

**STATE OF FLORIDA
SITING BOARD**

**IN RE: FLORIDA POWER AND LIGHT
COMPANY BOBWHITE-MANATEE
230 KV TRANSMISSION LINE PROJECT
TLSA NO. TA07-14**

**OGC CASE NO. 07-0026
DOAH CASE NO. 07-0105TL**

FINAL ORDER APPROVING CERTIFICATION OF TRANSMISSION LINE

On August 11, 2008, an administrative law judge ("ALJ") with the Division of Administrative Hearings ("DOAH") submitted his Recommended Order in this certification proceeding. A copy of the Recommended Order is attached as Exhibit A. The Recommended Order states that copies of the Recommended Order were served on counsel for all represented parties and on the unrepresented parties to the proceeding. The matter is now before the Governor and Cabinet, sitting as the Siting Board, for final action under the Florida Electric Transmission Line Siting Act, sections 403.52-403.5365, Florida Statutes ("TLSA").

BACKGROUND

The applicant, Florida Power & Light Company ("FPL") is an electric utility. In this proceeding, FPL is applying for certification of a corridor for a 230 kV electric transmission line to connect its existing Manatee Energy Center, an electric generating facility near Parrish in Manatee County, to its proposed Bobwhite transmission substation, east of Interstate 75 ("I-75") and just north of Fruitville Road in Sarasota County. The project is designated as the "Bobwhite-Manatee 230 kV Transmission Line Project" ("Project"). The service area for the proposed Project is an area in Manatee County and Sarasota County that is south of the Manatee Energy Center, north of the planned Bobwhite substation, and east of I-75 and the existing 230 kV transmission network. In furtherance of the Project, FPL submitted a Petition to Determine Need for the Bobwhite-Manatee 230 kV Line to the Public Service Commission ("PSC") on June 26, 2006. On August 28, 2006, the PSC issued its Final Order Determining the Need for an

Electrical Transmission Line, in which the PSC determined that there is a need for the Project by December 2011 to:

(a) provide additional transmission reinforcement to the existing 230kV transmission network between Manatee and Ringling Substations in a reliable manner consistent with the North American Electric Reliability Corporation (NERC), and the Florida Reliability Coordinating Council (FRCC) and other applicable standards; (b) serve the increasing load and customer base in the projected service area; and (c) provide for another electrical feed via a separate right-of-way ("ROW") path, thereby reducing the impact of a loss of the existing transmission facilities on a common ROW.

On January 2, 2007, FPL filed its Application for Corridor Certification for the Project with the Florida Department of Environmental Protection ("DEP" or "the Department"). FPL's original proposed corridor, as described in the application (Joint Exhibit 1), exits the Manatee Energy Center north of State Road 62 ("SR 62") and turns east for approximately one mile. The corridor then turns south along a section line for approximately five miles, in which area the corridor is approximately 3,000 feet wide. The corridor includes a lateral spur along an existing 50-foot-wide farm road, which is included in the corridor for the sole purpose of providing access to the transmission line from County Road 675 ("CR 675"). The corridor then intersects CR 675 and follows CR 675 to its intersection with State Road 64 ("SR 64"), in which area the corridor is 400 feet wide and centered on the road. At the intersection of SR 64, the corridor turns west and follows SR 64 for approximately three miles to its intersection with Dam Road. There, the corridor turns south and runs along section lines for approximately three miles, beginning with a width of 4,500 feet and narrowing to 3,000 feet, until it reaches University Parkway. At University Parkway, the corridor turns west and runs along the south side of the road to its intersection with Lorraine Road, in which area the corridor is at least 500 feet wide. At Lorraine Road, the corridor turns south along the road and is of varying width as it follows Lorraine Road to Dog Kennel Road and the proposed Bobwhite substation.

DOAH PROCEEDINGS

On January 9, 2007, the Department requested, pursuant to section 403.525, Florida Statutes, that DOAH assign an ALJ to conduct certification proceedings pursuant to TLSA and, after assignment of an ALJ, filed a copy of the application and supporting documents with DOAH. Notice was given to all persons, entities, and parties entitled to notice and to the general public. All necessary and required governmental agencies participated in the certification process. Numerous other parties who might be substantially affected by the proposed project intervened in the proceeding. (RO ¶¶ 1-23).

On March 15, 2007, DEP determined that FPL's application was complete. Various affected agencies then submitted reports to DEP, after which DEP issued its Written Analysis of the Project, incorporating the reviewing agencies' reports and proposing a set of Conditions of Certification for the Project.

Section 403.5271, Florida Statutes, permits parties to a TLSA proceeding to propose alternate transmission line corridor routes for consideration under the Act. Schroeder-Manatee Ranch, Inc., and Lake Club Investors, LLC, (jointly referred to as "SMR") proposed ten alternate corridors. Taylor & Fulton, Inc., proposed two alternate corridors. John Falkner ("Falkner") proposed one alternate corridor. Pursuant to section 403.5271(1)(b)1., Florida Statutes, FPL and DEP accepted all of these proposed alternate corridors for consideration. Because Falkner failed to provide data to support his proposed alternate, however, Falkner's initial proposed corridor was deemed withdrawn. The affected agencies reviewed the proposed alternate corridors and supplied supplemental reports to DEP. DEP then issued a Supplemental Written Analysis for the Project, which included analysis of the proposed alternate corridors and proposed Conditions of Certification. Prior to commencement of the certification hearing, SMR withdrew eight of its ten proposed alternate corridors.

The ALJ commenced the certification hearing on November 5, 2007. After eight days of hearing, a number of the parties moved for a continuance of the hearing to allow for the

submittal and consideration of new alternate corridors. The ALJ granted this motion and continued the certification hearing until May 5, 2008.

The parties then proposed a number of new alternate corridors. SMR proposed a new alternate corridor that was supported by FPL and 14 of the 17 non-government parties. The proponents named this proposed corridor the "Consensus Corridor." The Concession Land Development, LLC, and The Concession Golf Club, LLC, (jointly referred to as "The Concession") proposed the corridor originally submitted as SMR #1. This proposed alternate corridor is referred to in the Recommended Order and this Final Order as the "Concession Corridor." Bridle Creek Homeowners Association ("Bridle Creek") proposed a new alternate corridor. FPL and DEP accepted these three new alternate corridors for consideration in the proceeding. After these parties filed additional information, DEP determined that their filings were complete.

Falkner also proposed two new alternate corridors, Falkner A and Falkner B, which DEP accepted on November 28, 2007. However, FPL rejected both of Falkner's alternate corridors. Therefore, pursuant to section 403.522(10), Florida Statutes, Falkner's alternate corridors were not "proper for certification."

The various reviewing agencies submitted supplemental reports on the new proposed alternate corridors that were proper for certification. On April 14, 2008, DEP issued an Addendum to its Written Analysis on the Project, incorporating the supplemental reports of the reviewing agencies and proposing a revised comprehensive set of Conditions of Certification.

Prior to the recommencement of the hearing, SMR withdrew its proposed alternate corridor SMR #10, and Bridle Creek withdrew its proposed alternate corridor. At the certification hearing, Taylor & Fulton withdrew its two proposed alternate corridors and Falkner withdrew Falkner Alternate Corridor B. Because Falkner Alternate Corridor A was the only remaining corridor proposed by Falkner at the time of the continued certification hearing, it is referred to in the Recommended Order and in this Final Order simply as the Falkner Corridor.

Thus, at the conclusion of the certification hearing, there remained three corridors proper for certification: the FPL Original Corridor described in Joint Exhibit 1, the Consensus Corridor described in FPL Exhibit 86, and the Concession Corridor described as SMR#1 in Joint Exhibit 2. Although not proper for certification, the Falkner Corridor, described in Falkner Exhibit JF-5 as Corridor A, was also addressed in the Recommended Order and in this Final Order because, if shown to have the least adverse impacts of all the proposed corridors, the Siting Board must deny certification or allow FPL to amend its application to include the Falkner Corridor.

During the final hearing, the parties presented testimony from numerous fact and expert witnesses and presented numerous joint and party- sponsored exhibits. In addition, public hearings were held during the evenings of October 24, 2007, and May 7, 2008, for the purpose of allowing members of the public to present evidence and testimony. Members of the public were placed under oath, testified, and were subject to cross-examination. Several documents, compiled as Public Exhibits 1 and 2, were received into the public hearing record.

The Transcript of the October 2007 hearing was filed with the DOAH on April 23, 2008, and the Transcript of the May 2008 hearing was filed on May 28, 2008. Several parties thereafter filed proposed recommended orders, after which the ALJ issued his Recommended Order.

SUMMARY OF THE RECOMMENDED ORDER

In the Recommended Order, the ALJ described each of the four proposed corridors that were considered: the FPL Original Corridor, the Consensus Corridor, the Concession Corridor, and the Falkner Corridor, including a general description of the routes for the proposed corridors and the land uses and significant natural features for each segment of these routes. He described the transmission line design and construction methods. He noted that the parties agreed that the proposed Conditions of Certification attached as Appendix I to DEP Exhibit 8 were consistent with the applicable non-procedural requirements of the state, regional, and local agencies that have regulatory jurisdiction over the proposed transmission line and that FPL had

agreed to comply with those Conditions of Certification. (RO ¶¶ 89 and 90). He summarized the agencies' reviews of the three corridors proper for certification, noting that the commenting agencies did not object to certification of any of the proposed corridors subject to the recommended Conditions of Certification. However, Manatee County recommended denial of the Concession Corridor and Sarasota County expressed concerns about that corridor. (RO ¶¶ 94 and 96).

