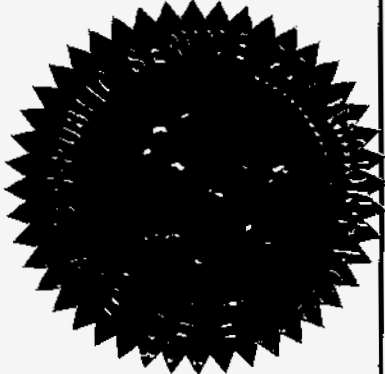


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 090478-WS

APPLICATION FOR ORIGINAL
CERTIFICATES FOR PROPOSED
WATER AND WASTEWATER SYSTEMS,
IN HERNANDO AND PASCO COUNTIES,
AND REQUEST FOR INITIAL RATES
AND CHARGES, BY SKYLAND
UTILITIES, LLC.



VOLUME 3

Pages 350 through 548

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THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP

DATE: Thursday, July 8, 2010

TIME: Commenced at 10:00 a.m.
Concluded at 2:12 p.m.

PLACE: Southwest Florida Water Management
District's Board Room
2379 Broad Street
Brooksville, Florida 34604-6899

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-D-2010

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FPSC-COMMUNICATIONS SECTION

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P R O C E E D I N G S

1
2 (Transcript follows in sequence from
3 Volume 2.)

4 **CHAIRMAN ARGENZIANO:** We're going to reconvene
5 our technical hearing at this time. And we left off --
6 first let me say that I'm planning to go to about
7 2:00 today. If we're close to an end, great. If not,
8 I'm not going to rush things for anybody. We will,
9 we'll bring it to Tallahassee if we have to and give you
10 all the time that you need. So, but for the sake of
11 travel today, for people to get home on time -- and if
12 we're close to an end around 2:00, we'll just keep
13 going. But if not, don't feel you're rushed. We'll
14 just pick it up at another time.

15 So with that said, I believe we had
16 Mr. Kennedy, if you'd come back up.

17 **MR. WHARTON:** Madam Chairman, may I bring up a
18 preliminary matter while he comes to the stand?

19 **CHAIRMAN ARGENZIANO:** Yes, please.

20 **MR. WHARTON:** And perhaps this will obviate
21 the need to object in the future. I just want to
22 revisit the issue of friendly cross and get a clear
23 ruling about what this means.

24 The Prehearing Order says, "Any party
25 conducting what appears to be friendly cross-examination

1 of a witness should be prepared to indicate why that
2 witness's direct testimony is adverse to its interests."

3 Yesterday I think there were some rulings that
4 basically indicated that a question could be
5 appropriately tailored such that it would fit outside
6 this. I suggest that the proper meaning of this is if
7 that witness is not adverse to you, no cross. Because
8 it is cross. Once the lawyer has finished with the rec,
9 all the other lawyers are doing cross. If that is not
10 an adverse witness to you, no cross. And I just suggest
11 that should be what that particular phrase means, but I
12 don't intend to bring it up again. I just want a
13 definitive ruling.

14 **CHAIRMAN ARGENZIANO:** I hear you. I'm just
15 not so sure it was tailored for anything other than
16 asking a question. But if staff would -- Commissioner
17 Skop.

18 **COMMISSIONER SKOP:** Thank you, Madam Chair.

19 Just to Mr. Wharton's concern, I think the
20 difficulty arose when you have a staff sponsored
21 witness. We haven't had those in quite some time. So I
22 think that that's where, you know, people want to ask
23 the witness a question and we try and be flexible, but
24 I'll yield to our legal staff for a better explanation.

25 **MS. CIBULA:** It's correct that friendly cross

1 is not allowed. But I think sometimes you have to see
2 what the question is before you can determine whether
3 it's friendly cross or not, and I think that was the
4 situation yesterday. So I think it should be based on
5 what the question is.

6 **CHAIRMAN ARGENZIANO:** So we'd have to get to
7 that point and then determine whether it was friendly
8 cross or not, I would, I'd imagine. And I'm sure that
9 if we get to that point, we'll hear from the parties.

10 **MR. WHARTON:** Thank you.

11 **CHAIRMAN ARGENZIANO:** Thank you. Okay. We're
12 ready to go.

13 **MR. DETERDING:** Are we ready?

14 **CHAIRMAN ARGENZIANO:** Mr. Kennedy.

15 **CONTINUED CROSS EXAMINATION**

16 **BY MR. DETERDING:**

17 **Q.** All right. Let's pick up where we left off,
18 Mr. Kennedy. Can you define for me what an ERC is for
19 water under the County's system, gallons per day?

20 **A.** Yeah. It's approximately 250, 250 or
21 270 gallons per ERU would be a reasonable number up to
22 300.

23 **Q.** For water?

24 **A.** For wastewater.

25 **Q.** Okay. How much for water?

1 **A.** Water is typically 350.

2 **Q.** Okay. Now we were discussing, I believe, the
3 Trilby system to the east of --

4 **A.** Yeah. We were talking about Lacoochee, what
5 we call Lacoochee, which is, serves the Trilby community
6 and Lacoochee community.

7 **Q.** Yeah. And that is to the east of, due east of
8 the parcel shown as ID 7A, B and C, the pink area to the
9 due east of those; correct?

10 **A.** Right.

11 **Q.** Okay. And what is the capacity of the system
12 there?

13 **A.** I think I responded yesterday, I think the
14 plant is around 60,000. I thought we had 30,000 gallons
15 of unused capacity. You asked me how many ERUs that
16 was, and I was tired. I think I told you about five
17 times more than what it really is. So it would be
18 around probably 110 to 150 ERUs for the, that capacity
19 if we could, you know, sustain that in that plant.

20 **Q.** Okay. And what do you mean by "if we could
21 sustain that"?

22 **A.** Well, it's a small plant. And the problem
23 with package plants is that the various -- they're
24 small, they don't have much buffering capacity. It
25 would depend upon what the nature of the, of the, of the

1 wastewater was.

2 You know, part of that problem with that
3 plant, for example, is it serves a housing authority
4 area. We get wide swings in water consumption and
5 usage, which tends to create operational problems.
6 That's one of the characteristics of package plants,
7 that they become difficult at times to operate. So
8 that's why I'm qualifying my, my answer.

9 **Q.** Okay. So the 110 to 150 or 100 to 150, I
10 believe you said, was the top end of what you would --

11 **A.** That would probably be the top end, yes.

12 **Q.** And that's, that's wastewater?

13 **A.** Yes.

14 **Q.** Okay. What about water over there?

15 **A.** It seems like y'all asked me that in my
16 deposition. You know, I don't remember the specific
17 numbers that I -- because I, you know, I just kind of
18 gave you a generalization of what I thought was
19 available there. And you'll have to point me to where
20 that is in the deposition.

21 **Q.** I'm just asking you to tell me right now what
22 you think it is.

23 **A.** Off the top of my head, we probably have
24 100,000.

25 **Q.** 100,000 gallons of --

1 **A.** Of available uncommitted capacity in the water
2 system.

3 **Q.** Uncommitted. Are there any committed -- is
4 there any committed capacity in the wastewater system
5 over there that you weren't including in your --

6 **A.** No. I mean, that's been a very stable area
7 there. There's not been much growth or activity in and
8 along that 301 corridor. There is a desire to encourage
9 the redevelopment and expansion of those areas.

10 **Q.** Okay. And you did say that that plant over
11 there was a, a package plant; correct?

12 **A.** Yes. It's a 60,000 gallon per day standard
13 package plant, yes, for wastewater treatment disposal.

14 **Q.** Okay. Now to the south you mentioned another
15 system, Blanton, I believe it's called.

16 **A.** Yes. That's a water only system, fairly
17 small. I, I forget what I indicated. It's probably
18 30,000 maximum capacity, you know. Probably half of
19 that may still be available for, for use.

20 **Q.** Okay. And, and what did you say that capacity
21 was again? I'm sorry.

22 **A.** Off the top of my head, I'm just guessing, you
23 know, 30, 50,000 gallons per day.

24 **Q.** And about half of it available?

25 **A.** Maybe.

1 Q. Okay.

2 A. Maybe more. It's a fairly small, compact
3 community that got created out there a long time ago and
4 it just serves that small area there in the Blanton,
5 Blanton community.

6 Q. Okay. And there's no wastewater service
7 there?

8 A. There's no wastewater there.

9 Q. How far is that Blanton facility from ID 4? I
10 believe you were estimating.

11 A. I think, you know, I think that was actually
12 cited in my prefiled testimony, so let me find that so
13 we can be more specific.

14 Q. Yeah. If you'll look on page 6, line 7
15 through 10. Is that where you talk about it?

16 A. Well, my pages aren't numbered, so let me --

17 Q. Oh. Mine weren't either.

18 MR. HOLLIMON: Sorry.

19 MR. DETERDING: That's all right.

20 THE WITNESS: You'd think I could find page 6
21 pretty quick, but.

22 Okay. The existing water system .5 -- that
23 refers to the Trilby system.

24 BY MR. DETERDING:

25 Q. Right.

1 **A.** And the 1.53 miles refers to the Blanton
2 system.

3 **Q.** Okay. And neither one of those systems, water
4 or sewer, are interconnected with the main county
5 system?

6 **A.** No, sir. Those are currently isolated out
7 there in no man's land.

8 **Q.** Okay. And how far away is the County's sewer
9 system from either one of those locations? Can you give
10 me both?

11 **A.** Well, in that same paragraph, the 2.54 miles
12 refers, I think, to the, to the wastewater facilities.

13 **Q.** Now is that from --

14 **A.** That's from the --

15 **Q.** -- Blanton or Trilby?

16 **A.** That's the Trilby. That's from these parcels
17 here.

18 **Q.** Okay. And how far from ID 4, which is the one
19 closest to --

20 **A.** Which one is ID 4?

21 **Q.** The one -- on that map you're looking at --
22 no. It's the one back next to the word "Pasco." That
23 one. Yes. Uh-huh.

24 **A.** This is the map I was having trouble with.

25 **Q.** Thank you.

1 A. Did I not cite that in here as well?

2 Q. I don't know that you have.

3 A. That was -- you know, my recollection, it's a
4 fairly significant distance, you know. It's --

5 Q. Five miles?

6 A. It's the next interchange down from the, this
7 interchange, which is the old 41 interchange. At State
8 Road 52 is where we have the next interchange. That is
9 the closest point of connection for our existing utility
10 system. My recollection, that's maybe five miles.

11 Q. Okay. And the, is that the closest inter,
12 wastewater interconnection on the same side of I-75 as
13 is ID 4?

14 A. Actually we have wastewater on both sides of
15 the --

16 Q. At that five-mile point?

17 A. Yeah. And there's a proposed or approved
18 development in between, about halfway. You know, if
19 that ever was to go forward, then, you know, that would,
20 that would be one of the ways we would interconnect or
21 extend service up to, up to this interchange. This
22 interchange is the employment center that we cited in
23 our, on our testimony.

24 Q. Uh-huh. Okay. But the Blanton water system
25 that exists is on the other side of I-75 from ID 4

1 there?

2 **A.** Yes. Yes. It's to the, to the east,
3 generally in this area right here.

4 **Q.** Has the County been able to deliver adequate
5 service from these existing facilities to those who are
6 currently served by them?

7 **A.** With respect to the Blanton and --

8 **Q.** Blanton and Trilby.

9 **A.** Yes.

10 **Q.** Okay. Would you agree that it is in the
11 public interest to connect to a central water and
12 central sewer system where it's available?

13 **A.** Yes.

14 **Q.** Is it true that the County has no plans to
15 extend service into the area proposed for service by
16 Skyland?

17 **A.** That's true.

18 **Q.** Isn't it true that the County considers its
19 water and sewer utility service areas to be all areas of
20 the county except where existing municipalities or
21 private utilities currently serve?

22 **A.** Yes. It's the County's desire to make sure
23 that any future utility systems are part of the public
24 utility system.

25 **Q.** And did the County seek approval of its

1 territory as the entire, that area, the entire county
2 other than those municipalities and private utilities
3 from the Department of Community Affairs?

4 A. I think you would need to ask the planners
5 about that specifically. My recollection is that there,
6 there are guidances in there relative to the comp plan
7 areas on how the provision of public utilities are, are
8 handled based upon the land use overlay.

9 Q. Well, I'm talking about the designation of
10 that as your territory as opposed to the provision of
11 service itself.

12 A. Again, you need to, you know, maybe you could
13 check with our planners on that. But I, I don't recall
14 a specific citing where it says that, you know, the
15 entire county is our service area.

16 Q. When you make determinations about whether or
17 not to extend service, you make those based upon your
18 professional experience about whether service can be
19 done economically and as needed; is that correct?

20 A. Yes.

21 Q. And you have said, I believe, that the County
22 generally does not propose service to new areas where
23 the density is less than two units per acre; correct?

24 A. Again, we're guided by the comp plan in those
25 areas that typically have in excess of, you know, a

1 density higher than two units per acre. That's what
2 we've targeted and tried to plan for.

3 Q. But you generally do not provide service to
4 communities with less than that, new communities.

5 A. Typically, unless, for example, I think the
6 comp plan provides for conservation subdivisions where
7 you might cluster the, you know, the requirement for
8 water and sewer, you know, on a very large tract. And
9 in those cases we would, we would be prepared to look at
10 how we would provide that service by individual small
11 systems, much like y'all have proposed --

12 Q. Package plants.

13 A. -- a package plant, an individual well,
14 whatever we would need to do if there was a desire to
15 create a public utility system to meet that, you know,
16 residential and associated commercial development
17 requirement.

18 Q. Do you believe that the certification of
19 Skyland, if it occurs, will in any way impede or impair
20 the ability of Pasco County to pay off existing bonded
21 indebtedness for its utility systems?

22 A. I can't speak to any specific, you know, issue
23 there, so the answer to that is no.

24 Q. Isn't it true there is nothing, to your
25 knowledge, in, within the Pasco County Comprehensive

1 Plan that prohibits central water and wastewater systems
2 in certain areas of the county?

3 A. Prohibits. Well, the provision of public
4 facilities is provided for in the, you know, in the, in
5 the comp plans. So even in those rural protection areas

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1 could result in a requirement to have a central water
2 system or central utility systems.

3 Q. Okay. Now you do provide service to some low
4 density areas of one unit per five acres or even lower
5 density within the county?

6 A. Yes.

7 Q. And I assume those are existing systems you
8 acquired that had that type of density when you
9 acquired?

10 A. Well, typically you'll find that because of
11 the past history of these sprawling developments that
12 were scattered across, and as we expanded and
13 interconnected the utility system, we've interlinked
14 those. And in, in between those areas you'll find where
15 we're serving, you know, places where that density is,
16 you know, is less, less than one unit per acre or
17 smaller. That's just the nature of how the utility
18 system has evolved and service connections have been
19 provided as the utility system has expanded across the
20 county.

21 Q. Would you agree that the areas served by
22 central sewer service are less likely to have health,
23 safety and welfare issues?

24 A. Generally, yes.

25 Q. And that those central systems are preferred

1 over individual onsite systems?

2 **A.** Typically, yes. There are still certain cases
3 where, you know, a septic tank may be, may be an
4 appropriate option. I have a septic tank and I have
5 three acres, so.

6 **Q.** Isn't it true that there is no reason a
7 package plant in and of itself shouldn't be able to
8 provide adequate and safe service?

9 **A.** True. You know, however, history and
10 experience tells us that they can be challenging to
11 operate and maintain and be, be maintained in
12 compliance.

13 I, you know, I recall lately that we checked
14 with DEP; out of the some 70 or so plants in, just in
15 our county alone, they're out of compliance for various,
16 various reasons, significant numbers of them. But
17 generally speaking, yes. If you put it in, you design
18 it, you operate it and you maintain it, it can do the
19 job.

20 **Q.** Okay. And the County has done so, have they
21 not?

22 **A.** Yeah. Lacoochee is a package plant and we
23 certainly had challenges there.

24 **Q.** If central wastewater service is provided to
25 the area proposed for service by Skyland, you don't know

1 whether the County could provide that service for any
2 less capital cost than Skyland, do you?

3 **A.** Well, we don't know anything because we've
4 never been approached or provided with specific
5 information on, you know, what exactly they would like
6 to do.

7 **Q.** Does Pasco County provide service in Hernando
8 County, Pasco County utilities?

9 **A.** No. We do serve Hillsborough County to the
10 south, some areas that are adjacent to the south county
11 line through interlocal agreements.

12 **Q.** But you don't have such an interlocal
13 agreement with Hernando County?

14 **A.** Not at this time. We have had conversations
15 about that and may do that in the future.

16 **Q.** An interlocal agreement that would permit you
17 to provide service in Hernando County or an interlocal
18 agreement to send sewage to --

19 **A.** Either way. We could either provide for a
20 complete collection, treatment, disposal or just have a
21 bulk service interconnect for water and sewer service
22 capability. You know, those are some of the options
23 that we have.

24 **Q.** But you've discussed the potential of
25 providing service, retail service within Hernando

1 County?

2 **A.** Not -- no. There hasn't been any reason to.
3 But what we have talked about is bulk interconnects
4 where, for example, the Lacoochee facility, the 60,000
5 gallon a day plant that we've talked about, we would
6 like to get that offline. And one of the options was to
7 buy capacity in Hernando's regional facility proposed up
8 at River Ridge. I believe it's River Ridge -- or Ridge
9 Manor. I'm sorry.

10 **Q.** If the area requested for certification by
11 Skyland is approved, it will not change any aspect of
12 the County's present utility operations, will it?

13 **A.** Probably not.

14 **Q.** It would not change the County's present
15 conceptual plans about what it intends to do with its
16 utility service or the rates and charges imposed by the
17 county, will it?

18 **A.** No.

19 **Q.** Or the ability of the County to finance its
20 utility operations or pay off its debt; correct?

21 **A.** There's no immediate measurable impact. I
22 guess over the long-term the loss of that customer base
23 would, would play into it. What that's worth today, I
24 have no idea, you know, but --

25 **Q.** Would you agree that the County is not ready,

1 willing and able to provide central service to every
2 unincorporated area of the county at the present time?

3 **A.** I think it, you know, I mean, generally
4 speaking, common sense would say it's unreasonable to
5 think that we could do everything for everybody out
6 there. So we can't do everything.

7 **Q.** So that's a no, you do not?

8 **A.** No.

9 **Q.** Okay. Is it true that you would, it would be
10 your opinion that any private utility anywhere in Pasco
11 County would be in competition or duplication of the
12 County's system?

13 **A.** Yes.

14 **Q.** You don't know of a single incident in which a
15 PSC certificate, certification of a utility's service
16 area has led to development that would not otherwise
17 have occurred, do you?

18 **A.** I mean, I can't think of anything in my
19 tenure. I mean, history shows you that, you know, that
20 certainly happened where --

21 **Q.** That PSC certification has caused development
22 where it would not otherwise have occurred?

23 **A.** No, not in that sense. Maybe certainly
24 created some of these isolated areas and small system
25 problems. You know, I guess that was my, my intention.

1 But I'm not aware of any other specific issues to, that
2 you're referring to.

3 Q. Do you know of any instance in which a PSC
4 certificate has led lands within a certificated
5 territory to develop at a higher density than they
6 otherwise would have if they --

7 MR. HOLLIMON: I'm going to object. This is
8 outside the scope of his direct testimony.

9 MR. DETERDING: He has talked about the, the
10 need or lack of need for service in the territory, and
11 he and the planners have talked about the effect of
12 extending service to these territories as having some
13 impact on the County's utility system and its
14 comprehensive plan, and that's what I'm seeking to get
15 from him.

16 MS. CIBULA: I think that the question is
17 proper.

18 CHAIRMAN ARGENZIANO: Continue.

19 THE WITNESS: Do you want me to --

20 BY MR. DETERDING:

21 Q. Would you like me to repeat the question?

22 A. Yeah. Repeat the question.

23 Q. Okay. You don't know of any instance in which
24 a PSC certificate has led lands within the certificated
25 territory to develop at a higher density than they would

1 have if the certificate had not existed.

2 **A.** No.

3 **Q.** Isn't it true, Mr. Kennedy, that there are
4 several policies embodied within the comp plan that are
5 intended to prevent creation of any new private
6 utilities in Pasco County under any circumstance?

7 **A.** Yes.

8 **Q.** Would you agree that the environmental
9 standards relevant to the inclusion of individual septic
10 tanks and private wells includes sampling and
11 performance assessments that are not as rigorous as
12 those required for central systems?

13 **A.** For septic tanks?

14 **Q.** Yes.

15 **A.** I'm not aware of any current performance
16 standards outside of, you know, the system comes out and
17 becomes problematic and the health department would, you
18 know, declare it to be in trouble and require corrective
19 action.

20 **Q.** So you would agree that the, the performance
21 standards for septic tanks and private wells are not as
22 rigorous as those for central systems?

23 **A.** There's not the, the degree of regulatory
24 oversight in place that there are for public utility
25 systems. I would agree with that.

1 **Q.** Have you done any study of how much it would
2 cost Pasco County to construct facilities to provide
3 service to Phase I development proposed by Skyland?

4 **A.** Nothing because we, again, we haven't been
5 provided any specific details that will allow us to do
6 that.

7 **Q.** Have you done any study to determine whether
8 or not it is more expensive to provide central services
9 in the areas proposed by Skyland for service in Phase I
10 than by well and septic tank?

11 **A.** No. Again, we haven't had any reason to do
12 those.

13 **Q.** You indicated earlier that generally speaking
14 your, the County system serves only those areas with
15 density of two units per acre or higher; correct?

16 **A.** Well, no. I indicated that typically for
17 economic reasons that's kind of the minimum densities
18 that you should be looking at if you're, you know, if
19 you're considering constructing a public utility system.
20 You know, that's also, I think, the threshold by which
21 the cutoff for individual well and septic tank, you
22 know, occurs as well. So that's -- the two units per
23 acre has merit from that perspective, but it also has
24 financial merit. It -- you know, actually you'd
25 probably want a little more density than two units per

1 acre. But that's kind of the, the line that we look at
2 and we use as a guidance.

3 Q. Pasco County does use that as a guideline
4 though.

5 A. I think everybody out there would probably use
6 that. I think that's one of those rules of thumb that,
7 you know, people look at.

8 Q. And -- but Pasco does utilize that as a --

9 A. Yeah. That's certainly a starting point.

10 Q. Okay. And is that part of the basis upon
11 which you formed the conclusion that there's no need for
12 service in the Skyland service area?

13 A. That's kind of the basis by which, yes, you
14 know, that we believe that it's simply not very
15 cost-effective to begin to consider, you know, the
16 construction of public utility systems if you don't have
17 at least those kinds of densities and more.

18 Q. Isn't it true that Pasco County's rates are
19 approximately 50 percent higher than the rates charged
20 by Hernando County for a similar service?

21 A. I don't even know what Hernando County's rates
22 are. I haven't looked at them.

23 Q. Assuming for the moment that is true, does
24 that mean that it is better for Hernando County to
25 provide service to Pasco County customers?

1 **A.** Well, I guess if Hernando County could
2 effectively come into a portion of our area and it made
3 sense from the public's perspective, we'd probably work
4 that out.

5 In Hillsborough County, for example, we
6 provide for water, sewer and collection services into a
7 residential development that lies in, in Hillsborough
8 County. And the reason we -- and they pay our rates and
9 we run and operate the system because that was what was
10 in the best interest of the public and the development
11 activity at that time. So if Hernando came to us with
12 the same situation or we had a situation like that and
13 we could work that out and it made sense, then we would
14 do it.

15 **Q.** Okay. And you were -- the reason you did this
16 in the case of Hillsborough County was because your
17 facilities were right there at the location where
18 service was needed?

19 **A.** Right. And, furthermore, you know,
20 Hillsborough didn't have anything readily available.
21 The points of connection were a considerable distance
22 away at that time, although they are getting closer and
23 we'll probably turn that system over to them in the
24 future.

25 **Q.** Okay. Has Pasco County's water and wastewater

1 system been the subject of consent agreements resulting
2 from alleged violations by DEP?

3 **A.** Absolutely.

4 **MR. HOLLIMON:** I'm going to object. This is,
5 this is outside the scope of his direct testimony.

6 **MR. DETERDING:** Mr. Kennedy is talking about
7 Pasco County providing service to Skyland. He has
8 talked about the, including an exhibit at the back of
9 his direct testimony that talks about the, what the
10 County has done, how many people it serves, what type of
11 plants it operates, and I want to get into the record
12 some information briefly about some of their history.

13 **MS. CIBULA:** I think we are moving outside the
14 scope of his direct testimony.

15 **CHAIRMAN ARGENZIANO:** I'll disallow the
16 question.

17 **MR. DETERDING:** I don't have anything further.

18 **CHAIRMAN ARGENZIANO:** Mr. Rehwinkel, sorry.
19 Oh, okay.

20 **MR. WHARTON:** You know, I hesitate to do this,
21 but we want to make a proffer. We want to proffer that
22 there's been all this anecdotal testimony about how
23 terrible private utilities are, but that we were not
24 allowed to get into that Pasco County had a 20 million
25 gallon spill, if you combine several different

1 incidences, within the last ten years. Just -- okay.

2 Thank you.

3 **MS. BENNETT:** I'm sorry. Go ahead,

4 Mr. Rehwinkel.

5 **CROSS EXAMINATION**

6 **BY MR. REHWINKEL:**

7 **Q.** Good morning still, Mr. Kennedy. My name is
8 Charles Rehwinkel with the Public Counsel's Office.

9 **A.** Good morning.

10 **Q.** I want to ask you a series of questions I
11 asked your counterpart with Hernando County. And I
12 think you indicate your, in your testimony, it looks
13 like it's on about the fourth page, that you have
14 compared the rates that Hernando County utilities
15 charges for water and wastewater service. You've
16 compared those to the proposed rates in this
17 application; is that true?

18 **A.** Hopefully it was Pasco's rates.

19 **Q.** I'm sorry. Pasco's. I apologize.

20 **A.** Yes. Yes. I've looked at those briefly.

21 **Q.** Okay. Did you hear the testimony from

22 Mr. Hartman about the average bill of \$89.16?

23 **A.** Yes. Uh-huh.

24 **Q.** What would the comparable rate be currently?

25 **A.** \$52.69.

1 **Q.** Okay. Would -- if Pasco, hypothetically, were
2 to extend service to the Pasco portion of the territory,
3 proposed territories or parcels in Phase I, would the
4 rates, the end user monthly rates that were charged,
5 would be charged to customers there be any different
6 than charged in the rest of the county?

7 **A.** We would not expect that to happen. So they
8 would be on the uniform rate system across the county.

9 **Q.** Okay. Have you made any judgment about
10 whether the rates that are charged -- that are proposed
11 by Skyland are realistic in your experience as a utility
12 director?

13 **A.** I haven't evaluated their cost of service
14 studies or got into all the specific details. I simply
15 look at the rate. And based on general knowledge, you
16 know, they're high.

