the full term, Lessee shall keep the Premises covered, at Lessee's sole cost and expense against claims for personal injury or property damage under a policy of general public liability insurance.

All insurance required to be maintained by Lessee shall be effected by valid and enforceable policies issued by insurers licensed to do business in the State of Florida, countersigned by an agent licensed to do business in Florida and of recognized responsibility satisfactory to Lessor. Within fifteen (15) days after the commencement of the term of this Lease, Lessee shall promptly deliver to Lessor the original policies as specified above and within fifteen (15) days after the premium of each such policy shall become due and payable, such premium shall be paid by Lessee and Lessor shall be furnished with satisfactory evidence of such payment.

All policies of insurance required to be maintained by Lessee shall name Lessee and Lessor as the insureds as their respective interests may appear.

14. **DESTRUCTION BY CASUALTY.** In the event of damage or destruction to the Premises, or any portion thereof, by fire or other cause, Lessee shall have the option to repair or restore the same, as the case may be, at Lessee's expense, or to terminate this Lease. If termination is elected, the provisions of Section 29 hereof shall become applicable.
15. **CONDEMNATION.** In the event that any portion of the Premises or all of the Premises are taken under condemnation proceedings, or by sale under threat of condemnation, Lessee shall have no right to any portion of the condemnation award, except for Lessee's utility property (as discussed herein). If the portion of the Premises taken is such that Lessee is not materially affected in the conduct of Lessee's business, then this Lease shall continue in full force and effect with no abatement of the obligations of Lessee hereunder as though such property was not taken. If, on the other hand, the taking of a portion of the Premises is such as to materially affect the conduct of Lessee's business, then and in that event, Lessee shall have the right to terminate this Lease, subject to the provisions of an equitable abatement of rent hereunder.
16. **ENTRY UPON PREMISES.** Lessee agrees that Lessor may at any reasonable time or times during the business hours of Lessee, enter upon the Premises for the purpose of inspecting the same, or to make necessary repairs where Lessor is obligated to make such repairs or where Lessee is delinquent in making repairs it is obligated to make.
17. **ASSIGNMENTS AND SUBLETTING.** Lessee shall not sublet the Premises or assign this Lease without the written consent of Lessor, which shall not be unreasonably withheld.

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Notwithstanding anything stated above, Lessee shall at all times during the term hereof ~~have the right~~ without having to obtain Lessor's prior approval therefor to assign this Lease or to sublease all or any portion of the Premises to (i) any Affiliate (defined below) of Lessee, any successor entities or persons by virtue of merger, consolidation, liquidation, reorganization or other operation of law; (ii) to the purchaser (or an Affiliate of the purchaser) of any material portion of the assets of Lessee, or any portion of the business conducted by Lessee at the Premises (however, Lessee shall at all times remain responsible for the payment of the Rent hereunder); (iii) any partnership or joint venture in which Lessee or an Affiliate of Lessee is a partner or a joint venturer that actively participates in the business thereof; and (iv) any entity occupying space in the Premises principally for the purpose of providing services to Lessee or its Affiliates. As used in this Lease, the Term "Affiliate" shall mean (i) any person or entity controlling, controlled by or under common control with Lessee, or (ii) any person or entity controlling, controlled by or under common control with Lessee's parent or any subsidiary of any tier of Lessee's parent. "Control" as used herein means the power, directly or indirectly, to direct or cause the direction of the management and policies of the controlled person or entity. The ownership, directly or indirectly, of at least 51% of the voting securities of, or the possession of the right to vote in the ordinary direction of its affairs at least 51% of the voting interest in, any person or entity shall be presumed to constitute such control.

18. **COVENANTS AS TO BREACH AND REMEDIES.** In addition to default by Lessee in any of Lessee's promises or covenants hereunder, either, (a) the appointment of a receiver to take possession of all, or substantially all, of Lessee's property, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act, shall also constitute a breach of this Lease by Lessee.

In the event of breach of this Lease by Lessee, if Lessee has not cured such default within 14 days of Lessee's receipt of written notice from Lessor describing such default, or in the event of renunciation of this Lease by Lessee before the expiration of the term hereof, Lessor may:

- (a) Treat this Lease as terminated and resume possession of the Premises, having immediate right of reentry, and may remove all persons and property from the Premises, and may store such property in a public warehouse or elsewhere at the cost of and for the account of Lessee; or
- (b) Lessor may retake possession of the Premises for the account of Lessee and relet the Premises; or,
- (c) Lessor may stand by and do nothing and shall have the right to sue Lessee for any sums or obligations due hereunder.

OR BOOK 02307 PAGE 0338

No such re-entry or taking possession of the Premises by Lessor shall be construed as an election on its part to terminate this Lease, unless written notice of such intention be given to Lessee, or unless the termination thereof be decreed by a court of competent jurisdiction.

In the event Lessee defaults or breaches any of the terms, conditions or promises of Lessee herein contained, and Lessor is put to the necessity of employing an attorney in order to collect any sum or sums of money which may be due by reason of such default, or otherwise take such steps or legal action as may be necessary to enforce such terms, conditions or promises, then Lessee agrees to pay reasonable attorneys' fees, paralegals' fees, legal assistants' fees and court costs and expenses in connection therewith.

19. **PERFORMANCE BY LESSOR OF LESSEE'S OBLIGATIONS.** In the event Lessor shall pay or be compelled to pay a sum of money, or to do any act which requires the payment of any money, by reason of the failure of Lessee to perform one or more of the covenants herein contained to be kept and performed by Lessee, then in such event, the sum or sums so paid by Lessor, together with all interest, expense or obligations incurred by Lessor, shall be considered as additional rent and shall be due and payable from Lessee to Lessor.
20. **NOTICES.** All notices to be given to Lessee shall be given in writing, personally, or by depositing the same in the United States Mails, certified or registered, return receipt requested, postage prepaid and addressed to Lessee at 1601 Hunter Creek Drive, Punta Gorda, FL 33982. Notices and rental payments hereunder to be given to Lessor shall be given in a like manner and addressed to Lessor at 29000 Tamayo Drive, Punta Gorda, FL 33982 or such other address as Lessor shall hereafter designate in writing. Notice shall be deemed to have been given upon receipt if given by personal delivery or three (3) days after deposit in the mail if mailed.
21. **WAIVER.** In the event Lessor does not insist on a strict performance of any of the terms and conditions hereof, such shall not be deemed a waiver of the rights or remedies that Lessor shall have to insist upon strict performance of any such terms or conditions in the future or any other conditions and terms of this Lease.
22. **SUCCESSORS AND ASSIGNS.** The conditions and covenants herein contained shall apply to and bind the heirs, successors, personal representatives and assigns, where allowed, of the parties hereto.
23. **INVALIDITY OF ANY PROVISIONS.** If any term, covenant, condition or provision of this Lease shall be held to any extent to be invalid or unenforceable under applicable law, the remaining terms, covenants, conditions and provisions of this Lease shall not be affected thereby but shall remain in full force and effect.
24. **MISCELLANEOUS.** The masculine, feminine or neuter gender, wherever used herein, shall be deemed to include the masculine, feminine and neuter whenever and wherever

OR BOOK 02307 PAGE 0339

applicable herein. Whenever the singular is used it shall be deemed to include the plural whenever and wherever applicable herein.

25. **HAZARDOUS SUBSTANCES.** Lessee shall indemnify, protect and hold harmless Lessor and each of its respective subsidiaries from and against all costs and damages incurred by Lessor in connection with the presence, emanation, migration, disposal, release or threatened release of any oil or other petroleum products or hazardous materials or substances on, within, or to or from the Premises as a result of (i) the operations of the Lessee after the Commencement Date and (ii) the activities of third parties affiliated with Lessee or invited on the Premises by Lessee. Lessor shall indemnify, protect and hold harmless Lessee and each of its respective subsidiaries from and against all costs and damages incurred by Lessee in connection with the presence, emanation, migration, disposal, release or threatened release of any oil or other petroleum products or hazardous materials or substances on, within, or to or from the Premises as a result of (i) any activity or action by any party prior to the Commencement Date, (ii) the condition of the Premises prior to the Commencement Date, including any future manifestations of such conditions, or (iii) the activities of Lessor or the activities of any third party not affiliated with Lessee and not invited on the Premises by Lessee. Each party agrees that such party will promptly give written notice to the other party of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Premises and any hazardous substance or environmental law of which such party has actual notice.
26. **REQUIRED STATEMENT.** Florida Statute §404.056(7) requires the following statement to be included in this Lease: RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
27. **WAIVER OF JURY TRIAL.** Lessor and Lessee hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other or any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Premises, and/or claim of injury or damage.
28. **RELATIONSHIP OF THE PARTIES.** Nothing herein contained shall be deemed or construed as creating the relationship of principal and agent or of partnership or joint venture between Lessor and Lessee; it being understood and agreed that neither the method of computing rent nor any other provision contained herein nor any acts of Lessor and Lessee shall be deemed to create any relationship between the parties other than that of Lessor and Lessee.

DR BOOK 02307 PAGE 0340

29. OBLIGATIONS OF LESSEE ON TERMINATION. Lessee agrees that upon the termination of this Lease for whatever reason, either upon the completion of the term hereof or otherwise, it will, at its sole cost and expense, (i) cause the water and wastewater treatment plants situated on the Premises and all percolation ponds, drainfields and other components of the utility system situated on the Premises (but exclusive of lines and laterals which are underground) to be decommissioned in accordance with all applicable regulations of the Florida Department of Environmental Protection, Sarasota County and any other state or federal agency having jurisdiction; (ii) remove all equipment, fixtures and personalty from any structures on the Premises.

30. QUIET ENJOYMENT. Lessor covenants that it now has good title to the Premises, free and clear of all liens and encumbrances. Lessor represents and warrants that it has full right and authority to enter into this Lease and that Lessee, upon paying the rental herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance or molestation from Lessor, subject to the terms and provisions of this Lease.

31. LIABILITY.

(a) Lessee shall be liable to Lessor for and shall indemnify and hold harmless Lessor and Lessor's partners, venturers, directors, officers, agents, employees, invitees, visitors and contractors from all claims, losses, costs, damages or expenses (including but not limited to attorney's fees) resulting or arising or alleged to result or arise from any and all injuries to or death of any person or damage to or loss of any property caused by any negligence or intentional misconduct of Lessee or Lessee's partners, venturers, directors, officers, agents, employees, or by any breach, violation or non-performance of any covenant of Lessee under this Lease other than any injury or damage arising (or alleged to arise) out of any negligence, intentional misconduct or breach of the term of this Lease by Lessor or Lessor's partners, venturers, directors, officers, agents, or employees. If any action or proceeding should be brought by or against Lessor in connection with any such liability or claim, Lessee, on notice from Lessor, shall defend such action or proceeding, at Lessee's expense, by or through attorneys reasonably satisfactory to Lessor.

(b) Lessor shall be liable to Lessee for and shall indemnify and hold harmless Lessee and Lessee's partners, venturers, directors, officers, agents, employees, invitees, visitors and contractors from all claims, losses, costs, damages or expenses (including but not limited to attorney's fees) resulting or arising or alleged to result or arise from any and all injuries to or death of any person or damage to or loss of any property caused by any negligence or intentional misconduct of Lessor or Lessor's partners, venturers, directors, officers, agents, or employees, or by any breach, violation or non-performance of any covenant of Lessor under this Lease other than any injury or damage arising (or alleged to arise) out of any negligence, intentional misconduct or breach of the term of this

DR BOOK 82387 PAGE 8341

GUARANTY OF PERFORMANCE

For valuable consideration, the undersigned irrevocably and unconditionally guarantees to Lessor the full, faithful and punctual performance by Lessee of all of Lessee's covenants and agreements contained in this Lease, or any extensions or renewals thereof, and agrees that any extensions, postponements, either of payment or enforcement, waivers, releases of any rights against any party, or releases of any security shall not affect the undersigned's absolute and unconditional liability hereunder. Demand, notice of default or of nonpayment, and all suretyship defenses whatsoever are hereby waived.

Dated, signed, sealed, and delivered as of the date set forth below.

WITNESSES:
[Signature]
[Signature]

Zola MacLachlan and Janice Fader,
successor Trustees of the Ernest E.
MacLachlan Revocable Trust and
Zola M. MacLachlan, Trustee of the
Zola M. MacLachlan Revocable Trust

By: [Signature]
As its: [Signature]

Date of Execution: 8/28/03

BY: [Signature]
JANICE FADER, TRUSTEE

WITNESSES:
[Signature]
[Signature]

Rivers Edge Utilities, LLC

By: [Signature]
As its: [Signature]

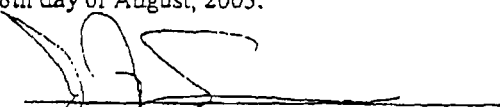
Date of Execution: 9/2/03

OR BOOK 02387 PAGE 0342

STATE OF FLORIDA
COUNTY OF CHARLOTTE

THE FOREGOING instrument was sworn to and subscribed before me this 28th day of August, 2003, by ZOLA M. MacLACHLAN, and JANICE FADER, successor Trustees of the ERNEST E. MacLACHLAN REVOABLE TRUST, and ZOLA M. MacLACHLAN, Trustee of the ZOLA M. MacLACHLAN REVOCABLE TRUST, to me personally known.

WITNESS my hand and seal this 28th day of August, 2003.



Notary Public

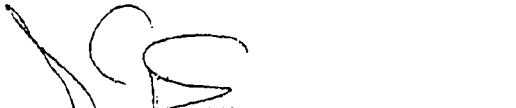


Ida J. Spencer
Commission # DD 026250
Expires June 25, 2006
Bonded Thru
Atlantic Bonding Co., Inc.

STATE OF FLORIDA
COUNTY OF CHARLOTTE

THE FOREGOING instrument was sworn to and subscribed before me this 2nd day of September, 2003, by JANICE FADER, as a Member/Manager of HUNTER CREEK UTILITIES, LLC., to me personally known.

WITNESS my hand and seal this 2nd day of September, 2003.



Notary Public



Ida J. Spencer
Commission # DD 026250
Expires June 25, 2006
Bonded Thru
Atlantic Bonding Co., Inc.

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9 to 2004
This instrument prepared
David E. Olmsted
Olmsted & Wilson, P.A.
17801 Murdock Circle, Suite A
Port Charlotte, FL 33948

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ASSIGNMENT AND ASSUMPTION OF LEASE

This Assignment and Assumption of Lease, made as of the 15th day of December, 2004, by and between ZOLA'S FAMILY TRUST, L.P., a Pennsylvania limited partnership, successor to ZOLA M. MacLACHLAN and MARYLU FITZPATRICK, Trustees of the ZOLA M. MacLACHLAN REVOCABLE TRUST dated August 9, 1994, and ZOLA MacLACHLAN and JANICE FADER, successor Trustees of the ERNEST E. MacLACHLAN REVOCABLE TRUST dated August 9, 1994, ("Assignor") and WATERFRONT HOMES OF CHARLOTTE, LLC, a Florida limited liability company ("Assignee").

WHEREAS, Assignor and Assignee have entered into that certain Land Contract, as Amended, whereby Assignor has agreed to sell and Assignee has agreed to purchase all of Assignor's right, title, and interest in and to a certain parcel of real estate located in Charlotte County, Florida ("the Premises"), as the same is more fully described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, a portion of said Premises is subject to a 99-Year Lease Agreement for Water and Wastewater Treatment Facilities dated September 5, 2003, (the "Lease"), said Lease having been recorded in Official Records Book 2307, Page 331, of the Public Records of Charlotte County, Florida; and,

WHEREAS, Assignor is the Lessor in said Lease, and wishes to assign its rights and obligations as Lessor to Assignee; and,

WHEREAS, simultaneously with the execution of this Assignment, the Lessee in said Lease, RIVERS EDGE UTILITIES, LLC, is assigning its interest to MSM UTILITIES, LLC, and the execution of this Agreement by Assignor and Assignee constitutes their consent to said assignment.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign all of Assignor's right, title, and interest as Lessor in and to the Lease subject to all encumbrances and restrictions effecting Assignor's interest in the Premises and in the Lease, and Assignee does hereby accept said assignment and agrees to be bound by, and to perform, all duties and obligations of Lessee under the terms and provisions of the Lease. Assignee releases Assignor from liability for all obligations under the Lease and indemnifies Assignor from all liability arising after the date hereof.

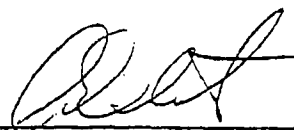
BARBARA T. SCOTT, CLERK
CHARLOTTE COUNTY
OR BOOK 02605
PGS 1199-1205 (7 Pg(s))
FILE NUMBER 1310707
RECORDED 12/22/2004 04:46:19 PM
RECORDING FEES 61.00
INDEX FEES 4.00

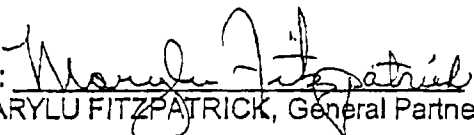
IMAGED IN MURDOCK
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IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption of Lease under seal as of the day and year first above written.

Signed in the presence of:

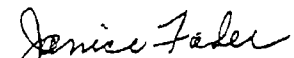
ZOLA'S FAMILY TRUST, L.P., a
Pennsylvania limited partnership


Witness: David E. Olmsted

By: 
MARYLU FITZPATRICK, General Partner


Witness: Diane M. Ricciardi



Witness: David E. Olmsted


JANICE FADER, Successor Trustee of
the ERNEST E. MacLACHLAN TRUST
dated 8/9/1994

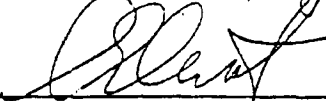

Witness: Diane M. Ricciardi

Signed in the presence of:

WATERFRONT HOMES OF
CHARLOTTE, LLC., A Florida
limited liability company


Witness: Erica S. Rogan

By: 
BEN J. MALTESE, Managing Partner


Witness: David E. Olmsted

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing was acknowledged before me this 15th day of December, 2004, by MARYLU FITZPATRICK, as General Partner of ZOLA'S FAMILY TRUST, L.P., a Pennsylvania limited partnership, who is personally known to me, or who produced _____ as identification.

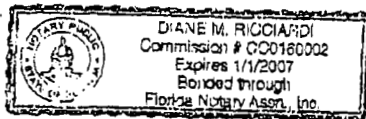


[Handwritten Signature]

Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing was acknowledged before me this 15th day of Dec, 2004, by JANICE FADER, successor Trustee of the ERNEST E. MacLACHLAN REVOCABLE TRUST, who is personally known to me, or who produced _____ as identification.



[Handwritten Signature]

Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing was acknowledged before me this 15th day of December, 2004, by BEN J. MALTESE, Managing Partner of WATERFRONT HOMES OF CHARLOTTE, LLC., a Florida limited liability company, who is personally known to me, or who produced _____ as identification.



David E. Olsted
MY COMMISSION # DD039964 EXPIRES
August 23, 2005
BONDED THRU TROY FAIR INSURANCE, INC.

[Handwritten Signature]

Notary Public
My Commission Expires:

Signed in the presence of:

[Signature]
Witness: *JANE CAMPBELL*

Zola MacLachlan
ZOLA MacLACHLAN, Successor
Trustee of the ERNEST E. MacLACHLAN
TRUST dated 8/9/1994

[Signature]
Witness: *Lynette R. M. Gray*

STATE OF PENNSYLVANIA
COUNTY OF WASHINGTON

The foregoing was acknowledged before me this 13th day of December, 2004, by ZOLA MacLACHLAN, successor Trustee of the ERNEST E. MacLACHLAN REVOCABLE TRUST, who is personally known to me, or ~~who produced~~ _____ as identification.



Dona C. Hamilton
Notary Public
My Commission Expires:
Notary Seal September 25, 2005

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Dona C. Hamilton, Notary Public
North Franklin Twp., Washington County
My Commission Expires Sept. 25, 2005
Member, Pennsylvania Association of Notaries

EXHIBIT "A"

The Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of the Southwest 1/4, lying and being in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (I.D. No. 0070972-000100-6).

AND

The Southeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of the Southwest 1/4, lying and being in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (I.D. No. 0070973-000000-6).

AND

The Northwest 1/4 of the Southwest 1/4 of Section 12, Township 40 South, Range 23 East, and that portion of Government Lot 2, Section 12, Township 40 South, Range 23 East, lying South of Lee Branch, and all of government Lot 5, lying South of Lee Branch, Section 11, Township 40 South, Range 23 East, Charlotte County, Florida; LESS portion platted as Hunter Creek Village Phase I, a subdivision as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida (I.D. Nos. 0070873-000500-2, 00708893-001000-1, and 0070893-001500-6).

LESS AND EXCEPT:

All that tract or parcel of land lying in Government Lot 5, Section 11, and Government Lot 2, Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, and being more particularly described as follows: Commencing at the Southeast corner of Government Lot 2, Section 12, Township 40 South, Range 23 East, run North 0°14'00" East, 657.38 feet to a concrete monument; thence North 88°46'30" West, 329.75 feet to a concrete monument; said monument lying on the Northerly right-of-way line of the Florida Power and Light Company easement; thence North 85°35'12" West along the Northerly right-of-way line of Florida Power and Light Company, 980 feet to an iron pin and the Point of Beginning; thence continue North 85°35'12" West along said right-of-way line 353.00 feet, plus or minus, to its point of intersection with the mean high water line of Hunter Creek Village Phase I; thence in a Northeasterly direction following the meanderings of the mean high water line of Hunter Creek Village Phase I, 485.0 feet, plus or minus, to its point of intersection with a line running North 4°24'43" East, from the Point of Beginning; thence South 4°24'43" West, 322.00 feet, plus or minus, to an iron pin and the Point of Beginning; together with 10 feet along and adjacent to the Southerly boundary of said property; said 10 foot strip constituting a portion of the easement described in O.R. Book 372, Page 403, Public Records of Charlotte County, Florida.

AND LESS AND EXCEPT:

The East 1/2 of the Northeast 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

AND

Tract B, and that portion of Lake Quail, all as shown on the plat of HUNTER CREEK VILLAGE PHASE I, a subdivision as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida (Tax I.D. Nos. 0086591-000380-4 and 0086591-000384-0).

AND

Tract 3 of unrecorded plat of Punta Gorda Ranches, being more particularly described as follows: Commence at the Northeast corner of the Northwest 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida; thence North 88°25'30" West along the North line of said Section 13, 293.0 feet; thence North 03°04'30" East along the Westerly right-of-way of A.C.L.R.R., 1573.36 feet for a Point of Beginning; thence continue North 03°04'30" East, 360.32 feet; thence North 88°25'30" West 606.14 feet; thence South 0°16'35" West 360.0 feet; thence South 88°25'30" East, 588.45 feet to the Point of Beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida. SUBJECT TO an easement across the West 25 feet for road (Tax I.D. No. 0070966-000100-4).

AND

Tract 4 of unrecorded plat of Punta Gorda Ranches, being more particularly described as follows: Commence at the Northeast corner of the Northwest 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida; thence North 88°25'30" West along the North line of said Section 13, 293.0 feet; thence North 03°04'30" East along the Westerly right-of-way of A.C.L.R.R., 1203.04 feet for a Point a Beginning; thence continue North 03°04'30" East, 370.32 feet; thence North 88°25'30" West, 588.45 feet; thence South 0°16'35" West, 370.0 feet; thence South 88°25'30" East, 570.27 feet to the Point of beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida. SUBJECT TO an easement across the West 25 feet for road (Tax I.D. No. 0070966-000000-5).

AND

The South 30 feet of Lot 18, and the North 30 feet of Lot 19, PINEHURST SUBDIVISION, a subdivision according to the plat thereof as recorded in Plat Book 8, Page 10, of the Public Records of Charlotte County, Florida (Tax I.D. No. 0090841-000500-9).

AND

Tract 11 - Commence at the Southeast corner of the Southwest 1/4 of the Southwest 1/4 of Section 12, Township 40 South, Range 23 East; thence North 0°16'35" East, 1315.21 feet for a Point of Beginning; thence continue North 0°16'35" East, 438.40 feet; thence

South 88°25'30" East, 511.21 feet; thence South 0°16'35" West, 438.40 feet; thence North 88°35'30" West, 511.21 feet to the Point of Beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (Tax I.D. No. 0070967-000000-4).

AND

The Northeast 1/4 of the Northeast 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida (Tax I.D. No. 0070981-000500-1),

LESS AND EXCEPT the right-of-way for a public highway along the East side of said land, and

LESS AND EXCEPT the right-of-way for a public road along the north line of said land, and

LESS AND EXCEPT the following: Commence at the Northeast corner of said Section 13; thence along the North boundary of said section 13, North 88°26'45" West, 45.15 feet to the westerly maintained right-of-way line of State Road 35 (U.S. 17) for a Point of Beginning; thence along said westerly maintained right-of-way line South 00°23'35" West, 330.28 feet; thence North 88°24'16" West, 8.00 feet; thence North 00°23'35" East, 330.28 feet to said North boundary of Section 13; thence along said North boundary South 88°26'45" East, 8.00 feet to the Point of Beginning.

TOGETHER WITH access over the public right-of-way as shown on the plat of Hunter Creek Village, Phase I, as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida, as originally established by instruments recorded in O.R. Book 551, Page 1357, O.R. Book 551, Page 1359, O.R. Book 568, Page 1347, O.R. Book 612, Page 1945, and O.R. Book 626, Page 1414, all of the Public Records of Charlotte County, Florida.

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ASSIGNMENT AND ASSUMPTION OF LEASE

This Assignment and Assumption of Lease, made as of the 15th day of Nov, 2004, by and between RIVERS EDGE UTILITIES, LLC, a Florida limited liability company ("Assignor"), and MSM UTILITIES, LLC, a Florida limited liability company ("Assignee").

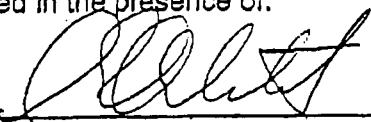
WHEREAS, Assignor operates a Water and Wastewater Treatment Facility, which facility is located on certain real property subject to 99-Year Lease Agreement for Water and Wastewater Treatment Facilities dated September 5, 2003, (the "Lease"), said Lease having been recorded in Official Records Book 2307, Page 331, of the Public Records of Charlotte County, Florida, and in which Lease Assignor is the Lessee; and


WHEREAS, Assignor desires to assign, and Assignee desires to acquire, the rights and obligations of Lessee under said Lease, and the Lessor of said Lease has consented to the assignment.

NOW, THEREFORE, In consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby assign all of Assignor's right, title, and interest as Lessee in and to the Lease subject to all encumbrances and restrictions affecting Assignor's interest in the Premises and in the Lease, and Assignee does hereby accept said assignment and agrees to be bound by, and to perform, all duties and obligations of Lessee under the terms and provisions of the Lease. Assignee releases Assignor from liability for all obligations under the Lease and indemnifies Assignor from all liability arising after the date hereof.


IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption of Lease under seal as of the day and year first above written.

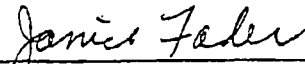
Signed in the presence of:


Witness: David E. Olmsted


Witness: Diane M. Ricciardi

RIVERS EDGE UTILITIES, LLC., a
Florida limited liability company

By: 
MARYLU FITZPATRICK, Manager

By: 
JANICE FADER, Manager

BARBARA T. SCOTT, CLERK
CHARLOTTE COUNTY
OR BOOK 02605
PGS 1206-1210 (5 Pg(s))
FILE NUMBER 1310708
RECORDED 12/22/2004 04:46:19 PM
RECORDING FEES 44.00

IMAGED IN MURDOCK

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

Signed in the presence of:

MSM UTILITIES, LLC., a
Florida limited liability company

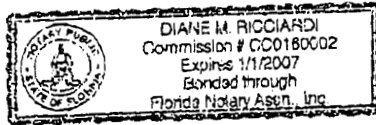
Erica Regan
Witness: *Erica Regan*

By: *B. J. Maltese*
BEN J. MALTESE, Managing Partner

David E. Olmsted
Witness: David E. Olmsted

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing was acknowledged before me this 15th day of November,
2004, by MARYLU FITZPATRICK and JANICE FADER, as Managers of RIVERS EDGE
UTILITIES, LLC., a Florida limited liability company, who are personally known to me, or
who produced _____ as identification.



[Signature]
Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF CHARLOTTE

The foregoing was acknowledged before me this 15th day of December,
2004, by BEN J. MALTESE, Managing Partner of MSM UTILITIES, LLC., a Florida limited
liability company, who is personally known to me, or who produced
_____ as identification.

[Signature]
Notary Public
My Commission Expires:

THIS INSTRUMENT PREPARED BY:
David E. Olmsted
Olmsted & Wilson, P.A.
17801 Murdock Circle, Suite A
Port Charlotte, FL 33948



David E. Olmsted
MY COMMISSION # DD039666 EXPIRES
August 23, 2005
BONDED THROUGH TROY FAIR INSURANCE, INC.

EXHIBIT "A"

The Northeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of the Southwest 1/4, lying and being in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (I.D. No. 0070972-000100-6).

AND

The Southeast 1/4 of the Northwest 1/4 of the Southwest 1/4 of the Southwest 1/4, lying and being in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (I.D. No. 0070973-000000-6).

AND

The Northwest 1/4 of the Southwest 1/4 of Section 12, Township 40 South, Range 23 East, and that portion of Government Lot 2, Section 12, Township 40 South, Range 23 East, lying South of Lee Branch, and all of government Lot 5, lying South of Lee Branch, Section 11, Township 40 South, Range 23 East, Charlotte County, Florida; LESS portion platted as Hunter Creek Village Phase I, a subdivision as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida (I.D. Nos. 0070873-000500-2, 00708893-001000-1, and 0070893-001500-6).

LESS AND EXCEPT:

All that tract or parcel of land lying in Government Lot 5, Section 11, and Government Lot 2, Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, and being more particularly described as follows: Commencing at the Southeast corner of Government Lot 2, Section 12, Township 40 South, Range 23 East, run North 0°14'00" East, 657.38 feet to a concrete monument; thence North 88°46'30" West, 329.75 feet to a concrete monument; said monument lying on the Northerly right-of-way line of the Florida Power and Light Company easement; thence North 85°35'12" West along the Northerly right-of-way line of Florida Power and Light Company, 980 feet to an iron pin and the Point of Beginning; thence continue North 85°35'12" West along said right-of-way line 353.00 feet, plus or minus, to its point of intersection with the mean high water line of Hunter Creek Village Phase I; thence in a Northeasterly direction following the meanderings of the mean high water line of Hunter Creek Village Phase I, 485.0 feet, plus or minus, to its point of intersection with a line running North 4°24'43" East, from the Point of Beginning; thence South 4°24'43" West, 322.00 feet, plus or minus, to an iron pin and the Point of Beginning; together with 10 feet along and adjacent to the Southerly boundary of said property; said 10 foot strip constituting a portion of the easement described in O.R. Book 372, Page 403, Public Records of Charlotte County, Florida.

AND LESS AND EXCEPT:

The East 1/2 of the Northeast 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

AND

~~Tract B, and that portion of Lake Quail, all as shown on the plat of HUNTER CREEK VILLAGE PHASE I, a subdivision as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida (Tax I.D. Nos. 0086591-000380-4 and 0086591-000384-0).~~

AND

Tract 3 of unrecorded plat of Punta Gorda Ranches, being more particularly described as follows: Commence at the Northeast corner of the Northwest 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida; thence North 88°25'30" West along the North line of said Section 13, 293.0 feet; thence North 03°04'30" East along the Westerly right-of-way of A.C.L.R.R., 1573.36 feet for a Point of Beginning; thence continue North 03°04'30" East, 360.32 feet; thence North 88°25'30" West 606.14 feet; thence South 0°16'35" West 360.0 feet; thence South 88°25'30" East, 588.45 feet to the Point of Beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida. SUBJECT TO an easement across the West 25 feet for road (Tax I.D. No. 0070966-000100-4).

AND

Tract 4 of unrecorded plat of Punta Gorda Ranches, being more particularly described as follows: Commence at the Northeast corner of the Northwest 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida; thence North 88°25'30" West along the North line of said Section 13, 293.0 feet; thence North 03°04'30" East along the Westerly right-of-way of A.C.L.R.R., 1203.04 feet for a Point a Beginning; thence continue North 03°04'30" East, 370.32 feet; thence North 88°25'30" West, 588.45 feet; thence South 0°16'35" West, 370.0 feet; thence South 88°25'30" East, 570.27 feet to the Point of beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida. SUBJECT TO an easement across the West 25 feet for road (Tax LD. No. 0070966-000000-5).

AND

The South 30 feet of Lot 18, and the North 30 feet of Lot 19, PINEHURST SUBDIVISION, a subdivision according to the plat thereof as recorded in Plat Book 8, Page 10, of the Public Records of Charlotte County, Florida (Tax I.D. No. 0090841-000500-9).

AND

Tract 11 - Commence at the Southeast corner of the Southwest 1/4 of the Southwest 1/4 of Section 12, Township 40 South, Range 23 East; thence North 0°16'35" East, 1315.21 feet for a Point of Beginning; thence continue North 0°16'35" East, 438.40 feet; thence

South 88°25'30" East, 511.21 feet; thence South 0°16'35" West, 438.40 feet; thence North 88°35'30" West, 511.21 feet to the Point of Beginning. All lying in Section 12, Township 40 South, Range 23 East, Charlotte County, Florida (Tax I.D. No. 0070967-000000-4).

AND

The Northeast 1/4 of the Northeast 1/4 of the Northeast 1/4 of the Northeast 1/4 of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida (Tax I.D. No. 0070981-000500-1),

LESS AND EXCEPT the right-of-way for a public highway along the East side of said land, and

LESS AND EXCEPT the right-of-way for a public road along the north line of said land, and

LESS AND EXCEPT the following: Commence at the Northeast corner of said Section 13; thence along the North boundary of said section 13, North 88°26'45" West, 45.15 feet to the westerly maintained right-of-way line of State Road 35 (U.S. 17) for a Point of Beginning; thence along said westerly maintained right-of-way line South 00°23'35" West, 330.28 feet; thence North 88°24'16" West, 8.00 feet; thence North 00°23'35" East, 330.28 feet to said North boundary of Section 13; thence along said North boundary South 88°26'45" East, 8.00 feet to the Point of Beginning.

TOGETHER WITH access over the public right-of-way as shown on the plat of Hunter Creek Village, Phase I, as recorded in Plat Book 15, Page 54, of the Public Records of Charlotte County, Florida, as originally established by instruments recorded in O.R. Book 551, Page 1357, O.R. Book 551, Page 1359, O.R. Book 568, Page 1347, O.R. Book 612, Page 1945, and O.R. Book 626, Page 1414, all of the Public Records of Charlotte County, Florida.

EXHIBIT "B"

DESCRIPTION OF THE TERRITORY PROPOSED TO BE SERVED

EXHIBIT "B"

Legal description of territory proposed to be added:

A portion of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida, being more specifically described as follows:

Commence at the Southeast corner of said Section 13: Thence South 87 degrees 21'06" West along the South line of said Section 13, a distance of 91.87 feet to the West right-of-way of State Road #35 (U.S. Highway #17) and the point of beginning; thence continue South 87 degrees 21'06" West a distance of 646.51 feet; thence North 01 degrees 58'09" West a distance of 2383.80 feet; thence north 88 degrees 27'53" East a distance of 337.71 feet; thence North 01 degrees 32'01" West a distance of 277.75 feet; thence north 30 degrees 58'39" West a distance of 125.00 feet; thence 69 degrees 19'18" West a distance of 312.50 feet; thence North 01 degrees 32'07" West a distance of 80.00 feet; thence South 88 Degrees 27'53" West a distance of 22.82 feet; thence North 01 degrees 32'07" West a distance of 330.00 feet; thence North 02 degrees 46'04" West a distance of 1700.17 feet; thence North 88 degrees 23'07" East a distance of 329.07 feet; thence North 02 degrees 47'31" West a distance of 635.34 feet to the South right-of-way of Palm Shores Boulevard; thence North 88 degrees 20'46" East a distance of 275.52 feet to the West right-of-way of State Road #35 (U.S. Highway #17); thence South 02 degrees 47'57" East along said right-of-way a distance of 2006.62 feet; thence South 88 degrees 18'40" West along said right-of-way a distance of 5.28 feet to the point of curvature of a curve to the left having as elements a radius of 11.333.16 feet and a central angle of 03 degrees 02'06.1"; thence along arc of said curve a distance of 600.33 feet to the point of compound curvature of a curve to the left having as elements a radius of 11.585.16 feet and a central angle of 04 degrees 34'53.3"; thence along arc of said curve a distance of 926.37 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 23.40 feet; thence North 87 degrees 21'06" East along said right-of-way a distance of 36.00 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 300.00 feet; thence North 87 degrees 21'06" East along said right-of-way a distance of 10.00 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 1439.06 feet to the point of beginning.