The ALJ then compared the impacts of each proposed corridor with respect to each of the five certification criteria specified in section 403.529(4), Florida Statutes. With respect to the criterion that the project ensure electric power system reliability and integrity, the ALJ found that the FPL Original Corridor, the Concession Corridor, and the Consensus Corridor were on “nearly equal footing,” with the Concession Corridor slightly less attractive. (RO ¶ 119). He found the Falkner Corridor to have the greatest potential for adverse impact because its proposed co-location of the transmission line on an existing FPL right-of-way would not provide geographic separation. Geographic separation improves system reliability by minimizing the possibility of corridor outages. Corridor outages cause blackouts that can jeopardize public health, safety, and welfare. (RO ¶ 111).

With respect to the criterion that the project meet the electrical energy needs of the state in an orderly and timely fashion, the ALJ found that the FPL Original Corridor, the Consensus Corridor, and the Concession Corridor were “all on essentially equal footing.” He found the Falkner Corridor to have some potential adverse impact. (RO ¶ 127). With respect to the criterion that the project comply with all applicable nonprocedural requirements of the relevant agencies, the ALJ found that the FPL Original Corridor, the Consensus Corridor, and the Concession Corridor were all on equal footing, but that the Falkner Corridor had more potential for adverse impact. (RO ¶ 132). With respect to the criterion that the project be consistent with applicable local government comprehensive plans, the ALJ found that neither Manatee County nor Sarasota County had asserted that any of the proposed corridors were inconsistent with

their comprehensive plans. (RO ¶ 137). The ALJ then examined the extent to which the proposed corridors were consistent with and furthered the relevant comprehensive plan goals, objectives, and policies. The ALJ found that the four proposed corridors were not far apart in meeting this criterion, but that the Consensus Corridor presented an advantage due to a proposal to provide mitigation that resulted in “a net positive furtherance of the relevant comprehensive plan goals, objectives, and policies regarding environmental protection, generally, and the [Heritage Ranch Conservation Easement], specifically.” (RO ¶¶ 139 and 140). Finally, with respect to the criterion that the project effect a reasonable balance between the need for the transmission line and its impacts on the public and the environment, the ALJ found that the FPL Original Corridor, the Consensus Corridor, and the Concession Corridor all met the criterion because none would cause impacts to the public and the environment that would be so great that they would outweigh the need for or benefits of constructing the line. The ALJ found the evidence submitted in support of the Falkner Corridor was insufficient to make a finding regarding this criterion. (RO ¶ 199).

After examining each proposed corridor in light of the certification criteria, the ALJ noted that the Falkner Corridor would not cause the least impact. Thus, the ALJ was not required to deny the application for certification or provide FPL an opportunity to amend its application to include this corridor. (RO ¶¶ 200 and 215).

The ALJ noted that the evidence regarding the three corridors proper for certification was presented based on the advantages and disadvantages associated with their various segments. (RO ¶ 202). Therefore, the ALJ specifically found that a corridor composed of segments from the FPL Original Corridor and the Consensus Corridor provided the best balance between the need for the project and its impact on the public and the environment. (RO ¶¶ 202-204 and 225).

The ALJ concluded that all parties had standing, that the FPL Original Corridor, the Consensus Corridor, and the Concession Corridor, were shown by a preponderance of the

evidence to satisfy the certification criteria, but that Falkner did not meet his burden with respect to the Falkner Corridor. (RO ¶ 219). The ALJ concluded that DEP's interpretation of TLSA permitted certifying a corridor that consists of segments from two or more proposed corridors. (RO ¶¶ 221-224). The ALJ concluded that the preponderance of the evidence demonstrated that the corridor with the least impact is a corridor composed of segments of the FPL Original Corridor from the Manatee Energy Center to the point where that corridor is perpendicular to Taylor & Fulton's southern property boundary, then continuing south in the Consensus Corridor to the proposed Bobwhite Substation. (RO ¶ 225). The ALJ recommended that the Siting Board issue a Final Order certifying this modified corridor, subject to specified Conditions of Certification, additional conditions accepted by FPL as described in the Recommended Order, and additional terms found in paragraphs 5A-5D of the Settlement Agreement entered in the record as FPL Exhibit 91, which provides for mitigation. (RO page 82).

STANDARDS OF REVIEW OF DOAH RECOMMENDED ORDERS

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. *See, e.g., Scholastic Book Fairs, Inc. v. Unemployment Appeals Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. *See, e.g., Rogers v. Dep't of Health*, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); *Belleau v. Dept. of Env'tl. Prot.*, 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); *Dunham v. Highlands County Sch. Bd.*, 652 So. 2d 894

(Fla. 2d DCA 1995). These evidentiary-related matters are within the province of the ALJ, as the “fact-finder” in these administrative proceedings. *See, e.g., Tedder v. Fla. Parole Comm’n*, 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003); *Heifetz v. Dep’t of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Also, the ALJ’s decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. *See, e.g., Collier Med. Ctr. v. State, Dep’t of HRS*, 462 So. 2d 83, 85 (Fla. 1st DCA 1985); *Fla. Chapter of Sierra Club v. Orlando Utils. Comm’n*, 436 So. 2d 383, 389 (Fla. 5th DCA 1983). An agency has no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla. v. Consol. Minerals*, 645 So. 2d 485, 487 (Fla. 2d DCA 1994).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ’s conclusions of law and interpretations of administrative rules “over which it has substantive jurisdiction.” An agency’s review of legal conclusions in a recommended order, are restricted to those that concern matters within the agency’s field of expertise. *See, e.g., G.E.L. Corp. v. Dep’t of Env’tl. Prot.*, 875 So. 2d 1257, 1264 (Fla. 5th DCA 2004). An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. *See, e.g., Pub. Employees Relations Comm’n v. Dade County Police Benevolent Ass’n.*, 467 So. 2d 987, 989 (Fla. 1985); *Fla. Pub. Employee Council, 79 v. Daniels*, 646 So. 2d 813, 816 (Fla. 1st DCA 1994). Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless “clearly erroneous.” *See, e.g., Falk v. Beard*, 614 So. 2d 1086, 1089 (Fla. 1993); *Dep’t of Env’tl. Reg. v. Goldring*, 477 So. 2d 532, 534 (Fla. 1985). Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are “permissible” ones. *See, e.g., Suddath Van Lines, Inc. v. Dep’t of Env’tl. Prot.*, 668 So. 2d 209, 212 (Fla. 1st DCA 1996).

However, agencies do not have jurisdiction to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with “factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations,” are not matters over which the agency has “substantive jurisdiction.” See *Martuccio v. Dep’t of Prof’l Reg.*, 622 So. 2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dep’t of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985); *Fla. Power & Light Co. v. Fla. Siting Bd.*, 693 So. 2d 1025, 1028 (Fla. 1st DCA 1997). Evidentiary rulings are matters within the ALJ’s sound “prerogative . . . as the finder of fact” and may not be reversed on agency review. See *Martuccio*, 622 So. 2d at 609. Agencies do not have the authority to modify or reject conclusions of law that apply general legal concepts typically resolved by judicial or quasi-judicial officers. See, e.g., *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140, 1142 (Fla. 2d DCA 2001).

Finally, in reviewing a recommended order and any written exceptions, the agency’s final order “shall include an explicit ruling on each exception.” See § 120.57(1)(k), Fla. Stat. (2007). However, the agency need not rule on an exception that “does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” *Id.*

RULINGS ON EXCEPTIONS

In this proceeding, FPL, DEP, and fifteen other parties filed joint exceptions to the Recommended Order (“Joint Exceptions”). The Concession and Falkner each filed separate Exceptions. FPL, DEP, and the other joint parties then filed responses to the Exceptions (“Joint Responses”) filed by both the Concession and Falkner. Neither the Concession nor Falkner filed responses to the Joint Exceptions. The Siting Board’s rulings on each of these Exceptions follows. Rulings on each set of Exceptions are numbered by the proponents of the exceptions.

Joint Exceptions:

The joint parties filed nine numbered Exceptions.

Joint Exception No. 1

The joint parties seek correction of Laurie Suess' title. The introductory portion of the RO, page 11, states that Laurie Suess' title is Director of Planning for Manatee County. The joint parties provide the correction that her title is Principal Planner for Manatee County. (Tr. Vol. 33: 3320.) This technical exception is granted.

Joint Exception No. 2

This exception seeks correction of a scrivener's error. The RO, in Finding of Fact 50, contains a clerical error at the end of the first sentence in which it refers to SR 675 instead of CR 675. This technical exception is granted.

Joint Exception No. 3

The RO, in Finding of Fact 73, states that the width of the ROW (right of way) will range from 10 to 75 feet. The joint parties contend that wider widths of up to 100 feet will be required where shorter typical structures than described in FPL's Application for Corridor Certification are coordinated between the underlying property owner and FPL. There is competent substantial evidence in the record that the maximum width of the ROW is typically 75 feet. (Joint Ex. 1, Ch. 1, 1-1 and Ch. 3, 3-1.). The ALJ is the fact finder, and is vested with the authority to consider and weigh the evidence presented, resolve conflicting evidence, draw permissible inferences from the evidence, and make ultimate findings of fact. *See, e.g., Tedder*, 842 So. 2d at 1025. The reviewing agency is not permitted to reject, modify, or make additional findings of fact when there is competent substantial evidence to support the ALJ's finding. Therefore, this exception is denied.

Joint Exception No. 4

The joint parties seek correction of a scrivener's error. The RO, in Finding of Fact 81, contains a clerical error in the last sentence in which it states that new access roads will be at least "six feet" above seasonal high water, instead of "six inches." (See Joint Exhibit 1, page 1-17.) The last sentence of Finding of Fact 81 is revised to read: "Where new access roads are

constructed, they will typically be 14 feet wide and at least six inches above seasonal high water.” This technical exception is granted.

