

MEMORANDUM OF UNDERSTANDING

FLORIDA PUBLIC SERVICE COMMISSION AND FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS

HISTORY

The Legislature has recognized that growth in Florida should be managed so that it occurs in an orderly manner, and enacted Chapter 163, Florida Statutes, to address comprehensive planning in the state. The Department of Community Affairs (DCA), as the state's planning agency, is responsible for the review of local government comprehensive plans and plan amendments. The Legislature also enacted Chapter 367, Florida Statutes, and declared the regulation of investor-owned water and wastewater utilities to be in the public interest. The Legislature gave the Public Service Commission (PSC) exclusive jurisdiction over these utilities with respect to their authority, service, and rates, in those counties which opt to give jurisdiction of those utilities to the PSC.

Section 163.3167(s), Florida Statutes, provides that "(e)ach local government shall prepare a comprehensive plan of the type and in the manner set out in this act or shall prepare amendments to its existing comprehensive plan to conform it to the requirements of this part in the manner set out in this part." Pursuant to Section 163.3177(6)(c), Florida Statutes, the plan is required to contain a "general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element correlated to principles and guidelines for future land use" and must indicate "ways to provide for future potable water, drainage, sanitary sewer, solid waste, and aquifer recharge protection requirements for the area."

The comprehensive plan is also required to include "a future land use plan element designating proposed future general distribution, location, and extent of uses of land..." and that each category of land use "shall be defined in terms of the types of uses included and specific standards for the density and intensity of use." The future land use plan must be based upon "data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land; the availability of public services; and the need for redevelopment..." (Section 163.3177(6)(a), Florida Statutes). Section 163.03(1)(e), Florida Statutes, directs the DCA to "conduct programs to encourage and

promote the involvement of private enterprises in the solution of urban problems."

Chapter 367, Florida Statutes, requires water and wastewater utilities regulated by the PSC to obtain a certificate of authorization from the PSC. Section 367.045(5)(b), Florida Statutes, provides that:

(W)hen 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 of a county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the Commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

By enacting Chapter 163, Florida Statutes, the Legislature did not add criteria to Chapter 367, Florida Statutes, nor did the Legislature intend to allow local governments to use comprehensive plans to designate the specific utility providers for each geographic area. Pursuant to Chapter 367, Florida Statutes, the authority to designate investor-owned utility certificated territories, for utilities in counties where the county has not exercised its option to regulate, is within the sole discretion of the PSC. However, a PSC certificate does not negate an investor-owned utility's duty to comply with local government future land use designations and other aspects of an approved local comprehensive plan.

It is the intent of this Memorandum of Understanding (MOU) to establish the guidelines under which the PSC and the DCA will work together in PSC certificate cases in order for both agencies to facilitate the intent of Chapters 163 and 367, Florida Statutes with respect to the regulation of investor-owned water and wastewater utilities and local comprehensive planning.

AGREEMENT

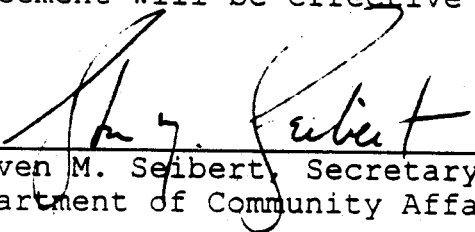
The PSC and the DCA agree to implement the following guidelines:

1. The PSC agrees to inform DCA when an original certificate case or an amendment of territory case is filed. The DCA will provide information to the PSC including comments regarding the relationship of the certificate application and the local government

comprehensive plan. The DCA comments will include information from the local government comprehensive plan such as, the land use categories, the densities and intensities of use, and other information regarding the land uses, patterns of development, and need for service in the requested territory. The PSC staff will present the information provided by the DCA to the Commission for consideration in evaluating the application.

2. The PSC will inform the DCA of certificate cases that have been protested by a local government because of a comprehensive plan issue. The DCA agrees to consult with the PSC to determine the appropriate role of the DCA in the certificate case and any subsequent PSC administrative proceeding. This role may include, at the request of the PSC staff, the DCA sponsoring testimony to complete the record regarding the DCA comments about the related comprehensive plan(s).

This MOU may be amended by mutual agreement of the DCA and the PSC. It shall remain in effect until it is dissolved by mutual agreement of the agencies or terminated by an agency after giving written 30-day advance notice to the other agency. This agreement will be effective upon the date of the last signature.


Steven M. Seibert, Secretary
Department of Community Affairs


Joe Garcia, Chairman
Public Service Commission

5-16-00

Date

5/16/2000

Date