

STATE OF FLORIDA

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DIVISION OF REGULATORY OVERSIGHT
DANIEL M. HOPPE, DIRECTOR
(850) 413-6480

Public Service Commission

January 16, 2001

E. Clinch Kavanaugh, Esquire
Jacobs & Associates, P.A.
401 Centre Street
The Historic Post Office Building, Second Floor
Fernandina Beach, Florida 32034

Re: Docket No. 990817-WS; Application by Florida Water Services Corporation for Expansion of Water and Wastewater Territory in Nassau County, Florida.

Dear Mr. Kavanaugh:

Enclosed please find a copy of some recent letters received from the Department of Community Affairs. These letters include the Florida Department of Transportation letter dated December 28, 2000, the City of Fernandina Beach letter dated November 20, 2000, and the Florida Department of Transportation letter dated April 20, 2000.

During our November 15, 2000 meeting in Fernandina Beach you indicated that you have filed a lawsuit on behalf of your clients, the developers, with respect to the access road to Crane Island and other related issues. If possible, please provide us any additional information on the status of that case and its progress. In addition, please indicate when you believe it will be completed, if possible. If you have any questions, please call me at (850) 413-6999.

Sincerely,

Richard Redemann, PE

- APP _____
- CAF _____
- CMP _____
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- CTR _____
- ECR _____
- LEG _____
- OPC _____
- PAI _____
- RGO _____
- SEC _____
- SER _____
- OTH _____

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Enclosures

- cc: Division of Regulatory Oversight (Hoppe, Lowe, Messer)
- Division of Legal Services (Christensen)
- Division of Records and Reporting (Bayo, Security File)
- Rutledge, Ecenia, Purnell & Hoffman (Menten)
- Florida Water Services, Inc. (Henesity)

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PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

DOCUMENT NUMBER - DATE
00804 JAN 19 2001
FPSC-RECORDS/REPORTING



PD

Florida Department of Transportation

JEB BUSH
GOVERNOR

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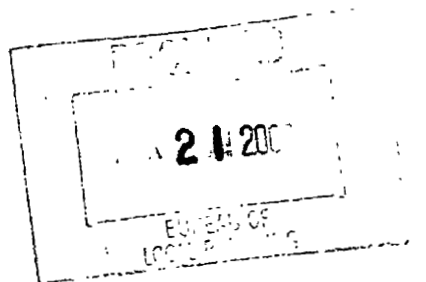
605 Suwannee Street
Tallahassee, Florida 32399-0450
Aviation Office
Mail Station 46

THOMAS F. BARRY, JR.
SECRETARY

DEC 21 2000

Florida Public Service Commission
Division of Regulatory Oversight

April 20, 2000



Mr. Wesley R. Poole, Esquire
City Attorney
City of Fernandina Beach
Post Office Box 1280
Fernandina Beach, Florida 32035

Dear Mr. Poole:

This letter is in response to your request for technical assistance to evaluate the impact on the airport operation and planned airport development of a 60' road right-of-way across airport property. You also requested an evaluation of the proposed Crane Island development for compatibility with airport operation. My March 9, 2000 letter to you provided my statutory responsibilities and qualifications to perform these functions.

The basis of my evaluation is state and federal regulatory requirements for airport and airspace protection applied to the specific configuration of the Fernandina Beach Municipal Airport. The regulatory requirements obligate that protection consider both the airport's existing and planned configuration as established by the appropriate aviation planning documents submitted to the Federal Aviation Administration (FAA). A review of current and previous master planning documents reflect Crane Island to be an undeveloped island surrounded by a tidal marsh river on the east and open water on the west. A review of the Department's airport license file reflects no evidence of an existing 'roadway' or right-of-way to this island on any airport layout plan, the current or previous FAA Form 5010 Airport Master Records or other document.

The Crane Island developers claim to a right-of-way easement is an issue for court resolution. Such a use, however, has never been a consideration in the establishment, design or planned development of the runways or for the investment of public funds for this purpose. While the courts may establish a right to an easement, the use of the easement for a road must be considered as a new construction or alteration project that has to be evaluated for its impact to the safe and efficient use of the airport as would be required of any other proposed project.

All construction or alteration on airport property and any off airport construction or alteration exceeding certain heights relative to the nearest runway, require a Notice of Proposed Construction or Alteration described in 14 CFR Part 77 (Part 77). Airport master planning procedures and guidelines govern all projects on airport property. All such projects require Federal Aviation Administration review and approval before being considered. Off airport proposals that exceed federal notification requirements are studied to determine their impact on safe and efficient use of airport airspace. Off airport proposals are regulated under provisions on Chapter 333, Florida

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Statutes(Ch 333) to prevent (1) obstructing airspace required for take off, maneuvering or landing; (2) uses that are not compatible with continuation of normal airport operation; and (3) uses that may adversely affect public health, safety or welfare.