Joint Exception No. 5

The joint parties take exception to the first two sentences in Finding of Fact 143, where the ALJ describes the location of the FPL Original Corridor as follow:

143. The FPL Original Corridor, south from SR 64, begins at Dam Road and travels south through a large tract of agricultural land owned by Taylor & Fulton. Manatee County plans to extend Dam Road north from University Parkway to SR 64, and the FPL Original Corridor would be aligned with Dam Road through the Taylor & Fulton property.

The ALJ’s description of the Corridor as traveling solely through Taylor & Fulton’s property is not supported by competent substantial evidence in the record. The record evidence clearly demonstrates that the FPL Original Corridor travels through property owned by both Taylor & Fulton and SMR. FPL Ex. 77B demonstrates that a good portion of the FPL Original Corridor south from SR 64 straddles the section line. Further, Joint Ex. 1 provides “[w]here Dam Road intersects SR 64, the preferred corridor turns south along section lines.” (Joint Ex. 1, Ch.2-11.) In Mr. Taylor’s testimony describing his property boundaries, he states, “the northern boundary is on State Road 64. And we come down around, down to Bridle Creek subdivision and over, and then up what could someday be Dam Road.” (Tr. Vol. 26: 2675). Further, FPL Ex. 25 demonstrates that south of SR 64, the SMR property boundary extends west from the section line nearest to Dam Road.

The location of the FPL Original Corridor is set forth in the record evidence and is not in dispute. The only issue raised here is in regard to the ALJ’s *description concerning the ownership of the property* to which the FPL Original Corridor travels through. The joint parties contend that the Corridor travels through both Taylor & Fulton’s property and through SMR’s property, and cite to evidence supporting their contention, and request specific revisions to the ALJ’s Finding of Fact. However, we are not authorized to make additional findings of fact or

reweigh the evidence. See, e.g., *Rogers*, 920 So. 2d at 30. Thus, the suggested additions to the ALJ's Finding of Fact 143 are not authorized. However, since the ALJ's description in the first two sentences of Finding of Fact 143 is not supported by competent substantial record evidence, this exception is granted and the references to property ownership are stricken.

Joint Exception No. 6

The joint parties take exception to Finding of Fact 150, where the ALJ describes the Dam Road extension, and the BWM Line running along one side of Dam Road, as being solely on Taylor & Fulton's property. The joint parties contend that the record evidence shows the Dam Road extension as generally following the section line (Joint Ex. 14, Figure 7-1) and that SMR owns the property west of the section line (FPL Ex. 25). In addition, the exact location of the future Dam Road extension will ultimately be determined at a later date. (Tr. Vol. 33: 3334.) For the reasons stated above in the ruling on Exception No. 6, we find no competent substantial record evidence supporting the ALJ's finding that the Dam Road extension will be solely on Taylor & Fulton's property, and therefore this exception is granted. However, as we are not authorized to make additional findings of fact or reweigh evidence, we decline to adopt the suggested additions to the ALJ's Finding of Fact 150.

Joint Exception No. 7

The joint parties contend that Finding of Fact 167 inaccurately states that the Consensus Corridor "avoids crossing lands designated for future Village Land Use on the Sarasota 2050 Plan." In support of this contention, the joint parties cite Joint Exhibit 11, Chapter 9 Future Land Use, Figure 9-7. We are unable to determine with certainty from the cited Exhibit the exact location of the corridor and whether it falls on lands designated for future Village Land Use on the Sarasota 2050 Plan. The joint parties seek to have us examine the Exhibit and reach a different inference from the evidence than that reached by the ALJ. A reviewing agency is not authorized to reweigh the evidence in order to reach a different inference than that of the trier of

fact. *See, e.g., Heifetz*, 475 So. 2d at 1281-82; *Greseth v. Dep't of HRS*, 573 So. 2d 1004, 1006 (Fla. 4th DCA 1991). Therefore, this exception is denied.

Joint Exception No. 8

The joint parties' exception to Finding of Fact 193 corrects a scrivener's error. The ALJ mistakenly referred to the "FPL Corridor" instead of the "Falkner Corridor" when discussing the corridor that would require transmission lines to be looped from the existing common ROW.

The record evidence shows that only the "Falkner Corridor" would require that transmission lines be looped in and out from existing common ROW to FPL's future distribution substations, adding over \$7 million of costs when compared to a geographically separate corridor. (Joint Ex. 1, App. A, page 4.) For this reason, this technical exception is granted.

Joint Exception No. 9

The joint parties take exception to the third and fourth sentences of Finding of Fact 196, which provide:

If the BWM Line is located in the Consensus Corridor or the FPL Original Corridor, FPL would first try to place the line in the road ROW. If that were not possible, FPL would locate the line just inside the Park's fence in an area already cleared.

The joint parties contend that Robert Hahn and Jack Hochheimer did not testify that FPL would "first try to place the line in the road ROW." However, there is competent substantial evidence in the record supporting an intention to avoid impacts to the state park and to place structures within road rights of way. (Tr. Vol. 5: 635; Tr. Vol. 9: 1042, 1084; Tr. Vol. 10: 1159-1160; Tr. Vol. 21: 2124.) Moreover, the record reflects that the costs of relocating PRECO's lines in order to locate the transmission line in the road ROW were included in the cost estimate. (Tr. Vol. 10: 1163.) Thus, the ALJ's findings are reasonable inferences from the competent substantial record evidence. The joint parties seek to have us reweigh the testimony and reach a different inference from the evidence than that reached by the ALJ. A reviewing agency is not authorized to reweigh the evidence in order to reach a different inference than that of the trier of fact. *See*,

e.g., *Heifetz*, 475 So. 2d at 1281-82; *Greseth*, 573 So. 2d at 1006. Therefore, this exception is denied.

Concession's Exceptions

The Concession filed five numbered exceptions.

Concession Exception No. 1

In its first exception to the RO, the Concession contends that the ALJ's Finding of Fact 160 is erroneous and should be rejected. Finding of Fact 160 states:

160. The Concession presented no direct evidence that the prospect of the BWM line near the entrance to the Concession residential development has harmed lot or home sales. The presence of the telecommunications tower was not shown to have affected sales.

As argued by the joint parties in their response to this exception, the ALJ's narrow finding specifies that direct evidence of actual harm to lot or home sales was lacking. Thus, rather than argue that Finding of Fact 160 is not supported by the competent substantial record evidence, the Concession instead mischaracterizes the ALJ's finding as one of "no evidence was presented" and then provides record citations to generalized testimony about concerns that the location of the transmission line could impact its entrance and the development. These citations do not support a finding of "direct evidence" that either the prospect of the Consensus Corridor or the presence of the telecommunications tower has affected lot or home sales.¹ The ALJ might have inferred from the testimony presented, i.e., from circumstantial evidence presented, that future sales would be affected. However, he did not do so and we are not authorized to reweigh the evidence or make additional findings of fact. *See, e.g.*, *Heifetz*, 475 So. 2d at 1281-82 (Fla. 1st DCA 1985); *Greseth*, 573 So. 2d at 1006.

¹ Direct evidence is evidence which requires only the inference that what the witness said is true to prove a material fact; e.g., 'I saw A shoot B' is direct evidence that A shot B. *See Ehrhardt, Florida Evidence* § 401.1 (2000 ed.); *see also Davis v. State*, 90 So. 2d 629, 631 (Fla. 1956).

Although not asserting that they were not supported by competent substantial evidence, the Concession also takes issue with the weight given to or possible inferences the ALJ may have drawn from Findings of Fact 157, 158, and 164. As discussed in the standards for agency review of recommended orders, these are matters solely within the province of the ALJ. *See, e.g., Tedder*, 842 So. 2d at 1025. Therefore, based on the foregoing the Concession's Exception No. 1 is denied.

Concession Exception No. 2

The Concession takes exception to Findings of Fact 202² and 204. In these findings, the ALJ determines that the preponderance of the evidence demonstrates that the best corridor is not one of the three corridors accepted for consideration by the Department and FPL, but a corridor composed of segments from the FPL Original Corridor and the Consensus Corridor ("Recommended Corridor"). The Concession does not argue that there is no competent substantial evidence to support these findings. Rather, the Concession asserts that these findings indicate the ALJ's rejection of the Concession Corridor, and that rejection of the Concession Corridor is erroneous. Thus, the Concession again urges us to reweigh the evidence and substitute our judgment for that of the ALJ in order to reach a different result. *See, Tedder*, 842 So. 2d at 1025 ("It is the [ALJ's] function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence."). On this basis, the Concession's Exception No. 2 is denied.

The Concession then argues that because the ALJ found that these three corridors were on equal or nearly equal footing for four of the five certification criteria and because the Concession Corridor was slightly less expensive than the other two proposed corridors that

² The Concession cites to ¶ 201, but it is clear that this reference is incorrect, and that ¶ 202 is the correct reference.

were proper for certification, that the ALJ “ignored” the impact of the Recommended Corridor on the Concession. This is clearly not the case.

The ALJ carefully examined each segment of each proposed corridor. In Findings of Fact ¶¶ 155-165, the ALJ discussed the potential impacts of the FPL Original Corridor and the Consensus Corridor, as well as the proposed Conditions of Certification that ameliorated those impacts, on the Concession. In addition, the ALJ looked not only at the impacts of these two proposed corridors on the Concession, but also the potential impacts of all proposed corridors on other affected persons and on the environment. While he did find that the corridors were nearly equal with respect to four of the five certification criteria, he also found negatives posed by the Concession Corridor. For instance, as pointed out by the joint parties in their response to this exception, the ALJ found a reliability risk posed by the Concession Corridor because of an active airstrip perpendicular to that corridor (RO ¶ 115). The ALJ found that the Concession Corridor was less desirable because of its impact on the Verna/Fruitville Road areas (RO ¶ 138), and he determined that the Concession corridor would potentially impact more residences than the other corridors (RO ¶¶ 141, 167-168). Thus, the ALJ fulfilled his role to consider all the evidence presented. *See Tedder*, 842 So. 2d at 1025. The Concession's Exception No. 2 is therefore denied.