Contains 62.16 acres more or less.

And

Parcel 1

Section 4, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

Parcel 2

All of Section 5, Township 40 South, Range 24 East, Charlotte County, Florida, less and except a strip 100 ft wide running N'y from the S line of the N ½ to the N line of the N ½ in the W ½ of the W ½ .

Together with

Parcel 3

The Northeast ¼ of the Northeast ¼ of Section 6, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

Parcel 4

The Northeast ¼ of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida, less the South 815.85 feet.

Together with

Parcel 5

The South ½ and the Northeast ¼ of Section 8, Township 40 South, Range 24 East, Charlotte County, Florida, which parcel includes all of said section 8, less and except a strip 100 ft wide running N'y from the S line of the S ½ to the N line of the S ½ in the E ½ of the W ½ .

Together with

Parcel 6

All of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida, less and except the Northeast ¼ of said Section 9.

Plus

The South 815.85 feet of the N.E. ¼ of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

Parcel 7

The West ½ of Section 10, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

Parcel 8

The Southerly 150 Feet of Sections 7 and 8, Township 40 South, Range 24 East, Charlotte County, Florida.

And

A parcel of land lying in Sections 5, 6, 7 and 8, Township 40 South, Range 24 East, Charlotte County, Florida, described as follows:

Begin at the NW corner of said Sec. 6; thence S 89°43'07" E, along N line of said Sec. 6, 1786.20 ft. to Point of Beginning; thence S 01°06'38" W along Ely line of Ann H. Ryals property as described in O.R. Book 1435, Pages 1513 and 1514, of the Public Records of Charlotte County, Florida, 1287.30 ft.; thence S 73°21'33" E along said Ely line, 919.56 ft.; thence S 00°41'16" E along said Ely line, 1116.55 ft. to SE corner of said Ryals property; thence N 89°41'03" W along S line of said Ryals property, 2475.81 ft. to E right-of-way line of State Road 35 (U.S. Highway 17) as monumented; thence S 00°26'53" W along said E right-of-way line, 1844.49 ft. to N line of William E. Roe property as described in O.R. Book 855, Page 1941, Public Records of Charlotte County, Florida; thence S 89°45'11" E along said N line, 1883.20 ft. to NE corner of said Roe property; thence S 00°31'12" W along E line of said Roe property, 118.50 ft. to SE corner of said Roe property; thence N 89°45'11" W along S line of said Roe property, 1585.05 ft. to E right-of-way of State Road 35 (U.S. Highway 17) as monumented; thence S 00°20'17" W along said E right-of-way line, 670.37 ft. to a point on the S line of said Sec. 6; thence N 89°49'39" W along said S line and on said right-of-way line of State Road 35 (U.S. Highway 17), 298.00 ft.; thence S 00°20'17" W along said E right-of-way line, 677.88 ft.; thence S 00°24'44" W along said E right-of-way line, 652.61 ft. to N line of Raymond Smith property as described in O.R. Book 963, Pages 2090 and 2091, Public Records of Charlotte County, Florida; thence S 89°32'33" E along N line of said Smith property as monumented by ABS & Associated, Inc., Registered Land Surveyors, 1138.93 ft. to a W iron rod set by said registered surveyors for the NE corner of Lot 11 of FLORADONIA SUBDIVISION, as recorded in Plat Book 1, Page 44, Public Records of Charlotte County, Florida; thence S 00°27'48" W along E line of said Smith property and also E line of said Lot 11, 1326.85 ft. to a 1/2' iron rod set by said registered surveyors for the SE corner of said Lot 11 in centerline of Catalpa Avenue; thence S 89°08'19" E along said centerline of Catalpa Avenue and along S line of the

N ½ of Sec. 7, 4675.89 ft. to the E ¼ corner of said Sec. 7; thence S 88°40'35" E, along said centerline and along S line of N ½ of Sec. 8, 3406.06 ft.; thence N 5380.44 ft. to a point on the N line of the S ½ of Sec. 5; thence N 89°00'36" W along said N line, 2545.405 ft.; thence N 07°47'49" W along said W line, 988.17 ft.; thence N 39°33'51" W, 1397.205 ft.; thence N 46°23'45" W, 875.12 ft. to N line of said Sec. 6; thence N 89°43'07" W along said N line, 3372.19 ft. to Point of Beginning. LESS and except a 100 foot wide strip running N'ly from the S line of N ½ of Sec. 8 to the N line of the S ½ of Sec. 5.

And

The South ½ of Section 7, Township 40 South, Range 24 East, Charlotte County, Florida Less right-of-way to State Road No. 35 (U.S. Highway No. 17) along West side and less the South 150.00 feet and also less the South 1/8 of Northwest ¼ of Southwest ¼.

Also that part of the Southwest ¼ of Section 8, Township 40 South, Range 24 East, Charlotte County, Florida less the South 150.00 feet.

And

A part of Section 6, Township 40 South, Range 24 East described A follows, Begin at the NW corner of Section 6, Township 40 South, Range 24 East thence S 89°38'49" East along North line of said Section 6. 50 feet to East r/w of U.S. 17' thence S 0°30'10" W along said East r/w, 50 feet to point of beginning; thence S 89°38'33" S, 1735.61 feet' thence S 1°10'26" W, 1237.08 feet; thence S 73°23'45" E, 919.56 feet; thence S 0°37'28" E, 1116.55 feet; thence N 89°37'15" W, 2626.59 feet to East r/w of U.S. 17' thence N 0°30'10" E along said East r/w, 2609.46 feet to Point Of Beginning, all lying and being in Township 40 South, Range 24 East, Charlotte County, Florida.

LESS AND EXCEPT

PARCEL, 105

THAT PORTION OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 40 SOUTH, RANGE 24 EAST, CHARLOTTE COUNTY, FLORIDA.

BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 40 SOUTH, RANGE 24 EAST: THENCE ALONG THE NORTH LINE OF SAID SECTION 6, S89°43'07" E, 0.39 FEET TO THE SURVEY BASE LINE OF

STATE ROAD 35 (U.S. Highway No. 17); THENCE
ALONG SAID SURVEY BASE LINE, S00°29'34" W, 50.00
FEET THENCE S89°42'41" E, 49.85 FEET FOR A POINT
OF BEGINNING, SAID POINT LYING ON THE EASTERLY
EXISTING RIGHT OF WAY LINE OF STATE ROAD 35
(U.S. 17) (PER DEED EXCEPTION, OFFICIAL RECORDS
BOOK 836, PAGE 595); THENCE CONTINUE S89°42'41"
E, 152.35 FEET; THENCE S00°29'34" W, 1,533.83
FEET; THENCE S 00°26'93" W, 1,075.70 FEET;
THENCE N 59°41'03' W, 150.74 FEET TO SAID
EASTERLY EXISTING RIGHT OF WAY LINE; THENCE
ALONG SAID EXISTING RIGHT OF WAY LINE, N
00°21'E4" E, 13.93 FEET TO THE SOUTH LINE OF THE
NORTHWEST QUARTER OF SAED SECTION 6, THENCE
CONTINUE ALONG SAID EASTERLY EXISTING RIGHT
OF WAY LINE, N 00 36'22" E, 20595.52 FEET TO THE
POINT OF BEGINNING.

o

EXHIBIT "C"

MAPS OF PROPOSED TERRITORY TO BE SERVED

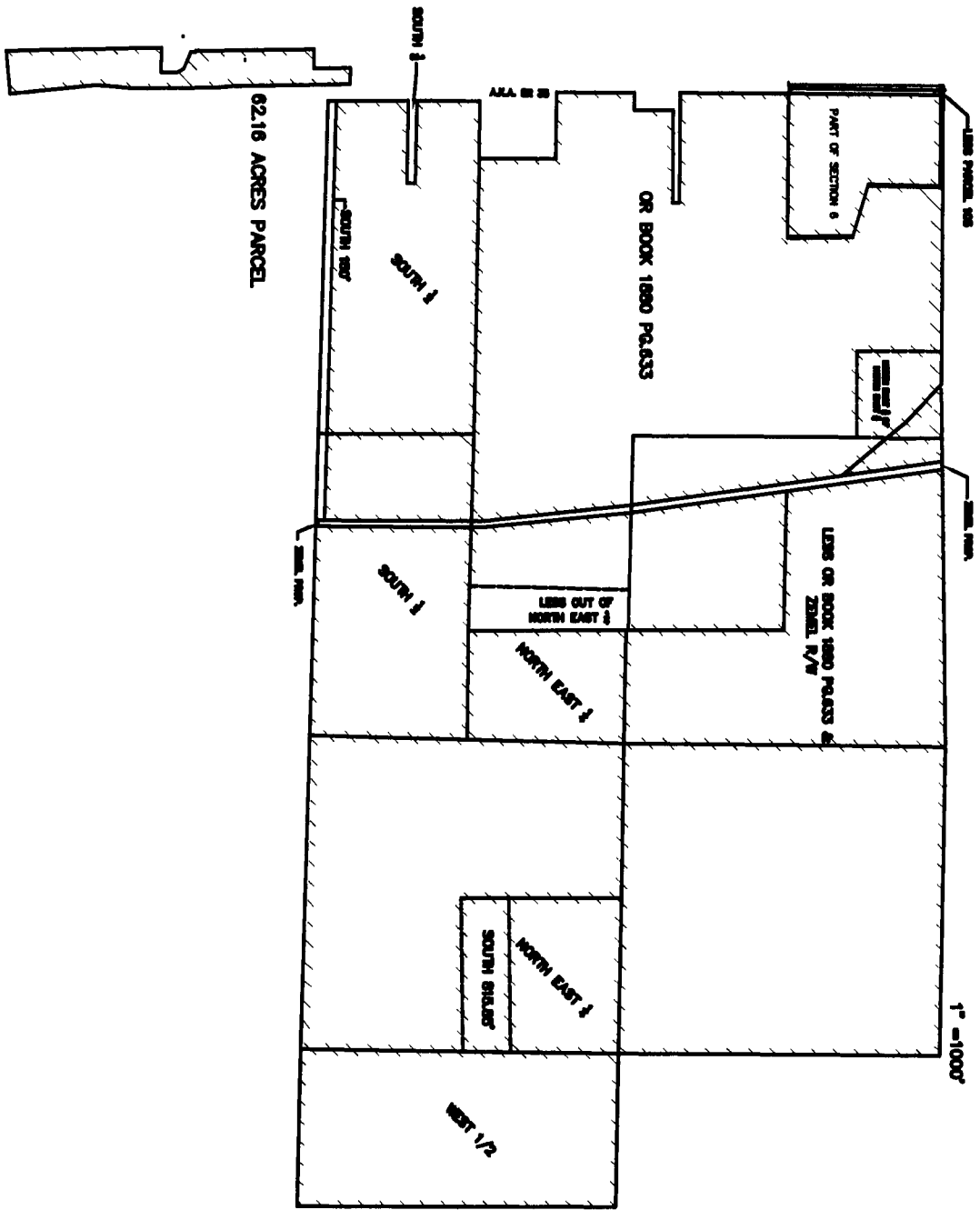
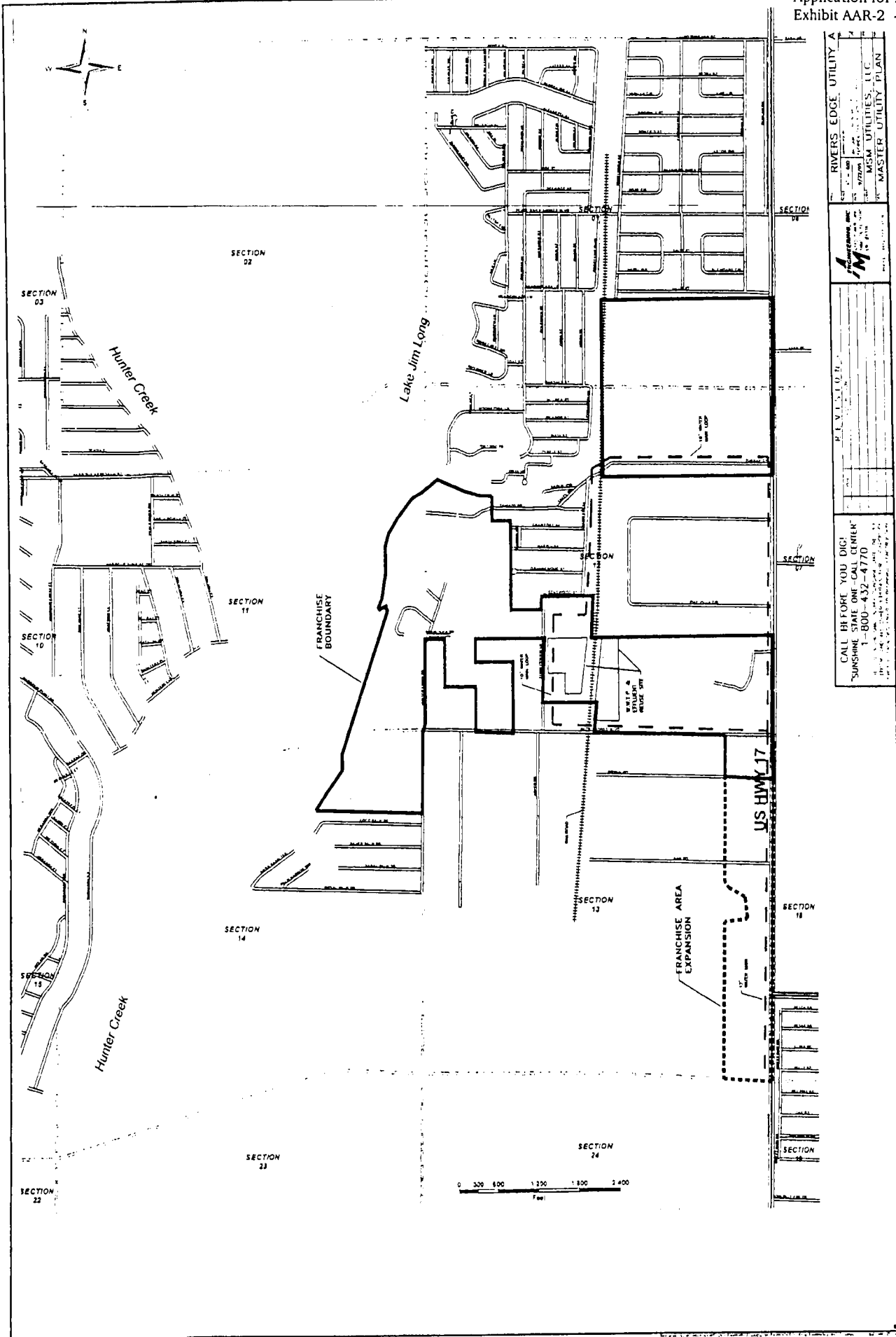
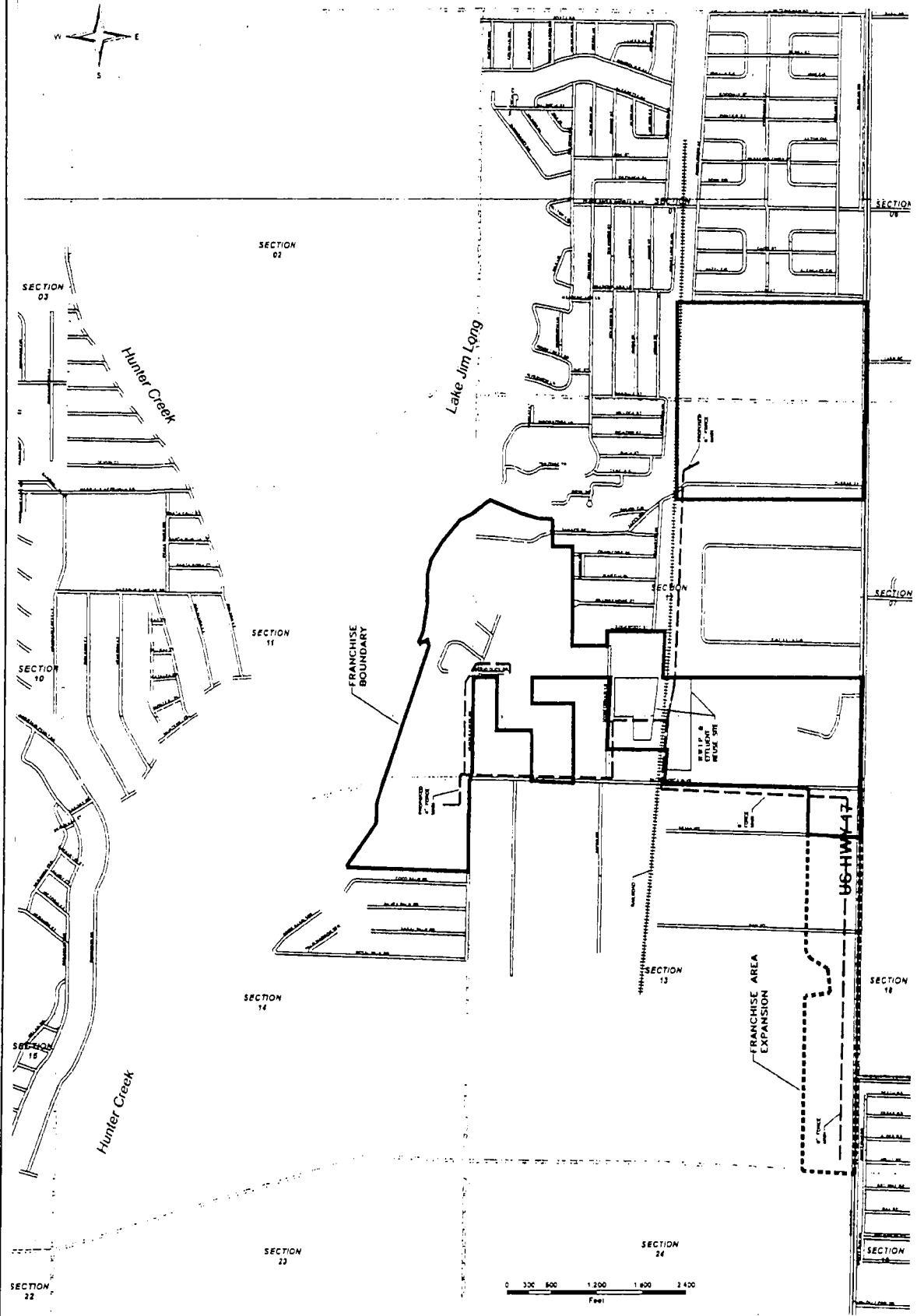


EXHIBIT "D"

MAP OF EXISTING LINES AND FACILITIES





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E.L.V. I.S.T.D.N.

J.M.
JACOBS MARSHALL

RIVERS EDGE UTILITY
MCM UTILITIES, LLC
MASTER UTILITY PLAN

EXHIBIT "E"

ORIGINAL TARIFFS ARE LOCATED IN THE ORIGINAL APPLICATION

*ORIGINAL'S
FORWARDED TO ECR*

ORIGINAL SHEET NO. 1.0

WATER TARIFF

MSM UTILITIES, LLC
NAME OF COMPANY

5660 Bayshore Road, Suite 36

North Fort Myers, Florida 33917
(ADDRESS OF COMPANY LOCATION)

(239) 543-1005
(Business & Emergency Telephone Number)

FILED WITH
FLORIDA PUBLIC SERVICE COMMISSION

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 2 0

MSM UTILITIES, LLC

WATER TARIFF

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Index of	
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Rules and Regulations	6.0-6.1
Service Availability Policy	23.0
Standard Forms	18.0
Technical Terms and Abbreviations	5.0-5.1
Territory Authority	3.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.0

MSM UTILITIES, LLC

WATER TARIFF

TERRITORY AUTHORITY

CERTIFICATE NUMBER - 611-W

COUNTY - CHARLOTTE

COMMISSION ORDERS APPROVING TERRITORY SERVED -

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-99-0756-FOF-WS	04/19/99	980731-WS	Original Certificate
PSC-05-0147-PAA-WS	02/07/05	031042-WS	Transfer of Certificate
PSC-06-0129-FOF-WS	02/16/06	050820-WS	Amendment
PSC-06-1064-FOF-WS	12/26/06	060628-WS	Amendment
		060820-WS	Transfer of Majority Organizational Control

(Continued to Sheet No. 3.1)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.1

MSM UTILITIES, LLC.

WATER TARIFF

(Continued from Sheet No. 3.0)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

The Oaks at Rivers Edge (formerly Hunter Creek Village)

The following described lands located in Charlotte County, Florida:

Per Order No. PSC-99-0756-FOF-WS
Township 40 South, Range 23 East
Section 12

The NE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, of Section 12, Township 40 South, Range 23 East.

The SE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, of Section 12, Township 40 South, Range 23 East.

The NW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East.

That portion of Government Lot 2, Section 12, Township 40 South, Range 23 East, lying South of Lee Branch Creek.

The Westerly 30 feet of the SW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East.

Township 40 South, Range 23 East
Section 11

All of Government Lot 5, lying South of Lee Branch Creek in Section 11, Township 40, South, Range 23 East.

The NE 1/4 of the SE 1/4 of Section 11, Township 40 South, Range 23 East, lying East of Hunter's Creek.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.2

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 3.1)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

The Oaks at Rivers Edge (formerly Hunter Creek Village)

The following described lands located in Charlotte County, Florida:

Per Order No. PSC-06-0129-FOF-WS
Extension of Service Territory

The North ¼ of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of the Seaboard Coastline Railroad and North of Turbak Road.

A portion of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, being more specifically described as follows:

Beginning at the Southeast corner of said Section 12, thence West along the South line of said Section 12, a distance of 2577.55 feet, thence North, a distance of 385.34 feet; thence West, a distance of 531.75 feet, thence North, a distance of 897.20 feet thence West, a distance of 511.21 feet, thence North, a distance of 438.40 feet, thence East a distance of 511.21 feet, thence North, a distance of 178.65 feet; thence East, a distance of 606.14 feet, thence South a distance of 600 feet more or less, thence east, a distance of 2860 feet more or less to the East line of said Section 12, thence South along the East line of said Section 12 to the point of beginning.

The South ¼ of Section 1, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Seaboard Coastline Railroad.

The South ¼ of Section 11, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Hunters Creek.

The North ¼ of Section 14, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Hunters Creek.

A. A. Reeves
ISSUING OFFICER
Vice President
TITLE

ORIGINAL SHEET NO. 3.3

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 3.2)

The following described lands located in Charlotte County, Florida:

Per Order No. PSC-06-1064-FOF-WS

Extension of Service Territory

The South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

The South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

The Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida. Less and except the Right-of-Way for a public highway along the East side of said land, and Less and except the Right-of-Way for a public road along the North line of said land, and Less and except the following: Commence at the Northeast corner of said Section 13; thence along the North boundary of said Section 13, North $88^{\circ}26'45''$ West, 45.15 feet, to the Westerly maintained Right-of-Way line of State Road 35 (US 17) for a point of beginning; thence along said Westerly maintained Right-of-Way line, South $00^{\circ}23'35''$ West, 330.28 feet; thence North $88^{\circ}24'16''$ West, 8.00 Feet; thence North $00^{\circ}23'35''$ East, 330.28 feet, to said North boundary of Section 13; thence along said North boundary, South $88^{\circ}26'45''$ East, 8.00 feet, to the point of beginning.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 4.0

MSM UTILITIES, LLC

WATER TARIFF

COMMUNITIES SERVED LISTING

<u>County</u> <u>Name</u>	<u>Development</u> <u>Name</u>	<u>Rate</u> <u>Schedule(s)</u> <u>Available</u>	<u>Sheet No.</u>
Charlotte	The Oaks at Rivers Edge	RS	13.0 (formerly Hunter Creek Village)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 5.0

MSM UTILITIES, LLC

WATER TARIFF

TECHNICAL TERMS AND ABBREVIATIONS

- 1.0 "BFC" - The abbreviation for "Base Facility Charge" which is the minimum amount the Company may charge its Customers and is separate from the amount the Company bills its Customers for water consumption.
- 2.0 "CERTIFICATE" - A document issued by the Commission authorizing the Company to provide water service in a specific territory.
- 3.0 "COMMISSION" - The shortened name for the Florida Public Service Commission.
- 4.0 "COMMUNITIES SERVED" - The group of Customers who receive water service from the Company and whose service location is within a specific area or locality that is uniquely separate from another.
- 5.0 "COMPANY" - The shortened name for the full name of the utility which is MSM UTILITIES, LLC.
- 6.0 "CUSTOMER" - Any person, firm or corporation who has entered into an agreement to receive water service from the Company and who is liable for the payment of that water service.
- 7.0 "CUSTOMER'S INSTALLATION" - All pipes, shut-offs, valves, fixtures and appliances or apparatus of every kind and nature used in connection with or forming a part of the installation for rendering water service to the Customer's side of the Service Connection whether such installation is owned by the Customer or used by the Customer under lease or other agreement.
- 8.0 "MAIN" - A pipe, conduit, or other facility used to convey water service to individual service lines or through other mains.
- 9.0 "RATE" - Amount which the Company may charge for water service which is applied to the Customer's actual consumption.
- 10.0 "RATE SCHEDULE" - The rate(s) or charge(s) for a particular classification of service plus the several provisions necessary for billing, including all special terms and conditions under which service shall be furnished at such rate or charge.
- 11.0 "SERVICE" - As mentioned in this tariff and in agreement with Customers, "Service" shall be construed to include, in addition to all water service required by the Customer, the readiness and ability on the part of the Company to furnish water service to the Customer. Service shall conform to the standards set forth in Section 367.111 of the Florida Statutes.

(Continued to Sheet No. 5.1)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 5.1

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 5.0)

- 12.0 "SERVICE CONNECTION" - The point where the Company's pipes or meters are connected with the pipes of the Customer.
- 13.0 "SERVICE LINES" - The pipes between the Company's Mains and the Service Connection and which includes all of the pipes, fittings and valves necessary to make the connection to the Customer's premises, excluding the meter.
- 14.0 "TERRITORY" - The geographical area described, if necessary, by metes and bounds but, in all cases, with township, range and section in a Certificate, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 6.0

MSM UTILITIES, LLC

WATER TARIFF

INDEX OF RULES AND REGULATIONS

	<u>Sheet Rule Number:</u>	<u>Number:</u>
Access to Premises	9.0	14.0
Adjustment of Bills	10.0	22.0
Adjustment of Bills for Meter Error	10.0	23.0
All Water Through Meter	10.0	21.0
Application	7.0	3.0
Applications by Agents	7.0	4.0
Change of Customer's Installation	8.0	11.0
Continuity of Service	8.0	9.0
Customer Billing	9.0	16.0
Delinquent Bills	7.0	8.0
Extensions	7.0	6.0
Filing of Contracts	10.0	25.0
General Information	7.0	1.0
Inspection of Customer's Installation	9.0	13.0
Limitation of Use	8.0	10.0
Meter Accuracy Requirements	10.0	24.0
Meters	10.0	20.0
Payment of Water and Wastewater Service Bills Concurrently	10.0	18.0

(Continued to Sheet No. 6.1)

A. A. Reeves
 ISSUING OFFICER

Vice President
 TITLE

ORIGINAL SHEET NO. 6.1

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 6.0)

	<u>Sheet</u> <u>Number:</u>	<u>Rule</u> <u>Number</u>
Policy Dispute	7.0	2.0
Protection of Company's Property.....	8.0	12.0
Refusal or Discontinuance of Service	7.0	5.0
Right-of-way or Easements	9.0	15.0
Termination of Service	9.0	17.0
Type and Maintenance	7.0	7.0
Unauthorized Connections - Water	10.0	19.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 7.0

MSM UTILITIES, LLC

WATER TARIFF

RULES AND REGULATIONS

- 1.0 GENERAL INFORMATION - These Rules and Regulations are a part of the rate schedules and applications and contracts of the Company and, in the absence of specific written agreement to the contrary, apply without modifications or change to each and every Customer to whom the Company renders water service.
- The Company shall provide water service to all Customers requiring such service within its Certificated territory pursuant to Chapter 25-30, Florida Administrative Code and Chapter 367, Florida Statutes.
- 2.0 POLICY DISPUTE - Any dispute between the Company and the Customer or prospective Customer regarding the meaning or application of any provision of this tariff shall upon written request by either party be resolved by the Florida Public Service Commission.
- 3.0 APPLICATION - In accordance with Rule 25-30.310, Florida Administrative Code, a signed application is required prior to the initiation of service. The Company shall provide each Applicant with a copy of the brochure entitled "Your Water and Wastewater Service," prepared by the Florida Public Service Commission.
- 4.0 APPLICATIONS BY AGENTS - Applications for water service requested by firms, partnerships, associations, corporations, and others shall be rendered only by duly authorized parties or agents.
- 5.0 REFUSAL OR DISCONTINUANCE OF SERVICE - The Company may refuse or discontinue water service rendered under application made by any member or agent of a household, organization, or business in accordance with Rule 25-30.320, Florida Administrative Code.
- 6.0 EXTENSIONS - Extensions will be made to the Company's facilities in compliance with Commission Rules and Orders and the Company's tariff.
- 7.0 TYPE AND MAINTENANCE - In accordance with Rule 25-30.545, Florida Administrative Code, the Customer's pipes, apparatus and equipment shall be selected, installed, used and maintained in accordance with standard practice and shall conform with the Rules and Regulations of the Company and shall comply with all laws and governmental regulations applicable to same. The Company shall not be responsible for the maintenance and operation of the Customer's pipes and facilities. The Customer expressly agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the water service. The Company reserves the right to discontinue or withhold water service to such apparatus or device.
- 8.0 DELINQUENT BILLS - When it has been determined that a Customer is delinquent in paying any bill, water service may be discontinued after the Company has mailed or presented a written notice to the Customer in accordance with Rule 25-30.320, Florida Administrative Code.

(Continued on Sheet No. 8.0)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 8.0

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 7.0)

- 9.0 CONTINUITY OF SERVICE - In accordance with Rule 25-30.250, Florida Administrative Code, the Company will at all times use reasonable diligence to provide continuous water service and, having used reasonable diligence, shall not be liable to the Customer for failure or interruption of continuous water service.

If at any time the Company shall interrupt or discontinue its service, all Customers affected by said interruption or discontinuance shall be given not less than 24 hours written notice.

- 10.0 LIMITATION OF USE - Water service purchased from the Company shall be used by the Customer only for the purposes specified in the application for water service. Water service shall be rendered to the Customer for the Customer's own use and the Customer shall not sell or otherwise dispose of such water service supplied by the Company.

In no case shall a Customer, except with the written consent of the Company, extend his lines across a street, alley, lane, court, property line, avenue, or other way in order to furnish water service to the adjacent property through one meter even though such adjacent property may be owned by him. In case of such unauthorized extension, sale, or disposition of service, the Customer's water service will be subject to discontinuance until such unauthorized extension, remetering, sale or disposition of service is discontinued and full payment is made to the Company for water service rendered by the Company (calculated on proper classification and rate schedules) and until reimbursement is made in full to the Company for all extra expenses incurred for clerical work, testing, and inspections. (This shall not be construed as prohibiting a Customer from remetering.)

- 11.0 CHANGE OF CUSTOMER'S INSTALLATION - No changes or increases in the Customer's installation, which will materially affect the proper operation of the pipes, mains, or stations of the Company, shall be made without written consent of the Company. The Customer shall be liable for any charge resulting from a violation of this Rule.

- 12.0 PROTECTION OF COMPANY'S PROPERTY - The Customer shall exercise reasonable diligence to protect the Company's property. If the Customer is found to have tampered with any Company property or refuses to correct any problems reported by the Company, service may be discontinued in accordance with Rule 25-30.320, Florida Administrative Code.

In the event of any loss or damage to property of the Company caused by or arising out of carelessness, neglect, or misuse by the Customer, the cost of making good such loss or repairing such damage shall be paid by the Customer.

(Continued on Sheet No. 9.0)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 9.0

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 8.0)

- 13.0 INSPECTION OF CUSTOMER'S INSTALLATION - All Customer's water service installations or changes shall be inspected upon completion by a competent authority to ensure that the Customer's piping, equipment, and devices have been installed in accordance with accepted standard practice and local laws and governmental regulations. Where municipal or other governmental inspection is required by local rules and ordinances, the Company cannot render water service until such inspection has been made and a formal notice of approval from the inspecting authority has been received by the Company.

Notwithstanding the above, the Company reserves the right to inspect the Customer's installation prior to rendering water service, and from time to time thereafter, but assumes no responsibility whatsoever for any portion thereof.

- 14.0 ACCESS TO PREMISES - In accordance with Rule 25-30.320(2)(f), Florida Administrative Code, the Customer shall provide the duly authorized agents of the Company access at all reasonable hours to its property. If reasonable access is not provided, service maybe discontinued pursuant to the above rule.

- 15.0 RIGHT-OF-WAY OR EASEMENTS - The Customer shall grant or cause to be granted to the Company, and without cost to the Company, all rights, easements, permits, and privileges which are necessary for the rendering of water service.

- 16.0 CUSTOMER BILLING - Bills for water service will be rendered - Monthly, Bimonthly, or Quarterly - as stated in the rate schedule.

In accordance with Rule 25-30.335, Florida Administrative Code, the Company may not consider a Customer delinquent in paying his or her bill until the twenty-first day after the Company has mailed or presented the bill for payment.

A municipal or county franchise tax levied upon a water or wastewater public Company shall not be incorporated into the rate for water or wastewater service but shall be shown as a separate item on the Company's bills to its Customers in such municipality or county.

If a Company utilizes the base facility and usage charge rate structure and does not have a Commission authorized vacation rate, the Company shall bill the Customer the base facility charge regardless of whether there is any usage.

- 17.0 TERMINATION OF SERVICE - When a Customer wishes to terminate service on any premises where water service is supplied by the Company, the Company may require reasonable notice to the Company in accordance with Rule 25-30.325, Florida Administrative Code.

(Continued on Sheet No. 10.0)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 10.0

MSM UTILITIES, LLC

WATER, TARIFF

(Continued from Sheet No. 9.0)

- 18.0 PAYMENT OF WATER AND WASTEWATER SERVICE BILLS CONCURRENTLY - In accordance with Rule 25-30.320(2)(g), Florida Administrative Code, when both water and wastewater service are provided by the Company, payment of any water service bill rendered by the Company to a Customer shall not be accepted by the Company without the simultaneous or concurrent payment of any wastewater service bill rendered by the Company.
- 19.0 UNAUTHORIZED CONNECTIONS - WATER - Any unauthorized connections to the Customer's water service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
- 20.0 METERS - All water meters shall be furnished by and remain the property of the Company and shall be accessible and subject to its control, in accordance with Rule 25-30.230, Florida Administrative Code.
- 21.0 ALL WATER THROUGH METER - That portion of the Customer's installation for water service shall be so arranged to ensure that all water service shall pass through the meter. No temporary pipes, nipples or spaces are permitted and under no circumstances are connections allowed which may permit water to by-pass the meter or metering equipment.
- 22.0 ADJUSTMENT OF BILLS - When a Customer has been undercharged as a result of incorrect application of the rate schedule, incorrect reading of the meter, incorrect connection of the meter, or other similar reasons, the amount may be refunded or billed to the Customer as the case may be pursuant to Rules 25-30.340 and 25-30.350, Florida Administrative Code.
- 23.0 ADJUSTMENT OF BILLS FOR METER ERROR - When meter tests are made by the Commission or by the Company, the accuracy of registration of the meter and its performance shall conform with Rule 25-30.262, Florida Administrative Code and any adjustment of a bill due to a meter found to be in error as a result of any meter test performed whether for unauthorized use or for a meter found to be fast, slow, non-registering, or partially registering, shall conform with Rule 25-30.340, Florida Administrative Code.
- 24.0 METER ACCURACY REQUIREMENTS - All meters used by the Company should conform to the provisions of Rule 25-30.262, Florida Administrative Code.
- 25.0 FILING OF CONTRACTS - Whenever a Developer Agreement or Contract, Guaranteed Revenue Contract, or Special Contract or Agreement is entered into by the Company for the sale of its product or services in a manner not specifically covered by its Rules and Regulations or approved Rate Schedules, a copy of such contracts or agreements shall be filed with the Commission prior to its execution in accordance with Rule 25-9.034 and Rule 25-30.550, Florida Administrative Code. If such contracts or agreements are approved by the Commission, a conformed copy shall be placed on file with the Commission within 30 days of execution.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 11.0

MSM UTILITIES, LLC

WATER TARIFF

INDEX OF RATES AND CHARGES SCHEDULES

	<u>Sheet Number</u>
Customer Deposits	N/A
General Service, GS	N/A
Meter Test Deposit	15.0
Miscellaneous Service Charges	16.0
Residential Service, RS	13.0
Service Availability Fees and Charges.....	N/A

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 12.0

MSM UTILITIES, LLC

WATER TARIFF

GENERAL SERVICE

RATE SCHEDULE GS

AVAILABILITY

Available throughout the area served by the Company.