17 **Q.** Okay. Is Pasco willing and able to provide
18 service to Phase I in portion, in Pasco County over the
19 five-year horizon that is proposed in this application?

20 **A.** I think if they came to us and asked us to do
21 it and we had good information about that, we could
22 probably work out arrangements to make that happen.
23 Yes.

24 **Q.** Would Pasco be able and/or willing to consider
25 an interlocal agreement with Hernando County to serve

1 any parcels that were in Hernando County but adjacent to
2 Pasco County?

3 A. Again, we've used interlocal agreements with
4 Hillsborough. We've approached Hernando as well, and we
5 would be willing to do, do those kinds of things.
6 Ultimately our Board of County Commissioners would
7 certainly make those decisions, but we have a history of
8 applying those solutions to these kinds of problems.

9 Q. In your experience as a Utilities Director
10 with Pasco County, have you encountered the incidence of
11 taking over cost prohibitive private utilities where the
12 developer sold lots, sold, completed the development and
13 then left the physical plant to deteriorate?

14 A. I haven't had a specific walkaway takeover.
15 We, we certainly have had some, I think, appointments
16 by, you know, temporary receiverships to get that
17 ultimately resolved and have purchased some of those
18 utilities. But I haven't had that specific occurrence
19 in my tenure there.

20 Q. Do you know if Skyland were allowed to develop
21 to the one unit per ten acre density proposed in the
22 Pasco County areas of the application and were to serve
23 at that level, would the, would the cost, the pricing
24 structure that is contained in the application be
25 sustainable?

1 **MR. WHARTON:** Madam Chairman, I object. I
2 object and I move to strike this cross-examination.
3 Mr. Rehwinkel's opening remarks notwithstanding, this is
4 friendly cross. Every question he has asked has been
5 adverse to Skyland. I move -- this, this, this is
6 just -- it's a backwards way to open the direct. And
7 because he has taken this, the OPC rather, not
8 Mr. Rehwinkel, has taken this neutral stance, I don't
9 think makes it any more appropriate. Whether he's
10 declared himself adverse, the questions have shown he is
11 adverse.

12 **CHAIRMAN ARGENZIANO:** Mr. Rehwinkel.

13 **MR. REHWINKEL:** Yes, Madam Chairman, if I may
14 be heard on this. These are the same questions I asked
15 Hernando County.

16 **MR. WHARTON:** Yes.

17 **MR. REHWINKEL:** These are the functional
18 equivalent of the questions I asked Mr. Hartman. They
19 were more detailed with Mr. Hartman because he has this
20 application that I was able to go through. We're trying
21 to decide for purposes of making a recommendation about
22 the public interest about which provider would best
23 serve unrelated end users who would be our clients in
24 the long-term, and we would like to present evidence to
25 that effect. I am asking open-ended questions to this

1 witness. I am not asking questions to favor this
2 witness or favor any party in this, in this proceeding.
3 These are questions that everyone knows that I'm going
4 to be asking. They're for the Commission's edification
5 about what prices may or may not be over, over the term
6 that you're considering granting a certificate here.

7 I have not -- and I can -- you can, you can
8 ask any of the witnesses or attorneys, I have not
9 colluded with or winked or nodded with anybody about
10 asking questions to any of their witnesses. I am
11 genuinely here as a neutral party.

12 And the Commission -- this, this proceeding
13 started off, I stayed out of the discovery and motion
14 practice phase at the beginning of this thing, but the
15 basic premise here is the Commission wants to have
16 information so that they can make the best judgment.
17 And I'm trying to elicit that information for the
18 edification of all the parties and for, and in respect
19 of the position that the Public Counsel has.

20 **MS. BENNETT:** Madam Chair, may I speak for
21 just a minute? And the reason I want to speak is I had
22 a list of questions that I was marking off that were
23 very similar to Mr. Rehwinkel's. So any ruling against
24 him, you're going to hear some of those same questions
25 from staff very shortly. Probably not as in-depth as

1 Mr. Rehwinkel, but there were two or three questions
2 that we were going to ask this witness about the ability
3 of Pasco County to serve that area, so.

4 **MR. WHARTON:** Well, for instance, Madam
5 Chairman, we would hope that the thorough investigation
6 would include costs, questions about the capital cost to
7 extend, which were never asked of Hernando. But whether
8 the -- taking everything that Mr. Rehwinkel says at face
9 value, it's still new testimony that we don't get to
10 cross on. But that's -- I won't persist.

11 **MS. CIBULA:** And also I'd like to point out
12 that OPC hasn't taken a position on these issues in the
13 prehearing order; therefore, I don't think this is
14 friendly cross.

15 **CHAIRMAN ARGENZIANO:** Are you still objecting
16 or does the nonpersisting mean you're withdrawing the
17 objection?

18 **MR. WHARTON:** I, I persist in my objection.

19 **CHAIRMAN ARGENZIANO:** Okay. Well, it's
20 overruled.

21 **MR. WHARTON:** My argument.

22 **CHAIRMAN ARGENZIANO:** Overruled. Continue.

23 **MR. REHWINKEL:** Thank you, Madam Chairman. I
24 have to admit I do not recall whether I had a pending
25 unanswered question. I was wondering if the court

1 reporter could help me.

2 (Foregoing question read by the court
3 reporter.)

4 **THE WITNESS:** You know, generally, you know, I
5 don't know the specifics of their cost study, their
6 financial capability, how they, how they intend to do
7 that, so, you know, I really don't have a good answer
8 for you on that at this point in time.

9 **BY MR. REHWINKEL:**

10 **Q.** Okay. Let me ask you a question and we can
11 maybe save a little bit of time here. I asked a series
12 of questions to both Mr. Hartman and to Mr. Stapf about
13 the types of costs that a government utility may or may
14 not incur. Did you listen to those?

15 **A.** Yes, I did.

16 **Q.** Were you -- would your answers be any
17 different than Mr. Stapf gave in general?

18 **A.** No. No. They are, you know, consistent in
19 our particular situation as well.

20 **Q.** Okay. And I don't mean the specifics about
21 whether you had an attorney allocated to you or not.

22 **A.** No. I have to pay the direct cost for, for
23 these attorneys and my county attorney. There's a
24 chargeback system for that. And I also pay overhead
25 allocation costs to the tune of about \$1.6 million right

1 now, so.

2 **MR. REHWINKEL:** Okay. I believe, Madam
3 Chairman, that those are all the questions I have.

4 **MR. KIRK:** Madam Chairperson?

5 **MR. REHWINKEL:** Thank you. Thank you,
6 Mr. Kennedy.

7 **MR. KIRK:** Just for the record, Hernando
8 County does not have any unfriendly cross of this
9 witness.

10 (Laughter.)

11 **CHAIRMAN ARGENZIANO:** Okay. Well, thank you.
12 Staff.

13 **MS. BENNETT:** I just have one question.

14 **CROSS EXAMINATION**

15 **BY MS. BENNETT:**

16 **Q.** Mr. Kennedy, my name is Lisa Bennett and I'm
17 one of the staff attorneys.

18 Are you aware of any statutes, ordinances or
19 rules that would prohibit septic tanks on any of the
20 properties Skyland proposes to have certificated in
21 Pasco County?

22 **A.** Not anything specific that I know of.

23 **MS. BENNETT:** Okay. That's all.

24 **CHAIRMAN ARGENZIANO:** Okay. Questions?
25 Commissioner Edgar.

1 **COMMISSIONER EDGAR:** Thank you. You've stated
2 in your direct testimony that you do not believe that
3 there is a need as is requested in the application. Is
4 that based upon your review of the application that is
5 before us?

6 **THE WITNESS:** No. It's based upon my
7 knowledge of what's out there, what's going on. There
8 are no approved developments, there's nothing in the
9 past. Like Saran Ranch is a good example. That's a DRI
10 that was approved 20 years ago out in the middle of
11 nowhere. We don't have any of those circumstances, you
12 know, entitlements, if you will, to develop in that area
13 that I know of. So I'm speaking from, from that
14 perspective.

15 **COMMISSIONER EDGAR:** Thank you.

16 **CHAIRMAN ARGENZIANO:** Commissioner Skop?

17 **COMMISSIONER SKOP:** No. No thank you.

18 **CHAIRMAN ARGENZIANO:** Any other questions for
19 this witness? You're excused. Are there --

20 **MR. HOLLIMON:** Just a couple of followups.

21 **CHAIRMAN ARGENZIANO:** I'm sorry. Okay. And
22 then we need to look at any exhibits also. I'm sorry.
23 Go right ahead, if it's not friendly.

24 **MR. HOLLIMON:** Okay. It's friendly redirect.

25 **COMMISSIONER ARGENZIANO:** Okay.

REDIRECT EXAMINATION

1
2 **BY MR. HOLLIMON:**

3 **Q.** Mr. Kennedy, you were asked about Pasco
4 County's Comp Plan with respect to the provision -- or
5 the private utilities versus public utilities in the
6 comp plan. Do you recall that?

7 Sir, why is it that Pasco County's
8 Comprehensive Plan encourages the public utility to be
9 the provider?

10 **A.** I think that's based on history and experience
11 and problems, you know, that have occurred in the county
12 over the years with, you know --

13 **Q.** What types, what types of problems are you
14 referring to?

15 **A.** They're problems. You know, they provide
16 typically -- the problem results in poor service and
17 high cost, and those complaints wind up on the
18 Commissioners', County Commissioners', you know, desk.
19 And some of them are serious, have, have serious issues
20 with respect to public health and safety. So the County
21 in '79 had to get into the, into the business, and they
22 got into the business by acquiring quite a few of those
23 private utilities and proceeded from there to build a
24 true public utility system for all of Pasco County.

25 **MR. WHARTON:** Madam Chairman, we move to

1 strike. Now we've bootstrapped the comp plan question
2 into all the problems with private utilities, but we
3 weren't allowed to ask about the problems with the
4 public utility.

5 **MR. HOLLIMON:** Well, he was asked questions
6 about Pasco County's policy, comp plan policy that
7 encourages or promotes the public utilities over private
8 utilities. I simply asked him to explain why that was
9 Pasco's policy. I mean, that's directly following up
10 from the cross-examination that was elicited.

11 **MR. WHARTON:** Thus the word bootstrapped. Now
12 we've gotten into a diatribe against private utilities,
13 but we weren't allowed to talk about incidences at the
14 public utility.

15 **MS. CIBULA:** I think the question is proper.

16 **CHAIRMAN ARGENZIANO:** Did he answer your
17 question?

18 **MR. HOLLIMON:** Yes, he did.

19 **CHAIRMAN ARGENZIANO:** Okay. Then the
20 objection is overruled. Any other questions?

21 **MR. HOLLIMON:** Yes.

22 **CHAIRMAN ARGENZIANO:** Okay.

23 **BY MR. HOLLIMON:**

24 Q. You also were asked about any comp plan
25 prohibitions on the provision of central services in the

1 county. Do you recall that?

2 **A.** Yes.

3 **Q.** Okay. And to your knowledge, is there a comp
4 plan prohibition on the provision of central services in
5 the Northeast Pasco Rural Area?

6 **A.** Yes. You know, unless you pursue the, I
7 believe the conservation subdivision approach where you
8 would cluster, you know, development and approach it in
9 that way, that's my recollection of that.

10 **MR. HOLLIMON:** Thank you. That's all I have.

11 **CHAIRMAN ARGENZIANO:** Okay. Thank you.
12 Any -- the witness is excused. Thank you. Any exhibits
13 to be entered into the record?

14 **MR. HOLLIMON:** Yes. What's marked as BEK,
15 excuse me, Exhibit 10 and 11.

16 **CHAIRMAN ARGENZIANO:** And they are 10 and 11?

17 **MS. BENNETT:** Oh, and staff would like to move
18 Exhibit 21, the deposition of Bruce Kennedy, in also.

19 **CHAIRMAN ARGENZIANO:** Any objections?

20 **MR. KIRK:** No objections from Hernando.

21 **CHAIRMAN ARGENZIANO:** Hearing none, they're
22 entered into the record.

23 (Exhibits 10, 11 and 21 marked for
24 identification and admitted into the record.)

25 And now we have our next witness, Mr. Gehring.

1 **MS. KLANCKE:** Actually, Madam Chairman, with
2 respect to --

3 **CHAIRMAN ARGENZIANO:** Oh, we were going to --

4 **MS. KLANCKE:** -- the next witness, in order to
5 accommodate the Southwest Florida Water Management
6 District witness that staff has proffered --

7 **CHAIRMAN ARGENZIANO:** Yes. Okay.

8 **MS. KLANCKE:** -- staff has conferred with the
9 parties and they do not oppose bringing him up at this
10 time.

11 **CHAIRMAN ARGENZIANO:** Okay. Then that's what
12 we'll do. We'll change the order, and he's on his way
13 up. Welcome. That way we won't have to have you travel
14 to Tallahassee, if the need occurs.

15 **PAUL M. WILLIAMS**

16 was called as a witness on behalf of Commission staff
17 and, having been duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 **BY MS. KLANCKE:**

20 **Q.** Good morning, Mr. Williams.

21 **A.** Good morning.

22 **Q.** You were previously sworn in yesterday; is
23 that correct?

24 **A.** That's correct.

25 **Q.** Would you please state your full name and

1 business address for the record?

2 A. My name is Paul Williams. I'm employed by the
3 Southwest Florida Water Management District here in the
4 Brooksville service office.

5 Q. In what capacity are you employed with the
6 Southwest Florida Water Management District?

7 A. I am the Water Use Manager for the Brooksville
8 service office, one of four offices the district has.

9 Q. Have you prefiled direct testimony in this
10 docket consisting of six pages?

11 A. I have.

12 Q. Do you have any changes or edits to your
13 testimony at this time?

14 A. I do not.

15 MS. KLANCKE: Chairman, at this time, if it
16 pleases the Commission, I would like to have the direct
17 prefiled testimony of Mr. Williams inserted into the
18 record as though read.

19 CHAIRMAN ARGENZIANO: Show that inserted into
20 the record as though read.

21 BY MS. KLANCKE:

22 Q. Mr. Williams, and you also have caused to be
23 filed Exhibit Number PMW-1, PMW-2 and PMW-3 attached to
24 your direct prefiled testimony; is that correct?

25 A. That's correct.

1 **Q.** Do you have any changes or corrections to
2 these exhibits at this time?

3 **A.** I do not.

4 (Exhibits 27, 28 and 29 marked for
5 identification.)
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1 DIRECT TESTIMONY OF PAUL M. WILLIAMS

2 Q. Please state your name and business address.

3 A. My name is Paul M. Williams. My business address is 2379 Broad St., Brooksville,
4 Florida 34604.

5 Q. By whom are you employed?

6 A. I am employed by the Southwest Florida Water Management District (SWFWMD) as
7 a Water Use Manager in the Brooksville Service Office.

8 Q. Please summarize your educational background.

9 A. I have a bachelor's degree in geology from Earlham College in Richmond, Indiana. I
10 have taken additional courses from the University of Delaware and the U.S. Geological
11 Survey. I have 36 years experience as a professional hydrogeologist and am currently licensed
12 in Florida.

13 Q. Please describe your work experience.

14 A. My work experience includes six years of employment with the State of Delaware
15 water regulatory agency; 24 years of employment consulting for Camp, Dresser, & McKee,
16 Roy F. Weston, Weston & Sampson, and as an independent groundwater consultant; three
17 years of employment as a water use permit evaluator with the SWFWMD; and three years of
18 employment as the Brooksville Water Use Manager with the SWFWMD. In my current
19 position my responsibilities include managing three professionals who review water use
20 permit (WUP) applications, conducting pre-application meetings for new permit applications,
21 coordinating with other SWFWMD personnel, as well as with county, city, and private water
22 companies on water use and related issues. Please see Exhibit PMW-1, which is my resume,
23 for additional details.

24 Q. What is the purpose of your testimony?

25 A. In accordance with the Memorandum of Understanding between the SWFWMD and

1 the PSC, I am providing the PSC with information regarding local water use and supply, as
2 well as SWFWMD permitting procedures with respect to the application for original
3 certificates that was filed by Skyland Utilities, LLC (Skyland) in Docket No. 090478-WS.

4 Q. Are you familiar with the application for original certificates that was filed by Skyland
5 in Docket No. 090478-WS?

6 A. I have reviewed relevant portions of the Skyland application and the supporting
7 documentation.

8 Q. Please describe the hydrogeology in the area encompassed within the Skyland
9 application.

10 A. The area covered by the Skyland application includes the Floridan aquifer, which
11 consists of a thick sequence of limestone and dolomite containing hundreds of feet of fresh
12 groundwater. This aquifer is highly productive and capable of producing millions of gallons
13 of fresh water to large diameter wells. The aquifer is recharged by rainfall throughout its
14 extent in the area. The recharge that is not used for consumptive purposes discharges to the
15 streams, rivers and springs near the Gulf coast.

16 Q. Please describe the water use permits currently held by Skyland in Pasco and
17 Hernando Counties.

18 A. Skyland does not hold any water use permits in either Pasco or Hernando Counties.
19 However, Evans Properties Inc. (Evans), the parent company of Skyland, holds 20 water use
20 permits for separate parcels in Pasco and Hernando Counties. All of these permits are for
21 agricultural water use and include quantities for annual average day, peak month day, and crop
22 (freeze) protection use. The map attached as Exhibit PMW-2 shows the Evans permits in the
23 proposed service areas of Skyland. These permits currently authorize the use of 841,350
24 gallons per day (gpd) on an annual average day basis for agricultural operations. These
25 permits also include larger quantities for peak month day and crop protection uses.

1 Q. What is the current groundwater availability in the area?

2 A. Groundwater quantities that can be permitted in the area are generally constrained by
3 limitations associated with the Pasco County portion of the Northern Tampa Bay Water Use
4 Caution Area (NTBWUCA) and limitations associated with the Weeki Wachee spring shed
5 (located in Pasco and Hernando Counties). Neither of the two general constraints described
6 above individually precludes additional permitted quantities in the area. There are some
7 locations within the NTBWUCA where no new groundwater quantities can be permitted, and
8 there are other areas where new quantities can be authorized if conditions and cautions are
9 included with the permit. These conditions may include, for example, environmental
10 monitoring, water-level collection, and wetland hydration. The Evans permits in Pasco
11 County are in an area where additional groundwater quantities may be permitted if the
12 NTBWUCA conditions and cautions are included with the permits.

13 Two of the three Evans permits located in Hernando County are within the Weeki
14 Wachee spring shed area as noted on Exhibit PMW-2. Additional groundwater quantities are
15 currently not constrained in this area; however, the SWFWMD is currently reviewing the
16 potential for additional groundwater development in this area. Both Hernando County and
17 Tampa Bay Water currently pump large quantities of groundwater from wells in the spring
18 shed area. Hernando County will likely develop future new supplies outside of the spring
19 shed area to minimize additional impacts to the area.

20 Q. How do the constraints described above affect potential permitting by Evans Properties
21 or Skyland?

22 A. On a gross water use basis, neither of the constraints described above should affect the
23 use of water by Evans if the development for housing (as described in the application) is a
24 replacement for the agricultural use on the properties. For seven of the eight water use permit
25 areas included in the Skyland application (except the 9081 water use permit area), the

1 proposed annual average day water use (based on 350 gallons per day per residential
2 connection) would be expected to be about a quarter of the total current permitted agricultural
3 use. The area included in the 9081 permitted area shows 1847 dwelling units on Figure 3(a)
4 of Appendix I of the application. These dwelling units do not seem to be reflected on Table
5 D-1 of the Skyland application and are therefore not included in the calculation of annual
6 average day use estimated for the public supply for that reason.

7 A comparison of the currently permitted quantities for agricultural use with the
8 estimated use for public supply is shown in Exhibit PMW-3. It is assumed in this comparison
9 that the public supply quantities will replace the agricultural use and that the public supply
10 quantities for the proposed dwelling units constitute all of the water use in the permitted area.
11 The total annual average day quantities for public supply in the permit areas (212,800 gpd) is
12 approximately one-quarter of the permitted agricultural use (841,350 gpd) as shown in Exhibit
13 PMW-3. The table also indicates that on an individual basis some permitted areas may
14 experience an increase in water demand while other areas may see a reduction of demand as a
15 result of the conversion from agricultural to public supply.

16 Q. Would Evans Properties or Skyland be required to modify their permit to use the
17 existing wells for public supply?

18 A. The SWFWMD permitting process requires the permittee to modify their permit to
19 convert the use type from agricultural to public supply. The process to modify an existing
20 permit is similar to the process of applying for a new permit.

21 Q. Has Skyland or Evans requested a new WUP, an increase to an existing WUP, or a
22 transfer of a WUP from Evans to Skyland?

23 A. There have been no applications from Skyland or Evans to request a new WUP, to
24 modify an existing WUP either in quantity or use type, or to transfer a WUP from Evans to
25 Skyland.

1 Q. What process does the SWFWMD utilize in evaluating whether to approve or deny a
2 WUP modification or to increase an existing WUP?

3 A. Modification or application for WUP is governed by Part II of Ch. 373, Florida
4 Statutes (F.S.), which provides the Water Management Districts the authority to issue water
5 use permits. Chapter 40D-2, Florida Administrative Code (F.A.C.), and the Basis of Review,
6 which is incorporated by reference in Chapter 40D-2, F.A.C., provide the regulatory
7 framework and criteria for reviewing water use applications. Pursuant to Rule 40D-2.041,
8 F.A.C., a WUP is required for three types of withdrawals, namely a withdrawal capacity from
9 a source or sources in excess of 1 million gallons per day, a withdrawal exceeding 100,000
10 gallons per day on an annual average day basis from all sources or any well 6" or larger in
11 diameter, or a surface water withdrawal of 4" or larger.

12 Pursuant to Rule 40D-2.301, F.A.C., in order to obtain, modify, or renew a WUP the
13 applicant must demonstrate that the water use is reasonable and beneficial, is in the public
14 interest, and will not interfere with any existing legal use of water by providing reasonable
15 assurances, on both an individual and a cumulative basis, that the water use:

- 16 (a) Is necessary to fulfill a certain reasonable demand
- 17 (b) Will not cause quantity or quality changes
- 18 (c) Will not cause adverse environmental impacts
- 19 (d) Will not interfere with a Reservation of water
- 20 (e) Complies with Minimum Flows and Levels
- 21 (f) Utilizes the lowest water quality available
- 22 (g) Will not cause salt water intrusion
- 23 (h) Will not cause pollution
- 24 (i) Will not harm offsite land uses
- 25 (j) Will not harm an existing legal withdrawal

- 1 (k) Incorporates water conservation measures
2 (l) Incorporate alternative water supplies
3 (m) Will not cause water to go to waste
4 (n) Will not otherwise be harmful to the water resources within the District.

5 All WUPs are required to be renewed by the permittees periodically, with most WUPs having
6 a duration ranging from 6 to 20 years. This is done to assure that the use remains reasonable
7 and beneficial, in the public interest, and does not interfere with any existing legal use of
8 water.

9 Q. What are the major differences between agricultural use and public supply use
10 evaluations?

11 A. There are different standards by which agricultural and public supply are judged.
12 These differences are based on the different ways and conditions under which water is used.
13 Agricultural water use quantities are based, at a minimum, on crop(s) type, acres, soil type,
14 irrigation method, and effective rainfall.

15 Public supply quantities are evaluated on a different set of criteria and standards,
16 which include users (single family residential, commercial use, and other uses), per capita
17 water use including both indoor and outdoor use, demand projections, use of reclaimed water,
18 and conservation and water fees and structures (rates).

19 Within the Pasco County portion of the Northern Tampa Bay Water Use Caution Area,
20 additional standards and permit requirements exist to protect and manage the water resources.
21 All permit applications receive an evaluation commensurate with the potential for impacts
22 associated with the quantity, location, and other factors of the proposed use.

23 Q. Does this conclude your testimony?

24 A. Yes it does.

25

1 **BY MS. KLANCKE:**

2 Q. Have you prepared a summary of your testimony
3 for this Commission?

4 A. I have.

5 Q. Would you please provide us with that summary?

6 A. My name is Paul Williams. I'm employed by the
7 Southwest Florida Water Management District as a Water
8 Use Manager in the Brooksville service office. I'm here
9 to provide the PSC, in accordance with the memorandum of
10 understanding between SWFWMD and the PSC, with
11 information regarding the water uses in the proposed
12 certificated area, the applicable SWFWMD water use
13 permitting procedures, and the water use permits held by
14 the applicant's parent company in the proposed
15 certificated area.

16 MS. KLANCKE: Madam Chairman, this witness is
17 tendered for cross-examination.

18 CHAIRMAN ARGENZIANO: Skyland?

19 MR. DETERDING: Me first?

20 CHAIRMAN ARGENZIANO: Yes, sir.

21 MR. DETERDING: Okay.

22 **CROSS EXAMINATION**

23 **BY MR. DETERDING:**

24 Q. Good morning, Mr. Williams.

25 A. Good morning.

1 **Q.** I just have a few questions for you. You note
2 in your testimony that neither Evans, the landowner, or
3 Skyland, the related utility, have applied for a water
4 use permit or transfer or modification of a water use
5 permit; is that correct?

6 **A.** That's what I indicated. Yes.

7 **Q.** And there have been no requests for increases
8 in permitted capacities in the existing water use
9 permits; correct?

10 **A.** That's correct.

11 **Q.** Isn't it true that under Florida law a private
12 utility such as Skyland would have to obtain its
13 certificate from the PSC before applying for a new WUP
14 permit or the transfer of an existing permit?

15 **MR. KIRK:** Object. This is outside of his
16 direct.

17 **MR. DETERDING:** It is not. Mr. Williams talks
18 about the fact that the utility doesn't have a permit.
19 Well, I want to show that they couldn't have a permit
20 under Florida law.

21 **MS. CIBULA:** I think the question is proper.

22 **CHAIRMAN ARGENZIANO:** Objection is overruled.
23 Continue.

24 **THE WITNESS:** I guess I can't answer that
25 question because I'm not familiar with that particular

1 portion of Florida law.

2 **BY MR. DETERDING:**

3 Q. Okay. You have not read 367.031, *Florida*
4 *Statutes*, I take it.

5 A. I may have, but it's been a long time.

6 Q. Okay. Isn't it true that Evans Properties has
7 existing water use permits in the territory proposed for
8 service by Skyland?

9 A. They have water use permits in those proposed
10 areas. That's correct.

11 Q. And if Evans Properties' permits are converted
12 from agricultural use by Evans to domestic water use by
13 Skyland under the quantities and densities outlined in
14 Skyland's application, the water use by the utility will
15 be only approximately one-fourth of the use currently
16 authorized for agricultural purposes; is that correct?

17 A. The information that was contained in the
18 application was incomplete, but the, the number of units
19 that were indicated would convert to something less than
20 the total permitted quantity for agricultural use.

