

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from)	DOCKET NO. 910489-SU
Florida Public Service Commission)	ORDER NO. 24680
regulation for a sewage treatment)	ISSUED: 6/19/91
and disposal system in Monroe County)	
by Whale Harbor Inn)	

ORDER INDICATING THE NONJURISDICTIONAL
STATUS OF WHALE HARBOR INN

BY THE COMMISSION:

Whale Harbor Inn (Whale Harbor) is an existing establishment that consists of two restaurants and a marina. By letter and affidavit received April 8, 1991, Whale Harbor has requested recognition of the nonjurisdictional status of its proposed wastewater treatment and disposal system. Pursuant to Section 367.031, Florida Statutes, the Department of Regulation (DER) will not issue a permit for the construction of a new water or wastewater facility until it receives either a certificate authorizing the system to provide service or an order recognizing that the system is not subject to the regulation of the Commission.

The affidavit shows that: Whale Harbor will provide wastewater service solely for the operation of its establishments; no charges will be made to anyone for the wastewater service; the costs of wastewater service will be treated as an operational expense of Whale Harbor; the wastewater system will be located solely on the premises of the establishment; and the facility's physical address is U.S. Highway No. 1, Mile Marker 83.7, Islamorada, Florida 33036.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water and wastewater facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes. Whale Harbor requested recognition of the nonjurisdictional status of its wastewater facility under Section 367.021(12), Florida Statutes.

Section 367.021(12), Florida Statutes, defines a utility as "every person . . . who is providing or proposes to provide, water or sewer service to the public for compensation." Based upon the facts as presented herein, it does not appear that Whale Harbor will be a utility, as defined by Section 367.021(12), Florida Statute, since it will not be providing wastewater service for compensation. Accordingly, Whale Harbor will not be subject to this Commission's jurisdiction. However, should there be any

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change in circumstances or method of operation, the owner of Whale Harbor, or his successor(s) in interest, must inform the Commission within thirty (30) days of such change, so that we may determine whether nonjurisdictional status is still appropriate.

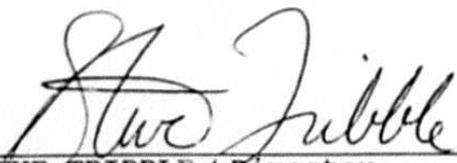
It is , therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Whale Harbor Inn's wastewater treatment and disposal system, located at U.S. Highway No. 1, Mile Marker 83.7, Islamorada, Florida 33036, is not a utility subject to this Commission's jurisdiction pursuant to the terms of Section 367.021(12), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation of Whale Harbor Inn's wastewater treatment and disposal system, the present owner or any successor in interest shall inform the Commission within thirty (30) days of such change. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this
19th day of JUNE, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.