



"Protecting South Florida's Water Resources for 40 Years"
1949-1989

South Florida Water Management District

P.O. Box 24680 • 3301 Gun Club Road • West Palm Beach, FL 33416-4680 • (407) 686-8800 • FL WATS 1-800-432-2045

Received DER

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June 28, 1989

Mr. Hamilton S. Oven, Jr., P.E.
Administrator, Siting Coordination Section
Division of Air Resources Management Department
Department of Environmental Regulation
2600 Blair Stone Road, Room 309L
Tallahassee, FL 32399-2400

Dear Mr. Oven:

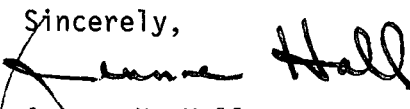
Subject: Final Agency Report
FP&L Midway-Levee 500 KV Transmission
Line Corridor Certification Application

Enclosed please find the District's Final Agency Report on the above referenced application, as required by Section 403.526, Florida Statutes.

The report was officially approved by the Governing Board for transmittal to the Department of Environmental Regulation at their meeting of June 15, 1989. At that time staff was also directed to work with FP&L to resolve the outstanding issues identified in the report. Those efforts are currently underway. As noted in the attached report, an updated agency report will be issued prior to the certification hearing, if appropriate, to reflect the resolution of any of those outstanding issues.

Should you have any questions on the attached report, please contact Susan Coughanour, of this office.

Sincerely,


Jeanne K. Hall
Deputy Director
Resource Control Department

JKH/SC/sc
Enclosure

c: Robert Benton
Phil Simpson
All Parties

Governing Board:

James F. Garner, Chairman - Fort Myers
Doran A. Jason, Vice Chairman - Key Biscayne
J.D. York - Palm City

Arsenio Milian - Miami
Fritz Stein - Belle Glade
Mike Stout - Windermere

Ken Adams - West Palm Beach
Valerie Boyd - Naples
James E. Nall - Fort Lauderdale

John R. Wodraska, Executive Director
Tilford C. Creel, Deputy Executive Director

APPROVED BY GOVERNING BOARD
MEETING OF 6/15/89

IMPACT ASSESSMENT REPORT

South Florida Water Management District

Name/Substations:	Midway-Corbett-Conservation-Levee
Applicant:	Florida Power & Light Co. (FP&L)
SFWMID ID No.:	89-TL3
Corridor Location:	St. Lucie, Martin, Palm Beach, Broward, Dade counties
Length of Line:	+134 - +147 miles (based on various combinations of the proposed Primary and Secondary corridors)
Type of Line:	Alternating Current
Existing Land Use:	Mixed (Residential, Commercial, Industrial, Agricultural, Conservation/Preservation, Undeveloped Wetlands)
Proposed Land Use:	Transmission Line
Power Transmission Capabilities:	500 KV
Transmission Line Corridor Certification Threshold:	230 KV and/or crosses county boundaries

Category	Minimal	Significant	Major
Land Management			X
Water Use	N/A		
Surface Water Management - Quantity	X		
Surface Water Management - Quality	X		
Wastewater Treatment & Disposal	N/A		
Water-Related Vegetation/Wildlife			X

III GENERAL PROJECT-RELATED INFORMATION

A. PURPOSE OF ACT AND DISTRICT RESPONSIBILITIES

The purpose of the State Transmission Line Siting Act (TLSA), Sections 403.52-403.536, F.S., is to certify the location of transmission line corridors through a centralized and coordinated planning and permitting process administered by the Florida Department of Environmental Regulation (DER). Authority to issue the Certification Order is assigned to the Governor and Cabinet, after consideration of a Recommended Order issued by a Hearing Officer.

The TLSA specifically authorizes the location, construction, operation and maintenance of transmission lines within certified corridors which may be as wide as one mile. While substation sites must be identified, in particular, the starting and ending points of the proposed transmission line, the permitting of the substation sites is not covered by the TLSA. A specific right-of-way within the corridor is not selected until after the corridor is certified. Its width is usually substantially less than the width of the certified corridor, depending on the proposed transmission line capabilities (voltage), the types of structures proposed (single pole versus H frame), and the type of adjacent roads and the extent to which the right-of-way parallels these roads.

This process specifically pre-empts all other existing state, regional, and local permitting and approval processes for the transmission line, including the SFWMD's right-of-way, surface water management, and water use permitting processes. However, the TLSA mandates that the affected local governments, water management district(s), regional planning council(s), and certain state agencies (Department of Community Affairs, Public Service Commission, Department of Natural Resources, Game and Fresh Water Fish Commission) participate in the process, requires that they prepare an assessment report, and grants them party status in the proceedings. The agency reports must include the following:

- (1) An assessment of the impacts of the proposed transmission line or corridor on the water resources and other matters within the jurisdiction of the District;
- (2) Expected compliance with agency standards;
- (3) Identification of any variances/exemptions from non-procedural requirements (i.e., technical criteria) needed in order for the Certification to be issued;
- (4) Identification of those matters within the District's jurisdiction which will be materially affected by the transmission line or corridor;
- (5) Conclusions and recommendations regarding certification of the proposed corridor (approval; approval with modifications and/or conditions; denial);
- (6) If denial of certification is recommended, the reasons for denial;
- (7) If approval of certification is recommended, proposed certification conditions on those matters within the agency's jurisdiction, including an identification of the specific statute, rule, or ordinance, as applicable, which authorizes the proposed condition.

Under the "TLA", any legally constituted party to the proceedings may file alternate transmission line corridor routes no later than 50 days prior to the certification hearing. Within five (5) working days, DER and the applicant must either accept or reject the proposed alternate corridors for further consideration. Each party proposing an alternate corridor is responsible for providing supplemental information on their alternate corridor(s) to all the other parties, consistent with the information required by the DER application form and in a level of detail commensurate with the scale of change in comparison to the applicant's original proposal.

For those alternates that are accepted, the SFWMD must file a supplemental report at least 30 days prior to the certification hearing which addresses the impact of the alternate corridors on the water resources and other matters within the jurisdiction of the SFWMD.

This certification process is the only opportunity that the District will have to review and "permit" the proposed activities. Through the required reports, the SFWMD can assess the potential permissibility of the proposed activities and recommend approval, denial, or approval with modifications and/or conditions. The SFWMD recommended certification conditions then become the means by which the SFWMD is assured that all applicable District criteria have been applied and met in the design, construction, and operation of the proposed transmission line.

B. Project Proposal

The proposed Midway-Levee 500 KV Transmission Line Corridor will connect the following substations from north to south: the existing Midway substation in St. Lucie County, the existing Corbett substation in Palm Beach County, the proposed Conservation substation in Tamarac/Broward County, and the existing Levee substation in Dade County. Both Primary and Secondary Corridors are proposed for certification. From the Midway to the Corbett substations, only a Primary Corridor is proposed while from the Corbett to the Conservation substations and from the Conservation to the Levee substations two Secondary Corridors are proposed. Exhibit 1 identifies the proposed corridors and substation locations.

More specific details on the proposed transmission line corridors can be found in the attached checklists which evaluate the potential land management, environmental, and surface water management impacts and related issues associated with the proposed transmission line (See pages 13-24 of this report).

IV CONCLUSIONS AND RECOMMENDATIONS

This report contains the SFWMD's conclusions and recommendations to the Florida Department of Environmental Regulation (DER) regarding the certification of the proposed FP&L Midway-Levee 500 KV transmission line corridor for inclusion in the Compiled Agencies' Report required by Section 403.523(B), F.S., and Rule 17-17.590, F.A.C.

At its June 15, 1989 meeting, the SFWMD Governing Board discussed the proposed transmission line corridors and voted to direct the staff to transmit the Impact Assessment Report, as presented, to the DER and to continue to work with FP&L to resolve the outstanding issues identified in the report.

In reviewing the proposed corridors, the SFWMD identified a number of policy and technical issues which must be resolved prior to the certification of the proposed transmission line. These issues include the following:

Land Management/Operation and Maintenance Issues

Consistency of the proposed use (500 KV transmission line) with the purposes (flood control, reclamation, conservation and allied purposes) for which the SFWMD's land and easements were acquired.

Limitations that the proposed transmission line would place on the SFWMD's future needs/use of its lands.

Impacts that the proposed transmission line would have on the SFWMD's regularly scheduled and emergency maintenance and other activities along the SFWMD's right-of-way.

Impacts on existing permitted uses of the SFWMD's right-of-way/lands.

Possible impacts on the SFWMD's microwave communications system.

Impacts on the Western C-51 Flood Control Project.

Environmental Issues

Impacts on wetlands within the SFWMD's right-of-way/Water Conservation Areas, due to the construction of the structure pads and access/finger roads and the required clearing of vegetation under the transmission line.

Consistency with the Save Our Rivers Program purchase of the Strazulla Property, including impacts on wetlands and future management plans for these lands.

Impacts on wetlands within the Corbett Wildlife Management Area due to the construction of the structure pads and access/finger roads and the required clearing of vegetation under the transmission lines.

Potential impacts on wading birds and other endangered and threatened species of the proposed locations of the transmission line corridors.

The policy issue of allowing wetland impacts on SFWMD and other state lands and accepting mitigation for those impacts.

Other Issues

Consistency of the proposed transmission line with the Governor's Executive Order on the Everglades.

Possible impacts on the SFWMD's Surface Water Improvement and Management planning efforts due to the location and construction of the proposed transmission line.