21 Q. By approximately one-fourth by the wording in
22 your --

23 A. Approximately. That's correct.

24 Q. Okay. Has the water management district ever
25 allowed permits for water banking?

1 **A.** Well, first of all, I don't quite understand
2 what you mean by water banking, and I'm not sure that I
3 can answer what the water management district has or has
4 not ever allowed.

5 **Q.** Well, let's see if you know anything about
6 what I understand to be water banking.

7 **MR. KIRK:** Again, objection. It's outside
8 direct. There's no reference in his direct testimony as
9 to water banking.

10 **MR. DETERDING:** He talks about what the, what
11 has been -- how the water management district operates,
12 what it, how it goes about the process of allowing, of
13 granting water use permits. I'm just trying to
14 understand what they do when applications are submitted
15 for various types of water uses.

16 **MS. CIBULA:** I think the question is proper.

17 **CHAIRMAN ARGENZIANO:** Overruled.

18 **BY MR. DETERDING:**

19 **Q.** If, okay, if a water use permit is sought for
20 something other than an immediate need, I believe that's
21 what I would refer to as water banking. Has the -- does
22 the water management district generally grant permits
23 for that?

24 **A.** In many cases water use permits are granted
25 where there's an anticipated need, and the applicant is

1 responsible for demonstrating that there is a real need
2 and that there, you know, is reasonable expectation that
3 that demand would be used. For instance, an
4 agricultural permit comes in and wants to grow something
5 on property that hasn't been used in the past, if they
6 provide the requisite backup information, business plan,
7 that sort of thing, then we would grant a water use
8 permit.

9 Q. What about water mining? Does that term mean
10 anything to you?

11 A. Well, in a hydrogeologic sense it does.

12 Q. What do you mean?

13 A. It usually means that water is being extracted
14 at a rate that's significantly greater than the recharge
15 rate or the rate of replenishment.

16 Q. Does the district generally grant permits for,
17 for two applicants for activities that would result in
18 that?

19 A. Well, that's a difficult question to answer.
20 I mean, there are cases where limestone mines, for
21 instance, want to cause dewatering to occur. They want
22 to lower the water levels, so they have to pump in
23 excess of recharge rates to lower water levels so that
24 they can actually do the mining. But they generally
25 recharge that water back onsite. So from a longterm

1 consumptive perspective I don't know of any cases where
2 we've done that.

3 Q. Does the district generally grant permits for
4 inter, interdistrict transfers?

5 A. There's a, there is a procedure for
6 interdistrict transfers. And I don't want to
7 characterize what the district generally does because,
8 again, I'm only --

9 MS. KLANCKE: I'd like to make an objection.
10 This whole line of questioning is not based on anything
11 that's contained in his direct prefiled testimony. We
12 give a lot of leeway with respect to him testifying with
13 regard to the DCA's processes, but not with regard to
14 anything they've ever done or could possibly consider.

15 MR. KIRK: Hernando would join in that
16 objection.

17 MR. DETERDING: I'm just trying to find out
18 what they're, how they manage water. And I think it's
19 important for this Commission to hear these things
20 because there have been several allegations about water
21 banking, water mining, transfers to Orlando, transfers
22 to Tampa Bay, and I think it's important we hear from
23 the regulator.

24 MS. CIBULA: I think the question is proper,
25 but maybe, you know, maybe it could be limited a little

1 bit.

2 **CHAIRMAN ARGENZIANO:** Maybe you could tighten
3 it.

4 **MR. DETERDING:** Well, I'll try and make it a
5 little more specific. Thank you.

6 **BY MR. DETERDING:**

7 **Q.** Did you hear the testimony from the public
8 yesterday about, about those type of transfers?

9 **A.** I was here in the morning for the public
10 testimony in the morning.

11 **Q.** Did you hear the testimony about, allegations
12 about attempts to transfer water from this property to
13 Orlando?

14 **A.** I remember some discussion about that. Yes,
15 sir.

16 **Q.** Do you think it's a legitimate concern that
17 water would be sent from this property to Orlando?

18 **A.** I don't know that I can really answer that
19 question.

20 **Q.** Well, as a result of Skyland receiving a
21 certificate.

22 **A.** Again, I'm not sure that I could -- you know,
23 when a permit application comes in, then we evaluate it
24 according to, you know, certain standards and criteria
25 and take a look at what the, what the reasonable demand

1 is. And so, you know, until we get an application, it's
2 difficult to be able to say what's reasonable and what
3 isn't reasonable.

4 Q. Okay. To your knowledge, has the district
5 done such things?

6 A. Done such what thing, please?

7 Q. As transferring water from Pasco County to, to
8 Orange County, to Orlando?

9 A. I don't know of any. But, again, I only
10 represent a small part of the district here.

11 Q. And do you know whether you would need a
12 certificate to do such a thing?

13 A. Again, there are procedures in place,
14 interdistrict transfer procedures. There's a, there are
15 a lot of laws that would come into effect here. And
16 because I haven't actually evaluated a permit for that
17 kind of a transfer, I can't tell you all the details.
18 But, but there are procedures in place to take a look at
19 those things.

20 Q. But all I'm asking is do you know whether a
21 PSC certificate would be necessary to do that?

22 A. I don't know.

23 Q. Okay. Does the district look at the
24 environmental impacts and drawdowns in any water
25 management district permitting proceeding?

1 gallons"?

2 **A.** Well, there are wells in this, in this
3 district that, that a single well, 15-, 16-inch diameter
4 well can produce many millions of gallons of water per
5 day.

6 **Q.** Okay. Not from a permitting perspective but
7 from a capabilities perspective, is there sufficient
8 water to supply or supplement the needs of an urbanized
9 or metropolitan area?

10 **A.** Would you repeat the question, please?

11 **Q.** Let's go into capability, not to permitting.
12 Is there a sufficient supply of water in this area to
13 supply or supplement the needs of an urbanized or
14 metropolitan area?

15 **A.** Well, that, the answer to that depends on the
16 quantity that you're talking about. So it's kind of an
17 unanswerable question. If it's a very small quantity in
18 a very small area, then there is available water in this
19 area. If it's a large quantity, then it certainly would
20 be looked at with more scrutiny.

21 **Q.** Look at your answer, referring you back to
22 your direct testimony on page 2.

23 **A.** Uh-huh.

24 **Q.** And you're talking about the area covered by
25 the Skyland application. So let me ask you the question

1 as to the area covered by the Skyland application as to
2 supply.

3 A. Again, it depends on the quantity.

4 COMMISSIONER ARGENZIANO: Can I, can I ask a
5 question here? Because it is a tough question to answer
6 because -- and let me ask it this way. From everything
7 I see that science has indicated when it comes to water
8 resources in regards to that question, you can't take
9 out more than Mother Nature puts in in a timely manner.
10 Is that correct?

11 THE WITNESS: That's correct.

12 CHAIRMAN ARGENZIANO: So that really, you
13 can't answer that in a way without -- there may be,
14 there may be large pipes down there that give you a
15 capability. But you're going into an environmental area
16 then because you cannot, if you read *Water Science*, you
17 cannot take out more than Mother Nature puts in.
18 Otherwise, you wind up with an adverse impact. So I'm
19 not sure that that question can be answered without
20 elaborating on that fact.

21 BY MR. KIRK:

22 Q. Maybe -- Mr. Williams, is this -- how would
23 you classify this area? Is this a high recharge area,
24 low recharge area?

25 A. It's a reasonably high, fairly average

1 recharge area for this part of the world.

2 Q. Let me refer -- let me turn to your direct
3 testimony on page 3, and if you could please read
4 beginning on lines 13 through 19.

5 A. Would you tell me what the first word in the
6 13 and 19?

7 Q. "Two of the three Evans permits." And just
8 read that paragraph.

9 A. Okay. Number, page 1, 2, 3, halfway down, a
10 quarter? I'm not seeing where it is.

11 Q. Okay. On page 3, beginning on line 13, the
12 paragraph starts off "Two of the three Evans permits
13 located in Hernando County."

14 A. Page 3. Again, I apologize. I'm not seeing
15 it. Maybe you can point it out to me.

16 Q. The page number is on the bottom. It's on
17 page 3, and the line is on the left-hand side.

18 A. Yeah. I'm not seeing that copy of it. I'm
19 sorry. I'm seeing another copy of it.

20 MS. KLANCKE: I'll provide the witness with an
21 extra copy.

22 CHAIRMAN ARGENZIANO: Thank you.

23 THE WITNESS: Thanks. Okay. I see it.

24 BY MR. KIRK:

25 Q. Okay. The second sentence starts off,

1 "Additional groundwater quantities are currently not
2 constrained in this area." What do you mean by "not
3 constrained"?

4 **A.** Well, certain areas, particularly in Pasco
5 County, were not generally allowing any development of
6 new quantities of water, additional quantities over and
7 above what's currently out there. This area is within
8 the Weeki Wachee spring shed. It's an area that we're
9 concerned about getting close to or somewhere near its
10 capacity. But specific quantities, or there is no
11 specific prohibition against developing new quantities
12 in this area.

13 **MR. KIRK:** I have no further questions.

14 **CHAIRMAN ARGENZIANO:** I have a couple of
15 questions I'd like to ask while they're still on my
16 mind.

17 I think you were asked a question before
18 regarding the water management district granting, I
19 guess, CUPs, I think that was the intent, or permits,
20 if, if there was to be adverse impact. And I think you
21 had answered that if there were, there's recharge, that
22 they recharge those areas. Were you referring to
23 artificial recharge?

24 **THE WITNESS:** No. There's natural recharge
25 somewhere in the vicinity of 12 or 13 or 14 inches a

1 year of rainfall.

2 **CHAIRMAN ARGENZIANO:** Right. No. I know
3 that. I thought the question was, maybe I'm, maybe I
4 got it wrong. I think it was by Skyland's attorneys,
5 that if, if the water management district, if there were
6 adverse, if there were going to be adverse impact, would
7 the water management district grant the permit? I think
8 you asked that question or very similar to that
9 question. Maybe I, maybe I got it wrong. And I thought
10 you answered in this area and the area that we were
11 talking about that there would, they could recharge. I
12 thought that's the way it was answered.

13 **THE WITNESS:** Maybe I misunderstood the
14 question.

15 **CHAIRMAN ARGENZIANO:** Okay. Maybe I, maybe I
16 got it wrong.

17 Okay. Let me ask you this way then. If there
18 was a WUCA or a SWUCA, would the water management
19 district be less likely to offer new permits or CUPs?

20 **THE WITNESS:** Well, the water use caution area
21 designation really is a heightened area of interest and
22 concern. So, for instance, we lower the threshold on
23 metering agricultural wells from 500,000 down to
24 100,000 gallons a day. We request higher levels of
25 efficiency. We request that individual permittees look

1 at reclaimed water to supply their needs. And so it's
2 not a prohibition against necessarily, although there's
3 some areas of the Northern Tampa Bay Water Use Caution
4 Area that are really under what we call a recovery plan.
5 The Hillsborough River Groundwater Basin, which is in
6 Pasco County, we're not issuing quantities for new
7 impacts, new water supply quantities. But this
8 particular area, this requested area is not under that
9 kind of prohibition. I hope that answers your question.

10 **CHAIRMAN ARGENZIANO:** Okay. Yes. Thank you.
11 Okay.

12 **CROSS EXAMINATION**

13 **BY MR. HOLLIMON:**

14 **Q.** Mr. Williams, good morning. My name is Bill
15 Hollimon, representing Pasco County.

16 **A.** Uh-huh.

17 **Q.** You were just talking about the water use
18 caution area. Is all of Pasco County within that area?

19 **A.** It's all within the Northern Tampa Bay Water
20 Use Caution Area. That's correct.

21 **Q.** So, so in the area that Skyland seeks to, is
22 proposing for a utility is all within that, that same
23 water use caution area?

24 **A.** I think some of the areas that are proposed
25 for certification are up in Hernando County, and that is

1 not in the Northern Tampa Bay Water Use Caution Area.

2 Q. Okay. But all the areas that are in Pasco
3 County are within it.

4 A. Yes. Correct.

5 Q. Now I want to understand something. Your
6 testimony is based upon your review of the application
7 that Skyland has filed; is that correct?

8 A. That's correct.

9 Q. And your testimony is based upon the
10 development that is outlined in that proposal?

11 A. Correct.

12 Q. And what do you understand the development
13 that's detailed in the application to consist of?

14 A. Well, my understanding was that they were
15 proposing to convert, if you will, agricultural
16 activities to building houses and supplying water to
17 those particular houses. And then there were other
18 parts of the application that weren't quantified in
19 terms of bulk water sales. There was no quantity
20 associated with that part of the application.

21 Q. So your analysis with respect to quantities of
22 water is all based upon the residential aspects of the
23 development?

24 A. In most of the residential. There were some
25 inconsistencies that I saw in terms of the residential

1 areas, and I think I mentioned those in my testimony.
2 There was one area, for instance, that had, I don't
3 know, 15 or 1,800 units, and it wasn't included on
4 another table. So I didn't include anything with
5 regards to that.

6 Q. So just to be clear, your testimony does not
7 address a, any kind of intensified agribusiness type of
8 use of water.

9 A. Say again. I'm sorry.

10 Q. Your testimony does not address Skyland's
11 development where they would do intensified
12 agribusiness.

13 A. No.

14 Q. And I think you said your testimony doesn't
15 address any type of bulk sale.

16 A. That's correct.

17 Q. And so your testimony is limited only to the
18 residential development that's outlined in the, in their
19 application.

20 A. That's correct.

21 Q. Thank you.

22 **CHAIRMAN ARGENZIANO:** Is that all the
23 questions you have?

24 **MR. HOLLIMON:** Yes.

25 **MR. McATEER:** No cross.

1 **CHAIRMAN ARGENZIANO:** Okay.

2 **MR. REHWINKEL:** None.

3 **MS. KLANCKE:** Staff has no redirect.

4 **CHAIRMAN ARGENZIANO:** Okay. You are --

5 **MS. KLANCKE:** Did you have a couple of
6 exhibits for this witness?

7 **CHAIRMAN ARGENZIANO:** Yes. Okay. Can we let
8 the witness go? You're free to go. Thank you. You're
9 excused. And we do have exhibits?

10 **MS. KLANCKE:** Yes. Exhibits Numbers 27, 28
11 and 29 on Staff's Comprehensive Exhibit List. These are
12 consisting of his three exhibits to his direct prefiled
13 testimony.

14 **MR. KIRK:** Hernando has no objection.

15 **CHAIRMAN ARGENZIANO:** Any objections? Hearing
16 none, they're entered into the record. Thank you.
17 Thank you, Mr. Williams.

18 (Exhibits 27, 28 and 29 admitted into the
19 record.)

20 **CHAIRMAN ARGENZIANO:** Let's move -- we'll go
21 back to Mr. Gehring.

22 **RICHARD E. GEHRING**

23 was called as a witness on behalf of Pasco County and,
24 having been duly sworn, testified as follows:

25 **DIRECT EXAMINATION**

1 **BY MR. HOLLIMON:**

2 Q. Good morning. Would you please state your
3 name?

4 A. I'm Richard E. Gehring. I am the Planning
5 Growth Management Administrator for Pasco County.

6 Q. Mr. Gehring, were you previously sworn in as a
7 witness?

8 A. Yes, sir, I was.

9 Q. And have you prefiled testimony in this
10 proceeding?

11 A. Yes, I have.

12 Q. And do you have any changes or corrections to
13 your prefiled testimony?

14 A. No, I don't.

15 Q. And did you offer any exhibits with your
16 testimony?

17 A. There are some plan exhibits that were
18 promulgated in the county package, but I don't think
19 they came from me that have, show the area of the, of
20 the county we're discussing.

21 Q. Is your resumé an exhibit?

22 A. Yes, sir.

23 Q. Mr. Kennedy, if I were to ask you the
24 questions in your prefiled testimony today, would your
25 answers remain as stated in your prefiled testimony?

1 **A.** Yes, they would.

2 **MR. HOLLIMON:** Pasco County moves to have
3 Mr. Gehring's testimony entered into the record.

4 **CHAIRMAN ARGENZIANO:** Show that entered into
5 the record.

6 And is it Mr. Deterding? I'm sorry. That's
7 right.

8 **MR. HOLLIMON:** I need to ask him --

9 **CHAIRMAN ARGENZIANO:** We're moving right on,
10 aren't we? Okay. Thank you. Yes, sir.

11

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1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS**

2 A. Richard E. Gehring, 7530 Little Road, Suite 320, New Port Richey, FL 34654

3 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT POSITION DO YOU HOLD?**

4 A. Pasco County, Planning and Growth Management Administrator.

5 **Q. PLEASE DESCRIBE YOUR DUTIES AND RESPONSIBILITIES IN THAT**
6 **POSITION.**

7 A. I am the Department Director for the Planning and Growth Management
8 Department, which includes the Metropolitan Planning Organization. As such, I
9 am responsible for moving forward the County's long range planning program.

10 This includes Land Use, Transportation and Economic Development.

11 Additionally, I am designated by the Comprehensive Plan as the official with the
12 responsibility for implementing and interpreting the Comprehensive Plan.

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

15 A. I have more than 35 years experience in planning and development, in both the
16 public and private sectors. I have been Planning Director, City Manager and
17 Mayor of the City of Dunedin, Florida. Additionally, I was the Principal in Charge
18 at Post, Buckley, Schuh & Jernigan in Tampa, Florida supervising activities for
19 five West Coast Florida offices. Additionally, I have managed many large scale
20 development projects. My resume is attached as exhibit REG-1.

21 **Q. ARE YOU SPONSORING ANY EXHIBITS IN THIS CASE?**

22 A. My testimony is primarily based upon the Pasco County Comprehensive Plan
23 which is included as an exhibit to Skyland's application.

24 **Q. WHAT IS THE NATURE OF YOUR TESTIMONY IN THIS PROCEEDING?**

1 A. My testimony is directed to the issue of whether Skyland's application to provide
2 water and wastewater services in Pasco County is consistent with the Pasco
3 County comprehensive plan.

4 **Q. ARE YOU FAMILIAR WITH THE TERRITORY THAT SKYLAND IS**
5 **REQUESTING TO SERVE WITH WATER AND WASTE WATER SERVICES?**

6 A. Yes.

7 **Q. WHERE IS THE PROPOSED TERRITORY AND WHAT IS THE LAND USE**
8 **DESIGNATION FOR THIS TERRITORY IN PASCO COUNTY'S**
9 **COMPREHENSIVE PLAN?**

10 A. The proposed territory is in Northeast Pasco County in an area the County's
11 Comprehensive Plan designates as the Northeast Pasco Rural Area, and the
12 future land use is designated as AG, agriculture or AG/R, agriculture/rural, which
13 limits the density of residential development to one dwelling unit per five acres or
14 one unit per ten acres save Parcel ID 4 of the proposed service area which is
15 within a designated Employment Center.

16 **Q. IN YOUR OPINION, IS THE PROPOSED UTILITY SERVICE CONSISTENT**
17 **WITH PASCO COUNTY'S COMPREHENSIVE PLAN?**

18 A. No.

19 **Q. WHAT IS THE BASIS OF YOUR OPINION?**

20 A. The proposed provision of utility service is inconsistent with numerous policies
21 and objectives of the Pasco County Comprehensive Plan including but not limited
22 to the sections referenced below. The Comprehensive Plan designates all of the
23 proposed service area as part of the Northeast Pasco Rural Area, within which
24 central water and sewer is prohibited except under very limited circumstances
25 (SEW 3.2.6). The proposed service area does not meet the limited criteria for
26 central water and sewer service. (SEW 3.2.6). Residential properties in the Rural

1 Area are to be developed with individual wells and septic tanks. (SEW 3.2.6;
2 WAT 2.1.4; FLU 2.1.13; FLU 2.1.15; FLU 2.1.16; FLU 2.1.17). The
3 Comprehensive Plan also prohibits the expansion of central water and sewer
4 service into areas designated as AG, agriculture or AG/R, agriculture/rural, such
5 as the proposed service area properties. (WAT 2.1.1; SEW 3.5.1 and Exhibit 2,
6 Northeast Pasco Zoning Map). The Comprehensive Plan encourages the
7 purchase of private utilities and their conversion to publicly operated utilities, not
8 the creation of new private utilities. (WAT 2.2.4). Skyland's proposal is contrary
9 to the County policy to replace package plants with regional wastewater
10 treatment plants. (SEW 3.2.1).

11 **Q. WHAT IS PASCO COUNTY'S PROCESS FOR CHANGING ITS**
12 **COMPREHENSIVE PLAN?**

13 A. Generally, the County is limited to two cycles of Comprehensive Plan
14 amendments annually. (There are limited exceptions for DRIs, small scale
15 amendments (less than 10 acres), Capital Improvement Elements, and other
16 limited circumstances.) If an individual would like to make a change to the
17 Comprehensive Plan, the first step is submitting an application. In some years,
18 the County has used a screening process, so that applicants do not need to
19 expend a great deal of time and effort preparing a complete application package
20 – if the recommendation from the Local Planning Agency was likely to be
21 negative.

22
23 Assuming there is a screening meeting, the staff will conduct a preliminary
24 evaluation of the proposed amendment and make a recommendation to the
25 Local Planning Agency. The recommendation can be to proceed, not to proceed,
26 or proceed with modifications. Before the Local Planning Agency, the staff and

1 the requestor make presentations. The Local Planning Agency then decides
2 whether to move the application along. Assuming the proposal makes it through
3 the initial screening, the next step would be ensuring a complete application
4 package was submitted.

5
6 Staff reviews the application, prepares an agenda memorandum including
7 analysis and recommendation. The application is heard by the Development
8 Review Committee. The recommendation of the DRC is presented to the Local
9 Planning Agency at a public hearing. The recommendation of the LPA is then
10 presented to the BCC at a public hearing where the transmittal of the proposed
11 amendment is considered. At the hearing the BCC decides whether to "transmit"
12 the proposed amendment to the Department of Community Affairs and other
13 agencies for review and comment.

14
15 Within sixty days of receipt of a proposed amendment, the DCA must issue an
16 Objections, Recommendations, and Comments (ORC) report. This report
17 evaluates the proposed amendment for consistency with state law and rules.
18 The report also reviews the proposed amendment for internal consistency. Upon
19 receipt of the ORC the County then has sixty days to address the issues in the
20 ORC, hold an adoption hearing, and make a determination whether to adopt the
21 proposed amendment or not.

22
23 Assuming the amendment is adopted, the amendment is then transmitted to the
24 DCA for a compliance review. Within 45 days after finding the adopted
25 amendment package complete, the DCA must issue a notice of intent regarding
26 whether to find the amendment in compliance or not in compliance.

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For 21 days after the issuance of the NOI, affected parties may file a challenge to

3

the proposed amendment. If no challenge is filed, the amendment becomes

4

effective.

5

Q. HAS THE COUNTY RECEIVED ANY REQUEST FROM A LANDOWNER

6

WITHIN THE PROPOSED SERVICE TERRITORY TO MODIFY THE

7

COMPREHENSIVE PLAN?

8

A. Not to my knowledge.

9

Q. HOW LONG DOES IT TAKE TO GO THROUGH A COMPREHENSIVE PLAN

10

AMENDMENT CYCLE?

11

A. The process can take 9 – 12 months, sometimes longer depending on the

12

specific request.

13

Q. DO YOU KNOW IF THE PSC IS REQUIRED TO DEFER TO THE PASCO

14

COUNTY COMPREHENSIVE PLAN?

15

A. The PSC is not required to defer to the Pasco County comprehensive plan.

16

Q. DO YOU BELIEVE THE PSC SHOULD DEFER TO THE PASCO COUNTY

17

COMPREHENSIVE PLAN?

18

A. Yes.

19

Q. WHY DO YOU TAKE THIS POSITION?

20

A. Florida's history is full of examples of unbridled (and unregulated) development.

21

Most of these stories end badly. Thankfully, the Florida legislature enacted

22

growth management standards and requirements and designated the

23

Department of Community Affairs to oversee the statewide planning and

24

development process. Pasco County, along with every other local government in

25

the State, has created a Comprehensive Plan for managing growth and

26

development. Pasco County's Comprehensive Plan was developed with input

1 from all stakeholders, and at considerable public expense. One of the primary
2 goals of the comprehensive planning process is to provide property owners and
3 developers with increased certainty – in other words, to provide a process that
4 can be reasonably relied upon to be consistent and fair. Indeed, both the private
5 sector and the public sector have made (and continue to make) substantial
6 investments in reliance upon the Pasco County Comprehensive Plan. Finally,
7 the Comprehensive Plan strikes a balance between development and
8 preservation of environmental resources and quality of life.

9
10 This private utility, if established, will promote “urban sprawl” by encouraging new
11 development and growth to occur prematurely in an area that is presently rural
12 and largely undeveloped and without proper planning and infrastructure in place
13 including roads, utility network, urbanized services and adequate electric power,
14 without limitation. The presence of centralized water and sewer would
15 encourage other development to occur in a leap frog and unplanned manner.

16 Northeastern Pasco County is generally designated “Rural” on Pasco County’s
17 Future Land Use Map (“FLUM”) as part of the County’s adopted Comprehensive
18 Plan. Residential homes in this area are generally on ten acres (or larger) tracts
19 of land. The development of a water and sewer utility in this area, at this time,
20 may encourage, promote or otherwise allow residential and other development to
21 occur at a faster pace, and before roads and other necessary public
22 infrastructure are in place to accommodate such development. Such resulting
23 development would have essentially “leap frogged” over rural, agricultural and
24 under developed lands to create a higher intensity/density area of development
25 in Northeastern Pasco County. Such resulting development constitutes “urban
26 sprawl” for purposes of Chapter 163, Part II, Florida Statutes, Rule Chapter 9J-5,

1 Florida Administrative Code, and the administrative and judicial decisions
2 interpreting such provisions.

3
4 Pasco County responding to the tremendous growth surge of the 2000-2007
5 housing boom conducted an in-depth analysis of its development practices by
6 inviting the Urban Land Institute (ULI) to engage a panel to evaluate and make
7 comprehensive recommendations concerning the land-use and economic
8 development future of the county. The document clearly criticizes a history of
9 sprawl decision-making which resulted in inefficient infrastructure delivery which
10 cannot be sustained. The recommendations of the report clearly call for the
11 county to re-consider its vision and strategic management commitments for
12 inclusion in the board's comprehensive plan.

13
14 Sprawl is a negative condition in Tampa Bay widely recognized as being
15 inefficient in terms of time and energy demand impacting the regional population
16 and a major environmental and economic condition that wastes resources both
17 natural and man-made. Sprawl impacts all aspects of daily life in that housing
18 and community development patterns that induce sprawl demand more energy
19 review use conservation of resources and makes our region less competitive.
20 Note Forbes magazine has declared Tampa Bay the worst traffic condition of all
21 metropolitan areas in the nation. As the One Bay study has documented
22 developed land would double if the population grows similar to our past trends
23 requiring 500,000 acres of new homes and job locations. Such sprawl
24 development would impact over 200,000 acres of wetlands and wildlife habitat.
25 By 2050 travel delays in our region will be more than twice as long as they are
26 today if we do not modify our development pattern.

