

The Intersection of Water and Growth Management
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Overview

- In 2005, the Florida Legislature established a significant link between water supply and land use planning through Senate Bills 360 and 444. This linkage joins the five water management districts' regional water supply plans and local government comprehensive plans throughout the state.
- The land use / water use linkage puts responsibility for water availability in the hands of local governments and a significant check against future growth in the hands of the Florida Department of Community Affairs ("DCA" or the "Department").
- DCA's check is that new densities in comp plans will not be allowed to pass through the Comp Planning process – the "ORC" phase of amendments¹ – unless the local government shows that there is ample water supply available for the additional growth.
 - If DCA issues Notice of Non-Compliance a formal proceeding under the Administrative Procedure Act² is initiated.
 - Consequential delays alone can be fatal to development plans.

Specifics

- Under the 2005 Legislation, each local government subject to a Regional Water Supply Plan must now include a 10-year work plan in its comprehensive plan potable water element.
- The 10-year work plan must address all public, semi-private and regional water supply facilities needed to serve existing and new development within the jurisdiction of the local government.³
- These 10-year water supply facility work plans must:

¹ Upon receipt of a proposed map or text amendment from local government, DCA conducts a review of the proposal against state law, rules and policies and issues an Objections, Recommendations and Comments ("ORC") Report. §163.3184(6)(c), Fla. Stat. (2006).

² Chapter 120, Florida Statutes (2006). Such proceedings are trial – type in nature and are conducted by an Administrative Law Judge assigned by the Division of Administrative Hearings.

³ Within 18 months after the governing board approves an updated regional water supply plan, the general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge element must incorporate the alternative water supply project or projects selected by the local government from those identified in the regional water supply plan pursuant to s. [373.0361](#)(2)(a) or proposed by the local government under s. [373.0361](#)(7)(b) [§163.3177(6)(c), Fla. Stat (2006)].

- project future water supply demands
- identify the water supply sources available to meet those demands and
- identify all water supply projects that need to be constructed. ⁴

Concurrency

- Effective July 1, 2005, all local governments must meet water supply concurrency requirements to insure that their future land use plans are based on water supply that is adequate and available, as well as the associated public facilities. ⁵
- Data and analysis to demonstrate that adequate water supplies and public facilities are (or will be) available must accompany proposed future land use map amendments submitted for review. ⁶

DCA's Emerging Role as Water Watch Dog

- The Department of Community Affairs recently has submitted objections to several South Florida comp plan amendments, as part of the ORC process.
- An ORC objection triggers a process whereby the local government can respond to DCA's concern and resolve the formal objection, or risk denial of the comp plan amendment. Without the amendment, presumably, the new development cannot proceed.
- Miami-Dade County Comprehensive Plan Proposed Amendment 07-1 (February 15, 2007) and related amendments are instructive.

One of the 2007 DCA ORC objections states simply that

"the County has not demonstrated that the proposed land uses in the Future Land Use Map (FLUM) amendments...will be supported by an adequate potable water supply"...until the County is able to demonstrate that it is has available potable water supply to serve the increased demand from the proposed land use amendments, it would be inappropriate to approve any such land use changes to the comprehensive plan which increase potential future water consumption."

- Without getting into a discussion of water management district / DEP⁷ preemption of the water allocation process, which is outside the scope of this text, suffice it to say that the water management districts do not have exclusive

⁴ The 10-year water supply facility work plans must also include schedules for permitting, constructing and operating for needed public, private and regional water supply facilities within the jurisdiction of the local government.

⁵ §163.3180(2)(a), Fla. Stat. (2006).

⁶ Submittal requirements are addressed in chapters 9J-5 and 9J-11, Florida Administrative Code.

⁷ Florida Department of Environmental Protection.

jurisdiction to control who is allowed to generate more demand, or how that demand is met.

- This has become a shared responsibility including DCA and, perhaps most importantly, local governments.

Local Government Utilities – Capacity Certificates

- Another topic at the intersection of water and growth management is the local government allocation process for water and sewer capacity. This is a ministerial process in many jurisdictions that amounts to giving developers a certificate or reservation for a specific quantity of water and sewer capacity.
- The manner in which the local government administers this allocation process has a direct bearing on water use.
- For example, does the local system allow:
 - Reservation of capacity before final site plan review is completed?
 - Marketing of capacity certificates?
 - Banking of capacity?
- Could investors join with the local government in developing new supplies and then sell water capacity certificates for a profit? This is similar to mitigation banking, if you think about it.
- How are capacity certificates awarded? Is water conservation a factor in granting a certificate to a new development?
- This leads us to another area – private development of Alternative Water Supplies (AWS).

Alternative Water Supplies

- Alternative supplies of water are now the key to the future in many parts of Florida. The Central Florida Coordination Area (CFCA) is an area where the conventional source of water supply (groundwater) is "maxed out" and anyone in the private sector wishing to accommodate new residents, new tourists, etc may have to find a source of water other than the traditional, and most convenient source.⁸
- In the private sector, investigation and development of AWS is emerging as a direct permitting requirement. The Villages is a prime example.
- The Villages constitutes a self-contained city in the Marion / Lake / Sumter County region. While the project is approaching build – out (2012), a major

⁸ More information on the CFCA is available on the websites of the water management districts.

Water Use Permit ("WUP") modification and renewal was processed recently by Southwest Florida Water Management District. The WUP modification involved allocation of additional groundwater (7 million gallons per day) and concerns about potential adverse impacts to environmental features and MFL's.

- Build-out will involve:
 - over 100,000 residents
 - many golf courses
 - retail / commercial
 - medical services
 - landscaping.
- Reclaimed water is already used in various areas, and storm water is retained for irrigation of golf courses and other areas.
- The WUP modification was approved, but a requirement for developing alternative water supply was included as a permit condition, along with schedules / milestones to assure sufficient progress towards replacing the 7 mgd groundwater allocation with the alternative supply.
- The Villages now must sign on to a regional project within the St. Johns River Water Management District or Southwest Florida Water Management District that can provide an additional 7 mgd, or try to do its own AWS.
- While a private AWS project would probably avoid many of the complications of a regional project, including the delays, the cost of smaller projects is often prohibitive.
- Clearly, The Villages and other, similarly situated private sector interests, will have the need and opportunity to find creative ways to bring on new water.
- The water management districts thus have an independent way of managing growth to assure protection of Florida's water resources.

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