SFWMD staff has reviewed the proposed Application for Transmission Line Corridor Certification with respect to current SFWMD policies and criteria. At this time the SFWMD is not recommending certification of any of the proposed corridors until the issues identified above are adequately resolved. If this occurs prior to the certification hearing, an updated SFWMD report will be issued.

If a corridor is ultimately approved for certification, SFWMD staff recommends that DER incorporate the following 16 Applicable General Agency Standards and 20 Site Specific Standards into the Conditions for Certification of the proposed Midway-Levee 500 KV Transmission Line Corridor.

A. APPLICABLE GENERAL AGENCY STANDARDS

1. GENERAL CONDITIONS

a. Professional Engineer Certificate

The operational phases of the surface water management system authorized under this Certification shall not become effective until an engineer practicing in the State of Florida in compliance with Section 471.003(2)(d). F.S., and with the appropriate experience in surface water management design, certifies, upon completion of each phase, that these facilities have been constructed in accordance with the design approved by the South Florida Water Management District (SFWMD). Within 30 days after completion of construction of each phase of the surface water management system, the Permittee shall submit the engineer's certification and notify the SFWMD that the facilities are ready for inspection and approval. Reference: Sections 373.117 and 373.419, F.S.; Rules 40E-4.091(1) (a), 40E-4.301 (2), and 40E-4.381(2) (d), F.A.C.

b. Minimum Standards

This Certification is based on the Permittee's submitted information to the SFWMD which reasonably demonstrates that adverse off-site water resource related impacts will not be caused by the authorized activities. The plans, drawings and design specifications submitted by the Permittee shall be considered the minimum standards for compliance. Reference: Sections 373.413(1) and 373.416(1), F.S.; Rules 40E-4.091(1)(a), 40E-4.301(1), and 40E-4.381, F.A.C.

c. Post Certification Information Submittals

Information submitted to the SFWMD subsequent to Certification, in compliance with the conditions of this Certification, shall be for the purpose of the SFWMD monitoring the Permittee's compliance with the Certification conditions and the permitting requirements contained in Chapters 40E-2 (Consumptive Use), 40E-4 (Surface Water Management), and 40E-6 (Utilization of District Works), F.A.C., prior to the commencement of the subject construction, operation and/or maintenance activity. Reference: Rules 17-17.665(11) and 17-17.750(4), F.A.C.

d. Liability

The permittee shall hold and save the SFWMD harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, operation, maintenance and/or use of any facility authorized by this Certification, to the extent allowed under Florida law. Reference: Section 373.443, F.S.; Rules 40E-4.091(1)(a) and 40E-4.381(j), F.A.C.

e. Liability

The Permittee shall hold and save the SFWMD harmless from any and all damages, claims, or liabilities caused by the Permittee's negligence which may arise by reason of the construction, operation, maintenance and/or use of any facility authorized by this Certification, to the extent allowed under Florida law. Reference: Section 373.443, F.S.; Rules 40E-4.091(12)(a) and 40E-4.381(j), F.A.C.

f. Enforcement

Authorized representatives of the SFWMD shall be allowed access to the transmission line right-of-way and any authorized off-site mitigation areas to inspect and observe any activities associated with the construction of the transmission line and any required mitigation areas and/or the operation and/or maintenance of the surface water management system in order to determine compliance with the conditions of this Certification. Reference: Section 373.423 and 373.603, F.S.; Rules 40E-4.091(1)(a) and 40E-4.301, F.A.C.

g. Water Quality Monitoring

If water quality data is required by this Certification for any water discharged from the Permittee's property or into surface waters of the state, it shall be submitted to the SFWMD and the Department of Environmental Regulation--Southeast District Office. Parameters to be monitored may include those listed in Chapter 17-3, F.A.C. The Permittee shall provide such data to the SFWMD as volumes of water discharged, including total volume discharged during the days of sampling, and total discharges from the property or into surface waters of the state. Reference: Sections 373.413(1) and 373.416(1), F.S.; Rules 40E-4.091(1)(a) and 40E-4.381, F.A.C.

h. Construction, Operation, and Maintenance Responsibilities

The Permittee shall be responsible for the construction, operation, and maintenance of the surface water management system installed for the transmission line. Reference: Sections 373.413(1) and 373.416(1), F.S.; Rules 40E-4.091(1)(a), 40E-4.301, and 40E-381(2)(h), F.A.C.

i. Post Certification Permit Modifications

Once the Certification for the transmission line has been issued, the SFWMD will require modification of the appropriate permits for any affected entities to reflect the activities authorized by the Certification Order. Reference: Sections 373.239 and 373.429, F.S.; Rules 40E-2.331 and 40E-4.331, F.A.C.

2. CONSTRUCTION CONDITIONS

a. The Permittee shall prosecute the work authorized under the Certification in a manner so as to minimize any adverse impact of the works on fish, wildlife, natural environment values, and water quality. The Permittee shall institute necessary measures during the construction period, including necessary compaction of any fill materials placed around newly installed structures, to reduce erosion, turbidity, nutrient loading and sedimentation in the receiving waters. Reference: Sections 373.413(1) and 373.416(1) F.S.; Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381(2)(a), F.A.C.

b. Off-site discharges during construction and development shall be made only through the discharge structures authorized by this Certification. Reference: Sections 373.413(1) and 373.416(1), F.S.; Rules 40E-091(1)(a), 40E-4.301, and 40E-4.381(2)(g), F.A.C.

c. The Permittee shall be responsible for the correction of any sedimentation, turbidity, erosion, and/or shoaling problems that result from the construction, operation, and/or maintenance of the works authorized under this Certification. Reference: Sections 373.413(1) and 373.416(1); Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

d. The Permittee shall be responsible for the correction of any water quality problems that result from the construction, operation and/or maintenance of works authorized under this Certification. Reference: Sections 373.413(1) and 373.416(1)(a), Rules 40E-4.301, and 40E-4.381, F.A.C.

e. The Permittee may be required to incorporate additional water quality treatment methods into the surface water management system if such measures are shown to be necessary. Reference: Sections 373.413(1) and 373.416(1); Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

f. It is the responsibility of the Permittee to ensure that adverse off-site water resource related impacts do not occur during construction. Reference: Section 373.413(1); Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

g. This project must be constructed in compliance with and meet all requirements set forth in Chapter 373, F.S., and Chapters 40E-2, 40E-4, and 40E-6, F.A.C.

B. SITE SPECIFIC STANDARDS

1. GENERAL REQUIREMENTS

a. Design Conditions:

(1) The Permittee shall avoid impacting wetlands within the certified corridor wherever practicable. When necessary and feasible, the location of and span between power poles shall be varied to eliminate or reduce wetland impacts. Reference: Sections 373.413(1), 373.414, and 373.416(1); Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

(2) The Permittee shall, wherever available, utilize adjacent existing roads for access to the transmission line right-of-way for construction, operation and/or maintenance purposes. Finger roads connecting the existing roads to the structure pads and access roads which must be constructed in areas where an existing road is not available shall be constructed in a manner which does not impede natural drainage flows and minimizes impacts to on-site and adjacent wetlands. Reference: Sections 373.413(1), 373.414, 373.416(1); Rules 40E-4.301, and 40E-4.381, F.A.C.

(3) No fill materials shall be obtained from excavated wetlands within the transmission line right-of-way, unless in accordance with a mitigation plan submitted in compliance with the conditions of this Certification. Reference: Sections 373.413(1), 373.414, and 373.416(1); Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

(4) Vertical clearances for any aerial crossings over SFWMD canals and rights-of-way shall conform to SFWMD criteria as required by Chapter 40E-6, F.A.C., Appendices G and G-1. Reference: Sections 373.085(1) and 373.086(1), F.S.

(5) Discharge structures, where appropriate, shall include a baffle, skimmer, or other mechanism suitable for preventing oil, grease, or other floatable materials from discharging to and/or from retention/detention areas. Reference: Sections 373.413(1), and 373.416(1), F.S.; Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

b. Water Use:

(1) No dewatering operation shall be allowed unless the Permittee can demonstrate and obtain the SFWMD's written satisfaction that no adverse water resource impacts will occur as a result of the operation. Reference: Section 373.223, F.S.; Rules 40E-2.091(1)(a), 40E-2.301, and 40E-2.381, and Chapter 40E-20, F.A.C.

2. INFORMATIONAL REQUESTS

a. General

(1) Subsequent to Certification, at least ninety (90) days prior to the commencement of construction of any portion of the transmission line, the Permittee shall provide the SFWMD with the final right-of-way location within the certified corridor for that portion of the transmission line proposed for construction. Reference: Section 373.413(2), F.S.

(2) At least ninety (90) days prior to the commencement of construction of any portion of the transmission line, the Permittee shall submit to SFWMD staff, for a completeness and sufficiency review, any pertinent additional information required under the SFWMD's site specific standards and the conditions of Certification for that portion proposed for construction. If SFWMD staff does not issue a written request for additional information within thirty (30) days, the information will be presumed to be complete and sufficient. Reference: Section 373.413(2), F.S.

(3) Within 60 days of the determination by SFWMD staff that the additional information is complete and sufficient, the SFWMD shall determine and notify the Permittee in writing whether the proposed activities conform to SFWMD criteria, as required by Chapters 40E-2, 40E-4, and 40E-6, F.A.C., and the conditions of the Certification. If necessary, the SFWMD shall identify what items remain to be addressed. Construction activities which impact works of the SFWMD or have surface water management impacts shall not begin until the SFWMD has determined either in writing, or by failure to notify the Permittee in writing, that the activities are in compliance with the applicable SFWMD criteria. Reference: Sections 373.413(1) and (2), F.S.