Concession Exception No. 3

In its third exception, the Concession asserts that the ALJ erred as a matter of law by denying the Concession's motion in limine, which requested the ALJ to exclude any evidence of SMR's proposal to protect 600 acres of environmentally sensitive land as mitigation for the impacts of the proposed Consensus Corridor. The Concession argues that the ALJ interpreted section 403.529(4)(a)-(e), Florida Statutes, incorrectly, and that this statute, properly interpreted, does not permit consideration of “off-site mitigation” when determining which corridor should be certified.

The Concession's primary argument is that section 403.529(4)(a)-(e), Florida Statutes, states the criteria for certifying a corridor, and that none of these criteria expressly mention consideration of mitigation. However, the Department, charged with administering this statute, interprets the statute as allowing consideration of mitigation when considering the certification criteria (Conclusion of Law ¶ 217). Further, the ALJ (Conclusion of Law ¶ 218) and the joint parties point out that the Siting Board has established a precedent for considering and accepting environmental mitigation when selecting a transmission line corridor. *See In Re: Fla. Power & Light Co. Levee-Midway 500 kV Transmission Line Corridor Certification Application No. TA89-07*, ER F.A.L.R. 90:105 (Fla. Siting Bd. 1990), *aff'd Fla. Sugar Cane League v. State*, 580 So. 2d 846, 850-51 (Fla. 1st DCA 1991). The Concession attempts to distinguish that case by asserting that the mitigation approved by the Siting Board in that case related to a specific dredge and fill requirement. Thus, the Concession concedes that the Siting Board can consider mitigation in the context of determining whether the substantive requirements of agencies have been met, even though section 403.529(4)(c), Florida Statutes, does not expressly refer to mitigation. The TLSA is intended to be a "centralized and coordinated licensing process," and certification under the TLSA is in lieu of any license or permit required by any state, regional, or local agency under state law or local ordinance. *See* §§ 403.521 and 403.531(3)(a), Fla. Stat. (2007). Therefore matters that would properly be addressed under an agency's substantive permitting requirements can be addressed under the TLSA certification procedures.

The Concession further contends that it would be bad public policy for the Siting Board to consider the impact of mitigation when choosing a corridor because to do so would allow those who contribute the most to always "win" the selection of their preferred corridor. This is unlikely to be the case, given the many factors the ALJ and the Siting Board must balance in determining what best serves the public interest. Regardless of the size or value of the "contribution", a person will not "win" its preferred corridor if that corridor does not ensure electrical reliability and integrity, or meet the electrical needs of the state in an orderly and timely

fashion, or comply with non-procedural requirements of agencies, or be consistent with applicable local comprehensive plans. When balancing the need versus the impacts, the ALJ views the proposed corridors with the welfare of the public and the environment in mind. When conducting this balancing, there is no reason why the ALJ should not consider public benefit as well as potential negative impacts. The Siting Board will not assume, without any supporting evidence, that an ALJ would treat the matter as a corridor auction, with no weight assigned to where mitigation activities are proposed, how the mitigation relates to the injury that a corridor may cause, and the environmental benefits to be gained; nor that an ALJ would not weigh both the public and private impacts from the proposed corridor alignments. The ALJ clearly did so in this case.

The Concession also contends that the proposed mitigation offered by SMR should not have been considered because the donation of the mitigation is conditional. This contention is negated by the language of SMR Exhibit 111, and is expressly repudiated in the joint parties' response to this exception, to which SMR is a signatory. Based on the foregoing, the Concession's Exception No. 3 is denied.

Concession Exception No. 4

In its fourth exception, the Concession contends that the ALJ erred as a matter of law by failing to properly apply section 253.02(2), Florida Statutes (2008), which the Concession contends would prohibit certification of the corridor recommended by the ALJ. The Concession argues that (a) the transmission line will impact state-owned lands and (b) there is a practical and prudent alternative to the use of state-owned lands. Thus, the Concession urges the Siting Board to make new additional findings of fact not made by the ALJ, in order to prohibit adoption of the ALJ's Recommended Corridor. We have no authority to make independent or supplemental findings of fact. *See, e.g., North Port, Fla.*, 645 So. 2d at 487.

The Concession's basic argument is that both the FPL Original Corridor and the Consensus Corridor run along State Road 64 and along Lake Manatee State Park, that the ALJ

and Siting Board must assume that the right of way selected within either of these corridors will be within the state park, and that neither the FPL Original Corridor nor the Consensus Corridor will be able to obtain an easement because a condition of obtaining the easement is that there be no practical and prudent alternative, which the Concession Corridor provides. However, the Concession's argument not only violates the standard of review as noted above, but also fails to acknowledge the TLSA's statutory definitions of a corridor and a right-of-way. A corridor is an area within which a linear facility right of way will be located. A corridor may be up to one mile wide. See § 403.522(10), Fla. Stat. (2007). A right-of-way is the land necessary for construction, operation, and maintenance of a transmission line. See § 403.522(23), Fla. Stat. (2007). While the application must identify a proposed corridor, and the ALJ must select among it and other alternate corridors that may be proposed, the right-of-way may be selected after a corridor is certified. See § 403.522(10), Fla. Stat. (2007). Thus, it cannot be presently determined whether the 2008 amendments to section 253.02(2), Florida Statutes, which describe the process for obtaining approval from the Board of Trustees for an easement (right-of-way) across state owned lands, will apply. The Concession asserts, however, that the ALJ and the Siting Board must assume the "worst case scenario," i.e., that the right-of-way will in fact cross state lands. This assumption is not required. Rather, the matter may be addressed through post-certification proceedings as required by Condition of Certification XVIII(B) in DEP Exhibit 8, with the ultimate decision about conditions for use of state lands being determined by the Governor and Cabinet, sitting as the Board of Trustees, pursuant to section 253.02(2) and section 403.531(3)(b), Florida Statutes.

In *Fla. Sugar Cane League*, 580 So. 2d at 846, the appellants argued that the ALJ and the Siting Board could not, as a matter of law, determine that the project met all non-procedural requirements of agencies because the right-of-way within the proposed corridor had not been chosen. Thus, appellants argued that there was no way to determine the impact of the project on wetlands within the corridor, and there was therefore no way to determine whether mitigation

proposed to offset the impacts was sufficient. The First District Court of Appeal rejected this argument, noting that the Siting Act specifically allowed for selection of the right-of-way after certification was granted, and that potential impacts had been appropriately addressed through a condition of certification requiring certain post-certification action. The appellants argued that because of separation requirements from another line, it was possible for the location of the right-of-way to be determined, and that the ALJ and Siting Board should thus have required the applicant to do so during the certification hearing. Because the Legislature specifically allowed for post certification selection of the right of way, the court rejected this notion. *Fla. Sugar Cane League*, 580 So. 2d at 850. Therefore, based on the foregoing the Concession's Exception No. 4 is denied.

Concession Exception No. 5

Finally, in its fifth exception, the Concession argues that the ALJ erred by assigning minimal weight to evidence that the Concession Corridor passes directly by property FPL purchased for a substation (Finding of Fact ¶ 126). The Siting Board may not reweigh evidence presented to the ALJ and reach a different conclusion. *See, e.g., Heifetz*, 475 So. 2d at 1281-82; *Greseth*, 573 So. 2d at 1006. Therefore, the Concession's Exception No. 5 is denied.

Falkner's Exceptions:

Falkner's Exception No. 1

Falkner takes exception to the ALJ's statement in the RO's Preliminary Statement on page 12 that members of the public were subject to cross-examination at the public hearings. There is competent substantial evidence in the record supporting the ALJ's statement. (Tr. Vol. 27: 2707 – where the ALJ informed the public that hearings are conducted just like trials, with “opening statements, and direct examination, and cross examination”; Tr. Vol. 27: 2711 – where ALJ explains to the public that lawyers have the opportunity to ask questions of those who speak at public hearing; Tr. Vol. 27: 2722-23 – where questions were asked of the public by counsel and the ALJ; Tr. Vol. 6: 683, 686 – where the ALJ discusses cross-examination and

attorneys “right to ask questions, if they care to, of a person that’s come to speak.”; Tr. Vol. 6: 700 – where the ALJ asks “Does any counsel wish to ask a question?”; Tr. Vol. 6: 700 – where the counsel for intervenors asked a question of a speaker.) Therefore, Falkner’s Exception No. 1 is denied.

Falkner’s Exception No. 2

Falkner takes exception to the ALJ’s statement on page 13 of the RO that FPL’s Motion in Limine was denied. While this statement is true, so far as it goes, Falkner correctly observes that the ALJ subsequently entered a written Order on Motion In Limine in which the ALJ granted the motion to the extent of holding that the PSC found that there was a need for a new transmission line, that the need was shown by the enhanced reliability benefits that would be gained by a geographically separate right of way, and that an attempt to present evidence contrary to these findings would be a collateral attack on the PSC’s need determination. Thus, Falkner’s Exception No. 2 is granted in part.

Falkner also asserts that to the extent the written ruling would prohibit the Siting Board from considering locating the transmission line within the existing FPL corridor, as proposed by Falkner, the ruling is erroneous. We disagree. The ALJ correctly ruled that because the PSC’s finding that reliability would be enhanced by geographical separation from the existing line was a foundation fact on which the determination of need was based, it may not be challenged in any other proceeding. See § 403.537, Fla. Stat. (2007). Thus, except as noted above, Falkner’s Exception No. 2 is denied.

