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October 9, 2007

VIA ELECTRONIC FILING

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

Re: PSC Docket 070109-WS; In re Application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County

Dear Ms. Cole:

Attached to this letter and electronic filing please find Charlotte County's Motion for Summary Final Order or Relinquishment of Jurisdiction. The filing contains three attachments—two affidavits and a copy of Charlotte County Resolution 2007-143. A Request for Oral Argument is being filed concurrently, but under separate cover.

Thank you for your assistance with this filing, and please do not hesitate to contact me with any questions or concerns.

Sincerely,

AKERMAN SENTERFITT

Todd D. Engelhardt

cc: Martin S. Friedman
Robert C. Brannon
Ralph Jaeger

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County by Sun River Utilities, Inc. (f/k/a MSM Utilities, LLC).		Docket No. 070109-WS Filed: October 9, 2007
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**MOTION FOR SUMMARY FINAL ORDER
OR RELINQUISHMENT OF JURISDICTION**

Charlotte County, by and through its undersigned counsel, pursuant to Rule 28-106.204(4), Florida Administrative Code, hereby moves for Summary Final Order in its favor in the above-captioned docket. As set forth in detail below, the Application for Amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County by Sun River Utilities, Inc. f/k/a MSM Utilities, LLC (hereinafter "Sun River") specifically violates the Charlotte County Comprehensive Plan ("Comp Plan"), as passed by the elected officials of the Charlotte County Commission after extensive public input, and as approved by the Department of Community Affairs ("DCA"). Because Sun River cannot show that its planned activities are consistent with the Comp Plan, and therefore with the public interest of the citizens of Charlotte County, there is no genuine issue of material fact, and Charlotte County respectfully requests that the Commission grant a Summary Final Order in its favor.

In the alternative, Charlotte County moves for this Commission to relinquish its jurisdiction, pursuant to Rule 28-106.204(1), Florida Administrative Code. As explained below, Charlotte County has passed Resolution 2007-143, specifically rescinding prior Resolution 94-195. Resolution 94-195 voluntarily subjected Charlotte County to the provisions of Chapter 367,

Florida Statutes, and thus to the jurisdiction and regulatory authority of this Commission.¹ Resolution 2007-143 exempts Charlotte County from the Commission's jurisdiction, effective September 25, 2007, and places all non-exempted water and wastewater systems in the County subject to the jurisdiction and regulatory authority of Charlotte County. Therefore, should this Commission not issue a Summary Final Order, Charlotte County respectfully requests that the Commission relinquish jurisdiction of this matter to Charlotte County.

STATEMENT OF UNDISPUTED FACTS

1. On September 27, 1994, the Charlotte County Board of County Commissioners adopted Resolution No. 94-195, which, pursuant to Florida Statutes Section 367.171(1), made Charlotte County subject to the provision of Chapter 367, Florida Statutes, and to the jurisdiction and regulatory authority of the Public Service Commission.

2. Between 1995 and 1997, Charlotte County conducted 115 public meetings for the purpose of rewriting its then comprehensive plan.²

3. On October 7, 1997, Charlotte County adopted the new Comp Plan, incorporating recommendations made by the DCA. The DCA ruled the Comp Plan to be "in compliance" on May 16, 2000.³

4. The Comp Plan contains planning directives which use the location and timing of infrastructure and services to direct growth in an orderly and efficient manner. The Plan's policy is generally aimed at reducing urban sprawl and controlling urban growth efficiently.⁴

¹ §367.171(1), Fla. Stat.

² See Affidavit of Jeffrey C. Ruggieri, ¶ 5 and attachments.

³ *Id.* at ¶ 4.

⁴ Comp Plan Objective 1.3, Policy 2.2.22 (attached to Affidavit of Jeffrey C. Ruggieri).

5. Page 4-36 of the Comp Plan describes "Rural Service Areas" as those locations "in which central potable water and sanitary sewer service should not be extended during the planning time period."⁵

6. Policy 9.1.4 of the Comp Plan limits the ability to expand certified areas with solely a few exceptions. Certified areas cannot be extended or expanded for potable water or sanitary sewer service outside of Infill Area boundaries. Exceptions to this rule are to be made in the case of New Communities or Developments of Regional Impact in West County, Mid County, or South County or Rural Communities in East County as designated by the Comp Plan; or in the case of where a utility(s) shall provide both central potable water and sanitary sewer service in a tandem manner within the Urban Service Area Overlay District.⁶

7. Policy 1.1.10 of the Comp Plan lists the criteria for amending the Urban Service Area boundary. Paragraph e of this Policy requires that any proposed expansion does not constitute urban sprawl or promote the expansion of urban sprawl in surrounding areas.⁷

8. The Comp Plan notes that lands designated primarily for agricultural activities are located primarily within the Rural Service Area. Policy 2.2.22 of the Comp Plan requires that conversions of agricultural land to more intensive urban uses must occur in accordance with the Urban Service Area strategy Rural Community or New Community concepts, or Development of Regional Impact. Such conversion may only occur when a demonstrated need has been established and it is determined by the County that it does not constitute urban sprawl or promote urban sprawl in surrounding areas.⁸

⁵ Affidavit of Jeffrey L. Pearson ¶ 6 and attachment.

⁶ *Id.*

⁷ Comp Plan Policy 1.1.10 (attached to Affidavit of Jeffrey C. Ruggieri)

⁸ Comp Plan p. 1-219, Policy 2.2.22 (attached to Affidavit of Jeffrey C. Ruggieri)

9. On February 8, 2007, Sun River filed an Application for Amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County.

10. The land within the boundary of Charlotte County described by Sun River's Application is located in a Rural Service Area, and not within the Urban Service Area.

11. The proposal by Sun River violates the Comp Plan.

12. Sun River's proposal encourages urban sprawl in violation of Objective 1.3 and Policy 2.2.22.

13. Sun River's proposal violates the directive on page 4-36 to not extend potable water and sanitary sewer service during the operation of the current Comp Plan.

14. Sun River's proposal violates Policy 9.1.4's limits on the serviceable areas within the County.

15. On March 16, 2007, Charlotte County filed its Objection to Sun River's Application.

16. On May 10, 2007, the DCA filed a Memorandum in which it evaluated Sun River's Application and determined that Sun River's proposed extension of utility services is inconsistent with the Comp Plan.

17. On September 25, 2007, the Charlotte County Board of County Commissioners adopted Resolution No. 2007-143.⁹ Resolution 2007-143 rescinded Resolution 94-195's explicit grant of jurisdiction to the PSC, effective immediately.

⁹ See Docket 070643-WS, filed September 28, 2007.

APPLICABLE LAW AND ANALYSIS

I. AS A MATTER OF LAW, SUN RIVER'S APPLICATION CANNOT BE APPROVED BECAUSE IT VIOLATES THE CHARLOTTE COUNTY COMPREHENSIVE PLAN, AND THEREFORE THE PUBLIC INTEREST

A. Standard of Review

The purpose of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts.¹⁰ Pursuant to Rule 28-106.204(4), Florida Administrative Code, “[a]ny party may move for summary final order whenever there is no genuine issue of material fact.” A summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order.¹¹ When a party establishes that there is no material fact relating to any disputed issue, the burden shifts to the opponent to demonstrate the falsity of the showing.¹² “If the opponent does not do so, summary judgment is proper and should be affirmed.”¹³ There are two requirements for a summary final order: (1) there is no genuine issue of material fact; and (2) a party is entitled to judgment as a matter of law.¹⁴

B. Argument

There is no question that Sun River's proposal violates the Comp Plan – Sun River's own application and filed testimony admit as much.¹⁵ Sun River seeks to provide utility service to an area that has not been approved for development, pursuant to the Comp Plan. The proposed

¹⁰ See Order No. PSC-05-0702-FOF-TP, p. 12; Order No. PSC-03-1469-FOF-TL

¹¹ See Order No. PSC-03-0528-FOF-TP, p.8.