(4) Since this Certification is the only form of permit required from any agency, it is understood that the Permittee and the SFWMD shall strive to resolve disputes by mutual agreement. If such mutual agreement is reached, the conditions of this Certification may be modified as necessary to reflect said mutual agreement. Reference: Sections 373.413 and 373.429, F.S.; Rules 40E-1.602 and 40E-4.331, F.A.C.

(5) If mutual agreement cannot be reached, then the matter shall be immediately referred to the Division of Administrative Hearings (DOAH) for disposition in accordance with the provision of Chapter 120, F.S. Reference: Section 403.5315, F.S.; Rule 17-17.680, F.A.C.

(6) Subsequent modifications to the drawings and supporting calculations submitted to the SFWMD which may alter the quantity and/or quality of waters discharged off-site shall be made pursuant to Section 403.4315, F.S., and Rule 17-17.680, F.A.C. They shall also be submitted to the SFWMD for a determination that the modifications are in compliance with Chapters 40E-2, 40E-4, and 40E-6, F.A.C., prior to the commencement of construction.

(7) The SFWMD and the Permittee may jointly agree to vary the informational requirements. Reference: Section 373.413(2), F.S.; Rule 40E-4.101(1), F.A.C.

b. Surface Water Management

(1) Prior to the commencement of construction of any portion of the transmission line, all construction activities for that portion of the transmission line which may obstruct, divert, control, impound or cross waters of the state must be reviewed by the SFWMD for a determination of compliance with Chapters 40E-2 and 40E-4, F.A.C. "Construction activities" in this situation shall include the placement of structure pads, access/maintenance roads, culverts, fill materials, and related activities. For all construction activities, the following information shall be submitted:

(a) A centerline profile of existing topographic features along the proposed access/maintenance road(s);

(b) A preliminary design of the proposed access/maintenance and finger road(s) with elevations marked;

(c) A typical cross-section of the proposed access/maintenance and finger roads;

(d) A cross-section of each stream or creek at the points to be crossed by the access/maintenance and finger road(s) or other construction;

(e) Specifications showing the location of each transmission tower, finger and access/maintenance road, and culvert to be constructed, including all areas to be filled or excavated;

(f) Specifications, including supporting assumption and calculation, showing the type and size of water control structures (pipe, culvert, equalizer, etc.) to be used, with proposed flowline elevations marked, drainage areas identified and design capacity verified;

(g) A cross-section of all proposed excavation areas showing the proposed depth of excavation;

(h) Calculations and the supporting documentation which demonstrate that all applicable C-18, C-51, C-11 West and C-9 West Basin criteria, particularly as they relate to floodplain management and compensating storage, have been met;

(i) Identification of wet season water table elevations for each basin in which facilities will be located;

(j) Calculations and the supporting documentation which demonstrate that the proposed construction activities associated with the transmission line will not have an adverse water quantity and/or water quality impact on existing and/or permitted surface water management systems.

Reference: Sections 383/413(1), 373.413(2), and 373.416(1), F.S.; Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

c. Wetlands

(1) Prior to the commencement of construction of any portion of the transmission line, a mitigation plan to offset any wetland impacts resulting from that portion of the transmission line must be submitted to the SFWMD for a determination of compliance with Chapters 40E-2 and 40E-4, F.A.C., including Appendix 7 (Isolated Wetland Rule) of the Basis of Review for Surface Water Management Permit Application within the SFWMD. This plan shall include the following:

(a) Specific acreage figures and locations of all wetlands, both within the transmission line right-of-way as well as adjacent to it, which would be impacted by the construction activities, including an explanation of why no feasible alternative exists;

(b) Documentation that none of the proposed excavation activities will adversely impact off-site wetlands;

(c) A discussion of the proposed mitigation activities to be undertaken, including the location of all mitigation areas and a description of the manner in which these areas will be created, restored or otherwise enhanced.

(d) A timetable for accomplishing the proposed mitigation activities prior or concurrently with the construction of the transmission line and any associated wetland impacts, unless documentation for doing otherwise is submitted and approved in writing prior to the commencement of construction.

(e) A monitoring and maintenance program to ensure the survival and success of any created, restored, or enhanced wetlands, which is predicated on a guaranteed survival or coverage of 80% of the appropriate wetland vegetation.

Reference: Sections 373.413(1), 373.413(2), 373.414, and 373.416(1), F.S.; Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

d. District Lands

(1) Prior to the commencement of construction of any portion of the transmission line which will cross over, on, under, or otherwise use the SFWMD's right-of-way, complete drawings showing the proposed facilities must be submitted to the SFWMD for documentation of compliance with Chapter 40E-6, F.A.C. These drawings shall depict the proposed crossing in both plan and profile views and shall show, as a minimum:

- (a) The canal right-of-way lines;
- (b) The top of the canal bank and its elevation;
- (c) The centerline of the levee and its elevation;
- (d) The canal maintenance berm and its elevation at its highest point;
- (e) The location of any poles, towers, and/or access roads located within the SFWMD's Right-of-way;
- (f) The location of any anchors, downguys or spanguys within the SFWMD'S right-of-way;
- (g) The elevation of the lowest line, wire, or cable crossing over the SFWMD's right-of-way, given at the lowest point of sag in the span within the SFWMD's right-of-way;
- (h) The location and elevation of any buried facilities;
- (i) The location of the facilities in relation to a section line, major road or other prominent well-known landmark by which the facilities may be located in the field.

Reference: Section 373.085 and 373.086, F.S.; Rules 40E-6.091(1) and 40E-6.101, F.A.C.

(2) Should the Permittee desire to utilize the SFWMD's right-of-way for access during construction of the transmission line and/or for inspection and maintenance after construction, the Permittee shall submit to the SFWMD a detailed plan identifying the proposed route, type and number of vehicles to be used, and frequency of such use. Prior to the use of any portion of the SFWMD right-of-way, the Permittee shall post a bond in the amount of \$5,000 per half mile, or any portion thereof, of right-of-way to be used, shall obtain liability insurance covering the Permittee's use of that portion of the right-of-way, and

pay key fees for those portions of the right-of-way for which it does not currently have keys. All use of the SFWMD's right-of-way by the Permittee shall be in accordance with Chapter 40E-6, F.A.C. Reference: Section 373.085 and 373.086, F.S.; Chapter 40E-6, F.A.C.

(3) Should the construction, operation and/or maintenance of the proposed transmission line result in interference and/or an unacceptable obstruction losses to any portion of the SFWMD's communications and control microwave system, FP & L shall be solely responsible for correcting the problem to the SFWMD's satisfaction. In an extreme case, this may involve the relocation of FP & L's transmission lines and towers. Reference: Section 373.085 and 373.086, F.S.; Chapter 40E-6, F.A.C.

(4) Should any future activities by the SFWMD, in conjunction with its responsibilities as the local sponsor for the Central and Southern Florida Flood Control Project and/or its responsibilities to implement adopted Surface Water Improvement and Management (SWIM) plans mandated by Chapter 87-97, F.S., require the relocation of any portions of FP & L's transmission line and towers, FP & L shall be solely responsible for relocating the transmission line and towers to the SFWMD's satisfaction. Reference: Section 373.085 and 373.086, F.S.

e. Hazardous Materials Management

(1) If hazardous materials are used in the construction, operation and/or maintenance of the transmission line, the Permittee shall provide reasonable assurance to the SFWMD that hazardous materials will not enter the surface water management system for the transmission line. Reference: Sections 373.413(1), 373.413(2), and 373.416(1), F.S.; Rules 40E-4.091(1)(a), 40E-4.301, and 40E-4.381, F.A.C.

C. ADDITIONAL REQUIREMENTS

1. General

a. Off-site supporting facilities, such as the substation sites, are considered by the SFWMD to be separate from this Certification and subject to the permitting requirements of Chapter 373, F.S. Reference: Sections 373.413(1) and 403.522(15), F.S.; Rules 40E-1.602 and 40E-4.041, F.A.C.