Falkner’s Exception No. 3

Falkner takes exception to Finding of Fact 8, which states that Falkner is a resident of Myakka City, Florida. Falkner bases his exception on his testimony regarding a home he owns on Rutland Road. However, there is competent substantial evidence in the record that Falkner resides in Myakka City as reflected in Mr. Falkner’s Petition to Intervene, filed on April 12, 2007, and Falkner’s Notice of Proposed Alternate Corridors, dated November 21, 2007 (both of which

provide Falkner's address as "35100 SR 64 East, Myakka City, FL, 34251"). If there is competent substantial evidence in the record to support the ALJ's findings of fact, the Siting Board is not authorized to reject them, modify them, or make new additional findings of fact. See *Rogers*, 920 So. 2d at 30; *Heifetz*, 475 So. 2d at 1281. Therefore, Falkner's Exception No. 3 is denied.

Falkner's Exception No. 4

Falkner takes exception to Finding of Fact 19, which states that the East County Homeowners Organization, Inc., (ECHO) was formed to protect the health, safety, and quality of life of the residents of eastern Sarasota County. Falkner contends that ECHO also protects residents of Manatee County. There is competent substantial evidence in the record in the form of the ECHO's Articles of Incorporation, which state that it is organized "to protect the personal health, safety, quality of life, and property values of and for residents of eastern Sarasota County." (ECHO Ex. 1, page 1, Article III Objectives and Purpose.) We are not authorized to reweigh the evidence or resolve conflicting evidence. *Rogers*, 920 So. 2d at 30. For the foregoing reasons, Falkner's Exception No. 4 is denied.

Falkner's Exception No. 5

Falkner takes exception to Finding of Fact 46, which states that the Falkner Corridor is 400-500 feet wide. In Proposed Recommended Order – Introductory Section Jointly Submitted by All Parties, all parties, including Falkner, stated in Finding of Fact 7, page 19, "[t]he Falkner Corridor is approximately 400-500' wide." Accordingly, Falkner's Exception No. 5 is denied.

Falkner's Exception No. 6

Falkner takes exception to Finding of Fact 49, which states that Gamble Creek, Tyre Creek, and Waterhole Creek have existing road crossings. Finding of Fact 49 is under the section of the Recommended Order discussing Land Use and Significant Natural Features of the FPL Original Corridor, from the Manatee Energy Center to SR 64. The ALJ's Finding of Fact is supported by competent substantial evidence. The record reflects expert testimony of

Mr. Simpson, an expert in terrestrial ecology, providing that the tributaries – Gamble Creek, Tyre Creek, and Waterhole Creek – “have existing farm roads crossing them already.” (Tr. Vol. 17: 1739.) Further, the record reflects testimony of Mr. Hochheimer, FPL transmission engineer and an expert in electrical engineering with a specialization in transmission line siting, discussing photographs of Gamble Creek, Tyre Creek, and Waterhole Creek and the dirt farm roads that run through the creeks. (Tr. Vol. 38: 4089-4094; Ex. FPL 108, Photographs A, B, D, E, F.). Accordingly, Falkner’s Exception No. 6 is denied.

Falkner’s Exception No. 7

Falkner takes exception to Finding of Fact 50. However, Falkner does not contend that the factual findings contained therein are not supported by competent substantial evidence. Instead, Falkner states that his exception is based on the fact that the ALJ failed to include additional findings of fact, to wit: “[t]he ALJ fails to note that there are at least 9 houses in this area” Falkner’s exception is improper because under Section 120.57 (1)(k), Florida Statutes, a reviewing agency need not rule on an exception that “does not identify the legal basis for the exception.” In order to sustain an exception to a Finding of Fact, the party making the exception must allege that the Finding of Fact is not supported by competent substantial evidence.

In addition, the ALJ need not include every piece of evidence in his RO. Rather, the ALJ’s duty is to weigh the evidence and reach ultimate findings of fact. *See Tedder*, 842 So. 2d at 1025. Further, we are not authorized to make additional or supplemental findings of facts. *See Rogers*, 920 So. 2d at 30. (agency not permitted to make additional findings of fact); *see also North Port, Fla.*, 645 So. 2d at 487 (“The agency’s scope of review of the facts is limited to ascertaining whether the hearing officer’s factual findings are supported by competent substantial evidence. . . .The agency makes no factual findings in reviewing the recommended order.”). For the foregoing reasons, Falkner’s Exception No. 7 is denied.

Falkner’s Exception No. 8

Falkner takes exception to the ALJ's statement in Finding of Fact 72 that along the Falkner corridor, "there are areas of existing and future residential development." The record reflects that existing and future residential development exists along the corridor (Ex. FPL 77B; Joint Ex. 1, Figure 2.1-2, p. 2-7; Joint Ex. 9, Future Land Use Maps tab, Maps 5, 7, 15 and 17, and Future Land Use tab, page 9, Table 2-1 Summary of Future Land Use Classification System; Tr. Vol. 34: 3465-66.) The ALJ's Finding of Fact is supported by competent substantial evidence; therefore, this exception is denied.

Falkner's Exception No. 9

Falkner takes exception to the ALJ's Findings of Fact 102-104. Included in Finding of Fact 102 is a conclusion of law that "Falkner had the burden to present in the certification hearing all the information needed to fully evaluate the Falkner Corridor." It is clearly Falkner's burden to prove that the alternate corridor can be certified at the hearing. Section 403.5271(3)(b), Florida Statutes, provides that "[t]he party proposing an alternate corridor has the burden to prove that the alternate corridor can be certified at the certification hearing. This act does not require an applicant or agency that is not proposing the alternate corridor to submit data in support of the alternate corridor." *See also Dep't of Banking and Fin., Div. of Sec. and Investor Prot. v. Osborne Stern and Co.*, 670 So. 2d 932, 934 (Fla. 1996) ("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue"); *Fla. Dep't of Transp. v. J.W.C.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981) ("In accordance with the general rule, applicable in court proceedings, 'the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal'").

Falkner contends that even if he had the burden of proof regarding the criteria in section 403.529 (4)(a)-(e), Florida Statutes (2007), he satisfied his burden, and that the Falkner Corridor has the least adverse impacts. As determined in the ALJ's Findings of Fact 105-201 concerning the criteria in Section 403.529, Florida Statutes, and the record evidence supporting those

findings; and as specified in our rulings below on Falkner's Exception Nos. 10-23, there is competent substantial record evidence that Falkner failed to meet his burden of proof regarding the criteria set forth in Section 403.529 (4)(a)-(e), Florida Statutes, and failed to demonstrate that it had the least adverse impact regarding the criteria in subsection (4), including costs. (Tr. Vol. 32: 3123-24, 3132-33; Tr. Vol. 37: 4031-32; Joint Ex. 1, Appendix A; Tr. Vol. 34: 3441-48, 3452, Tr. Vol. 22: 2266-67 (concern about cascading outages in existing ROW and that Falkner Corridor transmission line would compromise reliability); Tr. Vol. 36: 3777-79, 3814-15, 3785-86 (concern over permitability of Falkner Corridor transmission line, and/or delays in permitting, due to need to avoid and/or minimize potential wetland impacts, and concerns regarding maintenance of structures in water); Joint Ex. 5, p. 4 (increased costs of Falkner Corridor line)).

Falkner, in his Exception No. 9, also contends that the ALJ "fails to take into account the effect of the exemption provided in section 403.524(2)(c), Florida Statutes," and states that due to the exemption "the Falkner proposal to build the BWM Line in the FPL ROW is deemed to satisfy the burden of proof" Falkner cites no supporting case law for his assertion, nor have we found any. Even if FPL would have the right to construct in an existing right-of-way without first obtaining certification under TLSA, it does not follow that Falkner's burden of proof on an alternate corridor would therefore be satisfied. Moreover, the exemption only applies where *all construction* is limited to established rights-of-way, and there is competent substantial record evidence raising concerns as to whether certain portions of the BWM Line would fit within the Falkner Corridor. (Tr. Vol. 35, 3750-51 ("I don't know if there's room for a - I will call it a fifth circuit in that area"; Tr. Vol. 3790-91 ("we haven't determined whether there's enough right-of-way to put the fifth line in that 1.5 mile section")). Additionally, exemption from certification under TLSA does not exempt the transmission line from meeting all other applicable permitting processes. See § 403.524(3), Fla. Stat. (2007).

Further, Falkner does not contend that there is no competent substantial evidence to support Findings of Fact 102-104. Instead, Falkner states that there exists competent

substantial evidence that the ALJ failed to include in his findings in ¶¶ 102-104. Pursuant to Section 120.57(1)(l), Florida Statutes, the reviewing agency “may not reject or modify the findings of fact unless the . . . findings of fact were not based upon competent substantial evidence” Thus, if there is competent substantial evidence in the record to support the ALJ’s Findings of Fact, a reviewing agency may not reject or modify the finding, regardless of whether other facts may exist that were not included by the ALJ. The ALJ is not required to include every piece of evidence, and the Siting Board is not authorized to reweigh the evidence or make additional findings of fact. *See Tedder*, 842 So. 2d at 1025. The Siting Board is not authorized to perform these functions that are within the exclusive province of the trier-of-fact. *See Belleau*, 695 So. 2d at 1307. Therefore, based on the foregoing, Falkner’s Exception No. 9 is denied.

