

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 APPLICATION FOR ORIGINAL CERTIFICATES

3 FOR PROPOSED WATER AND WASTEWATER SYSTEMS

4 IN HERNANDO AND PASCO COUNTIES

5 AND REQUEST FOR INITIAL RATES AND CHARGES

6 FOR SKYLAND UTILITIES, LLC

7 DOCKET NO. 090478-WS

8 ON BEHALF OF SKYLAND UTILITIES, LLC

9 REBUTTAL TESTIMONY OF GERALD C. HARTMAN

10 Q. What is your name and employment address?

11 A. Gerald C. Hartman, PE, BCEE, ASA, GAI Consultants, Inc., 301 E. Pine  
12 Street, Suite 500, Orlando, Florida 32801.

13 Q. Are you the same Gerald C. Hartman who provided direct testimony in  
14 this docket?

15 A. Yes.

16 Q. Are you aware of the interveners in the Skyland Utilities, LLC  
17 Docket?

18 A. I am aware that representatives from the City of Brooksville,  
19 Hernando County and Pasco County have intervened in this case.

20 Q. Have you reviewed the direct testimony of anyone from the City of  
21 Brooksville?

22 A. No, the City of Brooksville did not file direct testimony in this  
23 docket.

24 Q. Have you reviewed the direct testimony of Ronald A. Pianta, AICP, on  
25 behalf of Hernando County, Florida?

COM 5  
APA  
ECR 5  
GCL 3  
RAD 1  
SSC  
ADM  
OPC  
CLR CFRR

1 A. Yes.

2 Q. Have you reviewed the direct testimony of Joseph Stapf on behalf of  
3 Hernando County, Florida?

4 A. Yes.

5 Q. Have your reviewed the direct testimony of Paul L. Weiczorek, AICP,  
6 on behalf of Hernando County, Florida?

7 A. Yes.

8 Q. Have your reviewed the direct testimony of Bruce Kennedy, PE, on  
9 behalf of Pasco County, Florida?

10 A. Yes.

11 Q. Have your reviewed the direct testimony of Richard E. Gehring on  
12 behalf of Pasco County, Florida?

13 A. Yes.

14 Q. Have your reviewed the direct testimony of Daniel W. Evans on behalf  
15 of the Florida Public Service Commission?

16 A. Yes.

17 Q. Have your reviewed the direct testimony of Paul M. Williams on  
18 behalf of the Florida Public Service Commission?

19 A. Yes.

20 Q. What is the purpose of your rebuttal testimony?

21 A. I will provide rebuttal in general to the overall contention that  
22 Skyland should not be granted water and wastewater certificates by the  
23 Florida Public Service Commission as well as to certain portions of the  
24 aforementioned individuals' direct testimony.

25

1 Q. Mr. Hartman, have you served as the staff and/or testified as an  
2 expert witness on behalf of counties which have taken back jurisdiction  
3 from the FPSC?

4 A. Yes.

5 Q. In which counties have you served or testified as an expert?

6 A. St. Johns County, Flagler County, Collier County, Hillsborough  
7 County, Sarasota County and DeSoto County.

8 Q. Have you participated in cases involving multi-county investor-owned  
9 utilities in Florida related to questions of the proper regulatory  
10 authority of the FPSC versus County regulation of those entities?

11 A. Yes. In the case of General Development Utilities in Sarasota and  
12 Charlotte Counties on behalf of the City of North Port.

13 Q. What was the outcome?

14 A. In that matter, the FPSC asserted jurisdiction due to the multi-  
15 county nature of the utility. In that case the FPSC interpreted it had  
16 jurisdiction to regulate the system because its service was located in  
17 more than one county.

18 Q. Are you aware of similar cases?

19 A. Yes. A quick summary includes the following:

20 1) Lake Suzy Utilities, Inc. case vs. DeSoto County - Result FPSC  
21 Jurisdiction;

22 2) Nocatee Utilities, Inc. case vs. St. Johns County - Result FPSC  
23 Jurisdiction

24 3) United Utilities case - Result FPSC Jurisdiction  
25

1 4) Florida Water Services Corporation cases (various) - Result FPSC  
2 Jurisdiction, to name a few.

3 Q. What is your opinion of the proper venue for Skyland, LLC to seek  
4 water and wastewater certificates?

5 A. It is my opinion, based on the facts of this docket, that the FPSC  
6 has exclusive jurisdiction to grant water and wastewater certificates to  
7 Skyland. This is in keeping with the cases I previously cited.

8 Q. Have you reviewed the testimony of Mr. Ronald A. Pianta for Hernando  
9 County, Mr. Paul L. Wieczorek for Hernando County and Mr. Richard Gehring  
10 for Pasco County relative to the causal relationship between FPSC  
11 certification and urban sprawl?

12 A. Yes. In the middle of Page 6 of Mr. Pianta's testimony, near the  
13 top of Page 3 of Mr. Wieczorek's testimony, and the middle of Page 6 of  
14 Mr. Gehring's testimony they each make reference to the certification of  
15 Skyland as violating the provisions of the local government Comprehensive  
16 Plan's provisions to limit urban sprawl. It is my personal knowledge, in  
17 serving several investor-owned utilities throughout the State, that I am  
18 not aware of any FPSC certification that led to urban sprawl. I have  
19 served as a consultant to ECFS, Inc. which is a major investor-owned  
20 utility in Brevard, Orange and Osceola Counties. I was a member of the  
21 Policy Advisory Committee representing the State of Florida American  
22 Society of Civil Engineers under Lt. Governor Jim Williams on the original  
23 drafting of the utility element of the State Comprehensive Plan. During  
24 all the sessions, I cannot recall any correlation between a FPSC  
25 certificate and urban sprawl ever being discussed or consideration that

1 the utility element of the Comprehensive Plan would preclude FPSC  
2 certification in and of itself. Moreover, I have assisted several Florida  
3 cities and counties on the Chapter 9J5 portions of their approved  
4 comprehensive plans. To my knowledge, there has never been a correlation  
5 between a FPSC certificate and urban sprawl in those utility elements of  
6 the comprehensive plans under Chapter 9J5. As evidenced in almost two  
7 decades of operation, ECFS, Inc. has appropriately operated and  
8 facilitated beneficial activities in the public interest through its  
9 operations of a regulated utility and its certification has not resulted  
10 in any of the alleged planning nightmares which the planners in this case  
11 had assigned to certification of the utility during its original PSC  
12 process.

13 Q. Have you reviewed the testimony of Mr. Paul L. Wieczorek for  
14 Hernando County, Mr. Joseph Stapf for Hernando County and Mr. Bruce  
15 Kennedy for Pasco County relative to their comment that the FPSC  
16 certification of Skyland is not in the public interest?

17 A. Yes. Mr. Wieczorek near the top of Page 3 of his testimony, Mr.  
18 Stapf on the last line of Page 6 of his testimony, and Mr. Kennedy near  
19 the middle of Page 4 of his testimony all state they do not believe the  
20 granting of utility certificates to Skyland is in the public interest. I  
21 believe that the Skyland application is in the public interest.

22 Q. As a professional engineer specializing in Florida water and  
23 wastewater utilities for over 30 years, have you had an occasion to  
24 address the public policy and interest declarations as stated in Chapter  
25 373.016 and Chapter 403.021 Florida Statutes?

1 A. Yes, I have.

2 Q. Would you address the above-referenced public policies as they  
3 relate to the Skyland application?

4 A. Yes. I will address Chapter 373.016 F.S. and 403.021 F.S. (Exhibit  
5 GCH-4) with the number and letter subsection (if applicable) provided at  
6 the beginning. Chapter 373.016 F.S. states the following to the policies  
7 of the State which are to be promoted:

8 *"(1) The waters in the state are among its basic resources. Such*  
9 *waters have not heretofore been conserved or fully controlled so as*  
10 *to realize their full beneficial use.*

11 *(2) The department and the governing board shall take into account*  
12 *cumulative impacts on water resources and manage those resources in*  
13 *a manner to ensure their sustainability.*

14 *(3) It is further declared to be the policy of the Legislature:*

15 *(a) To provide for the management of water and related land*  
16 *resources;*

17 *(b) To promote the conservation, replenishment, recapture,*  
18 *enhancement, development, and proper utilization of surface and*  
19 *ground water;*

20 *(c) To develop and regulate dams, impoundments, reservoirs, and*  
21 *other works and to provide water storage for beneficial purposes;*

22 *(d) To promote the availability of sufficient water for all existing*  
23 *and future reasonable-beneficial uses and natural systems;*

24 *(e) To prevent damage from floods, soil erosion, and excessive*  
25 *drainage;*

1 (f) To minimize degradation of water resources caused by the  
2 discharge of stormwater;  
3 (g) To preserve natural resources, fish, and wildlife;  
4 (h) To promote the public policy set forth in s. 403.021;  
5 (i) To promote recreational development, protect public lands, and  
6 assist in maintaining the navigability of rivers and harbors; and  
7 (j) Otherwise to promote the health, safety, and general welfare of  
8 the people of this state.