APPLICABILITY

For water service to all customers for which no other schedule applies.

LIMITATIONS

Subject to all of the Rules and Regulations of this Tariff and General Rules and Regulations of the Commission.

BILLING PERIOD

Monthly

RATE

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$21.17
3/4"	\$31.76
1"	\$52.93
1 1/2"	\$105.85
2"	\$169.36
3"	\$338.72
4"	\$529.25
6"	\$1,058.50

Gallage Charge

Per 1,000 Gallons \$8.08

MINIMUM CHARGE

Base Facility Charge

TERMS OF PAYMENT

Bills are due and payable when rendered. In accordance with Rule 25-30.320, Florida Administrative Code, if a Customer is delinquent in paying the bill for water service, service may then be discontinued.

EFFECTIVE DATE

TYPE OF FILING

Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 13.0

MSM UTILITIES, LLC

WATER TARIFF

RESIDENTIAL SERVICE

RATE SCHEDULE RS

AVAILABILITY

Available throughout the area served by the Company.

APPLICABILITY

For Water service for all purposes in private residences and individually metered apartment units.

LIMITATIONS

Subject to all of the Rules and Regulations of this Tariff and General Rules and Regulations of the Commission.

BILLING PERIOD

Monthly

RATE

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$21.17
3/4"	\$31.76
1"	\$52.93
1 1/2"	\$105.85
2"	\$169.36
3"	\$338.72
4"	\$529.25
6"	\$1,058.50

<u>Gallage Charge Per 1,000 Gallons</u>	
0 - 7,000 gallons	\$7.38
7,001 - 14,000 gallons	\$9.23
Over 14,000 gallons	\$11.07

MINIMUM CHARGE

Base Facility Charge

BASE FACILITY CHARGE

Any customer who requests that service be interrupted for any length of time will pay the Base Facility Charge (BFC) during that period of interruption. Any customer who attempts to circumvent this charge by closing his account (and requesting deposit refund) at the time of temporary departure and then returning several months later as a new customer will be held liable for the BFC during the disconnected months. The payment of the BFC will be made monthly.

TERMS OF PAYMENT

Bills are due and payable when rendered. In accordance with Rule 25-30.320, Florida Administrative Code, if a Customer is delinquent in paying the bill for water service, service may then be discontinued.

EFFECTIVE DATE

TYPE OF FILING

Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 14.0

MSM UTILITIES, LLC

WATER TARIFF

CUSTOMER DEPOSITS

ESTABLISHMENT OF CREDIT – Before rendering water service, the Company may require an Applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the Customer from complying with the Company's rules for prompt payment. Credit will be deemed so established if the Customer complies with the requirements of Rule 25-30.311, Florida Administrative Code.

AMOUNT OF DEPOSIT – The amount of initial deposit shall be the following according to meter size:

	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4"	<u>\$113.70</u>	<u>\$90.02</u>
All over 5/8" x 3/4"	<u>2 x Average Bill</u>	<u>2 x Average Bill</u>

ADDITIONAL DEPOSIT – Under Rule 25-30.311(7), Florida Administrative Code, the Company may require a new deposit, where previously waived or returned, or an additional deposit in order to secure payment of current bills provided.

INTEREST ON DEPOSIT – The Company shall pay interest on Customer deposits pursuant to Rules 25-30.311(4) and (4a). The Company will pay or credit accrued interest to the Customer's account during the month of September each year.

REFUND OF DEPOSIT – After a residential Customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the Company shall refund the Customer's deposit provided the Customer has met the requirements of Rule 25-30.311(5), Florida Administrative Code. The Company may hold the deposit of a non-residential Customer after a continuous service period of 23 months and shall pay interest on the non-residential Customer's deposit pursuant to Rules 25-30.311(4) and (5), Florida Administrative Code.

Nothing in this rule shall prohibit the Company from refunding a Customer's deposit in less than 23 months.

EFFECTIVE DATE - _____

TYPE OF FILING -

Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 15.0

MSM UTILITIES, LLC

WATER TARIFF

METER TEST DEPOSIT

METER BENCH TEST REQUEST - If any Customer requests a bench test of his or her water meter, in accordance with Rule 25-30.266, Florida Administrative Code, the Company may require a deposit to defray the cost of testing; such deposit shall not exceed the schedule of fees found in Rule 25-30.266, Florida Administrative Code.

<u>METER SIZE</u>	<u>FEE</u>
5/8" x 3/4"	\$20.00
1" and 1 1/2"	\$25.00
2" and over	Actual Cost

REFUND OF METER BENCH TEST DEPOSIT - The Company may refund the meter bench test deposit in accordance with Rule 25-30.266, Florida Administrative Code.

METER FIELD TEST REQUEST - A Customer may request a no-charge field test of the accuracy of a meter in accordance with Rule 25-30.266, Florida Administrative Code.

EFFECTIVE DATE - _____

TYPE OF FILING - Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 16.0

MSM UTILITIES, LLC

WATER TARIFF

MISCELLANEOUS SERVICE CHARGES

The Company may charge the following miscellaneous service charges in accordance with the terms stated herein. If both water and wastewater services are provided, only a single charge is appropriate unless circumstances beyond the control of the Company require multiple actions.

INITIAL CONNECTION - This charge may be levied for service initiation at a location where service did not exist previously.

NORMAL RECONNECTION - This charge may be levied for transfer of service to a new Customer account at a previously served location or reconnection of service subsequent to a Customer requested disconnection.

VIOLATION RECONNECTION - This charge may be levied prior to reconnection of an existing Customer after disconnection of service for cause according to Rule 25-30.320(2), Florida Administrative Code, including a delinquency in bill payment.

PREMISES VISIT - This charge may be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill and does not discontinue service because the Customer pays the service representative or otherwise meets satisfactory arrangements to pay the bill or when a service representative visits a premises at the customer's request for complaint resolution and the problem is found to be the customer's responsibility.

Schedule of Miscellaneous Service Charges

	<u>Normal Hrs.</u>	<u>After Hrs.</u>
Initial Connection Fee	\$ <u>20.00</u>	<u>N/A</u>
Normal Reconnection Fee	\$ <u>20.00</u>	\$ <u>40.00</u>
Violation Reconnection Fee	\$ <u>20.00</u>	\$ <u>40.00</u>
Premises Visit	\$ <u>20.00</u>	\$ <u>40.00</u>

EFFECTIVE DATE - _____

TYPE OF FILING - Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 17.0

MSM UTILITIES, LLC

WATER TARIFF

SERVICE AVAILABILITY FEES AND CHARGES

<u>Description</u>	<u>Refer to Service Availability Policy</u>	<u>Amount</u>	<u>Sheet No./Rule No.</u>
<u>Back-Flow Preventor Installation Fee</u>			
5/8" x 3/4"		\$	
1"		\$	
1 1/2"		\$	
2"		\$	
Over 2"		\$(1)	
<u>Customer Connection (Tap-in) Charge</u>			
5/8" x 3/4" metered service		\$	
1" metered service		\$	
1 1/2" metered service		\$	
2" metered service		\$	
Over 2" metered service		\$(1)	
<u>Guaranteed Revenue Charge</u>			
With Prepayment of Service Availability Charges:			
Residential-per ERC/month (__ GPD)		\$	
All others-per gallon/month		\$	
Without Prepayment of Service Availability Charges:			
Residential-per ERC/month (__ GPD)		\$	
All others-per gallon/month		\$	
<u>Inspection Fee</u>		\$(1)	
<u>Main Extension Charge</u>			
Residential-per ERC (GPD)		\$	
All others-per gallon		\$	
Or			
Residential-per lot (__ foot frontage)		\$	
All others-per front foot		\$	
<u>Meter Installation Fee</u>			
5/8" x 3/4"		\$180.00	
1"		\$Actual Cost	
1 1/2"		\$Actual Cost	
2"		\$Actual Cost	
Over 2"		\$(1) Actual Cost	
<u>Plan review Charge</u>		\$(1)	
<u>Plant Capacity Charge</u>			
Residential-per ERC (250 GPD)		\$638.10	
All others-per gallon		\$2.55	
<u>System Capacity Charge</u>			
Residential-per ERC (__ GPD)		\$	
All others-per gallon		\$	

Actual Cost is equal to the total cost incurred for services rendered.

EFFECTIVE DATE - _____

TYPE OF FILING - Transfer of Majority Organizational Control

A. A. Reeves
 ISSUING OFFICER
Vice President
 TITLE

ORIGINAL SHEET NO. 18.0

MSM UTILITIES, LLC

WATER TARIFF

<u>Description</u>	<u>INDEX OF STANDARD FORMS</u>	<u>Sheet No.</u>
APPLICATION FOR METER INSTALLATION		N/A
APPLICATION FOR WATER SERVICE		20.0
COPY OF CUSTOMER'S BILL		22.0
CUSTOMER'S GUARANTEE DEPOSIT RECEIPT		See Sheet No. 14.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 19.0

MSM UTILITIES, LLC
WATER TARIFF

CUSTOMER'S GUARANTEE DEPOSIT RECEIPT

See Sheet No. 14.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 20.0

MSM UTILITIES, LLC

WATER TARIFF

APPLICATION FOR WATER OR WASTEWATER SERVICE

Name _____ Telephone Number _____

Billing Address _____

City _____ State _____ Zip _____

Service Address _____

City _____ State _____ Zip _____

Date service should _____

Service requested: Water _____ Wastewater _____ Both _____

By signing this agreement, the Customer agrees to the following:

1. The Company shall not be responsible for the maintenance and operation of the Customer's pipes and facilities. The Customer agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the water service; the Company reserves the right to discontinue or withhold water service to such apparatus or device.
2. The Company may refuse or discontinue water service rendered under application made by any member or agent of a household, organization or business for any of the reasons contained in Rule 25-30320, Florida Administrative Code. Any unauthorized connections to the Customer's water service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
3. The Customer agrees to abide by all existing Company Rules and Regulations as contained in the tariff. In addition, the Customer has received from the Company a copy of the brochure "Your Water and Wastewater Service" produced by the Florida Public Service Commission.
4. Bills for water serviced will be rendered Monthly as stated in the rate schedule. Bills must be paid within 20 days of mailing bills. If payment is not made after five working days written notice, service may be discontinued.
5. When a Customer wishes to terminate service on any premises where water or wastewater service is supplied by the Company, the Company may require a 24-hour written notice prior to the date the Customer desires to terminate service.

Signature

Date

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 21.0

MSM UTILITIES, LLC

WATER TARIFF

APPLICATION FOR METER INSTALLATION

NOT APPLICABLE

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 22.0

MSM UTILITIES, LLC

WATER TARIFF

COPY OF CUSTOMER'S BILL

MSM UTILITIES, LLC
5660 Bayshore Road, Suite 36
North Fort Myers, Florida 33917

Water and Sewer Bill

Date _____
Name _____
Account Number _____
Current Reading _____
Last Reading _____
Gallons Used (x 1000) _____

Water
Base Rate \$ _____
Usage : _____

Sewer
Base Rate: \$ _____
Usage : _____
Current Balance: _____
Past Due: _____
TOTAL DUE: _____

Billing Period _____ to _____

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 23.0

MSM UTILITIES LLC
WATER TARIFF

INDEX OF SERVICE AVAILABILITY

<u>Description</u>	<u>Sheet Number</u>
Schedule of Fees and Charges	N/A
Service Availability Policy	24.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 24.0

MSM UTILITIES LLC

WATER TARIFF

SERVICE AVAILABILITY POLICY

The utility provides service to the Oaks at Rivers Edge (Formerly Hunter Creek Village). The developer shall install the wastewater collection lines to the boundary of each new lot and the lot owner or the developer shall pay all approved service availability fees for the lots that are developed and must connect to the wastewater system to receive service.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

WASTEWATER TARIFF

MSM UTILITIES, LLC
NAME OF COMPANY

FILED WITH
FLORIDA PUBLIC SERVICE COMMISSION

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 1.0

WASTEWATER TARIFF

MSM UTILITIES, LLC
NAME OF COMPANY

5660 Bayshore Road, Suite 36

North Fort Myers, Florida 33917
(ADDRESS OF COMPANY LOCATION)

(239) 543-1005
(Business & Emergency Telephone Numbers)

FILED WITH
FLORIDA PUBLIC SERVICE COMMISSION

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 2.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

TABLE OF CONTENTS

	Sheet Number
Communities Served Listing	4.0
Description of Territory Served	3.1
Index of	
Rates and Charges Schedules	11.0
Rules and Regulations	6.0-6.1
Service Availability Policy	21.0
Standard Forms	17.0
Technical Terms and Abbreviations	5.0-5.1
Territory Authority	3.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

TERRITORY AUTHORITY

CERTIFICATE NUMBER - 527-S

COUNTY - CHARLOTTE

COMMISSION ORDERS APPROVING TERRITORY SERVED -

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-99-0756-FOF-WS	04/19/99	980731-WS	Original Certificate
PSC-05-0147-PAA-WS	02/07/05	031042-WS	Transfer of Certificate
PSC-06-0129-FOF-WS	02/16/06	050820-WS	Amendment
PSC-06-1064-FOF-WS	12/26/06	060628-WS	Amendment
		060820-WS	Transfer of Majority Organizational Control

(Continued to Sheet No. 3.1)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.1

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 3.0)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

The Oaks at Rivers Edge (formerly Hunter Creek Village)

The following described lands located in Charlotte County, Florida:

Per Order No. PSC-99-0756-FOF-WS

Township 40 South, Range 23 East
Section 12

The NE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, of Section 12, Township 40 South, Range 23 East.

The SE 1/4 of the NW 1/4 of the SW 1/4 of the SW 1/4, of Section 12, Township 40 South, Range 23 East.

The NW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East.

That portion of Government Lot 2, Section 12, Township 40 South, Range 23 East, lying South of Lee Branch Creek.

The Westerly 30 feet of the SW 1/4 of the SW 1/4 of Section 12, Township 40 South, Range 23 East.

Township 40 South, Range 23 East
Section 11

All of Government Lot 5, lying South of Lee Branch Creek in Section 11, Township 40, South, Range 23 East.

The NE 1/4 of the SE 1/4 of Section 11, Township 40 South, Range 23 East, lying East of Hunter's Creek.

(Continued on Sheet 3.2)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.2

MSM UTILITIES, LLC
WASTEWATER TARIFF

(Continued from Sheet No. 3.1)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA
The Oaks at Rivers Edge (formerly Hunter Creek Village)

The following described lands located in Charlotte County, Florida:

Per Order No. PSC-06-0129-FOF-WS
Extension of Service Territory

The North ¼ of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of the Seaboard Coastline Railroad and North of Turbak Road.

A portion of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida, being more specifically described as follows:

Beginning at the Southeast corner of said Section 12, thence West along the South line of said Section 12, a distance of 2577.55 feet, thence North, a distance of 385.34 feet; thence West, a distance of 531.75 feet, thence North, a distance of 897.20 feet thence West, a distance of 511.21 feet, thence North, a distance of 438.40 feet, thence East a distance of 511.21 feet, thence North, a distance of 178.65 feet; thence East, a distance of 606.14 feet, thence South a distance of 600 feet more or less, thence east, a distance of 2860 feet more or less to the East line of said Section 12, thence South along the East line of said Section 12 to the point of beginning.

The South ¼ of Section 1, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Seaboard Coastline Railroad.

The South ¼ of Section 11, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Hunters Creek.

The North ¼ of Section 14, Township 40 South, Range 23 East, Charlotte County, Florida, lying East of Hunters Creek.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.3

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 3.2)

The following described lands located in Charlotte County, Florida:

Per Order No. PSC-06-1064-FOF-WS

Extension of Service Territory

The South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

The South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ and the North $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 12, Township 40 South, Range 23 East, Charlotte County, Florida.

The Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of the Northeast $\frac{1}{4}$, of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida. Less and except the Right-of-Way for a public highway along the East side of said land, and Less and except the Right-of-Way for a public road along the North line of said land, and Less and except the following: Commence at the Northeast corner of said Section 13; thence along the North boundary of said Section 13, North $88^{\circ}26'45''$ West, 45.15 feet, to the Westerly maintained Right-of-Way line of State Road 35 (US 17) for a point of beginning; thence along said Westerly maintained Right-of-Way line, South $00^{\circ}23'35''$ West, 330.28 feet; thence North $88^{\circ}24'16''$ West, 8.00 Feet; thence North $00^{\circ}23'35''$ East, 330.28 feet, to said North boundary of Section 13; thence along said North boundary, South $88^{\circ}26'45''$ East, 8.00 feet, to the point of beginning.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 4.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

COMMUNITIES SERVED LISTING

<u>County Name</u>	<u>Development Name</u>	<u>Rate Schedule(s) Available</u>	<u>Sheet No.</u>
Charlotte	The Oaks at Rivers Edge (Formerly Hunter Creek Village)	RS	13.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 5.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

TECHNICAL TERMS AND ABBREVIATIONS

- 1.0 "BFC" - The abbreviation for "Base Facility Charge" which is the minimum amount the Company may charge its Customers and is separate from the amount the Company bills its Customers for wastewater consumption.
- 2.0 "CERTIFICATE" - A document issued by the Commission authorizing the Company to provide wastewater service in a specific territory.
- 3.0 "COMMISSION" - The shortened name for the Florida Public Service Commission.
- 4.0 "COMMUNITIES SERVED" - The group of Customers who receive wastewater service from the Company and whose service location is within a specific area or locality that is uniquely separate from another.
- 5.0 "COMPANY" - The shortened name for the full name of the utility which is MSM UTILITIES, LLC.
- 6.0 "CUSTOMER" - Any person, firm or corporation who has entered into an agreement to receive wastewater service from the Company and who is liable for the payment of that wastewater service.
- 7.0 "CUSTOMER'S INSTALLATION" - All pipes, shut-offs, valves, fixtures and appliances or apparatus of every kind and nature used in connection with or forming a part of the installation for disposing of wastewater located on the Customer's side of the Service Connection whether such installation is owned by the Customer or used by the Customer under lease or other agreement.
- 8.0 "MAIN" - A pipe, conduit, or other facility used to convey wastewater service from individual service lines or through other mains.
- 9.0 "RATE" - Amount which the Company may charge for wastewater service which is applied to the Customer's water consumption.
- 10.0 "RATE SCHEDULE" - The rate(s) or charge(s) for a particular classification of service plus the several provisions necessary for billing, including all special terms and conditions under which service shall be furnished at such rate or charge.
- 11.0 "SERVICE" - As mentioned in this tariff and in agreement with Customers, "Service" shall be construed to include, in addition to all wastewater service required by the Customer, the readiness and ability on the part of the Company to furnish wastewater service to the Customer. Service shall conform to the standards set forth in Section 367.111 of the Florida Statutes.

(Continued to Sheet No. 5.1)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 5.1

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 5.0)

- 12.0 "SERVICE CONNECTION" - The point where the Company's pipes or meters are connected with the pipes of the Customer.
- 13.0 "SERVICE LINES" - The pipes between the Company's Mains and the Service Connection and which includes all of the pipes, fittings and valves necessary to make the connection to the Customer's premises, excluding the meter.
- 14.0 "TERRITORY" - The geographical area described, if necessary, by metes and bounds but, in all cases, with township, range and section in a Certificate, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 6.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

INDEX OF RULES AND REGULATIONS

	<u>Sheet Rule Number:</u>	<u>Number:</u>
Access to Premises	9.0	12.0
Adjustment of Bills	10.0	20.0
Application	7.0	3.0
Applications by Agents	7.0	4.0
Change of Customer's Installation	8.0	10.0
Continuity of Service	8.0	8.0
Customer Billing	9.0	15.0
Delinquent Bills	10.0	17.0
Evidence of Consumption	10.0	22.0
Extensions	7.0	6.0
Filing of Contracts	10.0	21.0
General Information	7.0	1.0
Inspection of Customer's Installation	8.0	11.0
Limitation of Use	8.0	9.0
Payment of Water and Wastewater Service Bills Concurrently	9.0	16.0
Policy Dispute	7.0	2.0
Protection of Company's Property	9.0	13.0
Refusal or Discontinuance of Service	7.0	5.0

(Continued to Sheet No. 6.1)

A. A. Reeves
 ISSUING OFFICER

Vice President
 TITLE

ORIGINAL SHEET NO. 6.1

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 6.0)

	Sheet Number:	Rule Number:
Right-of-way or Easements	9.0	14.0
Termination of Service	10.0	18.0
Type and Maintenance	7.0	7.0
Unauthorized Connections - Wastewater	10.0	19.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 7.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

RULES AND REGULATIONS

- 1.0 GENERAL INFORMATION - These Rules and Regulations are a part of the rate schedules and applications and contracts of the Company and, in the absence of specific written agreement to the contrary, apply without modifications or change to each and every Customer to whom the Company renders wastewater service.
- The Company shall provide wastewater service to all Customers requiring such service within its Certificated territory pursuant to Chapter 25-30, Florida Administrative Code and Chapter 367, Florida Statutes.
- 2.0 POLICY DISPUTE - Any dispute between the Company and the Customer or prospective Customer regarding the meaning or application of any provision of this tariff shall upon written request by either party be resolved by the Florida Public Service Commission.
- 3.0 APPLICATION - In accordance with Rule 25-30.310, Florida Administrative Code, a signed application is required prior to the initiation of service. The Company shall provide each Applicant with a copy of the brochure entitled "Your Water and Wastewater Service," prepared by the Florida Public Service Commission.
- 4.0 APPLICATIONS BY AGENTS - Applications for wastewater service requested by firms, partnerships, associations, corporations, and others shall be rendered only by duly authorized parties or agents.
- 5.0 REFUSAL OR DISCONTINUANCE OF SERVICE - The Company may refuse or discontinue wastewater service rendered under application made by any member or agent of a household, organization, or business in accordance with Rule 25-30.320, Florida Administrative Code.
- 6.0 EXTENSIONS - Extensions will be made to the Company's facilities in compliance with Commission Rules and Orders and the Company's tariff.
- 7.0 TYPE AND MAINTENANCE - In accordance with Rule 25-30.545, Florida Administrative Code, the Customer's pipes, apparatus and equipment shall be selected, installed, used and maintained in accordance with standard practice and shall conform with the Rules and Regulations of the Company and shall comply with all laws and governmental regulations applicable to same. The Company shall not be responsible for the maintenance and operation of the Customer's pipes and facilities. The Customer expressly agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the wastewater service. The Company reserves the right to discontinue or withhold wastewater service to such apparatus or device.

(Continued on Sheet No. 8.0)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 8.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 7.0)

- 8.0 CONTINUITY OF SERVICE - In accordance with Rule 25-30.250, Florida Administrative Code, the Company will at all times use reasonable diligence to provide continuous wastewater service and, having used reasonable diligence, shall not be liable to the Customer for failure or interruption of continuous wastewater service.

If at any time the Company shall interrupt or discontinue its service, all Customers affected by said interruption or discontinuance shall be given not less than 24 hours written notice.

- 9.0 LIMITATION OF USE - Wastewater service purchased from the Company shall be used by the Customer only for the purposes specified in the application for wastewater service. Wastewater service shall be rendered to the Customer for the Customer's own use and shall be collected directly into the Company's main wastewater lines.

In no case shall a Customer, except with the written consent of the Company, extend his lines across a street, alley, lane, court, property line, avenue, or other way in order to furnish wastewater service to the adjacent property even though such adjacent property may be owned by him. In case of such unauthorized extension, sale, or disposition of service, the Customer's wastewater service will be subject to discontinuance until such unauthorized extension, remetering, sale or disposition of service is discontinued and full payment is made to the Company for wastewater service rendered by the Company (calculated on proper classification and rate schedules) and until reimbursement is made in full to the Company for all extra expenses incurred for clerical work, testing, and inspections. (This shall not be construed as prohibiting a Customer from remetering.)

- 10.0 CHANGE OF CUSTOMER'S INSTALLATION - No changes or increases in the Customer's installation, which will materially affect the proper operation of the pipes, mains, or stations of the Company, shall be made without written consent of the Company. The Customer shall be liable for any change resulting from a violation of this Rule.

- 11.0 INSPECTION OF CUSTOMER'S INSTALLATION - All Customer's wastewater service installations or changes shall be inspected upon completion by a competent authority to ensure that the Customer's piping, equipment, and devices have been installed in accordance with accepted standard practice and local laws and governmental regulations. Where municipal or other governmental inspection is required by local rules and ordinances, the Company cannot render wastewater service until such inspection has been made and a formal notice of approval from the inspecting authority has been received by the Company.

Notwithstanding the above, the Company reserves the right to inspect the Customer's installation prior to rendering wastewater service, and from time to time thereafter, but assumes no responsibility whatsoever for any portion thereof.

(Continued on Sheet No. 9.0)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 9.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 8.0)

- 12.0 ACCESS TO PREMISES - In accordance with Rule 25-30.320(2)(f), Florida Administrative Code, the Customer shall provide the duly authorized agents of the Company access at all reasonable hours to its property. If reasonable access is not provided, service may be discontinued pursuant to the above rule.
- 13.0 PROTECTION OF COMPANY'S PROPERTY - The Customer shall exercise reasonable diligence to protect the Company's property. If the Customer is found to have tampered with any Company property or refuses to correct any problems reported by the Company, service may be discontinued in accordance with Rule 25-30.320, Florida Administrative Code. In the event of any loss or damage to property of the Company caused by or arising out of carelessness, neglect, or misuse by the Customer, the cost of making good such loss or repairing such damage shall be paid by the Customer.
- 14.0 RIGHT-OF-WAY OR EASEMENTS - The Customer shall grant or cause to be granted to the Company, and without cost to the Company, all rights, easements, permits, and privileges which are necessary for the rendering of wastewater service.
- 15.0 CUSTOMER BILLING - Bills for wastewater service will be rendered - Monthly, Bimonthly, or Quarterly - as stated in the rate schedule.

In accordance with Rule 25-30.335, Florida Administrative Code, the Company may not consider a Customer delinquent in paying his or her bill until the twenty-first day after the Company has mailed or presented the bill for payment.

A municipal or county franchise tax levied upon a water or wastewater public utility shall not be incorporated into the rate for water or wastewater service but shall be shown as a separate item on the Company's bills to its Customers in such municipality or county.

If a utility utilizes the base facility and usage charge rate structure and does not have a Commission authorized vacation rate, the Company shall bill the Customer the base facility charge regardless of whether there is any usage.

- 16.0 PAYMENT OF WATER AND WASTEWATER SERVICE BILLS CONCURRENTLY - In accordance with Rule 25-30.320(2)(g), Florida Administrative Code, when both water and wastewater service are provided by the Company, payment of any wastewater service bill rendered by the Company to a Customer shall not be accepted by the Company without the simultaneous or concurrent payment of any water service bill rendered by the Company.

(Continued on Sheet No. 10.0)

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 10.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 9.0)

- 17.0 DELINQUENT BILLS - When it has been determined that a Customer is delinquent in paying any bill, wastewater service may be discontinued after the Company has mailed or presented a written notice to the Customer in accordance with Rule 25-30.320, Florida Administrative Code.
- 18.0 TERMINATION OF SERVICE - When a Customer wishes to terminate service on any premises where wastewater service is supplied by the Company, the Company may require reasonable notice to the Company in accordance with Rule 25-30.325, Florida Administrative Code.
- 19.0 UNAUTHORIZED CONNECTIONS - WASTEWATER - Any unauthorized connections to the Customer's wastewater service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
- 20.0 ADJUSTMENT OF BILLS - When a Customer has been undercharged as a result of incorrect application of the rate schedule or, if wastewater service is measured by water consumption and a meter error is determined, the amount may be credited or billed to the Customer as the case may be, pursuant to Rules 25-30.340 and 25-30.350, Florida Administrative Code.
- 21.0 FILING OF CONTRACTS - Whenever a Developer Agreement or Contract, Guaranteed Revenue Contract, or Special Contract or Agreement is entered into by the Company for the sale of its product or services in a manner not specifically covered by its Rules and Regulations or approved Rate Schedules, a copy of such contracts or agreements shall be filed with the Commission prior to its execution in accordance with Rule 25-9.034 and Rule 25-30.550, Florida Administrative Code. If such contracts or agreements are approved by the Commission, a conformed copy shall be placed on file with the Commission within 30 days of execution.
- 22.0 EVIDENCE OF CONSUMPTION - The initiation or continuation or resumption of water service to the Customer's premises shall constitute the initiation or continuation or resumption of wastewater service to the Customer's premises regardless of occupancy.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 11.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

INDEX OF RATES AND CHARGES SCHEDULES

	<u>Sheet Number</u>
Customer Deposits	N/A
General Service, GS	N/A
Miscellaneous Service Charges	15.0
Residential Service, RS	13.0
Service Availability Fees and Charges	N/A

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 12.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

GENERAL SERVICE

RATE SCHEDULE GS

AVAILABILITY - Available throughout the area served by the Company.
APPLICABILITY - For wastewater service to all Customers for which no other schedule applies.
LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.
BILLING PERIOD - Monthly

RATE -

Meter Size	
5/8" x 3/4"	\$25.68
3/4"	\$38.52
1"	\$64.20
1 1/2"	\$128.40
2"	\$205.44
3"	\$410.88
4"	\$642.00
6"	\$1,284.00
<u>Gallonge Charge</u>	
Per 1,000 Gallons	\$5.27

MINIMUM CHARGE - Base Facility Charge

TERMS OF PAYMENT - Bills are due and payable when rendered. In accordance with Rule 25-30.320, Florida Administrative Code, if a Customer is delinquent in paying the bill for wastewater service, service may then be discontinued.

EFFECTIVE DATE - _____

TYPE OF BILLING - Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 13.0

MSM UTILITIES, LLC
WASTEWATER TARIFF

RESIDENTIAL SERVICE

RATE SCHEDULE RS

- AVAILABILITY - Available throughout the area served by the Company.
- APPLICABILITY - For wastewater service for all purposes in private residences and individually metered apartment units.
- LIMITATIONS - Subject to all of the Rules and Regulations of this, Tariff and General Rules and Regulations of the Commission,
- BILLING PERIOD - Monthly
- RATE - Base Facility Charge
- | | |
|--|---------|
| All Meter Sizes | \$25.68 |
| Gallage Charge Per 1,000 gallons
(Maximum 10,000 gallons per month) | \$ 4.39 |
- MINIMUM CHARGE - Base Facility Charge
- TERMS OF PAYMENT - Bills are due and payable when rendered. In accordance with Rule 25-30.320, Florida Administrative Code, if a Customer is delinquent in paying the bill for wastewater service, service may then be discontinued.
- BASE FACILITY CHARGE - Any customer who requests that service be interrupted for any length of time will pay the Base Facility Charge (BFC) during that period of interruption. Any customer who attempts to circumvent this charge by closing his account (and requesting deposit refund) at the *time of* temporary departure and then returning several months later as a new customer will be held liable for the BFC during the disconnected months. The payment of the BFC will be made monthly.
- EFFECTIVE DATE - _____
- TYPE OF FILING - Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 14.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

CUSTOMER DEPOSITS

ESTABLISHMENT OF CREDIT - Before rendering wastewater service, the Company may require an Applicant for service to satisfactorily establish credit, but such establishment of credit shall not relieve the Customer from complying with the Company's rules for prompt payment. Credit will be deemed so established if the Customer complies with the requirements of Rule 25-30.311, Florida Administrative Code.

AMOUNT OF DEPOSIT - The amount of initial deposit shall be the following according to meter size:

	<u>Residential</u>	<u>General Service</u>
5/8" x 3/4"	<u>\$85.70</u>	<u>\$101.62</u>
All over 5/8" x 3/4"	<u>2 x Average Bill</u>	<u>2 x Average Bill</u>

ADDITIONAL DEPOSIT - Under Rule 25-30.311(7), Florida Administrative Code, the Company may require a new deposit, where previously waived or returned, or an additional deposit in order to secure payment of current bills provided.

INTEREST ON DEPOSIT - The Company shall pay interest on Customer deposits pursuant to Rule 25-30.311(4) and (4a). The Company will pay or credit accrued interest to the Customer's account during the month of September each year.

REFUND OF DEPOSIT - After a residential Customer has established a satisfactory payment record and has had continuous service for a period of 23 months, the Company shall refund the Customer's deposit provided the Customer has met the requirements of Rule 25-30.311(5), Florida Administrative Code. The Company may hold the deposit of a non-residential Customer after a continuous service period of 23 months and shall pay interest on the non-residential Customer's deposit pursuant to Rule 25-30.311(4) and (5), Florida Administrative Code.

Nothing in this rule shall prohibit the Company from refunding a Customer's deposit in less than 23 months.

EFFECTIVE DATE - _____

TYPE OF FILING - Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO.

15.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

MISCELLANEOUS SERVICE CHARGES

The Company may charge the following miscellaneous service charges in accordance with the terms state herein. If both water and wastewater services are provided, only a single charge is appropriate furless circumstances beyond the control of the Company require multiple actions,

INITIAL CONNECTION - This charge may be levied for service initiation at a location where service did not exist previously.

NORMAL RECONNECTION - This charge may be levied for transfer of service to a new Customer account at a previously served location or reconnection of service subsequent to a Customer requested disconnection.

VIOLATION RECONNECTION - This charge may be levied prior to reconnection of an existing Customer after disconnection of service for cause according to Rule 25-30.320(2), Florida Administrative Code, including a delinquency in bill payment.

PREMISES VISIT - This charge may be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill and does not discontinue service because the Customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill or when a service representative visits a premises at the customer's request for complaint resolution and the problem is found to be the customer's responsibility.

Schedule of Miscellaneous Service Charges

	<u>Normal Hrs.</u>	<u>After Hrs.</u>
Initial Connection Fee	<u>\$20.00</u>	<u>N/A</u>
Normal Reconnection Fee	<u>\$20.00</u>	<u>\$40.00</u>
Violation Reconnection Fee	<u>\$ Actual Cost (1)</u>	<u>\$ Actual Cost (1)</u>
Premises Visit	<u>\$20.00</u>	<u>\$40.00</u>

(1) Actual Cost is equal to the total cost incurred for services.

EFFECTIVE DATE - _____

TYPE OF FILING - Transfer of Majority Organizational Control

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 16.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

SERVICE AVAILABILITY FEES AND CHARGES

Refer to Service Availability Policy Amount Sheet No./Rule No. Sheet No./Rule
No.

Description

<u>Customer Connection (Tap-in) Charge</u>		
5/8" x 3/4" metered service		\$
1" metered service		\$
1 1/2" metered service		\$
2" metered service		\$
Over 2" metered service		\$(1)
<u>Guaranteed Revenue Charge</u>		
With Prepayment of Service Availability Charges:		
Residential-per ERC/month ()GPD		\$
All others per gallon/month		\$
Without Prepayment of Service Availability Charges:		
Residential-per ERC/month ()GPD		\$
All others-per gallon/month		\$
<u>Inspection Fee</u>		\$(1)
<u>Main Extension Charge</u>		
Residential-per ERC ()GPD		\$
All others-per gallon		\$
or		
Residential-per lot () foot frontage)		\$
All others per front foot		\$
<u>Plan Review Charge</u>		\$(1)
<u>Plant Capacity Charge</u>		
Residential per ERC (200 GPD)		\$1,762.40
All others-per gallon		\$8.81
<u>System Capacity Charge</u>		
Residential-per ERC ()GPD		\$
All others per gallon		\$

(1) Actual Cost is equal to the total cost incurred for services rendered.

EFFECTIVE DATE - _____

TYPE OF FILING - Transfer of Majority Organizational Control

A. A. Reeves
 ISSUING OFFICER

Vice President
 TITLE

ORIGINAL SHEET NO. 17.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

INDEX OF STANDARD FORMS

	<u>Sheet No.</u>
APPLICATION FOR WASTEWATER SERVICE	19.0
COPY OF CUSTOMER'S BILL	20.0
CUSTOMER'S GUARANTEE DEPOSIT RECEIPT	14.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 18.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

CUSTOMER'S GUARANTEE DEPOSIT RECEIPT

See Sheet No. 14

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 19.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

APPLICATION FOR WATER OR WASTEWATER SERVICE

Name _____ Telephone Number _____

Billing Address _____

City _____ State _____ Zip _____

Service Address _____

City _____ State _____ Zip _____

Date service should begin _____

Service requested: Water _____ Wastewater _____ Both _____

By signing this agreement, the Customer agrees to the following:

1. The Company shall not be responsible for the maintenance and operation of the Customer's pipes and facilities. The Customer agrees not to utilize any appliance or device which is not properly constructed, controlled and protected or which may adversely affect the wastewater service; the Company reserves the right to discontinue or withhold wastewater service to such apparatus or device.
2. The Company may refuse or discontinue wastewater service rendered under application made by any member or agent of a household, organization, or business for any of the reasons contained in Rule 25-30.320, Florida Administrative Code. Any unauthorized connections to the Customer's wastewater service shall be subject to immediate discontinuance without notice, in accordance with Rule 25-30.320, Florida Administrative Code.
3. The Customer agrees to abide by all existing Company Rules and Regulations as contained in the tariff. In addition, the Customer has received from the Company a copy of the brochure "Your Water and Wastewater Service" produced by the Florida Public Service Commission.
4. Bills for wastewater service will be rendered - Monthly, Bimonthly, or Quarterly - as stated in the rate schedule. Bills must be paid within 20 days of mailing bills. If payment is not made after five working days written notice, service may be discontinued.
5. When a Customer wishes to terminate service on any premises where water and/or wastewater service is supplied by the Company, the Company may require a 24-hour written notice prior to the date the Customer desires to terminate service.