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Expansion of utilities into rural areas planned in the counties comprehensive plan will defeat objectives of the One Bay planning process which we have joined together to support a reduction in land consumption, a preservation of agricultural lands, a protection of wetlands systems, a reduction in vehicle miles traveled, a reduction in trip generation, a reduction in water demand, a reduction in electric usage and a reduction in greenhouse gas generation. All of these benefits accrue from consistent policy attention to focusing growth in desired service areas and discouraging growth in remote rural areas.

Pasco County Rural Protection Areas- Pasco County has adopted four specific areas for the protection and enhancement of rural living conditions and the preservation of agricultural activities. The land proposed for action by the PSC is located in the Northeast Pasco Rural Protection Area. (Comprehensive Plan Map 2 – 13; Policy FLU2.1.1) The policy of Pasco County is as follows:

Pasco County shall recognize through land use policies and land development regulations the Northeast Pasco Rural Area (as defined in Map 2 -13 Rural Areas) as an area with specific rural character. It shall be the policy of the County that rural areas require approaches to land use intensities and densities, rural roadway corridor protection, the provision of services and facilities, environmental protection and Land Development Code enforcement consistent with the rural character of such areas.

Additionally, Pasco County has articulated its policy with regard to provision of potable water and sanitary sewer in FLU Policy 2.1.13 as follows:

POLICY FLU 2.1.13 PROVISION OF POTABLE WATER AND SEWER

1 Consistent with the provision of services and facilities within the Northeast
2 Pasco Rural Area, Pasco County shall:

3 a. Continue to rely primarily upon individual wells as the
4 method of providing potable water to the residents and other occupants within
5 the Northeast Pasco Rural Area.

6 b. Continue to rely primarily upon individual septic tank
7 systems as the method of disposal of wastewater within the Northeast Pasco
8 Rural Areas;

9 c. Require that new development within the Northeast
10 Pasco Rural Area shall not be designed nor constructed with central water and/or
11 sewer systems. Public and private central system shall be, if paid for by the
12 landowner/developer, permitted in the future if:

13 (1) The development is a conservation subdivision; or

14 (2) The development form is an MPUD Master Planned
15 Unit Development in Res-1(Residential – 1 du/ga):

16 (3) It is clearly and convincingly demonstrated by the
17 proponents of the system expansion that a health problem exists in a built, but
18 unserved, area for which there is no other feasible solution. In such cases, the
19 service area expansion plans will be updated concurrent with an areawide
20 administrative land use update; or

21 (4) It is part of the implementation strategies for the
22 comprehensive redevelopment plan for Trilby, Lacochee, and Trilacoochee.
23 This exception permits the extension of utilities along US 301 to serve the
24 business district uses as described in Policy FLU 1.7.4.

25 (5) It is within the I-75/US 41 interchange mixed
26 use/employment center/RES-9 (Residential -9 du/ga) designated properties.

1 Only one parcel (Parcel 4; 77 acres) appears to meet any of these conditions.
2 Further, Policy FLU2.1.16 provides that "Improvements to public facilities shall be
3 accomplished whenever possible and practical in a manner so as to preserve or
4 enhance the rural of the Northeast Pasco Rural Area."

5
6
7 **Q. WHAT RESULT DO YOU FORESEE IF THE PSC IGNORES THE PASCO**
8 **COUNTY COMPREHENSIVE PLAN?**

9 A. Any deviation from the requirements of the Comprehensive Plan creates a ripple
10 effect that extends beyond the specifics of the deviation. In the instant case, for
11 example, proposed is the provision of a public utility in an area of Pasco County
12 designated for rural development. As is often the case, the availability of such
13 services leads to leap-frog development, rather than a compact development
14 pattern. This is likely to bring pressure to Pasco County to intensify this area of
15 the County.

16
17 Additionally, the issues of leap frog development are not solely related to the
18 initial provision of infrastructure, in this case water and sewer. Rather, inefficient
19 development require on-going expenditures for both capital and operations of the
20 myriad of service provided by the public including: schools, parks, libraries, fire,
21 emergency medical services and sheriff operations. These costs would be on-
22 going burdens to the taxpayers of Pasco County. In these times of limited fiscal
23 resources, it would be irresponsible to place this burden on Pasco County
24 taxpayers solely to address the speculative desires of one property owner.
25

1 This is proposal is contrary not only to the plans of the County for NE Pasco, but
2 could hinder the County's articulated strategic plan of concentrating growth in the
3 western and southern market areas. The Western and Southern market area
4 strategy was crafted to re-position the county from an exporter of employees to a
5 balanced, sustainable economy with high quality of life. Finally, the PSC must
6 harmonize its role with Pasco County's growth management role. Because a
7 PSC decision that is contrary to the Pasco County Comprehensive Plan creates
8 so many downstream effects, the PSC must be very careful in making such
9 decisions.

10 **Q. WHAT ACTION IN THIS CASE BEST SERVES THE PUBLIC INTEREST?**

11 A. The PSC should deny Skyland's application and preserve Pasco County's ability
12 to implement its Comprehensive Plan for growth management and efficient
13 development of utility services.

14 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

15 A. Yes.
16
17
18

1 **BY MR. HOLLIMON:**

2 Q. If you could briefly summarize your testimony,
3 please.

4 A. Okay. Good morning. My testimony would be a
5 summary of really the plan process, and the primary
6 exhibit would be the comp plan structure in Pasco
7 County. The key question would be is Skyland's
8 application consistent with the Pasco County
9 Comprehensive Plan, and that's really what my testimony
10 addresses.

11 There's some very key wording in the Pasco
12 plan that on its face does not support the proposed
13 action by land use plan categories in and of themselves.
14 The agricultural and agricultural rural are very
15 limiting, and we've already discussed the one to five
16 acres, one unit per five acres and one unit per ten
17 acres, and these are the lowest densities in the county.

18 Of all the parcels that they have, only one,
19 what's called ID 4, is actually in a designated
20 development area, which is an employment center located
21 at an interchange on I-75.

22 So the PSC action is not consistent with our
23 comp plan, inconsistent with the objectives of that
24 plan, and those objectives are very specific. You had
25 yesterday people testifying who are neighbors there and

1 they are familiar with what's called the NEPRA, the
2 Northeast Pasco Rural Protection Area, and they have
3 lobbied and worked to get the plan to have very specific
4 prohibitive prohibitions to preserve the rural character
5 of the area. The service, service is not to be provided
6 for in that plan area. Water is to be by well. Sewer
7 is to be by septic. And those are very specific wording
8 in the plan policy. So system expansions have ability
9 to occur, but they're in very limited circumstances.
10 And there are some four or five of them listed in the
11 actual plan.

12 So this area prohibits utilities, except for
13 those specific criteria. And only this one parcel, this
14 77 acres, would be eligible under the current rules and
15 procedure.

16 The plan can be amended, and as of this time,
17 as I testified, there's no, there's no amendment in
18 process for any of these properties.

19 The PSC has a requirement -- or is not
20 required to defer to the plan. And I would argue that
21 the PSC should defer to the local plan. The plan is a
22 process where it is definitely presenting the public
23 interest. And if you're representing and considering
24 the public interest, we think the plan should be a key,
25 a key part of that.

1 Florida growth history, which I outlined in my
2 testimony, covers the process. We got here with the
3 Growth Management Act and how it structures mandated
4 planning, and Pasco has an adopted plan. And it is --
5 under Florida law, comp planning is really a function of
6 capacity to serve. And we're really only going to be
7 able to expend (phonetic) development rights where there
8 is service capacity. So this decision you're making is
9 directly related, I think, to the structure of comp
10 planning in that it impacts the capacity to serve by
11 extending utilities into an area that is planned to be
12 rural.

13 Plans provide for consistency and reliability.
14 A number of those people that were testifying in areas
15 of the county are saying that their public well, and the
16 plan says that their public well is to maintain a
17 quality of life, which we think is predominantly rural,
18 and that is one of the criteria of the plan. Now we're
19 not constraining the entire county. This is
20 approximately a 500,000 acre county. Other areas are
21 designated to be very urban and intense. This area in
22 question is intended to be rural.

23 The question relates to the private utility,
24 is it creating an opportunity for urban sprawl? I think
25 that's a very key component. And the testimony is

1 centralizing water and sewer will encourage urban
2 development.

3 The break policy or the, the policy, the
4 commitment that we have that we don't want to see broken
5 is to not -- is the prohibition to installing central
6 systems. So which then not only address water and
7 sewer, but also pull on requirements for roads and other
8 services, promote a higher level of development and
9 actually spread county resources farther and farther
10 across a larger area, which is very costly to the, you
11 know, the citizens of Pasco County and the surrounding
12 region.

13 From 2002 to 2007, Pasco changed its direction
14 and planning considerably. We had a condition and did a
15 ULI study, and in essence I have in some of my text what
16 I argue was stopping the peanut butter process, which is
17 spread development all over the county. And there is a
18 very clear direction that came out of those set of
19 recommendations. The board has been moving on them for
20 the last couple of years. They've done a revisioning
21 process, they've done a strategic planning process, a
22 business planning process, all of which build on
23 focusing their resources.

24 In the key focus, One Bay, which is a policy
25 in Tampa Bay generated by the Tampa Bay Regional

1 Planning Council, has been a key force in that
2 direction. And One Bay says this is what you did when
3 you developed the first 3,500,000 people into, into
4 Tampa Bay. If we go from 3.5 to 7 million, let's do it
5 differently. And that differentness is based on
6 concentration of areas and not allowing sprawl, and
7 there's very specific results from that.

8 In the, in the One Bay concept you would
9 lose -- we would use to get that increment of growth,
10 which is a doubling of the Tampa Bay area, if we
11 concentrate it, we will use 500,000 less acres. Well,
12 that's equal to the scale of Pasco County. If we
13 concentrate it, we would have 200,000 less wetland acres
14 distributed. We would -- if we don't concentrate it, we
15 will double the VMT, which is vehicle miles traveled.

16 Tampa Bay is now recognized by *Forbes Magazine*
17 as the worst traffic congestion in the nation. One Bay
18 limits VMT wetland loss. Okay. One Bay limits vehicle
19 miles traveled, wetland loss, it saves ag lands, which
20 is a key criteria, it reduces less water, electric and
21 less greenhouse gas. All these, all these come from
22 concentration.

23 Pasco County has specifically four rural areas
24 it has set up. There are various levels of rural
25 preservation from a light protect the rural character of

1 areas that are one and two, sort of large lot, all the
2 way --

3 **COMMISSIONER SKOP:** Mr. Gehring?

4 **THE WITNESS:** All the way up to the most
5 restrictive, which is -- yes, sir.

6 **COMMISSIONER SKOP:** Mr. Gehring, can I stop
7 you for a second? Again, witness summaries are limited
8 to five minutes, and it seems we're getting towards the
9 end of the allotted time. Are you close to concluding?

10 **THE WITNESS:** I have two more points.

11 **COMMISSIONER SKOP:** All right.

12 **THE WITNESS:** I will summarize them. And
13 that's just that Pasco County has these four areas, and
14 northeast Pasco is the most restrictive. The plan sets
15 out critical points about not modifying it in such a way
16 that there's a ripple effect. And I think this plan
17 impact of this change of, of utility capacity would have
18 that ripple effect.

19 And, lastly, our public policy is to not
20 recognize something that's -- I view this as a
21 speculative action of putting together a series of
22 properties and trying to make them a development
23 proposal. This checkerboard effect we think is, is
24 proof positive of an inefficient development pattern
25 that would produce sprawl and hinder the implementation

1 of the comp plan. Thank you.

2 **MR. HOLLIMON:** We tender the witness for
3 cross.

4 **COMMISSIONER SKOP:** Thank you, Mr. Hollimon.
5 Mr. Wharton, you're recognized.

6 **CROSS EXAMINATION**

7 **BY MR. WHARTON:**

8 **Q.** Good afternoon, Mr. Gehring.

9 **A.** Good afternoon.

10 **Q.** So I think you just testified that under the
11 comp plan there shouldn't be any central services up on
12 these properties.

13 **A.** Yes, I did.

14 **Q.** Okay. First of all, isn't the County
15 providing central services in the Northeast Pasco County
16 Rural Area?

17 **A.** There are areas that are served. The majority
18 of the ones I think Mr. Kennedy outlined have been
19 taking over some package units or areas where there are
20 historic concentrations, like in Lacochee where there
21 are designated housing concentrations that are at
22 significant densities that have systems that are, that
23 are again not central systems but package systems.

24 **Q.** So is that a yes?

25 **A.** They don't meet, they don't meet the criteria

1 to me of being central systems, I'm saying, but they are
2 the County taking over package systems that don't
3 function and they're part of the centralized delivery of
4 service that the County has. But they are not what I
5 would call part of the central water and sewer system.

6 Q. Okay. So if Skyland rendered service on the
7 properties that it proposes to certificate in this same
8 form or fashion, then that would not be inconsistent
9 with the comp plan; right?

10 A. No. It would be inconsistent in that those
11 would be package facilities. And if the categories of
12 land use were the same of ag and ag rural, we would want
13 those to be water by well and sewer by septic.

14 Q. Okay. In other words, in your opinion, what
15 the County is rendering by way of service up there now
16 is inconsistent with the comp plan.

17 A. Under those criteria we have where you can
18 render service, which are, include poor condition,
19 health conditions, failure of systems generating the
20 need to provide service, then I think they meet that
21 criteria in most cases.

22 Q. How do you know that? What determination has
23 been made in that regard? What do you rely upon?

24 A. Well, the small pockets of areas that had
25 historically either well systems that were taken over or

1 were, or the example that you discussed extensively
2 about the package plant had the 30,000 gallons are all
3 systems that have had, that are monitored and maintained
4 by the County that were installed in some development
5 action that was not relying on a central system.

6 Q. And there's something in the comprehensive
7 plan specifically saying that that's an exception?

8 A. Yes. There are four exceptions in the, in the
9 area. One is the conservation sub, one is the MPUD,
10 another is clear, convincing demonstration of a health
11 problem, and the fourth is, is -- actually there's
12 five -- the implementation of a planning area that's
13 unique, which is the Lacoochee/Tribby area, which is a
14 concentration of very low income area, and lastly the
15 interchange question, the economic employment center at
16 I-75 and County Road 41 which has been designated as an
17 employment center, those are all areas that are able to
18 provide, to have systems not -- and can be relieved from
19 the required, from the prohibition against systems.

20 Q. Okay. So if I understand you correctly, the
21 service that is being rendered by the County in the
22 proximity to the certificated territories that Skyland
23 seeks to get as described by Mr. Kennedy are consistent
24 with the comp plan. But if Skyland rendered those same
25 types of services within its territories, it would be

1 inconsistent.

2 A. Yes.

3 Q. All right. Isn't it true there's nothing
4 unique about Skyland as a company or its proposal that
5 has caused you to make this objection?

6 A. Correct.

7 Q. It's just its location in the county; right?

8 A. It is in the rural preservation area.

9 Q. All right. Let's talk about one of the
10 exceptions that you talked about a second ago. Now this
11 is in the Northeast Pasco County Rural Area?

12 A. Yes, sir.

13 Q. All right. And isn't it true that there's a
14 policy in the comp plan saying that private central
15 systems, if paid for by the landowner or developer, are
16 permitted if the development form is a conservation
17 subdivision?

18 A. There is a provision for conservation
19 subdivision.

20 Q. Okay. So if there was a conservation
21 subdivision on these lands, then it would be consistent
22 with the comprehensive plan for the central utility
23 services to be provided by a private company; correct?

24 A. As long as the facilities were paid for by the
25 private developer, yes.

1 Q. I understand. And these lands are eligible
2 for conservation subdivisions; correct? There would be
3 a process to go through, but --

4 A. There is a process. I can't opine that they
5 would all be approved or that they'd -- they'll be
6 subject to the process.

7 Q. All right. And you don't know as we sit here
8 today whether or not an application like that would be
9 approved?

10 A. No.

11 Q. You'd have to see that and judge it on the
12 merits on a case-by-case basis?

13 A. Yes.

14 Q. All right. Now you've only been in your
15 present position 12 months; right?

16 A. Yes, sir.

17 Q. And you haven't actually testified in a
18 judicial or quasi-judicial proceeding as an expert since
19 the late '80s or the early '90s; right?

20 A. Right.

21 Q. Now isn't it true that you believe that the
22 policy of Pasco County as embodied in the comprehensive
23 plan is that the provision of these services by public
24 utilities is superior to the provision of these services
25 by private utilities?

1 **A.** I believe it's the County's policy and intent
2 to have public central facilities and to prohibit --

3 **THE COURT REPORTER:** I'm sorry. I'm sorry. I
4 was interrupted. Can you repeat that?

5 **THE WITNESS:** I'm saying that it's the
6 County's policy to, to promote the centralized systems
7 through the County and to prohibit private facilities.
8 As I did -- we have had extensive discussions about what
9 is superior or not, and I argued that both systems can
10 be, deliver a quality of service.

11 **BY MR. WHARTON:**

12 **Q.** True. Although you --

13 **A.** It's clearly the County's position that, that
14 central facilities should be public.

15 **Q.** You did indicate in your deposition on page
16 10 though when I talked to you that it was the County's
17 position that the provision of these services by public
18 was superior; correct?

19 **A.** Yes.

20 **Q.** All right. You've obviously gone back and
21 reviewed your deposition.

22 **A.** Yes.

23 **Q.** All right. Now you do agree, don't you, that
24 the County could construct or put into place new package
25 plants in the future in a way that is consistent with

1 the comp plan?

2 **A.** If they, if they were responding to the, like
3 a health condition or one of the criteria, they could.
4 If they weren't, the plan -- it would be inconsistent
5 with the plan.

6 **Q.** Okay. Well, do you -- based on what you know
7 today, could Skyland put in package plants up within the
8 territories it seeks to certificate in a way that would
9 be consistent with the comp plan?

10 **A.** As the properties now stand, no. If they
11 pursued either plan amendments or mechanisms that were
12 covered by the policy, then they, then they could.

13 **Q.** But right now you're not aware of any of those
14 exceptions applying to those properties?

15 **A.** Right.

16 **Q.** So, in other words, as you sit here today, you
17 don't believe the County could provide service through
18 package plants up on those properties either, do you, in
19 a way that was consistent with the comp plan?

20 **A.** Correct. If the policy is sewer by septic and
21 water by well, then it would be inconsistent for the
22 County to go dropping package plants.

23 **Q.** So the County has an, apparently an exception
24 to the provision of these types of services on a private
25 basis if there's a public health concern; is that a fair

1 statement?

2 **A.** Well, in areas where they've had to take over
3 systems they've generally been because they failed, and
4 that's generally a public health concern. They're not
5 out there proposing new systems to expand their, their,
6 their provision of service. They are generally having a
7 system that was, was, in most cases, a leapfrog action
8 and I think in some cases PSC regulated that have failed
9 and/or taken over by the County for operation. And then
10 there's long-range plans to connect them to some central
11 system in the future, may not have occurred yet. So
12 they can be operating a package system in the county
13 system.

14 **Q.** But I really asked you a different question.
15 If there was an area where there was a public health
16 concern, an established public health concern, would it
17 be consistent with the Pasco County Comprehensive Plan
18 for that particular concern to be met in the form of the
19 provision of private utility services?

20 **A.** Not if it violated the rural protection
21 criteria of the plan. Not if it was expanding a service
22 capacity with a private central system.

23 **Q.** Even that would be violative of the
24 comprehensive plan.

25 **A.** Correct.

1 **Q.** Okay. What about service from package
2 plants -- first of all, one of these properties is
3 designated an employment center; correct?

4 **A.** Yes.

5 **Q.** What does that mean?

6 **A.** Pasco has the highest community migration out
7 of the county to employment travels, vehicle miles
8 traveled for employment in the region. And so we've
9 created employment centers as an area where we want to
10 concentrate activity, and in those employment centers we
11 give a ratio of a high floor area ratio of development
12 along with a residential capacity so that there can be
13 job, workforce housing next to a job opportunity. We
14 have a series of these located in the county, and there
15 is one in the subject, in the area of discussion located
16 at the interchange with I-75.

17 **Q.** What could be built out there?

18 **A.** It's predominantly focused on what we call
19 target industries, industries that generate above
20 average annual employment income per capita numbers and
21 that's what they're aimed at. So mainly higher quality
22 jobs, and that's -- and the focus is you not only have
23 to -- you can develop to a 3FAR, but you also have to
24 develop a corresponding residential community along with
25 the project. So in Parcel 4, for example, there's a

1 number in there for 1,800 units. That's using the 27 or
2 so units per acre density that's allowed in an EC.
3 It's, it's an intensive zone with an intensive
4 commercial utilization and an intensive residential
5 utilization.

6 Q. Let me ask you a couple of questions about
7 that. First of all, you referred to Parcel 4 and
8 1,800 units. Have you -- do you have a copy of the now
9 famous Exhibit 42, what's sometimes been referred to as
10 3A? Have you looked at that before?

11 A. Yes, I have.

12 Q. All right. Do you agree that the units
13 reflected hereon for Pasco County are correct under the
14 current comprehensive plan?

15 A. I would call them possible. They're
16 conditionally correct subject to a site plan, subject to
17 a ratio development, subject to having the employment to
18 relate to these units. There's arguments ongoing with
19 DCA all the time that you can't unlock these kind of
20 units without the corresponding employment.

21 Q. But one thing you would not need is you
22 wouldn't need a comprehensive plan amendment to achieve
23 these densities; right? You'd have to do some other
24 thing.

25 A. Correct. You'd have to have an MPUD.

1 **Q.** All right. Let's go back to the employment
2 center for a second. It would be consistent with the
3 Pasco County Comprehensive Plan for a private utility to
4 provide services to the employment center?

5 **A.** In our policy of discouraging private
6 utilities, I would say no. And the -- but the area of
7 the employment center would be, needs to be served and
8 it can be served by a system that would evolve when it
9 was developed. And right now it's anticipated it would
10 be a public system. We have a plant on the interstate
11 corridor to the south and we would direct services to
12 that.

13 **Q.** You know, with a policy to discourage private
14 utilities, it makes me unsure why you have testified
15 about all these other details. That policy seems to
16 always come upfront and establish a basic inconsistency
17 with the comp plan. Do you agree with me?

18 **MR. HOLLIMON:** I object. This is
19 argumentative.

20 **MR. WHARTON:** It's a leading question, but I
21 don't think it's argumentative.

22 **MS. CIBULA:** Maybe Mr. Wharton can rephrase
23 the question.

24 **MR. WHARTON:** I'll withdraw the question.

25 **CHAIRMAN ARGENZIANO:** Okay.

1 **BY MR. WHARTON:**

2 **Q.** Don't you agree with me that despite any
3 particular nuance that's in the Pasco County
4 Comprehensive Plan, the provision of services by a new
5 private utility is going to be contrary, for lack of a
6 better word, to this policy to discourage new private
7 utilities?

8 **A.** Correct.

9 **Q.** Okay. But despite that intent in the plan to
10 discourage private utilities, there apparently are some
11 instances in which private utilities can render service
12 consistent with the plan but for that policy?

13 **A.** In areas where there's no prohibition,
14 particularly in this northeast Pasco area where there is
15 a prohibition to central facilities to not encourage
16 urbanization, there are areas that a facility could be
17 in place and be considered. They could certainly be
18 negotiated or discussed with the County.

19 **Q.** What's the next nearest interchange to the
20 interchange that you have described as the employment
21 center?

22 **A.** In the interstate system coming through Pasco
23 the interchange to the south is the interchange, I-75
24 and State Road 52. That interchange is the last urban
25 interchange which, a category of interchange in the

1 corridor. This -- then you start rural interchanges.
2 So this is the first rural interchange at County Road
3 41. The next interchange to the north is at State Road
4 50 from Brooksville.

5 Q. Is the, is the County providing services at
6 that next interchange to the south?

7 A. Yes.

8 Q. And are they doing it through package plants?

9 A. Well, there's really, there's currently a
10 fairly antique truck stop there, and I believe it's --
11 actually I don't know what system it's on. It's not on
12 anything. It's on septic. So I don't think there are
13 any County facilities at that interchange that I know of
14 at this point.

15 Q. Oh, I thought you had said the County was
16 providing service there.

17 A. No. We have service, we have a plant on the
18 I-75 corridor south at the next interchange, which is
19 54, State Road 54.

20 Q. Okay. Let me refer you back to a couple of
21 answers that you've given me earlier to try to reconcile
22 them. You agree that under policy SEW 3.2.6 of the
23 Pasco County Comprehensive Plan that if a conservation
24 subdivision -- is that the same thing as a clustered
25 subdivision, by the way?

1 **A.** It's in essence the intent. You, you put
2 aside various lines to conserve and you cluster
3 development on a lower land area.

4 **Q.** Now isn't it true that that particular policy
5 says for a conservation subdivision, if the system is
6 paid for by the landowner or the developer, then private
7 central systems are permitted?

8 **A.** That is the wording. "C, require that new
9 development within the Northeast Pasco Rural Area shall
10 not be designed or constructed with central water and
11 sewer systems. Public and private central systems shall
12 be, if paid for by the landowner, permitted in the
13 future if, and if the development is a conservation
14 subdivision."

15 **Q.** Okay. So that seems to be an exception to
16 what you had said was the policy to discourage private
17 utilities.

18 **A.** And I would, given our rate of approval for
19 conservation subs, I would still say it's discouraging.
20 We have one, I think we only have one.

21 **Q.** But you would agree --

22 **A.** We have one in process that's not been
23 completed.

24 **Q.** But you would agree that you don't know
25 whether a conservation subdivision would or would not be

1 approved out on these lands in Pasco County.

2 A. I do not, I could not say today that they
3 would be approved.

4 Q. Did you just say that the conservation
5 subdivision you had had failed?

6 A. It hasn't completed all of its approvals. I
7 don't know whether it's recorded yet, for example.

8 Q. Okay.

9 A. There's elements out there. There's one in,
10 there's one in process.

11 Q. All right. Do you know whether the County has
12 a policy to replace package plants with regional
13 wastewater treatment plants?

14 A. From my personal history, which is limited,
15 no. But from listening and discussing with utilities
16 and Mr. Kennedy's testimony, yes, the process of the
17 utility operation has been to take over package
18 facilities and create a unified countywide system.

19 Q. Don't you agree that if the County put into
20 place a new package plant in the, in any rural area in
21 Pasco County, it would be inconsistent with the comp
22 plan?

23 A. It depends on the character of the demand and
24 what you're trying, what problem you're trying to solve.
25 I've testified that I think that a package unit can be

1 effective to meet the treatment criteria, but I prefer
2 not to testify as an engineer since I'm not one.