9 (4) (a) Because water constitutes a public resource benefiting the  
10 entire state, it is the policy of the Legislature that the waters in  
11 the state be managed on a state and regional basis. Consistent with  
12 this directive, the Legislature recognizes the need to allocate  
13 water throughout the state so as to meet all reasonable-beneficial  
14 uses. However, the Legislature acknowledges that such allocations  
15 have in the past adversely affected the water resources of certain  
16 areas in this state. To protect such water resources and to meet the  
17 current and future needs of those areas with abundant water, the  
18 Legislature directs the department and the water management  
19 districts to encourage the use of water from sources nearest the  
20 area of use or application whenever practicable. Such sources shall  
21 include all naturally occurring water sources and all alternative  
22 water sources, including, but not limited to, desalination,  
23 conservation, reuse of nonpotable reclaimed water and stormwater,  
24 and aquifer storage and recovery. Reuse of potable reclaimed water  
25 and stormwater shall not be subject to the evaluation described in

1 s. 373.223(3)(a)-(g). However, this directive to encourage the use  
2 of water, whenever practicable, from sources nearest the area of use  
3 or application shall not apply to the transport and direct and  
4 indirect use of water within the area encompassed by the Central and  
5 Southern Florida Flood Control Project, nor shall it apply anywhere  
6 in the state to the transport and use of water supplied exclusively  
7 for bottled water as defined in s. 500.03(1)(d), nor shall it apply  
8 to the transport and use of reclaimed water for electrical power  
9 production by an electric utility as defined in section 366.02(2)."

10 §(2) states that it is the Department of Environmental Regulation  
11 and the Governing Board of the Water Management District who take into  
12 account the cumulative impacts of water resources and it is through these  
13 Departments that appropriate management of these resources is conducted to  
14 ensure their sustainability. It is not the responsibility or within the  
15 authority of Hernando or Pasco Counties to attempt to do so through their  
16 home rule powers or within their municipal boundaries.

17 §(3)(a), is similar to §(2), the Department provides for the  
18 management of water and related land resources.

19 §(3)(b) states that the Department promotes conservation. Only  
20 Skyland and its related landowner could implement such activities to  
21 replenish, recapture, enhance, and develop the proper utilization of  
22 surface and groundwater on the property which they own.

23 §(3)(d) seeks to promote the availability of sufficient water for  
24 all existing and future reasonable-beneficial uses and natural systems is  
25 the declaration of policy in these areas. The natural systems of Skyland



1 are on the related party's property and the availability of sufficient  
2 water for such future reasonable-beneficial uses is to be promoted.

3 §(3)(e) addresses the need to prevent damage from floods, soil  
4 erosion, and excessive drainage which is proper stewardship of lands is of  
5 extreme interest to the landowner and Skyland to maintain the value and  
6 sustainability of their property and to protect the resource which  
7 sustains it and properties surrounding it.

8 §(3)(f) addresses minimization of the degradation of water resources  
9 caused by the discharge of stormwater. Skyland's related party owns the  
10 property where stormwater accumulates from rainfall and can best minimize  
11 the degradation of water resources by containing stormwater for recharge.  
12 Other entities which do not have adequate land area, cannot avail  
13 themselves of the utilization of stormwater to minimize the degradation of  
14 water resources.

15 §(3)(g) provides for the preservation of natural resources, fish and  
16 wildlife. Skyland's related party landowner is in the business of  
17 preserving the natural resources of the property and, in fact, the natural  
18 resources of the property are integral to the operations of this entity.  
19 ECFS, Inc., as an example, has preserved the natural resources, fish and  
20 wildlife in an effective manner in past by becoming certificated to  
21 provide very similar water services and it is anticipated by Skyland that  
22 such certification will enable it to do the same things.

23 §(3)(h) refers to Chapter 403.021 of the Florida Statutes and that  
24 section provides in (1) thereof that the pollution of the air and waters  
25 of the State constitute a menace to the public health and welfare; creates

1 public nuisances; is harmful to wildlife and fish and other aquatic life;  
2 and impairs domestic, agricultural, industrial, recreational, and other  
3 beneficial uses of air and water. Both Hernando and Pasco Counties have  
4 allowed for the pollution of groundwaters through the inducement of  
5 saltwater intrusion. This fact has significant effects and was  
6 categorically one of the primary reasons for the certification of ECFS,  
7 Inc. in Brevard, Orange and Osceola Counties. The success of ECFS, Inc.  
8 in these arenas has maintained the ability to develop alternative water  
9 supplies (Taylor Creek Reservoir), maintained water resources which are  
10 not polluted for agricultural, domestic, industrial, recreational and  
11 other beneficial uses, and has provided for enhanced water resource  
12 management.

13 §(3)(j) provides for the promotion of the health, safety and general  
14 welfare, which certainly public utility systems, whether investor-owned or  
15 governmentally-owned, should do in their practice and operations.

16 §(4)(a) speaks to the protection of such water resources and the need to  
17 meet the current and future needs of those areas with abundant water.

18 Herein the Legislature directs the Department and the water management  
19 districts to encourage the use of water from sources nearest the area of  
20 use or application whenever practicable. This has been generally  
21 described as a portion of the "local sources first" doctrine which  
22 reflects the preferred by the State of Florida to have service provided to  
23 an area from sources within that area. The Skyland application  
24 accomplishes this declaration of State policy and no other service  
25 provider would be able to accomplish the same within the Skyland area

1 since Skyland's related party owns the property and existing facilities  
2 within the proposed certificated area.

3 Q. To your knowledge, have similar statements as those made by Mr.  
4 Wieczorek, Mr. Stapf and Mr. Kennedy in their direct testimony been made  
5 previously by others in a similar setting? What was the outcome?

6 A. Yes. Statements concerning public interest have been proffered by  
7 others previously in a similar nature and in similar cases. The facts are  
8 that no other entity but Skyland can as efficiently or effectively serve  
9 the customers requiring service within the proposed certificated area.  
10 Pasco and Hernando Counties utility assets are miles away from most of the  
11 proposed service area and would require a costly duplication of pipelines  
12 for service. Additionally, such service could not be as efficient or  
13 effective as service provided by Skyland. Witnesses for Brevard County  
14 and the City of Cocoa offered testimony similar to that proffered here by  
15 Mr. Wieczorek, Mr. Stapf and Mr. Kennedy, in the ECFS, Inc. certification  
16 case. In my opinion, none of those statements were valid, and they have  
17 been demonstrated not to be valid over the past two decades.

18 Q. Are there additional reasons the FPSC should grant water and  
19 wastewater certificates to Skyland?

20 A. Yes. First and foremost, the granting of a certificate to provide  
21 water and wastewater service is just that, an opportunity to provide water  
22 and wastewater service as and when needed. The granting of water and  
23 wastewater certificates does not grant the right to develop a service area  
24 in any particular way, but rather only the right to provide utility  
25 services within the service area. The FPSC is tasked with the duty to

1 address requests for water and wastewater certificates by private  
2 utilities by Chapter 367, Florida Statutes. Specific development within a  
3 service area is governed by local Comprehensive Plans and permit  
4 processes. The FPSC has made this determination in numerous cases  
5 including Farmton Water Resources, LLC, Docket Number 021256-WS, and East  
6 Central Florida Services, Inc., Docket Number 910114-WU. FPSC Order  
7 Number PSC-04-0980-FOF-WU, on page 16, states, in part: "The evidence  
8 presented clearly shows that a county's control over development is not  
9 reduced with the issuance of a certificate. The counties' hands are not  
10 tied when it comes to enforcement of their own comprehensive plans if and  
11 when rezoning is needed. Our certification does not deprive the counties  
12 of any authority they have to control urban sprawl on the Farmton  
13 properties." In this Docket, both Hernando and Pasco Counties have  
14 determined that the entire County, excluding those areas already served,  
15 is their utility service area. The same was true in Marion, Desoto,  
16 Volusia, and Brevard Counties to name a few, yet in those counties only a  
17 smaller area receives facilities and service. I do not believe the fact  
18 that the Counties contention that the entire County is their service area  
19 means development has been approved in all such areas.

20 Secondly, I would like to discuss the need for a utility to serve  
21 Skyland's proposed service area. As stated in Exhibit A of Skyland's  
22 application they are an affiliate of Evans Properties, Inc. Evans  
23 Properties owns all of the land within Skyland's proposed service area  
24 which is in Hernando and Pasco Counties. Evans Properties has been in the  
25 agribusiness industry in Florida for over 50 years. As a company in the

1 agribusiness industry, Evans Properties is very aware of the concept of  
2 and need for water resource planning. As a large land-owner Evans  
3 Properties is an environmental steward and acutely aware of the need for  
4 proper planning and use of natural resources. Evans Properties, in  
5 looking for ways to diversify their business interests and take advantage  
6 of opportunities as they are presented, determined that creating a utility  
7 company to provide additional utility services to their property would be  
8 the most cost efficient, effective method for utility service delivery.  
9 The ability to provide utility service is important to the diversification  
10 opportunities of Evans Properties. Therefore, Skyland Utilities, LLC was  
11 formed to facilitate access to those diversification opportunities upon  
12 Evans Properties' owned land in a timely fashion. Skyland will be able to  
13 plan the management of water resources and ensure water quality by the  
14 provision of appropriate wastewater services. Skyland, as a utility  
15 company, will have the appropriate standing to work with regulators and  
16 potential customers in providing utility services while maintaining  
17 adherence to the regulations that provide for the public health, safety  
18 and welfare in the provision of those services. The FPSC has consistently  
19 dealt with large service areas owned by a single entity. The FPSC stated,  
20 in part, in the East Central Florida Services, Inc. final order: "We do  
21 not think it is in the public interest at this time to carve up a vast  
22 territory, which is all owned by one entity, so as to certificate only  
23 scattered portions thereof." Skyland received a request for service from  
24 Evans Properties for existing structures within the service area as well  
25 as service for future intensified agribusiness and future planned

1 development. In addition, in an email dated November 20, 2009, Mr.  
2 Charles Coultas with the DEP stated that DEP was dealing with some 200 or  
3 so contaminated potable private wells south of Brooksville and that DEP  
4 had talked to Hernando County Utilities about the issue but the County was  
5 not interested in extending their water mains into that area. He wondered  
6 if Skyland's proposal would go through. This is a request for service to  
7 those areas and we are willing to seriously consider it to determine if  
8 Skyland can assist those areas in some way once we obtain our certificate.  
9 This is a perfect example of an unexpected and unforeseen need for utility  
10 service. Evans Properties has been approached regarding opportunities  
11 relating to bio-fuels production, water cleansing, etc. and as such  
12 desires to be in the position of pursuing those opportunities.