¹² See Order No. PSC-01-1427-FOF-TP, p. 13.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Application at p.2, ¶ 3; Direct Testimony of A.A. Reeves, III, at p.5 (“The portion of the proposed territory that lies outside the urban service area may not comport with the Comprehensive Plan.”); Direct Testimony of Gerald C. Hartman, P.E., at p.6 (“Charlotte County has no plans in their comprehensive plan for service to the proposed Sun River utility area.”)

service area falls outside the Urban Service Area, and squarely within the Rural Service Area. A Rural Service Area is one "in which central potable water and sanitary sewer service should not be extended during the planning time period."¹⁶ The area has not been targeted at any time for infill and development.¹⁷ No immediate need for utilities exists. The DCA has noted the Application presumes that the need for utilities will be generated from increased commercial, residential, and industrial development that has not yet transpired nor been approved by Charlotte County.¹⁸

Sun River's proposal to extend services into the Rural Service Area violates the very premise of the Comp Plan- to use the location and timing of infrastructure and services to direct growth in an orderly and efficient manner.¹⁹ The extension of these services would certainly encourage growth and urban sprawl, in sharp contrast to the goals of the Comp Plan.²⁰ "Urban sprawl" is defined as

"Urban development or uses which are located in predominantly rural areas, or rural areas interspersed with generally low-intensity or low-density urban uses, and which are characterized by one or more of the following conditions: (a) The premature or poorly planned conversion of rural land to other uses; (b) The creation of areas of urban development or uses which are not functionally related to land uses which predominate the adjacent area; or (c) The creation of areas of urban development or uses which fail to maximize the use of existing public facilities or the use of areas within which public services are currently provided. Urban sprawl is typically manifested in one or more of the following land use or development patterns: Leapfrog or scattered development; ribbon or strip commercial or other development; or large expanses of predominantly low-intensity, low-density, or single-use development."²¹

Sun River cannot show that its proposal would serve any purpose other than to encourage exactly this type of development, in an area it admits is not permitted to handle such development.

¹⁶ Affidavit of Jeffrey L. Pearson ¶ 6 and attachment p. 4-36.

¹⁷ DCA Memorandum, p.2.

¹⁸ *Id.*, p.1.

¹⁹ Comp Plan Objective 1.3 (attached to Affidavit of Jeffrey C. Ruggieri).

²⁰ Comp Plan Objective 1.3, Policy 2.2.22 (attached to Affidavit of Jeffrey C. Ruggieri).

²¹ Rule 9J-5.003 (134), Fla. Admin. Code

The Florida Legislature has been clear regarding the importance and predominance of comprehensive plans when making decisions based on the proper use of land. Section 163.3161(3) of the Florida Statutes states the Legislature's intent that local governments act through the use of comprehensive planning to "preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources, consistent with the public interest; overcome present handicaps; and deal effectively with future problems that may result from the use and development of land within their jurisdictions." The statute goes on to note that:

"Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions."²²

Comprehensive plans are intended to be joint ventures between local government planners and the public, not decrees from government officials which do not reflect the wants and desires of the citizens within each plan's geographic area. The plans are meant to implement the shared development goals of both the elected officials and the electing public. To ensure that the process is truly public-oriented, statutes exist mandating notice and procedures allowing for effective public participation in the process.²³ The procedures must provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings, open discussion, communications programs, information services, and consideration of and response to public comments.²⁴ At least two advertised public hearings must be held.²⁵ A

²² §163.3161(3), Fla. Stat.

²³ §163.3181, §163.3184, Fla. Stat.

²⁴ §163.3181(2), Fla. Stat.

sign-in form at these hearings must be provided, allowing for information to be mailed directly to members of the public in attendance, in addition to members who submit written comments related to the plan.²⁶

The Legislature has taken further steps to ensure that the overall plan is in the public interest by requiring the approval of not only the DCA, but a laundry list of state and regional planning and regulatory entities prior to implementation of the plan.²⁷ Specifically, the statute requires the County to transmit its proposed comprehensive plan to "the state land planning agency, the appropriate regional planning council and water management district, the Department of Environmental Protection, the Department of State, and the Department of Transportation," along with the "Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services."²⁸ Requiring such widespread public and governmental approval of comprehensive plans prior to their implementation demonstrates Florida's strong public policy in favor of upholding the detailed planning and conclusions reached within these comprehensive plans whenever possible. Individually affected persons who believe that the plans fail to correctly address planning and development issues can challenge the plans, as long as those persons have participated in the process by submitting written or oral comments, recommendations, or objections to the plan.²⁹

After a comprehensive plan has been adopted in conformity with all statutory requirements, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan must be consistent with

²⁵ §163.3184 (15)(b), Fla. Stat.

²⁶ §163.3184 (15)(c), Fla. Stat.

²⁷ See §163.3184 (3),(4), Fla. Stat.

²⁸ §163.3184 (3), Fla. Stat.

²⁹ §163.3184 (1), Fla. Stat.

the plan as adopted.³⁰ "Governmental agencies" is defined by statute as including "[t]his state or any department, commission, agency, or other instrumentality thereof."³¹ Thus, no public or private development is permitted unless it is in conformity with the comprehensive plans, or elements or portions thereof.³² The adoption of comprehensive plans aims "to protect human, environmental, social, and economic resources; and to maintain, through orderly growth and development, the character and stability of present and future land use and development in [the] state."³³ Once adopted, a local comprehensive land use plan is likened to a constitution for all future development within the governmental boundary.³⁴

The Florida Public Service Commission is excused from being bound by the specific language and directives listed in Chapter 163, but not from the impetus behind the statutes. Like comprehensive plans themselves, the Public Service Commission is also beholden to the public interest. While Section 367.011, Florida Statutes, makes the PSC regulatory powers superior to the provisions in other statutes covering the same subject matter, the specific statutes within that chapter repeatedly refer to the public interest.³⁵ The Florida Supreme Court views the public interest as "the ultimate measuring stick to guide the PSC in its decisions."³⁶ The PSC is empowered by the Legislature both to "grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest" and to "deny a certificate of authorization, if in the public interest."³⁷

³⁰ §163.3194 (1)(a), Fla. Stat.

³¹ §163.3164 (10)(b), Fla. Stat.

³² §163.3161 (5), Fla. Stat.

³³ §163.3161 (7), Fla. Stat.

³⁴ *Machado v. Musgrove*, 519 So. 2d 629, 632 (Fla. 3d DCA 1987); *Martin County v. Yusem*, 690 So. 2d 1288, 1293 (Fla. 1997).

³⁵ §367.011(4), Fla. Stat.; *See, e.g.*, §367.045, §367.071, §367.011, §367.111, Fla. Stat.

³⁶ *Gulf Coast Electric Cooperative, Inc. v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999).

³⁷ §367.045 (5)(a), Fla. Stat.

As stated above, comprehensive plans exist solely for the public's benefit, and are authoritative statements of the public interest, as they are created and adopted through a collaborative process uniting the elected officials and the public with the goal of designing their communities and guiding future development therein. When an application for granting or amending a certificate comes before the Commission, and a timely objection has been made by an appropriate motion or application, the Commission is required to consider the local comprehensive plan of the county or community.³⁸ While the statute does not order the PSC to "defer" to the Comp Plan, the mandate of the public interest still reigns as the PSC's guideline in making decisions. Prior Commission Orders have narrowed the discussion concerning conflict with a county's comprehensive plan by focusing on whether the amendment of a certificate is the actual final straw in causing a violation of the citizen's development mandate.³⁹ However, such a myopic view ignores the reality that PSC ratification of a proposal which violates the Comp Plan would likely serve as an impetus for further non-compliant action. The "first straw" weighs the same as the one that actually breaks the camel's back. In sum, an application for a certificate which flies boldly against the stated planning goals of the citizens of an area, such as that filed by Sun River in this cause, cannot by definition be "in the public interest" and therefore, the PSC must deny the application as a matter of law.

II. THE PSC SHOULD RELINQUISH JURISDICTION OF THIS MATTER BECAUSE CHARLOTTE COUNTY HAS RESCINDED ITS RESOLUTION SUBJECTING ITSELF TO PSC JURISDICTION

Pursuant to the rights and procedure enumerated in Florida Statutes Section 367.171(1), on September 25, 2007, the Board of County Commissioners of Charlotte County, Florida, passed and adopted Resolution No. 2007-143. This Resolution rescinded the County's

³⁸ §367.045 (5)(b), Fla. Stat.