Project Work(Canal/Levee): L-8; 1-40, L-36, L-35A, L-35B, L-68A

Quality of Title: XX Fee Title XX Easement Other

Save Our Rivers Project: Strazzula Total Acres: 1,225

Status of Ownership: XX Purchase Complete Partially Purchased

 Designated in 5-year plan Designation under consideration

Save Our Rivers Project: Water Conservation Areas Total Acres: 220,078

Status of Ownership: Purchase Complete XX Partially Purchased

 Designated in 5-year plan Designation under consideration

Other District Lands: See Footnote 12 Total Acres:
(name)

Status of Ownership: Fee Title Easement Other

	ACCEPTABLE RESPONSE IN APPLICATION	RESOLVABLE THROUGH SITE SPECIFIC STANDARDS MINOR	MAJOR	MAJOR REGIONAL ISSUES
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I. RIGHT-OF-WAY IMPACTS

A. CONSISTENCY WITH EXISTING USES
OF RIGHT-OF-WAY

1. District Uses				X(1)
2. Other Approved Uses				X(2)

B. CONSISTENCY WITH DISTRICT RIGHT-
OF-WAY PERMITTING CRITERIA

1. Allowable Uses				X(3)
2. Design Requirements for Crossings		X(4)		
3. Design Requirements for Connections (culverts, pumps, open channels, etc.)		X(4)		
4. Design Requirements for Other Uses (landscape, fence)	X			
5. Environmental Impacts				X(5)
6. Access Considerations			X(6)	

LAND MANAGEMENT, Cont'd

	ACCEPTABLE RESPONSE IN APPLICATION	RESOLVABLE THROUGH SITE SPECIFIC STANDARDS		MAJOR REGIONAL ISSUES
		MINOR	MAJOR	

II. SAVE OUR RIVERS IMPACTS

A. CONSISTENCY OF PROPOSED USE WITH:

1. Section 373.59, F.S. (Resource
Rivers Act/Save Our Rivers
Program Requirements)

a. Water management			X(7)	
b. Water supply		X(7)		
c. Conservation & protection of water resources			X(7)	
d. General public recreational purposes		X(7)		

2. SFWMD Management Plans for
Property
(Conceptual/Interim/Operational)

a. Conservation & protection of water resources			X(7)	
b. Public recreational uses		X(7)		
c. Water management			X(7)	
d. Water supply		X(7)		
e. Unique habitat				X(7)

III. OTHER DISTRICT LANDS

A. CONSISTENCY OF PROPOSED USE WITH:

<u>1. Acquisition Purpose</u>				X(8)
<u>2. SFWMD Management Plan for Property</u>				X(8)

FOOTNOTES:

1. Of particular concern to the SFWMD are the potential impacts that the construction, operation and maintenance of the proposed transmission line would have on the SFWMD's legally mandated responsibilities for managing its lands, including the Water Conservation Areas and the canal/levee rights-of-way which comprise the Central and Southern Florida Flood Control Project. These lands were specifically acquired for water management related purposes (i.e., flood control, water supply, conservation, reclamation, allied purposes) and are managed by the SFWMD, and other agencies [U.S. Fish and Wildlife Service (USFWS), Florida Game and Fresh Water Fish Commission (FGFWFC)] through special agreements, for those purposes. Not only must the SFWMD consider its responsibilities for operation and maintenance of the existing project system and lands, but also any future needs or uses which may be precluded or limited by a proposed use.

LAND MANAGEMENT FOOTNOTES continued

Construction of the proposed transmission line can be expected to impact the SFWMD's operation and maintenance activities on SFWMD rights-of-way in several ways, some more significantly than others. During construction of the transmission line, access to the affected portions of the levee road and associated right-of-way will be limited while FP&L substantially upgrades the levee road (from a normal width of 10 feet to a required width of 18 feet with a more stable surface), constructs the structure pads and connecting finger roads, to the levee and installs the transmission line poles and wiring. (See Exhibit 4 for a typical layout) These periods are not expected to have a major impact on the SFWMD's regularly scheduled maintenance activities, but could be problematic in an emergency situation.

The primary impact of the proposed transmission line on the SFWMD's current operation and maintenance activities will occur as a result of the location of the structure pads within the right-of-way and the access/finger roads which will connect them to the levee road. Since they will be located with a distance of 700 to 1320 feet between them, they will result in the break-up of a long continuous area and, thus, can be expected to increase the amount of time that it now takes to maintain the areas immediately adjacent to the levees. Additional impacts may occur in those instances where maintenance activities require the use of heavy equipment such as drag lines which must be operated a safe distance away from the power lines. Special attention to detailed design/construction plans would be necessary to minimize potential adverse impacts.

An additional potential impact of the proposed transmission line involves the SFWMD's Communications and Control Microwave System, in particular, the stations located at the Acme Pump Station on L-40 and at S-39. While there do not appear to be any potential adverse impacts based on the information currently available, until such time as a specific right-of-way has been identified and the location of the transmission line structure pads has been finalized, it will not be possible for District staff to confirm this. Please reference Site Specific Standard 2.d)3.

2. As noted above, the SFWMD has agreements with the USFWS and FGFWFC to manage Water Conservation Area #1 (Loxahatchee Wildlife Refuge) and Water Conservation Areas #2 and #3, respectively, for wildlife management purposes. In addition, there are several locations along the L-40 and L-36 levees where the SFWMD has issued right-of-way, surface water management, and/or water use permits to several local water management districts which allow connections to the Water Conservation Areas for surface water discharges and/or water use withdrawals. There is also an existing power line corridor which is located immediately adjacent to the western boundary of Water Conservation Area #1 which then generally follows U.S. 27 between Water Conservation Area #2A and #2B and #3A.

For some portions of the SFWMD's right-of-way and lands, the SFWMD does not have fee title but only an easement for water management purposes. Consequently, in order to utilize those lands, permission from the underlying fee owner would also be required.

LAND MANAGEMENT FOOTNOTES continued

3. The SFWMD has historically discouraged the construction of transmission lines within its rights-of-way for the reasons enumerated in Footnote No. 1 above. Since current right-of-way permitting criteria do not identify transmission lines as an allowable use, such a use would require a policy decision by the SFWMD's Governing Board.

Also related to this issue is the Governor's Executive Order No. 88-25, issued January 21, 1988, on the Florida Everglades (See Exhibit 2). It specifically directed the SFWMD and other agencies to take a number of actions, including the following:

"(1) Apply the utmost scrutiny in reviewing development in the Everglades, and permit development only in those areas where there is a need and desire for economic development and where no significant adverse impact will occur to the animal and plant life, water supply, and the function of the Everglades system.

(2) Allow development on public land in the state water conservation areas only for the purposes of enhancing and managing water supply, flood control and natural resources protection and restoration....."

In view of the above, it is possible that the proposed transmission line may not be consistent with the Governor's Executive Order.

An additional item related to this issue is the Final Order issued by the Florida Land and Adjudicatory Commission (Governor and Cabinet) regarding the appeal by the Florida Audubon Society of the Right-of-Way Occupancy Permits (No. 8521 and 8522) issued by the SFWMD to the Florida Cellular Telephone Company. These permits would have allowed the construction of a cellular telephone tower in Water Conservation Area #2. On April 29, 1988 the Commission rescinded the Final Order of the SFWMD approving the right-of-way occupancy permits. This action has subsequently been appealed to the First District Court of Appeal. See Exhibit 3 for further details.

4. Prior to the commencement of construction of the proposed transmission line, complete drawings showing the facilities which will cross over, on, under, or otherwise use the SFWMD's right-of-way must be submitted to the SFWMD for documentation of compliance with Chapter 40E-6, F.A.C. The proposed transmission line must meet vertical clearance and related criteria designed to insure that the SFWMD can meet its operation and maintenance responsibilities for SFWMD canals and rights-of-way. It must also maintain existing drainage flows both upstream and downstream of the proposed transmission line structure pads and access/finger roads through proper culverting. See also Footnotes No. 1 and 3 on page 24 of the Surface Water Management Checklist. Please reference Site Specific Standards 1.a(5) and 2.b(1).

5. Please reference the Environmental Checklist footnotes beginning on page 19.

LAND MANAGEMENT FOOTNOTES continued

6. The existence of the proposed transmission line and an associated access/maintenance road adjacent to and/or within the Water Conservation Areas, especially since it would involve the substantial upgrading of the SFWMD's existing levee roads, can be expected to create unauthorized entry problems involving off-the-road and other vehicles, illegal dumping, vandalism, environmental and other damages.

Should FP&L desire to utilize the SFWMD's right-of-way for access during construction of the transmission line and/or for inspection and maintenance after construction, FP&L shall submit to the SFWMD a detailed plan identifying the proposed route, type and number of vehicles to be used, and frequency of such use. Prior to the use of any portion of the SFWMD's right-of-way, FP&L will be required to provide a bond in the amount \$5,000 per half mile, or any portion thereof, of right-of-way to be used, proof of liability insurance covering FP&L's use of that portion of the right-of-way, and key fees for those portions of the SFWMD's right-of-way for which it does not now have keys.

7. Please see Footnote No. 3 on page 21 of the Environmental Checklist.

8. The Western C-51 Flood Control Project is a proposed, but not yet constructed, project work of the Central and Southern Florida Flood Control Project. A Detailed Design Memorandum (DDM) is currently being prepared by the U.S. Army Corps of Engineers (COE) and is scheduled to be issued in August, 1989. District land aquisition efforts are currently underway. It is anticipated that permits will be obtained and construction initiated in early 1990. If the proposed transmission line is located along the eastern boundary of Water Conservation Area #1 where the proposed detention area will be located, it will be necessary to substantially upgrade the existing levee in that area beyond that currently existing/proposed in order to meet FP&L road access requirements.

See also Footnote No. 1 on page 20 of the Environmental Checklist for a discussion of potential impacts to other environmentally sensitive, SFWMD lands which were not acquired by the Save Our Rivers program.

WETLANDS ACREAGE SUMMARY*

Total	Presently	Proposed To Be	Proposed To Be	Proposed To Be	Resulting Net
Existing	Impacted	Preserved	Altered/Destroyed	Mitigated	Gain/Loss
+12,522(1)	(1)	(1)	(1)	(1)	(1)

*Applicant generated estimates, subject to verification when a specific right-of-way is confirmed and final construction plans are submitted for approval.