3 Q. Let me ask you this. In the context of
4 consistency with the comprehensive plan, is there
5 anything the County could do to provide water or
6 wastewater services on the land Skyland seeks to
7 certificate that Skyland itself could not do?

8 A. Explain that question, what makes Skyland's
9 action --

10 Q. I, I --

11 A. Is it --

12 Q. I kind of like it. I'll ask it to be read
13 back. I think you'll understand it if you hear it
14 again. Listen to the beginning.

15 (Foregoing question read by the court
16 reporter.)

17 Do you understand?

18 A. I do. But it begs a question of if we don't
19 want central services, the County would not extend
20 central services to those areas that are rural in
21 character and rural preservation. So the fact that you
22 can be certificated to do that, obviously the County
23 could deliver a water and sewer package to those subject
24 land areas, just as you could if you were certificated.
25 So what am I missing here?

1 Q. Well, again, the emphasis of the question was
2 in terms of consistency with the comprehensive plan, is
3 there something the County can do to provide water or
4 wastewater services to these territories that is somehow
5 consistent with the plan because they are the County,
6 but if Skyland did that same thing on those same
7 territories, it would not be consistent? That's what
8 I'm trying to get to.

9 A. But the County's policy is to not extend
10 central services to those areas; therefore, it wouldn't
11 if it wants to preserve the rural character of the
12 Northeast Pasco Rural Protection Area.

13 Q. Well, then consider it as a hypothetical. All
14 these things haven't happened yet.

15 A. Well, of course we know how to put pipes in
16 the ground and we know how to connect them to a central
17 system. And we -- and if you had to provide a service,
18 yes, the County could provide a service. But it would
19 be -- it would not be consistent with the comp plan.

20 Q. Is there anything that Pasco County could do
21 with regard to the provision of water and wastewater
22 services within these territories which would be
23 consistent with the comprehensive plan, that if
24 Skyland --

25 A. Servicing --

1 **Q.** -- put into place those same services --

2 **A.** Servicing --

3 **THE COURT REPORTER:** I couldn't hear that.

4 **CHAIRMAN ARGENZIANO:** Yeah. Let's not cross
5 over. We have to -- she has to get this all
6 transcribed, so.

7 **THE WITNESS:** Is there anything --

8 **MR. WHARTON:** Let me finish my question,
9 please.

10 **THE WITNESS:** All right.

11 **THE COURT REPORTER:** Would you do your
12 question over, please?

13 **MR. WHARTON:** Yes, I will, again.

14 **BY MR. WHARTON:**

15 **Q.** Now, Mr. Gehring --

16 **A.** Yes, sir.

17 **Q.** -- is there anything that the Pasco County
18 Water and Sewer Utility Department could do in terms of
19 rendering services on these lands that in your opinion
20 would be consistent with the comprehensive plan, but if
21 those same services were provided in the same way on the
22 same lands by Skyland, it would not be consistent with
23 the comprehensive plan?

24 **A.** The County could service a conservation sub;
25 the County could respond to some MPUD, the County could,

1 that is in a Res 1 district, which is a higher category
2 than you have, which you don't have, so that wouldn't
3 apply; the County could have a health problem it was
4 trying to solve; and the County could be servicing
5 Lacoochee/Trilby or the I-75 employment center area.
6 And in all those actions it would be in this general
7 area and they would be consistent with the comp plan.
8 Were you to have certificated capacity to serve, you
9 could, if you paid for those facilities, you could
10 service a conservation sub. So you could do it that
11 way.

12 I don't know, since there is no Res 1 and
13 there is no designated health problem and you, and you
14 wouldn't move into Lacoochee/Trilby, then all those
15 other categories the County would tend to serve and not
16 want you to serve. So a conservation sub would to me be
17 the one you could do.

18 Q. It sounds to me like the answer to my question
19 is yes, there are things the Counties could do --

20 A. As to conservation sub.

21 Q. Okay. But -- well, no, not as to conservation
22 subs. As to my question it sounds like the answer is
23 yes, there are things --

24 A. There are things you could do.

25 Q. Okay. So you agree the answer is yes?

1 **A.** As I limited it, yes.

2 **CHAIRMAN ARGENZIANO:** I think he answered your
3 question. Does that -- did you answer to the best of
4 your ability?

5 **THE WITNESS:** Yes.

6 **CHAIRMAN ARGENZIANO:** Because I don't want to
7 do two hours of the same question.

8 **MR. WHARTON:** I don't want to either, Madam
9 Chairman.

10 **CHAIRMAN ARGENZIANO:** No. But if he answered
11 the question, then that's all he can do.

12 **BY MR. WHARTON:**

13 **Q.** All right. Don't you agree that the
14 comprehensive plan applies equally to Skyland and to
15 Pasco County?

16 **A.** Yes.

17 **Q.** Do you agree that any time that the County is
18 referred to in the comprehensive plan with a capital C,
19 that it's referring to the County?

20 **A.** I'd have to see the specific wording. There's
21 been debate on that point. It can twist and turn in
22 various forms and various sections of the plan, so I
23 would have to see the actual application of it.
24 Generally it's generically meaning the county.

25 **Q.** Okay. But you, but still you sounded like

1 your answer is no, there might be some areas in the plan
2 where capital C for County doesn't just mean the county
3 because you would have to look at the context.

4 **A.** Right. Obviously in yesterday's testimony
5 there was discussion of having subsections of a policy,
6 you can have an A, B, C that very clearly relates to
7 private sector activity even though the word County is
8 used, and the intent of that section would be that it
9 covers both private and public action.

10 **Q.** So you do believe there are instances in there
11 where it says the capital County may do this or that
12 that might only apply to the county, and there are other
13 sections where it says capital County which you believe
14 might apply to both given the context?

15 **A.** Yes. Without seeing an actual wording, it's
16 not a structural element that you can opine to across
17 the entire plan, which is, you know, eight inches of
18 paper.

19 **Q.** Now just so we're clear, you believe Skyland's
20 proposal is in conflict with the comp plan.

21 **A.** Yes, I do.

22 **Q.** But you've talked about some instances where
23 it would not be; correct?

24 **A.** Correct.

25 **Q.** Where -- okay. So there are apparently some

1 exceptions as you've delineated them?

2 **A.** The provision to allow a conservation sub
3 would be an exception, private development activity
4 meeting that criteria, which waives the central
5 prohibition to the central facility.

6 **Q.** Would the, would the certification of the
7 utility alone be inconsistent with the comp plan? In
8 other words, the establishment of that certificated
9 service area.

10 **A.** In my opinion it is.

11 **Q.** Okay. Isn't it true that the County has
12 promulgated a service area to the four corners of the
13 county?

14 **A.** Yes, it has.

15 **Q.** Do you consider that inconsistent with the
16 comp plan?

17 **A.** In that the County is constrained by the
18 policies of the plan, I don't consider it inconsistent.

19 **Q.** Why is the County constrained by the policies
20 of the plan? Can't the County go out and do something
21 in violation of the plan?

22 **A.** No.

23 **Q.** No?

24 **A.** You can have a county jurisdiction area for
25 utilities across the entire county. You can write

1 prohibitions for rural protection areas. You can write
2 prohibitions for high risk, floodable areas that are
3 under FEMA. You can prohibit a number of areas that the
4 County should not spend public monies to expand the
5 facilities. You can set performance criteria in your
6 business plan that says you won't serve below a certain
7 density with a public central facility. Even though
8 it's entirely in the district, that would not, you know,
9 that would all be constraints on their system to be
10 expanded.

11 Q. Isn't it true that when you say the County is
12 constrained by the plan, you mean you assume the County
13 utilities department will act consistent with the plan
14 because they're part of the County?

15 A. They are. Correct.

16 Q. Okay. Well, Evans Properties is also
17 constrained by the plan, isn't it, whether or not
18 Skyland is certificated?

19 A. Yes, it is.

20 Q. And yet you think the promulgation of a
21 service area by Skyland is inconsistent with the plan,
22 but by the County is not; correct?

23 A. Correct.

24 Q. Even though the County has expanded its
25 service area to include these exact areas, that's your

1 opinion?

2 **A.** The County as an entity is constrained by the
3 plan to extend services by the policies of the plan.
4 You are asking for certification to deliver services to
5 an area we wish not to be urbanized or suburbanized,
6 and, therefore, the extension of that capacity is what
7 is inconsistent with the plan.

8 **Q.** But in order for the customers for the utility
9 to be there in a way that was inconsistent with the
10 plan, county government would had to have acquiesced to
11 that; correct?

12 **A.** It would take public action.

13 **Q.** That would allow that to happen.

14 **A.** It would allow that to happen. And as I
15 testified in my, in the interrogatories, the key
16 provision here is that, like I said earlier, our comp
17 plan structure is built on capacity to serve. We're a
18 concurrency driven planning process. Utility
19 availability is a very strategic issue in whether
20 property is developable or not.

21 So when you have a certification, which I
22 consider to be almost a development action because
23 you're granting the ability to serve to a property, it
24 then has this presumptive capacity to utilize that.
25 They also can argue in reliance that I spent money to

1 achieve that. They can also argue that obviously the
2 State of Florida through the PSC granted that and that
3 weight and moment comes into the process.

4 And all regulatory decisions, land use,
5 zoning, whatever nature, rest on change of conditions.
6 Someone comes in and argues anything, they say an
7 interchange has been put on this interstate, a road was
8 built, a utility line has been extended, a capacity to
9 serve has been granted, that action creates the
10 developability, which then opens the door for the rural
11 area to lose its rural character through the, through
12 the creation of the units. And that's what we wish to
13 discourage.

14 **Q.** In other words, in other words, your concern
15 is that all the things you just described might be taken
16 into account by the politicians making the decision
17 whether or not to allow the growth?

18 **A.** Various attorneys argue very well the question
19 of capacity to serve has changed and therefore they
20 should be granted something. And the plan would then be
21 diminished were it to be changed because of that
22 argument.

23 **Q.** But you do agree that your ultimate concern is
24 that the politicians who would make those decisions and
25 the DCA might be persuaded to allow a change more than

1 they would be otherwise because of the certification?

2 **A.** Yes, because of the certification. I'm not
3 speaking alone to this point. There is a major paper,
4 if you go online and look, plan implementation
5 limitations, and you'll come up with a paper from the
6 University of Florida and it limits the history of the
7 whole comp planning process. And in the limitations on
8 planning implementation there's a specific reference to
9 the PSC being able to grant utility service rights and
10 not follow local plans as being a constraint on the
11 implementation of comp plans. So it's not just me
12 arguing that. It's a generalized principle and problem
13 within the Florida growth management process.

14 **Q.** It feels pretty good slipping that one in,
15 huh? That's something you never talked about in your
16 deposition; right?

17 **A.** I happened to have a couple of hours to sit
18 there and search the Web on my phone and I did cover
19 that paper.

20 **Q.** You just, just found this in the last couple
21 of days?

22 **A.** And it's -- well, it's the argument. Just
23 search up sprawl. Even though sprawl being some dreary,
24 missing, you know, ubiquitous, floating thing, and it's
25 very tangible when you have the saving of 500,000 acres

1 of land development activity if you control sprawl and
2 the loss of 500,000 acres if you don't. And I think
3 that's really what's on the table here.

4 Q. Well, gosh, since you found that paper in the
5 last couple of days, let me ask you a question I asked
6 you in your deposition.

7 A. Okay.

8 Q. As we sit here today, are you aware of any
9 instances in the State of Florida where the granting of
10 a Public Service Commission certificate has led to urban
11 sprawl?

12 A. Yes.

13 Q. What's that? What, what instance?

14 A. In the historic term, I would argue that Pasco
15 County is a sprawl county that was generated in the
16 activity of development of private utility systems
17 jumping, leapfrogging over development conditions in
18 Hillsborough and Pinellas into Pasco where there were
19 less regulations at the time and instituting a complete
20 urban fabric that, that was premature. And a lot of
21 those, Aloha Utilities, et cetera, were all certified,
22 were all regulated entities. The County has
23 subsequently taken them over. That's ancient history.
24 If you come down to the near term, we're currently
25 acquiring Crystal Springs, a little minor water system

1 out in the county, out on 39 in east county. But it's
2 got a whole subdivision that wouldn't have occurred if
3 it hadn't got a utility right for water service to that
4 particular area.

5 Q. And that's a PSC certificated utility?

6 A. I believe it is.

7 Q. When did you learn about it?

8 A. Well, I've seen it in, in our regulatory
9 process coming in in the rezoning step, and that's
10 looking at what the capacity to serve is in that area
11 and finding that utility system. And then we brought it
12 up in discussions as an example of one.

13 But I would -- throughout Bruce's discussion
14 he pointed out numerous minor systems that he's taken
15 over. A number of those were regulated by the PSC.

16 Q. What's name of the utility there?

17 A. Crystal -- I think it's Crystal Spring Water.

18 Q. All right. Do you recall that I took your
19 deposition on May 5th, 2010?

20 A. Yes.

21 Q. And on page 54 thereof do you recall this
22 question and answer on line 2? "Question, Do you
23 know" -- and you and I were talking about Pasco County.
24 You can look at the context there, if you'd like.

25 "Question, Do you know of any instances in

1 which the availability of those private utilities has
2 led to urban sprawl? Answer, I would have to go back
3 and look at individual service areas and evaluate each
4 one, which I have not done."

5 **A.** At that time.

6 **Q.** "Question, You don't know of any as we sit
7 here today? Answer, No." Correct?

8 **A.** At that time, correct.

9 **Q.** So when I took your deposition on May 24th,
10 2010 -- May 28th, 2010, you didn't know of any?

11 **A.** Correct.

12 **Q.** But now you've gone out and you've discovered
13 this Crystal Springs?

14 **A.** And I believe I could map others. But, yes,
15 Crystal Springs is an example of one we're currently in
16 acquisition of.

17 **Q.** Really? And do you -- so there was nothing
18 there when the PSC certificated that particular system?

19 **A.** I'd have to go back and look at the
20 circumstances.

21 **Q.** In other words, you don't know whether the
22 issuance of the certificate is what led to sprawl.
23 There might have been a well and septic tank system in
24 there, correct, and the utility may have come along
25 after the fact?

1 A. The specifics of that particular application
2 we could look at. And there's, there's a whole unit
3 development in that 39 that I think related to sprawl in
4 an isolated corner that I think wouldn't have occurred
5 without the utility capacity.

6 But generically Hillsborough County has a
7 major urban corridor, suburban corridor and a rural
8 edge. Development jumped over Hillsborough's rural edge
9 into Pasco as a sprawl action mainly driven by, by
10 permitted private utility actions. Pasco has created an
11 urban system, and we are, have urban, suburban and rural
12 going to our line, and you are up in that rural area.
13 And the pattern occurs again in Hernando with an urban
14 edge as you cross that line.

15 So the pattern of development that One Bay and
16 the regional process tries to address is that we have
17 had constant sprawl due to private land acquisition
18 development programs that jumped over the urban, the
19 edge, the urbanizing edge into a jurisdiction where they
20 could perform and that's created the condition we're in
21 with unbelievable utility, service, transportation
22 limitations. And to isolate it back down to Crystal
23 Spring is to miss the big point, and that is that the
24 whole region has had a consistent problem with sprawl.

25 Q. Now you're using the phrase "private

1 utilities." How do you know those weren't public
2 utilities in several of those instance?

3 A. Because whenever Pasco was -- Pasco had no
4 public utility system in that era.

5 Q. What era is that?

6 A. In the '70s when -- pre '75 there was no
7 zoning and no comp planning and projects jumped, jumped
8 the county line in both Pinellas and Hillsborough.

9 Q. There were municipal water systems, weren't
10 there, and wastewater?

11 A. There were -- New Port Richey would have had a
12 system.

13 Q. And you have done sufficient investigation
14 where you can testify on your own knowledge today that
15 the utility and the PSC certification came first, not
16 necessarily that small onsite systems were taken offline
17 by utilities that were created after the fact?

18 A. I think both systems exist, but I could -- I
19 don't have it today in front of me as a map and exhibit
20 but I think I could generate it. And I've had enough
21 discussion with our utility system providers that they
22 were regulated systems.

23 Q. And all this is something you've gone out and
24 discovered since I took your deposition?

25 A. In the context of this question, yes. But I'm

1 also in the cross -- I'm doing an urban service area
2 study for the entire county on how to take the 54/56
3 corridor and the 19 corridor and make them an urban
4 service area. And I'm doing detailed planning in all of
5 those areas and mapping all of the served, unserved,
6 water served by who, public, private mapping going on at
7 this moment, which has raised all of these issues that I
8 did not know at the end of May that I do know now in
9 July.

10 **CHAIRMAN ARGENZIANO:** Mr. Wharton, excuse me.
11 Are we on here? Is this on? At some point I have
12 to give our -- our court reporter has gone two hours.
13 So would you, do you mind splitting now and then --

14 **MR. WHARTON:** Okay.

15 **CHAIRMAN ARGENZIANO:** Okay. Let's do that.
16 Let's take a ten-minute break and then we'll come back.
17 Thank you.

18 (Recess taken.)

19 Okay. We're going to resume, if everybody
20 would take their seats, and we'll continue.

21 Mr. Wharton.

22 **BY MR. WHARTON:**

23 **Q.** Mr. Gehring.

24 **A.** Yes, sir.

25 **Q.** All right. Let's go back and talk about this

1 same subject we were talking about when we took a break.

2 First of all, did you print this paper? Do
3 you have a copy of it up there?

4 A. No. It was, I just found the site. It's Roy
5 R. Carriker, C-A-R-R-I-K-E-R, University of Florida.

6 Q. What are his qualifications?

7 A. He is a party writing in the structure of
8 history of comp planning in basically an agricultural
9 setting from the University of Florida, and he is -- the
10 background piece is a, is a broad overview of the whole
11 comp planning structure. But as far as his Ph.D or
12 where it's from and stuff, I'm sure we can get it in the
13 article.

14 Q. But there's just a single reference in there
15 about the PSC that was written by this one fellow?

16 A. It's, it's a laundry list of typical problems
17 in plan implementation of which this is one. The whole
18 plat of subs is another, you know, those things like
19 that that frustrate --

20 Q. All right. Let's go back and talk about these
21 utilities. First of all, you were talking about this
22 happening way back before the county utility department
23 came into existence; right?

24 A. I was referring to the --

25 Q. All right.

1 **A.** -- the factor of sprawl being a historic
2 phenomenon.

3 **Q.** Do you know whether Pasco County actually
4 regulated those utilities back at that time?

5 **A.** I would not be able to tell you that I know
6 for a fact that they did.

7 **Q.** Okay. Now I want you to tell me every utility
8 you are speaking of that you believe the certification
9 of that utility by the PSC led to urban sprawl. Give me
10 the name of it and let me know how you know it's
11 certificated.

12 **A.** Okay. Since I'm referring to this data as
13 being, coming to me as I'm doing these studies
14 throughout the southern end of the county which abut
15 Hillsborough and Pinellas, I'm looking predominantly at,
16 at mobile home parks, isolated communities, retirement
17 communities, of which I can't name every one. The
18 predominant one would be Aloha, which we have acquired
19 significant amounts of Aloha, and we, and then actually
20 some portions of Aloha still exist and we bulk service
21 them. That's an example of one.

22 I would have to go back and pull the data I
23 don't have in my background. What I have is the pattern
24 of development in that area and how it was disjointed
25 because it was delivered by incremental service

1 decisions by isolated package systems.

2 Q. So you believe the certification of Aloha by
3 the Public Service Commission led to urban sprawl; is
4 that your point?

5 A. My point is that the delivery of private
6 utility systems not on a unified master plan utility
7 system creates sprawl, and the private action and the
8 action to be able to get that utility capacity created
9 those units, which ended up creating sprawl.

10 Q. So you believe the certification of Aloha
11 created urban sprawl?

12 A. The act of the certification is providing the
13 capacity. It's like saying if someone has a driver's
14 license, they now create an accident. You know, an
15 accident has to happen. Okay. So the actual
16 certification does not create the sprawl per se. So the
17 sprawl is the resulting outcome when the usual amount of
18 land area is leaped over and a whole growth corridor
19 gets created separated by literally miles of lower
20 density conditions in the abutting area, and then that
21 new area urbanizes due to, you know, either excess or
22 utility capacity.

23 Q. When was Aloha created, do you know?

24 A. I would have to put it in the early '70s.

25 Q. 1972, does that sound about right, or before?

1 **A.** I'm fine with that. I've been in the area
2 that long but --

3 **Q.** Are any of the utilities that you have
4 discussed that you believe were certificated by the
5 Commission which resulted in urban sprawl, do you have
6 personal knowledge as we sit here today whether the
7 development that occurred in the service area of those
8 utilities was already entitled when the utilities were
9 created?

10 **A.** In some of those earlier eras there wouldn't
11 have been any entitlement because there was no
12 regulation. So you could, subject to going and -- there
13 was no such thing as a development order.

14 **Q.** Okay. So some of these areas that you're
15 saying developed in a sprawling fashion were pregrowth
16 management as that scheme exists in Florida now?

17 **A.** Right. Correct.

18 **Q.** What about post growth management? Do you
19 have any personal knowledge as we sit here today that
20 whether or not the development was already entitled with
21 regard to the utilities that you testified about?

22 **A.** I can't give you the name of it, but one of
23 the ones that Bruce referred to as, that he now services
24 in this area I believe has a utility system. It was
25 regulated and it was taken over by the County, and

1 that's a more near-term action than historic. But I
2 don't know all the names of the units or what date they
3 were certified.

4 Q. You don't know the name of the utility?

5 A. No, I don't.

6 Q. And you don't know whether or not it was, the
7 development was already entitled before it was created?

8 A. That historic fact I don't know.

9 Q. All right. Now let's talk about what could be
10 constructed on the properties that Skyland seeks to
11 certificate. You could develop as low as five acres per
12 unit; right?

13 A. One unit per five acres, yes.

14 Q. Yeah. Also we talked about the area out there
15 the County has designated as an interchange. That would
16 allow some more intensive services such as hotels,
17 motels, commercial activities, gas supply, food,
18 restaurants; correct?

19 A. Correct. In the EC. And I would correct an
20 earlier statement I made about utilities, where they
21 start. They do come up to State Road 52/75. There is
22 county service capacity just south of that interchange,
23 which I referred to the plant being farther south. But
24 there actually are lines and service to that
25 interchange.

1 Q. Okay. At the interchange that I was just
2 talking about, light industrial characteristics would be
3 allowed out there?

4 A. Yes, sir.

5 Q. That would include things like agricultural
6 related industries?

7 A. It could be, although agriculture industries
8 can also be done in agricultural zones.

9 Q. Citrus packing?

10 A. Yes.

11 Q. Dairy processing facilities?

12 A. Yes. Subject to permitting, as you know, for
13 whatever intensity they're at.

14 Q. Did you -- didn't you tell me in deposition
15 there are mechanisms for agricultural use to encourage
16 housing?

17 A. There are provisions where agricultural,
18 either migrant housing or housing related to the staff
19 that's on a farm can be housed on the farm.

20 Q. Okay. And that would include to the -- that
21 would also apply to the lands that Skyland seeks to
22 certificate?

23 A. If they were to be proposed that way and
24 planned that way.

25 Q. Okay. Now isn't it true that you could

1 foresee some circumstances under which properties
2 currently designated rural in Pasco might gain your
3 recommendation for greater densities?

4 **A.** Hypothetical without a circumstance, I would
5 say I'd have to know the circumstance.

6 **Q.** But, but you would not categorically foreclose
7 that possibility based on a case-by-case basis that
8 might, you might approve that?

9 **A.** In our market area definition we've chopped
10 the county into five different market areas. There is a
11 rural market area which starts all the way over near
12 US 19 and goes all the way to the Green Swamp north of
13 State Road 52. There are different intensities in that
14 entire rural area. One is more large lot, the other one
15 is more farm ag, five acres or so, and the most
16 restrictive and largest is this Northeast Pasco Rural
17 Protection. So there's different conditions across this
18 entire area we call the rural market area or the north
19 market area. And so as you move those circumstances,
20 proximity to service capacity changes, village existing
21 zonings and approvals. And so the most restrictive is
22 in this future land use in northeast Pasco. So this
23 would be the hardest area to get that flexibility and
24 where we would be the most restrictive.

25 **Q.** And it just means that you would have to

1 satisfy more criteria, stricter criteria?

2 **A.** Stricter criteria and higher -- actually we're
3 designing what I would call disincentives for these
4 areas. We are restructuring, under Senate Bill 360's
5 requirement for mobility plan, mobility fee, a framework
6 of different levels of traffic impact fee based on
7 different levels of service, where in this rural area
8 the standard would be considerably higher, so the unit
9 cost for the vehicle miles traveled because it's so
10 remote will be extremely high. So it's a disincentive.

11 **Q.** But, again, you would agree that to the extent
12 that greater densities would be allowed or any of the
13 other activities that we've talked about would be
14 reviewed on a case-by-case basis?

15 **A.** Even though the area is rural, on a
16 case-by-case basis there are areas on the 301 corridor,
17 in the interstate corridor in proximity to the existing
18 municipal communities of Dade City, St. Leo and San
19 Antonio. But while they abut that entire edge of what's
20 called the Northeast Pasco Rural Protection Area, we
21 would handle some of those differently. And you'll see
22 that those are mainly Res 1 in the category of our land
23 use plan, which means they, they're not in that ag, ag
24 rural, which is what is the predominant over 3,000 acres
25 of your holdings in Pasco.

1 Q. But you limited your answer to certain
2 parcels. You would agree with me, would you not, that
3 with regard to the remainder of the parcel Skyland seeks
4 to certificate, to the extent that greater densities or
5 different activities were requested, you would review
6 that on a case-by-case basis?

7 A. We would review it on a case-by-case basis,
8 but it would be very, it would be within the context of
9 a very restrictive preservation of rural character,
10 preservation of agricultural lands, not extending
11 utilities other than by well and septic, et cetera.

12 Q. Have you heard the testimony in this case
13 about the contaminated well problem up in Hernando
14 County?

15 A. From the audience perspective, yes.

16 Q. Is that the kind of exception that you had
17 indicated? You had talked about four exceptions, and
18 one of them was for I think like the health, safety and
19 welfare.

20 **MR. KIRK:** I'm going to object. There's
21 nothing in his direct testimony about contaminated
22 wells.

23 **MR. WHARTON:** Well, what he's testified about
24 is that there are four categorical allowances for when
25 private utilities can serve in Pasco County.

1 **MS. CIBULA:** I think the question is proper.

2 **THE WITNESS:** There is a Reference 3 in the
3 policy where it is, quote, it is clearly and
4 convincingly demonstrated by proponents of system
5 expansion that the health problem exists in a built but
6 unserved area which there is no other feasible solution.
7 In such cases, the service area expansion plans will be
8 updated concurrent with the area wide administrative
9 land use update. So if there's a health problem, we
10 would respond to it.