Signature

Date

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 20.0

MSM UTILITIES, LLC
WASTEWATER TARIFF

COPY OF CUSTOMER'S BILL

MSM UTILITIES, LLC
5660 Bayshore Road, Suite 36
North Fort Myers, Florida 33917

Water and Sewer Bill

Date: _____
Name: _____
Account Number: _____
Current Reading: _____
Last Reading: _____
Gallons Used: (x1000) _____

Water

Base Rate: \$ 10.50
Usage:

Sewer

Base Rate: \$ 6.50
Usage:

Current Balance:

Past Due:

TOTAL DUE:

Billing Period _____ to _____

A. A. Reeves
ISSUING OFFICER
Vice President
TITLE

ORIGINAL SHEET NO. 21.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

INDEX OF SERVICE AVAILABILITY POLICY

	<u>Sheet Number</u>
Schedule of Fees and Charges	N/A
Service Availability Policy	22.0

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 22.0

MSM UTILITIES, LLC

WASTEWATER TARIFF

SERVICE AVAILABILITY POLICY

The utility provides service to the Oaks at Rivers Edge (Formerly Hunter Creek Village). The developer shall install the wastewater collection lines to the boundary of each new lot and the lot owner or the developer shall pay all approved service availability fees for the lots that are developed and must connect to the wastewater system to receive service.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

WATER TARIFF

MSM UTILITIES, LLC
NAME OF COMPANY

FILED WITH
FLORIDA PUBLIC SERVICE COMMISSION

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

REVISED EXHIBIT "E"

TARIFF SHEET

ORIGINAL SHEET NO. 3.4

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 3.3)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

A portion of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida, being more specifically described as follows:
Commence at the Southeast corner of said Section 13: Thence South 87 degrees 21'06" West along the South line of said Section 13, a distance of 91.87 feet to the West right-of-way of State Road #35 (U.S. Highway #17) and the point of beginning; thence continue South 87 degrees 21'06" West a distance of 646.51 feet; thence North 01 degrees 58'09" West a distance of 2383.80 feet; thence north 88 degrees 27'53" East a distance of 337.71 feet; thence North 01 degrees 32'01" West a distance of 277.75 feet; thence north 30 degrees 58'39" West a distance of 125.00 feet; thence 69 degrees 19'18" West a distance of 312.50 feet; thence North 01 degrees 32'07" West a distance of 80.00 feet; thence South 88 Degrees 27'53" West a distance of 22.82 feet; thence North 01 degrees 32'07" West a distance of 330.00 feet; thence North 02 degrees 46'04" West a distance of 1700.17 feet; thence North 88 degrees 23'07" East a distance of 329.07 feet; thence North 02 degrees 47'31" West a distance of 635.34 feet to the South right-of-way of Palm Shores Boulevard; thence North 88 degrees 20'46" East a distance of 275.52 feet to the West right-of-way of State Road #35 (U.S. Highway #17); thence South 02 degrees 47'57" East along said right-of-way a distance of 2006.62 feet; thence South 88 degrees 18'40" West along said right-of-way a distance of 5.28 feet to the point of curvature of a curve to the left having as elements a radius of 11.333.16 feet and a central angle of 03 degrees 02'06.1"; thence along arc of said curve a distance of 600.33 feet to the point of compound curvature of a curve to the left having as elements a radius of 11.585.16 feet and a central angle of 04 degrees 34'53.3"; thence along arc of said curve a distance of 926.37 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 23.40 feet; thence North 87 degrees 21'06" East along said right-of-way a distance of 36.00 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 300.00 feet; thence North 87 degrees 21'06" East along said right-of-way a distance of 10.00 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 1439.06 feet to the point of beginning.

Containing 62.16 acres more or less.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.5

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 3.4)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

Section 4, Township 40 South, Range 24 East, Charlotte County, Florida.
Together with

All of Section 5, Township 40 South, Range 24 East, Charlotte County, Florida. Less and except that portion of the West $\frac{1}{4}$ of said Section 5 conveyed to Schwartz Charlotte Properties, LLC, a Florida limited liability company by Warranty Deed dated April 3, 2001, and recorded in O.R. Book 1880, pages 633 through 636, inclusive, of the public records of Charlotte County, Florida, and less and except the parcel of property commonly referred to as the Zemel right-of-way property.

Together with

Government Lot No. 2 in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 6, Township 40 South, Range 24 East, Charlotte County, Florida less and except lands described in Official Records Book 1880, pages 633 through 636, public records of Charlotte County, Florida.

Together with

The Northeast $\frac{1}{4}$ of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida, less the South 815.85 feet.

Together with

The South $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of Section 8, Township 40 South, Range 24 East, Charlotte County, Florida, which parcel includes all of said section 8 less and except the portion thereof conveyed to Schwartz Charlotte Properties, LLC, a Florida limited liability company, by Warranty Deed dated April 3, 2001, and recorded in O.R. Book 1880, pages 633 through 636, inclusive, of the public records of Charlotte County, Florida.

Also, less and except that portion of the above-described parcel lying west of the Zemel property (old abandoned 100 foot railroad right-of-way) and less and except the said right-of-way.

Together with

All of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida, less and except the Northeast $\frac{1}{4}$ of said Section 9.

Plus

The South 815.85 feet of the N.E. $\frac{1}{4}$ of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.6

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 3.5)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

The West ½ of Section 10, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

The Southerly 150 Feet of Sections 7 and 8, Township 40 South, Range 24 East, Charlotte County, Florida, less the above-referenced Zemel property.

And

A parcel of land lying in Sections 5, 6, 7 and 8, Township 40 South, Range 24 East, Charlotte County, Florida, described as follows:
Begin at the NW corner of said Sec. 6; thence S 89°43'07" E, along N line of said Sec. 6, 1786.20 ft. to Point of Beginning; thence S 01°06'38" W along Ely line of Ann H. Ryals property as described in O.R. Book 1435, Pages 1513 and 1514, of the Public Records of Charlotte County, Florida, 1287.30 ft.; thence S 73°2T33" E along said Ely line, 919.56 ft.; thence S 00°41'16" E along said Ely line, 1116.55 ft. to SE corner of said Ryals property; thence N 89°41'03" W along S line of said Ryals property, 2475.81 ft. to E right-of-way line of State Road 35 (U.S. Highway 17) as monumented; thence S 00°26'53" W along said E right-of-way line, 1844.49 ft. to N line of William E. Roe property as described in O.R. Book 855, Page 1941, Public Records of Charlotte County, Florida; thence 89°45'11" E along said N line, 1883.20 ft. to NE corner of said Roe property; thence 00°31'12" W along E line of said Roe property, 118.50 ft. to SE corner of said Roe property; thence N 89°45'11" W along S line of said Roe property, 1585.05 ft. to E right-of-way of State Road 35 (U.S. Highway 17) as monumented; thence S 00°20'17" W along said E right-of-way line, 670.37 ft. to a point on the S line of said Sec. 6; thence 89°49'39"W along said S line and on said right-of-way line of State Road 35 (U.S. Highway 17), 298.00 ft.; thence S 00°20'17" W along said E right-of-way line, 677.88 ft.; thence S 00°24'44" W along said E right-of-way line, 652.61 ft. to N line of Raymond Smith property as described in O.R. Book 963, Pages 2090 and 2091, Public Records of Charlotte County, Florida; thence S 89°32'33" E along N line of said Smith property as monumented by ABS & Associated, Inc.,

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.7

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 3.6)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

Registered Land Surveyors, 1138.93 ft. to a W iron rod set by said registered surveyors for the NE corner of Lot 11 of FLORADONIA SUBDIVISION, as recorded in Plat Book 1, Page 44, Public Records of Charlotte County, Florida; thence S 00°27'48" W along E line of said Smith property and also E line of said Lot 11, 1326.85 ft. to a 1/2' iron rod set by said registered surveyors for the SE corner of said Lot 11 in centerline of Catalpa Avenue; thence S 89°08'19" E along said centerline of Catalpa Avenue and along S line of the N 1/2 of Sec. 7, 4675.89 ft. to the E 1/4 corner of said Sec. 7; thence S 68°40'35" E, along said centerline and along S line of N 1/2 of Sec. 8, 3406.06 ft.; thence N 5380.44 ft. to a point on the N line of the S 1/2 of Sec. 5; thence N 89°00'36" W along said N line, 2545.405 ft. to a point on the W line of Zemel property (old abandoned 100 ft. wide railroad bed); thence N 07°47'49" W along said W line, 988.17 ft.; thence N 39°33'51" W, 1397.205 ft.; thence N 46°23'45" W, 875.12 ft. to N line of said Sec. 6; thence N 89°43'07" W along said N line, 3372.19 ft. to Point of Beginning. LESS Zemel property (old abandoned 100 foot wide railroad bed) running N'ly from the S line of N 1/2 of Sec. 8 to the N line of the S 1/2 of Sec. 5. Also subject to reservations, restrictions and easements of record.

And

The South 1/4 of Section 7, Township 40 South, Range 24 East, Charlotte County, Florida less right-of-way to State Road No. 35 (U.S. Highway No. 17) along West side and less the South 150.00 feet and also less the South 1/8 of Northwest 1/4 of Southwest 1/4. Also that part of the Southwest 1/4 of Section 8, Township 40 South, Range 24 East, Charlotte County, Florida lying West of Zemel Property (Old abandoned 100 foot wide Rail Road right-of-way) less the South 150.00 feet.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.8

MSM UTILITIES, LLC

WATER TARIFF

(Continued from Sheet No. 3.7)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

A part of Section 6, Township 40 South, Range 24 East described as follows, Begin at the NW corner of Section 6, Township 40 South, Range 24 East, thence S 89°38'49" East along North line of said Section 6. 50 feet to East right-of-way of U.S. 17, thence South 0°30'10" West along said East right-of-way, 50 feet to point of beginning, thence S 89°38'33" S, 1735.61 feet; thence South 1°10'26" West, 1237.08 feet; thence S 73°23'45" East, 919.56 feet; thence S 0°37'28" East, 1116.55 feet; thence N 89°37'15" West, 2626.59 feet to East right-of-way of U.S. 17; thence N 0°30'10" East along said East right-of-way, 2609.46 feet to Point Of Beginning, all lying and being in Township 40 South, Range 24 East, Charlotte County, Florida. **LESS and SUBJECT** to any railroad right-of-way and Florida Power & Light Company easements of record.

Less and Except
PARCEL, 105

THAT PORTION OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 40 SOUTH, RANGE 24 EAST, CHARLOTTE COUNTY, FLORIDA. BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 40 SOUTH, RANGE 24 EAST; THENCE ALONG THE NORTH LINE OF SAID SECTION 6, SOUTH 89° 43' 07" EAST, 0.39 FEET TO THE SURVEY BASE LINE OF STATE ROAD 35 (U.S. Highway No. 17); THENCE ALONG SAID SURVEY BASE LINE, SOUTH 00°29'34" WEST, 50.00 FEET; THENCE SOUTH 89°42'41" EAST, 49.85 FEET FOR A POINT OF BEGINNING, SAID POINT LYING ON THE EASTERLY EXISTING RIGHT OF WAY LINE OF STATE ROAD 35 (U.S. 17) (PER DEED EXCEPTION, OFFICIAL RECORDS BOOK 836, PAGE 595); THENCE CONTINUE SOUTH 89°42'41" EAST, 152.35 FEET; THENCE SOUTH 00°29'34" WEST, 1,533.83 FEET; THENCE SOUTH 00°26'93" WEST, 1,075.70 FEET; THENCE NORTH 59°41'03" WEST, 150.74 FEET TO SAID EASTERLY EXISTING RIGHT OF WAY LINE; THENCE ALONG SAID EXISTING RIGHT OF WAY LINE, NORTH 00°21'54" EAST, 13.93 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6; THENCE CONTINUE ALONG SAID EASTERLY EXISTING RIGHT OF WAY LINE, NORTH 00°36'22" EAST, 2,595.52 FEET TO THE POINT OF BEGINNING.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.4

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 3.3)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

A portion of Section 13, Township 40 South, Range 23 East, Charlotte County, Florida, being more specifically described as follows:
Commence at the Southeast corner of said Section 13: Thence South 87 degrees 21'06" West along the South line of said Section 13, a distance of 91.87 feet to the West right-of-way of State Road #35 (U.S. Highway #17) and the point of beginning; thence continue South 87 degrees 21'06" West a distance of 646.51 feet; thence North 01 degrees 58'09" West a distance of 2383.80 feet; thence north 88 degrees 27'53" East a distance of 337.71 feet; thence North 01 degrees 32'01" West a distance of 277.75 feet; thence north 30 degrees 58'39" West a distance of 125.00 feet; thence 69 degrees 19'18" West a distance of 312.50 feet; thence North 01 degrees 32'07" West a distance of 80.00 feet; thence South 88 Degrees 27'53" West a distance of 22.82 feet; thence North 01 degrees 32'07" West a distance of 330.00 feet; thence North 02 degrees 46'04" West a distance of 1700.17 feet; thence North 88 degrees 23'07" East a distance of 329.07 feet; thence North 02 degrees 47'31" West a distance of 635.34 feet to the South right-of-way of Palm Shores Boulevard; thence North 88 degrees 20'46" East a distance of 275.52 feet to the West right-of-way of State Road #35 (U.S. Highway #17); thence South 02 degrees 47'57" East along said right-of-way a distance of 2006.62 feet; thence South 88 degrees 18'40" West along said right-of-way a distance of 5.28 feet to the point of curvature of a curve to the left having as elements a radius of 11.333.16 feet and a central angle of 03 degrees 02'06.1"; thence along arc of said curve a distance of 600.33 feet to the point of compound curvature of a curve to the left having as elements a radius of 11.585.16 feet and a central angle of 04 degrees 34'53.3"; thence along arc of said curve a distance of 926.37 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 23.40 feet; thence North 87 degrees 21'06" East along said right-of-way a distance of 36.00 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 300.00 feet; thence North 87 degrees 21'06" East along said right-of-way a distance of 10.00 feet; thence South 02 degrees 38'54" East along said right-of-way a distance of 1439.06 feet to the point of beginning.

Containing 62.16 acres more or less.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.5

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 3.4)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

Section 4, Township 40 South, Range 24 East, Charlotte County, Florida.
Together with

All of Section 5, Township 40 South, Range 24 East, Charlotte County, Florida. Less and except that portion of the West $\frac{1}{4}$ of said Section 5 conveyed to Schwartz Charlotte Properties, LLC, a Florida limited liability company by Warranty Deed dated April 3, 2001, and recorded in O.R. Book 1880, pages 633 through 636, inclusive, of the public records of Charlotte County, Florida, and less and except the parcel of property commonly referred to as the Zemel right-of-way property.

Together with

Government Lot No. 2 in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 6, Township 40 South, Range 24 East, Charlotte County, Florida less and except lands described in Official Records Book 1880, pages 633 through 636, public records of Charlotte County, Florida.

Together with

The Northeast $\frac{1}{4}$ of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida, less the South 815.85 feet.

Together with

The South $\frac{1}{2}$ and the Northeast $\frac{1}{4}$ of Section 8, Township 40 South, Range 24 East, Charlotte County, Florida, which parcel includes all of said section 8 less and except the portion thereof conveyed to Schwartz Charlotte Properties, LLC, a Florida limited liability company, by Warranty Deed dated April 3, 2001, and recorded in O.R. Book 1880, pages 633 through 636, inclusive, of the public records of Charlotte County, Florida.

Also, less and except that portion of the above-described parcel lying west of the Zemel property (old abandoned 100 foot railroad right-of-way) and less and except the said right-of-way.

Together with

All of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida, less and except the Northeast $\frac{1}{4}$ of said Section 9.

Plus

The South 815.85 feet of the N.E. $\frac{1}{4}$ of Section 9, Township 40 South, Range 24 East, Charlotte County, Florida.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.6

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 3.5)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

The West $\frac{1}{2}$ of Section 10, Township 40 South, Range 24 East, Charlotte County, Florida.

Together with

The Southerly 150 Feet of Sections 7 and 8, Township 40 South, Range 24 East, Charlotte County, Florida, less the above-referenced Zemel property.

And

A parcel of land lying in Sections 5, 6, 7 and 8, Township 40 South, Range 24 East, Charlotte County, Florida, described as follows:
Begin at the NW corner of said Sec. 6; thence S 89°43'07" E, along N line of said Sec. 6, 1786.20 ft. to Point of Beginning; thence S 01°06'38" W along Ely line of Ann H. Ryals property as described in O.R. Book 1435, Pages 1513 and 1514, of the Public Records of Charlotte County, Florida, 1287.30 ft.; thence S 73°27'33" E along said Ely line, 919.56 ft.; thence S 00°41'16" E along said Ely line, 1116.55 ft. to SE corner of said Ryals property; thence N 89°41'03" W along S line of said Ryals property, 2475.81 ft. to E right-of-way line of State Road 35 (U.S. Highway 17) as monumented; thence S 00°26'53" W along said E right-of-way line, 1844.49 ft. to N line of William E. Roe property as described in O.R. Book 855, Page 1941, Public Records of Charlotte County, Florida; thence 89°45'11" E along said N line, 1883.20 ft. to NE corner of said Roe property; thence 00°31'12" W along E line of said Roe property, 118.50 ft. to SE corner of said Roe property; thence N 89°45'11" W along S line of said Roe property, 1585.05 ft. to E right-of-way of State Road 35 (U.S. Highway 17) as monumented; thence S 00°20'17" W along said E right-of-way line, 670.37 ft. to a point on the S line of said Sec. 6; thence 89°49'39" W along said S line and on said right-of-way line of State Road 35 (U.S. Highway 17), 298.00 ft.; thence S 00°20'17" W along said E right-of-way line, 677.88 ft.; thence S 00°24'44" W along said E right-of-way line, 652.61 ft. to N line of Raymond Smith property as described in O.R. Book 963, Pages 2090 and 2091, Public Records of Charlotte County, Florida; thence S 89°32'33" E along N line of said Smith property as monumented by ABS & Associated, Inc.,

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.7

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 3.6)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

Registered Land Surveyors, 1138.93 ft. to a W iron rod set by said registered surveyors for the NE corner of Lot 11 of FLORADONIA SUBDIVISION, as recorded in Plat Book 1, Page 44, Public Records of Charlotte County, Florida; thence S 00°27'48" W along E line of said Smith property and also E line of said Lot 11, 1326.85 ft. to a 1/2' iron rod set by said registered surveyors for the SE corner of said Lot 11 in centerline of Catalpa Avenue; thence S 89°08'19" E along said centerline of Catalpa Avenue and along S line of the N 1/2 of Sec. 7, 4675.89 ft. to the E 1/4 corner of said Sec. 7; thence S 88°40'35" E, along said centerline and along S line of N 1/2 of Sec. 8, 3406.06 ft.; thence N 5380.44 ft. to a point on the N line of the S 1/2 of Sec. 5; thence N 89°00'36" W along said N line, 2545.405 ft. to a point on the W line of Zemel property (old abandoned 100 ft. wide railroad bed); thence N 07°47'49" W along said W line, 988.17 ft.; thence N 39°33'51" W, 1397.205 ft.; thence N 46°23'45" W, 875.12 ft. to N line of said Sec. 6; thence N 89°43'07" W along said N line, 3372.19 ft. to Point of Beginning. LESS Zemel property (old abandoned 100 foot wide railroad bed) running N'ly from the S line of N 1/2 of Sec. 8 to the N line of the S 1/2 of Sec. 5. Also subject to reservations, restrictions and easements of record.

And

The South 1/4 of Section 7, Township 40 South, Range 24 East, Charlotte County, Florida Less right-of-way to State Road No. 35 (U.S. Highway No. 17) along West side and less the South 150.00 feet and also less the South 1/8 of Northwest 1/4 of Southwest 1/4. Also that part of the Southwest 1/4 of Section 8, Township 40 South, Range 24 East, Charlotte County, Florida lying West of Zemel Property (Old abandoned 100 foot wide Rail Road right-of-way) less the South 150.00 feet.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

ORIGINAL SHEET NO. 3.8

MSM UTILITIES, LLC

WASTEWATER TARIFF

(Continued from Sheet No. 3.7)

DESCRIPTION OF TERRITORY SERVED
WATER AND WASTEWATER SERVICE AREA

A part of Section 6, Township 40 South, Range 24 East described As follows, Begin at the NW corner of Section 6, Township 40 South, Range 24 East, thence S 89°38'49" East along North line of said Section 6. 50 feet to East right-of-way of U.S. 17, thence South 0°30'10" West along said East right-of-way, 50 feet to point of beginning, thence S 89°38'33" S, 1735.61 feet' thence South 1°10'26" West, 1237.08 feet; thence S 73°23'45" East, 919.56 feet; thence S 0°37'28" East, 1116.55 feet; thence N 89°37'15" West, 2626.59 feet to East right-of-way of U.S. 17; thence N 0°30'10" East along said East right-of-way, 2609.46 feet to Point Of Beginning, all lying and being in Township 40 South, Range 24 East, Charlotte County, Florida. **LESS and SUBJECT** to any railroad right-of-way and Florida Power & Light Company easements of record.

Less and Except
PARCEL, 105

THAT PORTION OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 40 SOUTH, RANGE 24 EAST, CHARLOTTE COUNTY, FLORIDA. BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 40 SOUTH, RANGE 24 EAST; THENCE ALONG THE NORTH LINE OF SAID SECTION 6, SOUTH 89° 43' 07" EAST, 0.39 FEET TO THE SURVEY BASE LINE OF STATE ROAD 35 (U.S. Highway No. 17); THENCE ALONG SAID SURVEY BASE LINE, SOUTH 00°29'34" WEST, 50.00 FEET; THENCE SOUTH 89°42'41" EAST, 49.85 FEET FOR A POINT OF BEGINNING, SAID POINT LYING ON THE EASTERLY EXISTING RIGHT OF WAY LINE OF STATE ROAD 35 (U.S. 17) (PER DEED EXCEPTION, OFFICIAL RECORDS BOOK 836, PAGE 595); THENCE CONTINUE SOUTH 89°42'41" EAST, 152.35 FEET; THENCE SOUTH 00°29'34" WEST, 1,533.83 FEET; THENCE SOUTH 00°26'93" WEST, 1,075.70 FEET; THENCE NORTH 59°41'03' WEST, 150.74 FEET TO SAID EASTERLY EXISTING RIGHT OF WAY LINE; THENCE ALONG SAID EXISTING RIGHT OF WAY LINE, NORTH 00°21'54" EAST, 13.93 FEET TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6; THENCE CONTINUE ALONG SAID EASTERLY EXISTING RIGHT OF WAY LINE, NORTH 00°36'22" EAST, 2,595.52 FEET TO THE POINT OF BEGINNING.

A. A. Reeves
ISSUING OFFICER

Vice President
TITLE

EXHIBIT "F"

AFFIDAVIT OF MAILING TO UTILITIES AND GOVERNMENTAL BODIES

AFFIDAVIT OF MAILING

STATE OF FLORIDA _____
COUNTY OF LEON

Before me, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared Jacquelyn Tribble, who, after being duly sworn on oath, did depose on oath and say that she is the secretary of Robert C. Brannan, attorney for MSM Utilities, LLC and that on February __, 2007, she did send by regular U.S. mail, a copy of the notice attached hereto to each of the utilities, governmental bodies, agencies, or municipalities, in accordance with the list provided by the Florida Public Service Commission, which is also attached hereto.

FURTHER AFFIANT SAYETH NAUGHT.

Jacquelyn Tribble
Jacquelyn Tribble

Sworn to and subscribed before me this 8th day of February, 2007, by Jacquelyn Tribble, who is personally known to me.

Bronwyn S. Revell

Print Name
NOTARY PUBLIC
My Commission Expires

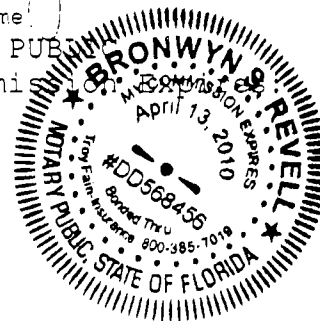


EXHIBIT "F"

EXHIBIT "G"

Affidavit of Property Owners Notice

AFFIDAVIT OF MAILING

STATE OF FLORIDA

COUNTY OF LEON

Before me, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared _____, who, after being duly sworn on oath, Jacquelyn Tribble, who, after being duly sworn on oath, did depose on oath and say that she is the secretary of Robert C. Brannan, attorney for MSM Utilities, LLC and that on February __, 2007, he/she did send by regular U.S. mail, a copy of the notice attached hereto to each of the property owners in the proposed territory.

FURTHER AFFIANT SAYETH NAUGHT.

Jacquelyn Tribble
Jacquelyn Tribble

Sworn to and subscribed before me this ___ day of February, 2007, by Jacquelyn Tribble, who is personally known to me or has produced _____ as identification.

Bronwyn S. Revell
Print Name
NOTARY PUBLIC
My Commission Expires: *April 13, 2010*
#DD568456
Notary Public, State of Florida
800.385.7019

EXHIBIT "G"

EXHIBIT "H"

WILL BE LATE FILED

(Affidavit of Newspaper Publication)

EXHIBIT "I"

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF LEON

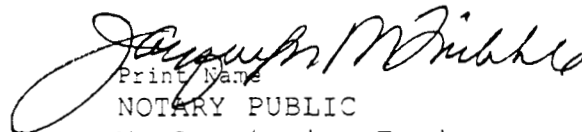
Before me, the undersigned authority, authorized to administer oaths and take acknowledgments, personally appeared Robert C. Brannan, who, after being duly sworn on oath, did depose on oath and say that he is the attorney for MSM Utilities, LLC/Sun River Utilities, Inc. and that on January 30, 2007, he did call the Public Service Commission and spoke with Ms. Stephanie Clapp and she confirmed to Robert that MSM Utilities, LLC, had a tariff on file with the Public Service Commission. Mr. Brannan also says that on January 30, 2007, he did search the Public Service Commission's web site and confirmed that MSM Utilities, LLC has filed a current Annual Report.

FURTHER AFFIANT SAYETH NAUGHT



ROBERT C. BRANNAN

Sworn to and subscribed before me this 8th day of February, 2007, by Robert C. Brannan, who is personally known to me.



Print Name
NOTARY PUBLIC
My Commission Expires:

EXHIBIT "I"



Jacquelyn M. Tribble
MY COMMISSION # DD203915 EXPIRES
June 5, 2007
BONDED THRU TROY FAIRBANKS, INC.

December 18, 2006

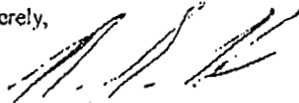
Mr. Tony Reeves
RF: Interest in Water and Sewer Services by Sun River Utilities
2401/2351, 3011 Duncan Road, Charlotte County (Parcel ID#0070986-000200-9) (Parcel ID#0071112-000700-9)

Dear Mr. Reeves;

Please be advised that as the owner of 2401/2351, 3011 Duncan Road, referenced above, I am very interested in receiving Water and Sewer Service by Sun River Utilities, and agree to cooperate with Sun River Utilities in applying to the Public Service Commission to have my property located at 2401/2351, 3011 Duncan Road included in the certificated territory of Sun River Utilities.

Please keep me informed as the approval process continues.

Sincerely,



Robert Scott Keenan

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 070109-WS EXHIBIT 4
COMPANY Sun River Utilities, Inc.
WITNESS A.A. Reeves, III (AAR-3)
DATE 01/16/08

Hudson-Sun River, LLC

*84 Business Park Drive
Armonk, NY 10504
Tel: 914-273-1200 Fax: 914-273-2491*

January 3, 2007

Mr. A. A. Reeves, Utility Director
Sun River Utilities, Inc.
5660 Bayshore Road, Suite 36
North Fort Myers, Florida 33917

Dear Mr. Reeves:

Hudson Sun-River, LLC ("Hudson Sun-River") currently has the Hudson Ranch property (approximately 2,458 acres) under contract to purchase. As the future owners of the site, we believe that the availability of water and sewer is important to our development plans. Accordingly, Hudson Sun-River is very interested in receiving water and sewer services from Sun River Utilities, Inc. ("Sun River Utilities"), and we request to have our site included into the certificated service territory of Sun River Utilities. We agree to cooperate with Sun River Utilities in applying to the Public Service Commission for said extension of the certificated service territory. A legal description of the property is attached.

If you have any questions, or need further information, please do not hesitate to contact me.

Sincerely,



Martin G. Berger
Managing Member
Hudson Sun-River, LLC

Robert C. Brannan, Esq.
Rosc, Sundstrom, & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

January 24, 2007

Re: Request for inclusion into service territory of MSM Utilities, LLC

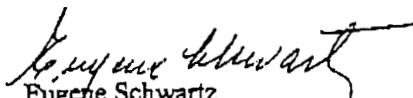
Dear Mr. Brannan,

I am the owner of the parcels (ID #'s provided) along US 17 in Charlotts County, Florida. I understand that you are making an application for an extension of the certificated utility service territory of MSM Utilities, LLC near our land and that of your clients.

We would appreciate your adding our property to your application for "addition to the utility service territory".

We believe our property is in a location that will be vital to Charlotte County citizens in the future and we wish to be part of that consideration.

Sincerely,


Eugene Schwartz
Charlotte County, Florida

ZACHARIAH P. ZACHARIAH, M.D., P.A.

EDGARDO DOS SANTOS, M.D.
PHILIP GEORGE, M.D.
LUIS N. VILLANUEVA, M.D.
MAMMEN P. ZACHARIAH, M.D.
MOLLY A. ZACHARIAH, M.D.
ZACHARIAH P. ZACHARIAH, M.D.

HOLY CROSS HOSPITAL
4725 NORTH FEDERAL HIGHWAY, SUITE 501
FORT LAUDERDALE, FLORIDA 33308

April 16, 2007

TELEPHONE: 954/772-2200
Fax: 954/772-2236
Fax: 954/772-8218

Mr. A. A. Reeves, Utility Director
Sun River Utilities, Inc.
5660 Bayshore Road, Suite 36
North Fort Myers , Florida 33917

Dear Mr. Reeves:

I am the owner at 31550 Washington Loop, Punta Gorda (Exhibit A attached) and sole manager of 246 LLC, owner of property also located on Washington Loop (Exhibit B attached) which together total 546 acres. The property currently is not served by any water and/or wastewater utility company.

Accordingly, I am very interested in receiving water and sewer services from Sun River Utilities, Inc. ("Sun River Utilities"), and I would like to request to have these properties be included into the certificated service territory of Sun River Utilities .

If necessary, I would agree to cooperate with Sun River Utilities in applying to the Public Service Commission for said extension of the certificated service territory. Legal descriptions of the properties are attached as Exhibits A and B.

If you have any questions, or need further in formation, please do not hesitate to contact me.

Sincerely,

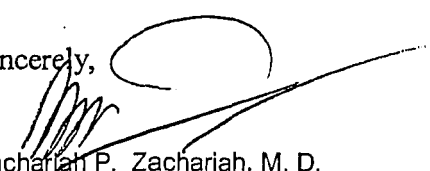

Zachariah P. Zachariah, M. D.

EXHIBIT "A"

Lots 4,5,6,7,8,9,10,11,12,13,20,21,22,23,24, and the Westerly 400.73 feet of Lot 3, J.H. Lucas Subdivision in Section 17, Township 40 South, Range 24 East, according to the Plat thereof as recorded in Plat Book 1, Page 44 of the Public Records of Charlotte County, Florida;

LESS AND EXCEPT the following described portion of Section 17:

Beginning at the intersection of the West limit of said Section 17 with the North limit of State Road 764; Thence North 00 03'26" East, along said West limit of Section 17, a distance of 273.00 feet to a point; Thence South 88 53'05" East, a distance of 160.00 feet to a point; Thence South 00 03'26" West, a distance 273.00 feet to a point on said North limit to State Road 764; Thence North 88 53'05" West, along said North limit to State Road 764, a distance of 160.00 feet to the Point of Beginning.

EXHIBIT B

LEGAL DESCRIPTION

A parcel of land located in a subdivision of Section 18, Township 40 South, Range 24 East, CHARLOTTE COUNTY, FLORIDA, as filed by Lucas and recorded in Plat Book 1, Page 44 of the Public Records of Charlotte County, Florida, being more particularly described as follows:

Beginning at the Northeast corner of Said Section 18, Township 40 South, Range 24 East, thence South 00°14'00" East along the East line of said Section 18, Township 40 South, Range 24 East, a distance of 2626.80 feet to the East Quarter corner; thence North 88°48'02" West, a distance of 655.22 feet; thence South 00°12'34" East, a distance of 620.92 feet; thence North 88°52'57" West a distance of 2621.87 feet thence North 00°06'52" West a distance of 3268.51 feet to the North line of said Section 18, Township 40 South, Range 24 East; thence South 88°29'58" East, along the North line of Section 18, a distance of 3271.22 feet to the Point of Beginning.

TOGETHER WITH:

a 30.00 foot ingress and egress easement more particularly described in Official Records Book 821 at Page 1708, of the Public Records of Charlotte County, Florida.

Together with:

Parcel No. 1:

A parcel of land located in a subdivision of Section 18, Township 40 South, Range 24 East, CHARLOTTE COUNTY, FLORIDA, being more particularly described as follows:

Commence at the East 1/4 corner of Section 18, Township 40 South, Range 24 East, thence run South 00°14'00" East along the east line of said Section 1237.32 feet to the north R/W of State Route 764; thence run North 89°11' 44" West along said R/W 2145.31 thence continue along said R/W North 00°54'48" East 10.06 feet, thence continue along said R/W North 89°10' 12" West 307.56 feet to the Point of Beginning; thence continue along said R/W North 89°10' 12" W 359.70 feet to the S.E. corner of a parcel of land located described in O. R. Book 565, Page 1583, of the Public Records of Charlotte County, Florida, thence run North 00° 49' 48" East along the east line of said parcel 330.00 feet to the Northeast corner of said parcel; thence continue North 00° 49' 48" East 292.18 feet thence run South 88° 52' 57" East 359.70 feet; thence run South 00° 49' 48" W 620.37 feet to the Point of Beginning.

Parcel No. 2:

A parcel of land located in a subdivision of Section 18, Township 40 South, Range 24 East, CHARLOTTE COUNTY, FLORIDA, being more particularly described as follows:

Commence at the East quarter corner of Section 18, Township 40 South, Range 24 East; thence run South 00° 14' 00" East along the east line of said Section, 1237.32 feet to the North R/W of State Road 764; thence North 89° 11' 44" West along said R/W 2092.00 feet to the Point of Beginning; thence continue North 89° 11' 44" West along said R/W 53.32 feet; thence North 00° 54' 48" East along said R/W 10.06 feet; thence continue along said R/W North 89° 10' 12" West 307.56 feet; thence run North 00° 49' 48" East 620.37 feet; thence run South 88° 52' 57" East 360.59 feet; thence run South 00° 48' 16" West 628.60 feet to the Point of Beginning.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 07010945 EXHIBIT 5

COMPANY Sun River Utilities, Inc.