13 Thirdly, I would like to discuss what the FPSC looks at when  
14 deciding to grant a water and/or wastewater certificate and how that  
15 relates to the testimony of the intervenors. Chapter 367.031 Florida  
16 Statutes gives the FPSC the authority to grant certificates of  
17 authorization for utility services. That authorization must be given  
18 prior to a utility getting Florida Department of Environmental Protection  
19 permits to construct plants or consumptive use permits or well drilling  
20 permits by water management districts. Therefore, the first step in  
21 establishing a private utility system such as Skyland is to file with the  
22 FPSC for an Original Certificate and Skyland made that filing on October  
23 16, 2009. The rules of the FPSC, as they apply to water and wastewater,  
24 are contained in Florida Administrative Code, Chapter 25-30. Florida  
25 Administrative Code, Chapter 25-30.033 is the FPSC rule outlining the

1 process for an Application for Original Certificate of Authorization and  
2 Initial Rates and Charges. There are 20 separate areas of information  
3 required in the Application for Original Certificate of Authorization.

4 These areas of information include:

- 5 1. the applicant's name and address
- 6 2. the financial and technical ability of the applicant to  
7 provide service and the need for service in the proposed area
- 8 3. whether the provision of service will be consistent with the  
9 water and wastewater sections of the comprehensive plan
- 10 4. the date applicant plans to begin serving customers
- 11 5. the number of equivalent residential connections proposed to  
12 be served
- 13 6. a description of the types of customers anticipated
- 14 7. evidence that the utility owns the land upon which the utility  
15 treatment facilities are or will be located or a copy of an agreement  
16 which provides for the continued use of the land
- 17 8. one original and two copies of a sample tariff
- 18 9. a description of the territory to be served
- 19 10. a copy of a detailed system map showing the proposed lines,  
20 treatment facilities and the territory proposed to be served
- 21 11. a copy of the official county tax assessment map or other map  
22 showing township range and section
- 23 12. a statement regarding the separate capacities of the proposed  
24 lines and treatment facilities in terms of ERCs and gallons per day
- 25 13. a description of the type of treatment to be used

1           14.    a statement describing the reason for not using reuse if it is  
2 not being used

3           15.    a detailed financial statement

4           16.    a list of entities upon which the applicant is relying to  
5 provide funding to the utility

6           17.    a cost study

7           18.    a schedule showing the projected cost of the proposed systems  
8 by uniform system of accounts

9           19.    a schedule showing the projected operating expenses

10          20.    a schedule showing the projected capital structure

11          Of these 20 areas of information there is only one that is fully in  
12 dispute and one that is partially in dispute by the intervenors. The  
13 disputes of the intervenors are consistency with the comprehensive plan  
14 and the need for service. The vast majority of information provided is  
15 not disputed by the intervenors.

16 Q.       Have you reviewed the direct written testimony of Mr. Ronald F.  
17 Pianta, AICP, Planning Director for Hernando County. What are your  
18 comments?

19 A.       Yes. On Page 2, lines 20 through 22, he states "Based upon my  
20 review of the goals, objectives and policies of the County's adopted  
21 Comprehensive Plan, a water/wastewater utility would not be consistent  
22 with the Hernando County Comprehensive Plan at this location." In support  
23 of his statement on Page 3, lines 2 through 4, he states "Infrastructure  
24 in the Rural area is to be consistent with the level of development  
25 allowed, and the County will not provide infrastructure that will support



1 urban development (Future Land Use Policy 1.01B6).” The properties within  
2 the Skyland service area in Hernando County have a designation as Rural.  
3 Section D, Page 2, of the Hernando County Comprehensive Plan shows that  
4 residential development with densities no greater than 1 unit per 10 acres  
5 is allowed in the Rural designation. Skyland’s application clearly shows  
6 that the allowed density is what has been anticipated in the proposed  
7 service area. Exhibit GCH-5 is Figure 3(a) from Appendix I in the  
8 Skyland’s application. Exhibit GCH-5 shows the Development Phases  
9 relating to the need for utility services. Parcel ID numbers 2, 5, 8, 10A  
10 and 10B are the parcels located within Hernando County. The approximate  
11 acreage and planned dwelling units are shown on the map. In all, there  
12 are approximately 791 acres of Skyland’s proposed service area in Hernando  
13 County. Utility services are planned to serve the equivalent of  
14 approximately 75 dwelling units. This density is within that 1 unit per  
15 10 acres as presented in Hernando County’s Comprehensive Plan for  
16 properties with the Rural designation. Additionally, the County plan  
17 speaks to County provided facilities. Skyland is not requesting that the  
18 County provide infrastructure. Utility infrastructure will be provided by  
19 Skyland.

20 Q. Did Mr. Pianta have an opinion regarding Skyland’s application and  
21 its conformity to the comprehensive Plan?

22 A. Yes. On Page 3, lines 12 through 13 of his testimony, Mr. Pianta  
23 was asked “In your professional opinion, would the siting of the proposed  
24 water/wastewater utility on the Evans property as proposed conform to or  
25 violate the County’s Comprehensive Plan?” Mr. Pianta’s answer on lines 14

1 through 18, shows "In my professional opinion, the proposed utility would  
2 not be consistent with the adopted goals, objectives and policies of the  
3 Comprehensive Plan and would violate the intent of the Plan to direct  
4 future development to urban areas, discourage urban sprawl as an unwanted  
5 and inefficient land use, and protect the character of rural areas from  
6 incompatible development trends." Mr. Pianta does not go into any details  
7 about why the utility would not be consistent with the adopted goals,  
8 objectives and policies of the Comprehensive Plan other than to say that  
9 the proposed utility would violate the intent to direct future development  
10 to urban areas, discourage urban sprawl as an unwanted and inefficient  
11 land use, and protect the character of rural areas from incompatible  
12 development trends. Skyland's application does not propose a level of  
13 service that violates the Hernando County Comprehensive Plan. The  
14 certification of Skyland's proposed Territory cannot violate the County  
15 Comprehensive Plan if the County's designation of the same areas as County  
16 Utility Territory does not. Evans Properties could provide the same level  
17 of service via central service or by private wells and on-site septic  
18 systems as being proposed by Skyland and be adherent to the Hernando  
19 County Comprehensive Plan. The granting of an FPSC Certificate, in and  
20 out of itself, does not trigger any type of development, as previously  
21 discussed. The determination of land use, zoning, etc. remains firmly in  
22 the hands of the County and any "urban sprawl" would have to be endorsed  
23 by the County. The granting of an FPSC certificate does not supersede the  
24 authority of the County to issue permits, grant zoning variances, etc. I  
25 have previously discussed Mr. Pianta's "urban sprawl" comment.

1 Q. Does this conclude your review of Mr. Pianta's testimony?

2 A. Yes.

3 Q. Would you review the direct written testimony of Mr. Paul L.  
4 Weiczorek, AICP, Senior Planner with the Hernando County Planning  
5 Department, and provide your comments?

6 A. Yes. Page 2, lines 23 through 25, and Page 3, lines one through  
7 five, shows the question "Finally, Mr. Pianta was asked "In closing, do  
8 you have a professional opinion on Skyland's proposed operation of a  
9 water/wastewater utility on the Evans property as proposed and, if so,  
10 what is that opinion?" and he answered "In summary, in my professional  
11 opinion is that the request to operate a utility at that location is  
12 inconsistent with the adopted comprehensive plan for Hernando County  
13 related to the provision of services, the protection of the character for  
14 rural areas, the discouragement of urban sprawl and would not be in the  
15 public interest." Do you agree or disagree with his conclusion?" Mr.  
16 Weiczorek's answer as shown on Page 3, line 6 is "I agree".

17 Q. Is that the extent of Mr. Weiczorek's testimony?

18 A. No. Page 3, lines 8 through 10 of his testimony shows "In my  
19 professional planning opinion, this project is not consistent with the  
20 Hernando County Comprehensive Plan and land Development Regulations, and  
21 is otherwise not in the public interest." That statement provides the sum  
22 of Mr. Weiczorek's testimony. There are no specific instances of  
23 inconsistencies shown in Mr. Weiczorek's testimony, therefore his  
24 testimony provides no independent, factual, or legal basis for his  
25 conclusory opinion. I would point out, however, that even if the granting

1 of a utility certificate were not consistent with the Hernando County  
2 Comprehensive Plan, the FPSC is not bound by local comprehensive plans.  
3 Section 367.045(5)(b), Florida Statutes provides that "the commission  
4 shall consider, but is not bound by, the local comprehensive plan or the  
5 county or municipality." In City of Oviedo v. Clark, 699 So. 2d 316, 318  
6 (Fla. 1<sup>st</sup> DCA 1997), the court held:

7 "We hold that the PSC correctly applied the requirements of section  
8 367.045(5)(b). The plain language of the statute only requires the PSC to  
9 consider the comprehensive plan. The PSC is expressly granted discretion  
10 in the decision of whether to defer to the plan." I have addressed Mr.  
11 Weiczorek's public interest comment elsewhere in this rebuttal.