³⁹ See Order No. PSC-04-0980-FOF-WU p. 16; Order No. PSC-96-1281-FOF-SU p.15.

Resolution 94-195, which had expressly decreed that the county was subject to the jurisdiction and regulatory authority of the PSC and Chapter 367, Florida Statutes.⁴⁰ The County Commissioners determined, and stated in their Recitals to the more recent Resolution, that the best interest of the citizens and residents of Charlotte County required County regulation of private for-profit water and wastewater systems.⁴¹

Section 367.171(5) states, in relevant part, "[w]hen a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the commission ... shall remain within the jurisdiction of the commission...until disposed of in accordance with the law in effect on the day such case was filed." Thus, the plain language of the statute continues to vest the Commission with jurisdiction to rule on Sun River's Application, despite the County's adoption of Resolution 2007-143. However, the exercise of such jurisdiction would constitute a colossal waste of the parties', and the Commission's, time, energy, and resources.

As explained in the Affidavit of Jeff Ruggieri, the area which Sun River seeks to service is not currently zoned for the types of activity Sun River seeks to encourage, and no permits have been issued for the development sought by Sun River. This type of zoning and permitting are counter to the County's Comp Plan, and such zoning and permitting decisions do not fall under the PSC's jurisdiction, but rather have always been retained by Charlotte County. Thus, even if the PSC did decide that the issuance of the amendment to the Certificates at issue here could be in the public interest despite the conflict with the Comp Plan approved by the citizens of Charlotte County, Sun River would still have to apply to Charlotte County to implement its servicing of the area. This ironic reality would render any PSC decision in Sun River's favor

⁴⁰ See §367.171(3), Fla. Stat.

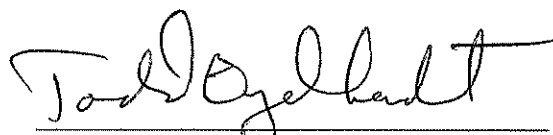
⁴¹ See Attached Resolution 2007-143.

effectively moot because Charlotte County is barred by law from approving any rezoning or permitting which runs counter to the approved Comp Plan.⁴²

Relinquishing jurisdiction of the matter, in favor of Charlotte County, is the most expedient action for the Commission to take. This case is still at an early stage- the County's direct testimony and exhibits have not yet been filed, and Commission Staff has likely spent minimal time and expense at this point. The Hearing is not scheduled until January 16-17, 2008.⁴³ Assuming for the moment that its claim of need in the area has merit, Sun River would still have an avenue it could pursue, in that the public hearings and opportunities for comments for the next Charlotte County Comprehensive Plan will be beginning shortly.⁴⁴ Upon a demonstration to the County of this claimed need and of Sun River's viability to offer services to this area, this can be taken into account during the development of the new Comp Plan, and the zoning and permitting issues could be resolved at that time as well. Thus, PSC relinquishment would not cause any harm to the parties involved, and would on the contrary save significant amounts of time, energy, and resources.

WHEREFORE, Charlotte County respectfully requests that the Commission issue a Summary Final Order in its favor, dismissing the Application by Sun River. In the alternative, Charlotte County respectfully requests that the Commission relinquish its jurisdiction of the matter over to Charlotte County.

Respectfully submitted this 9th day of October, 2007.



Todd D. Engelhardt
Florida Bar Number: 0013444

⁴² §163.3194 (1)(a), Fla. Stat.

⁴³ See Order No. PSC-07-0807-PCO-WS, issued October 4, 2007.

⁴⁴ The current Comp Plan expires in 2010.

Harold A. McLean
Florida Bar Number: 0193591
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
P. O. Box 1877
Tallahassee, FL 32302-1877
Phone: (850) 224-9634
Fax: (850) 222-0103
Attorneys for Charlotte County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Charlotte County's Motion For Summary Final Order Or Relinquishment Of Jurisdiction has been furnished by U.S. Mail to the following on the 9th day of October 2007:

Martin S. Friedman, Esq.
Robert C. Brannan, Esq.
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
Phone: 850-877-6555
Fax: 850-656-4029
Email: rbrannan@rsbattorneys.com

Ralph Jeager, Esq.
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



Todd D. Engelhardt

RESOLUTION
NO. 2007 143

A RESOLUTION RELATING TO COUNTY REGULATION OF PRIVATE WATER AND WASTEWATER SYSTEM UTILITIES; RESCINDING RESOLUTION NO. 94-195; EXCLUDING CHARLOTTE COUNTY FROM THE PROVISIONS OF CHAPTER 367, FLORIDA STATUTES, THUS TRANSFERRING SUCH REGULATION FROM THE PUBLIC SERVICE COMMISSION BACK TO CHARLOTTE COUNTY; PROVIDING FOR MAILING A CERTIFIED COPY HEREOF; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, pursuant to Board of County Commissioners Resolution No. 94-195, adopted September 27, 1994, attached hereto as Exhibit "A" and incorporated herein by reference, the Florida Public Service Commission ("PSC") presently regulates certain private water and wastewater system utilities within Charlotte County pursuant to its authority under Chapter 367, Florida Statutes, the "Water and Wastewater System Regulatory Law"; and

WHEREAS, the Charlotte County Board of County Commissioners has determined that it is in the best interest of the citizens and residents of Charlotte County that private for-profit water and wastewater systems within Charlotte County be regulated by Charlotte County; and

WHEREAS, the Charlotte County Board of County Commissioners now desires to transfer the regulation of private utilities from the PSC to Charlotte County, pursuant to Section 367.171(1), Florida Statutes, and thereby exclude itself from the provisions of Chapter 367.

IMAGED
9-27-07
AP

CERTIFIED, TRUE COPY
OF THE ORIGINAL
BARBARA T. SCOTT
CLERK OF THE CIRCUIT COURT
CHARLOTTE COUNTY, FLORIDA
BY: Ann J. Bashler
DEPUTY CLERK

NOW THEREFORE, BE IT RESOLVED by the Board of County commissioners of Charlotte County, Florida:

1. Resolution No. 94-195 is hereby rescinded, thereby excluding Charlotte County, Florida from the provisions of Chapter 367, Florida Statutes, effective immediately, and all non-exempted water and wastewater systems in the County that meet the definition of "utility" as defined by Section 367.021, Florida Statutes, are hereby subject to the jurisdiction and regulatory authority of Charlotte County, Florida.
2. The Clerk of the Board is hereby directed and authorized to notify the Public Service Commission of the adoption of this resolution by mailing a certified copy of this resolution to the Public Service Commission forthwith.

PASSED AND DULY ADOPTED this 25 day of September, 2007.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY FLORIDA

By Richard D. Loftus
Richard D. Loftus, Chairman

ATTEST:
Barbara T. Scott, Clerk of Circuit
Court and Ex-officio Clerk to the
Board of County Commissioners

By Anna L. Bahler
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Janette S. Knowlton
Janette S. Knowlton, County Attorney

MB

CERTIFIED, TRUE COPY
OF THE ORIGINAL
BARBARA T. SCOTT
CLERK OF THE CIRCUIT COURT
CHARLOTTE COUNTY, FLORIDA
BY: *[Signature]*
DEPUTY CLERK

R E S O L U T I O N
NUMBER 94-195

A RESOLUTION RELATING TO COUNTY REGULATION OF PRIVATE WATER AND WASTEWATER SYSTEM UTILITIES; DECLARING CHARLOTTE COUNTY SUBJECT TO THE PROVISIONS OF CHAPTER 367, FLORIDA STATUTES, THUS TRANSFERRING SUCH REGULATION TO THE PUBLIC SERVICE COMMISSION; PROVIDING FOR MAILING A CERTIFIED COPY HEREOF; AND PROVIDING AN EFFECTIVE DATE.