	ACCEPTABLE RESPONSE IN APPLICATION	RESOLVABLE THROUGH SITE SPECIFIC STANDARDS		MAJOR REGIONAL ISSUES
		MINOR	MAJOR	
I. <u>EXISTING SENSITIVE LANDS</u>				
A. <u>WETLANDS</u>				
1. Quantity				X(1)
2. Quality				X(1)
B. <u>UNIQUE HABITAT</u>				X(1)
C. <u>ENDANGERED SPECIES</u>				X(2)
D. <u>OTHER (Save Our Rivers; OFWs; aquifer recharge areas; etc.)</u>				X(3)
II. <u>IMPACTS OF PRESERVATION/MITIGATION</u>				
A. <u>QUANTITY</u>				X(4)
B. <u>QUALITY</u>				X(4)
C. <u>MANAGEMENT SCHEME</u> (managed elevations, buffers, littoral zones; etc.)				X(4)
D. <u>ENDANGERED SPECIES/HABITAT</u>				X(4)
III. <u>COMPATIBILITY OF PROPOSED LAND USE AND NATURAL CHARACTERISTICS</u>				X(4)

FOOTNOTES: See following pages.

FOOTNOTES: Environment

1. The proposed transmission line corridors traverse some of the most environmentally sensitive wetland systems within the southeastern United States. As currently proposed, the route will intrude into important wetland habitat in portions of the Water Conservation Areas, the Corbett Wildlife Management Area, the recently acquired Strazulla property, and the Loxahatchee Wildlife Refuge (Water Conservation Area #1). Within the primary corridor, the applicant has identified over 12,521 acres of wetlands. The majority of the wetlands on these properties are in excellent environmental condition and provide valuable habitat for endangered and threatened species.

FP & L has stated that the actual extent of wetland impacts cannot be determined until a specific right-of-way within a certified corridor is identified and construction plans specifying the locations of access/finger roads and structure pads are finalized.

Of greatest concern to the SFWMD are the proposed Primary and Secondary corridor alignments within and adjacent to the Water Conservation Areas where the corridors straddle several of the SFWMD's levees (L-40, L-36, L-35A, L-35B, L-68A) for approximately 1000 feet to each side. If the proposed transmission line were to be located inside the Water Conservation Areas, within the confines of the perimeter levees (L-40 and L-36), or along L-35A, L-35B, and L-68A as proposed with the Secondary Corridor, it can be expected to adversely impact the extensive wet prairie and saw grass marsh communities which currently exist.

In addition, immediately to the east of L-40, off the levee road, but within the SFWMD's right-of-way for Water Conservation Area #1, wetland communities of several types occur in various locations along the entire length of L-40. Construction of the transmission line in this area would also impact several wet prairie, saw grass marsh, cypress strand, and mixed hardwood forested wetland systems.

FP & L is proposing to access the transmission line from the SFWMD's levee roads for both construction and maintenance purposes. In order to accommodate their vehicles, it will be necessary to substantially upgrade the levee road to meet FP & L standards. This upgrading would require expanding the width of the road from 10 to 18 feet and improving the road surface which would further extend the levee into these wetlands communities. Fill impacts in these wetland areas will also occur from the construction of the structure pads and the access/finger roads connecting the pads to the levee road.

Additional wetland impacts will also occur as a result of FP & L's maintenance practices which require some type of clearing within the full width of the right-of-way underneath the entire length of the transmission line in most circumstances. This is most often the case in areas subject to forest fires, such as the Water Conservation Areas, and where conflict and/or danger timber exists. Observations of existing transmission lines through wetland communities indicate that clear cutting or mowing induces species changes in the vegetative composition underneath the lines. In forested systems, in particular, the result is complete elimination of wetland tree species.

ENVIRONMENT FOOTNOTES continued

An additional area of concern is the Corbett Wildlife Management Area which the proposed corridor traverses from its northern to southern property lines, a distance of 11-1/2 miles. The proposed transmission line would cross numerous cypress domes and wet prairie communities, including the Hungryland Slough, a cypress wetland system, in the southern portion of the Corbett Area. To access the transmission line structure pads within this corridor will require the construction of a new fill road along the entire length of the corridor. In addition, due to the frequency of fire in this area, both controlled burns and wild fires, the entire length of the line would require clearing and continued mowing and maintenance in order to minimize impacts to the lines from fire. Thus, the resulting impacts to wetlands would be extensive.

Secondary and tertiary impacts can be expected to occur with species changes in both the floral and faunal communities. While the adverse effect of alteration of habitat by clearing practices is difficult to quantify, it is very likely that exotic vegetation invasion will occur as a result of the construction and clearing disturbances. Consequently, the location of the line through the Corbett Area would effectively bisect the western third of the property from the balance of the area with a segment of cleared and altered lands, an access road, and structure pads.

Another area of concern is an extensive cypress stand within the boundaries of the Loxahatchee Wildlife Refuge, but outside of Water Conservation Area #1, which would be crossed by the proposed transmission line. The proximity of power lines to the boardwalk in the Refuge would be detrimental to the purposes for which that area is managed. In addition, the corridor crosses a portion of the impoundment area managed for apple snails, the preferred food of the Everglades Kite. Thus, construction of the transmission line in this area could adversely impact use of this area by the Everglades Kite.

The proposed transmission line corridor also traverses a +1300 acre tract of SFWMD lands located south of the Loxahatchee Wildlife Refuge Headquarters and adjacent to L-40. Although these lands were acquired prior to the implementation of the Save Our Rivers program, they are recognized for the good quality mixed wet prairie and hardwood wetland systems they contain.

2. The Water Conservation Areas provide valuable habitat for many endangered, threatened, and species of special concern. SFWMD staff has observed Everglades Kites and Wood Storks within the proposed alignments and contiguous wetland areas. Both species have been designated as endangered by the U.S. Fish and Wildlife Service and the Florida Game and Fresh Water Fish Commission. For example, on April 12, 1989 SFWMD staff observed 7 Everglades Kites along the L-36 levee in Conservation Area #2A. Conservation Area #2B recently held several hundred Wood Storks. Over 50 Wood Storks were sighted on one occasion in the Strazulla property. Further documentation of the extent of wading bird usage within the Water Conservation Areas is available from the routine aerial reconnaissance bird surveys conducted by the National Audubon Society in conjunction with the SFWMD and Everglades National Park.

ENVIRONMENT FOOTNOTES continued

Many species of wading birds routinely utilize the Conservation Areas as foraging and nesting habitat. Both the Primary and Secondary corridors pass within close proximity of documented rookeries in the Water Conservation Areas and the Corbett Wildlife Management Area. The importance of the Water Conservation Areas to nesting success is becoming more apparent now that natural freshwater sites are no longer as abundant in the Florida environment. These impoundments provide preferred nesting habitat for many wading bird populations. During nesting periods the birds may fly up to 20 miles from colony sites to forage. Secondary impacts resulting from bird collisions with wires have been reported from other areas of the country but are not well studied or documented in Florida. However, the literature indicates that bird collisions with power lines occur frequently. Thus, the location of the proposed transmission line through these areas may be biologically significant considering the extensive use of these areas by endangered, threatened and species of special concern.

The proposed corridor through the Corbett Wildlife Management Area will pass through an active Red-Cockaded Woodpecker colony. The USFWS has identified the Red-Cockaded Woodpecker as an endangered species while the FGFWC classifies it as threatened. Construction of the transmission line through this site would eliminate the old growth slash pines necessary for the survival of this colony of endangered species and may eliminate further habitat necessary for other colonies within the Corbett Area.

Several other avian species were recently observed by SFWMD staff within the proposed corridors. These include limpkins, red-shouldered hawks, little blue herons, white ibis, black-necked stilts, great egrets, snowy egrets, and great blue herons. Many of these are classified as species of special concern.

3. The proposed corridor encompasses the western boundary of the Strazulla property where it abuts the Loxahatchee Wildlife Refuge. This tract was recently purchased by the SFWMD through the Save Our Rivers program after 11 years of litigation over protection of the water resources and wildlife values of the wetland systems on this land. The property supports extensive saw grass marsh and wet prairie communities which the proposed transmission line will cross. Direct impacts to the wetlands on this property would result from the placement of fill for the structure pads and any clearing/maintenance activities which would be necessary underneath the power lines. In addition, the power lines may present a physical obstacle to bird movement between the Strazulla lands and the Loxahatchee Wildlife Refuge. Discussions are currently underway with the U.S. Fish and Wildlife Service to allow that agency to manage the property in conjunction with its management responsibilities for the Refuge.

Under the SFWMD's Save Our Rivers Program, efforts are currently underway to purchase the remaining portions of the Water Conservation Areas which are not now in public ownership. This includes 85,078 acres in fee title and 135,000 acres of mineral rights. Please see Footnotes #1 and #3 of this checklist for a discussion of the impacts of the proposed transmission line on these areas.

ENVIRONMENT FOOTNOTES continued

4. Although the actual extent of wetland impacts cannot be determined at this time, it is anticipated that the corridor will involve significant quantities of wetland habitat loss and/or alteration. No specific mitigation proposals have been submitted at this time. FP & L has stated that they will comply with agency requirements for wetland mitigation, but cannot quantify impacts until a specific right-of-way within a certified corridor is identified and construction plans for the access roads and structure pads are finalized. Once specific impacts are identified, a mitigation plan will be developed.