12 Q. Does this conclude your review of Mr. Wieczorek's testimony?

13 A. Yes.

14 Q. Would you review the direct written testimony of Mr. Joseph Stapf,  
15 Utilities Director of Hernando County, and provide your comments?

16 A. Yes. Mr. Stapf's testimony does not specifically say what his  
17 objections are with Skyland's application, therefore I will address his  
18 comments from the testimony where I feel appropriate.

19 Q. Does Mr. Stapf address the need for service in the proposed Skyland  
20 service area?

21 A. Yes. On Page 2, lines 5 through 17 of his testimony, Mr. Stapf  
22 discusses the issue of whether Evans Properties had requested water  
23 service from the Hernando County Utilities Department or if other property  
24 owners in the area had requested service. Mr. Stapf's response is that no  
25 requests have been received from Evans Properties nor has the utilities

1 department received "petitions or organized requests for water supply  
2 system installation in this area."(lines 16 and 17). Evans Properties did  
3 not request utility service from Hernando County for several reasons.  
4 First, and most importantly, the proposed Skyland service area encompasses  
5 property in both Hernando and Pasco Counties. Because this service area  
6 traverses county boundaries, it would not be possible for the Hernando  
7 County Utility Department to provide service. Second, Evans Properties  
8 was not aware of any Hernando County utility services in the vicinity.  
9 Third, Evans Properties felt that a private utility company dedicated to  
10 the utility needs in their service area would be the quickest, most  
11 efficient and responsive way to have the needed utility services provided.  
12 Additionally, Mr. Stapf's testimony on Page 3, lines 2 through 13,  
13 discusses if it is efficient to provide utility services to Skyland's  
14 proposed 155 Equivalent Residential Connections. Mr. Stapf's answer,  
15 shown on lines 9 through 13, is "In my experience, and in my professional  
16 opinion, attempting to provide water and wastewater service to such a  
17 comparatively small number of customers is difficult at best. There is  
18 little opportunity to achieve any significant and meaningful economies of  
19 scale. In fact, it is quite the opposite. There are few customers over  
20 which to spread large infrastructure cost." I would like to point out  
21 that Mr. Stapf does not appear to be objecting to Skyland's application.  
22 He appears to be stating an opinion that the provision of utility services  
23 to the number of customers shown in the Skyland's application is difficult  
24 at best and that there are no meaningful economies of scale. It is my  
25 experience, as outlined in Exhibit GCH-3 attached to my direct pre-filed

1 testimony, that there are many utility facilities in Florida and across  
2 the nation (both public and private) that provide service to similar  
3 numbers of customers. While Mr. Stapf believes it might be more difficult  
4 to provide service to customers in smaller systems, it certainly is a  
5 common practice. The provision of utility services in the proposed  
6 Skyland service area will be as efficient as possible to maintain utility  
7 services that are in the best interests of the public health, safety and  
8 welfare for the proposed service area. While it is true that greater  
9 densities typically promote economies of scale, there are many instances  
10 of utility services being provided in less dense service areas. One of  
11 the leading indicators of economies of scale is price. The level of rates  
12 proposed in Skyland's application is not uncommon, especially for similar  
13 types of service areas. In addition, Skyland is in the best position to  
14 meet the needs of the proposed service territory for water and sewer  
15 services as a result of many factors including its relationship with the  
16 related party landowner and resulting ability to provide efficient, timely  
17 and economical service to these areas as needed.

18 Q. Does Mr. Stapf discuss the possibility of Hernando County providing  
19 service to the Skyland proposed service area?

20 A. Yes. On Page 3, lines 14 through 25, and Page 4, lines 1 through 15  
21 of his testimony Mr. Stapf discusses the fact that all of Hernando County  
22 is ostensibly in the service area of the Hernando County Utilities  
23 Department and that service could potentially be provided by the Hernando  
24 County Utilities Department, if the level of interest is consistent with  
25 established County policy (Page 4 lines 1 and 2) and the Hernando County

1 Board of County Commissioners voted to approve it and the benefitting  
2 parties would be assessed the price (Page 4 lines 6 and 7). I do not  
3 agree with Mr. Stapf's contention that the Hernando County Utilities  
4 Department can timely, competitively, and potentially, and institutionally  
5 provide service to the Evans Properties land. Skyland's proposed service  
6 area traverses county boundaries and therefore the service area requested  
7 is outside the Hernando County service area. In addition, Hernando County  
8 Utilities would have to determine if the request for service warranted the  
9 provision of utility service. Mr. Stapf's testimony clearly states that  
10 he does not feel 155 ERCs is viable for the proposed service area. That  
11 number includes 35 ERCs in Hernando County. Given Mr. Stapf's testimony, I  
12 cannot see how he could not help but conclude that 35 ERCs is even less  
13 viable than 155 ERCs. Even where the County Utility desirous of serving  
14 the proposed service area in Hernando County, the Hernando County Board of  
15 County Commissioners would still have to approve it. Even if the Board  
16 were to approve it, ultimately Evans Properties would still have to pay  
17 for it. This process is tenuous at best and would be time consuming and  
18 would still require Evans Properties to pay for utility infrastructure.  
19 Evans Properties, in order to diversify, must have utility services  
20 available in the proposed service area now rather than later to ensure the  
21 ability to take advantage of any opportunity available.

22 Q. Does Mr. Stapf discuss the written requests received by Skyland  
23 requesting service?

24 A. Yes. Starting on Page 4, line 16, and continuing through Page 5,  
25 line 9 of his testimony, Mr. Stapf discusses written requests for service

1 in Skyland's proposed service area. Mr. Stapf acknowledges that there  
2 have been several requests from Evans Properties to Skyland for service.  
3 Page 5, lines 7 through 8, shows Mr. Stapf's final comment on the need for  
4 service to be "In my opinion, this does not suggest any outcry for public  
5 water supply service in this area, or in any of the surrounding area."  
6 Skyland's proposed service area encompasses approximately 4,000 acres of  
7 land within Hernando and Pasco Counties. I am not sure what Mr. Stapf  
8 considers a "public outcry" but in my opinion a request from a significant  
9 land owner such as Evans Properties constitutes a need for service.

10 Q. Does Mr. Stapf have an opinion on the financial viability of the  
11 Hernando County Utility Department if Skyland is granted a water and  
12 wastewater certificate by the FPSC?

13 A. Yes. Mr. Stapf, on Page 6, lines 17 through 19 of his testimony,  
14 states "It could potentially jeopardize Hernando County's ability to repay  
15 current and future bonds, and therefore potentially jeopardizes the  
16 County's Bond Rating, as well as its capacity to effectively implement its  
17 ongoing Capital Improvements Program." Mr. Stapf does not give a specific  
18 example to show what effect, if any, the granting of a utility  
19 certification would have on the outstanding bonds of the county utility.  
20 I have reviewed Hernando County Utilities' outstanding 2004 bond issue.  
21 This bond was issued to pay for the acquisition of the Spring Hill utility  
22 system from Florida Water and to fund certain other utility improvements.  
23 Utility revenues were pledged for the repayment of the bond. Appendix I  
24 of that report is the Consulting Engineers and Bond Feasibility Report.  
25 Pages 62 and 63 detail where future system growth is anticipated to take



1 place and thus this information is used to project future revenues. There  
2 is no mention of any of the properties included in Skyland's proposed  
3 service area. Therefore, there is no direct link between future revenues  
4 pledged for the 2004 Bond Issue and Skyland's proposed service area. Mr.  
5 Stapf's contention that the 35 ERCs proposed in Hernando County in Phase I  
6 of Skyland's application could somehow effect the repayment of a  
7 \$41,000,000 bond issue backed by the revenues of over 80,000 water and  
8 wastewater customers (2008 projection pages 63 and 64 of the Bond  
9 Feasibility Report) is very suspect. Regarding any future bond issues, at  
10 the time such a bond issue is contemplated by the county utility, a  
11 Consulting Engineers and Bond Feasibility Report will be done taking into  
12 consideration the utility system statistics at that time. If Skyland is  
13 certificated the Bond Feasibility Report will not include any revenues  
14 associated with that certification, thus, the existence of a Skyland  
15 Utilities certificate will not impact any future bonding repayment.

16 Q. Does Mr. Stapf have an opinion regarding the public interest of  
17 granting Skyland's certificates?

18 A. Yes. I have addressed the general issue of public interest  
19 elsewhere in my testimony but I would like to add additional rebuttal to  
20 Mr. Stapf's testimony on the point. On Page 6, line 25, and continuing on  
21 Page 7 lines 1 through 13 of his testimony, Mr. Stapf states "In my  
22 professional opinion it is NOT in the public interest. This proposal is a  
23 long term threat to the integrity and financial viability of the already  
24 established Hernando County Water and Sewer System which serves  
25 approximately 125,000 water customers and 65,000 sewer customers. This

1 system is governed by the Hernando County Board of County Commissioners  
2 serving as the Board of the Water and Sewer District. These Commissioners  
3 are elected at large in the County, and are directly accountable to the  
4 voters/taxpayers/utility customers. The lack of accountability presented  
5 by a utility provider was a major factor in the County's acquisition of  
6 the Florida Water System in 2004. The County has made and will continue  
7 to make significant improvements to the former Florida Water physical  
8 plant in order to establish and maintain an effective and necessary level  
9 of service mandated by federal and state regulatory agencies. Moreover,  
10 providing (or attempting to provide) water sewer service in an area in  
11 which the maximum allowed density is one house per ten acres is generally  
12 cost prohibitive, and in my professional experience and opinion  
13 impractical."