WITNESS Gerald C. Hartman, (GCH-1)

DATE 01-16-08

GERALD C. HARTMAN, PE, BCEE, ASA
Environmental Group Practice Leader/Vice President

Docket No. 070109-WS
Application for Amendment
Exhibit GCH-1 - Page 1 of 12

EDUCATION

B.S., Duke University, 1975
M.S., Duke University, 1976

PROFESSIONAL REGISTRATION

Alabama	No. 19422
Arizona	No. 28939
Colorado	No. 31200
Florida	No. 27703
Georgia	No. 17597
Illinois	No. 062-053100
Indiana	No. 10100292
Louisiana	No. 30816
Maine	No. 10395
Maryland	No. 12410
Mississippi	No. 12717
New Hampshire	No. 10820
New Mexico	No. 15990
North Carolina	No. 15264
Ohio	No. 70152
Pennsylvania	No. 38216
South Carolina	No. 15389
Virginia	No. 131184
Wisconsin	No. 32971
NCEES National P.E. Senior Appraiser Public Utilities, A.S.A.	No. 2048 No. 7542

PROFESSIONAL AFFILIATIONS

Diplomate - American Academy of
Environmental Engineers
American Society of Civil Engineers
National Society of Professional Engineers
Florida Engineering Society
American Water Works Association

EXPERIENCE

Financial Reports

Mr. Hartman has been involved in over 300 capital charge, impact fee and installation charge studies involving water, wastewater and fire service for various entities. He also has participated in over 150 user rate adjustment reports. Mr. Hartman assisted in the development of over 70 revenue bond issues, 20 short-term bank loan systems, 10 general obligation bonds, numerous grant/loan programs, numerous capacity sale programs, and 20 privatization programs. Mr. Hartman has been involved in over \$2 billion in utility bond and commercial loan financings for water and wastewater utility, and over \$4 billion in utility grants, matching funding, cost-sharing, SRF loans and Federal Loans (R.D., etc.), assessments and CIAC programs.

Water and Environment Federation
American Water Resources Association
Florida Water & Pollution Control
Operators Association
Florida Water Works Association
American Concrete Institute
Water Management Institute
American Society of Appraisers

QUALIFICATIONS SUMMARY

Mr. Hartman is an experienced environmental engineer with special expertise in water, wastewater and stormwater utility systems. Mr. Hartman is a qualified expert witness in the areas of water supply and treatment, wastewater treatment and effluent disposal, utility system valuation and financing, facility siting, certification/service area activities/ franchises and formation/creation, management and acquisition of utility projects.

Mr. Hartman is highly qualified in environmental engineering with special expertise in pumping system analysis/station design; hydraulic analysis; pipeline design; wastewater collection, treatment, effluent reuse, utilization and disposal; facility planning; rate charge and fee studies; funding and grants. Mr. Hartman is a qualified expert witness in the areas of wastewater treatment and effluent disposal, water and wastewater construction, solids handling, utility system appraisals, rates and charges, and utility creation/management/acquisition projects.

 **HARTMAN CONSULTING & DESIGN**

301 E. Pine Street, Suite 1020 • Orlando, FL 32801 • T 407 447 9095 • F 407 447 9405

GERALD C. HARTMAN, PE, BCEE, ASA
Environmental Group Practice Leader/Vice President

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Water and Wastewater Acquisition Valuations and Evaluations

Mr. Hartman has been involved in some 300 water and wastewater negotiations, valuations and evaluations, and has been a qualified expert witness by the courts with regard to water and wastewater, arbitrations and condemnation cases. He has participated in the valuation of numerous water and wastewater utility systems. His experience in the past few years includes:

Year	Project	Party Represented
2007	Marion Utilities, Sunshine Utilities and Windstream Utilities	County
2007	Donaldsonville/Peoples Utilities	Owner
2007	Ocean Reef/NKLUA/Card Sound I.Q.	FCAA
2007	Irish Acres	County
2007	I-20 Systems	Owner (On-going)
2007	Town & Country Update	Owner (On-going)
2007	Service Management Systems, Inc.	C.B. Ellis/Bank (On-going)
2007	Bulow Village Resort	County (On-going)
2007	Plantation Bay	County (On-going)
2007	Intercoastal Utilities	Owner (On-going)
2006	MSM Utilities, Inc.	Owner (Seller)
2006	BSU/Citrus Park	Owner
2006	Jasmine Lakes and Palm Terrace	City (On-going)
2006	The Arbors	County (On-going)
2006	Oak Centre	County (On-going)
2006	Silver Oaks Estates	County (On-going)
2006	Regal Woods	County (On-going)
2006	Golden Glen	County (On-going)
2006	Willow Oaks	County (On-going)
2006	South Oak	County (On-going)
2006	Gulf State Community Bank – Utility Holdings	Bank
2006	Rolling Green	County (On-going)
2006	South 40, Citrus Park and Raven Hill	County
2006	Holiday Utility Company, Inc.	Bank
2006	Old Bahama Bay	Management
2006	Utility Consolidation Program	County
2006	Loch Harbor Water & Wastewater System	Owner
2005	Lake Wales Utility Company	Bank
2005	Pennichuck Water Company	Confidential
2005	K.W. Resort Utilities, Inc.	Confidential
2005	Water Management Services, Inc.	Owner
2005	Town and Country Utility Co.	Confidential
2005	Village of Royal Palm Beach	Village
2005	Tymber Creek Utilities, Inc.	Pending
2005	Orange/Osceola/Lake/Seminole Counties Utilities, Inc. (Partial)	Confidential
2005	Utilities, Inc. (Partial)	Owner
2005	Village of Royal Palm Beach	Village
2005	Bald Head Island Utilities, Inc.	Village
2005	Broward County	Confidential
2005	Burkim Enterprises, Inc.	Owner
2005	Lyman Utilities, Inc. Harrison County, MS	Owner (On-going)
2004	Quail Meadow Utility Company	County



GERALD C. HARTMAN, PE, BCEE, ASA
Environmental Group Practice Leader/Vice President

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Year	Project	Party Represented
2004	Silver Springs Shores Regional	County
2004	Matanzas Shores	County
2004	El Dorado Utilities, NM	Owner
2004	CDF to City of Tupelo, MS	CDF
2004	Pesotum, Illinois – IAWC	Village
2004	Philo, Illinois – IAWC	Village
2004	Central Florida	Confidential
2004	Skyview	City
2004	Polk Utilities	NFP
2004	St. Johns Services Company	County
2004	Intercoastal Utilities Company	County
2004	Stonecrest Utilities	County
2004	Meredith Manor	County
2004	Lake Harriet Estates	County
2004	Lake Brantley	County
2004	Fern Park	County
2004	Druid Hills	County
2004	Dol Ray Manor	County
2004	Apple Valley	County
2004	Kingsway Utility Area	County
2004	Lake Suzy Utilities (water portion)	County
2004	Sanibel Bayous Wastewater Corporation	City
2004	Ocean City Utilities	FCURIA/County
2004	Peoples Water of Donaldsonville, LA	Owner (On-going)
2003	Harmony Homes	County
2003	Florida Central Commerce Park	County
2003	Chuluota	County
2003	District 3C (Miramar portion)	City
2003	Lincoln Utilities/Indiana Water Service	Owner
2003	Gibsonia Estates	City
2003	Lake Gibson Estates	City
2003	El Dorado Utilities, NM	Buyer
2003	Jungle Den Utilities	Association
2003	Holiday Haven Utilities	Association
2003	Salt Springs	County
2003	Smyrna Villas	County
2003	South Forty	County
2003	Citrus Park	County
2003	Spruce Creek South	County
2003	Spruce Creek	County
2003	Spruce Creek Country Club Estates	County
2003	Stonecrest/Steeplechase	County
2003	Marion Oaks	County
2003	Kingswood Utilities	County
2003	Oakwood Utilities	County
2003	Sunny Hills Utilities	Confidential
2003	Interlachen Lake/Park Manor	Confidential
2003	Tomoka/Twin Rivers	Confidential
2003	Beacon Hills	Buyer



GERALD C. HARTMAN, PE, BCEE, ASA
Environmental Group Practice Leader/Vice President

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Year	Project	Party Represented
2003	Woodmere	Buyer
2003	Bay Lake Estates	City
2003	Fountains	City
2003	Intercession City	City
2003	Lake Ajay Estates	City
2003	Pine Ridge Estates	City
2003	Tropical Park	City
2003	Windsong	City
2003	Buenaventura Lakes	City
2002	Lelani Heights Utilities	County
2002	Fisherman Haven Utilities	County
2002	Fox Run Utilities, Inc.	County
2002	Ponce Inlet	City
2002	Amelia Island Utilities	City
2002	Florida Public Utilities	City
2002	AquaSource – LSU	County
2002	Park Place Utility Company, GA	Owner
2002	Kingsway Utility System	Owner/County
2002	Pennichuck Water Company, NH	City
2002	Philo Water System, IL	Village
2002	Pasco County – 2 systems	County
2002	Marion Consolidation – 10 systems	County
2002	Sugarmill	UCCNSB
2002	Deltona	FCURIA
2002	Palm Coast	FCURIA
2002	Bald Head Island Utilities, NC	Village
2002	White's Creek – Lincolnshire, SC	Owner
2002	Bluebird Utilities, Tupelo, MS	NFP
2001-2	Due Diligence – 260 systems (VA, NC, SC)	Buyer
2001	Shady Oaks	County
2001	Davie/Sunrise	City
2001	Lindale Utilities	County
2001	Aquarina	Owner
2001	Intercoastal Utilities	County
2001	Beverly Beach	City
2001	Citrus County Utility Consolidation Plan (numerous)	County
2001	Pasco County Utility Acquisition Plan (numerous)	County
2001	Skylake Utilities	City
2001	Town of Lauderdale-By-The-Sea	Town
2001	John Knox Village	City
2001	Silver Springs Regional	County
2001	DeSoto Countywide FWSC Franchise and Assets	County
2001	Zellwood Station Co-Op	Co-Op
2001	Palm Cay	County
2000	The Great Outdoors	Owner
2000	Destin Water Users	City
2000	Pine Run	County
2000	Oak Run	County
2000	Dundee Wastewater (partial)	City



GERALD C. HARTMAN, PE, BCEE, ASA
Environmental Group Practice Leader/Vice President

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Year	Project	Party Represented
2000	Polk City Water	City
2000	A.P. Utilities (2 systems)	County
2000	CGD Utilities	Bank
2000	Boynton Beach (partial)	City
2000	Aqua-Lake Gibson Utilities	City
2000	Bartelt Enterprises, Ltd. (2 systems)	Owner
2000	49 'Ner Water System, Tucson, AZ	Owner
2000	Stock Island Wastewater and Reuse System	Owner
1999	Del Webb (3 systems)	County
1999	Destin Water Users Co-Op	City
1999	O&S Water Company	City
1999	Rolling Springs Water Company	County
1999	ORCA Water & Solid Waste	Authority
1999	Marianna Shores Water and Wastewater	City
1999	Mount Olive Utilities	City
1999	AP Utilities (3 systems)	County
1999	Tangerine Water Association	City
1999	Laniger Enterprises Water & Wastewater	Bank
1999	IRI golf Water System, AZ	Investor
1999	South Lake Utilities	City
1999	St. Lucie West CDD	City
1999	Polk City/Lakeland	City
1999	Dobo System, Hanover County, NC	County
1999	Rampart Utilities	County
1999	Garlits to Marion County	County
1998	Golf and Lake Estates	City
1998	Sanibel Bayous/E.P.C.	City
1998	Tega Cay Utility Company, SC	City
1998	Marlboro Meadows, MD	Owner
1998	Sugarmill Water and Wastewater/Volusia County	UCCNSB
1998	SunStates Utilities, Inc.	Owner
1998	Town of Hope Mills/FPWC, NC	Town
1998	River Hills, SC	County
1998	Town of Palm Beach	Town
1998	K.W. Utilities, Inc.	Buyer
1998	Orange Grove Utility Company, MS	Owner
1998	Garden Grove Water Company	City
1998	Saniando Utilities, Inc.	County
1997	Golden Ocala Water and Wastewater System	County
1997	Holiday Heights, Daetwyller Shores, Conway, Westmont	County
1997	University Shores	County
1997	Sunshine Utilities	County
1997	Bradfield Farms Utility, NC	Owner
1997	Palmetto Utility Corporation	Owner
1997	A.P. Utilities	County
1997	Village of Royal Palm Beach	Village
1997	Jasmine Lake Utilities Corporation	Lender
1997	Arizona (confidential)	Owner
1997	Village Water Ltd., FL	Owner



GERALD C. HARTMAN, PE, BCEE, ASA
Environmental Group Practice Leader/Vice President

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Year	Project	Party Represented
1997	N.C. System – CMUD (3 systems)	Owner
1997	Courtyards of Broward	City
1997	Miami Springs	City
1997	Widefield Homes Water Company, CO	Company
1997	Peoples Water System	ECUA
1997	Quail Meadows, GA	County
1997	Rolling Green, GA	County
1996	Keystone Heights	City
1996	Keystone Club Estates	City
1996	Lakeview Villas	City
1996	Geneva Lakes	City
1996	Postmaster Village	City
1996	Landen Sewer System, CMUD, NC	Company
1996	Citizens Utilities, AZ	City
1996	Widefield Water and Sanitation, CO	District
1996	Consolidation Program Game Plan	County
1996	Marion Oaks	County
1996	Marco Shores	Company
1996	Marco Island	Company
1996	Cayuga Water System, GA	Authority
1996	Glendale Water System, GA	Authority
1996	Lehigh Acres Water and Wastewater, GA	Authority
1996	Lindrick Services Company	Company
1996	Carolina Blythe Utility, NC	City
1996	Ocean Reef R.O. WTPs	NKLUA
1995	Sanibel Bayous	City
1995	Rotunda West Utilities	Investor
1995	Palm Coast Utility Corporation	ITT
1995	Sunshine State Parkway	Company
1995	Orange Grove Utilities, Inc., Gulfport, MS	Company
1995	Georgia Utilities, Peachtree, GA	City
1995	Beacon Hills Utilities	Company
1995	Woodmere Utilities	Company
1995	Springhill Utilities	Company
1995	Okeechobee Utility Authority	OUA
1995	Okeechobee Beach Water Association	OUA
1995	City of Okeechobee	OUA
1995	Mad Hatter Utilities, Inc.	Company
1994	Eastern Regional Water Treatment Plant	Owner
1994	GDU – Port St. Lucie Water and Wastewater	City
1994	St. Lucie County Utilities	City
1994	Marco Island/Marco Shores	Sun Bank
1994	Heater of Seabrook, SC	Company
1994	Placid Lake Utilities, Inc.	Company
1994	Ocean Reef Club Solid Waste System	ORCA
1994	Ocean Reef Club Wastewater System	ORCA
1994	South Bay Utilities, Inc.	Company
1994	Kensington Park Utilities, Inc.	Company
1993	River Park Water System	SSU/Allete



GERALD C. HARTMAN, PE, BCEE, ASA
Environmental Group Practice Leader/Vice President

Docket No. 070109-WS
 Application for Amendment
 Exhibit GCH-1 - Page 7 of 12

Year	Project	Party Represented
1993	Taylor Woodrow, Sarasota County	Taylor Woodrow
1993	Atlantic Utilities, Sarasota County	Company
1993	Alafaya Utilities, Inc.	Bank
1993	Anden Group Wastewater System, PA	Company
1993	West Charlotte Utilities, Inc.	District
1993	Sanlando Utilities, Inc.	Investor
1993	Venice Gardens Utilities	Company
1992	Myakka Utilities, Inc.	City
1992	Kingsley Service Company	County
1992	Mid Clay Utilities, Inc.	County
1992	Clay Utilities, Inc.	County
1992	RUD#1 (4 systems review)	Meadowoods/Kensington Park
1992	Martin Downs Utilities, Inc.	County
1992	Fox Run Utility System	County
1992	Leilani Heights	County
1992	River Park Water and Sewer	SSU/Allete
1992	Central Florida Research Park	Bank of America
1992	Rolling Oaks Utility	Investor
1992	City of Palm Bay Utilities	PBUC
1992	North Port - GDU Water and Sewer	City
1992	Palm Bay - GDU Water and Sewer	City
1992	Sebastian - GDU Water and Sewer	City
1991	Sanibel - Sanibel Sewer System, Ltd.	City
1991	St. Augustine Shores, St. Johns County	SSU/Allete
1991	Remington Forest, St. Johns County	SSU/Allete
1991	Palm Valley, St. Johns County	SSU/Allete
1991	Valrico Hills, Hillsborough County	SSU/Allete
1991	Hershel Heights, Hillsborough County	SSU/Allete
1991	Seaboard Utilities, Hillsborough County	UFUC
1991	Federal Bankruptcy - Lehigh Acres	Topeka/Allete
1991	Meadowoods Utilities, Regional Utility District #1	Investor
1991	Kensington Park Utilities, Regional Utility District #1	Investor
1991	Industrial Park, Orange City	City
1991	Country Village, Orange City	City
1991	John Know Village, Orange City	City
1991	Land O'Lakes, Orange City	City
1990	Orange-Osceola Utilities, Osceola County	County
1990	Morningside East and West, Osceola County	County
1990	Magnolia Valley Services, Inc., New Port Richey	City
1990	West Lakeland Industrial, City of Lakeland	City
1990	Highlands County Landfill	Owner
1990	Venice Gardens Utilities, Sarasota County	SSU/Allete
1990	South Hutchinson Services, St. Lucie County	SHS
1990	Indian River Utilities, Inc.	City
1990	Terra Mar Utility Company	City
1989	Seminole Utility Company, Winter Springs	Topeka/Allete
1989	North Hutchinson Services, Inc., St. Lucie County	NHS
1989	Sugarmill Utility Company	UCCNSB
1989	Ocean Reef Club, Inc., ORCA	Company

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Year	Project	Party Represented
1989	Prima Vista Utility Company, City of Ocoee	PVUC
1989	Deltona Utilities, Volusia County	SSU
1989	Poinciana Utilities, Inc., Jack Parker Corporation	JPC
1989	Julington Creek	Investor
1989	Silver Springs Shores	Bank
1988	Eastside Water Company, Hillsborough County	County
1988	Twin County Utilities	Company
1988	Burnt Store Utilities	Company
1988	Deep Creek Utilities	Company
1988	North Beach Water Company, Indian River County	NBWC
1988	Bent Pine Utility Company, Indian River County	BPUC
1988	Country Club Village, SSU	CCV
1987	Sugarmill Utility Company, Florida Land Corporation	FLC
1987	North Orlando Water and Sewer Company, Winter Springs	NOWSCO
1987	Osceola Services Company, FCS (nfp)	OSC
1987	Orange City Water Company, Orange City	City
1987	West Volusia Utility Company, Orange City	City
1987	Seacoast Utilities, Inc., Florida Land Corporation	FLC

And numerous other water and wastewater utility valuations in the 1976-1987 period.

Facility Planning

Mr. Hartman has been involved in over 50 water, wastewater and/or solid waste master plans, and many capital improvement program, and numerous capital construction fund plans. He represented the American Society of Civil Engineers in the State Comprehensive Plan as a Policy Advisory Committee Member on the utility element, and participated in the preparation of Comprehensive Plans, Chapter 9J5, for more than 20 communities. Mr. Hartman has been involved in business planning and strategic planning for not-for-profit, governmental and investor-owned utilities.

Analyses and Design

Mr. Hartman has participated in numerous computer-assisted hydraulic analyses of water and wastewater transmission systems including extended period simulations as well as hydraulic transient analyses. He was involved in wastewater treatment investigations, sludge pilot testing programs, effluent disposal pilot programs and investigations, several energy efficiency analyses, several odor control studies, and other process evaluations for operations. Mr. Hartman participated in value engineering investigations oriented toward obtaining the most cost-effective alternatives for regional and private programs. Mr. Hartman has been involved in the design of package WWTPs through AWT facilities and simple well and chlorination systems through reverse osmosis facilities. He has been involved in numerous water blending, trihalomethane, synthetic organic contaminant removal, secondary precipitation, corrosion control, and alum precipitation studies. Mr. Hartman has performed process evaluations for simple aeration facilities, surface water sedimentation facilities, water softening facilities, as well as reverse osmosis facilities. He was involved in water conservation program, as well as distribution system evaluation programs. He participated in both sanitary sludge management and disposal studies and co-authored the book entitled "Sludge Management and Disposal for the Practicing Engineer." He also participated in numerous lime sludge thickening, management, and utilization/disposal investigations. Mr. Hartman has been involved in wellfield management studies, wellfield protection ordinances, wellfield siting, water resource evaluations and water resource planning for several entities in sand aquifer, sand and gravel aquifer and limestone aquifer systems.



Utility Management Consulting

Mr. Hartman has been involved in utility transfers from public, not-for-profit, district, investor-owned, and other entities to cities, counties, not-for-profit corporations, districts, and private investors. He has been involved in staffing, budget preparation, asset classification, form and standards preparation, utility policies and procedures manuals/training, customer development programs, standard customer agreements, capacity sales, and other programs. Mr. Hartman has been involved in over 100 interlocal agreements with respect to service area, capacity, service, emergency interconnects, back-up or other interconnects, rates, charges, service conditions, ownership, bonding and other matters. Additionally, Mr. Hartman has assisted in the formation of newly certificated utilities, newly created utility departments for cities and counties, new regional water supply authorities, new district utilities, and other utility formations. Mr. Hartman has assisted in Chapter 180.02 F.S. utility reserve areas for the Cities of Haines City, Sanibel, Lakeland, St. Cloud, Winter Haven, Bartow, Palm Bay, Orange City, and many others. He has participated in the certification of many utilities such as ECFS, Malabar Woods, B&C Water Resources, Inc., Farmton Water Resources, Inc. and many others; and certification disputes such as Windstream, Intercoastal Dulay Utilities, FWSC/ITT, and others and served as service area certification staff of the regulatory for St. Johns County; i.e., Intercoastal, etc.; as service area transfer/certification staff of the regulatory for Flagler County; i.e., Palm Coast to FWSC. He has served as a local county regulatory staff professional in Collier, Citrus, Hernando, Flagler and St. Johns Counties as well as elsewhere. Mr. Hartman has also provided the technical assistance to many utility service area agreements such as Winter Haven/Lake Wales/Haines City, etc. and North Miami Beach – MDWASD and others. For 30 years, Mr. Hartman has been a professional assisting in the resolution of water and wastewater utility issues.

WASTEWATER EXPERIENCE

Design

Mr. Hartman has participated in the design of wastewater facilities throughout Florida totaling more than \$500 million in value. He has been involved in the design of odor control systems for wastewater plants; sludge dewatering, PSRP and PFRP facilities; and numerous wastewater treatment plants varying from extended aeration through advanced biological nutrient removal pumping/lift stations for collection/transmission systems. He served as the engineer in charge of numerous wastewater reuse systems; more than 30 golf course reuse systems; numerous percolation pond system/rapid infiltration basin systems; spray irrigation systems; wetlands application systems; surface discharge systems; agricultural reuse systems; forest irrigation systems; as well as power plant reuse systems. A few projects include:

- Marion County – Oak Run 1.6 MGD WWTP – 2006
- Marion County – Stonecrest 1.0 MGD WWTP - 2006
- Flagler County – Beverly Beach water and wastewater system including a 125,000 gpd/250,000 gpd AST/AWT Membrane Bio-reactor WWTP – 2005
- Fernandina Beach WWTP Upgrades – Filters, etc. – 2003
- AUS, Inc./Poinciana – 0.5 to 1.0 WWTP expansion WWTP #2 – 2000
- Utilities Commission, New Smyrna Beach – 6.0 MGD AWT WWTP and appurtenant consulting activities, 2000.
- Avatar/Poinciana – 0.5 MGD WWTP and spray irrigation – WWTP #2 – 1998
- City of Inverness – WWTP sludge stabilization improvements – 1997
- Flagler Beach – 1.0 MGD WWTP irrigation system upgrades and design – 1996
- Monroe County – Stock Island 0.125 MGD AST WWTP corrections – 1995
- ORCA/NKLUA Key Largo 0.5 MGD WWTP – 1995
- City of Cape Canaveral - 1.8 MGD upgrade to advanced wastewater treatment levels

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with effluent disposal to a manmade wetland system and subsequently to the Banana River, 1994

- Vestavia, Alabama - Old Overton 0.5 MGD AST WWTP - 1994
- Town of Lexington, S.C. - 1.5 MGD CMAS WWTP with discharge 14 mile creek - 1994
- City of Palm Bay - 0.5 MGD WWTP - CMAS AST - 1993
- City of Sanibel - 1.6 MGD advanced wastewater treatment facility with effluent disposal to two non-restricted public access sites, 1993
- Southern States Utilities Inc. - Venice Gardens Utility 2.5 MGD, Class I wastewater treatment facility with effluent disposal to non-restricted public access sites, rapid rate infiltration basins and sprayfield, 1992
- Glenmuir Subdivision, Orange County - 25,000 gpd wastewater treatment plant, 1992
- Hillsborough County - Northwest regional sludge management facility (25 dry tons per day), consisting of sludge storage, thickening, dewatering, in-vessel composting, and odor control, 1990
- Southern States Utilities Inc. - Marco Island Utility wastewater treatment plant expansion from 2.5 to 3.5 MGD, AST, 1990

He has been involved in service area delineations, major customer agreements, wholesale sewer agreements, regionalization projects and many privatization assignments.

Analyses

Mr. Hartman has participated in over 50 computer-assisted hydraulic analyses of wastewater transmission systems. He was involved in 40 wastewater treatment investigations, 12 sludge pilot testing programs, 14 effluent disposal pilot programs and investigations, several energy efficiency analyses, several odor control studies, and other process evaluations for operations. Mr. Hartman participated in 6 value engineering investigations. Many regionalization projects and privatization procurement projects oriented toward obtaining the most cost-effective alternatives for regional and private programs. He participated in both sanitary sludge management and disposal studies and co-authored the book entitled "Sludge Management and Disposal for the Practicing Engineer." He also participated in numerous lime sludge thickening, management, and utilization/disposal investigations. He has been involved in biosolids management and effluent utilization projects. He has permitted regional sludge stabilization and land application projects. Mr. Hartman has served as an expert regarding several sludge systems including ATAD, Micronair and N-Viro as well as others.

PUBLICATIONS/PRESENTATIONS

Mr. Hartman has presented several training sessions and seminars for the American Water Works Association, the American Society of Civil Engineers, the Water Environment Federation, and the Water and Pollution Control Operators Association. He has presented and/or published numerous papers on water, wastewater and utility management topics. His two (2) books and papers written since 1994 are shown below.

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BOOKS

Hartman, G.C., *Utility Management and Finance*, (presently under contractual preparation with Lewis Publishing Company/CRC Press).

Vesilind, P.A., Hartman, G.C., Skene, E.T., *Sludge Management and Disposal for the Practicing Engineer*; Lewis Publishers, Inc.; Chelsea, Michigan; 1986, 1988, 1991.

PAPERS/PRESENTATIONS (Since 1994)

Hartman, G.C. and Wanielista, M. P. "Stormwater Reuse: The Utility Business Practice." 9th Biennial Conference on Stormwater Research & Watershed Management. May 2, 2007.

Hartman, G.C. and R.J. Ori, "Water and Wastewater Utility Acquisition," AWWA National Management Specialty Conference, 1994.

Hartman, G.C. and R.C. Copeland, "Utility Acquisitions – Practices, Pitfalls and Management," AWWA Annual Conference, 1995.

Hartman, G.C., "Safe Drinking Water Act," and "Stormwater Utilities," FLC Annual Meeting, 1995.

Hartman, G.C., M.A. Rynning, and R.A. Terrero, "5-Year Reserve Capacity – Can Customers Afford the Cost?" FSASCE Annual Meeting, 1996.

Hartman, G.C., T.A. Cloud, and M.B. Alvarez, "Innovations in Water and Wastewater Technology," Florida Quality Cities, August 1996.

Hartman, G.C., Seth Lehman, "Financing Utility Acquisitions," AWWA/WEF Joint Management Conference, February 1997.

Hartman, G.C., B.V. Breedlove, "Water: Where It Comes From and Where It Goes," FRT & G/FDEP Conference, September 1997.

Hartman, G.C., W.D. Wagner, T.A. Cloud, and R.C. Copeland, "Outsourcing Programs in Seminole County," AWWA/WEF/FPCOA Conference, November 1997.

Hartman, G.C., M.B. Alvarez, J.R. Voorhees, and G.L. Basham, "Using Color as an Indicator to Comply with the Proposed D/DBP Rule," AWWA, Water Quality Technology Conference, November 1997.

Hartman, G.C., "In-House, Outsourcing and the Not-for-Profit Utilities Option," Florida Government Finance Officers Association (FGFOA) Conference, March 27, 1998.

Hartman, G.C. and D.P. Dufresne, "Understanding Groundwater Mounds – A Key to Successful Design, Operation and Maintenance of Rapid Infiltration Basins," April 4-7, 1998, FWWAWET/FPCOA Joint Meeting.

Hartman, G.C. and Seth Lehman, "Financing Water Utilities – Acquisition and Privatization Projects," AWWA Annual Conference, June 24, 1998.

Hartman, G.C. contributing author, Chapter 14B, Nichols on Eminent Domain, RCNLD Valuation of Public Utilities, March 1999 Edition, Release No. 48.



GERALD C. HARTMAN, PE, BCEE, ASA
Environmental Group Practice Leader/Vice President

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Hartman, G.C., M.A. Rynning, and V. Hargray, "Assessment of Commercial Customer Water Impacts," AWWA 2000.

Hartman, G.C., M. Sloan, N.J. Gassman, and D.M. Lee, "Developing a Framework to Balance Needs for Consumptive Use and Natural Systems with Water Resources Availability," WEF Watershed 2002 Specialty Conference, February 23-27, 2002.

Hartman, G.C., "Utility Valuation," Wake Forest University Law School Seminar Series, February 7, 2003.

Hartman, G.C., H.E. Schmidt, Jr. and M.S. Davis, "Biosolids Application in Rural DeSoto County, Florida," WEF/AWWA/CWEA Joint Residuals and Biosolids Management Conference, February 19-22, 2003.

Hartman, G.C. and Dr. M. Wanielista, "Irrigation Quality Water – Examples and Design Considerations," ASCE Conference, April 4, 2003.

Hartman, G.C., M.A. Rynning and V. Hargray, "Assessing the Water Demands of Commercial Customer," WEF Volume 6, No. 4, July/August 2003 – Utility Executive.

Hartman, G.C., D. Cooper, N. Eckloff and R. Anderson, "Water," The Bond Buyer's Sixth Southeast Public Finance Conference, February 23, 2004.

Wanielista, Marty and G.C. Hartman, "Regional Stormwater Facilities", Stormwater Management for Highways Transportation Research Board TRB AFB60, July 12, 2005.

ADDITIONAL EDUCATION

AWRA Seminars
AWWA Seminars
ASCE Seminars
WEF Seminars
ASA Seminars
Ethics ASA, NSPE, PE
USPAP 2003, 2004 & Exam
ME 201 AC Machinery & Technical Specialties ASA
ME 202 AC Machinery & Technical Specialties ASA
ME 203 AC Machinery & Technical Specialties ASA
ME 204 Machinery & Technical Specialties ASA
Public Utilities Specialty Designation Exam Parts I, II, and III ASA
AAEE Continuing Education
NSPE Continuing Education
P.E. (multiple states) Continuing Education
ASA Continuing Education

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HCD HARTMAN CONSULTING & DESIGN
A Subsidiary of GAI Consultants, Inc.

May 11, 2007

A070263.00
GAI #pending

Martin S. Friedman, Esquire
Rose, Sundstrom & Bentley, LLP
Sanlando Center
2180 West State Road 434
Suite 2118
Longwood, FL 32779

Subject: Sun River Utilities, Inc. PSC Application to Extend Its Service Area

Dear Mr. Friedman:

This letter constitutes Hartman Consulting & Design/GAI Consultants, Inc.'s (HCD/GAI) proposal to serve Sun River Utilities, Inc. concerning the expansion of its utility service area in Charlotte County, Florida. Your co-counsel will be Mr. Bob Brannan from your firm in Tallahassee. The client is Sun River Utilities, Inc. with the manager being Mr. Tony Reeves.

We will provide utility management consulting support relative to the FPSC application and service area expansion. We understand that certain local engineering services and coordination will be conducted with another firm as part of the team. We will provide such activities as direct written testimony, depositions, discovery request for responses, deposition materials, litigation services, written rebuttal testimony, exhibits, and final written and oral testimony as may be required through the process.

We will utilize our hourly schedule attached hereto for this activity. The schedule shall be as required for the process. We will use the appropriate personnel from our firm to provide the necessary support in this endeavor.


FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 070109-WS EXHIBIT 6
COMPANY Sun River Utilities, Inc.
WITNESS Gerald C. Hartman (GCH-2)
DATE 01/16/08

Martin S. Friedman, Esquire
May 11, 2007
Page 2

We appreciate the opportunity the technical expertise which you desire. Upon receipt of the executed copy of this proposal we will consider that our notice to proceed based upon the direction provided to our firm.

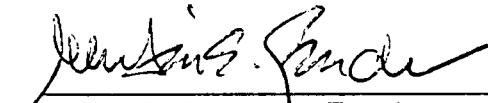
Very truly yours,

Hartman Consulting & Design
a subsidiary of GAI Consultants, Inc.



Gerald C. Hartman, PE, BCEE, ASA
Vice President

Accepted by:

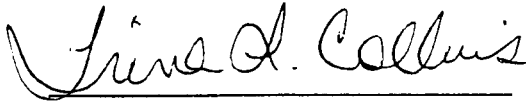
Sun River Utilities, Inc.

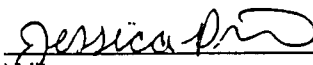

Martin S. Friedman, Esquire
Attorney for Sun River Utilities, Inc.
Rose Sundstrom & Bentley, P. A.

5.22.07
Date


Witness


Witness


Witness


Witness

GCH/jev/pending/corresp/Proposal

Cc: Arthur J. Koerber, P.E., GAI
Rick Cima, P.E., GAI



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1/1/07 – 12/31/07

Rate Schedule

(Applies only to new 2007 clients)

<u>Classification</u>	<u>Rate per Hour</u>
Principal Engineer	\$210
Sr. Consultant	\$190
Certified Public Accountant	\$170
Sr. Professional Engineer	\$150
Professional Engineer / Production Manager / Sr. Constr. Mgr.	\$130
Consultant/Sr. Designer/Const. Eng.	\$100
Engineer/Funding Specialist	\$90
Finance Analyst /MBA / Constr. Specialist	\$85
Designer / Sr. CAD	\$80
Project Support	\$60
Junior Designer	\$60
Engineering Assistant	\$55
2-Person Survey Crew	\$105
Survey Crew with Auto Instrument	\$120
3-Person Survey Crew	\$140
4-Person Survey Crew	\$170
Professional Surveyor & Mapper	\$130
Survey Project Manager	\$95
Field Supervisor	\$90

Robert C. Brannan, Esq.
Rosc, Sundstrom, & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

January 24, 2007

Re: Request for inclusion into service territory of MSM Utilities, LLC

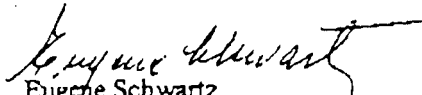
Dear Mr. Brannan,

I am the owner of the parcels (ID #'s provided) along US 17 in Charlotte County, Florida. I understand that you are making an application for an extension of the certificated utility service territory of MSM Utilities, LLC near our land and that of your clients.

We would appreciate your adding our property to your application for "addition to the utility service territory".

We believe our property is in a location that will be vital to Charlotte County citizens in the future and we wish to be part of that consideration.

Sincerely,


Eugene Schwartz
Charlotte County, Florida

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS EXHIBIT 7
COMPANY Sun River Utilities, Inc
WITNESS Gerald C. Hartman (GCH-3)
DATE 01/16/08

December 18, 2006

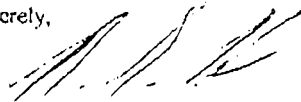
Mr. Tony Reeves
RF Interest in Water and Sewer Services by Sun River Utilities
2401/2351, 3011 Duncan Road, Charlotte County (Parcel ID#0070986-000200-9) (Parcel ID#0071112-
000700-9)

Dear Mr. Reeves:

Please be advised that as the owner of 2401/2351, 3011 Duncan Road, referenced above, I am very interested in receiving Water and Sewer Service by Sun River Utilities, and agree to cooperate with Sun River Utilities in applying to the Public Service Commission to have my property located at 2401/2351, 3011 Duncan Road included in the certificated territory of Sun River Utilities.

Please keep me informed as the approval process continues.

Sincerely,



Robert Scott Keenan

Hudson-Sun River, LLC

*84 Business Park Drive
Armonk, NY 10504
Tel: 914-273-1200 Fax: 914-273-2491*

January 3, 2007

Mr. A. A. Reeves, Utility Director
Sun River Utilities, Inc.
5660 Bayshore Road, Suite 36
North Fort Myers, Florida 33917

Dear Mr. Reeves:

Hudson Sun-River, LLC (“Hudson Sun-River”) currently has the Hudson Ranch property (approximately 2,458 acres) under contract to purchase. As the future owners of the site, we believe that the availability of water and sewer is important to our development plans. Accordingly, Hudson Sun-River is very interested in receiving water and sewer services from Sun River Utilities, Inc. (“Sun River Utilities”), and we request to have our site included into the certificated service territory of Sun River Utilities. We agree to cooperate with Sun River Utilities in applying to the Public Service Commission for said extension of the certificated service territory. A legal description of the property is attached.

If you have any questions, or need further information, please do not hesitate to contact me.

