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**Sent:** Thursday, July 03, 2008 2:30 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** oldbridge9@aol.com; Neale.Montgomery@PaveselLaw.com; Tom Walden; Patti Daniel; Martin Friedman; Christian W. Marcelli; Trina Collins  
**Subject:** Filing in Docket No.: 080179-SU; North Fort Myers Utility, Inc.'s Application for Amendment to Extend its Wastewater Service Area in Lee County, Florida  
**Importance:** High  
**Attachments:** PSC Clerk 03 (Resp to Comments of DCA).ltr.07-03-2008(2).pdf

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- b. Docket No.: 080179-SU; North Fort Myers Utility, Inc.'s Application for Amendment to Extend its Wastewater Service Area in Lee County, Florida – Filing North Fort Myers Utility, Inc.'s Response to the Comments of the Department of Community Affairs ("DCA") .
- c. North Fort Myers Utility, Inc.
- d. 3 pages.
- e. Response to Comments of DCA Letter to Commission Clerk – 3 pages.

7/3/2008

DOCUMENT NUMBER-DATE

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July 3, 2008

VIA E-FILING

Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No.: 080179-SU; North Fort Myers Utility, Inc's Application for Amendment  
to Extend its Wastewater Service Area in Lee County, Florida  
Our File No.: 16319.75

Dear Ms. Cole:

The Staff has requested that North Fort Myers Utility, Inc. ("NFMU") respond to the comments of the Department of Community Affairs ("DCA"). Since the DCA has expressed no concern for the expansion of NFMU's service area to include the approximately 30 acres located adjacent to US41, north of Del Prado Blvd., this letter will address only those comments addressing the portion of the extension located on the eastern end of NFMU's existing service area along the Caloosahatchee River. DCA provided no substantive comments independent of those provided by Lee County to the DCA in the letter attached to the DCA comments.

At the outset, I would point out that Section 367.045 (5) (b), Florida Statutes, provides as follows:

When granting or amending a certificate of authorization, the commission need not consider whether the issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan or a county or municipality unless a timely objection to the notice required by this section

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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 of municipality. (e. s.)

The time for filing objections to this Application has expired and I am unaware of any objections filed by Lee County. Lee County has merely made written comments. The County's letter does not find that the application is inconsistent with its Comprehensive Plan. Rather, its issue is one of potentially encouraging urban sprawl. Lee County has the ability to control the development of the property in question notwithstanding its inclusion into NFMU's Service Area, through a number of mechanisms, including the provision of potable water service. (Lee County is the supplier of potable water to the property in question). As recognized by the appellate court in City of Oviedo v. Clark, 699 So. 2d 316 (Fla. 1<sup>st</sup> DCA 1997), it is within the discretion of the Commission as to whether to defer to the local comprehensive plan. The County has not pointed out any inconsistencies with its Comprehensive Plan. In fact, the County concludes its comments by pointing out that Lee County's Comprehensive Plan does not prohibit the extension of a utility's franchise area into non-urban areas.

Specifically as it relates to the Lee County Comprehensive Plan, there are numerous provisions applicable to the project. The property in question includes existing industrial marine uses which should be connected to a central wastewater system. Even without a Comprehensive Plan amendment these industrial uses could be expanded.

A portion of the property in question is located in the Water Dependent overlay zone where development priority is granted to water-dependent uses (Policy 1.7.5). These uses should be connected to central wastewater facilities. Objective 5.2 encourages the County to maintain and enforce ordinances as are necessary to require connection of commercial establishments to central wastewater systems with or without a Comprehensive Plan amendment. A mix of uses can currently be located on the property in question which would benefit from central wastewater service. That objective is further defined in Policy 56.2.1 which declares that it is in the public interest of preserving public health and preserving and enhancing environmental quality to abate and cease the use of septic tanks when central wastewater service is available. This is particularly true of the property in question in which is located on the Caloosahatchee River.

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The current residential density of the property in question is one dwelling unit per acre (Policy 1.4.1). Thus, the property could, without any Comprehensive Plan amendment, be developed with almost 200 dwelling units. Such units would be clustered, necessitating central wastewater service. Further, since the property in question is located at the intersection of two state arterial roads, and south of the new Babcock City, it is a natural subject for a Future Land Use Amendment (Objective 2.4). The property owner has a pending Comprehensive Plan Amendment to change the property in question to a Future Urban Area, and with central wastewater service growth should be directed to the area of the property in question (Objective 2.2).

As acknowledged by Lee County, Policy 2.1.3 permits public utilities in all Land use categories, thus, NFMU's Application is not inconsistent with the Lee County Comprehensive Plan.

Should you have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,



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For the Firm

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