RECITALS

WHEREAS, the Charlotte County Board of County Commissioners presently regulates certain private water and wastewater system utilities pursuant to its authority as a charter county and Chapter 367, Florida Statutes, the "Water and Wastewater System Regulatory Law," which specifically excludes Charlotte County from Public Service Commission (PSC) jurisdiction; and

WHEREAS, the Charlotte County Board of County Commissioners has determined that it is in the best interest of the citizens and residents of Charlotte County that private for-profit water and sewer systems within Charlotte County be regulated by the Public Service Commission, which has adequate staff to analyze utility system rates; and

WHEREAS, the Charlotte County Board of County Commissioners now desires to transfer the regulation of private utilities to the PSC, pursuant to Section 367.171(1), Florida Statutes, and thereby make the provisions of Chapter 367 effective in Charlotte County, Florida;

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Charlotte County, Florida:

1. Charlotte County, Florida, is hereby subject to the provisions of Chapter 367, Florida Statutes, the "Water and Wastewater Regulatory Law," effective immediately, and all non-exempted water and sewer systems in the County that meet the definition of "utility" as defined by Section 367.021, Florida Statutes, are hereby subject to the jurisdiction and regulatory authority of the State of Florida Public Service Commission.

2. The Clerk to the Board is hereby directed and authorized to notify the Public Service Commission of the adoption of this resolution by mailing a certified copy of this resolution to the Public Service Commission forthwith.

PASSED AND DULY ADOPTED this 27th day of September, 1994.

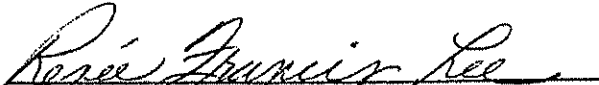
BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By 
Richard J. Leonard, Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By 
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


Renee Francis Lee, County Attorney *mb*

**BARBARA T. SCOTT
CLERK OF THE CIRCUIT COURT**



COMMISSION MINUTES

September 26, 2007

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

We are forwarding a certified copy of Resolution #2007-143 as required within the Resolution per item 2, on page 2. This Resolution was approved by the Board of Charlotte County Commissioners on Tuesday, September 25, 2007.

If you have any questions, please contact me directly at (941) 743-1539.

Sincerely,

BARBARA T. SCOTT
CLERK OF THE CIRCUIT COURT

By: Anne L. Pfahler
Anne L. Pfahler
Deputy Clerk

Enclosure (1)
BTS/alp

MAILED
9-27-07
AP

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County		Docket No. 070109-WS
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AFFIDAVIT OF JEFFREY L. PEARSON

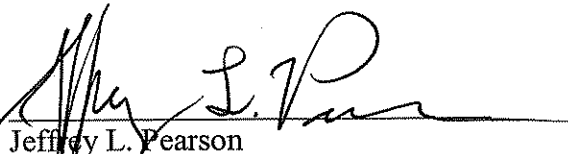
Jeffrey L. Pearson, as Charlotte County Utilities Director, being duly sworn, deposes and says as follows:

1. My name is Jeffrey L. Pearson, I am over the age of 21, and I have personal knowledge of the facts and statements herein.
2. I am the Utilities Director for Charlotte County, Florida.
3. My work address is 25550 Harborview Rd. Port Charlotte Fl., Suite 1, 33980.
4. Pursuant to my duties and responsibilities as Utilities Director, I am very familiar with the Charlotte County Comprehensive Plan.
5. I have reviewed the petition filed by Sun River Utilities, formerly known as MSM Utilities, LLC., at the Florida Public Service Commission in the above-referenced docket. Sun River Utilities seeks the Commission's approval of an application to amend Certificates 611-W and 527-S to extend water and wastewater service areas within Charlotte County.
6. Sun River's proposed actions raise growth management concerns, related to provisions of the approved Charlotte County Comprehensive Plan. The proposed service area described in Sun River's petition exceeds the boundaries designated for Urban Service. Therefore, the extension of utilities into this area is inconsistent with, and actually violates, the Charlotte County Comprehensive Plan, specifically page 4-36 which states the following: *Rural Service Areas*. "Rural Service Areas are those locations in which central potable water and

sanitary sewer service should not be extended during the planning time period. This action, along with very low residential densities, reduces the likelihood of major population growth occurring in rural areas of Charlotte County. The Rural Service Area includes the bridgeless barrier islands, all of East County, and much of South County.” Policy 9.1.4: “Certified areas will not be extended or expanded for potable water or sanitary sewer service outside of Infill Area boundaries. Exceptions shall be made in the case of New Communities or Developments of Regional Impact in West County, Mid County, or South County or Rural Communities in East County; or in the case of where a utility(s) shall provide both central potable water and sanitary sewer service in a tandem manner within the Urban Service Area Overlay District.” The subject property is located in a Rural Service Area and is not a known New Community or Development of Regional Impact, therefore the proposed certified service area expansion should be denied because it violates the Comprehensive Plan.

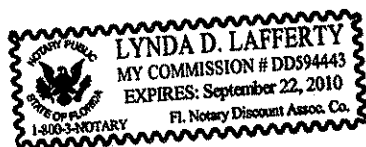
FURTHER AFFIANT SAYETH NAUGHT


STATE OF FLORIDA
COUNTY OF CHARLOTTE


Jeffrey L. Pearson

Sworn to and subscribed to before me this 8th day of OCTOBER, 2007, by Jeffrey L. Pearson, as Utilities Director of Charlotte County, who produced _____ as identification or is personally known to me

and who did take an oath.




NOTARY PUBLIC
My Commission Expires
Lynda D. Lafferty

permitted to extend service in accordance with that authorization. In the case of Charlotte County Utilities (under the direction of the Board of County Commissioners), a landowner may be entitled to request service extensions within Suburban Areas. In such cases, the landowner requesting the extension will be required to bear the full cost of infrastructure and design, permitting, and installation.

Rural Service Areas. Rural Service Areas are those locations in which central potable water and sanitary sewer service should not be extended during the planning time period. This action, along with very low residential densities, reduces the likelihood of major population growth occurring in rural areas of Charlotte County. The Rural Service Area includes the bridgeless barrier islands, all of East County, and much of South County.

Developments, such as New Communities, Developments of Regional Impact, or Rural Communities, may be approved within South County and East County locations based upon a master plan. If a master plan is approved for such a proposal, it should include provisions for central potable water and sanitary sewer service. If central potable water and sanitary sewer service is installed within such development, transmission lines may be extended by a utility provider through the Rural Services Area. In such case, the line extension should not be construed as justification for development at increased urban densities or intensities adjacent to the extended line in land designated as Rural Service Area and which is not part of the approved New Community, DRI, or Rural Community master plan.

Water and Sewer Extensions. Besides roads, central potable water lines have had the greatest infrastructure influence on the development pattern of Charlotte County. Much of the urbanized area has been subdivided into low-density lots. This pattern is reflected on the Future Land Use Map where the predominant land use is low-density residential. In addition, many of the commercial and industrial sites have been subdivided into smaller lots. This development pattern enabled many developers to install only potable water lines. They could then rely upon the use of septic systems for treating wastewater.

The County currently requires simultaneous extension and certification of water and sewer utility lines. However, this condition may not be achievable when the water and sewer providers are not the same (i.e., different certificated areas). In these cases, extension of lines simultaneously should be evaluated on a case-by-case basis. The County presently has mandatory connection requirements if water or sewer service is available.

Utilities South of the Peace River. Currently, there are two utility providers in South County. These providers are the City of Punta Gorda and Charlotte County Utilities through the Burnt Store facilities. While most of the City of Punta Gorda is served by central water and sewer service, much of the unincorporated area surrounding the city is not. In order to ensure service provision to unincorporated areas, Charlotte County and the City continue to work towards solutions for providing the necessary infrastructure. These solutions include, for the most part, interlocal agreements for service provision and sharing of expansion plans for meeting growing demands.

CCU Goals, Objectives and Policies

Potable Water and Sanitary Sewer

Goal 9: Charlotte County will encourage public and private utility companies (utilities) to provide well-designed and economically efficient systems of potable water and sanitary sewer service that maximizes the use of existing facilities to meet the needs of a growing population, while protecting the natural environment.

Objective 9.1: Charlotte County and the utilities serving the county shall assure the provision of potable water and sanitary sewer services to new and existing development in conjunction with previously certified areas and the Urban Service Area strategy through the planning ~~timeframe of 2010-~~ horizons established within the comprehensive plan.