Mitigation for wetland impacts will be required in accordance with current SFWMD criteria. The criteria established in Appendix 7, Isolated Wetlands Rule, Basis of Review for Surface Water Management Permit Applications, SFWMD, will be the standard for assessment of mitigation/compensation plans. It is anticipated that mitigation requirements will be extensive and expensive. All mitigation projects will require follow up monitoring and maintenance to ensure that the created, restored and/or enhanced wetlands are successfully established.

Areas of concern regarding mitigation include the policy issue of allowing wetland impacts on SFWMD and other state lands and accepting mitigation for these impacts. In addition, the extent to which the proposed alignment through major wetland habitats, with its resulting mitigation and monitoring expenses, is more cost effective than alternative alignments which avoid major wetlands has not been established at this time.

Drainage Basin: Multiple
Receiving Body: Multiple

	ACCEPTABLE RESPONSE IN APPLICATION	RESOLVABLE THROUGH SITE SPECIFIC STANDARDS		MAJOR REGIONAL ISSUES
		MINOR	MAJOR	

I. SYSTEM DESIGNA. QUANTITY CONSIDERATIONS

1. Discharge method, location and route to receiving water		X(1)		
2. Floodplain encroachment		X(2)		
3. Net basin storage		X(2)		
4. Stage/storage		X(1,2,3)		
5. Control elevations		X(1,2)		
6. Water management areas			X(3)	
7. Minimum drainage			X(1,3)	
8. Overdrainage			X(1,3)	
9. Outparcels	N/A			
10. Exfiltration	N/A			
11. Floor and road protection	N/A(4)			

B. QUALITY CONSIDERATIONS

1. Standard BMP's		X(1)		
2. Special BMP's (sensitive waters, on-site wastewater disposal, etc.)		X(1)		
3. Use of natural system		X(1)		
4. Hazardous materials use/generation	X(5)			
5. Exfiltration systems	N/A			

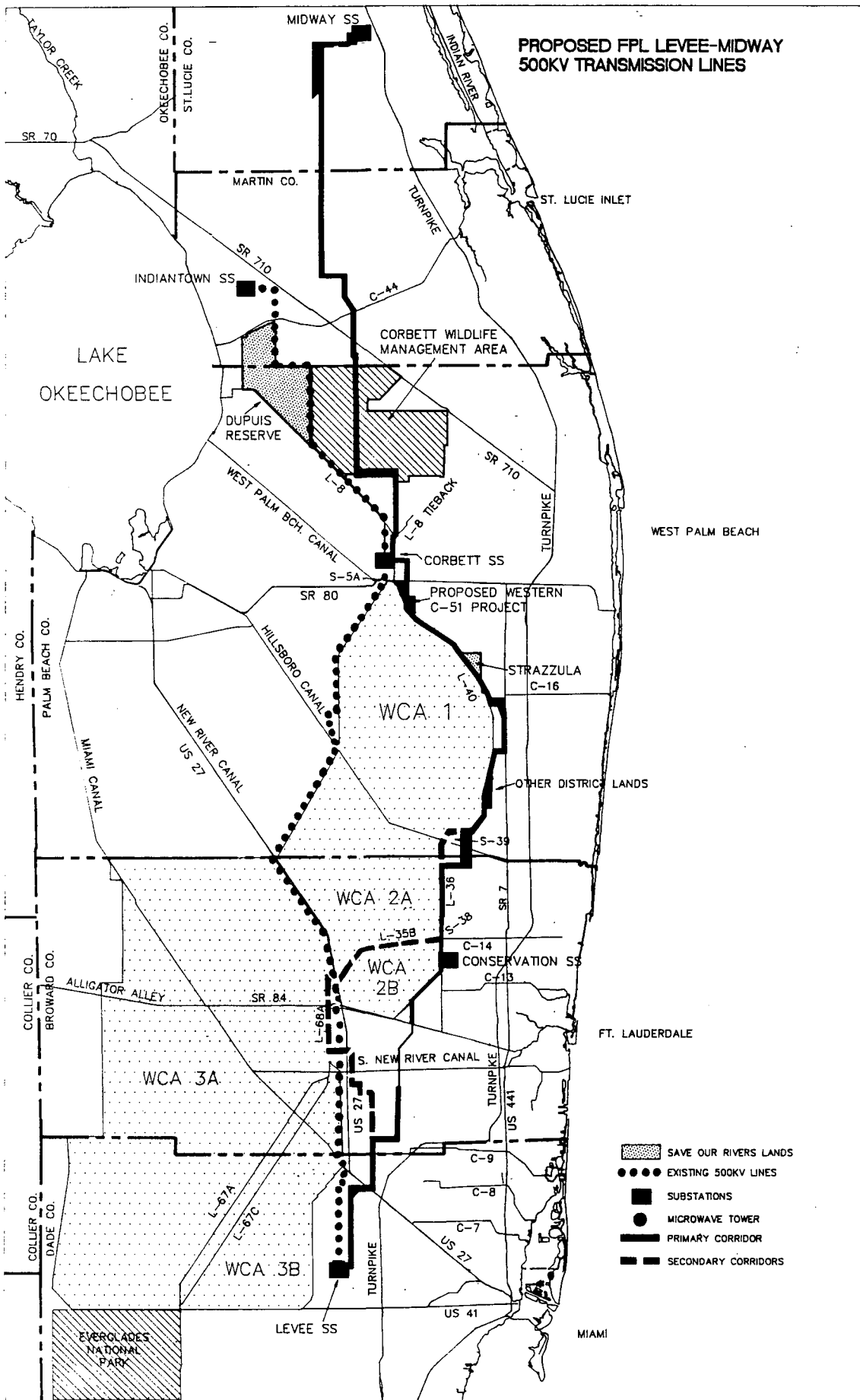
II. OFF-SITE IMPACTS

A. UPSTREAM (passage of offsite flows)			X(1,3)	
B. DOWNSTREAM (pre vs. post; capacity of receiving water)		X(1,3)		

FOOTNOTES: See following page.

FOOTNOTES: SURFACE WATER MANAGEMENT

1. FP & L has indicated that the information necessary to evaluate the possible surface water management impacts associated with the construction of the proposed transmission line within the Primary or Secondary corridors, including impacts on existing developments within and/or adjacent to the proposed corridors, cannot be provided during the certification process since a specific right-of-way has not yet been determined and construction plans are not available. Consequently, an assessment of these items cannot be completed until the final construction plans are submitted for the specific locations of the transmission lines poles, structure pads, and finger/access roads. Please reference Site Specific Standard 2.b(1).
2. Once a specific right-of-way is selected, it will be possible to evaluate possible floodplain encroachment within the C-18, C-51, C-11 West and C-9 West drainage basins. Staff predicts minimal/resolvable impacts within these special basins. However, the extent to which the criteria for fill encroachment will be applied will depend on the actual location of the transmission line and the need to construct new access roads in addition to the structure pads for the poles and the connecting finger/access roads. Compliance with the SFWMD's fill encroachment criteria could result in the need to provide additional compensating storage. Therefore, FP & L is advised that final construction plans may require modification in order to comply with these special basin criteria. Please reference Site Specific Standard 2.b(1)(h).
3. The proposed Primary and Secondary corridors will affect many existing water management areas, some of which are part of surface water management systems previously permitted by the SFWMD. When finalizing construction plans for the transmission line access roads and structure pads, FP & L must address possible adverse impacts to each of these existing water management systems on an individual basis. Depending on the final construction plans for the transmission line, modification of the affected surface water management permit may be required, in cooperation with the permittee of record. If the affected water management system has not been permitted by the SFWMD, FP & L shall demonstrate that the proposed works will not adversely impact the existing surface water management system.
4. This assumes that the access roads will not be required to meet local minimum road elevation criteria and that no buildings are proposed as part of the transmission line. The substations will be permitted separately from the transmission line corridor certification process.
5. FP & L has indicated that no hazardous materials are likely to be used, stored and/or generated in the construction, operation and/or maintenance of the transmission line except possibly the application of approved herbicides used in accordance with applicable regulations. Please reference Site Specific Standard 2.e.(1).



State of Florida

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 88-25

WHEREAS, it is the policy of the State of Florida to protect and manage the Florida Everglades in order to enhance the natural, recreational, scientific, and economic values of this resource for present and future Floridians; and

WHEREAS, the Everglades provide a natural water storage and filtering system which is essential to the life and economy of South Florida; and

WHEREAS, the Everglades are a vast fresh water marsh that have long been recognized as a source of beauty, inspiration, and enjoyment; and

WHEREAS, the Everglades are a unique ecosystem rich in biological diversity, and are the home to many endangered and threatened plant and animal species; and

WHEREAS, the Everglades confer an economic benefit by supporting a one-billion dollar agricultural industry, attracting millions of visitors every year, and supporting the urban structure of South Florida; and

WHEREAS, the Everglades are an integral part of the Kissimmee River-Lake Okeechobee-Everglades ecological system, the total of which is herein referred to as the Everglades, which must be protected and restored; and

* WHEREAS, past development of the Everglades has not taken place in a manner consistent with public safety, economic welfare, and sound resource management practices, and has threatened this valuable system; and

EXHIBIT 2

WHEREAS, the 1987 Legislature passed the Surface Water Improvement and Management Act which directed the Department of Environmental Regulation and water management districts to design and implement plans and programs for the improvement and management of surface waters, created the Lake Okeechobee Technical Advisory Council, and authorized \$4.8 million for Fiscal Year 1987-88 toward the restoration of Lake Okeechobee, and

* WHEREAS, the United States Congress, the Florida Legislature, the Florida Cabinet, and various federal, state and local agencies have recognized the importance of protecting the Everglades and have sought to manage the Everglades in a manner consistent with the principles of public safety, economic development, and protective natural resource management; and

* WHEREAS, I, as Governor of the State of Florida, have recognized the value of this fragile and unique resource and have taken steps to prevent the development of an airport in the Everglades.