11 And the question you're raising, I would
12 look -- I have administered utility systems, so I would
13 look at there's a set of problems out there, I don't
14 know the nature of the problem, I don't know what the
15 health -- is it a, is it a quality of water and odor, is
16 it a health actual detriment, are those wells so old
17 that they don't meet current criteria and really what
18 people should do is put new wells in with better casings
19 and deeper conditions than they had? There's a number
20 of ways to solve the problem without it being, meeting
21 this requirement. I don't know whether you would
22 trigger this requirement automatically when you walk in
23 and say my well is bad, let me do this.

24 **Q.** Fair enough. And I understand it's a
25 hypothetical. Those wells are in Hernando County.

1 But as we sit here today, you're just not sure
2 whether if a similar situation occurred in Pasco, it
3 would --

4 (Simultaneous conversation.)

5 **A.** It would have to be on a case -- it would have
6 to be on the actual health condition.

7 **THE COURT REPORTER:** Okay. Wait a minute. I
8 didn't get the end of your question and --

9 **CHAIRMAN ARGENZIANO:** Okay. Let's do this.
10 Let's make sure we don't talk over each other because it
11 really is hard. So if --

12 **MR. WHARTON:** Well, yeah, let me finish asking
13 my question and give a little bit of a pause.

14 **CHAIRMAN ARGENZIANO:** Yeah. Let me finish
15 saying what I wanted to say. Let's all talk one at a
16 time. You finish your question, and then if you would
17 answer the, answer the question. Thank you.

18 **BY MR. WHARTON:**

19 **Q.** So I understand that it's a hypothetical. But
20 is it fair to say that you're not sure as we sit here
21 today whether if that same situation was occurring up in
22 the northeast part of Pasco County, whether or not it
23 would fit within that particular exception?

24 **A.** Yes. You would have to look at the facts.

25 **Q.** Okay. Now we talked a little bit about this,

1 but conservation subdivisions are allowed in Pasco
2 County. I think you said there was only one and there's
3 one in the works; is that right?

4 **A.** Correct.

5 **Q.** Do you think conservation subdivision is a
6 good planning tool?

7 **A.** From a land rights standpoint where you have
8 pressures on properties, I would say yes. From a rural
9 preservation, maintaining the quality and character of
10 the Northeast Pasco Rural Protection Area, I would say
11 no. I think they are not desirable in this most unique
12 agricultural area.

13 **Q.** Does that mean that you are categorically
14 against them or would you review them on a case-by-case
15 basis?

16 **A.** It would have to be on a case-by-case basis
17 and the scale of the property you are attempting to
18 apply it to. If you have a large enough site where
19 you're doing a big enough open space for conservation
20 preservation, it would change the character. If you
21 have a smaller aggregate site, the, the placement of the
22 clustered units have to get far enough from the roadway
23 to preserve the rural character of the roadway. And as
24 you get a smaller site, it's harder and harder to do.
25 So it would have to be a site-by-site basis.

1 Q. You agree with me, don't you, that
2 comprehensive plans are documents that by their very
3 nature are designed to change and evolve?

4 A. They're not only designed to change and
5 evolve, but you're mandated to do an evaluation and
6 appraisal report and assess what the condition of the
7 plan is and to update it based on your year, which is
8 the evolutionary review that has to happen by, on
9 schedule. So they do evolve.

10 Q. Now you agree, don't you, that the board
11 decides whether a particular proposal for growth or
12 greater densities will or will not be approved at the
13 board level?

14 A. Recognizing that that also involves DCA and
15 other agencies that can intervene and parties who have
16 interest in an action, it can occur with board approval.

17 Q. So all the things you've just described are
18 the tools that are available to local government --

19 A. Yes.

20 Q. -- to control growth?

21 A. Yes, they are.

22 Q. Okay. You're not hesitating after I asked my
23 question for the court reporter. We should not be so
24 hard on her.

25 Well, describe those tools, delineate for

1 them. What kind of tools are available to Pasco County
2 to control growth in these areas, the areas that Skyland
3 seeks to certificate?

4 **A.** Well, in the comp planning process would be
5 the start. But I would argue that in this particular
6 setting, we are not, we are doing what I would call an
7 off book comp plan amendment in that we're utilizing the
8 PSC approval process to extend utilities into rural
9 areas. So it's sort of a step that's not a comp plan
10 amendment, but I would consider it as such. So there
11 are things that can happen that affect the
12 developability of an area, but it all starts with a comp
13 plan amendment application made by someone, it's
14 reviewed.

15 You know, our county, our county has a more
16 restrictive process in that our board as the LPA
17 considers what I received as filed comp plan changes,
18 and they can accept or reject processing them based on
19 whether they meet criteria. So a comp plan that was, an
20 action that was clearly, say, in a rural area could be
21 rejected for consideration and never make it in the
22 door.

23 When it came in the door and was filed and
24 processed, it then goes through the statutory provisions
25 of so many, 60 days, 45 days off to DCA, back with an

1 approval process, LPA action, board action. And then
2 subsequent to that there is a zoning process, if the
3 lands need to be appropriately zoned to that land use
4 category, that is also multiple public hearings.
5 Subsequent to that, there's a site planning process or a
6 platting process to make the property able to go in and
7 pursue a building permit. And then the building permit
8 is ultimately, you know, pursued and made consistent
9 with all those prior approvals. And whenever that
10 building permit is completed, it has a CO and someone
11 can occupy it and it goes on the tax roll.

12 Q. So in order for the type of growth to occur on
13 these lands which you have expressed concern about, the
14 landowner would have to go through all the processes
15 you've just described; correct?

16 A. Correct.

17 Q. And all those processes are in place now,
18 aren't they?

19 A. Correct.

20 Q. And all those processes would continue to be
21 in place even if the certificate were granted to
22 Skyland?

23 A. Correct.

24 Q. Now you agree with me that if the property
25 owner within the land that Skyland seeks to certificate

1 decides that they do want to change in the comp plan,
2 that the County wouldn't be compelled to reach some
3 different result based on the fact that Skyland had been
4 certificated.

5 **A.** Not compelled. But a level of developability
6 would have been established in that it would have
7 service potential for water and sewer in that it had
8 been granted in that action.

9 **Q.** Which is something that the bodies that are,
10 whether it be the Board of County Commission or DCA,
11 that are attempting to decide whether that proposal
12 should be allowed might take into consideration; right?

13 **A.** Correct.

14 **Q.** You don't even really know that they would
15 take it into consideration, do you?

16 **A.** I'm saying I've never been in a land use
17 approval process, of which I've probably processed
18 hundreds, in which every supporting element isn't put on
19 the table in front of the body in the quasi-judicial and
20 legislative decisions they're making that support the
21 application. So the ability to serve it in a system
22 that's driven by capacity to serve under our growth
23 management laws would certainly be included. And if
24 someone failed to include it, they would not be, not be
25 representing their client, so.

1 **Q.** You express concern in your testimony about
2 utilities being a component of urbanization.

3 **A.** Yes.

4 **Q.** But you do agree with me that actual
5 urbanization will not occur unless the County allows it
6 to occur.

7 **A.** I would disagree with you across this whole
8 line of responses that are both in your questioning and
9 in your own expert's responses about when development
10 occurs, and therefore that development is the sprawling
11 action. Because if you look at the conditions of sprawl
12 that are referenced in the 9J5 provisions of what
13 constitutes sprawl or indicators of urban sprawl, the
14 preamble to about six or seven of the 13 provisions use
15 the word, words "promotes, allows or designates." Okay.
16 Those are, those are the criteria in front of whatever
17 the, the element of criteria that's being analyzed in
18 the 13 points are --

19 **MR. WHARTON:** Madam Chairman, I think this
20 response is, is not responsive.

21 **THE WITNESS:** Okay.

22 **CHAIRMAN ARGENZIANO:** Would you ask the
23 question again and let's see if he can --

24 **BY MR. WHARTON:**

25 **Q.** Well, let's do it this way.

1 Sir, do you recall that I took your deposition
2 on May 28th, 2010?

3 **A.** Yes, you did.

4 **Q.** And on page 31, line 8, let's read your prior
5 answer first for context. You -- on page 12 thereof you
6 said, "Answer, You're encouraging a component of
7 urbanization into an area that you don't want to
8 urbanize. Question, That urbanization will not occur
9 unless the County allows it; correct? Answer, Correct."
10 Do you stand by that testimony?

11 **A.** Correct.

12 **Q.** Now you do agree with me that the
13 certification of Skyland won't remove any of the steps
14 that the landowner would have to go through in order to
15 develop more intensely. They would all still remain in
16 place.

17 **A.** They would all remain in place.

18 **Q.** All right. Now you don't believe the creation
19 of utility infrastructure in and of itself is urban
20 sprawl; right?

21 **A.** I think I testified to you that putting a pipe
22 in the ground does not create sprawl.

23 **Q.** Okay.

24 **A.** But in the answer that you just truncated, the
25 wording "promotes, allows and designates," which is the

1 criteria in 9J5, those actions are covered when you
2 put -- if you put a pipe in the ground and you hook it
3 up and it has capacity to serve, it's promoting
4 development. The very existence of it that it can be
5 attached to, just like a right-of-way creates the
6 opportunity for access, the pipe creates the opportunity
7 for service.

8 Q. And you would, you would say the same thing
9 about things like access?

10 A. I would.

11 Q. Electricity?

12 A. I would.

13 Q. Telephone service?

14 A. Telephone is not critical, but, yes. Any
15 urban levels of service required by, delivered by a
16 utility.

17 Q. And I understand that your testimony is that
18 it makes greater growth possible. But, again, that
19 greater growth won't occur unless local government
20 allows it to occur; correct?

21 A. Correct.

22 Q. Now you talk in your testimony about
23 inefficient development. You would agree that
24 inefficient development will not occur unless local
25 government allows it to occur; correct?

1 **A.** I don't think local government can mandate
2 efficiency. And I would argue that your proposal in
3 your application are at ludicrous levels of service for
4 those kinds of low load densities that should not have a
5 utility because they would create ridiculous, I think
6 are very high rates that are inappropriate. So the
7 government can't mandate except through the application
8 of these kind of policies that it doesn't want the
9 service so it'll avoid that level of service.

10 Mr. Kennedy opines that two units an acre is
11 like the threshold level. I would argue that I prefer
12 more like four to five units an acre to be an acceptable
13 level to introduce water and sewer services. Because
14 you not only want to break even, you want to have a
15 viable system that can, you know, serve, continue to
16 serve and be the quality that's necessary.

17 **Q.** So do you recall that I took your deposition
18 on May 28th, 2010?

19 **A.** Yes.

20 **Q.** And on page 80 thereof, at line 21, "Question,
21 You would agree with me that inefficient development
22 will not occur on these particular lands unless the
23 County allows it to do so? Answer, The County and the
24 rest of the whole regulatory process. Question, They
25 will all have to say yes to inefficient development to

1 occur? Answer, Inefficient development to occur.
2 Question, So the answer to my question is yes." Do you
3 stand by that testimony?

4 **A.** Yes.

5 **MR. WHARTON:** Okay. May I just have one
6 moment, Madam Chairman? I think I'm finished.

7 **CHAIRMAN ARGENZIANO:** We'll just take a couple
8 of minutes of quiet, quietness.

9 (Pause.)

10 **BY MR. WHARTON:**

11 **Q.** A couple of final questions. You had talked
12 about how you believed there would be particular
13 difficulties in getting approval for a conservation
14 subdivision in this part of the county; correct?

15 **A.** You asked about my opinion and I said that it
16 would be difficult.

17 **Q.** Well, as a, as a professional planner working
18 for government, would you agree with me there is a point
19 where if such a regulation is too restrictive, that it
20 could constitute a taking?

21 **MR. HOLLIMON:** Objection. This calls for a
22 legal conclusion.

23 **MR. WHARTON:** Well, I'm asking him in his
24 context of a governmental planner.

25 **MR. KIRK:** I would object to the

1 characterization of a governmental planner versus -- a
2 planner has professional qualifications regardless of
3 whether they're in the private sector or governmental
4 sector.

5 **COMMISSIONER EDGAR:** Madam Chair, if I may.

6 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

7 **COMMISSIONER EDGAR:** Thank you. I hesitate,
8 and I apologize for speaking over your, or at least
9 attempting to, but it is, and I defer to the Chair, but
10 it is unusual for, in our practice anyway, for an
11 attorney that is not proffering the witness to make an
12 objection.

13 **MR. KIRK:** I'm sorry. I'm not used to these
14 proceedings.

15 **COMMISSIONER EDGAR:** And, again, it's, of
16 course, up to the Chair.

17 **CHAIRMAN ARGENZIANO:** Thank you. I agree.

18 **COMMISSIONER EDGAR:** But I suspect
19 Mr. Hollimon can handle it.

20 **MR. KIRK:** I'll, I'll withdraw my objection.

21 **CHAIRMAN ARGENZIANO:** Okay. Thank you. The
22 objection is withdrawn.

23 **MS. CIBULA:** I think it does call for a legal
24 conclusion, and this witness isn't an attorney.

25 **MR. WHARTON:** I'll restate the question.

1 **BY MR. WHARTON:**

2 Q. You do understand within your context, within
3 the context of your position at Pasco County that the
4 owners of the lands that Skyland seeks to certificate
5 have certain property rights.

6 A. Correct.

7 Q. And one of those property rights would allow
8 them to appropriately apply for a conservation
9 subdivision within the lands they own in Pasco County?

10 A. Correct.

11 Q. And you would expect your staff to apply the
12 criteria to that request and to make a recommendation
13 based on whether or not those criteria had been met?

14 A. Correct.

15 **MR. WHARTON:** That's all we have, Madam
16 Chairman.

17 **CHAIRMAN ARGENZIANO:** Thank you. Commissioner
18 Skop.

19 **MR. KIRK:** Hernando has no unfriendly
20 questions.

21 **CHAIRMAN ARGENZIANO:** Okay. Thank you again.
22 Commissioner Skop.

23 **COMMISSIONER SKOP:** Thank you, Madam Chairman.
24 I just had a few questions.

25 Good afternoon, Mr. Gehring.

1 **THE WITNESS:** Good afternoon.

2 **COMMISSIONER SKOP:** You testified in your
3 prefiled testimony that you offer the opinion that the
4 Skyland application was not consistent with the Pasco
5 County Comprehensive Plan; is that correct?

6 **THE WITNESS:** Correct.

7 **COMMISSIONER SKOP:** And you also in your
8 testimony discussed inefficient development. I think
9 that checkerboard was used. Can you explain that just
10 briefly, or elaborate?

11 **THE WITNESS:** Were you to -- well, first of
12 all, physical properties of the site in your application
13 are such that it's a pattern of properties dispersed
14 over a large area separated by multiple sections
15 creating blocks of ownership which are a historical
16 acquisition action that occurred over time, not creating
17 a unified development parcel. So that's the
18 checkerboard of, of, you know, blocks of real estate
19 that, that are now being then given a package of
20 certification rights to have utilities. And just by
21 their physical disjointedness you get a Phase I strategy
22 which are not unified. They're isolated projects. And
23 so further by their isolation they then create a higher
24 sprawl potential. And so the checkerboard effect is
25 very much that, you know, component that is of concern

1 to, to me.

2 You use the word efficiency, and efficiency to
3 me is inherent in all of these discussions. I think
4 efficiency is in your mission statement and goals of
5 the, of the PSC. You're supposed to deliver efficient
6 systems. I think what the County is concerned about is
7 efficient urbanization. I think sprawl is inefficient
8 urbanization. So in that context, that inefficiency is
9 why we have these policies and why we would preserve one
10 area of the county for rural characteristics and say
11 don't extend capacities of utility services in there.
12 And the same time, go to our southern extreme and say
13 this should be our most intense development area because
14 we're trying to promote urban concentration. And
15 inherent in that is efficiency because we're trying to
16 get more users on systems closer to jobs, closer to
17 access, closer to utilities and utilize the public
18 dollar better. And we're all into some very constrained
19 fiscal condition from the state all the way down to the,
20 to the closest level.

21 And I think that that's in essence why I
22 raised that point. And yesterday as I came in the door,
23 you know, there was a bunch of PR material out at the
24 door here. Your *Conserve The World* paper here, this is
25 your PR piece that tells everybody how to turn off their

1 water and turn on their this and monitor this and prune
2 their trees better. I think this decision is inherent
3 in that level of efficiency that we shouldn't promote
4 disperse utility capacity into rural areas. So that's
5 why I raised it.

6 **COMMISSIONER SKOP:** All right. Thank you.

7 In response to some of the questions that
8 Mr. Wharton asked you, your testimony discussed how a
9 private utility might be allowed to provide service in
10 Pasco County in accordance with the comprehensive plan;
11 correct?

12 **THE WITNESS:** Yes.

13 **COMMISSIONER SKOP:** Okay. I'd like to explore
14 that a little bit further in the interest of a complete
15 record. If I could get you to refer to what's before
16 you as Figure 3A, please.

17 **THE WITNESS:** Okay.

18 **COMMISSIONER SKOP:** And if I could draw your
19 attention to what is marked on Figure 3A as ID 6. Do
20 you see that?

21 **THE WITNESS:** ID 6 abuts the county boundary
22 at the corner?

23 **COMMISSIONER SKOP:** Yes, sir.

24 **THE WITNESS:** Yes.

25 **COMMISSIONER SKOP:** Okay. And then just above

1 that there's a parcel marked as ID 10A and 10B or ID 10?

2 **THE WITNESS:** Yes, sir.

3 **THE COURT REPORTER:** I'm sorry. I didn't hear
4 what you said. Did you say something?

5 **THE WITNESS:** I just said it was these two
6 parcels.

7 **THE COURT REPORTER:** Oh, okay.

8 **COMMISSIONER SKOP:** And the reason I ask this
9 is I want to pose a hypothetical to you. If the Skyland
10 application before us only pertained to the parcels
11 marked as, or the contiguous parcels marked as ID 10 and
12 ID 6 and if those parcels were required to be built out
13 in accordance with the currently approved densities,
14 would you be able to offer an opinion as to whether that
15 would be consistent with the comprehensive plan?

16 **THE WITNESS:** I'll refer to a graphic I've
17 used, which is the county's northeast Pasco, which I
18 think is into evidence. But those properties are
19 located approximately in this location and they're in
20 the rural protection area, and they're zoned ag --

21 **COMMISSIONER SKOP:** Before I -- just would you
22 be able to offer an opinion as to whether it would be
23 consistent with the plan, yes or no?

24 **THE WITNESS:** Yes.

25 **COMMISSIONER SKOP:** Okay. What is that

1 opinion?

2 **THE WITNESS:** That urbanization of those two,
3 two densities within the zone would be acceptable. In
4 excess of the zone would not. With utilities would be
5 not unless they were in a clustered format that was
6 approved.

7 **COMMISSIONER SKOP:** All right. Thank you. No
8 further questions.

9 **CHAIRMAN ARGENZIANO:** Does the City of
10 Brooksville have any questions?

11 **MR. McATEER:** No.

12 **CHAIRMAN ARGENZIANO:** Mr. Rehwinkel?

13 **MR. REHWINKEL:** No.

14 **MS. KLANCKE:** Staff has no questions for this
15 witness, but we do have several exhibits.

16 **CHAIRMAN ARGENZIANO:** Okay.

17 **MR. HOLLIMON:** Madam Chairman, I have one
18 follow-up.

19 **CHAIRMAN ARGENZIANO:** Redirect?

20 **MR. HOLLIMON:** Yes.

21 **REDIRECT EXAMINATION**

22 **BY MR. HOLLIMON:**

23 Q. Mr. Gehring, you were asked about, I believe
24 was it the Carriker article that you testified about?
25 Am I identifying that correctly?

1 **A.** Yes.

2 **Q.** Okay. I want to know is, is that the type of
3 article that land use planners reasonably rely upon?

4 **A.** I'll be the first to say that a Google search
5 is not in-depth research. It's literally that. But as
6 a general University of Florida piece that, that has
7 been generated to deal with the history of comp
8 planning, a number of people would, who are looking at
9 comp plan characteristics of Florida. And Florida has
10 become literally a landmark condition across the nation.
11 A number of people refer to and study the Florida
12 principles and practices in a number of ways, and comp
13 planning and growth management laws are those. And so
14 this type of article does come up and is used by the
15 planning community as an overview, and that's -- I
16 think, I think it meets that criteria as something that
17 people would find in the literature.

18 **Q.** So my question though is to you as a land use
19 planner, is it the type of article that you would
20 reasonably rely upon?

21 **A.** Yes.

22 **Q.** Thank you.

23 **CHAIRMAN ARGENZIANO:** And the exhibits?

24 **MR. HOLLIMON:** Yes. Yes. It's Exhibit --
25 well, his resume -- do you know the number, Caroline?

1 **MS. KLANCKE:** 12.

2 **MR. HOLLIMON:** 12, yes. His resumé, Exhibit
3 12, we would ask that be entered into the record.

4 **CHAIRMAN ARGENZIANO:** Any objections? Hearing
5 none, entered into the record.

6 (Exhibit 12 marked for identification and
7 admitted into the record.)

8 **MS. KLANCKE:** Staff also has several exhibits
9 marked on its Comprehensive Exhibit List, in particular
10 Exhibit Numbers 22, 23, 24, 34, 35 and 36. And it is
11 our understanding that there are no objections to this.

12 **CHAIRMAN ARGENZIANO:** Any objections? Hearing
13 none, those numbered exhibits are entered into the
14 record.

15 (Exhibits 22, 23, 24, 34, 35 and 36 marked for
16 identification and admitted into the record.)

17 **MR. WHARTON:** 34, 35 and 36?

18 **CHAIRMAN ARGENZIANO:** Was it --

19 **MS. KLANCKE:** That is correct.

20 **CHAIRMAN ARGENZIANO:** Was it 34 or 24?

21 **MS. KLANCKE:** 22, 23, 24, 34, 35 and 36.

22 **MR. KIRK:** Hernando has no objection.

23 **CHAIRMAN ARGENZIANO:** Okay. You're excused.

24 Thank you.

25 **MR. WHARTON:** At this time, Madam Chairman, if

1 staff is, if I'm not interrupting, Skyland would move
2 into the record the deposition of Mr. Wieczorek, which
3 was originally on staff's list but which may have been
4 removed when Mr. Wieczorek was withdrawn as a witness.
5 Mr. Wieczorek prefiled testimony in this case, we took
6 his deposition. The civil rules say that the deposition
7 of a witness, whether or not a party, may be used by any
8 party for any purpose if the Court finds the witness is
9 an expert or skilled witness. I believe that his
10 prefiled testimony which is on file with the Commission
11 reveals that he is an expert or skilled witness. I
12 believe this transcript reveals that he is an expert or
13 skilled witness.

14 His prefiled testimony was withdrawn, but the
15 surrebuttal testimony that Commissioner Skop authorized
16 the parties to file actually has the other planner from
17 Hernando County saying, oh, and by the way, to the
18 extent that my opinions disagree with some of
19 Mr. Wieczorek's, I'm his boss. This is a deposition
20 that I believe Hernando County named two planners, they
21 put in prefiled testimony for two planners, and I
22 believe that in the interest of completion of the record
23 and appropriately under the Rules of Civil Procedure
24 that it should be a part of the record.

25 **MR. KIRK:** If the County may respond.

1 **COMMISSIONER SKOP:** Briefly.

2 **MR. KIRK:** The prefiled testimony of
3 Mr. Wieczorek, at the time that we were preparing our
4 witness list, Hernando County was unsure of the vacation
5 and travel schedule of Mr. Pianta, our planner, and this
6 hearing had not yet been set. In an abundance of
7 caution, we listed a senior planner under Mr. Pianta as
8 a witness. To avoid duplicative -- to avoid
9 inconsistent testimony, we prepared direct testimony of
10 Mr. Pianta. Mr. Wieczorek, in his direct testimony
11 said, yes, I have read Mr. Pianta's direct testimony, I
12 concur with it. In my professional opinion I concur
13 with it and did not add or subtract from it.

14 As we were preparing for hearing and a number
15 of witnesses that were -- the County made a motion to
16 withdraw Mr. Wieczorek as a witness because
17 Mr. Wieczorek's testimony, one, it would be inferior to
18 Mr. Pianta, who is his supervisor, and, second, the
19 Order Establishing Procedure discouraged redundant or
20 repetitive testimony. So we filed a motion to withdraw
21 Mr. Wieczorek as a witness. The motion was granted.
22 Mr. Wieczorek is not here, his prefiled testimony has
23 been stricken, and we think it's appropriate that his
24 deposition will become moot.

25 In the surrebuttal testimony of Mr. Pianta, it

1 was filed at a time we did not know whether or not the
2 granting of the motion to withdraw Mr. Wieczorek would
3 be approved or not be approved. But the portions -- the
4 County would be willing, if -- we do not believe that
5 putting his deposition in the record would accomplish
6 anything. We would ask that it not be put into the
7 record, and any references to Mr. Wieczorek in
8 Mr. Pianta's surrebuttal testimony we'd be willing to
9 strike.

10 **COMMISSIONER SKOP:** Staff recommendation?

11 **MS. CIBULA:** I recommend that since the
12 testimony has been withdrawn, that the deposition not be
13 entered into the record.

14 **COMMISSIONER SKOP:** That'll be the ruling.
15 The deposition will not be entered.

16 **MR. KIRK:** And the County would be willing to
17 strike any references in Mr. Pianta's surrebuttal
18 testimony as to Mr. Wieczorek.

19 **COMMISSIONER SKOP:** Staff, to, to the offer.

20 **MS. CIBULA:** I think that would work.

21 **COMMISSIONER SKOP:** Okay. Thank you. Show
22 that done also.

23 **MS. BENNETT:** Before we start the rebuttal
24 provisions, portions, I think that Brooksville does have
25 an exhibit that they would like to enter into the

1 record. I think it's Exhibit 13.

2 **COMMISSIONER SKOP:** Mr. McAteer.

3 **MR. McATEER:** Yes. We would like to move in
4 Exhibit 13, which is simply the, the amended objection
5 which is of record but has not been entered as an
6 exhibit in this proceeding and including Exhibits A, B
7 and C attached thereto.

8 **COMMISSIONER SKOP:** Any objection? Hearing
9 none, Exhibit 13 will be entered into the record.

10 (Exhibit 13 marked for identification and
11 admitted into the record.)

12 Thank you, Mr. McAteer.

13 Any other matters before we move forward?
14 Okay. So this takes us to surrebuttal? Okay.

15 **MS. BENNETT:** Rebuttal.

16 **COMMISSIONER SKOP:** Or rebuttal. Okay. All
17 right. Call the next witness.

18 **MR. DETERDING:** Skyland would call Gerald C.
19 Hartman.

20 **COMMISSIONER SKOP:** Mr. Hartman, you've been
21 previously sworn; correct?

22 **THE WITNESS:** Yes, Chairman.

23 **COMMISSIONER SKOP:** Thank you.