Policy 9.1.1: Utilities are encouraged to extend central potable water and sanitary sewer services to Infill Areas in accordance with the Urban Service Area strategy. Such extensions will represent sequential extensions of service.

Policy 9.1.2: In the case of a utility which provides both central potable water and sanitary sewer service, the utility is encouraged to extend potable water and sanitary sewer lines concurrently. As an exception to this policy, lines may be extended separately if the service area is primarily composed of one type of service line and is located at a distance from which it would be economically inefficient to require concurrent extensions.

Policy 9.1.3: In the case of utilities which provide both central potable water and sanitary sewer service, the certified area for one service will not be extended to an area unless the certified area for the other service is also extended to the same location.

Policy 9.1.4: Certified areas will not be extended or expanded for potable water or sanitary sewer service outside of Infill Area boundaries. Exceptions shall be made in the case of New Communities or

Developments of Regional Impact in West County, Mid County, or South County or Rural Communities in East County; or in the case of where a utility(s) shall provide both central potable water and sanitary sewer service in a tandem manner within the Urban Service Area Overlay District.

Policy 9.1.5: Utilities which have an approved certification to provide service shall serve their approved areas in accordance with the certification.

Policy 9.1.6: When it is necessary for potable water or sanitary sewer lines to be extended through a Rural Service Area in order to provide service to lands located within another Urban Service Area, the extension of such transmission lines shall not be construed as justification for development at urban intensities in the Rural Service Area adjacent to the extended infrastructure.

Policy 9.1.7: Landowners of new development within the Infill area or previously certified area where central potable water or sewer service is not available, may elect to use wells and septic systems but will be required to connect to a central potable water or sewer service when it becomes available and within 365 days upon written notification by the utility provider.

Objective 9.2: Charlotte County, in making land use decisions, shall utilize the availability of central potable water and sanitary sewer service.

Policy 9.2.1: New lots platted within Charlotte County served by a septic system shall have a minimum lot area consistent with the requirements of the more stringent of Chapter 10D-6, *Florida Administrative Code*, or local ordinance.

Policy 9.2.3: Water and sewer availability will not necessarily provide justification for development approval.

Objective 9.3: Charlotte County shall protect its existing and future potable water supplies, such as the Peace River, and wellhead locations in order to continue using those natural resources for drinking water purposes.

Policy 9.3.1: Charlotte County will evaluate the effects of development on wellheads for all proposed land uses within delineated cones of influence for all central potable water supply wellheads used for public consumption. Where a cone of influence is not determined, all proposed development within 1,500 feet of the wellhead will be evaluated. Land uses in which

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for amendment of Certificates 611-W and 527-S to extend water and wastewater service areas to include certain land in Charlotte County		Docket No. 070109-WS
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AFFIDAVIT OF JEFFREY C. RUGGIERI

Jeffrey C. Ruggieri, as Planning Services Manager, being duly sworn, deposes and says as follows:

1. My name is Jeffrey C. Ruggieri, I am over the age of 21, and I have personal knowledge of the facts and statements herein.
2. I am the Planning Services Manager for Charlotte County.
3. My work address is 18500 Murdock Circle, Port Charlotte FL, 33948.
4. Pursuant to my duties and responsibilities as Planning Services Manager, I am very familiar with the Charlotte County Comprehensive Plan, which was adopted by Charlotte County on October 7, 1997, approved by the Department of Community Affairs on May 16, 2000, with Evaluation Appraisal Report approved by DCA on July 12, 2007.
5. Evidence in County files shows that the County had approximately 115 public meetings over three years (1995, 1996, and 1997) regarding the revised comprehensive plan. I have attached a chart prepared by previous Community Development Department staff used as a status update for the comprehensive plan process that shows all of the public meeting dates.
6. I have reviewed the petition filed by Sun River Utilities, formerly known as MSM Utilities, LLC., at the Florida Public Service Commission in the above-referenced docket. Sun River Utilities seeks the Commission's approval of an application to amend Certificates 611-W and 527-S to extend water and wastewater service areas within Charlotte County.

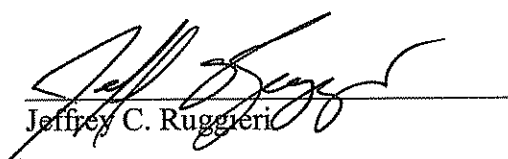
7. Sun River's proposed actions raise growth management concerns, related to provisions of the approved Charlotte County Comprehensive Plan. The proposed service area described in Sun River's petition exceeds the boundaries designated for Urban Service. Therefore, the extension of utilities into this area is inconsistent with, and actually violates, the Charlotte County Comprehensive Plan, specifically **Policy 9.1.1 and Policy 9.1.4** of the Potable Water and Sanitary Sewer Elements.

8. Further, the area that Sun River plans to service has not been zoned for the type of development that Sun River seeks to service. Such a rezoning would further conflict with the Comprehensive Plan's Future Land Use Elements **Policy 1.1.10; Policy 1.3.1; Policy 1.4.5; Policy 2.2.22; Objective 2.7 and Policies 2.7.1 and 2.7.10.**

9. I have attached copies of the Policies and Objectives that would be violated by Sun River, should its application be approved by the Public Service Commission.

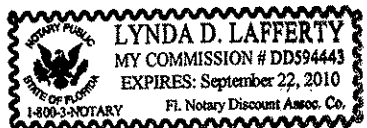
FURTHER AFFIANT SAYETH NAUGHT


STATE OF FLORIDA
COUNTY OF CHARLOTTE


Jeffrey C. Ruggieri

Sworn to and subscribed to before me this 5th day of OCTOBER, 2007, by Jeffrey C. Ruggieri, as Planning Services Manager of Charlotte County, who produced _____ as identification or is personally known to me

and who did take an oath.




NOTARY PUBLIC
My Commission Expires
Lynda D. Lafferty

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Element or Component	Current Status	Future Presentations Scheduled	Public Meetings Completed	Comments
<p>FUTURE LAND USE Existing Land Use Map (Information only. Adoption not necessary Future Land Use Map Series</p>	<p>Released Aug. 19, 1996 Released Aug. 26, 1996</p>		<p>Aug.26 - P&Z Workshop Sept. 5 - P&Z Workshop Sept.10 - P&Z Workshop Oct. 8 - BCC/ANRAC Workshop Oct.24 - Charlotte Assembly Oct.31 - Charlotte Assembly Nov. 7 - Charlotte Assembly Nov.14 - Charlotte Assembly Nov.21 - Charlotte Assembly Nov.25 - Charlotte Assembly Dec. 9 - P&Z Meeting Jan. 14 - BCC Meeting Jan. 15 - Comp plan open house</p>	<p>GOPs must be adopted by ordinance. FLUM includes new designations, but land uses remain about the same. Charlotte Assembly sub-group D finished reviewing.</p>
<p>TRANSPORTATION</p>	<p>Released Aug. 30, 1996</p>		<p>Sept.23 - P&Z Meeting Oct. 8 - BCC Meeting Oct.23 - Charlotte Assembly Oct.31 - Comp plan open house Nov.12 - P&Z/Charlotte Assembly Report Nov.19 - Charlotte Assembly</p>	<p>Prepared by MPO staff. TAC and CAC will review and offer comments. Strong emphasis on intermodalism and ISTEA process. GOPs and LOS standards must be adopted. Charlotte Assembly sub-group B finished reviewing.</p>