14 Mr. Stapf begins his dissertation on why the establishment of Skyland is  
15 not in the public interest by explaining that Skyland poses a long term  
16 threat to the already established county utility which services almost  
17 200,000 customers. The only "threat" discussed anywhere in Mr. Stapf's  
18 testimony is the current and future bond issues. As previously noted,  
19 Skyland's proposed service area is not considered in the current bond  
20 issues and won't be considered in future. Therefore, it is not a long-  
21 term threat as defined anywhere in Mr. Stapf's testimony. Mr. Stapf then  
22 discusses the lack of accountability presented by a private utility. A  
23 private utility is accountable to the same state and federal agencies as  
24 is a public utility. The private utility in this instance would be  
25 accountable to the FPSC regarding rate and charges and customer service

1 matters versus the County Commission. The FPSC has been in existence  
2 since 1887. It has significant experience in providing regulatory  
3 oversight for private utilities. Mr. Stapf then states the County has  
4 made and will make significant improvements to the former Florida Water  
5 physical plant in order to establish and maintain an effective and  
6 necessary level of service mandated by federal and state regulatory  
7 agencies. While I am not sure what this has to do with the "public  
8 interest" considerations in granting Skyland a utility certificate, I will  
9 point out that private utilities are also held accountable by federal and  
10 state regulatory agencies to provide an effective and necessary level of  
11 service. The exact same standards and rules that are applicable to  
12 Government-Run utilities. Mr. Stapf concludes his testimony by stating  
13 that providing or attempting to provide water/sewer service in an area in  
14 which the maximum allowed density is one house per ten acres is generally  
15 cost prohibitive, and in his opinion impractical. Again, I am not sure  
16 how this statement supports the argument that the granting of Skyland's  
17 utility certificate is not in the public interest. In my opinion, the  
18 provision of centralized water and wastewater service is always in the  
19 public interest in that it provides for the health, safety and welfare of  
20 utility customers. Regarding Mr. Stapf's statement that the cost to  
21 provide service in the proposed service area is generally cost prohibitive  
22 and generally impractical, Evans Properties has requested service from  
23 Skyland and is well aware of the rates proposed by Skyland to provide  
24 service and is willing to pay those rates. Skyland is willing to build  
25 the necessary utility infrastructure to provide the service. Therefore,

1 Mr. Stapf's comments don't appear to apply to the facts which underlie  
2 this particular application.

3 Q. Does this conclude your rebuttal of Mr. Stapf's direct testimony?

4 A. Yes.

5 Q. Would you review the direct written testimony of Mr. Bruce Kennedy,  
6 PE, Assistant County Administrator, Utilities Services for Pasco County,  
7 and provide your comments?

8 A. Yes, Page 2 of Mr. Kennedy's testimony, lines 1 through 3 shows the  
9 purpose of Mr. Kennedy's testimony to be "My testimony relates to the  
10 water and wastewater utility services provided by Pasco County and the  
11 deficiencies in Skyland's application from a utility and engineering  
12 perspective."

13 I failed to find any mention of a specific deficiency in Skyland's  
14 application in the remainder of Mr. Kennedy's testimony. Therefore, as I  
15 did with Mr. Stapf from Hernando County, I will rebut Mr. Kennedy's  
16 statements from his testimony where I feel it is warranted.

17 Q. Does Mr. Kennedy state whether Pasco County provides service in the  
18 proposed service area?

19 A. Yes. On Page 4, lines 4 through 17 of his testimony, Mr. Kennedy  
20 states "There are numerous reasons why we are not serving this area. We  
21 have not received any requests for service. The area is adequately and  
22 appropriately served by private water wells and individual septic tanks.  
23 The Comprehensive Plan does not forecast any need for central water and  
24 sewer service in the area and the Plan also prohibits such service in the  
25 area for numerous reasons as explained by Richard Gehring, Planning and

1 Growth Management Administrator, in his testimony. Additionally, it is  
2 not efficient, cost effective, good utility practice, or in the public  
3 interest to provide central water and sewer to such low density (one unit  
4 per 10 cares) as is proposed by Skyland. Skyland's proposed water and  
5 sewer rates will be substantially higher than those charged by Pasco  
6 County Utilities. It is not efficient, cost-effective, good utility  
7 practice, or in the public interest to provide central water and sewer to  
8 such widespread, non-contiguous parcels of property. Generally, density  
9 of at least 2 units per acre is necessary for central water and sewer  
10 service to be economical."

11 It would appear from Mr. Kennedy's testimony that had Pasco County  
12 received a request for service in the proposed service area, it would not  
13 have been met with a positive response. Additionally, the proposed  
14 service area traverses county boundaries, therefore Skyland is best able  
15 to serve the entire service area.

16 Q. Do you have additional comments from your prior testimony regarding  
17 the public interest statement Mr. Kennedy made?

18 A. Yes. In my opinion it is in the public interest for the health,  
19 safety and welfare of the public to provide central water and wastewater  
20 service where possible, instead of private wells and on-site septic  
21 systems. Private wells are not monitored for pollutants and are not  
22 subject to the Safe Drinking Water Act. When private wells become  
23 contaminated it is sometimes difficult for individual owners to correct  
24 the problem. On November 19, 2009, an email was sent from Mr. Charles  
25 Coultas from the Florida Department of Environmental Protection to the

1 FPSC. His email stated that the FDEP was dealing with 200 or so  
2 contaminated private potable wells south of Brooksville in Hernando  
3 County. The FDEP contacted Hernando County Utilities but it was not  
4 interested in extending their water mains into the area of contamination  
5 and that the homeowners could not afford to pay for the extension of  
6 Hernando County's water lines. Mr. Coultas was inquiring if Skyland might  
7 be able to help this situation. This situation can and does routinely  
8 occur. Senate Bill 550, currently pending Governor Crist's signature, is  
9 significant legislation regarding among other things, on-site septic  
10 systems. The Bill requires the inspection of on-site septic systems with  
11 a five year evaluation cycle (Beginning at Page 108, line 3123). This  
12 legislation is the result of numerous problems around the State with on-  
13 site septic systems that are not operating appropriately and therefore  
14 causing significant ground and surface water pollution. On-site septic  
15 systems are not monitored for their adherence to the Clean Water Act.  
16 Skyland is willing and able to provide central water and wastewater  
17 service to the proposed service area and in my opinion this is in the  
18 interest of the public health, safety and welfare.

19 Q. Do you have comments regarding Mr. Kennedy's issue with the level of  
20 rates for Skyland?

21 A. Yes. Mr. Kennedy asserts that the proposed water and sewer rates  
22 will be substantially higher than those charged by Pasco County Utilities.  
23 In my experience there are numerous utilities with lower rates than Pasco  
24 County Utilities and many with higher rates. The level of rates is not  
25 the only indicator of efficiency. There are no customers in the proposed

1 service area who are unaware of Skyland's requested rates and those rates  
2 have not been protested. Skyland has received a request for service from  
3 Evans and Evans is aware of the level of the water and sewer rates.  
4 Future customers will also be aware of the level of the rates before they  
5 connect to the utility system.

6 Q. Does Mr. Kennedy make any comments regarding Pasco County's ability  
7 to serve Skyland's proposed service area?

8 A. Yes. Mr. Kennedy, on Page 5, lines 7-10 of his testimony states "PCU  
9 maintains an existing water system less than 0.5 miles to the East from  
10 the proposed area and PCU maintains other water facilities within 1.53  
11 miles from the Skyland proposed area and wastewater facilities with (SIC)  
12 2.54 miles from the proposed area."

13 Q. Do you agree with Mr. Kennedy that Pasco County has the ability to  
14 serve Skyland's proposed service area?

15 A. No. Mr. Kennedy does not state with exactness which parcel the  
16 existing Pasco County facilities are near. Exhibit GCH-5 shows that Pasco  
17 County Utilities has facilities within a mile of Parcel ID 7c which is  
18 anticipated to require utility services during Phase II which will not  
19 occur for at least six years from the date of certification. Phase I,  
20 Parcel IDs 1, 3 and 4 are substantially further from the Pasco County  
21 Utilities shown. Additional water facilities are within 1.53 miles and  
22 wastewater facilities are within 2.54 miles according to Mr. Kennedy's  
23 testimony. Again, he does not state with specificity which parcel or  
24 parcels the facilities are near. Mr. Kennedy's testimony states with no  
25 uncertainty that serving the proposed service area is not something Pasco

1 County Utilities feels is necessary, cost effective, efficient or good  
2 utility practice. Therefore, the existence of Pasco County utility assets  
3 within one to three miles of select parcels of the over 4,000 acres of the  
4 Skyland proposed service area is not relevant. In the event Pasco County  
5 decided it was in the public interest to serve the proposed service area  
6 they could only serve the Pasco County portions and would require  
7 significant capital outlays to pay for the extension of water and  
8 wastewater lines to where anticipated utility services would initially be  
9 required. Additional significant outlays would be required to provide  
10 service throughout the service area. Skyland is willing and able to  
11 provide utility service and can do so more effectively than Pasco County  
12 and can provide utility service to the entire proposed service area.