Provisions in Part 77 establish traverse ways to facilitate passage of mobile objects in the vicinity of airports. Public roads are adjusted upward 15 feet to form the traverse way. Runway obstruction surfaces must clear traverse ways to ensure the safe and efficient operation of the facility. The Crane Island proposal would be a public road. Its traverse way crosses both the existing Runway(RWY) 13 clear zone and that of the planned 750' extension. This runway improvement is shown on the Airport Layout Plan(ALP) approved by the FAA in May 1999.

A runway clear zone is a definable area used in Ch 333 to regulate land uses and development for public health, welfare and safety purposes. It is that area beneath the imaginary runway approach surface extending from the primary surface at runway elevation to where the approach surface reaches 50' above the runway. The traverse way for a 60' right-of-way cannot cross this area without exceeding the height of the overlying approach surface at some point because of the approach surface slope and the limited area between the end of the planned runway and the Amelia River. An object, including a traverse way, exceeding the imaginary approach surface would be an obstruction in airspace required for landing on this planned runway, that under provisions of Ch 333 is an airport hazard to be prevented. The City's airport zoning ordinance adopted in compliance with this statute prohibits a proposed object that would have this impact.

It is my opinion that placing an uncontrolled public access road in this proximity of active airport runways would be an airport hazard as defined in Ch 333. Such an object would require significant changes to the existing facility and its planned development. Fencing between the road and the three runway ends would have to be installed for public safety and aviation security. The fence would create another airport hazard between the road and RWY 13 compounding the impact. The existence of these objects would make the planned RWY 13 extension operationally impractical. While the District Office is the determining authority, funds for a runway extension that will not be useable are not likely to be approved. The airport's approved planning documents reflect the need for longer runways to support the demand to accommodate larger business aircraft than the existing runways. This demand is growth driven and will be vital factor in the city's and surrounding region's economic development.

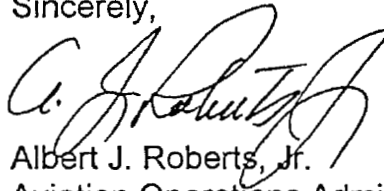
It appears the reason for the right-of-way easement is to support residential development of Crane Island. Residential development of the island is not compatible with airport operation, either as it exists or as it is planned. As stated above, the runway clear zone area for the extended RWY 13 covers a significant portion of the island north end. For public health, safety and welfare purposes, Ch 333 prohibits residential construction as well as most other types of development in runway clear zones. The entire northern half of the island, outside of the clear zone, is beneath the approach/ departure paths of two runways where aircraft will routinely operate at very low altitude. These are areas of high noise impact. Other provisions of Ch 333, require local government to prohibit residential construction in airport noise impacted areas. The clear zone public safety protection and the airport noise compatibility controls are applicable to all local governments in the vicinity of public airports.

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A final issue is how the proposed development will be addressed by the comprehensive plans (compplan) of the city and county. The county's compplan currently designates the island as conservation wetlands. This would seem to mandate a compplan change if any type of development is to proceed. If a change is submitted for comment, the Aviation Office will recommend the Department object, as it is not consistent with the approved airport master plan. The inconsistency of residential development for aviation compatibility and public safety issues are as outlined above. The airport master plan also reflects area public aviation transportation needs and funding required to meet them. A compplan change must not be inconsistent with an area's public transportation needs.

I hope this response will be of assistance to you and the Commission. The original signed copy of will be mailed today. Please do not hesitate to call if you have questions or need additional information.

Sincerely,



Albert J. Roberts, Jr.
Aviation Operations Administrator

AR/ajr

cc: Mr. Lorenzo Alexander, FDOT Dist 2 Public Transportation Manager
Mr. William Ashbaker, P.E., State Aviation Manager
Mr. Bob Cambic, FDCA Growth Management Administrator
Mr. Brian Crumbaker, Esq., Assistant General Counsel
Mr. Ken Davis, Esq., FDOT Dist 2 Counsel
Mr. Walt Gossett, Nassau County Coordinator
Mr. Roland Luster, FDOT Dist 2 Aviation Programs
Mr. Mark Markwood, Land Use Planning Manager
Mr. Mike Mullin, Esq., Nassau County Attorney
Mr. Richard Owen, FAA Orlando Airports District Office



City of Fernandina Beach

WESLEY R. POOLE
CITY ATTORNEY

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Florida Public Service Commission
Division of Regulatory Oversight

November 20, 2000

Mr. James Stansbury
Community Program Administrator
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Re: Request for Preliminary Sufficiency Determination

Dear Mr. Stansbury:

You have received, or will be receiving shortly, Nassau County's transmittal of its evaluation and appraisal report (E.A.R.), for review.