RECREATION AND OPEN SPACE	Released Aug. 8, 1996		<p>Oct. 14 - Charlotte Assembly Oct.21 - Charlotte Assembly Oct.31 - Charlotte Assembly Oct.31 - Comp plan open house Nov. 6 - RPAC Meeting Nov.12 - P&Z/Charlotte Assembly report Nov.26 - BCC Meeting</p>	<p>RPAC will review and advise. Minor additions may be required upon completion and acceptance of the WRT Master Plan. GOPs, LOS must be adopted.</p> <p>Charlotte Assembly sub-group C finished reviewing.</p>
NATURAL RESOURCES AND COASTAL PLANNING	Released Sep. 22, 1996		<p>Oct. 14 - Charlotte Assembly Oct.21 - Charlotte Assembly Oct.31 - Charlotte Assembly Nov. 4- Charlotte Assembly Nov. 20 - Comp plan open house Nov 25. - P&Z Meeting Dec. 10 - BCC Meeting</p>	<p>RPAC will review and advise. Major emphasis on habitat conservation plans to protect wildlife. GOPs must be adopted.</p> <p>Charlotte Assembly sub-group C finished reviewing.</p>
HOUSING	Released Sep. 12, 1996		<p>Oct. 9 - Charlotte Assembly Oct.16 - Charlotte Assembly Oct.23 - Charlotte Assembly Oct.31 - Comp plan open house Nov. 6 - Charlotte Assembly Nov.12 - P&Z/Charlotte Assembly report Nov.26 - BCC Meeting</p>	<p>AHAC will review and comment. GOPs must be adopted.</p> <p>Charlotte Assembly sub-group B finished reviewing.</p>

<p>INFRASTRUCTURE Drainage Aquifer Recharge Solid Waste</p>	<p>Released Aug. 7, 1996 Released Aug. 7, 1996 Released Aug. 7, 1996</p>	<p>Aug.26 - P&Z Meeting Oct.23 - Charlotte Assembly Oct.28 - P&Z Meeting Oct.30 - Charlotte Assembly Oct.31 - Comp plan open house Nov.12 - BCC Meeting Nov. 13 - Charlotte Assembly Nov 25 - Charlotte Assembly Nov.12 - P&Z/Charlotte Assembly</p>	<p>GOPs, LOS standards must be adopted. Charlotte Assembly sub-group A finished reviewing.</p>
<p>Water and Sewer</p>	<p>Released Nov, 1, 1996</p>	<p>Dec. 5 - Charlotte Assembly Dec.12 - Charlotte Assembly Dec.16 - P&Z Meeting Dec. 19 - Charlotte Assembly Jan. 15 - Comp plan open house Jan.28 - BCC Meeting</p>	<p>Charlotte Assembly sub-group D finished reviewing Sewer and Water.</p>
<p>INTERGOVERNMENTAL COORDINATION (ICE)</p>	<p>Released Sep. 17, 1996</p>	<p>Nov. 20 - Comp plan open house Nov, 22 Charlotte Assembly Dec. 3 Charlotte Assembly Dec. 9 - Charlotte Assembly Dec.10 - BCC Meeting Dec.16 - P&Z</p>	<p>GOPs must be adopted. Florida Legislature and DCA have again changed requirements of this element. Group B of Charlotte Assembly finished reviewing.</p>
<p>CAPITAL IMPROVEMENTS ELEMENT (CIE)</p>	<p>Released Oct. 17, 1996</p>	<p>Nov.22 - Charlotte Assembly Dec. 9 - Charlotte Assembly Dec 16 - Charlotte Assembly Jan. 8 - Charlotte Assembly Jan. 15 - Comp plan open house</p>	<p>GOPs, five-year schedule must be adopted. Expect modifications reflecting changes to other elements. Group E of Charlotte Assembly finished reviewing.</p>

<p>HISTORIC PRESERVATION</p>	<p>Released Sep. 17, 1996</p>		<p>Oct.14 - Charlotte Assembly Oct.21 - Charlotte Assembly Oct.31 - Charlotte Assembly Oct.31 - Comp plan open house Nov. 4 - Charlotte Assembly Nov.12 - P&Z Meeting Nov.26 - BCC Meeting</p>	<p>An optional element. GOPs will be kept very simple. Historic Preservation Board reviewed and approved of the draft. Charlotte Assembly sub-group C finished reviewing.</p>
<p>COMMUNITY FACILITIES AND SERVICES</p>	<p>Released Nov.15, 1996</p>		<p>Nov. 20 - Charlotte Assembly Nov. 20 - Comp plan open house Nov.25 - P&Z Meeting Dec.10 - BCC Meeting</p>	<p>An optional element covering fire, public safety, police and justice, education and libraries. Charlotte Assembly sub-group B finished reviewing.</p>

- Jan. 16, 1997 - P&Z/Charlotte Assembly joint meeting
- Jan. 23, 1997 - P&Z/Charlotte Assembly joint meeting
- Jan. 27 1997 - P&Z workshop
- Jan. 29, 1997 - P&Z/Charlotte Assembly joint meeting
- Feb. 6, 1997 - P&Z/Charlotte Assembly joint meeting
- Feb. 10, 1997 - P&Z (LPA) transmittal hearing
- Feb. 25, 1997 - P&Z presentation of comp plan to BCC
- Mar. 11, 1997 - BCC workshop on transmittal
- Mar. 18, 1997 - BCC transmittal hearing
- Jun. 23, 1997 - P&Z discussion of ORC
- Jul 8, 1997 - BCC workshop discussion of ORC
- Aug. 14, 1997 - P&Z/Charlotte Assembly joint meeting
- Aug 25, 1997 - P&Z (LPA) adoption hearing

Sep 9, 1997 - BCC adoption hearing
Oct 7, 1997 - BCC adoption hearing

Staff met at least once with each of these bodies/organizations:

Regional Planning Advisory Council
Charlotte County Genealogical Society
Economic Development Council
Charlotte County Chamber of Commerce
Englewood Area Chamber of Commerce
South Gulf Cove Property Owner's Association
Northwest Charlotte Homeowner's Association
Charlotte Builders and Contractor's Association
Charlotte County Board of Realtors
Charlotte County Tax Watch
Charlotte Harbor Environmental Center
Agriculture and Natural Resources Advisory Committee
Marine Advisory Committee
Historic Preservation Board
Affordable Housing Advisory Committee
Parks and Recreation Advisory Committee
Beaches and Shores Advisory Committee
Environmental Lands Acquisition Advisory Committee

CCU Goals, Objectives and Policies

Potable Water and Sanitary Sewer

Goal 9: Charlotte County will encourage public and private utility companies (utilities) to provide well-designed and economically efficient systems of potable water and sanitary sewer service that maximizes the use of existing facilities to meet the needs of a growing population, while protecting the natural environment.

Objective 9.1: Charlotte County and the utilities serving the county shall assure the provision of potable water and sanitary sewer services to new and existing development in conjunction with previously certified areas and the Urban Service Area strategy through the planning ~~timeframe of 2010~~ horizons established within the comprehensive plan.

Policy 9.1.1: Utilities are encouraged to extend central potable water and sanitary sewer services to Infill Areas in accordance with the Urban Service Area strategy. Such extensions will represent sequential extensions of service.

Policy 9.1.2: In the case of a utility which provides both central potable water and sanitary sewer service, the utility is encouraged to extend potable water and sanitary sewer lines concurrently. As an exception to this policy, lines may be extended separately if the service area is primarily composed of one type of service line and is located at a distance from which it would be economically inefficient to require concurrent extensions.

Policy 9.1.3: In the case of utilities which provide both central potable water and sanitary sewer service, the certified area for one service will not be extended to an area unless the certified area for the other service is also extended to the same location.

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Objective 9.2: Charlotte County, in making land use decisions, shall utilize the availability of central potable water and sanitary sewer service.

Policy 9.2.1: New lots platted within Charlotte County served by a septic system shall have a minimum lot area consistent with the requirements of the more stringent of Chapter 10D-6, *Florida Administrative Code*, or local ordinance.

Policy 9.2.3: Water and sewer availability will not necessarily provide justification for development approval.

Objective 9.3: Charlotte County shall protect its existing and future potable water supplies, such as the Peace River, and wellhead locations in order to continue using those natural resources for drinking water purposes.

Policy 9.3.1: Charlotte County will evaluate the effects of development on wellheads for all proposed land uses within delineated cones of influence for all central potable water supply wellheads used for public consumption. Where a cone of influence is not determined, all proposed development within 1,500 feet of the wellhead will be evaluated. Land uses in which

- a. infrastructure and services can be incrementally extended in a financially feasible manner or a private developer will pay the full cost if not publicly funded;
- b. the proposed land area is adjacent, or in close proximity, to an existing Infill Area;
- c. population growth and development trends warrant an increase in size; and
- d. existing Infill Areas have reached significant buildout to warrant expansion into new locations.