Falkner’s Exception No. 10

Falkner takes exception to Findings of Fact 113 and 114; however, Falkner does not contend that the factual findings are not supported by competent substantial evidence. In fact, Falkner provides that the ALJ “correctly states” Falkner’s position. Instead, Falkner bases his exception on the ALJ’s failure to include additional findings of fact. Falkner contends that “[t]he R.O. does not set forth the following relevant facts” As stated previously in our rulings above, we are not authorized to make supplemental findings of facts, because the ALJ is the fact finder. *See North Port, Fla.*, 645 So. 2d at 487. Also, there is competent substantial evidence in the record supporting the ALJ’s Findings of Fact. (Tr. Vol. 34: 3440-3441, 3460-3461.) For the foregoing reasons, Falkner’s Exception No. 10 is denied.

Falkner’s Exception No. 11

Falkner takes exception to the ALJ’s statement in Finding of Fact 118 that maintenance of structures in the river would be more difficult than on land and that “the replacement of poles and some other major components would require barges or helicopters.” Falkner contends that the Finding of Fact is not supported by competent substantial evidence. The record reflects that

Falkner's own witness, Mr. Lippincott, an FPL engineer, testified that maintenance in water is "completely different than doing the maintenance on land" and that the structures in the water "would require barges and/or helicopters to do the work on anything that's in the river. So comparing the one land versus in the river, there's a huge difference from a maintenance standpoint." (Tr. Vol. 36: 3814-3815.)

Falkner also contends that the ALJ "fails to note that very little maintenance is required with these structures." We are not authorized to make supplemental findings of facts, because the ALJ is the fact finder. *Id.* Therefore, since there is competent substantial record evidence for the ALJ's Finding of Fact, Falkner's Exception No. 11 is denied.

Falkner's Exception No. 12

Falkner takes exception to the ALJ's summary Finding of Fact 119, which states that "[t]he Falkner Corridor has the greatest potential for adverse impact with regard to this criterion." The criterion at issue relates to the transmission line's ability to "[e]nsure electric power system reliability and integrity." (RO pages 42-43). The record contains competent substantial evidence supporting the ALJ's summary finding. (Tr. Vol. 34:3440-41, 3460-61). Indeed, Finding of Fact 111, to which Falkner did not file an exception, summarizes expert testimony and states that "a corridor outage with the BWM Line in the Falkner Corridor could possibly trigger cascading, or uncontrollable, outages," and that "a cascading outage could occur, resulting in a blackout lasting hours and affecting 500,000 customers. Such a blackout would jeopardize public health, safety and welfare." Falkner has thus expressed his agreement with, or at least waived any objection to, this finding of fact. *See, e.g., Env'tl. Coalition of Fla., Inc. v Broward County*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991)(Having filed no exceptions to certain findings of fact the party has thereby expressed its agreement with, or at least waived any objection to, those findings of fact). Based on the ALJ's Findings of Fact 106 through 118, including uncontested Finding of Fact 111; and the record evidence cited in our rulings on Findings of Fact 113-114, and 118, Falkner's Exception No. 12 is denied.

Falkner's Exception No. 13

Falkner takes exception to the ALJ's statement in Finding of Fact 123 that "[s]ome questions remain about whether the BWM Line could physically fit within the existing common ROW in the area south of SR 70" The record reflects that Mr. Hahn, an FPL transmission engineer and expert in electrical engineering with experience in transmission line siting, permitting, and engineering, testified in regards to whether the line would fit in that area ". . . I don't know if there's room for a – I will call it a fifth circuit in that area." (Tr. Vol. 35: 3750-3751.) He further testified that there were two areas he was concerned wouldn't fit:

The first being, south of State Road 70, the PRECO facilities are there, and we haven't determined whether there's enough right-of-way to put the fifth line in that 1.5 mile section. The other aspect would be corners. I didn't look at whether there was enough room in the corners for guying. . . .

(Tr. Vol. 36: 3790-3791.) The competent substantial record evidence supports the ALJ's Finding of Fact 123; therefore, Falkner's Exception No. 13 is denied.

Falkner's Exception No. 14

Falkner takes exception to Findings of Fact 124 and 125, where the ALJ states that "[p]lacing the BMW Line in a corridor east of the existing common ROW would more efficiently integrate these future distribution substations than placing the transmission line in the Falkner corridor." Falkner contends that this finding is not supported by competent substantial evidence. Additionally, Falkner contends that the issue of future expansion is not relevant to this TLSA proceeding, and that because of the uncertainties associated with future substations that "no weight can be given to the integration of future substations." There is competent substantial evidence in the record to support Findings of Fact 124 and 125. (Tr. Vol. 13: 1506-08; Tr. Vol. 25: 2489; Tr. Vol. 30: 3018-19; Tr. Vol. 32: 3097-98, 3124, 3143-44, 3154.) Further, the ALJ, after hearing all the evidence, found the issue of future expansion to be relevant to the criterion concerning which transmission line will best meet the electrical energy needs of the state in an orderly and timely fashion. See § 403.529(4)(b), Fla. Stat. (2007). We are not authorized to

reject or modify findings of fact that are supported by competent substantial record evidence.

See § 120.57(1)(l), Fla. Stat. (2007). Therefore, Falkner's Exception No. 14 is denied.

Falkner's Exception No. 15

Falkner contends that there is no competent substantial evidence to support the ALJ's summary Finding of Fact 127, which states that "[t]he FPL Original Corridor, the Consensus Corridor, and the Concession Corridor are all on essentially equal footing with regard to this particular certification criterion. The Falkner Corridor has some potential adverse impact with regard to this criterion." The criterion at issue concerns the ability of the transmission line to meet the electrical energy needs of the state in an orderly and timely fashion.

There is competent substantial evidence in the record supporting the ALJ's summary Finding of Fact 127, as demonstrated by the record evidence cited above in support of Findings of Fact 123-125, and the uncontested Findings of Fact 120-122. For example, in uncontested Finding of Fact 120 the ALJ found that "[t]he design, construction, and operation of the BMW Line can be accomplished in an orderly and timely fashion and in compliance with conditions of certification in any of the *three corridors proper for certification.*" (emphasis added).

Additionally, record evidence demonstrates concern regarding whether there would be difficulty in obtaining permits due to potential wetland impacts in the Falkner Corridor. (Tr. Vol. 36: 3775-3777, 3785.) For the foregoing reasons, Falkner's Exception No. 15 is denied.

Falkner's Exception No. 16

Falkner takes exception to Finding of Fact 131, which states: "Falkner did not show, and it was not conceded by the FPL, that the BMW Line could be constructed in the Falkner Corridor in compliance with the EMF standards." There is competent substantial record evidence supporting the ALJ's finding. (Tr. Vol. 35: 3746, 3748-49). Falkner had the burden of proving that its alternate corridor could be certified at the certification hearing. See § 403.5271(3)(b), Fla. Stat. (2007) ("The party proposing an alternate corridor has the burden to prove that the alternate corridor can be certified at the certification hearing. This act does not require an

applicant or agency that is not proposing the alternate corridor to submit data in support of the alternate corridor.”). Falkner’s witness, Mr. Hahn, an FPL engineer, testified that he had not done the EMF studies to determine whether addition of the BWM Line to the multiple other lines in the Falkner corridor would have sufficient right-of-way to comply with the EMF requirements. (Tr. Vol. 35: 3746, 3748-49). Accordingly, Falkner’s Exception No. 16 is denied.

Falkner’s Exception No. 17

Falkner takes exception to the ALJ’s Finding of Fact 132, where the ALJ concludes that the three corridors proper for certification are on equal footing with respect to the criterion concerning compliance with applicable nonprocedural agency requirements, and that the Falkner Corridor has more potential adverse impacts. There is competent substantial evidence supporting the ALJ’s Finding of Fact. For example, the record reflects uncertainty regarding the potential difficulty of obtaining permits due to potential wetland impacts, and lack of proof regarding compliance with EMF regulations. (Tr. Vol. 35: 3746, 3748-3749; Vol. 36: 3775-3777, 3785.) Based on the ALJ’s Findings of Fact 128 through 131, and the record evidence cited herein, Falkner’s Exception No. 17 is denied.

Falkner also contends that the ALJ’s finding fails to account for the exemption provided by section 403.524(2)(c) Florida Statutes. For the reasons discussed in our ruling on Falkner’s Exception No. 9 above, we find this argument to be without merit.

Falkner’s Exception No. 18

Falkner takes exception to Finding of Fact 140, which states that “[t]he four proposed corridors are not far apart with respect to this particular certification criterion [concerning the consistency with applicable local government comprehensive plans], but, as explained above, there is an advantage with The Consensus Corridor and a disadvantage with The Concession Corridor.” There is competent substantial evidence to support the ALJ’s Finding of Fact. In Finding of Fact 138, to which Falkner did not take exception, the ALJ discussed why he concluded that the Concession Corridor presents a “negative” with respect to the criterion at

issue. In Finding of Fact 139, to which Falkner did not take exception, the ALJ discussed why he concluded that the Consensus Corridor presented a net positive effect with regard to the comprehensive plan goals. Falkner has thus expressed his agreement with, or at least waived any objection to, these underlying findings of fact. *See, e.g., Env'tl. Coalition of Fla., Inc.*, 586 So. 2d at 1213.

Falkner contends that the ALJ failed to make findings of fact concerning the “benefits of the Falkner Corridor with regard to consistency with local government comprehensive plans.” As discussed previously, the ALJ is the fact finder, and it is within the ALJ’s province to consider, weigh, and judge the credibility of evidence presented at hearing, and make ultimate findings of fact. We are not authorized to make additional findings of fact or reweigh the evidence. *See, e.g., Rogers*, 920 So. 2d at 30; *Belleau*, 695 So. 2d at 1307. Accordingly, Falkner’s Exception No. 18 is denied.

