



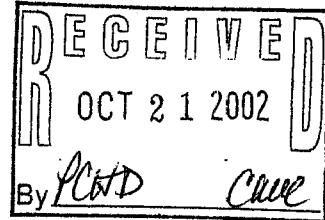
STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

JEB BUSH
 Governor

STEVEN M. SEIBERT
 Secretary

October 4, 2002



John E. Maines, IV, Esq.
 10 West Main Street
 Lake Butler, FL 32054-1638

Re: DEP Groundwater Remediation System in the City of Lake Butler

Dear Mr. Maines:

This letter will confirm our telephone conversation of Monday, September 30, 2002. We discussed the proposal of the Department of Environmental Protection (DEP) to move a groundwater remediation system from a privately owned parcel to a parcel owned by the City of Lake Butler. Both parcels are located within the jurisdiction of the City of Lake Butler. The groundwater remediation system consists of several large flow through process tanks, air stripping columns, pumps, and other equipment which will be attached to the ground for several months or years. The purpose of the system is to remove pollutants from the groundwater. Your client, the City of Lake Butler, has inquired whether DEP's groundwater remediation system must be consistent with the Lake Butler Comprehensive Plan and land development regulations, which appear to require a special exception for the proposal.

If the Growth Management Act is considered in isolation, the answer to your question would be clear. The groundwater remediation system is a "structure," §163.3164(21) and §380.031(19), *Fla. Stat.* (2002), placing the system on a new parcel of land would be "development," §163.3164(6) and §380.04, *Fla. Stat.* (2002), which would require a "development order," §163.3164(7), *Fla. Stat.* (2002), and which would have to be consistent with the Lake Butler Comprehensive Plan and land development regulations, §163.3194(1)(a) and (2), *Fla. Stat.* (2002).

However, DEP's groundwater remediation system is governed by §376.30 through §376.317, *Fla. Stat.* (2002). DEP is granted broad powers to deal with environmental and health hazards. §376.30(3), *Fla. Stat.* (2002). DEP must clean up pollutants if the responsible party does not. §376.305(1) and (2), *Fla. Stat.* (2002). DEP may require access to a privately owned site for contamination assessment or remedial action. §376.303(4), *Fla. Stat.* (2002).

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The Florida appellate courts have held that statutes such as Ch. 163 and Ch. 376, "can and should be construed in harmony with one another in their roles of protecting and conserving our environmental resources and promoting planned developments." *Pinellas County v. Lake Padgett Pines*, 333 So.2d 472 (Fla. 2d DCA 1976). In *Lake Padgett Pines*, the court considered whether development of the Cypress Creek Well Field in Pasco County to provide potable water to Pinellas County was a development of regional impact (DRI). The Second District noted that the proposed wellfield was "development," and probably met the definition of a DRI as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety or welfare of citizens of more than one county." *id.*, at 477. However, the Court concluded that the Water Resources Act, Ch. 373, governed the wellfield, rather than the DRI statute, Ch. 380. The Court stated that,

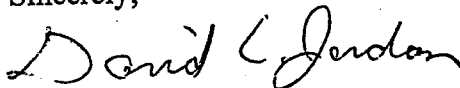
[W]e do not believe that in establishing Ch. 380, the Legislature intended for local governments to be in a position to control the actions taken under Ch. 373, when those very actions are vital to supplying water on a regional basis. The controversy before us lends emphasis to this premise since the Cypress Creek Project has been made necessary by existing developments rather than by proposed developments which undoubtedly require the "guidance of growth" referred to in the policy declaration of Ch. 380.

Lake Padgett Pines, at 479.

Just as Ch. 373 in *Lake Padgett Pines*, the Legislature has directed that Ch. 376, "being necessary for the general welfare and the public health and safety of the state and its inhabitants, shall be liberally construed. . ." §373.315, *Fla. Stat.* (2002). Just as in *Lake Padgett Pines*, the groundwater remediation system has been made necessary by existing development, rather than by proposed development.

Therefore, the Department of Community Affairs believes that the groundwater remediation system proposed by DEP is governed by Ch. 376, and not by the comprehensive plans and land development regulations required by Ch. 163.

Sincerely,



David L. Jordan
Deputy General Counsel
(850) 488-0410

cc: Rebecca Grace, Esq.