Policy 1.1.9: Charlotte County will levy various fees to ensure that new development pays the marginal cost of developing the capital facilities to provide new services and infrastructure.

Policy 1.1.10: Criteria for amending the Urban Service Area boundary include (i.e., converting rural service area to urban service area lands):

- a. the proposed expansion is contiguous to the Urban Service Area (except for self-supporting development approved as either a New Community or Development of Regional Impact);
- b. proposed land uses are compatible or provide sufficient buffering from existing, adjacent uses;
- c. an enforceable agreement exists for the extension of central potable water and sanitary sewer service into the proposed expansion area; and
- d. the proposed expansion will not interfere with agriculture or conservation activities; and
- e. the proposed expansion does not constitute urban sprawl or promote the expansion of urban sprawl in surrounding areas.

Objective 1.2 (Concurrency): ~~Charlotte County will employ a Concurrency Management System to ensure that appropriate Levels of Service identified within this comprehensive plan are achieved or maintained. will require the availability of services concurrent with the impacts of development, as provided by Section 163.3177(10)(h), F.S. Decisions regarding the location, extent and intensity of future land use in Charlotte County, particularly urban-type expansion, will ensure consistency with the type of uses and development established within each designated Urban and Rural Service Area. Future land use decisions will also be based on the physical constraints and financial feasibility of providing areas with services at levels of service (LOS) that meet or exceed the minimum standards adopted in the Comprehensive Plan.~~

Policy 1.2.2 1: Charlotte County will maintain a Concurrency Management System, as adopted in the Capital Improvements Element, to ensure that development orders and ~~or building~~ permits are issued on the condition that adequate public facilities and services meet of or exceed minimum LOS standards specified in the various elements of this Plan. ~~are available to serve new development when its impact occurs.~~

Policy 1.2.4 2: New development will not reduce urban infrastructure and services below the Level of Service standards adopted by Charlotte County in this comprehensive plan.

Policy 1.2.3: Charlotte County will implement Land Development Regulations providing that Levels of Service will must be sufficient prior to the issuance of a certificate of occupancy.

Policy 1.2.4: ~~Charlotte County will not approve proposed comprehensive plan or rezoning amendments which would reduce levels of service below the adopted standards scheduled in the Capital Improvements Element. Within the time frame provided by Section 163.3202(1), F.S. the Community Development and Construction Services Departments will ensure that development orders will be based on the County's ability to maintain minimum levels of service, and will coordinate with other agencies in administering the Concurrency Management System to ensure that the necessary public facilities and services are available at the adopted Level of Service concurrent with the impacts of development.~~

Policy 1.2.5: The following options shall apply in an area with facilities and services that do not meet minimum Levels of Service required by concurrency:

- a. Projects may be phased to maintain minimum Level of Service standards concurrent with the development; and/or
- b. A Developer may pay their proportionate share cost of improvements, if such facilities are identified in the Capital Improvements Program in accordance with Charlotte County's Proportionate Share Mitigation Ordinance.

Objective 1.3 (Infrastructure and Services): Charlotte County will use the location and timing of infrastructure and services to direct growth in an orderly and efficient manner.

Policy 1.3.1: Charlotte County's provision of infrastructure and services shall be guided by the following service areas, which are listed by level of priority:

First priority - Infill Areas.

Second priority - Suburban Areas.

Third priority - Rural Service Areas.

Policy 1.3.2: In certain instances, Charlotte County may provide higher levels infrastructure and services to areas regardless of the Urban Service Area designation in order to protect the public health, safety, and welfare or at the request and capital outlay of citizens within an area.

Objective 1.4 (Platted Lands Strategy): Recognizing that Charlotte County has a supply of platted lands which is greater than the long-term need, the county shall reduce the total number of platted vacant lots ~~by a minimum of 1% of vacant platted lots per year within the West, Mid, East and South County planning areas~~ by a minimum of 1% during the planning period (2010) by January 1, 2005 of this Plan.

Policy 1.4.1: Charlotte County will work with its legislative delegation and other communities to create an action plan to identify workable solutions to statewide platted lands issues. The County may apply to the State and Federal governments for funding to assist in resolving the problems associated with platted lands. Funding sources shall include the state's Conservation and Recreational Lands (CARL), Preservation 2000, Florida Forever, Florida Communities Trust, Southwest Florida Water Management District, and various other programs.

Policy 1.4.2: Charlotte County will encourage the reduction of platted lots through the following measures:

- a. assembly and de-platting of lots by private interests for re-platting and eventual development or other purposes;
- b. public acquisition of platted lands for preservation, restoration, recreation, viable habitat for listed species, or outdoor education using public funds as appropriate and available; or
- c. consider selective acquisition of individual lots by Charlotte County for use in property assembly, lot swaps, or transfers of density or ~~development rights~~ units where such facilitates a public need such as the provision of infrastructure or urban services.

Policy 1.4.3: ~~By December 1, 1998,~~ Charlotte County will bear the costs for deplatting of lands within targeted areas if a density reduction occurs as a result of the deplatting and will create an administrative deplatting process. As part of this process, the county will develop target areas for prioritization of deplatting efforts.

Policy 1.4.4: ~~By December 1, 1998~~ 2008, Charlotte County will review its impact fee schedule in order to develop a series of graduated impact fees in order to encourage development in Infill locations. The graduated impact fee schedule will reflect the true cost of infrastructure provision.

Policy 1.4.5: Charlotte County will employ a transfer of ~~development rights~~ density units program whereby the development rights of property may be severed in perpetuity or until designation as an Infill Area and transferred to locations which are more appropriate for urban development. The transfer of ~~development rights~~ density units program will establish criteria for sending zones ~~from which development rights will be severed and transferred to receiving zones~~ and receiving zones.

- a. ~~Sending zZones shall~~ may include only the Tropical Storm and Category 1 Hurricane Storm Surge zones; any property containing historic, archeological, or environmentally sensitive resources; land being utilized for a bona fide agricultural use; lots or parcels of substandard size or dimension which were legally platted prior to 19992; platted lots within the Suburban section of the Urban Service Area which are not served by water or sewer and are not within the boundaries of any utility company's 5-year Capital Improvement Program for extension of water or sewer; or land within the Urban Service Area which has an approved residential final plat or DRC residential final site plan which does not utilize the full developable density and which was approved subsequent to January 1, 2004. ~~Resource Conservation and Preservation~~

~~Future Land Use Map locations, Suburban and Rural Areas identified in the Urban Service Area strategy, locations within the Special Surface Water Protection Overlay District, and any property containing historical, archeological, or environmentally sensitive resources.~~

- b. Receiving Zones shall include property within the Urban Service Area that is designated on the include Medium Density Residential and High Density Residential Future Land Use Map locations, New Communities, Rural Communities, and areas specified within a resource management plan developed consistent with the Natural Resources and Coastal Planning Element as Low Density Residential, Medium Density Residential, High Density Residential, Rural Estate Residential, Village Residential, Limited Development, or which contains a Mixed Use designation. Prior to the approval of a petition to increase density, all of the necessary facilities and services, except roadway infrastructure, must be in place or the subject of a binding executed agreement which requires the facilities to be completed prior to the issuance of a certificate of occupancy; roadway infrastructure must be in place or under construction within three years of the issuance of a building permit. Receiving Zones must be environmentally suitable for development; environmentally sensitive lands within the Receiving Zone must be preserved in perpetuity.
- c. In keeping with the policies within this plan that direct population density away from coastal areas, amendments to the Future Land Use Map or Zoning Atlas petitions that would create or allow an increase in density within the Tropical Storm and Category 1 Hurricane Storm Surge zones (Coastal High Hazard Area) are prohibited unless the density is transferred from an equivalent Storm Surge zone or one of greater hazard intensity; there shall be no transfer of density from an "AE" flood zone into a "V" flood zone. (The requirement for density from equivalent areas is waived for property located in the Charlotte Harbor CRA, but the density must still be transferred from property located in the Tropical Storm or Category 1 Hurricane Storm Surge zones.) The Sending Zone(s) must be identified and included with the Receiving Zone amendment application as part of the supporting documentation so that the impacts of the proposed transfer can be evaluated, and the transfer of density must be approved concurrent with the adoption of the amendment. Impacts will be evaluated in terms of evacuation clearance times and the availability of sufficient shelter capacity. The transfer of density must maintain or improve evacuation clearance times. In order to utilize the Sending Zone density, the FLUM and/or Zoning designation of the Sending Zone must have been amended or be concurrently amended to show the reduction in density, and/or the Plat must be vacated.
- d. Except as indicated in c. above, the following shall apply as to the timing of the transfer of density:
- transfers of density must occur concurrent with any plan amendment petition that automatically increases density, unless accompanied by a rezoning to Planned Development;
 - transfers of density must occur concurrent with and any rezoning that increases density and which does not utilize a Planned Development; and,

- for any rezoning, which increase density and utilizes a Planned Development, the transfer of density ~~may~~ must occur no later than prior to preliminary plat of or final DRC approval.