Sincerely,



Martin G. Berger
Managing Member
Hudson Sun-River, LLC

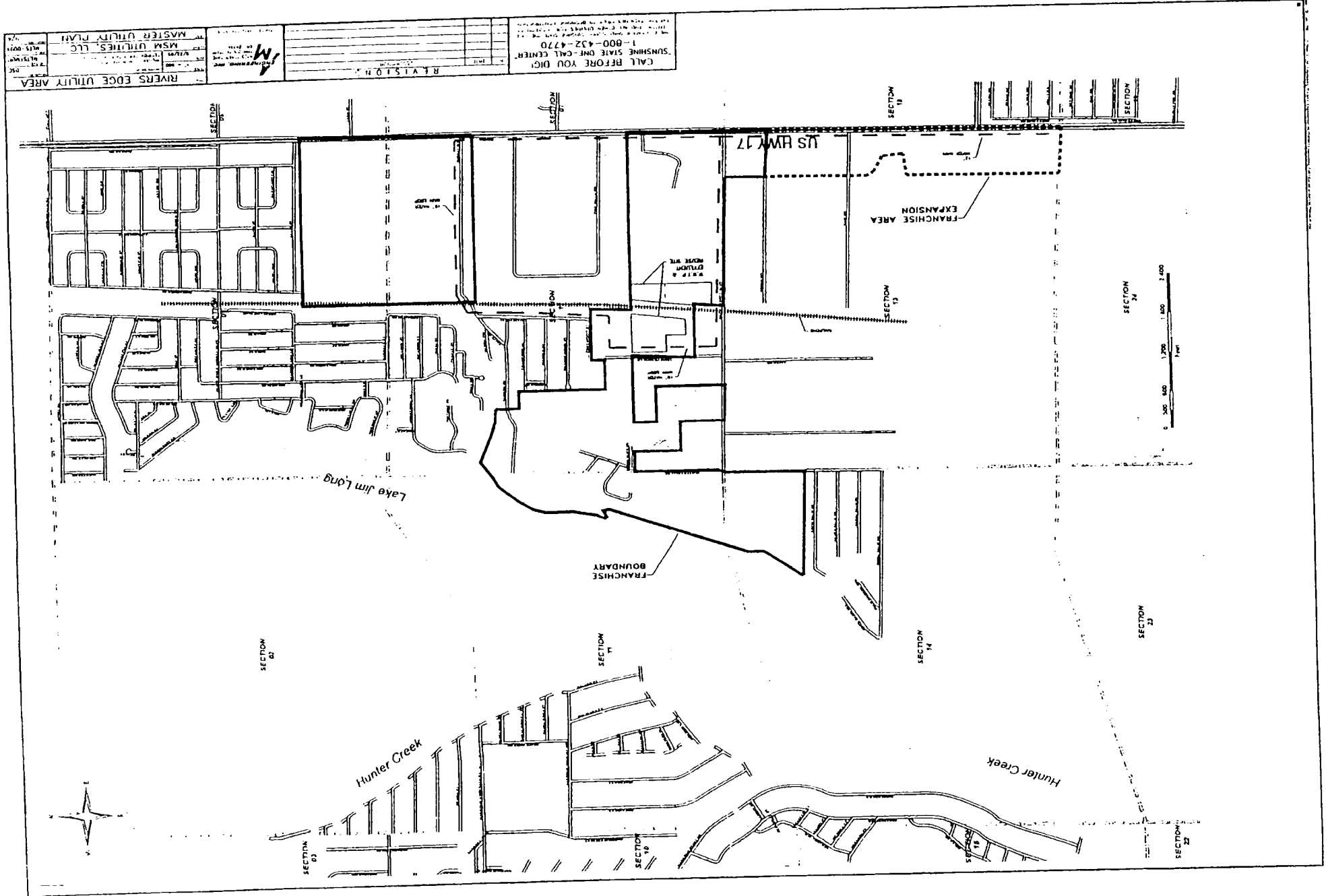
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS EXHIBIT 8

COMPANY Sun River Utilities, Inc.

WITNESS Gerald C. Hartman (GCH-4)

DATE 01-16-08



CCU Goals, Objectives and Policies

Potable Water and Sanitary Sewer

Goal 9: Charlotte County will encourage public and private utility companies (utilities) to provide well-designed and economically efficient systems of potable water and sanitary sewer service that maximizes the use of existing facilities to meet the needs of a growing population, while protecting the natural environment.

Objective 9.1: Charlotte County and the utilities serving the county shall assure the provision of potable water and sanitary sewer services to new and existing development in conjunction with previously certified areas and the Urban Service Area strategy through the planning ~~timeframe of 2010~~ horizons established within the comprehensive plan.

Policy 9.1.1: Utilities are encouraged to extend central potable water and sanitary sewer services to Infill Areas in accordance with the Urban Service Area strategy. Such extensions will represent sequential extensions of service.

Policy 9.1.2: In the case of a utility which provides both central potable water and sanitary sewer service, the utility is encouraged to extend potable water and sanitary sewer lines concurrently. As an exception to this policy, lines may be extended separately if the service area is primarily composed of one type of service line and is located at a distance from which it would be economically inefficient to require concurrent extensions.

Policy 9.1.3: In the case of utilities which provide both central potable water and sanitary sewer service, the certified area for one service will not be extended to an area unless the certified area for the other service is also extended to the same location.

Policy 9.1.4: Certified areas will not be extended or expanded for potable water or sanitary sewer service outside of Infill Area boundaries. Exceptions shall be made in the case of New Communities or

4-42

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 070109WS EXHIBIT 9
COMPANY Charlotte County (Direct)
WITNESS Jeffrey C. Ruggieri (JCR-1)
DATE 01/16/08

Developments of Regional Impact in West County, Mid County, or South County or Rural Communities in East County; or in the case of where a utility(s) shall provide both central potable water and sanitary sewer service in a tandem manner within the Urban Service Area Overlay District.

Policy 9.1.5: Utilities which have an approved certification to provide service shall serve their approved areas in accordance with the certification.

Policy 9.1.6: When it is necessary for potable water or sanitary sewer lines to be extended through a Rural Service Area in order to provide service to lands located within another Urban Service Area, the extension of such transmission lines shall not be construed as justification for development at urban intensities in the Rural Service Area adjacent to the extended infrastructure.

Policy 9.1.7: Landowners of new development within the Infill area or previously certified area where central potable water or sewer service is not available, may elect to use wells and septic systems but will be required to connect to a central potable water or sewer service when it becomes available and within 365 days upon written notification by the utility provider.

Objective 9.2: Charlotte County, in making land use decisions, shall utilize the availability of central potable water and sanitary sewer service.

Policy 9.2.1: New lots platted within Charlotte County served by a septic system shall have a minimum lot area consistent with the requirements of the more stringent of Chapter 10D-6, *Florida Administrative Code*, or local ordinance.

Policy 9.2.3: Water and sewer availability will not necessarily provide justification for development approval.

Objective 9.3: Charlotte County shall protect its existing and future potable water supplies, such as the Peace River, and wellhead locations in order to continue using those natural resources for drinking water purposes.

Policy 9.3.1: Charlotte County will evaluate the effects of development on wellheads for all proposed land uses within delineated cones of influence for all central potable water supply wellheads used for public consumption. Where a cone of influence is not determined, all proposed development within 1,500 feet of the wellhead will be evaluated. Land uses in which

- a. infrastructure and services can be incrementally extended in a financially feasible manner or a private developer will pay the full cost if not publicly funded;
- b. the proposed land area is adjacent, or in close proximity, to an existing Infill Area;
- c. population growth and development trends warrant an increase in size; and
- d. existing Infill Areas have reached significant buildout to warrant expansion into new locations.

Policy 1.1.9: Charlotte County will levy various fees to ensure that new development pays the marginal cost of developing the capital facilities to provide new services and infrastructure.

Policy 1.1.10: Criteria for amending the Urban Service Area boundary include (i.e., converting rural service area to urban service area lands):

- a. the proposed expansion is contiguous to the Urban Service Area (except for self-supporting development approved as either a New Community or Development of Regional Impact);
- b. proposed land uses are compatible or provide sufficient buffering from existing, adjacent uses;
- c. an enforceable agreement exists for the extension of central potable water and sanitary sewer service into the proposed expansion area; and
- d. the proposed expansion will not interfere with agriculture or conservation activities; and
- e. the proposed expansion does not constitute urban sprawl or promote the expansion of urban sprawl in surrounding areas.

Objective 1.2 (Concurrency): ~~Charlotte County will employ a Concurrency Management System to ensure that appropriate Levels of Service identified within this comprehensive plan are achieved or maintained.~~ will require the availability of services concurrent with the impacts of development, as provided by Section 163.3177(10)(h), F.S. Decisions regarding the location, extent and intensity of future land use in Charlotte County, particularly urban-type expansion, will ensure consistency with the type of uses and development established within each designated Urban and Rural Service Area. Future land use decisions will also be based on the physical constraints and financial feasibility of providing areas with services at levels of service (LOS) that meet or exceed the minimum standards adopted in the Comprehensive Plan.

Policy 1.2.2 1: ~~Charlotte County will maintain a Concurrency Management System, as adopted in the Capital Improvements Element, to ensure that development orders and or building permits are issued on the condition that adequate public facilities and services meet of or exceed minimum LOS standards specified in the various elements of this Plan. are available to serve new development when its impact occurs.~~

Policy 1.2.4 2: New development will not reduce urban infrastructure and services below the Level of Service standards adopted by Charlotte County in this comprehensive plan.

Policy 1.2.3: Charlotte County will implement Land Development Regulations providing that Levels of Service will must be sufficient prior to the issuance of a certificate of occupancy.

~~Policy 1.2.4: Charlotte County will not approve proposed comprehensive plan or rezoning amendments which would reduce levels of service below the adopted standards scheduled in the Capital Improvements Element. Within the time frame provided by Section 163.3202(1), F.S. the Community Development and Construction Services Departments will ensure that development orders will be based on the County's ability to maintain minimum levels of service, and will coordinate with other agencies in administering the Concurrency Management System to ensure that the necessary public facilities and services are available at the adopted Level of Service concurrent with the impacts of development.~~

Policy 1.2.5: The following options shall apply in an area with facilities and services that do not meet minimum Levels of Service required by concurrency:

- a. Projects may be phased to maintain minimum Level of Service standards concurrent with the development; and/or
- b. A Developer may pay their proportionate share cost of improvements, if such facilities are identified in the Capital Improvements Program in accordance with Charlotte County's Proportionate Share Mitigation Ordinance.

Objective 1.3 (Infrastructure and Services): Charlotte County will use the location and timing of infrastructure and services to direct growth in an orderly and efficient manner.

Policy 1.3.1: Charlotte County's provision of infrastructure and services shall be guided by the following service areas, which are listed by level of priority:

First priority - Infill Areas.

Second priority - Suburban Areas.

Third priority - Rural Service Areas.

Policy 1.3.2: In certain instances, Charlotte County may provide higher levels infrastructure and services to areas regardless of the Urban Service Area designation in order to protect the public health, safety, and welfare or at the request and capital outlay of citizens within an area.

Objective 1.4 (Platted Lands Strategy): Recognizing that Charlotte County has a supply of platted lands which is greater than the long-term need, the county shall reduce the total number of platted vacant lots by ~~a minimum of 1% of vacant platted lots per year~~ within the West, Mid, East and South County planning areas by a minimum of 1% during the planning period (2010) by January 1, 2005 of this Plan.

Policy 1.4.1: Charlotte County will work with its legislative delegation and other communities to create an action plan to identify workable solutions to statewide platted lands issues. The County may apply to the State and Federal governments for funding to assist in resolving the problems associated with platted lands. Funding sources shall include the state's ~~Conservation and Recreational Lands (CARL), Preservation 2000,~~ Florida Forever, Florida Communities Trust, Southwest Florida Water Management District, and various other programs.

Policy 1.4.2: Charlotte County will encourage the reduction of platted lots through the following measures:

- a. assembly and de-platting of lots by private interests for re-platting and eventual development or other purposes;
- b. public acquisition of platted lands for preservation, restoration, recreation, viable habitat for listed species, or outdoor education using public funds as appropriate and available; or
- c. consider selective acquisition of individual lots by Charlotte County for use in property assembly, lot swaps, or transfers of ~~density or development rights~~ units where such facilitates a public need such as the provision of infrastructure or urban services.

Policy 1.4.3: ~~By December 1, 1998,~~ Charlotte County will bear the costs for deplatting of lands within targeted areas if a density reduction occurs as a result of the deplatting and will create an administrative deplatting process. As part of this process, the county will develop target areas for prioritization of deplatting efforts.

Policy 1.4.4: ~~By December 1, 1998~~ 2008, Charlotte County will review its impact fee schedule in order to develop a series of graduated impact fees in order to encourage development in Infill locations. The graduated impact fee schedule will reflect the true cost of infrastructure provision.

Policy 1.4.5: Charlotte County will employ a transfer of ~~development rights~~ density units program whereby the development rights of property may be severed in perpetuity or until designation as an Infill Area and transferred to locations which are more appropriate for urban development. The transfer of ~~development rights~~ density units program will establish criteria for sending zones ~~from which development rights will be severed and transferred to receiving zones~~ and receiving zones.

- a. ~~Sending zones shall~~ may include only the Tropical Storm and Category 1 Hurricane Storm Surge zones; any property containing historic, archeological, or environmentally sensitive resources; land being utilized for a bona fide agricultural use; lots or parcels of substandard size or dimension which were legally platted prior to 1992; platted lots within the Suburban section of the Urban Service Area which are not served by water or sewer and are not within the boundaries of any utility company's 5-year Capital Improvement Program for extension of water or sewer; or land within the Urban Service Area which has an approved residential final plat or DRC residential final site plan which does not utilize the full developable density and which was approved subsequent to January 1, 2004. ~~Resource Conservation and Preservation~~

- ~~Future Land Use Map locations, Suburban and Rural Areas identified in the Urban Service Area strategy, locations within the Special Surface Water Protection Overlay District, and any property containing historical, archeological, or environmentally sensitive resources.~~
- b. Receiving Zones shall include property within the Urban Service Area that is designated on the include Medium Density Residential and High Density Residential Future Land Use Map locations, New Communities, Rural Communities, and areas specified within a resource management plan developed consistent with the Natural Resources and Coastal Planning Element as Low Density Residential, Medium Density Residential, High Density Residential, Rural Estate Residential, Village Residential, Limited Development, or which contains a Mixed Use designation. Prior to the approval of a petition to increase density, all of the necessary facilities and services, except roadway infrastructure, must be in place or the subject of a binding executed agreement which requires the facilities to be completed prior to the issuance of a certificate of occupancy; roadway infrastructure must be in place or under construction within three years of the issuance of a building permit. Receiving Zones must be environmentally suitable for development; environmentally sensitive lands within the Receiving Zone must be preserved in perpetuity.
- c. In keeping with the policies within this plan that direct population density away from coastal areas, amendments to the Future Land Use Map or Zoning Atlas petitions that would create or allow an increase in density within the Tropical Storm and Category 1 Hurricane Storm Surge zones (Coastal High Hazard Area) are prohibited unless the density is transferred from an equivalent Storm Surge zone or one of greater hazard intensity; there shall be no transfer of density from an "AE" flood zone into a "V" flood zone. (The requirement for density from equivalent areas is waived for property located in the Charlotte Harbor CRA, but the density must still be transferred from property located in the Tropical Storm or Category 1 Hurricane Storm Surge zones.) The Sending Zone(s) must be identified and included with the Receiving Zone amendment application as part of the supporting documentation so that the impacts of the proposed transfer can be evaluated, and the transfer of density must be approved concurrent with the adoption of the amendment. Impacts will be evaluated in terms of evacuation clearance times and the availability of sufficient shelter capacity. The transfer of density must maintain or improve evacuation clearance times. In order to utilize the Sending Zone density, the FLUM and/or Zoning designation of the Sending Zone must have been amended or be concurrently amended to show the reduction in density, and/or the Plat must be vacated.
- d. Except as indicated in c. above, the following shall apply as to the timing of the transfer of density:
- transfers of density must occur concurrent with any plan amendment petition that automatically increases density, unless accompanied by a rezoning to Planned Development;
 - transfers of density must occur concurrent with and any rezoning that increases density and which does not utilize a Planned Development; and,

- for any rezoning, which increase density and utilizes a Planned Development, the transfer of density ~~may~~ must occur no later than prior to preliminary plat of or final DRC approval.

Policy 1.4.6: Charlotte County will encourage private enterprise to work towards solutions to the platted lands problem through participation in state land acquisition programs such as Conservation and Recreational Lands (CARL), Florida Communities Trust, Florida Forever, Florida Communities Trust, Southwest Florida Water Management District, and various other programs such as administrative deplattings.

Policy 1.4.7: Charlotte County will facilitate the re-assembling of platted parcels by plat vacation and other means legally available.

Objective 1.5: To ensure the availability of suitable land for public and utility services and facilities necessary to support proposed development.

Policy 1.5.1: Public and uUtility services and facilities shall be allowed in all Future Land Use Map designations.

Policy 1.5.2: Public and uUtility services and facilities shall be developed in compliance with applicable design standards and with buffers and setbacks in order to protect adjacent land uses from activities conducted on such public and utility sites. The design and construction of such facilities shall protect natural resources and environmental sensitive areas.

Objective 1.6 (Future Land Use coordination): The location and intensity of development shall coincide with the availability of facilities and services and with appropriate topography and soil conditions.

Policy 1.6.1: Development orders, building permits, and certificates of occupancy shall be issued in accordance with the Concurrency Management System to ensure that the necessary public facilities and services are available, at the adopted Level of Service, concurrent with the impacts of development.

Policy 1.6.2: Availability of facilities and services shall be measured by the adopted levels of service standards.

Objective 1.7: The location and intensity of development shall be determined by appropriate topography and soil conditions.

Policy 2.2.17: Industrial uses will be buffered from incompatible adjacent land uses by means such as vegetative, natural, or opaque barriers. The Land Development Regulations will provide appearance standards for buffering techniques.

Policy 2.2.18: The following classifications shall be used to designate agricultural lands

Agriculture

These lands are designated for agricultural activities and are located primarily within the Rural Service Area. Agricultural lands may not exceed a maximum residential density of one (1) dwelling unit per ten (10) acres within the Rural Service Area and one (1) dwelling unit per one (1) acre within the Urban Service Area. Uses on land designated as such include: single-family residential dwelling units, ranching, crop farming including citriculture, silviculture, aquaculture, and row crops, and extractive industries.

Policy 2.2.19: Charlotte County will encourage the bona fide practice of agriculture and will promote the conservation of agricultural lands to assure that the County experiences no substantial loss of agricultural productivity.

Policy 2.2.20: Agricultural lands illustrated on the Future Land Use Map will be generally located within Charlotte County's Rural Service Area. This policy will not be construed to prohibit the practice of bona fide agricultural uses within the Urban Service Area.

Policy 2.2.21: Charlotte County will preserve the economic viability of agricultural lands and will prevent the premature conversion of these lands to other uses.

Policy 2.2.22: Agricultural lands within Charlotte County may be converted to other uses when a demonstrated need has been established and it is determined that it does not constitute urban sprawl or promote urban sprawl in surrounding area. A conversion of agricultural land to more intensive urban uses must occur in accordance with the Urban Service Area strategy Rural Community or New Community concepts, or Development of Regional Impact.

Policy 2.2.23: Through the resources of the Agricultural Extension Service, Charlotte County will actively promote the conservation of bona fide agricultural uses, and will provide information to agricultural producers to improve production and methods.

Policy 2.2.24: The following classifications shall be used to designate lands which serve a broad variety of public purposes:

~~an applicable New Community shall occur prior to the first development activity within that New Community. This shall include appropriate action to reduce the intensity/density of the sending zone through encumbrance via easement transfer of deed to Charlotte County, state government, or federal government. New Community master development plans shall include a traffic circulation map and access management controls in order to protect the public safety.~~

~~**Policy 2.6.15:** New Community master development plans shall include a traffic circulation map and access management controls in order to protect the public safety.~~

Objective 2.7 (Rural Community Mixed Use): Conversion of rural lands within the East County planning area to more intensive uses may occur through the establishment of self-supporting "Rural Communities" which will provide residential and employment opportunities within the Rural Service Area.

Policy 2.7.1: Rural Communities will be developed according to a master development plan and will comprise a mixture of uses appropriate for a rural environment.

Policy 2.7.2: The designation of Rural Community Mixed Use on the Future Land Use Map shall be made by plan amendment. Plan amendments will contain a master development plan approved by the Board of County Commissioners identifying land uses, densities, and intensities; population projections; an evaluation of its urban sprawl potential; commitments to avoid or mitigate the potential for urban sprawl; and demonstration of how the Rural Community affects land and population within the Urban Service Area.

Policy 2.7.3: Approved Rural Communities shall be designated as a Rural Community Mixed Use District or Development of Regional Impact on the Future Land Use Map.

Policy 2.7.4: Residential development within Rural Communities will be limited to Rural Estate Residential uses as defined in this element ~~unless~~ with clustering and open space provisions are provided.

Policy 2.7.5: Commercial uses within Rural Communities are limited to Rural Commercial Centers as defined in this element. Rural Commercial Centers will serve the population of the rural residential uses and satisfy the internal shopping needs by being located in a central location of the development.

Policy 2.7.6: The master development plan for Rural Communities will incorporate land for open spaces around the perimeter forming a greenbelt providing a clear distinction from surrounding land uses. Open space may be dedicated to public use or designated for common use, such as hiking and

bridle trails. If designated for common use, the master plan will identify a management strategy and will set aside funds to support maintenance.

Policy 2.7.7: The clustering of uses within Rural Communities is allowed as part of a master plan. Clustered development requires utilization of infrastructure such as central wastewater facilities.

Policy 2.7.8: Rural Community master development plans shall include a traffic circulation map and access management controls in order to protect the public safety.

Policy 2.7.9: Rural Community proposals will include transfers of development rights density units from targeted platted lands or environmentally sensitive areas identified in a resource management plan as a component of a master development plan. The residential development potential of a Rural Community shall be achieved through transfer of development rights density units. Lands from which a transfer of development rights density units occur shall be encumbered through a recorded easement covenant, or transfer of deed to Charlotte County, state government, or federal government. Transferred densities shall be at least a one-for-one transfer. In addition, the following density bonuses shall apply:

- ~~a. an increase by 300% of the sending zone's underlying density for development rights transferred from 'A' and 'V' zones as defined by the Flood Insurance Rate Map (FIRM);~~
- ~~b. an increase by 200% of the sending zone's underlying density for development rights transferred from the Coastal High Hazard Area;~~
- ~~c. an increase by 150% of the sending zone's underlying density for development rights transferred from a jurisdictional wetland area to be preserved consistent with Policy 1.11.7 of the Natural Resources and Coastal Planning Element;~~
- ~~d. an increase by 150% of the sending zone's underlying density for development rights transferred from agricultural areas which will be maintained in an agricultural use.~~

Policy 2.7.10: Rural Communities shall contain a minimum of 500 gross acres with the following minimum and maximum land use percentages:

Land Use	Minimum Development Percentage	Maximum Development Percentage
Residential	50%	80%
Commercial/industrial	10%	25%
Recreation	5%	no maximum
Open space	5%	no maximum

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DIRECT TESTIMONY OF JEFFREY L. PEARSON
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
ON BEHALF OF
CHARLOTTE COUNTY, FLORIDA
DOCKET NO. 070109-WS

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 070109-WS EXHIBIT 10
COMPANY Charlotte County (Direct)
WITNESS Jeffrey L. Pearson (JLP-1)
DATE 01/16/08

**CHARLOTTE COUNTY UTILITIES
CHARLOTTE COUNTY, FLORIDA**

UNIFORM EXTENSION POLICY

Revised: January 2007

EFFECTIVE DATE: February 1, 2007

CHARLOTTE COUNTY
UNIFORM EXTENSION POLICY

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1.0 INTENT.

1.1 Purpose of the Uniform Extension Policy

Charlotte County ("County"), as owner and operator of Charlotte County Utilities ("CCU"), hereby establishes this Uniform Extension Policy, designed to set forth the service and financial relationship between CCU and property owners, builders and/or developers seeking to obtain potable water, reclaimed water or wastewater service for the benefit of their property(ies). County declares that each prospective customer of CCU services shall be responsible for the cost, allocable to that customer, of water production and treatment; wastewater treatment and disposal; water storage and distribution; and wastewater collection facilities necessary to provide the required service to that customer's property.

The Board of County Commissioners ("Board") recognizes the importance of providing for the expansion of adequate water and wastewater utility services in a timely and cost-effective manner. The provision of new potable water, reclaimed water and wastewater infrastructure requires a large investment in capital, both from the public sector and private developers of property. In addition to the costs associated with expanding water and wastewater services, the Board recognizes the necessity to plan and coordinate the growth of utility services with demand. It is the intent of this Uniform Extension Policy to provide CCU and the community with a variety of tools and options

for meeting the financial and planning challenges associated with the expansion of potable water, reclaimed water and wastewater utility services.

This policy sets forth the fees and charges applicable to those property owners, builders and/or developers seeking to obtain an extension of, or new connection to, CCU services, which are established to recover the costs of providing such services to new customers. The general process for extending utility service is also defined in this policy, along with alternative options to provide for the ongoing extension of utility infrastructure by allowing for various cooperative agreements with property developers. In addition, this policy sets forth the non-monetary obligations of the service applicant that are necessary to extend utility service to new customers, including items such as engineering design information and provisions for easements and rights-of-way.

1.2 Goals of the Uniform Extension Policy

In accordance with existing federal, State and County laws and policies, the Uniform Extension Policy has the following primary goals:

1.2.1 Establish applicable fees: The Uniform Extension Policy sets forth the fees necessary to recover the costs of providing services to new CCU customers, as well as to reserve capacity from water and/or wastewater treatment facilities that are in existence, under construction or under active design for near term construction. County intends that fees shall be allocated on a pro-rata basis, with a well-defined process of allocating costs among CCU customers. Included in the costs of providing utility services to new customers are those fixed and non-variable costs of producing and delivering, or receiving, treating and disposing of the product of the CCU systems. This includes expenses, such as interest cost or its equivalent, attributable to the capital cost of reserved facilities, and fixed cost of operating and maintaining the water production and wastewater treatment facilities. All fees established and defined by the Uniform Extension Policy are described in the section entitled "Associated Service Fees," which provides a more detailed explanation of the fees and their purpose.

1.2.2 Establish a uniform method of determining the value of "Contributed Capital": A goal of this Uniform Extension Policy is to establish a uniform method of determining the value of all "Contributed Capital" that prospective customers will be required to contribute to CCU as a term of service. This uniform method of valuation shall be demonstrably non-discriminatory, and shall further be applied uniformly to all customers and prospective customers within the present or expanded future service area.

1.2.3 Balance the financial requirements of the system equitably and properly between existing customers and prospective customers seeking future service: It is the County's intention that the fees and charges provided for herein be established from time to time by resolution, so as to balance the financial requirements of the system equitably and properly between the existing customers of CCU services and those prospective customers seeking future service. It is the County's policy that prospective future customers shall be required to pay the costs properly attributable to

them under generally accepted practices for allocating the cost of service in a utility system. The policy and goal of County is that connection charges paid by such prospective customers are not to be used for the operation and maintenance of that portion of the utility system utilized by existing customers but, rather, should be limited in their use to the provision of new plant facilities, properly sized and allocated to each future customer or for debt service, or other capital expenditures allocable to such plant facilities constructed for future customers.

1.2.4 Define a process for extending the water distribution and wastewater collection systems, along with alternative options: Recognizing the importance of extending utility services in a timely and cost-effective manner, this Uniform Extension Policy is intended to clarify the process for extending the potable water and reclaimed water distribution and wastewater collection systems; including the master potable water transmission system, master reclaimed water transmission system, master wastewater collection system, and all associated transmission and collection mains and oversized "onsite" infrastructure that may be provided by developers. An additional goal of this policy is to provide alternative options for organizing and financing the extension of water and wastewater utility services, to be used at the discretion of the Director and County Administrator when the standard approach is recognized by County to be incapable of meeting the community's needs in a timely and/or cost-effective manner.

1.2.5 Define an efficient and effective service application process: In the interest of providing the best possible service to CCU customers, an additional goal of this policy is to provide an efficient and effective service application, review, and approval process. The Uniform Extension Policy is intended to clarify the process for submitting service applications so that all parties involved have a clear understanding of the information required to apply for service, the responsibilities of all parties, and the intended purpose of all fees and charges.

2.0 AVAILABILITY.

The provision of service under this Uniform Extension Policy is available to prospective and existing CCU customers throughout the service area of County, subject only to matters of economic feasibility. County reserves the right to determine the economic feasibility of extending utility infrastructure. The evaluation of economic feasibility will be based upon, among other relevant factors, the determination of whether adequate revenue to support County's capital investments or future investments required in conjunction with any proposed extension will be generated by the additional customers expected to connect to the system.

For instances in which the initial evaluation has demonstrated that the extension of utility service to new areas is not economically feasible, County shall consider alternative options including, but not limited to, those options provided for in this Uniform Extension Policy.

3.0 AUTHORITY.

In the adoption of this Uniform Extension Policy, the Board is exercising its governmental authority pursuant to Article VIII, Section 1(g) of the Florida Constitution and F.S. Chapters 125 and 153, as amended. The aforementioned provisions authorize Charlotte County to carry on county government and to facilitate the adequate and efficient provision of water and wastewater services.

4.0 DEFINITIONS.

- (a) Accrued Guaranteed Revenue Fees (AGRF): "Accrued Guaranteed Revenue Fees" are those fees collected by County for the repayment of the carrying costs of facilities built or acquired in excess of those needed to serve current customers and held for future use by future customers.
- (b) Board: The Board of County Commissioners of Charlotte County, Florida.
- (c) Capital Improvement Plan (CIP): A five-year plan approved by the Board through which CCU identifies projects that require capital expenditures.
- (d) Contributed Capital: The value of water distribution and wastewater collection systems installed by Developers and contributed to CCU.
- (e) Connection Fees: "Connection Fees" are the fees levied upon each Developer to recover the costs of expanding the capacity of CCU for the express purpose of serving the property(ies) of said Developer. Connection Fees may be used for the purpose of paying or reimbursing the equitable share of the capital cost relating to such acquisition, construction, expansion or equipping of excess and unused capacity of CCU, or expansion thereof in order to serve new users of CCU facilities. Connection Fees are not allocated to the operation and maintenance of those existing facilities that are used to serve current customers. Connection Fees, also known as system development charges, are those capital charges required by County to allocate to each Developer its fair share of the capital cost of water and wastewater treatment facilities, and/or master water distribution and wastewater collection facilities, based on the amount of capacity required by the property(ies) of each Developer.
- (f) County: Charlotte County, a political subdivision of the State of Florida. As used in this Uniform Extension Policy, the terms "County" and "CCU" may be interchangeable.
- (g) County Administrator: The chief administrative officer of County or authorized designee.

- (h) Developer: Any person or entity seeking to secure potable water, reclaimed water, or wastewater services for property(ies) within County's service area for the benefit of itself or prospective future customers of such service, including a lot owner.
- (i) Director: The Director of Charlotte County Utilities or authorized designee.
- (j) Engineer of Record: The "project engineer," a registered professional engineer of record, responsible for: 1) the preparation of plans, specifications and other related design documents for the potable water, non-potable irrigation water and/or wastewater systems being constructed within Charlotte County; and 2) certifying the project, including all costs, upon completion.
- (k) Equivalent Residential Connection (ERC): A measure used to compare the demand for water and wastewater utility services from varying types of residential and non-residential properties. One ERC is defined to be equal to the expected service demand of one average residential property, which is found in the latest Rate Resolution and is currently established to be equivalent to 225 gallons of potable water per day and 190 gallons of wastewater per day.
- (l) Meter Fees: The charge imposed by CCU to recover the costs associated with water meters, which may include any combination of: the cost of water meter devices, valve, box and appurtenances; inspection of meter installation if installation was not performed by CCU; the installation of meter facilities, installed at the request of Developer or where determined by the CCU Director or authorized designee to be required.
- (m) Reserved Capacity: The specific allocation of water or wastewater capacity reserved by County for the benefit of a Developer as evidenced by a Utility Agreement and supported by the payment of Connection Fees in accordance with this Uniform Extension Policy.
- (n) Utility Agreement: A written agreement setting forth in detail the terms and conditions under which CCU will render service to a Developer's property, and setting forth the obligations and requirements of each party to the agreement.

5.0 ASSOCIATED SERVICE FEES.

This Uniform Extension Policy establishes and defines fees necessary to recover the costs of providing extended utility services, as well as the costs of reserving additional utility capacity for future customers. A variety of fees are established herein in

an effort to equitably allocate costs uniformly among CCU customers, and each of the fees set forth by this policy is allocated to a specific CCU cost.

5.1 Contributed Capital

County requires each Developer applying for extended utility service to provide "Contributed Capital" through the installation of water distribution and wastewater collection facilities. Title to such facilities shall be transferred to County, and the aggregate value of such Contributed Capital shall be computed and certified by the Engineer of Record. Calculation of the value of Contributed Capital should not include those "customer's lines" and "plumber's lines" that remain the property and responsibility of Developer (see section 7.1 for details). CCU will rely on the certified costs provided by the Engineer of Record in the calculation of "Contributed Capital." CCU reserves the right to dispute incorrect calculations regarding the dedicated portion of the utility infrastructure.

The Contributed Capital requirement is intended to recover the costs of those "onsite facilities" required to provide water and wastewater service, which may include those facilities required to distribute reclaimed water as required by County's most recent Reclaimed Water Ordinance. Each Developer shall be responsible for all costs associated with the design, installation, inspection and testing of onsite facilities. This may include the complete potable water distribution, reclaimed water distribution and wastewater collection systems located in the street or streets adjoining or within the boundaries of Developer's property.

The term "complete water distribution and wastewater collection system," as used herein, shall include all component parts of a water distribution system, including valves, fittings, laterals, hydrants and all appurtenances and/or onsite treatment facilities, as shown upon the approved design of water distribution system, and may also include those facilities and appurtenances required to provide reclaimed water as directed by County's most recent Reclaimed Water Ordinance. The wastewater collection system shall include all collection lines, manholes, force mains, lift or pumping stations, including the site for same, and all other necessary appurtenances and/or onsite treatment facilities as shown upon the approved design for the installation of such wastewater collection system.

If so requested by Developer, and taking into consideration the limited size of Developer's property for which service has been requested, County may investigate the desirability of having County design and install the potable water distribution, reclaimed water distribution and wastewater collection systems. In such event, County reserves the right to compute the estimated cost of such extension and to require Developer to pay such cost of construction in lieu of Developer's installation of the water distribution and wastewater collection system.

At the discretion of the Director, CCU may require the installation of oversized lines and/or facilities, which may or may not be located on a Developer's property. Such oversizing of lines and/or facilities is intended to economically expand system capacity

for future anticipated development, and oversized lines and/or facilities will be designed to provide service capacity for properties other than Developer's. For these instances, CCU and Developer will set forth the terms of the oversizing as part of the Utility Agreement, and any reimbursement of Developer for oversizing shall be in accordance with the terms set forth in the Utility Agreement and this Uniform Extension Policy.

5.2 Connection Fees

County has established "Connection Fees" as a method of assessing the costs to Developer for its allocable fair share of CCU's master water transmission and master wastewater collection system, as well as the costs associated with CCU's water and wastewater treatment plant capacity.

5.2.1 Offsite water distribution and wastewater collection system: County declares that service to each Developer's property is dependent upon those main water transmission lines, wastewater collection lines, wastewater force mains and/or master pumping stations necessary to connect all Developers' properties with the central facilities of County, and that the aforementioned infrastructure is, or will be, adequate in size to provide the necessary and appropriate utility services to Developers' properties. These "offsite" facilities are generally defined as the master water distribution system and the master wastewater collection system. County shall create and periodically update its Water and Wastewater Master Plan identifying the master systems.

County further declares that the charge for Developer's share of the master distribution and collection facilities will be applicable to Developer's property, whether or not the main transmission lines, force mains and pumping stations have been previously constructed. The apportionment of the cost of the master distribution and collection system has been reduced to an ERC cost, and such costs have been included within the Connection Fees in accordance with the current Rate Resolution approved by the Board, as amended from time to time.

5.2.2 Plant capacity charges: County declares that it will require Developers to contribute to that portion of the cost of construction of water resources, treatment, storage and pumping, and wastewater treatment and effluent disposal corresponding to the demand expressed in gallons per average day exerted or to be exerted by Developer upon CCU water and wastewater plants. The allocable fair share cost to be borne by each ERC has been, and will continue to be, determined through an analysis of the cost of all plant facilities acquired, under construction or to be constructed in the future, compared with the anticipated demand of the service area at build-out, expressed in ERCs.

