

D. Bruce May, Jr.
850 425 5607
bruce.may@hklaw.com

January 12, 2007

VIA HAND DELIVERY

Patti Daniel
Supervisor, Bureau of Certification
Division of Economic Regulation
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RECEIVED-FPSC
07 JAN 12 PM 4:32
COMMISSION
CLERK

Re: *In re: Application for certificates to provide water and wastewater service in Flagler and Volusia Counties by D & E Water Resources, L.L.C. ("Application")*
Docket No. 060694-WU

Dear Ms. Daniel:

We have received a copy of a letter dated January 5, 2007, to you from the Florida Department of Community Affairs ("DCA"), Acting Chief of Comprehensive Planning, Mike McDaniel. The DCA letter provides the Commission with comments on the referenced Application as it relates to the local comprehensive plans of Flagler and Volusia Counties. We note at the outset that the DCA has neither objected to the Application nor has it requested a hearing on the Application. Thus, on behalf of our client, D & E Water Resources, L.L.C. ("D & E"), we are submitting this as a courtesy response to DCA's letter to clarify the record.

The DCA states that the Application is not inconsistent with the Volusia County comprehensive plan. In fact, the Application is consistent with the comprehensive plan of that county because the Volusia County Council has already authorized the development which will be served by this utility.

With respect to Flagler County, the DCA suggests that the local comprehensive plan of Flagler County does not demonstrate a need for D & E's "central water and wastewater service in this area of Flagler County at this time." (Emphasis added.) The DCA's position appears to be based on the claim that the service area in Flagler County has been recently annexed into the City of Bunnell ("City") and that, until the City adopts an amendment to its land use regulations to reflect the annexation, the development density contemplated within the service area may not be consistent with existing land use regulations of Flagler County. The DCA letter fails to mention several key factors that show that the issuance of the utility certificates is not

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC
- OTH _____

inconsistent with relevant local comprehensive plans. For example, DCA has failed to fully apprise the Commission is that the City recognizes its legal obligation to amend its comprehensive plan as a result of the annexation, and clearly has the ability to do so in a manner that will establish internal consistency of all elements, including the subject service area. The DCA letter also fails to apprise the Commission that the City has transmitted proposed comprehensive plan amendments to the DCA and is working diligently with that agency to plan for the newly annexed area. Furthermore, the Commission should note that, pursuant to the annexation agreement which the City has entered into with Plum Creek, the City fully supports the establishment of the utility in the annexed area, and recognizes in its land use designations the propriety of a one unit per acre density within the annexed area. Finally, the DCA fails to recognize that the proposed development uses a "rural cluster" development approach which, as shown in Appendix II of the Application, is compatible with existing Flagler County land use policies.

It is also important to note that the local comprehensive plans of Flagler County and the City do not prohibit the establishment of a water and wastewater utility service territory as requested in the Application. Indeed, the Application is not inconsistent with the local comprehensive plans because the water and wastewater service territory as proposed by the Application, in and of itself, is neither a land use nor a development as defined by Florida's planning statutes. Furthermore, the Commission should be aware that the Application has been properly noticed and that neither DCA, Flagler County, the City nor any other entity appearing on the FPSC's notice list has filed any objection to the Application. Thus, in addressing D & E's Application, the Commission is not required to consider whether the issuance of a water utility certificate is consistent with the local comprehensive plans.¹

Finally, we wish to point out that granting the requested water utility certificate to D & E in no way restricts the City and DCA from exercising their statutory rights to manage growth and land use throughout the proposed service territory. As we have advised the DCA, D & E and Plum Creek are committed to working in close coordination with the DCA, the City, and other governmental entities as Plum Creek pursues development plans in the area.

¹ Section 367.045(5)(b), Fla. Stat. (2006) provides:

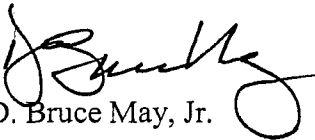
... when granting or amending a certificate of authorization, the Commission need not consider whether the issuance or amendment of a certificate of authorization is inconsistent with the local comprehensive plan of a county or a municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the Commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality. (Emphasis added.)

Patti Daniel
Page 3
January 12, 2007

We hope this response is informative. Of course, if you need additional information, or have any questions, please do not hesitate to contact us. Thank you for your consideration.

Sincerely,

HOLLAND & KNIGHT LLP


D. Bruce May, Jr.

DBM:kjg

cc: Blanca Bayo
Mike McDaniel
Paul Hossain
Clay Henderson

4288672_v2