24 **GERALD C. HARTMAN**

25 was called as a witness on behalf of Skyland Utilities,

1 LLC, and, having been duly sworn, testified as follows:

2 **DIRECT EXAMINATION**

3 **BY MR. DETERDING:**

4 Q. Mr. Hartman, please state your name and
5 employment address.

6 A. Gerald Charles Hartman. My address is
7 301 East Pine Street, Orlando, Florida.

8 Q. And you previously provided direct testimony
9 in this proceeding?

10 A. Yes, I did.

11 Q. Did you prepare in conjunction with my
12 office a document referred to as rebuttal testimony of
13 Gerald C. Hartman consisting of 43 pages?

14 A. Yes, I did.

15 Q. If I asked you those same questions here
16 today, would your answers be the same?

17 A. Yes, they would.

18 Q. Do you have any corrections to make to that
19 testimony?

20 A. Yes, I do. Four. Those corrections are on
21 page 11, line 11, changing the word, as I testified in
22 my deposition, from "duplication" to "extension." On
23 page 13, lines 24 and 25, put a period --

24 **COMMISSIONER EDGAR:** I'm sorry. Slow down
25 just a tad.

1 **THE WITNESS:** Okay. Sorry.

2 **COMMISSIONER EDGAR:** Okay. You said line --
3 page 11, line 11 duplication to what?

4 **THE WITNESS:** Extension.

5 **COMMISSIONER EDGAR:** Extension. Thank you.

6 **THE WITNESS:** These were covered in my, in my
7 deposition.

8 On page 13, lines 24 and 25, put a period
9 after the word "area," capitalize the A in "as" and
10 insert the words after "well" to be, "as the opportunity
11 for," and delete the word "of" on line 25.

12 On page 14, line 11, after the word
13 "production," insert "not at this property yet."

14 **COMMISSIONER EDGAR:** I'm sorry. I guess I'm
15 just tired. Could you do that one more time?

16 **THE WITNESS:** Surely.

17 **COMMISSIONER EDGAR:** I missed it.

18 **CHAIRMAN ARGENZIANO:** Line 14, the whole
19 thing?

20 **COMMISSIONER EDGAR:** Page 14?

21 **CHAIRMAN ARGENZIANO:** Page 14, line 11. I'm
22 sorry.

23 **THE WITNESS:** Page 14, line 11, after the word
24 "production," insert "not at this property yet."

25 **COMMISSIONER EDGAR:** Okay. Thank you.

1 **THE WITNESS:** My pleasure.

2 **COMMISSIONER SKOP:** Mr. Hartman, I'm sorry.
3 I'm not seeing that on page 14. Perhaps I'm looking at
4 the wrong -- I'm on the rebuttal I think.

5 **THE WITNESS:** "Relating to bio-fuels
6 production, comma."

7 **COMMISSIONER SKOP:** Okay. Sorry.

8 **COMMISSIONER EDGAR:** I didn't see it at first
9 either.

10 **COMMISSIONER SKOP:** Thank you.

11 **THE WITNESS:** Okay. On page 23, line 4, after
12 the word "potentially," delete the comma and the word
13 "and," and that is it.

14 **MR. REHWINKEL:** Madam Chairman, can I ask a
15 question about the correction on the second one, which
16 is on page 13?

17 **CHAIRMAN ARGENZIANO:** Mr. Rehwinkel.

18 **MR. REHWINKEL:** I thought you said strike the
19 word "of" on line 25.

20 **THE WITNESS:** "As well as opportunity for
21 service for future intensified agribusiness and future
22 planned" is how it would read. Page 13, lines 24 and
23 25.

24 **MR. REHWINKEL:** For some reason my page, line
25 25 doesn't have the word "of" on it.

1 **THE WITNESS:** I'm sorry. I think it's the
2 first word of line 25. What's the first word there
3 before the word "service"?

4 **MR. REHWINKEL:** It's "as."

5 **THE WITNESS:** Oh, as. Excuse me.

6 **MR. REHWINKEL:** So strike that word?

7 **THE WITNESS:** Strike the word "as." Sorry.
8 That's it.

9 **MS. BENNETT:** My, I asked -- also on page 14
10 I'm struggling with that sentence also. Could you read
11 the sentence?

12 **CHAIRMAN ARGENZIANO:** After the word is
13 redacted.

14 **THE WITNESS:** "As well as the opportunity for
15 service for future intensified agribusiness."

16 **CHAIRMAN ARGENZIANO:** Did you say page 14?

17 **MS. BENNETT:** 14. The --

18 **THE WITNESS:** Oh, 14. I'm sorry.

19 **MS. BENNETT:** If you'd read the entire
20 sentence the way you intend it to be.

21 **THE WITNESS:** "Evans Properties has been
22 approached regarding opportunities relating to bio-fuels
23 production, not at this property yet, water cleansing,
24 et cetera."

25 In my deposition the water cleansing aspects

1 were discussed for the other two applications. And at
2 this, at the juncture of my deposition that discussion
3 had not been held. The initial discussion relative to
4 water cleansing on the property has been held prior to
5 this hearing with the district here and future
6 discussions would be forthcoming later on.

7 **MS. BENNETT:** Thank you.

8 **CHAIRMAN ARGENZIANO:** Everybody okay?

9 **BY MR. DETERDING:**

10 **Q.** Mr. Hartman, did you cause to be prepared what
11 were marked as GCH-4 and GCH-5 now listed by the staff
12 as Exhibits 37 and 38?

13 **A.** Yes.

14 **Q.** Do you have any changes or corrections to make
15 to those exhibits?

16 **A.** No.

17 **MR. DETERDING:** Commissioners, we talked about
18 the demonstratives the other day, and the concern was
19 raised as to the second one, which I believe is not the
20 one up there, the second one, yes, that it depicted the
21 wells that were deemed contaminated by DEP, and the
22 concern was raised that it was premature because he had
23 not discussed those in his direct. He has, however,
24 discussed them in his rebuttal. And in order for the
25 Commission to be able to see the location of those

1 wells, we were wanting to use this demonstrative. It is
2 not intended to be admitted into evidence, just to be
3 able to point to to the extent necessary.

4 **COMMISSIONER SKOP:** Mr. Deterding, with
5 respect to that demonstrative, I can't see that far over
6 there, but I have a different one that has more of the
7 well locations. I can't see the number of yellow
8 triangles on there, but perhaps it's the same, perhaps
9 it's different.

10 **MR. DETERDING:** I believe it is identical to
11 the sheet you have in front of you.

12 **COMMISSIONER SKOP:** Thank you.

13 **MR. KIRK:** Hernando County would renew its
14 objection as to the depiction of the wells that's on
15 this exhibit. There's been no foundation laid as to the
16 source as to either document from FDEP or testimony from
17 FDEP or the health department as to the exact location
18 of the wells or whether -- and there's nothing in
19 Mr. Hartman's either direct or rebuttal testimony or his
20 deposition that indicates that he independently tested
21 these areas as to the location of potentially
22 contaminated wells.

23 **MR. McATEER:** The City of Brooksville would
24 join in that objection as we did yesterday. And we
25 would note again, as we noted yesterday, that the backup

1 materials that have been discussed from DEP that
2 supposedly illustrate where these sites are and how
3 these sites got to where they are on this proposed
4 demonstrative is not part of the record. So this, this
5 should not be allowed to be used in this proceeding.

6 **COMMISSIONER SKOP:** Mr. Hollimon, any
7 objection?

8 **MR. HOLLIMON:** I agree with those objections.
9 There needs to be a foundation laid for the accuracy of
10 the exhibit. Until that's done, I can't see how that
11 can be used.

12 **COMMISSIONER SKOP:** Staff, to the objection
13 for lack of foundation.

14 **MS. CIBULA:** I think that since everyone at
15 this point is in agreement on this exhibit, then maybe
16 we shouldn't use it.

17 **MR. DETERDING:** Well, may I respond to the
18 objections?

19 **COMMISSIONER SKOP:** Yes. Mr. Deterding,
20 you're recognized.

21 **MR. DETERDING:** The, the -- I can certainly
22 question Mr. Hartman about the depiction of the wells on
23 here, but we're not proposing to put this in as an
24 exhibit. But it is information that he has obtained
25 from DEP, he can testify to that. And, and I'll be glad

1 to lay that foundation and then -- before there's a
2 ruling on this.

3 **COMMISSIONER SKOP:** Staff.

4 **MS. CIBULA:** I just think it's within your
5 discretion whether you want to use the exhibit or not.

6 **COMMISSIONER SKOP:** Commissioner Edgar, do you
7 have any thoughts on this?

8 **COMMISSIONER EDGAR:** No, sir.

9 **COMMISSIONER SKOP:** Okay. Based on the
10 objection, I'm going to deny it for lack of foundation
11 and we'll move on.

12 **MR. DETERDING:** I'm not allowed to lay that
13 foundation, Commissioner?

14 **COMMISSIONER SKOP:** I'd look to staff. I
15 believe the -- to -- before staff answers this, I
16 believe the objection as to lack of foundation focuses
17 on the fact that it's not substantiated either in the
18 direct or the rebuttal testimony. And, staff, can you
19 briefly -- Mr. Deterding, if you have something to add
20 before I go to staff.

21 **MR. DETERDING:** Well, I, I can, I can lay that
22 foundation by questioning Mr. Hartman about where he
23 obtained the information, and I believe it's the type of
24 information that an expert such as Mr. Hartman would
25 rely upon.

1 **COMMISSIONER SKOP:** Staff, based on staff's
2 recommendation, I'm willing to allow it subject to
3 contemporaneous objection when they lay that foundation.
4 I mean, if we want to move forward incrementally and see
5 where this goes, I mean, that's probably a better course
6 of action. But I'll look to legal staff.

7 **MR. KIRK:** I mean, is it appropriate to object
8 to --

9 **COMMISSIONER SKOP:** Hold on, Mr. Kirk.

10 **MS. CIBULA:** I think that would be a good
11 approach.

12 **COMMISSIONER SKOP:** Okay. Here's what we're
13 going to do. We're going to -- based on the objection,
14 the objections will be overruled. We're going to allow
15 it to see if Mr. Deterding can lay a foundation, subject
16 to objection, and we'll make a ruling at the appropriate
17 time.

18 **BY MR. DETERDING:**

19 **Q.** Mr. Hartman, can you describe for us where you
20 got the information that was depicted on that map about
21 the location of the contaminated wells and what they
22 depict?

23 **A.** As I did provide it in rebuttal testimony, did
24 state that there were contaminated arsenic wells in the
25 area. I just did not provide the exhibit which is shown

1 here for clarity to where the locations were, just, just
2 that they were in the area. And the information we have
3 is from the Florida Department of Environmental
4 Protection, it's the contaminated wells. We have a
5 complete printout of the 312 contaminated wells with
6 their X and Y coordinates down to the GPS system which
7 went into our GPS system which is shown right here,
8 these ten pages, which then plotted it on this map.

9 Then we ran our GPS analysis to, with the,
10 with the service areas to render the distance of the
11 various contaminated wells from the borders of the
12 certificated area, and we have that complete analysis.

13 Q. And was this prepared under your direction and
14 control?

15 A. Yes, it was. I'm a professional engineer, and
16 well contamination falls within my water and wastewater
17 professional work.

18 MR. KIRK: Are we allowed to cross-examine the
19 witness as to this?

20 COMMISSIONER SKOP: Yes. You may proceed.

21 **CROSS EXAMINATION**

22 **BY MR. KIRK:**

23 Q. Mr. Hartman, did you bring the source
24 documents with you that you obtained from DEP?

25 COMMISSIONER SKOP: Mr. Deterding, just to be

1 sure, assuming that, subject to challenge, that
2 foundation is laid, it's your intent not to offer this
3 exhibit, this demonstrative exhibit into evidence; is
4 that correct?

5 **MR. DETERDING:** That is correct, Commissioner.
6 We're -- it's just there to illustrate for the
7 edification of the Commission to see the location as it
8 relates to, to the proposed service territory.

9 **COMMISSIONER SKOP:** Thank you.

10 **MR. DETERDING:** And, Commissioner, he did talk
11 about the contaminated wells in his rebuttal testimony
12 and we're just intending for him to point to it during
13 his summary. If no questions are raised about it, then
14 that will be the end of it.

15 **COMMISSIONER SKOP:** We'll give the counties a
16 few minutes to look at the, the supporting
17 documentation.

18 **MR. KIRK:** Provided this document is not
19 admitted into evidence, Hernando County would agree to
20 it being used solely for demonstrative purposes at this
21 hearing.

22 **MR. McATEER:** The City of Brooksville would
23 still renew its objection and perhaps place a standing
24 objection on the record to its being used, because
25 although the exhibit would not be in evidence, it's

1 being referenced, the court reporter is typing as we
2 speak, and it's going to be part of the record in a, in
3 a usable, formative way, even if not in an expressly
4 formal way. And I don't think that they've offered --
5 there's no one here from DEP to authenticate this data,
6 there's no witness from DEP. These are triangles that
7 they put on a map from a list they purportedly got from
8 DEP but they can't authenticate how they got it, what
9 the chain of custody was, where it came from, who mailed
10 it to them, whatever. And the proper predicate has not
11 been laid for this thing to be used in this proceeding
12 and for it to be discussed in a recorded manner, and I
13 just renew my objection. I'll place a standing
14 objection on the record to its utilization as a
15 demonstrative exhibit.

16 **COMMISSIONER SKOP:** Mr. Hollimon.

17 **MR. WHARTON:** May I, Commissioner Skop?

18 **COMMISSIONER SKOP:** Hold on, Mr. Wharton.

19 Mr. Hollimon.

20 **MR. HOLLIMON:** Pasco County doesn't object to
21 the use of this as a demonstrative.

22 **COMMISSIONER SKOP:** All right. Thank you.

23 Mr. Wharton, you're recognized.

24 **MR. WHARTON:** We just had a witness refer to a
25 document that he looked at on his telephone under the

1 exact same evidentiary doctrine. It's the kind of
2 information that experts normally rely upon in the
3 formation of their opinions.

4 In response to Mr., to Commissioner Skop's
5 questions, I'm sorry, the last witness held up a map.
6 It's -- whether or not we move this in at the end, right
7 now it's just a demonstrative aid to Mr. Hartman's
8 testimony, and we would ask that he be allowed to use it
9 in his summary, which is really the whole point of all
10 this.

11 **COMMISSIONER SKOP:** Staff, to the objection of
12 the City of Brooksville.

13 **MS. CIBULA:** I think since it's just being
14 used for demonstrative purposes at this point that it
15 should be allowed.

16 **COMMISSIONER SKOP:** Having the proper
17 foundation laid, the exhibit will be used for
18 demonstrative for the testimony of, rebuttal testimony
19 of Mr. Hartman and will not be entered into evidence.

20 **MR. DETERDING:** Thank you.

21 **COMMISSIONER SKOP:** You may proceed.

22 **MR. DETERDING:** Mr. Hartman -- well,
23 Commissioners, I'm not sure how you want to handle this.
24 I was going to get him to provide a summary of his
25 testimony, but we also have the issue of his providing a

1 response to the testimony of Mr. Radacky, and I would
2 assume we'd do that first since that would come before
3 the summary of the rebuttal, if that suits the
4 Commission.

5 **MR. KIRK:** No objection.

6 **CHAIRMAN ARGENZIANO:** I don't hear any
7 objections. That's the way we'll go. Thank you.

8 **BY MR. DETERDING:**

9 Q. Mr. Hartman, did you hear the testimony of
10 Mr. Radacky -- I don't know if I'm pronouncing that --
11 Mr. Radacky yesterday?

12 A. Yes, I did. He testified twice before the
13 Commission.

14 Q. Did you hear Mr. Radacky's concerns about
15 water banking and mining of water and transfer of bulk
16 water to urban areas?

17 A. Yes, I did.

18 Q. Can you please respond to the points raised by
19 Mr. Radacky?

20 A. Water banking has, is a term, sort of a slang
21 term, if you will, that has been used within the water
22 management districts for entities that obtain
23 consumptive use capacity greater than the reasonable
24 beneficial use documented that they would actually
25 utilize. And water banking means there's an increment

1 greater than your reasonable beneficial use that you
2 have banked away that you could then sell to someone
3 else as an overallocation under the reasonable
4 beneficial use allocations in the State of Florida. And
5 that's how the term in my practice of the past 30 years
6 with the water management districts has been used. That
7 practice is regulated by the districts. There's a
8 thorough analysis relative to demand, a thorough
9 analysis relative to reasonable uses of the water and
10 whether they're efficient or effective. By that review
11 process, going through the complete water use permit or
12 consumptive use permit process, there are reasonable
13 assurances provided by the various districts, in this
14 case the Southwest Florida Water Management District,
15 that water banking would not occur. The agency that
16 provides that assurance is the district. That is water
17 banking.

18 The next issue is water mining. Water mining
19 is, was generally described by the district, district's
20 witness, and it is taking more water than nature allows
21 in the recharge to that system and thereby
22 depressurizing the potentiometric surface and thereby
23 creating drawdowns that go out and radiate from the
24 general area of the, of the withdrawal. The mining
25 means that it continues to occur and it's a negative

1 impact on the natural resources.

2 Historically, a classic example in this
3 district and is no longer occurring is in the phosphate
4 mining region to the south. We used to come in to the
5 district in the '70s and the '80s -- that dates me back
6 when your dad was, was around -- and we used to talk
7 about the big red hole and how deep, how much deeper is
8 it getting and how we called that great
9 depressurization. Water mining was in fact the
10 phosphate mining companies were, were doing it, and thus
11 the genesis of the term "water mining."

12 Again, the water management districts do not
13 allow such adverse impacts. There used to be a rule in
14 this district called the water crop theory or method,
15 and that's that you couldn't withdraw more than rainfall
16 on your property basically on a water harvesting
17 situation. Through litigation it was found that it was
18 not a fair limitation. So then they've gone into
19 three-phase leaky aquifer simulation models and very
20 sophisticated water use models that the water management
21 district has. And without that big history, basically
22 the water management district does not allow such
23 withdrawals that would occur from water mining to occur
24 anymore due to no adverse impacts to existing legal
25 users, and that's a criterion relative to permitting.

1 So reasonable assurance is provided again, and also
2 again by the water management district, that water
3 mining would not occur. And it's a regulatory process.

4 Additionally, water mining creates induced
5 impacts. And he commented about lake levels dropping,
6 trees fall, you know, trees that were adversely
7 impacted, et cetera. Well, before -- that's prior to
8 the regulation that has been put into place. That
9 occurred back when the 5531 rule was the effective rule
10 at this district. That's, you know, the five feet
11 potentiometric surface and the three foot dewatering and
12 the one foot water table reduction, which were the rules
13 at this district at that time when the Crossbar Ranch
14 Wellfield and the Cypress Creek Wellfield were
15 developed. I have personal knowledge of those and
16 probably not well liked in this forum right now.

17 When I came to Pasco County, I was not liked
18 at all. I worked for Camp, Dresser, McKee from 1976
19 through 1983. I'm a professional engineer. I was a
20 project manager on the needs and sources study for the
21 Southwest Florida Water Management District, and Bruce
22 Kennedy, believe it or not, was my project manager back
23 then. And --

24 **CHAIRMAN ARGENZIANO:** The 1982 needs and
25 sources? Was it '82?

1 **THE WITNESS:** I did the 1975 and then --

2 **CHAIRMAN ARGENZIANO:** And then eighty --

3 **THE WITNESS:** -- there was another one five
4 years later. I didn't do the yellow book, which is the
5 '82/'83, and then the blue later, after that. Those
6 two -- I did the first two. It's called the big black
7 book and then the three-volume gray book. And the three
8 volumes are, you know, very thick. And I was the author
9 of both of those as a project engineer. Following that
10 I did --

11 **CHAIRMAN ARGENZIANO:** So it's your fault.

12 (Laughter.)

13 **THE WITNESS:** I signed and sealed -- well,
14 Geraghty Miller were our hydrogeologists, I hate to
15 throw them under the bus here, but we were the engineers
16 designing it.

17 The -- but associated with that at that time
18 we had -- there was a reference to the friendly neighbor
19 program. That's a thing that we had discussed with West
20 Coast Regional Water Supply Authority at the time,
21 Colonel Richard J. Essie (phonetic) was the General
22 Manager at the time. And we said we're being, we're
23 going to be sued by these people for pulling down their
24 wells, there's no doubt about it, and there's a couple
25 of things we can do. We can be proactive or reactive.

1 And I was a project engineer for it, so I think I know a
2 little bit about it. I said, We better be proactive.
3 Let's go out there and fix at no cost to those people
4 and pay the differential energy cost for those
5 individual wells to deepen their wells and to improve
6 their water supply, because that's a lot cheaper than
7 being sued. The cost of homes and making a home not
8 usable is much greater than the, than the cost per,
9 little bit of cost of fixing a water supply.

10 **CHAIRMAN ARGENZIANO:** Can I ask you for a
11 moment, what year was that or around what time, what
12 time frame?

13 **THE WITNESS:** From '78 -- well, actually the
14 Good Well Program continued through the early '80s.

15 **CHAIRMAN ARGENZIANO:** '80s. Okay.

16 **THE WITNESS:** We continued to do it, and
17 unfortunately it was done based upon an impact, a
18 response to impact.

19 **CHAIRMAN ARGENZIANO:** Well, was that, was
20 that, and I don't know, it may have been the later '80s
21 when the, when SWFWMD had indicated -- I think first, I
22 think it was Pete Hubble who was the director at the
23 time, had indicated that I guess the cone of influence
24 from pumping from Pasco had now encroached into
25 Hernando. Was that --

1 **THE WITNESS:** There's no doubt about it. On
2 the Crossbar Ranch Wellfield, even our models when we
3 did it, when we originally permitted it, the drawdowns
4 encroached because the Crossbar Ranch is very close to
5 the, to the Hernando County line.

6 **CHAIRMAN ARGENZIANO:** Right. Crossbar and
7 Cypress contributing?

8 **THE WITNESS:** Both. But the main contributor
9 to the Hernando County drawdowns was Crossbar Ranch
10 Wellfield, and the major pipeline that was put up there
11 was the 54-inch pipeline.

12 **CHAIRMAN ARGENZIANO:** Just one other question
13 to that, and I don't know if they're still doing it. I
14 doubt they are now. Was it Crossbar where they actually
15 were doing surface recharge, kind of an artificial
16 recharge?

17 **THE WITNESS:** Well, we -- yes. We took
18 secondary aquifer water and surficial lens water and
19 tried to rehydrate the wetlands systems, and we had a
20 very difficult time to match the water chemistry of
21 rainfall.

22 **CHAIRMAN ARGENZIANO:** Right.

23 **THE WITNESS:** Even surficial water and
24 secondary actual water have different chemical
25 characteristics, and there still was a very minor

1 environmental impact, even though the actual amount of
2 water was provided. So, yes, we went through all of
3 that.

4 **CHAIRMAN ARGENZIANO:** Let me ask you just one
5 other question. Pertaining to the water management
6 districts right now, and I probably should have asked it
7 to Mr. Williams earlier today, to your knowledge, do you
8 know, did the Legislature change the policy for CUPs to
9 be permitted now just through the, I guess the board or
10 one individual rather than the staff?

11 **THE WITNESS:** It used to come to the board.
12 And the Legislature made the Executive Director very
13 powerful by allowing the Executive Director, if he so
14 desires, to grant CUPs with water use permits.

15 **CHAIRMAN ARGENZIANO:** That's what I meant.
16 Not the board, the Executive Director. Exactly.

17 **THE WITNESS:** Yes. And that, that has
18 occurred. In fact, Michael Minton was on the board of
19 the South Florida Water Management District over there
20 at one time. Sorry.

21 **CHAIRMAN ARGENZIANO:** So it could be the
22 Executive Director himself?

23 **THE WITNESS:** The Executive Director was given
24 a lot more authority, if he so chooses to keep that
25 authority. He can refer to the board, which was the

1 historical process.

2 **CHAIRMAN ARGENZIANO:** Thank you.

3 **THE WITNESS:** So relative to the, those
4 impacts, it all comes back to who was the entity? The
5 entity was West Coast Regional Water Supply Authority or
6 Tampa Bay Water. It was not an investor-owned utility.
7 It's categorized here that massive water withdrawals by
8 investor-owned utilities caused severe environmental
9 damage. Well, there's no singular massive
10 investor-owned utility in the area like that or even
11 close to that. The water supply, total water supply
12 capacity of Tampa Bay Water is far in excess of any
13 investor-owned utility. So it's a comparison that is
14 not weighted properly.

15 Then going on to the next issue, I do live in
16 the Orlando area and I thought it was sort of humorous
17 that we were going to be getting water from Hernando or
18 Pasco Counties because that's not in any plan for the
19 Orlando, Central Florida area. It's not --

20 **CHAIRMAN ARGENZIANO:** Can I stop you there for
21 a minute? Is it in the a for the Marion County area?

22 **THE WITNESS:** Marion County is separate.
23 They, that's a -- there's a, there's a --

24 **CHAIRMAN ARGENZIANO:** St. Johns, I understand.
25 But I knew there was a, I thought there was a plan

1 because Orlando was looking for water.

2 **THE WITNESS:** Oh, not -- it was blocked to go
3 to Marion County.

4 **CHAIRMAN ARGENZIANO:** For now.

5 **THE WITNESS:** For now. Yeah.

6 **CHAIRMAN ARGENZIANO:** But they're still
7 looking for water?

8 **THE WITNESS:** Oh, yes. Their main alternative
9 water supply project is, is Taylor Creek Reservoir. And
10 the Taylor Creek Reservoir system is on ECFS, a
11 regulated utility by this Commission. The reservoir is
12 8,000 acres. It has a safe yield of about 27 million
13 gallons per day.

14 **CHAIRMAN ARGENZIANO:** I'm sorry. Is that
15 established by some type of minimum flows and levels?

16 **THE WITNESS:** It is established by the Army
17 Corps of Engineers operational plan, and the minimum --
18 there's really not a minimum flow or level on that.

19 **CHAIRMAN ARGENZIANO:** I know. But is that --
20 when you say the Army Corps, and I didn't mean to cut
21 you off, I'm sorry, I apologize, it's just while it's
22 coming out and I'm thinking about it, is that -- the
23 Army Corps' establishment of the number that you
24 suggest, is that due to structures?

25 **THE WITNESS:** There's an operational plan and

1 it is due to the dam structures. In the operational
2 plan when they found that the flooding conditions and
3 agricultural use conditions did not warrant as high a
4 level, they reduced it from 46 feet down to 43 feet.
5 But it probably will go back. Part of the plan is to
6 take it back up to the 46 feet. But that is the
7 original preliminary engineering report of the Army
8 Corps of Engineers on that facility. And then the L73
9 canal connects it to provide an 83 MGD total capacity
10 system.