13 Q. Does Mr. Kennedy feel that Pasco County should serve Skyland's  
14 proposed service area?

15 A. No. Mr. Kennedy states in his testimony, Page 5, lines 14 - 22, that  
16 "We have no plans to serve most of these parcels because they would be  
17 adequately and efficiently served by individual well and septic consistent  
18 with the Comp Plan but one of the parcels (Parcel ID 4) of the proposed  
19 service area is within a designated Employment Center for which PCU plans  
20 to provide water and wastewater service consistent with the Pasco County  
21 Strategic and Comprehensive Plans. The proposed certificate, if granted,  
22 will result in private water and wastewater utility service to County  
23 citizens that will be significantly more costly than service that could be  
24 provided through individual wells and septic systems or that could be  
25 provided by Pasco County Utilities."



1 Q. Would you like to comment on Mr. Kennedy's statements regarding  
2 Pasco County's plans to serve the proposed service area?

3 A. Yes. The parcel of land Mr. Kennedy says Pasco County would provide  
4 service for, Parcel ID 4, is wholly owned by Evans Properties and they  
5 have requested service from Skyland for all of the property they own in  
6 Hernando and Pasco Counties, including Parcel ID 4. Mr. Kennedy does not  
7 elaborate on when service would be available to Parcel ID 4 in his  
8 testimony. Evans' need for service is in the near future and is not  
9 limited to Parcel ID 4. The County's "citizens", as Mr. Kennedy is  
10 referring to in his testimony, is in this case Evans Properties since they  
11 own all of the land in Parcel Id 4 and they have requested service from  
12 Skyland and are aware of the associated costs.

13 Q. Does Mr. Kennedy feel there is a need for service in Skyland's  
14 proposed service area?

15 A. No. When asked what is his basis of that opinion Mr. Kennedy answers  
16 on Page 6, lines 2 through 12 of his testimony "Again, we have not  
17 received a request for service in the area or nearby and the existing  
18 buildings and land uses are adequately served by individual wells and  
19 individual septic tanks. Skyland's application contains no specific  
20 information as to need and the future development and bulk sales noted in  
21 the application is purely speculative at this time. The only development  
22 projects (Trilby Estates, Saran Ranch and Pine Ridge Estates) approved in  
23 the vicinity of Skyland's proposed service area will be developed on  
24 individual well and septic, consistent with the Pasco Comprehensive Plan.  
25 Furthermore, there are numerous private residences that would be encircled

1 by Skyland's proposed service area (particularly Parcels ID 9, 11, 12A and  
2 12B) and these property owners, currently on private well and septic, have  
3 not asked for central service."

4 Q. Would you like to comment on Mr. Kennedy's reasoning on why he feels  
5 there is not a need for service in Skyland's proposed service area?

6 A. Yes. As discussed earlier in my rebuttal Evans did not request  
7 service from Pasco County because there are no Pasco County utility  
8 facilities in the immediate vicinity of the proposed service area for  
9 which Evans has requested service from Skyland and if Pasco County had  
10 facilities immediately adjacent to Parcel ID 3 (Phase I in Pasco County)  
11 it certainly couldn't easily serve Parcel IDs 1 and 4 in Pasco county from  
12 that facility nor could they serve Parcel ID 2 (Phase I in Hernando  
13 County). Mr. Kennedy's assertion that Skyland's application contains no  
14 specific information as to need and the future development and bulk sales  
15 in the service area is not accurate. Skyland's application provides the  
16 planning of utility services to Phase I requirements and has a year by  
17 year anticipated need for service. Additionally, the conceptual utility  
18 layout has been provided for both water and wastewater services along with  
19 the associated costs. Evans has not applied for permitting with Hernando  
20 or Pasco County at this time pending the granting of utility certificates  
21 from the FPSC. As such time as utility certificates are granted by the  
22 FPSC Evans will seek appropriate permitting. Mr. Kennedy also discusses  
23 numerous private residences that would be encircled by Skyland's proposed  
24 service area. Those residences are outside Skyland's proposed service

25

1 area and therefore could not be served by Skyland without Skyland filing  
2 for additional service territory.

3 Q. Does Mr. Kennedy feel that Skyland would be in competition with or  
4 duplication of Pasco County's Utility?

5 A. Yes. On Page 6, lines 16 through 25 and Page 7, lines 1 and 2 of  
6 his testimony Mr. Kennedy says "PCU maintains an existing water and  
7 wastewater system less than 0.5 miles from the proposed area and PCU  
8 maintains other water facilities within 1.53 miles from the Skyland  
9 proposed area. These facilities could be extended to provide service to  
10 proposed service area, if service was needed. Additionally, one of the  
11 parcels (Parcel ID 4) of the proposed service area is within a designated  
12 Employment Center for which PCU plans to provide water and wastewater  
13 service consistent the Pasco County Strategic and Comprehensive Plans.  
14 See Exhibit 3, Northeast Pasco Future Land Use Map. Furthermore, Pasco  
15 has established as its service territory the entire unincorporated area of  
16 the County not currently served by a legally existing private utility.  
17 See § 110-28, Pasco County Code. Accordingly, Skyland's proposed service  
18 will be in competition with, or duplication of, the PCU system."

19 Q. Do you have any comment on Mr. Kennedy's testimony regarding  
20 Skyland's supposed competition with or duplication of Pasco County's  
21 Utility?

22 A. Yes. I have provided detail rebuttal regarding the existing PCU  
23 system and the potential provision of service, by PCU, to Parcel ID 4. In  
24 summary, PCU does not have facilities now that could easily provide  
25 service to the entire Skyland proposed service area. The facilities they

1 do have in closer proximity do not appear to be in close proximity to the  
2 areas designated as Phase I. The County certainly does not have  
3 facilities, nor is it able to provide service to the Hernando County  
4 portion of the proposed service area. In my opinion there is no way that  
5 Skyland's utility would be in duplication of the PCU system. Mr.  
6 Kennedy's statement that the entire unincorporated area of Pasco County  
7 not currently served by a utility is PCU's service territory is a broad  
8 assertion. Mr. Kennedy has testified that Pasco County does not have  
9 utility assets in all the unincorporated areas of the County nor it has  
10 plans to extend utility services in its planning horizon. Competition can  
11 only exist when parties can provide similar services. Skyland can't be in  
12 competition with PCU in the proposed service area because PCU is not able  
13 to provide utility services there. Skyland, as a private utility company,  
14 has appropriately requested original water and wastewater certificates  
15 from the FPSC for the proposed service area. The granting of those water  
16 and wastewater certificates is rightly within the authority of the FPSC in  
17 this instance (Chapter 367, Florida Statutes).

18 Q. Does this conclude your rebuttal of Mr. Kennedy's testimony?

19 A. Yes.

20 Q. Would you review the direct written testimony of Mr. Richard E.  
21 Gehring, Pasco County Planning and Growth Management Administrator, and  
22 provide your comments?

23 A. Yes, Mr. Gehring states, Page 2, lines 1 through 3 "My testimony is  
24 directed to the issue of whether Skyland's application to provide water  
25

1 and wastewater services in Pasco County is consistent with the Pasco  
2 County comprehensive plan."

3 Q. Do you have any comments regarding Skyland's consistency with the  
4 Pasco County Comprehensive plan?

5 A. Yes. As I discussed earlier in my general rebuttal comments, the  
6 FPSC may consider but is not bound by the County's comprehensive plan when  
7 granting water and wastewater certificates to private utilities.

8 Mr. Gehring testifies on Page 2, lines 22 through 26 that "The  
9 Comprehensive Plan designates all of the proposed service area as part of  
10 the Northeast Pasco Rural Area, within which central water and sewer is  
11 prohibited except under very limited circumstances (SEW 3.2.6). The  
12 proposed service area does not meet the limited criteria for central water  
13 and sewer service. (SEW 3.2.6)." Mr. Gehring's comments while technically  
14 correct could use some elaboration. First, Skyland's proposed service  
15 area traverses county boundaries between Hernando and Pasco County so the  
16 Hernando parcels are not in the Northeast Pasco Rural Area.

17 Secondly, the certification of a utility service area cannot be in  
18 consistent with the comp plan. If it were then the County's designation  
19 of the entire county as its Service Area would be even less consistent  
20 with that plan.

21 Third, even assuming that the certification of a utility in these  
22 rural areas is in and of itself inconsistent with the comp plan, Evans  
23 could request and be granted a conservation subdivision designation and  
24 then the development of a private central system would be consistent with  
25 the comprehensive plan. Evans has not requested such designation at this

1 time but could in the future if Skyland is granted water and wastewater  
2 certificates.

3 Mr. Gehring, Page 5, line 15 of his testimony states "The PSC is not  
4 required to defer to the Pasco County comprehensive plan." I concur with  
5 Mr. Gehring and have elaborated on this in my general rebuttal comments.

6 Q. Does Mr. Gehring have an opinion whether Skyland's application will  
7 promote "urban sprawl"?

8 A. Yes. Mr. Gehring spends a significant portion of his testimony  
9 discussing the concern of "urban sprawl" (Pages 5 - 10) and his belief  
10 that the granting of a certificate to Skyland will promote "urban sprawl".  
11 I have addressed the issue of urban sprawl elsewhere in my testimony but  
12 would like to reiterate several points. The granting of a water and  
13 wastewater certificate does not grant any rights or privileges regarding  
14 development of any kind. Growth management tools are still firmly in the  
15 hands of the County and it is up to the County to ultimately approve the  
16 "urban sprawl" that Mr. Gehring focus. The granting of a water and  
17 wastewater certificate can't foster "urban sprawl" as defined by Mr.  
18 Gehring. It is ultimately up to the Board of County Commissioners to  
19 allow "urban sprawl", not a utility certificate from the FPSC.