NOW, THEREFORE, I, BOB MARTINEZ, as Governor and Chief Executive of the State of Florida, by virtue of the authority vested in me by the Constitution and the Laws of the State, do hereby issue the following order immediately:

* The Secretaries of the Departments of Environmental Regulation, Health and Rehabilitative Services, Transportation, Community Affairs, and Commerce, and the Director of the Governor's Office of Planning and Budgeting, are hereby directed; and the Departments of Natural Resources, State and Agriculture, Game and Fresh Water Fish Commission, South Florida Water Management District, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency and

local governments in the Everglades region are hereby requested; to take the following actions as applicable to their agencies:

* 1. Apply the utmost scrutiny in reviewing development in the Everglades, and permit development only in those areas where there is a need and desire for economic development and where no significant adverse impact will occur to the animal and plant life, water supply, and the function of the Everglades system.

* 2. Allow development on public land in the state water conservation areas only for the purposes of enhancing and managing water supply, flood control and natural resources protection and restoration.

3. Consider the national, state and regional significance of the Everglades in evaluating land acquisition plans and in formulating new acquisition proposals.

4. Report to me through the Office of Planning and Budgeting any existing or potential threat that could adversely affect the Everglades.

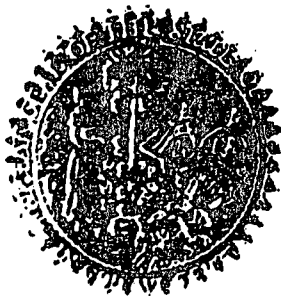
5. ~~The South~~ Florida Water Management District is hereby requested to vigorously work to restore the natural values of the Kissimmee River and seek the assistance of the U.S. Army Corps of Engineers in restoration efforts.

6. The Department of Environmental Regulation is directed to work with the South Florida Water Management District and other public agencies to abate and avoid the degradation of the quality of water in Lake Okeechobee.

7. The Department of Environmental Regulation is directed to coordinate the development of a plan for restoring the natural hydrology in portions of Golden Gate Estates in Collier County south of State Road 84 (Alligator Alley). The Department of Environmental Regulation should work with the South Florida Water Management District and other public agencies and interest groups to develop this plan, which should include the acquisition of appropriate parcels of land by the Department of Natural Resources..

* 8. The South Florida Water Management District is requested to operate the works of the District to protect and restore the natural hydrology of Everglades National Park in a manner consistent with District objectives and to implement plans in cooperation with the Army Corps of Engineers to restore natural flow into the park where it has been interrupted by works of the District.

9. The foregoing agencies are encouraged to manage the resources of the Everglades to ensure their integrity for future generations.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Coral Gables, Florida, this 21st day of January, 1998.


GOVERNOR

ATTEST:


SECRETARY OF STATE

STATE OF FLORIDA
FLORIDA LAND AND WATER ADJUDICATORY COMMISSION

RECEIVED
OFFICE OF COUNSEL

MAY 4 '88

IN RE:)
RIGHT OF WAY OCCUPANCY)
PERMITS NO. 8521 and 8522, ISSUED) CASE NO. 88-3
TO FLORIDA CELLULAR TELEPHONE)
COMPANY)

FINAL ORDER

This Request for Review having come before the
Florida Land and Water Adjudicatory Commission (the "Commission")
pursuant to Section 373.114, Florida Statutes, on April 12,
1988, in Tallahassee, Florida, for review of the Final
Order of the South Florida Water Management District (the
"District") granting the Florida Cellular Telephone Company,
Inc. ("FCTC") permission to construct a telephone tower
on land over which the District exercises an easement.
The Commission enters the following Findings of Fact, Conclusions
of Law, and Order:

FINDINGS OF FACT

1. The Florida Audubon Society, Inc. ("Audubon")
is a non-profit Florida corporation and the Petitioner
in this action. Audubon's primary corporate purpose is
the protection of the natural environment.

2. The Florida Cellular Telephone Company, Inc.
is a Florida corporation and the Respondent in this action.
The FCTC is currently in the process of building a cellular
telephone communications network in Florida.

3. The District, a special taxing district created
by Chapter 373, Florida Statutes, is charged with the statutory
responsibility of the administration and enforcement of
Chapter 373, Florida Statutes, and Chapter 40E, Florida
Administrative Code.

4. This case involves the issuance of right-of-way
occupancy permits by the District to FCTC for construction
of a cellular phone tower in a water conservation area.
The determination of the parties' rights in this case necessarily
involves an evaluation of the District's property interests

EXHIBIT 3

in the water conservation areas. Therefore, it is helpful to understand the historical matrix out of which those property interests arise.

5. In the years following World War II, the United States government dedicated its vast resources to initiating the construction of public works projects around the country. Central among the projects begun were those relating to the management of water bodies and wetlands for flood control, reclamation, conservation, and other allied purposes. South Florida was one area selected for management in accordance with the federal law.

6. In 1948, the Secretary of the Army completed a comprehensive report and plan of improvements for water projects in the middle and lower regions of Florida. The Secretary evaluated the region in the context of the underlying federal legislation that authorized such projects; that is to say, the Secretary focused on information relating to flood control, reclamation, conservation, and other allied purposes. The Secretary's report was accepted by Congress and was printed as House Document No. 643, 80th Congress, 2d Session (1949).

7. Included within the Secretary's report was a discussion of the effect of water management projects on Florida wildlife. In his report, the Secretary stated:

Southern and central Florida were originally one of the greatest natural habitats for fish, birds, and game on the North American Continent. The shores of Lake Okeechobee and the Everglades once afforded a refuge for thousands of water fowl and other birds which are now virtually extinct. The Fish and Wildlife Service of the Department of the Interior has investigated the possibilities of preserving the fish and game resources of this area and has presented plans for accomplishing this purpose. The plan of improvement presented in this report has been developed with full consideration given to this important feature. In brief, it appears that large parts of the Everglades should be held and protected as conservation areas which would be ideal for preservation of wildlife. Id. at 36.

8. Under the federal scheme of wetlands management, a state or its political subdivisions could construct projects

in order to promote the enumerated federal purposes. In 1949, the State of Florida formed the Central and Southern Flood Control District to implement the federal program. This special district would later evolve into the South Florida Water Management District.

9. In 1950, the State of Florida conveyed to the Central and Southern Flood Control District an easement over portions of state-owned lands in South Florida that were identified by the Secretary of the Army as crucial to the management effort. The easement reflected the state's desire to promote the federal management program, and was given "in the interest of flood control, reclamation, conservation, and other allied purposes." These lands were later to become known as the state water conservation areas.

10. In late 1986, FCTC applied to the Board of Trustees of the Internal Improvement Trust Fund (the "Trustees") for permission to construct a cellular phone tower on land in the state-owned water conservation areas. The site selected by FCTC is adjacent to a major highway and remains relatively dry by virtue of having been filled at some time in the past. A small fishing camp is presently located on the site. On November 6, 1986, the Trustees granted FCTC an easement to construct and maintain a tower for an annual fee of \$200.00.

11. In August, 1987, FCTC learned that it had to obtain right-of-way occupancy permits from the District in order to construct the tower in the water conservation areas. FCTC applied for the permits. Following review of the project by District staff, FCTC amended its application to significantly alter the design of the tower in order to address staff concerns. Staff had voiced objection to the negative aesthetic impact of the tower. As currently proposed, the tower would be constructed of steel and would stand 350 feet in height. The tower would be self-supporting; it would require no external wires for stabilization.

12. On January 7, 1988, the issuance of the permits came before the District's Governing Board for consideration. The Board's discussion about the tower focused on the impact that the tower would have on bird populations in the area. Dr. Oscar Owre, an ornithologist hired by FCTC to address this issue, stated that while any tower produces bird mortality, he did not expect undue bird mortality from this tower. Following Dr. Owre's statement, several speakers expressed concern about potential damage the tower could cause to endangered species such as the wood stork and the Everglades kite. Believing that it lacked authority to deny the issuance of the right-of-way occupancy permits based solely on the tower's impact on bird populations, the Board issued the permits.

13. On February 1, 1988, Audubon filed with the Commission its Request for Review of the District's Final Order granting the right-of-way occupancy permits.

14. On February 11, 1988, FCTC moved to dismiss or have the Commission deny Audubon's Request for Review.

15. On March 29, 1988, the Department of Environmental Regulation filed with the Commission its recommendation on this matter.

CONCLUSIONS OF LAW

The threshold issue which must be addressed in this proceeding relates to Audubon's standing to bring this Request for Review before the Commission. In Challancin v. Florida Land and Water Adjudicatory Commission, 515 So.2d 1288 (Fla. 4th DCA 1987), the Court acknowledged the broad standing afforded by Section 373.114, Florida Statutes, and more specifically, the ability of Audubon to challenge the decision of a water management district which affects Audubon's articulable interests in the natural environment. We believe that under the authority of Challancin, the record demonstrates in this instance that Audubon's specific interest in the protection of wildlife will be impacted by the construction of the proposed phone tower and, therefore, that Audubon should be allowed access to this administrative forum.