The cost of treatment plant facilities shall include such items as engineering, legal, accounting, financing costs, administrative, and general expenses associated with the planning or construction of facilities, the cost of obtaining regulatory permits, the cost of land and rights-of-way, if any, and such other costs normally associated with such capital programs. These plant capacity charges, together with Developer's allocable share

of "offsite" or master facilities, are a component part and are included within the Connection Fees.

5.2.3 Connection Fees - when payable: County acknowledges that, corresponding with the reservation of capacity to each Developer, the CCU system shall have in existence, under construction or under active design for near-term construction, treatment plant capacities equal to the amount called for in Developer's specific reservation, and in the aggregate for all Developer reservations, at any given time. Since capital investments will have been made, or are being made, on behalf of each Developer, Connection Fees for all capacity reserved are declared to be due in full at the time of the execution of the Utility Agreement. This payment may be made for the entire project or specific phases. However, capacity shall only be reserved for those projects or phases for which Connection Fees have been paid. County reserves the right to terminate a Utility Agreement if payment of fees due at the signing of said Utility Agreement is not made within sixty (60) days of the signing date on the agreement for whatever reason. Developer shall be responsible for re-initiating the capacity reservation application process in the event of such termination of Utility Agreement, including payment of any required application fees that are due.

In the event Developer elects to pay Connection Fees in phases, Developer shall pay Connection Fees in full for each phase prior to the commencement of utility construction at each phase. Furthermore, any Connection Fees paid for a phase after sixty (60) days from the signing of the Utility Agreement shall be subject to change, and the Connection Fee due shall be based upon the most recent Rate Resolution.

CCU requires Developer to enter into a Utility Agreement as a prerequisite for reserving system capacity. However, if Developer has not entered into a Utility Agreement with CCU for whatever reason, and consequently has not paid Connection Fees, then Connection Fees and all other applicable fees shall be due prior to application for a building permit or utility service.

In the event that said Developer's actual capacity utilization exceeds the capacity allocated to Developer in its Utility Agreement, as determined by the Director, then said Developer shall pay, on demand, Connection Fees for such excess capacity utilized, together with all other applicable fees as set forth herein, including AGRF.

5.2.4 Uniform application of Connection Fees: County declares that such Connection Fees shall be uniform among all Developers within the service area, notwithstanding provisions which may be contained in Utility Agreements not executed by CCU or the practices and procedures pertaining to Connection Fees as established by prior owners of County's utility services, or contained within agreements executed between Developers and prior owners of County's utility services.

County's requirement to apply Connection Fees uniformly to all Developers requires that existing Developer connections not in service on the effective date of this

Uniform Extension Policy may have their Connection Fees adjusted to the levels set forth by the current Rate Resolution, unless otherwise prohibited by law.

In the event that a Developer has not utilized capacity previously reserved by the payment of Connection Fees within a period of five (5) years following the signing of a Utility Agreement, County maintains that the Connection Fees defined in the most recent Rate Resolution shall be applicable to the unused reserved capacity (i.e., any reserved capacity that has not been previously used through the connection of real property to the CCU water distribution and/or wastewater collection system(s)), and that an additional payment to recover any difference between the latest Connection Fees and the previously paid Connection Fees may be required in order for Developer to maintain a claim to the unused reserved capacity. Additional requirements as set forth in section 9.2 of this Uniform Extension Policy may apply for reserved capacity that has not been used within a period of five (5) years following the signing of a Utility Agreement.

The Connection Fees declared to be in effect on the effective date of the resolution adopting this Uniform Extension Policy will continue in effect until lawfully changed by County, as provided in the current Rate Resolution. Additional provisions for the Connection Fees associated with various common categories of development are set forth below:

(a) Commercial Properties: All non-residential property devoted to industrial, business, educational or other categories not covered below (section 5.2.4 (b), (c)) shall be considered to be commercial uses. The Connection Fees to be paid to County for such proposed uses shall be based upon the residential equivalency of such proposed use. CCU will estimate the anticipated water consumption and wastewater production on a daily basis and shall divide such by the ERC use factors found in the latest Rate Resolution, and the larger of the two quotients shall be used to determine a residential equivalency. Such residential equivalency factor shall be multiplied by the Connection Fees then in effect for single-family residential use in order to determine the Connection Fees applicable to such proposed commercial use. The minimum Connection Fee for any commercial use shall be that of one equivalent residential connection.

(b) Common Facilities - Multifamily Complexes: All uses for water and/or wastewater service of a common nature for such purposes as washing, recreational facilities, clubhouses, meeting rooms or similar applications generally found in connection with the construction of multifamily projects shall be considered in the same manner as commercial installations, and the Connection Fees applicable thereto shall be computed in accordance with the commercial category set forth herein.

(c) Irrigation Uses: Water connections for the purpose of irrigating common areas (not applicable to single-family house lots) shall have their Connection Fees computed based upon the number of gallons of potable water required to provide one (1) inch of irrigation per week for the number of irrigable acres

on the property in question. The equivalent daily usage of potable water for irrigation shall then be divided by the ERC use factor found in the latest Rate Resolution to determine the number of ERCs associated with irrigation of common areas. Since irrigation water does not include corresponding wastewater service, the residential equivalency shall be multiplied by the fee applicable to potable water per ERC instead of the fee applicable for the water and wastewater to single-family residences.

5.3 Accrued Guaranteed Revenue Fees

Payment of Accrued Guaranteed Revenue Fees (AGRF) is a requirement for utility service. The amount of the AGRF shall be determined as set forth in the current adopted Rate Resolution, based in part upon the size of the proposed service requirement expressed in units of ERCs. AGRF shall be allocated by CCU to the repayment of the carrying costs of facilities built or acquired in excess of those needed to serve current customers and held for future use by future customers.

5.3.1 AGRF – when payable: The AGRF is due at the time of request for meter set/service connection to CCU services.

5.4 Inspection Fees

County reserves the right to inspect the installation of all potable and reclaimed water distribution facilities, wastewater collection facilities, and/or onsite treatment facilities and appurtenances installed by Developer or Developer's contractors, which facilities are proposed to be transferred to County for ownership, operation and control. Such inspection is designed to assure County that potable water, reclaimed water, and wastewater lines, onsite treatment facilities and/or lift stations are installed in accordance with approved designs and are further consistent with the criteria and specifications governing the kind and quality of such installation. County further reserves the right to be present at tests for component parts of water distribution or wastewater collection systems for the purpose of determining that the system, as constructed, conforms to County's criteria for exfiltration, infiltration, pressure testing, line and grade, and water-quality parameters, including bacteriological and disinfection requirements. Such tests will be performed by Developer or Developer's contractor, but only under the observation of County's engineer or authorized inspector.

Developer shall pay to County an Inspection Fee intended to defray the actual costs of inspecting Developer's installation of facilities. The Inspection Fee shall be determined by CCU as based upon the construction costs of Developer's project and a standard rate for inspection services, and the total fee shall not exceed five percent (5%) of the cost, either actual or estimated, of the subject water and wastewater facilities as installed by Developer. CCU maintains full-time inspection capability and the cost for inspection services as set forth herein is, and shall continue to be, designed to defray the actual cost of conducting such inspections and testing.

5.4.1 Inspection Fees – when payable: Inspection Fees are due in full at the time of the execution of the Utility Agreement. The initial payment of Inspection Fees shall be based upon estimated construction costs, as agreed to by both parties to the Utility Agreement. At the time that the actual construction cost is established, an adjustment to the Inspection Fee may be made.

5.5 Administration and Recording Fees

Developer shall pay to County the administrative costs of processing Developer's service request, including, but not limited to, the cost of preparation of Utility Agreements, preliminary engineering costs, review and approval of permit applications, and legal costs. Developer shall also pay a Recording Fee to defray the cost of recording the Utility Agreement and associated documents with the Clerk of the Court. Administration and Recording Fees shall be established by CCU from time to time.

5.5.1 Administration and Recording Fees – when payable: Administration and Recording Fees are due in full at the time of the execution of the Utility Agreement.

5.6 Engineering Fees

County will charge Engineering Fees to recover all costs incurred by County for the processing and review of construction/engineering plans and shop drawings.

5.6.1 Engineering Fees – when payable: Engineering Fees are due in full at the time of request by Developer for review of construction/engineering plans and shop drawings.

5.7 Meter Fees

County will charge Meter Fees to recover all material and labor costs incurred by County for the installation and/or inspection of meters.

5.6.1 Meter Installation Fee – when payable: County will require the payment of such fee concurrent with the request by a prospective customer for the meter installation. The Meter Installation Fee shall be charged only one time for meter installation at any one location; provided, however, that requests to exchange existing meters for meters of a larger size will result in a charge to the prospective customer of the difference between the existing smaller-sized meter and the requested larger-sized meter. In addition, meters of larger size have a different ERC value and installation cost and, consequently, require the payment of increased Connection Fees. The difference between the Connection Fees paid and the Connection Fee applicable to the larger meter will be collected at the time of the request for larger meter service.

5.6.2 Meter Cost and Inspection Fees – when payable: Meter Cost and Inspection Fees shall be charged in those instances when Developer is responsible for the installation of a meter that has been provided to Developer by County. County will

require the payment of such fees concurrent with the request by a prospective customer for meter equipment and/or meter inspection. The cost of any meters and labor required to inspect meter installations shall be the actual cost to County to provide these products and services. Developer shall be responsible for actual costs related to lost, damaged or missing meters or materials.

6.0 EXTENSION OF THE WATER DISTRIBUTION AND WASTEWATER COLLECTION SYSTEM.

The Board hereby determines that it is in the best interest of the citizens of County that potable water, reclaimed water, and wastewater utility services be rendered by a centralized utility system whenever possible. This finding follows because of the economic benefits of a centralized utility system, and the improved ability to coordinate and conserve natural resources, as well as to coordinate and plan for responsible growth. The provision of centralized utility services relies upon the ability to extend water distribution and wastewater collection infrastructure to those areas of County where growth is occurring or is expected to occur.

6.1 Standard Process for Extending the Water Distribution and Wastewater Collection System

Recognizing a need to plan for extensions of utility service, County shall utilize its Water and Wastewater Master Plan, along with a Capital Improvement Plan (CIP), to identify and plan for potable water distribution, reclaimed water distribution, and wastewater collection infrastructure extension projects. CCU shall utilize the Water and Wastewater Master Plan and CIP to communicate its intentions to the public for extending water, wastewater and reclaimed water infrastructure; and CCU shall follow those plans according to the timing set forth therein, subject to periodic revision to account for changes including, but not limited to, modifications of regulations, new economic conditions, comments provided by the public, changes in the financial position of CCU and new technologies.

CCU intends to construct those transmission facilities identified in its Water and Wastewater Master Plan, and revenues from Connection Fees shall be utilized to defray the costs of those projects.

6.2 Alternative Options for Extending the Water Distribution and Wastewater Collection System

The Board recognizes that the Water and Wastewater Master Plan may not anticipate or plan for every future contingency, and that some water and wastewater infrastructure that is not included in the Water and Wastewater Master Plan may need to be constructed. For this reason, the Board finds that some alternative options for providing appropriate infrastructure will be made available, including but not limited to the following. Said alternative options shall be made available for use at the discretion of

the Director, in concurrence with the County Administrator, subject to regulatory, technical and economic feasibility.

6.2.1 Developer paid extension of water and/or wastewater transmission mains: In those circumstances where CCU has not planned to extend connecting transmission lines to Developer's property, Developer may elect to pay the full cost of extending transmission lines to connect CCU's existing main transmission system to the point of connection for Developer's planned or existing onsite facilities.

In such cases, Developer shall be required to enter into a Utility Agreement with CCU. Such an agreement shall provide that Developer is responsible for the full cost of design, construction and inspection of transmission lines, as certified by Developer's engineer and approved by the Director, for the minimum-sized transmission line needed to serve the project.

In some cases the Director may require an oversizing of said transmission lines. In those cases, Developer shall be reimbursed for the oversizing costs of the transmission lines based upon the terms set forth in the Utility Agreement and herein under the heading of "oversizing reimbursement program."

6.2.2 Infrastructure assessment to provide for property improvements: Following the recommendation of the Director, in concurrence with the County Administrator, for those cases in which additional funding may be required to provide for essential potable water distribution, reclaimed water distribution, and/or wastewater collection infrastructure, the Board may elect to impose infrastructure assessments. Infrastructure assessments shall provide for payment of all or a portion of the capital cost of infrastructure improvements against property located within an infrastructure assessment unit. Infrastructure assessments shall be imposed for a specified term of years sufficient to pay the capital cost of such improvements, plus interest thereon and any other cost, as defined, incurred by County or the infrastructure assessment units. Infrastructure assessments shall be levied in accordance with all applicable federal, State, and local regulations, including, but not limited to, F.S. 153.05, "Water system improvements and sanitary sewers; special assessments." Nothing contained in this article shall be construed to require or preclude the imposition of infrastructure assessments against government property.

6.2.3 Municipal Service Benefit and Taxing Units to provide for property improvements: Following the recommendation of the Director, in concurrence with the County Administrator, for those cases in which additional funding may be required to provide for essential potable water distribution, reclaimed water distribution, and/or wastewater collection infrastructure, the Board may elect to define Municipal Service Benefit Units (MSBUs) and/or Municipal Services Taxing Units (MSTUs) as provided for in Part IV of the County Code and F.S. 125.01(1)(q), 125.01(5), as amended. An MSBU or MSTU may be created to provide for payment of all or a portion of the capital cost of infrastructure improvements against property located within the defined

geographical area of the MSBU or MSTU. The benefits of said infrastructure improvements shall go towards the properties located within the MSBU or MSTU.

6.2.4 Provision of utility service through franchise area: It is not the policy of the Board to encourage the proliferation of franchised utilities within County. However, the Board recognizes that F.S. 367.031, F.S. 367.045, and F.A.C. Chapter 25-30 provide that utilities or prospective utilities subject to the jurisdiction of the Public Service Commission may apply for a certification of authorization to provide water and/or wastewater service. For circumstances in which an application for certification of authorization to provide water and/or wastewater service within the service area of CCU has been made, the Board finds that CCU shall make available those resources that may be needed to cooperate with the Public Service Commission in its review of the application(s) for certification of authorization. This may include, but is not limited to, responding to any requests for information by the Public Service Commission that may be needed to determine if reasonably adequate utility service is available at present, or can be provided in the near future, to the area delineated in the application.

6.3 Oversizing Reimbursement Program

The oversizing reimbursement program shall apply to all Utility Agreements that require oversizing of potable water distribution, reclaimed water distribution, and/or wastewater collection facilities, unless otherwise specified in an agreement between County and Developer. For those instances in which CCU and a Developer have entered into a Utility Agreement that requires oversizing of utility facilities, CCU shall reimburse Developer for the actual costs of oversizing in accordance with the terms set forth herein.

CCU shall reimburse Developer for the actual costs of oversizing utility facilities. On an annual basis, CCU shall make equal payments to Developer over a period of ten (10) years, such that each annual payment is equal to ten percent (10%) of the total cost of oversizing utility facilities. The first payment shall be due within one (1) year of the acceptance by CCU of the oversized utility facilities. Payments shall be sent by CCU to the address specified by Developer in the Utility Agreement. Developer may request in writing that payments be sent to a new address at any time during the repayment period.

The total construction costs for oversizing shall be established using final contract invoices for those costs of materials incurred to construct the oversized facilities as submitted by Developer and approved by the Director. Developer costs associated with project engineering, permitting, and inspection shall not be eligible for reimbursement through the oversizing reimbursement program. In the case of oversized pipes, the cost of oversizing shall be based upon the pipe sizing of the oversized lines in comparison with the minimum-sized facilities required to serve Developer's needs, as determined by the Director. In the case of other, non-pipe, oversized utility facilities, the cost of oversizing shall also be determined by comparing the cost of the oversized facilities to the minimum-sized facilities required to serve Developer's needs, as determined by the Director.

Total reimbursements to Developer who constructed or funded the installation of oversized facilities shall not exceed Developer's total costs of constructing the oversized facilities, minus Developer's calculated costs for constructing the minimum-sized facilities as previously set forth.

No interest payment on the total cost of oversizing shall be due to Developer or paid by CCU. Oversizing reimbursement payments may be transferred or assigned by Developer, following the written permission of the Director.

6.4 Multiparty Agreements

The Board finds that multiparty agreements among Developers to provide for the extension of water distribution and/or wastewater collection systems shall be encouraged, as they help to coordinate future infrastructure needs and the resources to pay for said facilities. Such multiparty agreements shall be subject to the review and approval of the Director, in concurrence with the County Administrator.

7.0 UTILITY SERVICE APPLICATION, REVIEW, AND APPROVAL PROCESS

CCU shall make available all necessary forms and applications required to apply for a service extension, including accompanying instructions for completing said documents. Instructions for application shall clearly list the necessary procedures, forms and applications required by CCU as part of the service application process.

Developer is solely responsible for obtaining and completing all necessary forms and documents required by CCU for the provision of water and wastewater service as required.

7.1 Transfer of Contributed Capital Property – Bills of Sale

Each Developer who has constructed portions of the water distribution and wastewater collection system on Developer's own property prior to interconnection with County's existing facilities shall convey such component parts of water distribution and wastewater collection system to County by bill of sale in a form that is satisfactory to County's attorney, together with such evidence as may be required by County that the water distribution system and/or wastewater collection system proposed to be transferred to County is free of all liens and encumbrances.

Any facilities in the category of "customer's lines" or "plumber's lines" located on the discharge side of the water meter or on the customer's side of the point of delivery of service shall not be transferred to County and shall remain the property of Developer, a subsequent owner-occupant thereof or their successors and assigns. Such "customer's lines" or "plumber's lines" shall remain the maintenance responsibility of Developer or subsequent customers.

County shall not be required to accept title to any component part of the water distribution or wastewater collection system, as constructed by Developer, until appropriate regulatory agency clearance is received and CCU has approved the construction of said lines and accepted the tests to determine that such construction is in accordance with the written criteria established by County, thereby having evidence justifying acceptance of such lines for County's ownership, operation and maintenance.

Developer shall maintain accurate cost records establishing the construction costs of all utility facilities constructed by Developer and proposed to be transferred to County. Such cost information shall be furnished to County concurrently with the bill of sale and such cost information shall be a prerequisite for the acceptance by County of the portion of the water distribution and wastewater collection system constructed by Developer.

County reserves the right to refuse connection and to deny the commencement of service to any customer seeking to be connected to portions of the water distribution and wastewater collection system installed by Developer until such time as all obligations of Developer under this Uniform Extension Policy have been fully met by Developer or Developer's successors or assigns.

7.2 Approved Application as a Condition of Meter Release and Service

CCU maintains the right to withhold the release of meter(s) and/or utility service until all required closing documents, as set forth in the Utility Agreement, have been received and approved by CCU, and any and all fees and charges due have been paid.

8.0 OBLIGATIONS OF DEVELOPER AND ENGINEERING REQUIREMENTS

In addition to the payment of all applicable fees, Developer shall be responsible for the non-monetary obligations set forth herein.

8.1 Engineering Information

It shall be Developer's obligation to furnish to County accurate information with regard to its projects, including matters of legal descriptions, engineering, construction, drainage and roads. In addition, Developer shall accurately describe its project in terms of the amount of water and wastewater services required or the number of ERCs required by the subject property. Increases in the number of ERCs required by the project, beyond those which have been reserved, will result in the requirement for the payment of additional Connection Fees and a recalculation of Accrued Guaranteed Revenue Fees to conform with the more accurate ERC requirements.

Developer is solely responsible for errors or changes in engineering information or the design of its onsite water distribution or wastewater collection system. Any error in

Developer's plans, or the construction of utility facilities on Developer's property that is not in conformity with the CCU-approved plans, may result in increased cost to Developer. Developer shall be responsible for increased costs resulting from said errors, including the costs associated with any necessary corrections, alterations or reconstruction of facilities.

8.2 Surety Bond

Developer may be required to provide any or all applicable performance, payment, warranty or subdivision bond(s) for any construction of water distribution, reclaimed water, or wastewater collection system proposed to be connected to the facilities of County.

8.3 Easements and Rights-of-Way

Following the construction of any water distribution or wastewater collection system proposed to be connected to the facilities of the County, Developer shall grant to County such easements or rights-of-way corresponding with the installation of the facilities. Such grant or conveyance shall be in a form that is satisfactory to County's attorney, together with such evidence as may be required by County, including any required land surveys, and an assurance of title for easements and/or rights-of-way transferred to County that demonstrates said property is free of all liens, mortgages, encumbrances and encroachments. Such conveyances, whether located on or off the property of Developer, shall be made without cost to County. County reserves the right to acquire such easement or rights-of-way to the point at which the meter is proposed to be installed or, in the case of wastewater, where the wastewater main connects to the service lateral, also known as the "point of delivery of service," being the point at which the County's facilities join with customer's own installation.

8.4 System Design - Independent Engineers

County shall accept the design of water and wastewater facilities prepared by a professional engineer who is registered in the State of Florida and regularly engaged in the field of civil and/or environmental engineering. County shall accept said designs provided that each such design shall: be certified to County; be fully subject to the prior approval of the Director; and shall conform to the written criteria of County governing the installation of those utility facilities ultimately to be accepted by County for ownership, operation and maintenance. As required under the general heading of Engineering Fees, Developer shall pay to County a fee commensurate with the cost to County of reviewing such engineering plans and furnishing to Developer's engineer information regarding location and criteria. All designs of water distribution and wastewater collection facilities are at all times subject to the approval of other agencies having jurisdiction over such design.

CCU will use its available engineering resources to review submitted plans and to determine if submitted plans are approved, rejected or returned with recommended alterations.

The Engineer of Record or an authorized designee shall be present at all final testing of onsite systems that are connected directly or indirectly to the CCU system, including tests such as pressure tests, video inspection and lift station start-ups. Additionally, County reserves the right to inspect all onsite systems to which it does not take title. In the event that Developer completes installation of onsite facilities and buries such facilities prior to inspection by County, County reserves the right to require unearthing of such lines so that same can be inspected prior to being placed into service.

8.5 Inspections of Plumber's Hook-Up

It shall be the responsibility of Developer or its plumbing contractor to connect Developer's plumbing installation with the water distribution and wastewater collection facilities of County. Said connections are generally made at "the point of delivery of service," which, in the case of potable water, shall be the discharge side of the water meter. The point of delivery for onsite wastewater facilities shall be at the point where County's wastewater mains connect with Developer's wastewater service lateral. County reserves the right to inspect all such connections to be assured that the same are properly made in accordance with County rules governing such connections and that the connection, as made, is free from infiltration and includes all required backflow prevention devices as defined by County engineering standards.

8.6 Insurance

Developer may be required to procure, maintain, and provide evidence of Automobile Liability, Comprehensive General Liability and Workers Compensation insurance coverage during the construction of any water distribution, reclaimed water, or wastewater collection system proposed to be connected to the facilities of County.

8.7 Licensing

Developer shall be required to ensure that all construction work is performed by, or under the supervision of, licensed contractors.

9.0 CONTINGENCIES

9.1 Reimbursement of Connection Fees

9.1.1 Reimbursement due to a change in building permit: In the event a building permit issued for a development: (i) expires prior to commencement of any part of the development for which the building permit was issued, (ii) is officially cancelled, or (iii) is revised such that the permit revision results in an overpayment of Connection

Fees, the then current owner/applicant may apply for a reimbursement of a portion of or the entire Connection Fee. Application for reimbursement must occur within six (6) months of the expiration of, cancellation of or approved revision of the building permit. Failure to make timely application for a reimbursement of the Connection Fee shall waive any right to a reimbursement. The amount of reimbursement offered shall depend upon the basis for the request for reimbursement.

9.1.2 Terms and conditions of application for reimbursement: The application for reimbursement shall be filed with the Director and shall contain the following:

- a. The name and address of the applicant;
- b. A legal description of the property location, and a notarized sworn statement that the petitioner is the current owner of the property;
- c. A copy of the dated receipt issued for payment of the Connection Fees;
- d. A certified copy of the latest recorded deed for the property;
- e. A copy of the latest ad valorem tax bill for the property;
- f. If a building permit was issued, the date the building permit was issued and the date of expiration, cancellation or approval of the revision, as applicable;
- g. If the request is due to a revision to the building permit, a copy of the approved revision including original and revised square footage, number of units, date of approval of the revision, and an explanation of the nature of the revision (change of size, use, etc.).

After verifying that the building permit has expired, or was cancelled before the development had commenced, or was revised and thereby required a reduction in the Connection Fees assessed for the property, the Director shall then approve or deny the request. All approved requests shall be forwarded to the Clerk of the Circuit Court's finance department for processing.

If a building permit is subsequently issued for development on the same property, which was previously approved for a reimbursement, the Connection Fees in effect at that time must be paid.

9.2 Unused Reserved Capacity

County reserves the right to require the payment of AGRF for those instances in which a Developer has reserved system capacity by paying Connection Fees, but has not applied for utility service within a period of no less than five (5) years from the time that the Connection Fees were initially paid. AGRF shall be due and owing to County within sixty (60) days following written notification to Developer that AGRF is due for the property(ies) in question. The AGRF payment due shall be established by the most recent Rate Resolution at the time that the written notification is given to Developer. Failure to pay AGRF due shall result in the termination of the Utility Agreement between Developer and CCU, and the subsequent loss of reserved capacity. Developer or current property owner should recognize that CCU shall no longer be obligated to maintain service availability or system capacity for the property in question, and that any future

connection to the CCU system(s) will require the payment of all applicable fees and charges, including, but not limited to, Connection Fees, AGRF and Meter Fees.

In the event that reserved system capacity has been unused within a period of no less than one (1) year from the time that Connection Fees were initially paid, Developer shall also be required to resubmit engineering plans and specifications pertaining to the undeveloped portion of the project. Developer shall also be required to resubmit plans and specifications following any period in which reserved system capacity has been unused for a period of no less than one (1) year from the previous CCU review of said plans and specifications. CCU may review resubmitted plans and specifications to determine if they meet the most current construction standards of CCU. Engineering Fees may apply in the event that Developer is required to resubmit plans and/or specifications. CCU reserves the right to terminate the Utility Agreement in the event that Developer's plans and specifications do not meet the current engineering standards of CCU.

Payment of AGRF shall extend Developer's claim to reserved capacity for a period not to exceed five (5) years. CCU reserves the right to terminate the Utility Agreement and revoke any and all claims to reserved capacity for all unused capacity at the end of the five (5) year extension.

9.3 Change of Service Requirements

Those property owners who are currently receiving utility service may apply to CCU for additional water and/or wastewater service capacity to accommodate a change in use or redevelopment of the property. CCU makes no guarantee that additional water and/or wastewater service capacity shall be available to an existing customer. Additional capacity reservation fees may apply for an expansion of service, including, but not limited to, Connection Fees, Inspection Fees, Administration and Recording Fees, Engineering Fees, and Meter Fees. Approval by CCU for additional service shall not release the applicant from any and all State or local permits, inspections and approvals that may be required as a result of the proposed change in use or redevelopment of said property.

9.4 Unsigned Utility Agreements

Unsigned Utility Agreements shall have no legal authority. The terms and conditions set forth in a draft unsigned Utility Agreement are intended for planning purposes only, and under no circumstances shall the terms and conditions set forth in a draft unsigned Utility Agreement remain valid for a period beyond sixty (60) days from the date that the draft unsigned document was received by Developer.

10.0 ADDITIONAL LEGAL PROVISIONS.

10.1 Right of Apportionment

County reserves the right to apportion available capacity among Developers to the end that a fair distribution of such capacity is accomplished and that no Developer, or group of Developers, shall preempt others from the reasonable opportunity to obtain such capacity.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020109-WS EXHIBIT 11

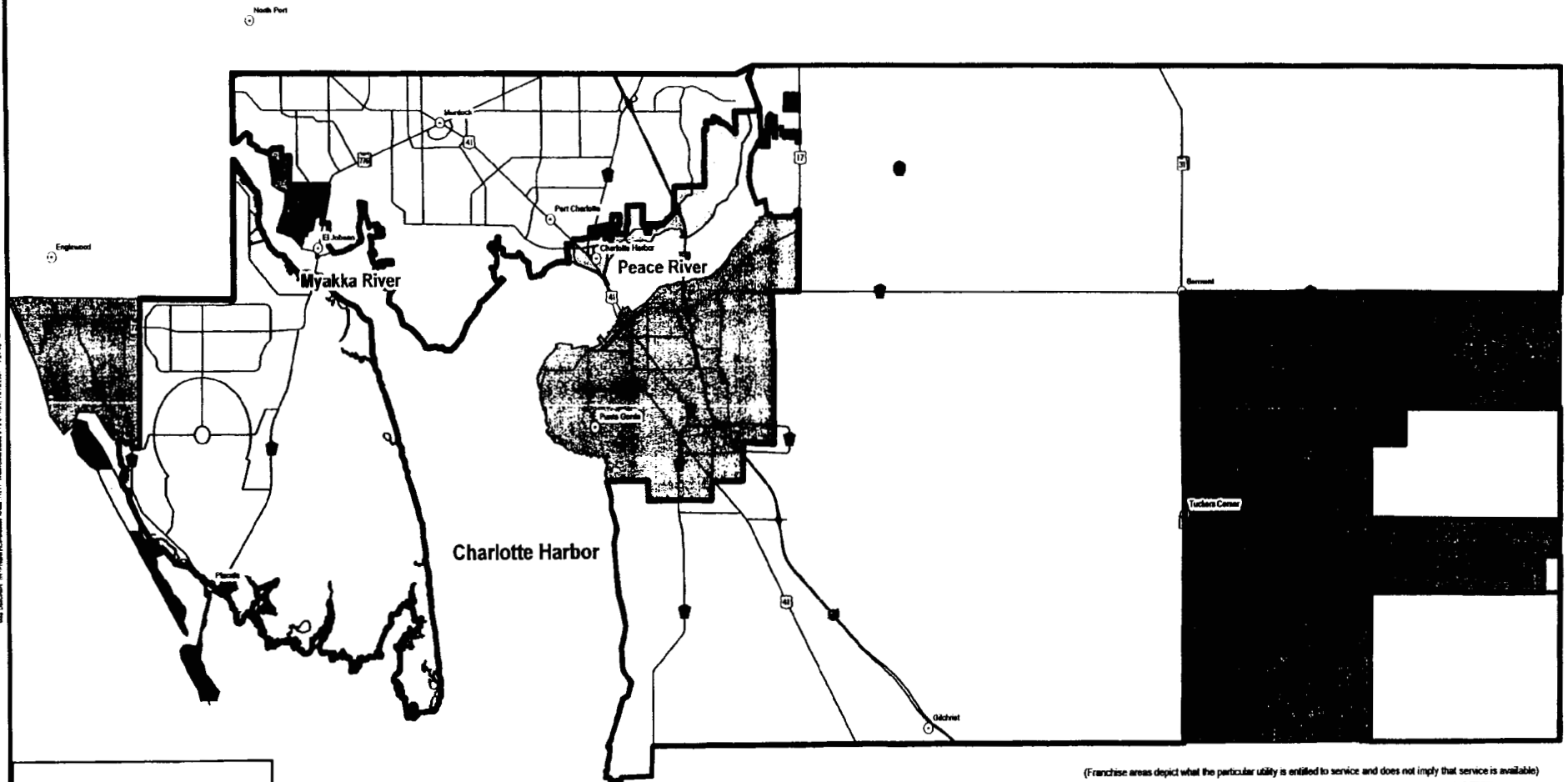
COMPANY Charlotte County (Direct)

WITNESS Jeffrey L. Pearson (Late filed Exhibit 1)

DATE 01/16/08

Charlotte County Water Certificated Franchise Areas

Docket No. 070109-WS
Maps of Charlotte County Utilities'
Water & Sewer Service Districts
Late Filed Exhibit 1, Page 1 of 2



(Franchise areas depict what the particular utility is entitled to service and does not imply that service is available)

This map is a representation of compiled information. It is believed to be an accurate and true depiction for the stated purpose. Charlotte County and its employees make no guarantee, express or otherwise, in the accuracy or completeness. We therefore do not accept any responsibility as to its use. This is not a survey nor is it to be used for design. No part of this map may be reproduced or transmitted in any form without the expressed written permission of Charlotte County Utilities. Copyright 2007 Charlotte County Utilities. Designed by D. Cain | W:\Projects\Certificated Areas\11-17 Water\Certificated 8-15-07.mxd printed on 10/15/2007 at 3:28:08 PM

Charlotte County Utility

— District 1
— District 2

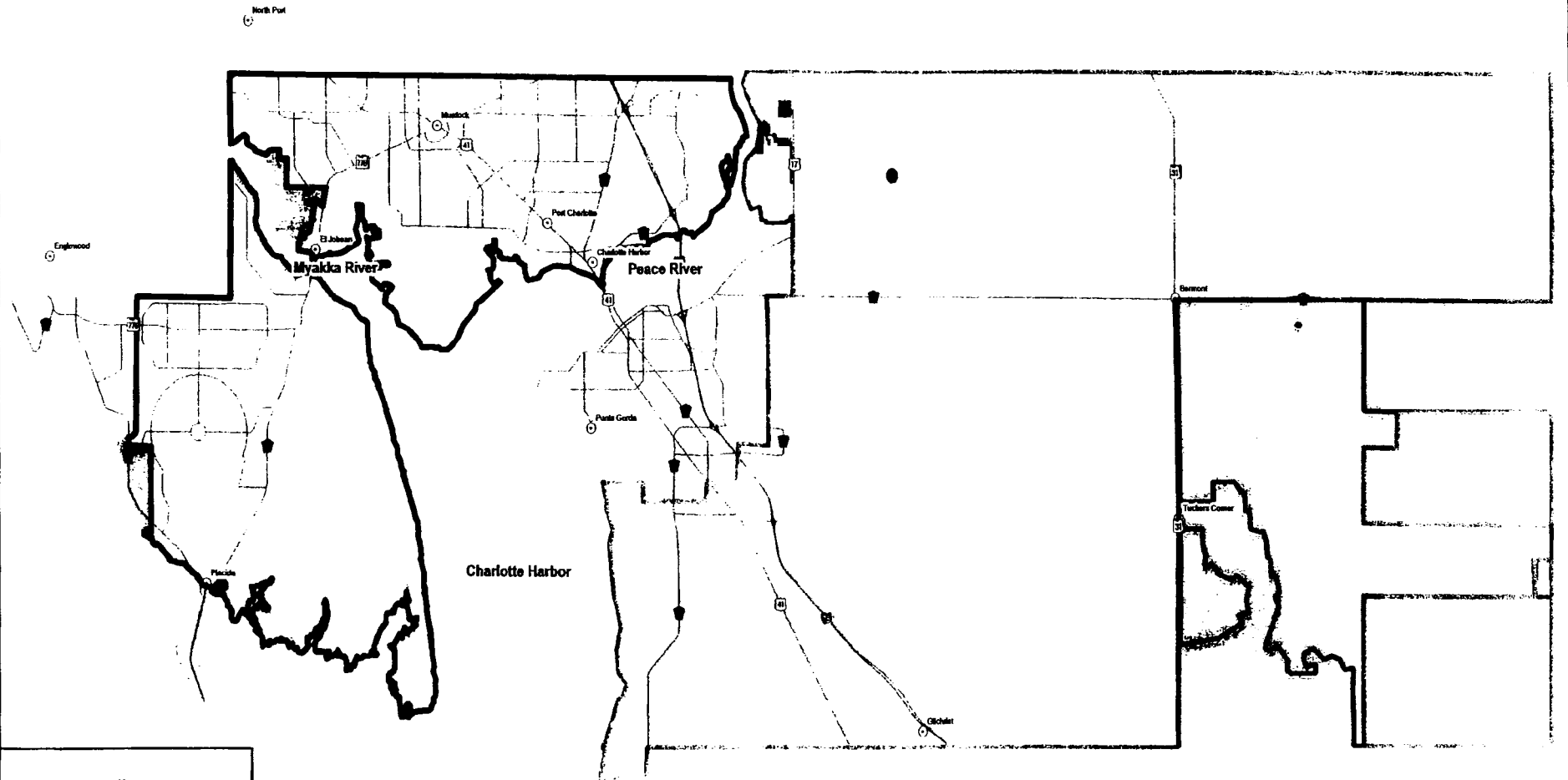
Legend

1- Bocilla Utilities	8- Knight Island Utilities
2- Charlotte County Utilities	9- Little Gasparilla Water
3-Charlotte Harbor Water Assoc.	10- NHC Utilities
4- City of Punta Gorda	11-Riverwood Development
5- El Jobean Water Association	12-Town & Country Utility Co.
6- Englewood Water District	13- MSM Utilities
7- Gasparilla Island Water Assoc	

DOCUMENT NUMBER-DATE
00269 JAN 10 08
President
FPSC-COMMISSION CLERK

Charlotte County Sewer Certificated Franchise Areas

Docket No. 070109-WS
 Maps of Charlotte County Utilities'
 Water & Sewer Service Districts
 Late Filed Exhibit 1, Page 2 of 2



(Franchise areas depict what the particular utility is entitled to service and does not imply that service is available)



This map is a representation of compiled information. It is intended to be an accurate and true depiction for the stated purpose. Charlotte County and its employees make no guarantee, implied or otherwise, as to the accuracy or completeness. We therefore do not accept any responsibility as to its use. This is not a warranty nor is it to be used for design. No part of this map may be reproduced or transmitted in any manner without the expressed written permission of Charlotte County Utilities. Copyright 2007 Charlotte County Utilities. Designed by D. Cobb, WSP/Project/Certificated Areas/Pr17 Sebring/Certificated 8.1.07.mxd produced on 10/11/2007 at 3:48:59 PM

Charlotte County Utility

— District 1

— District 2

Legend

- | | |
|-------------------------------|---------------------------------|
| 2- Charlotte County Utilities | 9- Utilities Inc of Sandlehaven |
| 4- City of Punta Gorda | 10-Town & Country Utility Co. |
| 6- Englewood Water District | 11- Riverwood Development |
| 7- Gasparilla Water Assoc. | 12- MSM Utilities |
| 8- Knight Island Utilities | |

DOCKET NO. 070109-WS

WITNESS: Direct Testimony Of Suzanne K. Lex
Appearing On Behalf Of Staff

DATE FILED: November 19, 2007

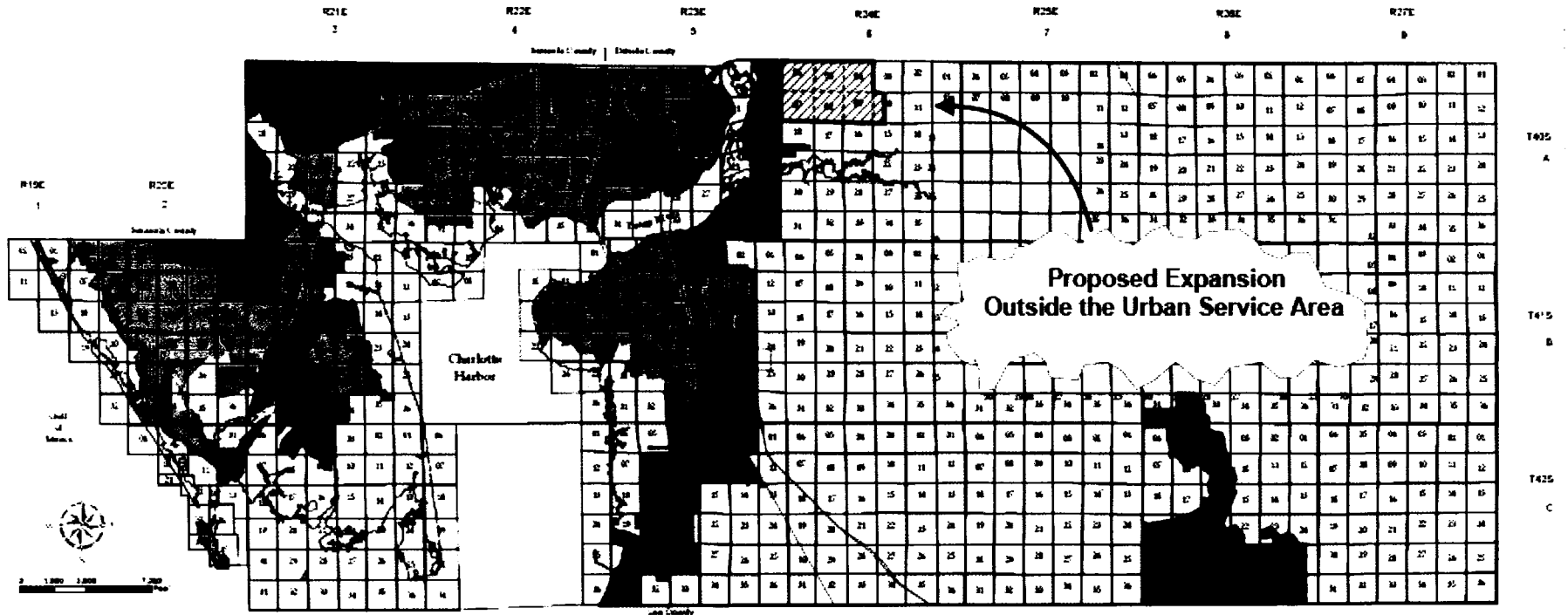
FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 070109WS EXHIBIT 12
COMPANY FPSC Staff (Direct)
WITNESS Suzanne K. Lex (SKL-1)
DATE 01-16-08



Charlotte County
 Community Development
 LAND INFORMATION SECTION

Map Number 2—Future Land Use Map Series

Urban Service Area Overlay



Infill Area

Infill Areas are those areas which have already experienced moderate to significant levels of urban development. In order for an area to be designated as infill, it must have obtained in general a 30% build-out density. The majority of existing urban services and infrastructure are concentrated within these areas, and include central potable water and wastewater treatment, road and drainage construction and maintenance, public education facilities, parks, libraries, and higher levels of police, fire, and emergency medical services.