Among the changes suggested by the Board of County Commissioners, is a proposed change of the future land use designation for "Crane Island" from conservation to medium residential. Crane Island is an undeveloped island in the unincorporated area immediately west of the municipal airport of the City of Fernandina of Fernandina Beach, comprised of approximately 108 acres, according to the County. The owners of Crane Island are involved in litigation with the City over what are primarily access issues. The City objects to this proposed change for several reasons including, but not limited to, the following:

1. It is our understanding that the change was requested by the owners of Crane Island, but that no data nor analysis was provided to support the change. Moreover, to our knowledge, the County was not provided any information on infrastructure, natural resources, flood plains, etc., to be considered by the Board in effecting the change;

2. Crane Island is in a natural, pristine state, located within the boundaries of the Nassau River - St. Johns River Marshes Aquatic Preserve;

3. The entire west side of Crane Island abuts the Intracoastal Waterway, known to be used as a migratory route for the west Indian manatee; the island is also believed to be the

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habitat of certain threatened or endangered species. To our Mr. knowledge, no attempt has been made to request that the "Florida Division of Forestry, The Florida Game and Fresh Water Fish Commission (sic), the U.S. Fish and Wildlife Service, the St. Johns River Water Management District," nor any other agencies, to "work together to ensure wise management of endangered and threatened species of plants, fish, wildlife, and their habitat in which they are located" as required by Policy 6.05.03 of the Nassau County Comprehensive Plan (NCCP). Likewise, no attempt has been made to "coordinate with the adjacent local government (City of Fernandina Beach) for the protection of endangered or threatened species and the habitat in which they exist," as required by Policy 6.05.05, NCCP. Other policies within the NCCP's conservation element appear to have been likewise ignored or overlooked.

4. To the best information and belief of the City, Crane Island lies within the 100 year floodplain. Nassau County's own "Local Mitigation Strategy" requires that conservation land use shall be designated for land areas within the 100 year floodplain and wetlands. Thus, instead of changing the future land use designation from conservation to residential, the County should, by its own policies, retain the conservation designation.

5. The County and City continue their formal agreement to act as the Joint Local Planning Agency to monitor the amount and type of development which has the potential of destroying the county's vital resources in the Amelia Island Planning area, yet the County summarily approved this requested change of future land use without any coordination with the City, or review by the Joint Local Planning Agency, contrary to Objective 8.02, NCCP.

6. Crane Island is located within the **Coastal High Hazard Area (CHHA)**, yet this fact was apparently not considered by the County in its re-designation of Crane Island to medium residential use. Nassau County's "Local Mitigation Strategy" notes that areas adjacent to the rivers and their tributaries are subject to storm surge. Areas of particular vulnerability include the "entire shoreline of the Nassau River," including Crane Island.

7. Crane Island lies immediately west of the City's municipal airport. The City is concerned that the proposed residential development of Crane Island is not compatible with the airport operations. The entire northern half of Crane Island is beneath the approach/departure paths of two runways where aircraft

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November 20, 2000
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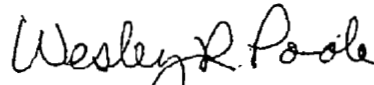
will routinely operate at very low altitudes. These are areas of high noise impact. The runway clear zone for the proposed extension of Runway 13 covers a significant portion of the island's north end. Florida Statutes, Chapter 333, requires local governments, (including Nassau County and the City of Fernandina Beach) to prohibit residential construction in airport noise impacted areas. Thus, the proposed residential development of Crane Island is inconsistent with both the County's and City's comprehensive plans' public transportation needs.

8. In addition to comprehensive plan issues, Nassau County's own airport zoning Ordinance, Article 28, prohibits the use of any land within any zones established by the ordinance in such a manner as to interfere with the operation of airborne aircraft.

The above represents just some of the concerns the City has with regard to this proposed land use change. On behalf of the City, I respectfully request that you require a preliminary sufficiency determination, and, further, that the City be informed of all further proceedings regarding this proposed amendment.

Thank you for your consideration.

Yours sincerely,


Wesley R. Poole
City Attorney

copies to:

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Nassau County Attorney
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