Policy 1.4.6: Charlotte County will encourage private enterprise to work towards solutions to the platted lands problem through participation in state land acquisition programs such as Conservation and Recreational Lands (CARL), Florida Communities Trust, Florida Forever, Florida Communities Trust, Southwest Florida Water Management District, and various other programs such as administrative deplattings.

Policy 1.4.7: Charlotte County will facilitate the re-assembling of platted parcels by plat vacation and other means legally available.

Objective 1.5: To ensure the availability of suitable land for public and utility services and facilities necessary to support proposed development.

Policy 1.5.1: Public and uUtility services and facilities shall be allowed in all Future Land Use Map designations.

Policy 1.5.2: Public and uUtility services and facilities shall be developed in compliance with applicable design standards and with buffers and setbacks in order to protect adjacent land uses from activities conducted on such public and utility sites. The design and construction of such facilities shall protect natural resources and environmental sensitive areas.

Objective 1.6 (Future Land Use coordination): The location and intensity of development shall coincide with the availability of facilities and services and with appropriate topography and soil conditions.

Policy 1.6.1: Development orders, building permits, and certificates of occupancy shall be issued in accordance with the Concurrency Management System to ensure that the necessary public facilities and services are available, at the adopted Level of Service, concurrent with the impacts of development.

Policy 1.6.2: Availability of facilities and services shall be measured by the adopted levels of service standards.

Objective 1.7: The location and intensity of development shall be determined by appropriate topography and soil conditions.

Policy 2.2.17: Industrial uses will be buffered from incompatible adjacent land uses by means such as vegetative, natural, or opaque barriers. The Land Development Regulations will provide appearance standards for buffering techniques.

Policy 2.2.18: The following classifications shall be used to designate agricultural lands

Agriculture

These lands are designated for agricultural activities and are located primarily within the Rural Service Area. Agricultural lands may not exceed a maximum residential density of one (1) dwelling unit per ten (10) acres within the Rural Service Area and one (1) dwelling unit per one (1) acre within the Urban Service Area. Uses on land designated as such include: single-family residential dwelling units, ranching, crop farming including citriculture, silviculture, aquaculture, and row crops, and extractive industries.

Policy 2.2.19: Charlotte County will encourage the bona fide practice of agriculture and will promote the conservation of agricultural lands to assure that the County experiences no substantial loss of agricultural productivity.

Policy 2.2.20: Agricultural lands illustrated on the Future Land Use Map will be generally located within Charlotte County's Rural Service Area. This policy will not be construed to prohibit the practice of bona fide agricultural uses within the Urban Service Area.

Policy 2.2.21: Charlotte County will preserve the economic viability of agricultural lands and will prevent the premature conversion of these lands to other uses.

Policy 2.2.22: Agricultural lands within Charlotte County may be converted to other uses when a demonstrated need has been established and it is determined that it does not constitute urban sprawl or promote urban sprawl in surrounding area. A conversion of agricultural land to more intensive urban uses must occur in accordance with the Urban Service Area strategy Rural Community or New Community concepts, or Development of Regional Impact.

Policy 2.2.23: Through the resources of the Agricultural Extension Service, Charlotte County will actively promote the conservation of bona fide agricultural uses, and will provide information to agricultural producers to improve production and methods.

Policy 2.2.24: The following classifications shall be used to designate lands which serve a broad variety of public purposes:

~~an applicable New Community shall occur prior to the first development activity within that New Community. This shall include appropriate action to reduce the intensity/density of the sending zone through encumbrance via easement transfer of deed to Charlotte County, state government, or federal government. New Community master development plans shall include a traffic circulation map and access management controls in order to protect the public safety.~~

~~**Policy 2.6.15:** New Community master development plans shall include a traffic circulation map and access management controls in order to protect the public safety.~~

Objective 2.7 (Rural Community Mixed Use): Conversion of rural lands within the East County planning area to more intensive uses may occur through the establishment of self-supporting “Rural Communities” which will provide residential and employment opportunities within the Rural Service Area.

Policy 2.7.1: Rural Communities will be developed according to a master development plan and will comprise a mixture of uses appropriate for a rural environment.

Policy 2.7.2: The designation of Rural Community Mixed Use on the Future Land Use Map shall be made by plan amendment. Plan amendments will contain a master development plan approved by the Board of County Commissioners identifying land uses, densities, and intensities; population projections; an evaluation of its urban sprawl potential; commitments to avoid or mitigate the potential for urban sprawl; and demonstration of how the Rural Community affects land and population within the Urban Service Area.

Policy 2.7.3: Approved Rural Communities shall be designated as a Rural Community Mixed Use District or Development of Regional Impact on the Future Land Use Map.

Policy 2.7.4: Residential development within Rural Communities will be limited to Rural Estate Residential uses as defined in this element ~~unless~~ with clustering and open space provisions are provided.

Policy 2.7.5: Commercial uses within Rural Communities are limited to Rural Commercial Centers as defined in this element. Rural Commercial Centers will serve the population of the rural residential uses and satisfy the internal shopping needs by being located in a central location of the development.

Policy 2.7.6: The master development plan for Rural Communities will incorporate land for open spaces around the perimeter forming a greenbelt providing a clear distinction from surrounding land uses. Open space may be dedicated to public use or designated for common use, such as hiking and

bridle trails. If designated for common use, the master plan will identify a management strategy and will set aside funds to support maintenance.

Policy 2.7.7: The clustering of uses within Rural Communities is allowed as part of a master plan. Clustered development requires utilization of infrastructure such as central wastewater facilities.

Policy 2.7.8: Rural Community master development plans shall include a traffic circulation map and access management controls in order to protect the public safety.

Policy 2.7.9: Rural Community proposals will include transfers of development rights density units from targeted platted lands or environmentally sensitive areas identified in a resource management plan as a component of a master development plan. The residential development potential of a Rural Community shall be achieved through transfer of development rights density units. Lands from which a transfer of development rights density units occur shall be encumbered through a recorded easement covenant, or transfer of deed to Charlotte County, state government, or federal government. Transferred densities shall be at least a one-for-one transfer. In addition, the following density bonuses shall apply:

- a. ~~an increase by 300% of the sending zone's underlying density for development rights transferred from 'A' and 'V' zones as defined by the Flood Insurance Rate Map (FIRM);~~
- b. ~~an increase by 200% of the sending zone's underlying density for development rights transferred from the Coastal High Hazard Area;~~
- c. ~~an increase by 150% of the sending zone's underlying density for development rights transferred from a jurisdictional wetland area to be preserved consistent with Policy 1.11.7 of the Natural Resources and Coastal Planning Element;~~
- d. ~~an increase by 150% of the sending zone's underlying density for development rights transferred from agricultural areas which will be maintained in an agricultural use.~~

Policy 2.7.10: Rural Communities shall contain a minimum of 500 gross acres with the following minimum and maximum land use percentages:

Land Use	Minimum Development Percentage	Maximum Development Percentage
Residential	50%	80%
Commercial/industrial	10%	25%
Recreation	5%	no maximum
Open space	5%	no maximum