Having resolved the issue of Audubon's standing, we turn now to the central issue of this appeal: Does the District possess the authority to deny the issuance of a right-of-way occupancy permit when the issuance of the permit would have a negative impact on bird populations in the water conservation areas? For the reasons set forth below, we believe the District may properly deny such a permit.

It should be noted from the outset that when the District issues a right-of-way occupancy permit it is not acting as a regulatory body in the traditional sense. Rather, the District is protecting real property in which it has a proprietary interest. In the regulatory context, the District derives its authority to control the use of land from the police power of the state. In the proprietary context, it draws authority from those property interests that it has acquired through donation or purchase. Thus, the Commission's analysis of a proprietary permit is necessarily quite different than that which would be employed to review a regulatory action.

The singular nature of the District's proprietary permitting system is reflected in the District's rules. Section 40E-6.011(2), Florida Administrative Code, provides in pertinent part that:

The District acts in a proprietary capacity in acquiring lands or interests therein for utilization as works of the District. These rules are based upon proprietary concepts of property law. A "permit" to utilize works or land of the District is a contract between the District and the "permittee," whereby the permittee obtains a license which is revokable at will, except as otherwise provided herein.

In instances where the District owns an unencumbered fee simple title, it asserts the same absolute right as any other private property owner to deny permission to enter upon and make a use of its land, with the exception that, as a governmental entity, it cannot act in a discriminatory or arbitrary and capricious manner. However, when the District owns an easement as in the instant case, it is required to apply basic easement law, which states that an easement

owner may only restrict those uses by the underlying fee owner which are in conflict with the exercise of the easement. See, e.g. Crutchfield v. Sebring Realty Company, 69 So.2d 328 (Fla. 1954); Reiger v. Anchor Post Products, Inc., 210 So.2d 283 (Fla. 3d DCA 1968).

A codification of this common law principle is reflected in Section 40E-6.301(2), Florida Administrative Code, which provides in pertinent part that:

In those instances where the District owns less than fee simple title, the District may deny a proposed use based upon any of such items which conflict with the District's property interest, based upon circumstances of each case.

In light of the foregoing statement of the law, we are faced, then, with determining whether FCTC's use of the tower would conflict with the exercise of the District's easement. As we have mentioned, the District's easement is grounded in a federal program that promoted "flood control, reclamation, conservation, and allied purposes." It is clear from the legislative history of that program that the protection of wildlife -- and more specifically, birds -- is one goal of the program. It is equally clear from the testimony of FCTC's own expert, Dr. Owre, that the tower will destroy birds.

In reviewing Dr. Owre's statements, we are aware that Dr. Owre opined that the tower would not present an undue hazard to birds. We take that statement to mean that the tower would not kill an unusually large number of birds when compared to similar towers in other areas. However, we do not believe that the tower must kill an unusually large number of birds in order to be inconsistent with the use the District's easement. Our view is bolstered by the recent decision of Florida Audubon Society v. Ratner, 497 So.2d 672 (Fla. 3d DCA 1986).

In Ratner, the South Florida Water Management District possessed an easement over a certain portion of the Everglades for the purposes of flood control, reclamation, conservation, and other allied purposes. The landowner sought to mine limestone in the area which was subject to the District's easement, and the District challenged his right to do so.

In determining the landowner's rights, the Third District Court of Appeal stated:

Though the parties dispute whether the overall impact of the changes brought on by limestone mining would be detrimental, any changes in the fragile Everglades environment would necessarily interfere with the District's... rights as exercised under the easement. Id. at 676 (emphasis supplied.)

We are persuaded that a tower located in the water conservation areas which will create a hazard to birds will similarly effect a change on the fragile Everglades environment; a change that is inconsistent with the District's easement.

Although we are inevitably led to the conclusion that the construction of a steel tower in the water conservation areas is inconsistent with the rights of the District in the same land, we would be remiss if we did not address one final point raised by FCTC. Specifically, FCTC points out that the Governor and Cabinet, sitting as the Trustees of the Internal Improvement Trust Fund, granted FCTC an easement to "construct, operate, and maintain" the telephone tower. FCTC claims that the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission, are now estopped from rescinding the District's right-of-way occupancy permits -- and thus stopping construction of the tower -- in light of the Trustees' previous action. We disagree. The Trustees and this Commission are different in more than name alone; each is a separate agency that protects very different interests. In this case the Commission is called upon to define the South Florida Water Management District's authority to manage the water conservation areas. As Trustees, we engaged in an entirely different analysis which, not surprisingly, had a different effect on the interests of FCTC. We cannot ignore our duties under Chapter 373, Florida Statutes, in order to harmonize these decisions.

ORDER

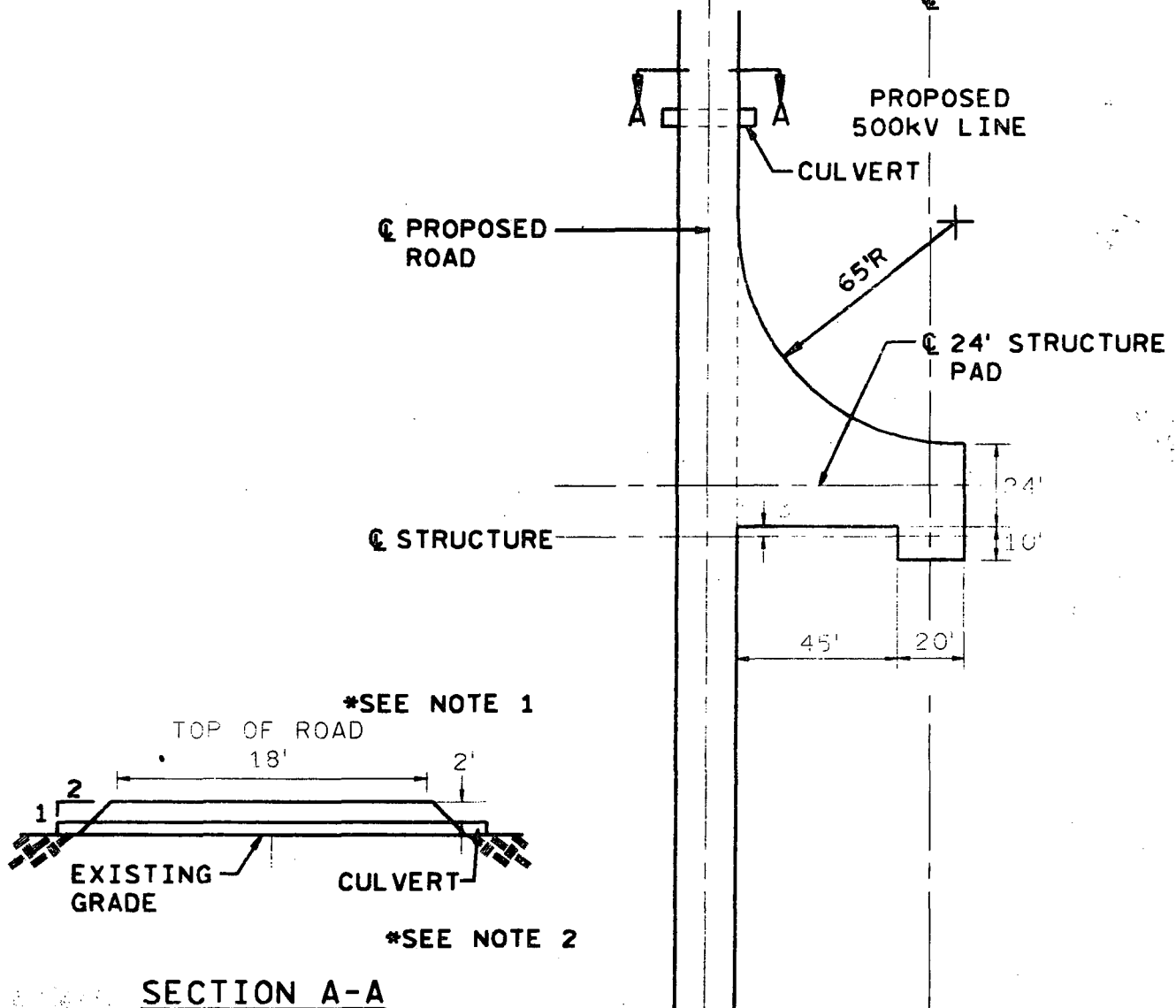
Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission does hereby order:

FCTC's Motion to Dismiss is hereby denied. The Request for Review filed by Audubon is granted. The Final Order of the District approving the right-of-way occupancy permits is rescinded.

Done and entered this 29th day of April, 1988.

Raele Achunk
Patricia A. Woodworth
Secretary, Florida Land and
Water Adjudicatory Commission

cc: Members of Commission
Parties of Record



NOTES

1. HEIGHT OF ROAD VARIES, MINIMUM 6" ABOVE MEAN HIGH WATER.
2. SPACING, DIAMETER AND LENGTH AS REQUIRED TO MAINTAIN FLOW. A MINIMUM OF TWO FEET OF COVER OVER THE CULVERT IS REQUIRED.

Figure 1.3-7
TYPICAL ACCESS ROAD AND STRUCTURE PAD LAYOUT
FOR SINGLE-POLE STRUCTURE

SOURCE: FPL, 1988.



Levee-Midway
500kV
Transmission Line

FPL

EXHIBIT 4