11 There's so much -- they've spent over
12 \$11 million in the development of that source. I, I
13 doubt they will abandon that and I doubt that they will
14 start a water war between the west coast of Florida and
15 the central, central part of the state over that issue
16 when they do have water supply potential to take them
17 out for the next 60 to 70 years from the identified
18 sources that I am personally knowledgeable of and serve
19 several of the entities associated with it as a
20 professional engineer and water resource person. So the
21 interdistrict transfer is a fear.

22 I, in my earlier life, challenged an
23 interdistrict transfer by the South Brevard Water
24 Authority and it was created by the Legislature in their
25 infinite wisdom. The Legislature dissolved it

1 thereafter. The entities were -- it is a highly
2 political situation, the Governor and Cabinet get
3 involved.

4 (Laughter.)

5 Can we say that the Legislature debated the
6 issue a few times? And there are so many issues when
7 you talk about interdistrict transfers. When you take
8 from one district to benefit another district and
9 deplete one district, in my professional experience in
10 the State of Florida serving water utilities for over 34
11 years, if my history is, is sound, I would not expect
12 that -- well, I still practice. So I don't think it's a
13 fear that this Commission should worry about in my
14 professional opinion.

15 **CHAIRMAN ARGENZIANO:** To that point, but what
16 gives you that confidence? Because in my recollection
17 there's a constant move forward to do that. Even though
18 to me it doesn't make sense anymore cost wise, but it
19 seems to me that you have some knowledge that maybe I'm
20 not privy to because it seems that every, every few
21 years either the Council of 100 or somebody is trying to
22 move forward with that interdistrict type transfer.

23 **THE WITNESS:** Not -- in the words of a
24 historical governor that went around talking about the
25 offshore springs, Governor Kirk.

1 **CHAIRMAN ARGENZIANO:** Kirk, uh-huh, from
2 Marion County.

3 **THE WITNESS:** Yeah.

4 **MR. KIRK:** No relation.

5 (Laughter.)

6 **CHAIRMAN ARGENZIANO:** I'm very aware of that,
7 yeah.

8 **THE WITNESS:** And he, he went around and he
9 actually came to my offices and discussed, if you will,
10 taking diversion facilities from the offshore springs of
11 all the fresh water that's being discharged to the
12 saltwater --

13 **CHAIRMAN ARGENZIANO:** Because at the time he
14 thought it was a wasted water.

15 **THE WITNESS:** As a wasted water.

16 **CHAIRMAN ARGENZIANO:** And didn't understand
17 the estuary needed it also, I guess.

18 **THE WITNESS:** The people in the estuaries
19 don't believe so. So there's a, there's a dynamic that
20 goes on. So, yes, I've practiced in the area for a
21 while. Our firm, you know, has about 700 people, so
22 we're a major firm. Not the biggest in the state by
23 far, but there's many other firms that have similar
24 capabilities. And I think that the, while the concept
25 theoretically has potential, when you get down to

1 implementation, the reality of the bars for
2 implementation become quite numerous. And until those
3 bars for implementation are removed, it's difficult.

4 Also, such a big regional -- and this is
5 what's shown in the big black book, if you look at my
6 transformation curves there and cost-effectiveness
7 analysis. And as you know, I helped provide the cost,
8 cost-effective analysis for the Commission in 1996,
9 cost-effective water and wastewater sizing of utilities,
10 et cetera. That, that -- '95/'96. The first upfront
11 cost with low utilization, used and useful, which we all
12 know about, creates such an economic bar to starting up
13 a, a four or 500 million gallon per day, you know,
14 120-inch or 10-foot diameter steel pipeline system which
15 was proposed, that until you get the customer base, no
16 one could afford to do it.

17 So there's so many bars to that. It's good
18 conversation. Everyone is entitled to their opinion.
19 Dick's a great guy, I like him, he's a good man. I
20 don't believe that -- in my professional opinion, I just
21 take umbrage relative to those fears, and I don't think
22 that's not something that this Commission would expect
23 from this property. This property is only 4,000 acres
24 and it didn't even fall out -- and I can, I can say
25 this, I did the regional wellfield site selection for

1 Tampa Bay Water -- not Tampa Bay Water, at the time it
2 was West Coast Regional Water Supply Authority -- that
3 Bruce Kennedy reviewed. And this site didn't even come
4 out anywhere close to being effective for a regional
5 water supply. So there are technical documents, there's
6 historical hydrogeological analyses, in-depth computer
7 modeling, et cetera, that rebut all that as a matter of
8 public record available. So I just want to bring that
9 out, and I have personal knowledge relative to a lot of
10 it.

11 Now that's relative to Tampa Bay Water's
12 impact. There was another portion that he talked about
13 was, was the investor-owned utilities creating saltwater
14 intrusion along the coastal areas of Pasco County and
15 that only investor-owned utilities did that. I, of
16 course, served Port Richey. Port Richey's wells went
17 saline, Port Richey, I mean, and New Port Richey. We
18 moved our wells further east. Designed that first
19 Calgon softening system, if you will, for the City of
20 Port Richey. So, I mean, there's a lot of record here
21 that's not solely investor-owned utilities. You can
22 tell horror stories about public utilities, which I
23 would like to refrain from, and you could tell horror
24 stories about investor-owned utilities, which sometimes
25 that occurs. I have not had that experience with large,

1 competent landowners that are stewards of their
2 properties. Understand, this is not a person who is
3 optioning property, doesn't own it, come up with a
4 development plan that gets developed, you know, with
5 little to no investment, creates a utility, sells out
6 and leaves. This is a property owner that has owned
7 this property for 50 years free and clear, and, and --
8 for a vast majority of the property, some it might be
9 later, and Ron is a better person at that -- but my
10 large landowner property clients, which I have several,
11 Plum Creek Timber being the biggest, Deseret or the
12 Mormon Church being the second biggest, and very large
13 property owners. They consider their land and are good
14 stewards of their land. The Hartman families
15 historically are dairy and cattle families in
16 Pennsylvania. We believe in stewardship of the land.
17 So why would you pollute the land if you're the
18 landowner? It makes no sense. The land is so much more
19 valuable than any possible utility. I'm sorry.

20 **CHAIRMAN ARGENZIANO:** I'm sorry. You were,
21 you were mentioning that it's not just a private utility
22 that would cause or does cause saltwater intrusion, but
23 wouldn't you then say that any withdrawals in that area
24 along the coastline are contributing, whether it's
25 private or public or a personal individual well?

1 **THE WITNESS:** From all kind of uses, and
2 dewatering of the surficial to reduce the recharge. The
3 drainage systems that have been put in to dewater areas
4 that normally weren't developable. I mean, a lot of
5 that stuff creates that situation. And, and those are
6 approvals, development approvals that are provided by
7 the legislative body.

8 **CHAIRMAN ARGENZIANO:** Well, I guess the point
9 I was getting to was that it didn't matter really -- I
10 guess you were trying to make the distinguishing point
11 that it's not private, just caused by a private utility.

12 **THE WITNESS:** That's correct.

13 **CHAIRMAN ARGENZIANO:** But I'm saying but there
14 is still that underlying problem that it is being
15 caused. I think in '72 there was a study, I think it
16 was Rider and Levy which you may be familiar with, which
17 indicated that even in Hernando and Citrus County, and
18 this is back in '72, I think, that they said that the
19 encroaching saline line or lens was due to development.
20 So it's kind of like anybody, they didn't distinguish
21 between private. But it was still a problem back then,
22 so I would imagine we're still facing a problem of
23 saline intrusion.

24 **THE WITNESS:** Chairman, to be responsive to
25 your question, absolutely. The largest, and I've

1 testified many times, in fact, provided to all the water
2 management districts executive directors as well as to
3 the Florida Legislature the map that we created at
4 Hartman & Associates that showed the transitional water
5 situations throughout the State of Florida. And what I
6 mean by that is not transitional from -- it's from fresh
7 to brackish to saline in-depth. And the greatest
8 pollution -- we talk about arsenic, we talk about a
9 bunch of others things, and specifically, yes, they're
10 very serious and health problems. But the greatest
11 level of pollution of our fresh water is saltwater
12 intrusion in the State of Florida. There's no doubt
13 about it. Maybe, maybe oil might come into it. But
14 historically I should say.

15 (Laughter.)

16 Okay. So that's, that's on those. And the
17 other issue relative to Dick Radacky, you asked to rebut
18 that all privates were bad and there's no, no, you know,
19 everything you said was bad. I think that's one-sided.
20 Investor-owned utilities have in the State of Florida
21 taken the risk that public government has not taken due
22 to concern about cost-effectiveness, concern about
23 adding additional costs to their existing customer base,
24 not wishing to extend and having risk. The people that
25 take risk in the State of Florida have historically been

1 the investor-owned utilities relative to extensions. So
2 that's -- and in my career, since I've been involved in
3 over 450 acquisitions of investor-owned utilities by
4 public government, later on, after the risk is taken,
5 the utility is built up, if it's something that makes
6 economic sense, as Bruce Kennedy stated, Pasco County
7 has acquired it. And, and the system pays for itself
8 based upon its mature customer base.

9 Now getting there, different people, I
10 can't -- there are exceptions to the rule. There's no
11 doubt about it. There's bad performers, there's cities
12 that are bad performers too and there's entities that
13 are bad performers, there are homeowner associations
14 that are bad performers. So I will not get into the
15 bashing aspects relative to that.

16 **BY MR. DETERDING:**

17 Q. Mr. Hartman, as far as the water banking,
18 mining and bulk water sales to urban areas, has any of
19 that been proposed by this applicant?

20 A. Absolutely not. In fact, the bulk water sales
21 was something that I brought up in our meetings to, to
22 the group. And, and we were thinking that if we did
23 develop, a system did get certificated and if customers
24 needed service adjacent to us, that a mechanism could be
25 provided. And it's, you know, this is one thing after a

1 little period of time. The same thing that happened at
2 ECFS. Osceola County came at our border, had a fire
3 station, they needed to have service, we provided
4 service.

5 Here we have an arsenic well that's two feet
6 from our property line, polluted wells. We have 16
7 public health polluted wells, by DEP, within a half
8 mile. Small extensions from this utility that we could
9 provide the water and they could tap in at the, at the
10 service area boundary, put a meter, whatever, minimal
11 cost, get there, versus a plan that may cost \$15 million
12 for 200 wells.

13 **CHAIRMAN ARGENZIANO:** Question to that point.
14 If it's that close to the, the tainted well, is there
15 any horizontal movement?

16 **THE WITNESS:** We're concerned about that.
17 We're investigating the plumes relative to that. We do
18 not know of any arsenic in our eight wells. And I
19 testified when asked by the Pasco County attorney,
20 special counsel, excuse me, relative to this matter, you
21 know, are there any problems with the wells? I stated
22 no from the standpoint of public health and from the
23 well actually being able to operate. Do the wells have
24 to be refurbished to be a higher grade well? Yes, of
25 course they do, and that investment is plugged into our,

1 into our study, our cost study that's been provided to
2 your staff. But, no, we have not found pollution in our
3 wells.

4 **CHAIRMAN ARGENZIANO:** Just one more. Do you
5 have any monitor wells to, in the vicinity to --

6 **THE WITNESS:** Unfortunately we haven't spent
7 the money yet to look at the monitor wells. We wanted
8 to know what DEP had done and what direction the plumes
9 were going, and we, and we asked the question here at
10 the water management district if they had done any
11 studies relative to pollution plumes. Other --

12 **CHAIRMAN ARGENZIANO:** What is the directional
13 flow of the water at that point?

14 **THE WITNESS:** It's, it typically goes about
15 like that. I'm indicating slightly, slightly north and
16 west, but it's primarily west.

17 **CHAIRMAN ARGENZIANO:** Towards the ridge?

18 **THE WITNESS:** There's a, there's a ridge,
19 there's the Pasco high, and then there's a high over
20 here, and the two sort of push against each other. But
21 because this is closer to the Pasco high, it's going
22 sort of like this.

23 **CHAIRMAN ARGENZIANO:** Okay. It's going --
24 okay.

25 **MR. McATEER:** I can't quite see, Mr. Hartman.

1 Would you -- is that in the direction of the City of
2 Brooksville, the flow, the flow direction that you're
3 speaking of?

4 **THE WITNESS:** Yes, it is. And as counsel
5 stated before, we, I didn't object -- or I guess I don't
6 object.

7 **CHAIRMAN ARGENZIANO:** That's why you didn't.
8 (Laughter.)

9 **THE WITNESS:** You know, but, but as he stated
10 before, the groundwater flow is, is in this direction.
11 That's a factual aspect.

12 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

13 **COMMISSIONER SKOP:** Thank you, Madam Chair.
14 To that point, Mr. Hartman, I guess in your
15 prefiled testimony you had some exhibits showing the
16 well locations on the various parcels.

17 **THE WITNESS:** Yes.

18 **COMMISSIONER SKOP:** And I'd like to draw your
19 attention to the green parcel that's identified -- I
20 don't have the ID map, ID 2 on Figure 3A.

21 **THE WITNESS:** Okay. This green parcel right
22 here?

23 **COMMISSIONER SKOP:** No. It's the one -- yes.
24 Yes, sir.

25 **THE WITNESS:** Okay.

1 **COMMISSIONER SKOP:** Okay. So let that reflect
2 it's the, you pointed to, the witness pointed to the
3 figure marked on Figure 3A as ID 2.

4 **THE WITNESS:** I have it.

5 **COMMISSIONER SKOP:** Okay. Looking at the --
6 in your prefiled testimony, I'm trying to think what --
7 I think it's Appendix 2, there's a figure in there
8 titled Figure D-2B and it shows the proposed, the
9 existing well service on that parcel.

10 **THE WITNESS:** It's in Appendix 2, you say?

11 **COMMISSIONER SKOP:** I believe so. I could be
12 wrong on that. But at least the way my book is tabbed,
13 it shows as Appendix 2 to your prefiled testimony.

14 **THE WITNESS:** Which --

15 **COMMISSIONER SKOP:** It must be, it must be
16 Appendix 3.

17 **THE WITNESS:** It's Appendix 3.

18 **COMMISSIONER SKOP:** Okay. All right. It
19 looks like I'm missing a sheet in this voluminous volume
20 of documents I have in front of me.

21 **THE WITNESS:** Yes. It's D-2B.

22 **COMMISSIONER SKOP:** Yes, sir. Do you see
23 that?

24 **THE WITNESS:** Yes, I do.

25 **COMMISSIONER SKOP:** Okay. I think you

1 previously stated in looking at what's been provided as
2 a demonstrative showing the location of existing wells
3 containing arsenic that the arsenic well is, I think you
4 said, within a couple hundred feet or 200 feet of your
5 property line for that parcel; is that correct?

6 **THE WITNESS:** Yes.

7 **COMMISSIONER SKOP:** Okay. Would you agree
8 that using the legend on Figure 2-DB that the distance
9 from the arsenic, arsenic contaminated well to the
10 existing well is approximately 1,000 feet or less than
11 1,000 feet?

12 **THE WITNESS:** It would be around, I get about
13 1,500 feet with my fingers.

14 **COMMISSIONER SKOP:** Okay. Based on the
15 triangle, if you're looking at the triangle, it comes
16 around the corner, so --

17 **THE WITNESS:** Yeah, it does. It's about, I
18 get about 1,500 feet, pretty close to 1,000 to 1,500.
19 I'll accept that.

20 **COMMISSIONER SKOP:** Okay. And then with
21 respect to the other well on the property that's located
22 on Figure 2-DB, would you agree that that's
23 approximately about 1,500 feet according to the legend
24 on the graph?

25 **THE WITNESS:** It would be closer to -- it's

1 right here, which is over here. And you're talking
2 about more like 2,500 feet.

3 **COMMISSIONER SKOP:** Okay. With respect to the
4 parcel that's marked as ID Parcel 1 on Figure 3A, do you
5 see that?

6 **THE WITNESS:** Excuse me?

7 **COMMISSIONER SKOP:** On Figure 3A.

8 **THE WITNESS:** Right.

9 **COMMISSIONER SKOP:** ID 1, Parcel ID 1.

10 **THE WITNESS:** Yes.

11 **COMMISSIONER SKOP:** Okay. And which exhibit
12 in the Appendix 3 shows that parcel? I believe it's
13 Figure 1-DB, would you agree?

14 **THE WITNESS:** That's correct.

15 **COMMISSIONER SKOP:** Okay. Would you agree,
16 subject to check, based on relation to the demonstrative
17 exhibit that shows the location of the arsenic wells and
18 using the legend on that map, that the location of the
19 arsenic well is probably within 1,000 feet of the
20 existing well on that parcel?

21 **THE WITNESS:** I would say that that's,
22 that's -- on the figure it's 420, 840 -- around
23 1,500 feet.

24 **COMMISSIONER SKOP:** Okay. All right. Thank
25 you. What is this -- I guess I'm trying to better

1 understand the argument, if the issue is trying to avoid
2 arsenic in wells and given the close proximity of
3 existing wells on the Evans property to wells that,
4 according to the demonstrative, are known to be
5 contaminated with arsenic at some levels that are above
6 the mean threshold, what is the argument being advanced
7 that the granting of the original certificate in this
8 case would avoid arsenic contamination?

9 **THE WITNESS:** Well, first, our wells, the
10 combined consumptive use permits of all the permits
11 together is about 841,000 gallons per day. And our
12 wells are deeper and have a, are fairly large in size,
13 in diameter, and because of that the hydrologic impact
14 is, is not great. And, and what happens is you can take
15 a, a smaller, shallower well offline or a, or they can
16 use it for irrigation water instead of drinking water,
17 potable uses that have the public health problem or for
18 other uses versus, you know -- let's talk about maybe
19 that area right there. You could take that well offline
20 from potable use and let it be used for nonpotable uses
21 and have it served off this system with a service line
22 that maybe Hernando County would then extend just a
23 little, a line segment here to take care of that.

24 By doing so, first, our wells don't have, we
25 don't have any, at this juncture we have no indication

1 that we do have any arsenic in our wells. But,
2 secondarily, if we did get polluted with arsenic, you
3 have a central system that you can provide that has an
4 operator that you could provide treatment. And it's far
5 better to have a central system for arsenic removal than
6 to have small little systems.

7 **COMMISSIONER SKOP:** Okay.

8 **THE WITNESS:** You have a licensed operator, et
9 cetera, and that's our whole argument. It would be
10 difficult and problematic because these properties are
11 clouded by the well pollution problem. Just look at the
12 map. I mean, you can, you can see, as you've brought
13 up, Commissioner. And so by not having a central system
14 where you could provide for treatment if it does get
15 polluted in the future, it doesn't make sense. So
16 there's a need for a central system to provide that
17 treatment.

18 **COMMISSIONER SKOP:** With respect to the
19 demonstrative exhibit, I don't think there's been any
20 testimony or any indication on those exhibits to
21 indicate whether those wells are deeper than the
22 existing Evans wells; is that correct?

23 **THE WITNESS:** And we have, we have the, the
24 information on well depths, but even more importantly is
25 the geologic cross section of the wells and then to look

1 at the flow through porous media between the two. And
2 arsenic will, will migrate when you have solution, et
3 cetera, and typically like a surface water or something
4 like that will allow for solution capability in a
5 limestone matrix. But if we're not getting very much
6 surface water in this area, so even though it's a carse
7 (phonetic) geology area, the migration is not great and
8 it's held in the matrix of the aquifer many times or can
9 be combined chemically in the aquifer system. So we
10 have to do those types of analyses, yet they're fairly
11 expensive. If we're not certificated, why do them, you
12 know? And that's where we're at.

13 **COMMISSIONER SKOP:** Okay. In your
14 professional opinion, given the close proximity of some
15 of the existing wells on the Evans property to wells
16 that are known to be contaminated pursuant to the DEP
17 study, can you say with any certainty that the Evans
18 property wells will never become contaminated with
19 arsenic?

20 **THE WITNESS:** I cannot say that it will never
21 occur because that comes with -- the scientific aspect
22 of an engineer comes out. Never is an absolute term. I
23 cannot say that. But if it does occur, a central water
24 system provides for treatment. And where you have a
25 planner talking about only well and septic, it makes no

1 sense.

2 **COMMISSIONER SKOP:** Thank you, Madam Chair.

3 **CHAIRMAN ARGENZIANO:** Just one other question
4 and then we're at that hour. Just to your point that
5 the wells, at least at that particular location that
6 Commissioner Skop was asking about, are larger, I guess,
7 and have larger capacity, how do you get efficiency if
8 you don't have a large area to serve with a larger well?

9 **THE WITNESS:** Well, in fact those wells, why
10 they were drilled to the size that they are was for the
11 peaking aspects normally required in agricultural use.

12 **CHAIRMAN ARGENZIANO:** Right.

13 **THE WITNESS:** And we don't have the same
14 peaking aspects in the conversion of use. So,
15 therefore, the stress on the -- it's like a big
16 reservoir that's pulled a little bit versus a small
17 reservoir that's pulled a lot, very little impact off
18 the big reservoir. And because of the peaking necessary
19 in the design for agricultural uses, we have that
20 capability.

21 **CHAIRMAN ARGENZIANO:** Okay. I think we're at
22 that point that I think it's time to -- staff, I think
23 you have to fill us in on what dates we have come up
24 with and we're going to let everybody get home and
25 travel.

1 **MS. KLANCKE:** It is my understanding that we
2 have contacted our clerk's office and they have afforded
3 us with August 4th as a possible continuation date for
4 the continuation of this hearing in Tallahassee.

5 **MR. DETERDING:** I've got booked and paid for
6 reservations to be out of state until the, from the 2nd
7 to the 12th.

8 **CHAIRMAN ARGENZIANO:** 2nd to the 12th. Okay.

9 **MR. WHARTON:** And we know that it's difficult
10 for the Commission to coordinate its own schedule with
11 so many parties, but both Mr. De Lisi is going to be in
12 Japan until when?

13 **MR. DE LISI:** I'm flying back the 4th.

14 **MR. WHARTON:** On the 4th. And Mr. Edwards?

15 (Inaudible. Not on microphone.)

16 **CHAIRMAN ARGENZIANO:** Okay. Then the 4th is
17 not going to work.

18 **MR. WHARTON:** And those are two of our
19 remaining witnesses.

20 **MR. KIRK:** Madam Chairperson, I could -- I
21 don't know if this is, may be a possible suggestion. I
22 did confer with counsel for Pasco, and we, subject to --
23 we would be willing to waive the live testimony of all
24 surrebuttal witnesses. I figure my cross-examination of
25 Mr. Hartman may be only about 15, 20 minutes. There's

1 only two rebuttal witnesses remaining. We'd be willing
2 to waive -- I mean, the prefiled surrebuttal testimony
3 speaks for itself. That could be admitted and we'd be
4 willing to waive live testimony of these witnesses in
5 the interest of trying to bring these proceedings to a
6 close.

7 **MR. WHARTON:** Well, are they talking about
8 withdrawing the surrebuttal?

9 **MR. HOLLIMON:** No.

10 **CHAIRMAN ARGENZIANO:** No. I don't think
11 that's what they said.

12 **MR. WHARTON:** Well, awesome. I mean, with all
13 due respect.

14 **CHAIRMAN ARGENZIANO:** Well, fine. And you can
15 have all that time. We just have to come up with
16 another date.

17 **MS. KLANCKE:** Absolutely. And we can work
18 with the parties to provide them with additional dates
19 that work with the Commission calendar and with the
20 parties' schedules.

21 **MR. WHARTON:** And we'll work with the staff in
22 that regard.

23 **MS. KLANCKE:** And we will notice whatever date
24 works for everybody, and it will be renoticed for
25 Tallahassee at the appropriate date and time so that

1 everybody is afforded with knowledge of it and go from
2 there.

3 **CHAIRMAN ARGENZIANO:** Commissioner Edgar.

4 **COMMISSIONER EDGAR:** Thank you. Are there any
5 timelines that we are operating under that we have to
6 meet other than obviously efficiency and administrative
7 and all of that?

8 **MS. KLANCKE:** For an original certificate
9 case, once it has been objected to and has been set for
10 hearing, there are no, you know, drop-dead deadlines
11 that we are laboring under.

12 **COMMISSIONER EDGAR:** Okay. Thank you.

13 **CHAIRMAN ARGENZIANO:** So what we will do then
14 is thank you, thank you for the offer, and everybody
15 will have plenty of time. We'll continue this meeting
16 at, at an arrived upon date. So everybody please try to
17 get together with staff and --

18 **MR. KIRK:** Hernando County would make itself
19 available at the wishes of any dates available by the
20 Commission. We'd just like to make sure that we have a
21 consistent panel.

22 **CHAIRMAN ARGENZIANO:** Absolutely. Absolutely.
23 We'll, you know, we're not going to cheat you out of
24 anything. We want everything to go just the way it's
25 supposed to go and give you plenty of time to do so.

1 Okay. Anything else? Anybody else?

2 **MR. KIRK:** One other, one other procedural
3 item. Between now and when the hearing actually takes
4 place, can we ask basically some kind of understanding
5 there will be no more discovery so that we don't end up
6 with another round of depositions and interrogatories
7 and --

8 **MR. WHARTON:** This case had a discovery
9 deadline and it has passed.

10 **CHAIRMAN ARGENZIANO:** And we will continue --
11 since we didn't finish with Mr. Hartman, we'll pick up
12 --

13 **MR. WHARTON:** Oh, actually that's a good
14 point. I have been -- technically we should not talk to
15 Mr. Hartman like at a lunch break when he's on the
16 stand. I have been in case that continued for three
17 months where it was completely crippling not to have
18 access to -- if we represent that we will not talk to
19 Mr. Hartman about any -- first of all, not much
20 testimony has happened -- about any particular
21 testimony, is there a problem communicating?

22 **CHAIRMAN ARGENZIANO:** All right. How long do
23 you think you have with Mr. Hartman?

24 **MR. DETERDING:** I just, I had one more
25 question on Radacky and then I had to get his testimony

1 inserted in the record and --

2 **CHAIRMAN ARGENZIANO:** Then maybe the best
3 thing is to finish up with Mr. Hartman and then we'll
4 continue the meeting in Tallahassee.

5 **MR. DETERDING:** Well, I would willing to bet
6 they've got a lot of cross, but whatever your pleasure
7 is.

8 **MR. WHARTON:** I wasn't even, I wasn't even
9 really suggesting that. I'm just saying we won't be
10 creating an ethical --

11 **MR. KIRK:** Also Hernando County's cross is, we
12 only have a few questions, probably only maybe about 15
13 or 20 minutes, and that way we can maybe conclude
14 Mr. Hartman as a, as a witness.

15 **MS. BENNETT:** Staff has probably got 15 to 30
16 minutes also of this witness.

17 **MR. WHARTON:** We won't talk to Mr. Hartman in
18 the interim.

19 **CHAIRMAN ARGENZIANO:** Okay. Thank you very
20 much. We will continue. Everybody please keep in touch
21 with staff. Thank you very much.

22 (Proceeding concluded at 2:12 p.m.)

23 (Transcript continues in sequence in Volume
24 4.)

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STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 26th day of July, 2010.

Linda Boles
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