Falkner’s Exception No. 19

Falkner takes exception to Finding of Fact 142, which states: “[t]he record does not show how many existing homes or residential lots are within 600 feet of the Falkner *Corridor*, but the Falkner *Corridor* passes through or by residential developments and urban areas.” (Emphasis added.) In Falkner’s exception, he mischaracterizes the ALJ’s Finding of Fact and discusses the existence of homes near the existing FPL ROW, whereas the ALJ’s Finding of Fact concerns homes near the Falkner *Corridor*. Regardless, it was Falkner’s burden to demonstrate the number of homes or residential lots, or lack thereof, within 600 feet of the Falkner Corridor, and Falkner failed to meet his burden and conceded in this exception that “no competent substantial evidence was presented on the existence of any homes or lots within 600 feet of the FPL ROW.” Moreover, there is competent substantial evidence supporting the ALJ’s Finding of Fact that the Falkner Corridor passes through or by residential developments and urban areas. (FPL Ex. 77B; Joint Ex. 1, Figure 2.1-1, p. 2-7; Tr. Vol. 34: 3465-66). Therefore, Falkner’s Exception No. 19 is denied.

Falkner's Exception No. 20

Falkner takes exception to the statement in Finding of Fact 169, which states that “the overall impact of the Falkner Corridor in this respect is unknown.” The ALJ’s Finding of Fact concerns the Falkner Corridor’s proximity to residences. The first sentence of the Finding of Fact, to which Falkner does not take exception, states that “[t]he number and proximity of existing and future homes along the Falkner Corridor was not shown.” As there was no competent substantial evidence in the record demonstrating the number and proximity of homes along Falkner’s Corridor, the ALJ correctly concluded that the overall impact of the Falkner Corridor in respect to its proximity to residences is unknown. The finding is supported by competent substantial evidence, therefore Falkner’s Exception No. 20 is denied. *See* § 120.57(1)(l), Fla. Stat. (2007).

Falkner's Exception No. 21

Falkner takes exception to Finding of Fact 171, which states that Falkner “did not show, and it was not conceded by FPL, that the BMW Line could be constructed in the Falkner Corridor in compliance with the EMF standards.” There is competent substantial record evidence supporting the ALJ’s Finding of Fact. Falkner had the burden of proving that its alternate corridor could be certified at the certification hearing. *See* § 403.5271(3)(b), Fla. Stat. (2007). Falkner’s witness, Mr. Hahn, an FPL engineer, testified that he had not done the EMF studies to determine whether addition of the BWM Line to the multiple other lines in the Falkner corridor would have sufficient right-of-way to comply with the EMF requirements. (Tr. Vol. 35: 3746, 3748-49). Therefore, Falkner’s Exception No. 21 is denied.

Falkner's Exception No. 22

Falkner takes exception to the ALJ’s Finding of Fact 189, in the RO’s Summary of Environmental Impacts section, which states that “[t]he Falkner Corridor has the greatest potential for adverse environmental impacts because of the need to place structures in the Manatee River and its floodplain.” The ALJ’s finding is supported by competent substantial

evidence. (Tr. Vol. 36: 3775-3777, 3785, 3802-3804, 3814-3815.) Falkner's witness, Mr. Hahn, an FPL engineer, testified on cross-examination that he had concerns about the permissibility of placing the BWM line in the existing ROW within the Falkner Corridor due to the wide river crossing and potential wetland impacts, as compared to the other corridors which were able to avoid such a wide river crossing. (Tr. Vol. 36: 3775-3777, 3785, 3802-3804, 3814-3815.)

Falkner also contends in this exception that the ALJ failed to set forth in paragraphs 172-187 additional findings of fact regarding environmental impacts of the other corridors with regard to trees, wetlands, and visual beauty of rural areas. We are not authorized to make additional findings of facts, as the ALJ is the fact finder. *See, e.g., Rogers*, 920 So. 2d at 30 (agency not permitted to make additional findings of fact); *see also North Port, Fla.*, 645 So. 2d at 487. Moreover, Falkner does not contend that Findings of Fact 172-187 are not supported by substantial competent evidence. In fact, there is competent substantial evidence supporting the ALJ's findings concerning environmental impacts. (Tr. Vol. 9: 1061; Tr. Vol. 17: 1732-40, 1746-48, 1750-53, 1795-96, 1838; Vol. 24: 2401-10, 2422-23; Tr. Vol. 36: 3785; Tr. Vol. 38: 4087-4117.) For the foregoing reasons, Falkner's Exception No. 22 is denied.

Falkner's Exception No. 23

Falkner takes exception to Finding of Fact 199, which summarizes the ALJ's conclusions regarding the criterion balancing the need for the line and the impacts, and states that "[t]he evidence submitted for the Falkner Corridor, however, was insufficient to make a finding regarding this particular criterion [regarding balancing the need and impact]." Falkner contends that the evidence submitted at the hearing established that the BWM Line in the Falkner Corridor would fully satisfy the need for the line and would minimize the adverse impacts. However, the ALJ is the fact finder, and is vested with the authority to consider and weigh the evidence presented, resolve conflicting evidence, draw permissible inferences from the evidence, and make ultimate findings of fact. *See Tedder*, 842 So. 2d at 1025. The Siting Board is not authorized to perform these functions. *See, e.g., Belleau*, 695 So. 2d at 1307.

There is competent substantial record evidence to support the ALJ's Finding of Fact. See RO Findings of Fact 102 and 104, and our ruling on Falkner's Exception No. 9 above. Therefore, Falkner's Exception No. 22 is denied.

Falkner's Exception No. 24

Falkner takes exception to Conclusion of Law 219, in which the ALJ concludes that "Falkner did not meet his burden to prove that the Falkner Corridor would meet the certification criteria." Falkner contends that even if he had the burden of proof, he satisfied it, and that his burden was satisfied because the Falkner Corridor was exempt from the TLSA requirements. These are the same arguments that Falkner raised in his Exception No. 9, which we have denied. For the same reasons articulated in our ruling on Falkner's Exception No. 9, this Exception No. 24 is denied.

Falkner's Exception No. 25

Falkner takes exception to Conclusion of Law 220, which states, among other things: "No timely motion or demand for specific relief was made by Falkner. Falkner's due process claim was not properly raised, alleged, or proven." In his exception, Falkner does not offer any evidence to dispute the ALJ's conclusion that he failed to "file a timely motion or demand for specific relief." Instead, Falkner, citing his own Proposed Recommended Order, contends that "the cumulative effect of FPL's actions prior to the certification hearing with the public and Sarasota and Manatee County governments as set forth in the [Falkner Proposed Recommended Order], and the denial of the right to cross examine had the effect of precluding fair notice and opportunity to be heard"

The ALJ found that Falkner failed to properly and timely raise his due process claim. This is a procedural ruling and is thus not appropriate for a reviewing agency to reject or modify. Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." A reviewing agency does not have substantive jurisdiction over discretionary

procedural rulings of the ALJ. See, e.g., *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1009-1010 (Fla. 1st DCA 2001); *Deep Lagoon Boat Club, Ltd.*, 784 So. 2d at 1142; *Martuccio*, 622 So. 2d at 609.

Regardless, there is competent substantial record evidence to support the ALJ's conclusion that Falkner's due process claim was not proven. The ALJ is vested with the authority to consider, weigh, and judge the credibility of the evidence presented at the hearing. The ALJ concluded that the statements made by FPL in its discussions with Sarasota County and Manatee County did not control the actions of those governments. We are not authorized to reweigh the evidence or make additional findings of fact. Moreover, as discussed in our ruling on Falkner's Exception No. 1, there is competent substantial evidence in the record supporting the ALJ's finding that members of the public were subject to cross-examination at the public hearings. Further, Falkner fully participated in the certification hearing and had ample opportunity to present his case-in-chief. As stated in the Joint Proposed Recommended Order – Introductory Section Jointly Submitted By All Parties, including Falkner, Falkner presented the testimony of six witnesses in his case-in-chief and numerous exhibits were received into evidence at the certification hearing. Falkner clearly had ample opportunity to be heard and he does not contend that he did not receive fair notice of any of the proceedings. Procedural due process requires both fair notice and a real opportunity to be heard. *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Authority*, 795 So. 2d 940, 948 (Fla. 2001). Falkner was denied neither.

Additionally, to the extent that Falkner's due process claim is an attack on the procedures of the TLSA, it cannot be raised in this certification hearing. See *Key Haven Assoc. Enter., Inc. v. Bd. of Trustees of Internal Improvement Fund*, 427 So. 2d 153, 157 (Fla. 1992); *Dep't of Revenue v. Young Am. Builders*, 330 So. 2d 864, 865 (Fla. 1st DCA 1976). For the foregoing reasons, Falkner's Exception No. 25 is denied.

Falkner's Exception No. 26

Falkner takes exception to Conclusion of Law 224, which concludes that the Siting Board has the authority to combine and certify a corridor that was not proposed in its entirety by any single party or addressed in any single application. As noted by the ALJ in Conclusion of Law 221, to which Falkner did not except, the definition of "corridor" in section 403.522(10), Florida Statutes, includes any area proposed for the location of the transmission line right-of-way and is broad enough to allow the Siting Board to certify a corridor that combines segments of two or more corridors proper for certification. All parts of any such combined corridor would have been subject to public notice, detailed description, and analysis in the proceeding. "Combining segments, therefore, satisfies the fundamental requirements of the TLSA to provide notice to all affected persons and to conduct a thorough review of the proposed corridor." (RO ¶ 221). The ALJ further concluded in RO ¶ 222 that section 403.529(4), Florida Statutes, and the definition of certification in section 403.522(7) authorize the Siting Board to approve an application with modifications, including changes to a corridor proper for certification. That is exactly what the ALJ recommended in this proceeding. (RO ¶ ¶203 and 225). The corridor recommended by the ALJ included segments from all three corridors proper for certification and can be viewed as a modification of any one of them. The ALJ also noted that there is prior precedent for combining corridor segments. *See In re: Fla. Power & Light Co. Levee-Midway 500 kV Transmission Line Corridor Certification Application No. TA89-07*, ER F.A.L.R. 90:105 (Fla. Siting Bd. 1990) In that case, as here, the ALJ recommended a corridor that included segments from corridors proposed by two parties. Falkner attempts to distinguish that case by asserting that in the earlier case there were multiple intermediate substations, whereas, in this case there were not any intermediary substations. Falkner fails to explain why this difference is legally significant.