Suburban Area

Suburban Areas are, for the most part, undeveloped, platted lands and parcels. However, there are scattered homes and businesses located in the areas. Service levels within Suburban areas are planned to be very low because the majority of development is to directed to Infill Areas. Once Infill Areas become more fully developed, a need will exist for additional developable land. That need will be filled by redesignating land located in Suburban Areas as Infill Areas.

This map is a representation of compiled public information. It is believed to be an accurate and true depiction for the stated purpose, but Charlotte County and its employees make no guarantee, implied or otherwise as to its use. This is not a survey or is to be used for design.

Draft Date 04/27/06 mlb

TESTIMONY OF STEVEN J. FELDMAN
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
ON BEHALF OF
SUN RIVER UTILITIES, INC. (f/k/a MSM Utilities, LLC)
DOCKET NO. 070109-WS

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS EXHIBIT 13

COMPANY Sun Rivers Utilities, Inc. (Rebuttal)

WITNESS Stephen J. Feldman (SJF-1)

DATE 01-16-08

STEVEN J. FELDMAN

PRESIDENT, STEVEN J. FELDMAN, INC.

2127 Brickell Ave., Ste. 2002, Miami, Florida 33129 • 786-229-9000 • 305-854-3625 (fax) • thnkdeep@aol.com

Born into a family of successful professionals involved in diversified real estate related disciplines and interests, Steve's career in major land development, building and finance is underpinned with important long-term roots and enormous industry experience including international. As a former senior officer with four major, national homebuilder/developers, Pulte, Porten-Sullivan, The William Lyon Company and Crosswinds Communities, Steve has been responsible for developing and building thousands of homes, dozens of neighborhoods and large masterplanned communities.

Prior to his experience with national homebuilder/developers, Steve was the Vice President and Chief Financial Officer of Green International, an international architectural, planning, engineering and construction management firm. Steve previously held various positions in family owned businesses in real estate, development, building and finance.

Steven J. Feldman, Inc. is primarily in the land investment opportunity business providing discovery, acquisition, entitlement, development and financial services.

Steve holds a Masters Degree in Business Administration (MBA) from Duquesne University, Finance and Management, 1972, Pittsburgh, PA.

Examples of Land Entitlement and Development Experience:

Welleby: This 1000 (+) acre mixed-use community is in the City of Sunrise and was a Development of Regional Impact (DRI). Today it is comprised of over 4000 residential units hospital, 2 retail centers, City Hall, offices, church and parks. Once entitled and the development of infrastructure was completed, residential pods, commercial and retail pods, etc. were sold to a wide variety of builders.

Turtle Run: This 640 (+) acre (DRI/BLIM) mixed-use community is in the City of Coral Springs. Today it is comprised of over 1000 residential units, Wal-mart, offices and other retail. After achieving all of the entitlements and development permits, Lennar/Courtellis completed the horizontal and vertical development.

Holliday Springs/Carolina: This 300 (+) acre residential community is in the City of Margate. It consists of several hundred residential units, golf course and country club and some minor retail. This was a failed development that required new entitlements and substantial development. Various homebuilders completed the vertical improvements of the community.

Crane's Landing: This 400 (+) acre parcel is in Lee County near Ft. Myers. Last year we acquired this highly sought after parcel; completed the zoning and permitting and sold it to a major public homebuilder.

Hillcrest Preserve: This 650 (+) acre farm site is located in Pasco County near Tampa. During the six month due diligence period last year, most of the necessary entitlements were completed. Adverse soil conditions (clay) created concern among a long list of potential purchasers. Through closely managed, highly qualified consultants, we eliminated the soils concerns. Within a year, the property was under contract and sold to a major homebuilder.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 076109-WS EXHIBIT 14

COMPANY Sun River Utilities, Inc. (Rebuttal)

WITNESS Gerald C. Hartman (GCH-1)

DATE 01-16-08

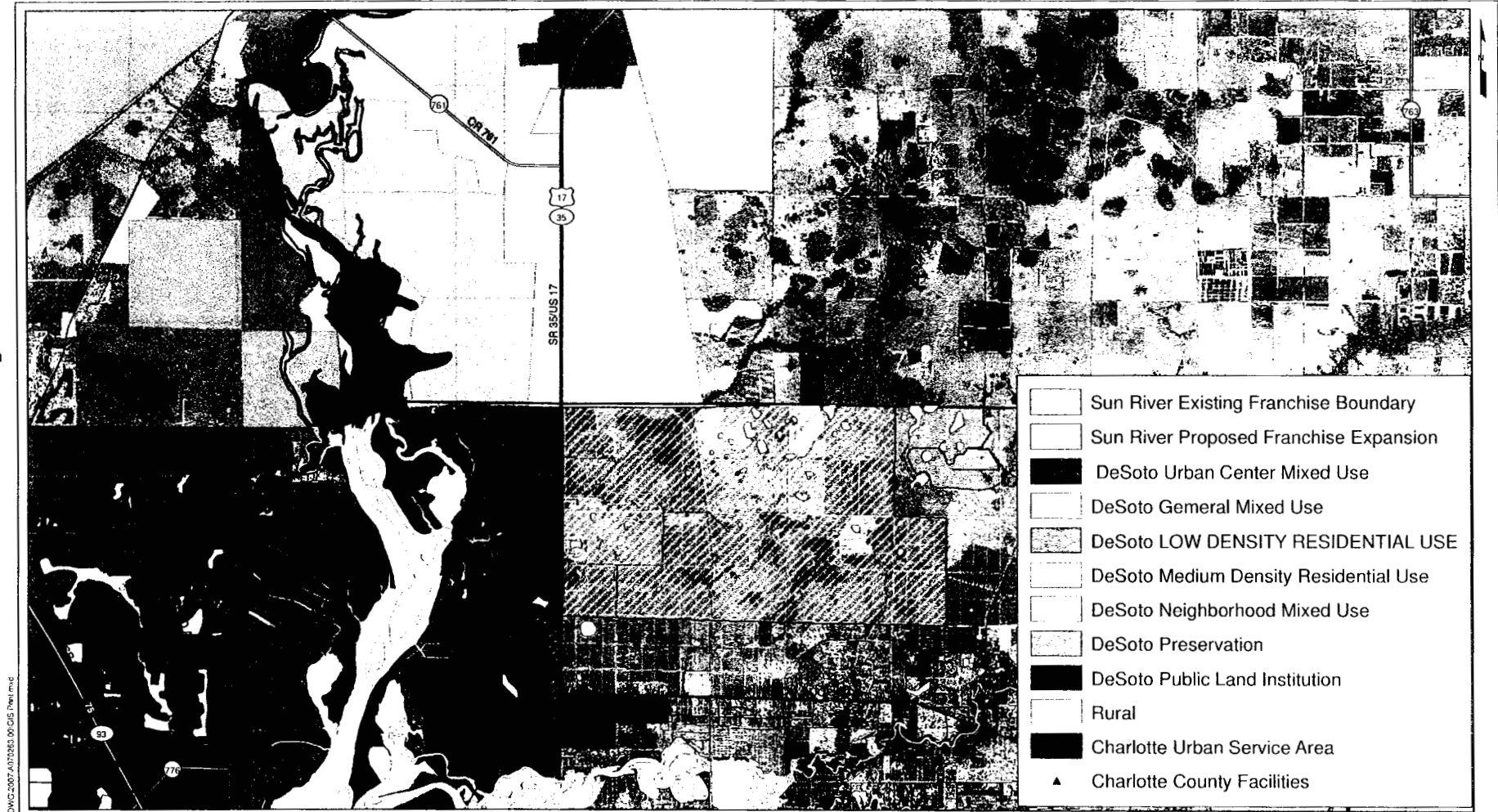


Figure 1-1: Sun River Utilities Service Area
 File: P:\ORL\HCD\CADD\DWG\2007\A172853_00\GIS\Thru.mxd

Hartman Consulting & Design
 301 E. Pine Street - Suite 1020 - Orlando, Florida 32801
 Phone 407-447-9095 - Fax 407-447-9406

Sun River Utilities
 Service Area
 HCD/GAI Consultants

FIGURE
 1-1

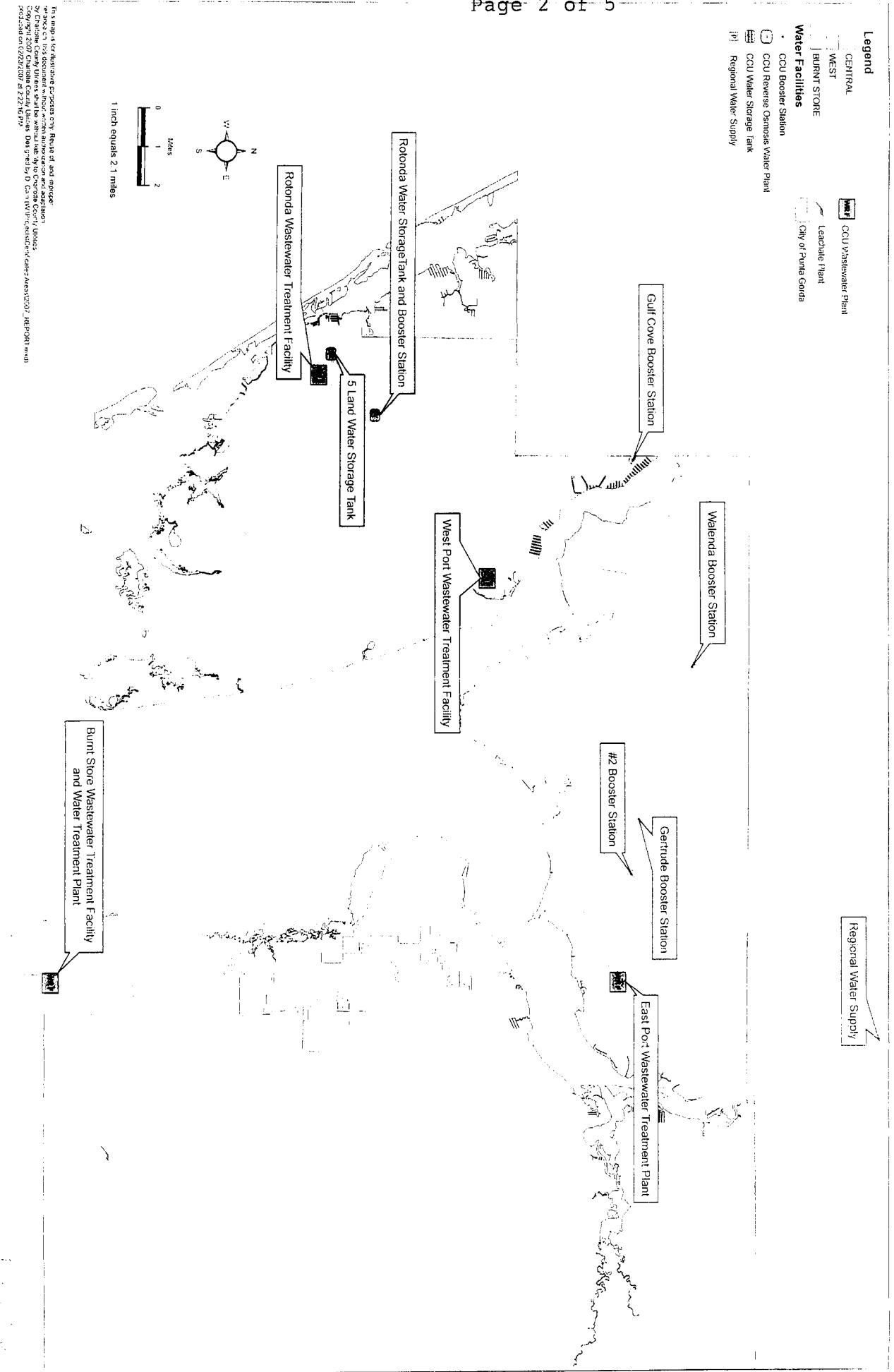
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS EXHIBIT 15

COMPANY Sun River Utilities, Inc. (Rebuttal)

WITNESS Gerald C. Hartman (GCH-2)

DATE 01/16/08



This map is for reference purposes only. Review of and reliance on this map should not be made without the assistance of the City of Punta Gorda. The City of Punta Gorda is not responsible for any errors or omissions on this map. The City of Punta Gorda is not responsible for any errors or omissions on this map. The City of Punta Gorda is not responsible for any errors or omissions on this map.

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-WS EXHIBIT 16

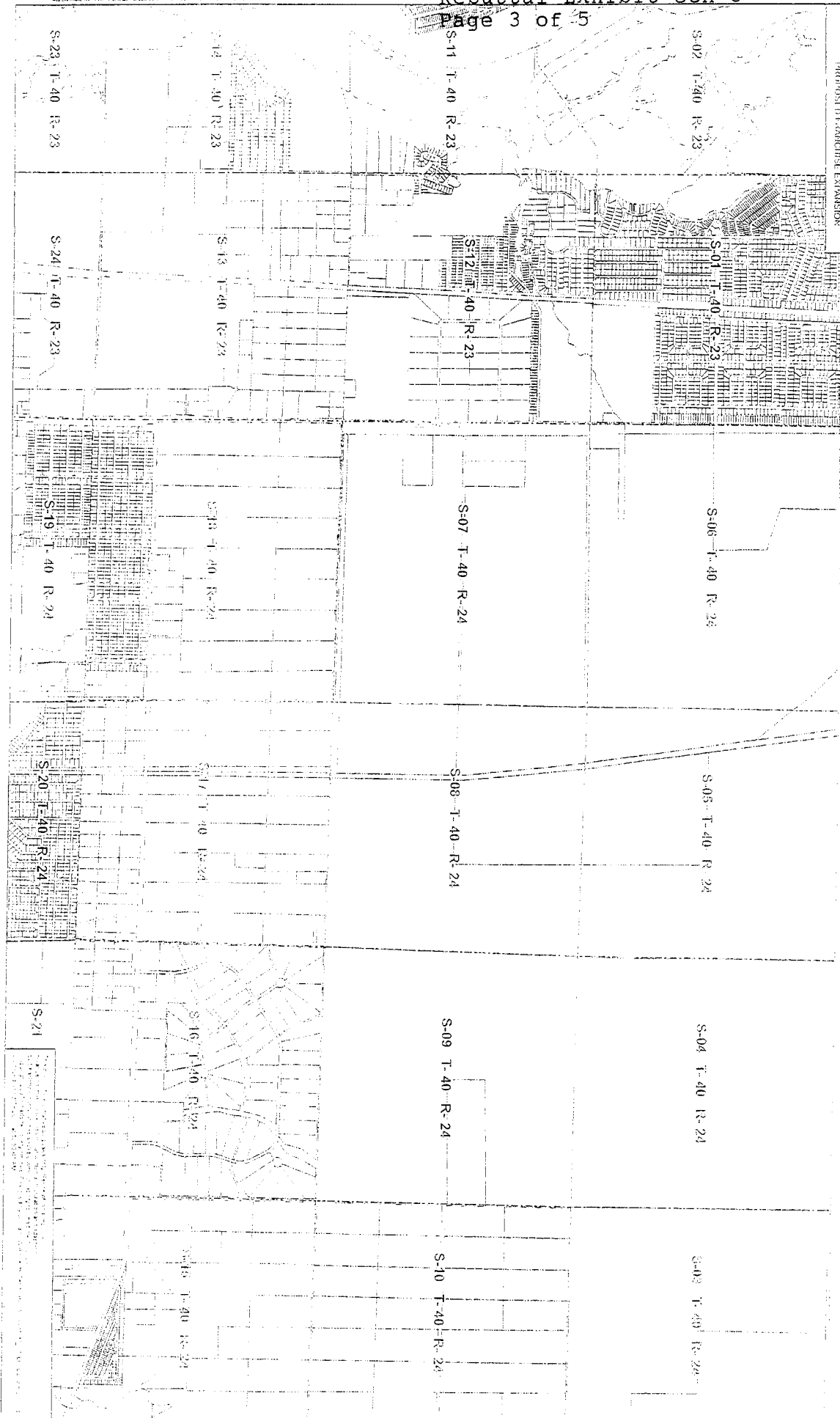
COMPANY Sun River Utilities, Inc. (Rebuttal)

WITNESS Gerald C. Hartman (GCH-3)

DATE 01/16/08

PROPOSED EXTENSION OF SERVICE
MSM UTILITIES

1. EXISTING LEASING AND Easements
PROPOSED BY FAVORITE EXPANSION



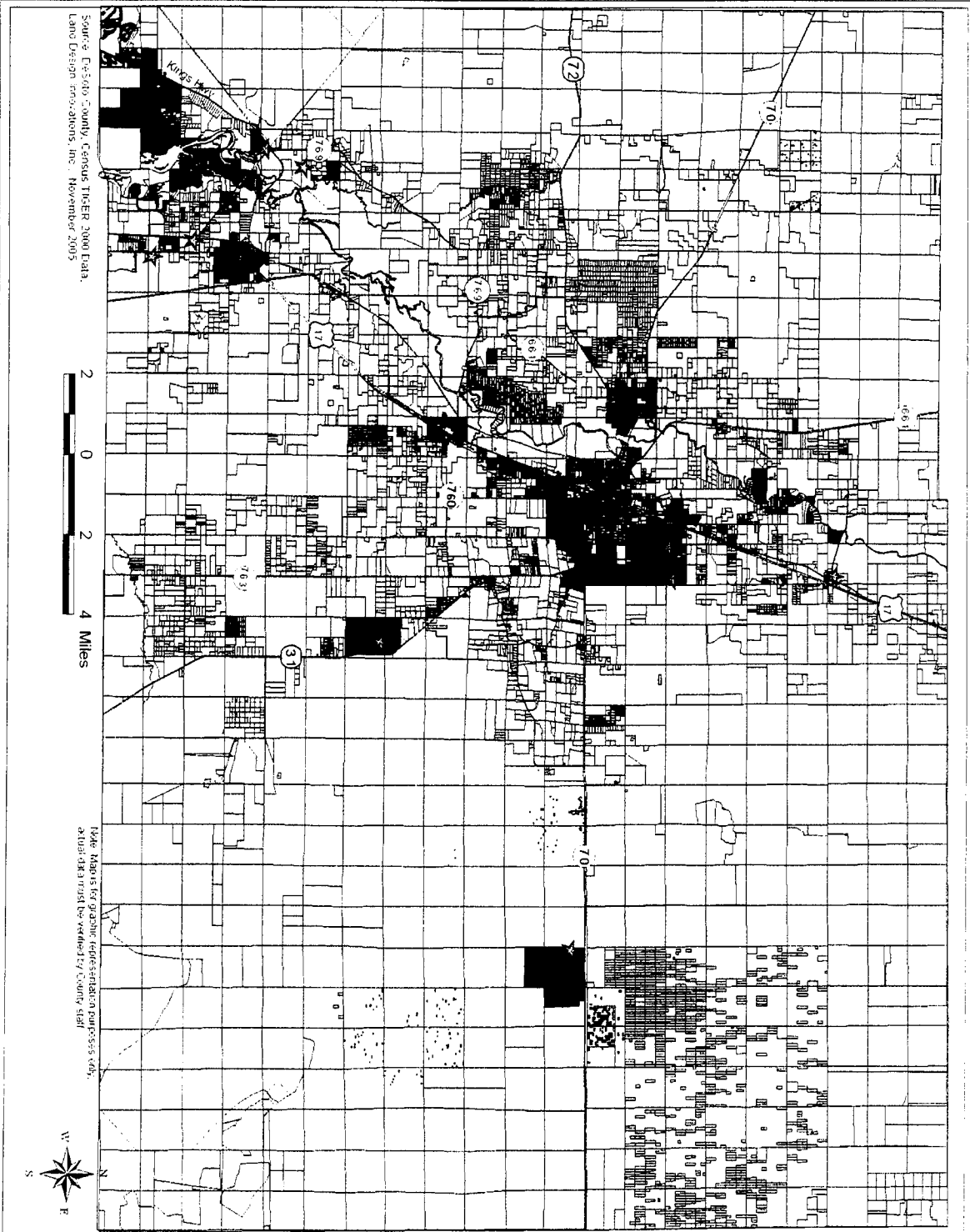
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. D70109-WS EXHIBIT 17

COMPANY Sun River Utilities, Inc. (Rebuttal)

WITNESS Gerald C. Hartman (GCH-4)

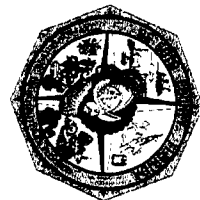
DATE 01/16/08



Source: Eschelon County, Census Tracer 2000 Data.
 Land Design Innovations, Inc. November 2005



Note: Maps are for graphic representation purposes only.
 Actual data must be verified by County staff.



Desoto County

Map I-2:
 Existing Land Use

- City
- Urban Center Mixed Use
- Neighborhood Mixed Use
- Rural / Residential
- Preservation
- Recreation
- Public
- Vacant
- ★ Public Well Site Locations

LAND DESIGN INNOVATIONS
 110 North Orlando Avenue
 Suite 205
 Winter Park, Florida 32789

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109-W EXHIBIT 18

COMPANY Sun River Utilities, Inc. (Rebuttal)

WITNESS Gerald C. Hartman (GCH-5)

DATE 01/16/08



Desoto County
2030
Future Land Use Map

Desoto County Florida
 Board of County Commissioners
 201 E. Oak Street
 Arcadia, FL 34286
 (853) 993-4811

Legend

	Yeast River Study Area		GENERAL MIXED USE
	URBAN CENTER MIXED USE		LOW DENSITY RESIDENTIAL USE
	CITY OF ARCADIA		MEDIUM DENSITY RESIDENTIAL USE
			NEIGHBORHOOD MIXED USE
			PRESERVATION
			PUBLIC LAND INSTITUTION
			RURAL
			OH1
			OH2
			78,000 Feet

0 19,500 39,000 78,000 Feet

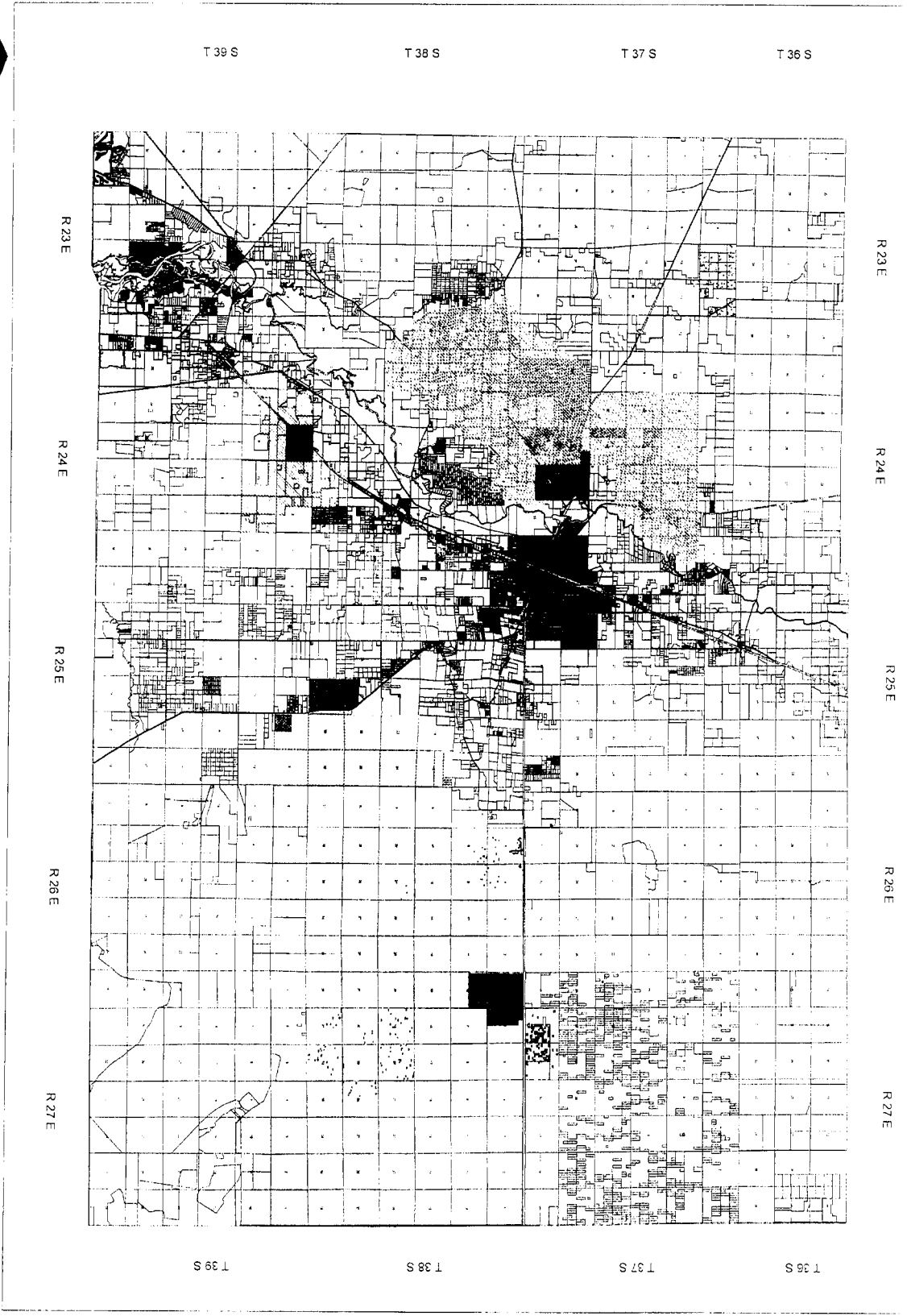


EXHIBIT NO. 19

DOCKET NO: 070109-WS

PARTY: SUN RIVER UTILITIES, INC. (F/K/A MSM UTILITIES, LLC)

DESCRIPTION: STAFF'S EXHIBIT

DOCUMENT:

Sun River Utilities' corrected response to Staff's First Set of Interrogatories (Nos. 2 and 3) – Map showing the location of four properties for which the owners have contacted the utility regarding water/wastewater service. (Witness: Reeves) [Bates stamp No. 000001]

PROFFERED BY: STAFF

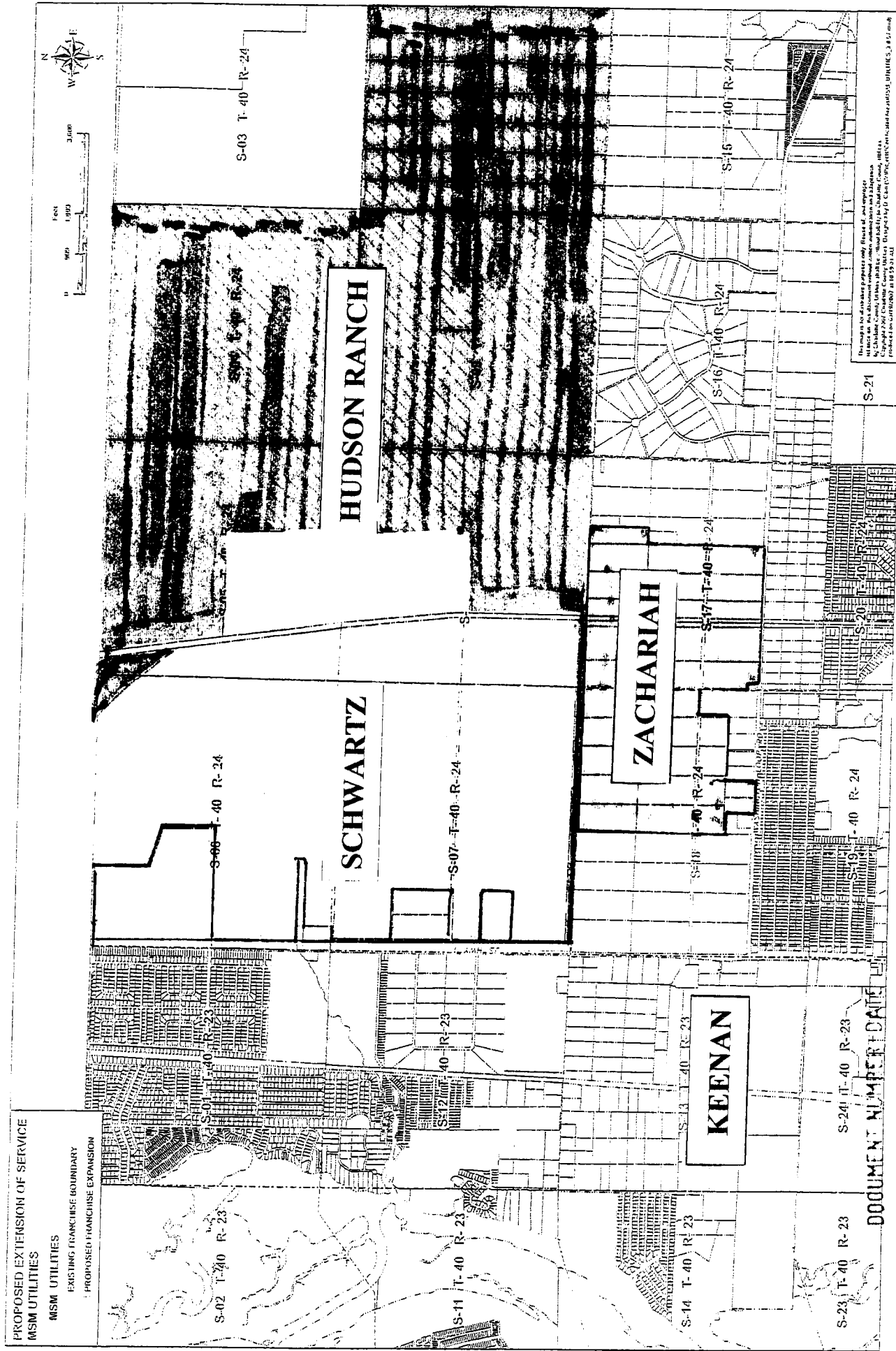
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070109WS EXHIBIT 19

COMPANY Sun River Utilities, Inc.

WITNESS Map Showing Location of 4 Properties

DATE 01/16/08



This map is for reference purposes only. It does not constitute a contract or warranty of any kind. The user of this map should consult the original records of the County of San Diego for the most current information.

Corrected Exhibit B

00325 JAN 11 08

FPSC-COMMISSION CLERK

Hearing Exhibit 000001

EXHIBIT NO. 20

DOCKET NO: 070109-WS

PARTY: SUN RIVER UTILITIES, INC. (F/K/A MSM UTILITIES, LLC)

DESCRIPTION: STAFF'S EXHIBIT

DOCUMENT:

Sun River Utilities' response to Staff's First Set of Interrogatories (No. 5) --- [Bates stamp No. 000002]

PROFFERED BY: STAFF

FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 070109 EXHIBIT 20
COMPANY Sun River Utilities, Inc.
WITNESS Response to Staff's Interrogatory #5
DATE 01/16/08

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of
SUN RIVER UTILITIES, INC.
formerly known as MSM UTILITIES, LLC,
for Extension of Water and Wastewater Service
Service in Charlotte County, Florida.

Docket No. 070109-WS

RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES
TO SUN RIVER UTILITIES, INC.

5. *Provide a timeframe for the expected need for service for each property, including phasing of development if that is anticipated.*

Sun River anticipates beginning to serve the need within the next five years. However, Sun River is unable to provide the requested timeframe with any greater specificity at this time. Seeking to be included into Sun River's service territory is each landowners' initial step into the entitlement process. The timeframe and staging of development will be determined by the landowners in concert with the County and State agencies after they have finalized their plans and submitted those plans for approval and, if necessary, received approval of any amendments to the comprehensive plan.