20 Q. Does Mr. Gehring have an opinion whether Skyland's application  
21 should be approved by the FPSC?

22 A. Yes. Mr. Gehring ends his testimony, Page 11, lines 11 through 13,  
23 with the statement "The PSC should deny Skyland's application and preserve  
24 Pasco County's ability to implement its Comprehensive Plan for growth  
25 management and efficient development of utility services."

1 Q. Do you have any comments regarding Mr. Gehring's feeling that the  
2 FPSC should not grant Skyland's application to preserve Pasco County's  
3 ability to impement its Comprehensive Plan for growth management and  
4 efficient development of utility services?

5 A. Yes. As discussed earlier, the granting of a FPSC certificate does  
6 nothing to erode Pasco County's ability to implement its Comprehensive  
7 Plan for growth management and efficient development of utility services.  
8 Any changes in land use would still have to be approved at the County  
9 level. Utility infrastructure still would have to be permitted by the  
10 County. They still have the ability to control those things that Mr.  
11 Gehring has issues with.

12 Q. Does this conclude your rebuttal of Mr. Gehring's testimony?

13 A. Yes.

14 Q. Would you review the direct written testimony of Mr. Daniel W.  
15 Evans, on behalf of the staff of the FPSC staff and employed by the  
16 Division of Community Affairs, and provide your comments?

17 A. Yes, in general Mr. Evans' testimony reflects portions of Mr.  
18 Gehring's testimony on behalf of Pasco County, Mr. Ronald F. Pianta, AICP  
19 on behalf of Hernando County and Mr. Paul L. Wieczorek, AICP also on  
20 behalf of Hernando County. I refer to my earlier rebuttal regarding  
21 issues raised in relation to consistency with the comprehensive plans of  
22 Hernando and Pasco counties. I will reiterate, however, that the FPSC is  
23 not bound by county comprehensive plans but may take them into  
24 consideration when granting a water and/or wastewater certificate for a  
25 private utility company. Also, the granting of a water and/or wastewater

1 certificate does not grant any right for development. County Boards still  
2 must grant permits and any changes to comprehensive plans would have to be  
3 approved by them.

4 Q. Does this conclude your rebuttal of Mr. Evans?

5 A. Yes.

6 Q. Would you review the direct written testimony of Mr. Paul M.  
7 Williams, on behalf of the staff of the FPSC staff and employed by the  
8 Southwest Florida Water Management District (SWFWMD), and provide your  
9 comments?

10 A. Yes. Mr. Williams discusses existing water permits in Skyland's  
11 proposed service area as well as general water supply issues in the  
12 proposed service area and the permitting procedure that Skyland might go  
13 through. While I don't basically disagree with most of Mr. William's  
14 testimony, I would like to point out that according to Florida Statutes  
15 367.031 Skyland can't be issued a consumptive use permit or well drilling  
16 permit until such time as the FPSC has granted utility certification to  
17 them. It is Skyland's intention to seek permitting when the FPSC has  
18 granted water utility certification.

19 Q. Does Mr. Williams feel there is enough existing groundwater for  
20 Skyland to provide water service?

21 A. Yes. Mr. Williams response regarding the current groundwater  
22 availability in the area to be served by Skyland on Page 3, lines 2  
23 through 19 shows "Groundwater quantities that can be permitted in the area  
24 are generally constrained by limitations associated with the Pasco County  
25 portion of the Northern Tampa Bay Water Use Caution Area (NTBWUCA) and



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

12       Two of the three Evans permits located in Hernando County are within  
13 the Weeki Wachee spring water shed area as noted on Exhibit PMW-2.  
14 Additional groundwater quantities are currently not constrained in this  
15 area. However, the SWFWMD is currently reviewing the potential for  
16 additional groundwater development in this area. Both Hernando County and  
17 Tampa Bay water currently pump large quantities of groundwater from wells  
18 in the spring water shed area. Hernando County will likely develop future  
19 new supplies outside of the spring water shed area to minimize additional  
20 impacts to the area." I would agree with Mr. Williams that it is possible  
21 for Skyland to permit wells in the proposed service area.

22 Q.     Does Mr. Williams discuss existing water use permits for Skyland's  
23 proposed service area and their effect on gross water use in the area?

24 A.     Yes. Mr. Williams' testimony discusses in detail the water use  
25 permits currently held by Evans Properties and the anticipated effect on a

1 gross water use basis if the demand shown in the application is a  
2 replacement for the agricultural use on the properties (Page 3, lines 22  
3 through 25 and Page 4 lines one through 15). Mr. Williams does discuss  
4 the area Parcel ID 4 that has a mixed use future land use designation  
5 which allows up to 32 units per acre. Figure 3(a) of Appendix I of  
6 Skyland's application and attached here as Exhibit GCH-5 reflects this and  
7 shows a potential for 1847 dwelling units but as Mr. Williams points out  
8 Table D-1 of the Skyland Application does not reflect that proposed number  
9 of dwelling units. As discussed in the application, it is the intention  
10 of Evans for utility service needs in Parcel ID 4 to be similar to what is  
11 anticipated to exist in the rest of the proposed service area. Mr.  
12 Williams does discuss his estimated total annual average day quantities if  
13 the water use in the permit areas were converted to residential  
14 equivalents. His estimate is that the water demand would be less than the  
15 currently permitted agricultural use. Mr. Williams believes that the  
16 water supply demands of the potential dwelling units shown on Exhibit GCH-  
17 5 constitute all of the water use in the permitted area.

18 Mr. Williams discusses the fact on Page 4, lines 21 through 25 of  
19 his testimony, that neither Skyland nor Evans have requested a new water  
20 use permit, an increase to an existing water use permit, or a transfer of  
21 a water use permit from Evans to Skyland. I agree with Mr. Williams that  
22 neither Skyland nor Evans have requested a new, increased, or transferred  
23 water use permit at this time. Skyland and Evans will make the  
24 appropriate filing necessary to secure water supply for the proposed  
25 service area upon FPSC certification.

1 Mr. Williams concludes his testimony discussing the process involved  
2 in modifying water permits and the difference between agricultural and  
3 public supply. I agree with Mr. Williams' comments.

4 Q. Does this conclude your rebuttal of Mr. Williams' testimony?

5 A. Yes.

6 Q. Do you believe that County utility Service Area can be inconsistent  
7 with their own comprehensive plans?

8 A. Yes, our firm serves many Florida counties and in general, they are  
9 consistent with their comprehensive plans, but a few do have  
10 inconsistencies with their own comprehensive plans which are either  
11 perfected with the modification of the comprehensive plan by the Board of  
12 County Commissioners and then sent for approval to DCA in Tallahassee, or  
13 another mechanism is utilized. But the simple answer is yes, counties  
14 have in the past been inconsistent with their own comprehensive plans.

15 Q. Are you familiar with any other instances in which private utilities  
16 were able to fill the void created by a lack of county or municipal  
17 utilities in a way that benefitted and demonstrated the public interest?

18 A. Yes, several. One of those is the provision of water supply to the  
19 Osceola County Fire Station in Eastern Osceola County on US 192 by ECFS.  
20 Definitely in the public interest and there was a lack of County or City  
21 facilities to provide service.

22 Q. Does that complete your rebuttal testimony?

23 A. Yes

24

25

Select Year:

## The 2009 Florida Statutes

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Title XXVIII  
NATURAL RESOURCES; CONSERVATION,  
RECLAMATION, AND USE

Chapter 373  
WATER  
RESOURCES

View Entire  
Chapter

### 373.016 Declaration of policy.--

- (1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.
- (2) The department and the governing board shall take into account cumulative impacts on water resources and manage those resources in a manner to ensure their sustainability.
- (3) It is further declared to be the policy of the Legislature:
  - (a) To provide for the management of water and related land resources;
  - (b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and ground water;
  - (c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;
  - (d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;
  - (e) To prevent damage from floods, soil erosion, and excessive drainage;
  - (f) To minimize degradation of water resources caused by the discharge of stormwater;
  - (g) To preserve natural resources, fish, and wildlife;
  - (h) To promote the public policy set forth in s. 403.021;
  - (i) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and
  - (j) Otherwise to promote the health, safety, and general welfare of the people of this state.

In implementing this chapter, the department and the governing board shall construe and apply the policies in this subsection as a whole, and no specific policy is to be construed or applied in isolation from the other policies in this subsection.

(4)(a) Because water constitutes a public resource benefiting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis. Consistent with this directive, the Legislature recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever practicable. Such sources shall include all naturally occurring water sources and all alternative water sources, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery. Reuse of potable reclaimed water and stormwater shall not be subject to the evaluation described in s. 373.223(3)(a)-(g). However, this directive to encourage the use of water, whenever practicable, from sources nearest the area of use or application shall not apply to the transport and direct and indirect use of water within the area encompassed by the Central and Southern Florida Flood Control Project, nor shall it apply anywhere in the state to the transport and use of water supplied exclusively for bottled water as defined in s. 500.03(1)(d), nor shall it apply to the transport and use of reclaimed water for electrical power production by an electric utility as defined in section 366.02(2).

(b) In establishing the policy outlined in paragraph (a), the Legislature realizes that under certain circumstances the need to transport water from distant sources may be necessary for environmental, technical, or economic reasons.

(5) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Protection or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such power should be delegated to the governing board of a water management district.

(6) It is further declared the policy of the Legislature that each water management district, to the extent consistent with effective management practices, shall approximate its fiscal and budget policies and procedures to those of the state.

**History.**—s. 2, part 1, ch. 72-299; s. 36, ch. 79-65; s. 70, ch. 83-310; s. 5, ch. 89-279; s. 20, ch. 93-213; s. 250, ch. 94-356; s. 1, ch. 97-160; s. 1, ch. 98-88.

Select Year:

## The 2009 Florida Statutes

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[Title XXIX](#)  
PUBLIC HEALTH

[Chapter 403](#)  
ENVIRONMENTAL CONTROL

[View Entire Chapter](#)

### **403.021 Legislative declaration; public policy.--**

(1) The pollution of the air and waters of this state constitutes a menace to public health and welfare; creates public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air and water.

(2) It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.

(3) It is declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. In accordance with the public policy established herein, the Legislature further declares that the citizens of this state should be afforded reasonable protection from the dangers inherent in the release of toxic or otherwise hazardous vapors, gases, or highly volatile liquids into the environment.

(4) It is declared that local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement, and control for the securing and maintenance of appropriate levels of air and water quality.

(5) It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(6) The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to ensure conservation of natural resources; to

ensure a continued safe environment; to ensure purity of air and water; to ensure domestic water supplies; to ensure protection and preservation of the public health, safety, welfare, and economic well-being; to ensure and provide for recreational and wildlife needs as the population increases and the economy expands; and to ensure a continuing growth of the economy and industrial development.

(7) The Legislature further finds and declares that:

(a) Compliance with this law will require capital outlays of hundreds of millions of dollars for the installation of machinery, equipment, and facilities for the treatment of industrial wastes which are not productive assets and increased operating expenses to owners without any financial return and should be separately classified for assessment purposes.

(b) Industry should be encouraged to install new machinery, equipment, and facilities as technology in environmental matters advances, thereby improving the quality of the air and waters of the state and benefiting the citizens of the state without pecuniary benefit to the owners of industries; and the Legislature should prescribe methods whereby just valuation may be secured to such owners and exemptions from certain excise taxes should be offered with respect to such installations.

(c) Facilities as herein defined should be classified separately from other real and personal property of any manufacturing or processing plant or installation, as such facilities contribute only to general welfare and health and are assets producing no profit return to owners.

(d) In existing manufacturing or processing plants it is more difficult to obtain satisfactory results in treating industrial wastes than in new plants being now planned or constructed and that with respect to existing plants in many instances it will be necessary to demolish and remove substantial portions thereof and replace the same with new and more modern equipment in order to more effectively treat, eliminate, or reduce the objectionable characteristics of any industrial wastes and that such replacements should be classified and assessed differently from replacements made in the ordinary course of business.

(8) The Legislature further finds and declares that the public health, welfare, and safety may be affected by disease-carrying vectors and pests. The department shall assist all governmental units charged with the control of such vectors and pests. Furthermore, in reviewing applications for permits, the department shall consider the total well-being of the public and shall not consider solely the ambient pollution standards when exercising its powers, if there may be danger of a public health hazard.

(9)(a) The Legislature finds and declares that it is essential to preserve and maintain authorized water depth in the existing navigation channels, port harbors, turning basins, and harbor berths of this state in order to provide for the continued safe navigation of deepwater shipping commerce. The department shall recognize that maintenance of authorized water depths consistent with port master plans developed pursuant to s. 163.3178(2)(k) is an ongoing, continuous, beneficial, and necessary activity that is in the public interest; and it shall develop a regulatory process that shall enable the ports of this state to conduct such activities in an environmentally sound, safe, expeditious, and cost-efficient

manner. It is the further intent of the Legislature that the permitting and enforcement of dredging, dredged-material management, and other related activities for Florida's deepwater ports pursuant to this chapter and chapters 161, 253, and 373 shall be consolidated within the department's Division of Water Resource Management and, with the concurrence of the affected deepwater port or ports, may be administered by a district office of the department or delegated to an approved local environmental program.

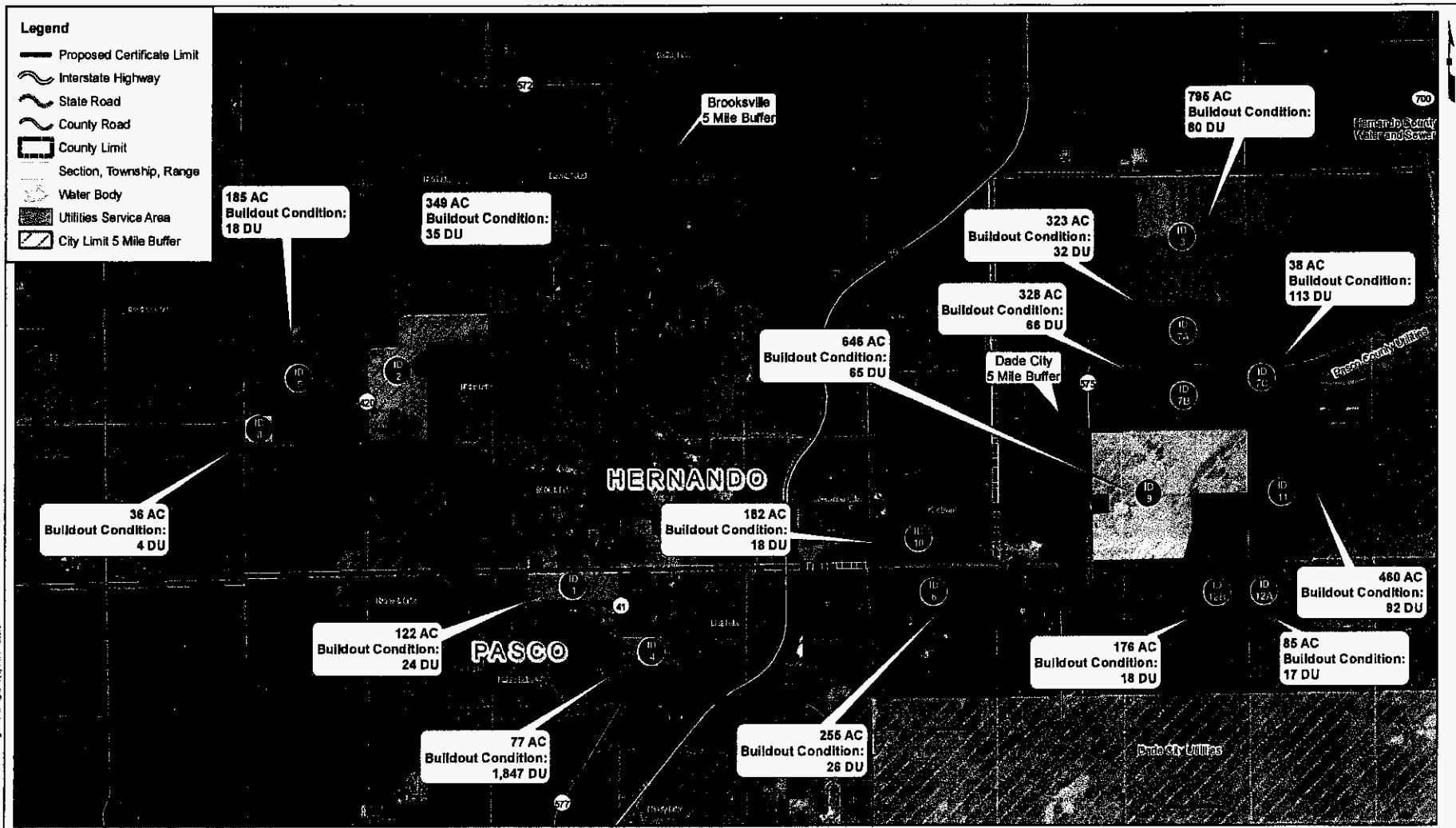
(b) The provisions of paragraph (a) apply only to the port waters, dredged-material management sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

(10) It is the policy of the state to ensure that the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants. The department, as the state water quality protection agency, shall compile, correlate, and disseminate available information on any contaminant which endangers or may endanger existing or potential drinking water resources. It shall also coordinate its regulatory program with the regulatory programs of other agencies to assure adequate protection of the drinking water resources of the state.

(11) It is the intent of the Legislature that water quality standards be reasonably established and applied to take into account the variability occurring in nature. The department shall recognize the statistical variability inherent in sampling and testing procedures that are used to express water quality standards. The department shall also recognize that some deviations from water quality standards occur as the result of natural background conditions. The department shall not consider deviations from water quality standards to be violations when the discharger can demonstrate that the deviations would occur in the absence of any human-induced discharges or alterations to the water body.

**History.**--s. 3, ch. 67-436; s. 1, ch. 78-98; ss. 1, 5, ch. 81-228; s. 4, ch. 84-79; s. 46, ch. 84-338; s. 11, ch. 85-269; s. 1, ch. 85-277; s. 8, ch. 86-186; s. 3, ch. 86-213; s. 143, ch. 96-320; s. 1004, ch. 97-103; s. 4, ch. 99-353.





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**DEVELOPMENT PHASES - FINAL**  
**SKYLAND UTILITIES, INC.**  
**EVANS PROPERTIES, INC. (PO #876380)**

**FIGURE**  
**3(a)**  
 09/12/2010

Docket No. 090478-WS  
 Development Phases - Final  
 Exhibit GCH-5, Page 1 of 1