Falkner also argues that to combine corridors would result in a corridor that was not presented or noticed prior to certification in violation of sections 403.5312 and 403.5363, Florida

Statutes. Section 403.5312, Florida Statutes, requires an applicant to file a notice of the certified route with the clerk of the court of affected counties within 60 days after certification. This statute does not apply to the issue at hand. Section 403.5363, Florida Statutes, requires the applicant, proponents of alternate routes, and the Department to publish various notices. Falkner does not identify any specific required notice that was not given. The statute does not expressly require that before a combination of corridors may be certified, the route of the combined corridor must be published. As noted by the ALJ, the purpose of the required notices is to place those who may be substantially affected by a proposed transmission line on notice of the administrative proceedings that will address the issues related to the transmission line project. In this case, the ALJ accepted evidence on, and considered the impact of, each segment of each proposed corridor. After doing so, the ALJ determined that the corridor that resulted in the least overall impact was a corridor composed of segments from the other corridors proper for certification on which he had taken evidence. Nothing in the record suggests that any party was unable to present evidence with respect to any of these segments, or that any member of the public was precluded from providing appropriate comment.

Based on the foregoing, Falkner's Exception No. 26 is denied.

Falkner's Exception No. 27

Falkner takes exception to Conclusion of Law 225, which states that "[t]he preponderance of the evidence presented at the certification hearing demonstrates that the corridor with the least adverse impact regarding the criteria in Section 403.509(4)³, Florida Statutes, is the FPL Original Corridor from the Manatee Energy Center to the point where it is perpendicular to Taylor & Fulton's southern property boundary, and then continuing south in the Consensus Corridor to the proposed Bobwhite substation." Falkner's arguments in his exception appear to be unrelated to the above statements in the ALJ's Conclusion of Law 225.

³ This reference appears to be a scrivener's error in the Recommended Order. The citation should be to section 403.529(4), Florida Statutes (2007). See, Finding of Fact 105.

Instead of tailoring his exception to the conclusion of law, Falkner reiterates for the third time the exact same arguments that he raised previously in his Exception No. 9 and Exception No. 24, to wit: Falkner contends that even if he had the burden of proof, he satisfied it, and that his burden was satisfied because the Falkner Corridor was exempt from the TLSA requirements, and that it was error for the ALJ not to apply the exemption. Falkner also contends, again, that it was error for the ALJ to combine a corridor that was not proposed in its entirety by any single application, and that the Falkner Corridor had the least impacts. These are the exact same arguments that Falkner raised in his Exception No. 9, Exception No. 24, and Exception No. 26, all of which we denied. For the same reasons articulated in those earlier rulings, this exception is also denied.

Falkner's Exception No. 28

Falkner takes exception to the Recommendation section of the RO, paragraphs 1-4, whereby the ALJ recommends that the Siting Board, among other things, enter a Final Order that certifies the combined/modified corridor. Falkner again contends that the corridor recommended for certification is not proper for certification. For the reasons stated in our rulings on Falkner's Exception No. 26, we find that the ALJ's actions were proper. Moreover, with regard to paragraphs 2-4 of the Recommendation, Falkner's exception is improper, as he fails to identify any legal basis for his objection and does not include any citations to the record or address any specific Findings of Fact or Conclusions of Law relating to the issues addressed in those paragraphs. See § 120.57(1)(k), Fla. Stat. (2007). For the foregoing reasons, we find that the ALJ's Recommendations were proper, and Falkner's Exception No. 28 is denied.

CONCLUSION

The ALJ found that "[t]he best combination of corridor segments is the FPL Original Corridor from the Manatee Energy Center to the point where it is perpendicular to Taylor & Fulton's southern property boundary, and then continuing south in the Consensus Corridor to the proposed Bobwhite substation." (RO ¶ 204). He concluded that the preponderance of the evidence presented at the certification hearing demonstrates that this recommended corridor

has the least adverse impact regarding the criteria in Section 403.529(4), Florida Statutes. (RO ¶ 225).

Having reviewed the matters of record and being otherwise duly advised, the Siting Board adopts the ALJ's recommended corridor. It is therefore ORDERED that:

A. The Recommended Order (Exhibit A) is adopted in its entirety, except as modified by the rulings in this Final Order, and is incorporated by reference herein.

B. The corridor for the Bobwhite-Manatee 230 kV Transmission Line Project consisting of the FPL Original Corridor from the Manatee Energy Center to the point where it is perpendicular to Taylor & Fulton's southern property boundary, and then continuing south in the Consensus Corridor to the proposed Bobwhite substation, is APPROVED for certification, subject to the Conditions of Certification in DEP Exhibit 8 attached and incorporated by reference herein (Exhibit B).

C. The approved certification is also subject to the additional conditions agreed to by Florida Power & Light and cited in paragraphs 161 through 163, and 183, of the Recommended Order (Exhibit A); and subject to the terms set forth as paragraphs 5A through 5D of the Settlement Agreement, FPL Exhibit 91 (Exhibit C), or comparable terms that provide for the environmental mitigation described therein, as conditions of certification.

D. Authority to assure and enforce compliance by Florida Power & Light and its agents with all of the Conditions of Certification imposed by this Final Order is hereby delegated to DEP.

Any party to this proceeding has the right to seek judicial review of this final order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing

fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 6th day of November, 2008, in Tallahassee, Florida, pursuant to a vote of the Governor and Cabinet, sitting as the Siting Board, at a duly noticed and constituted Cabinet meeting held on October 28, 2008.

THE GOVERNOR AND CABINET
SITTING AS THE SITING BOARD



THE HONORABLE CHARLIE CRIST
GOVERNOR

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.


CLERK
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this 6th day of November, 2008, to:

Carolyn Raepple, Esquire
Virginia Dailey, Esquire
Hopping Green & Sams, P.A.
Post Office Box 6526
Tallahassee, FL 32314

Brian Brattebo, Esquire
Florida Power & Light Company
Post Office Box 14000
Juno Beach, FL 33408

H. Ray Allen, II, Esquire
Dianne Triplett, Esquire
Carlton Fields, P.A.
4221 West Boy Scout Boulevard
Tampa, FL 33607-5736

James Antista, General Counsel
Emily Norton, Asst. Gen. Counsel
Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, FL 32399-1600

Martha C. Brown, Asst. Gen. Counsel
Jennifer Brubaker, Asst. Gen. Counsel
Florida Public Service Commission
2450 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Kimberly Menchion, Asst. Gen. Cnsl.
Department of Transportation
605 Suwannee Street, MS 58
Tallahassee, FL 32399-0450

Roy W. Cohn, Esquire
Roy W. Cohn, PLC
2406 Watrous Avenue
Tampa, FL 33629

Glenn Compton, Chairman
ManaSota-88, Inc.
Post Office Box 1728
Nokomis, FL 34274

Donald D. Conn, Esq.
Tampa Bay Regional Planning Council
4000 Gateway Centre Blvd., Suite 100
Pinellas Park, FL 33782

V Nicholas Dancaescu, Esquire
Kent Hipp, Esquire
GrayRobinson, P.A.
Post Office Box 3068
Orlando, FL 32802

Liz Donley, Esquire
SW Florida Regional Planning Council
1926 Victoria Avenue
Ft. Myers, FL 33901

Robert Fournier, Esquire
City of Sarasota
1 South School Ave.
Sarasota, FL 34273

W. Douglas Hall, Esquire
Carlton Fields, P.A.
Post Office Drawer 190
Tallahassee, FL 32302
Kevin S Hennessy, Esquire
R. David Jackson, Esquire
Lewis, Longman & Walker, P.A.
1001 Third Avenue West, Suite 670
Bradenton, FL 34205

Barbara Gaspare Hines, Esq.
117 81st Street
Holmes Beach, FL 34217

David M. Pearce, Esquire
Sarasota County Attorneys Office
1660 Ringling Boulevard, 2nd Floor
Sarasota, FL 34236-6870

Kelly Martinson, Asst. Gen. Counsel
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Martha A. Moore, Sr. Attorney
Southwest Florida Water Mgt District
2379 Broad Street
Brooksville, FL 34604

Keith Colabella
Bridle Creek Homeowners Association
19307 64th Ave East
Bradenton FL 34211

Jon C. Moyle, Jr., Esquire
Moyle, Flanigan, Katz, Kollins
118 North Gadsden Street
Tallahassee, FL 32301

Sarah A. Schenk, Esquire
Manatee County Attorneys Office
Post Office Box 1000
Bradenton, FL 34206-1000

Robert Scheffel Wright, Esquire
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301

Maureen M. Daughton, Esquire
Broad and Cassell
215 South Monroe St., Ste. 400
Tallahassee, FL 32301

Paul F. Grondahl, Esquire
Mackey Law Group, PA
1402 Third Ave. West
Bradenton, FL 34205

Richard Lopez, Esquire
390 North Orange Ave., Ste. 1100
Orlando, FL 32801

Patricia Anderson
Dept. of Health - Environmental Engineering
4042 Bald Cypress Way
Tallahassee, Florida 32399-1742

Forrest Watson
Florida Division of Forestry
Dept. of Agricultural and Consumer Services
3125 Conner Boulevard
Tallahassee, FL 32399-1650

Laura Kammerer
Bureau of Historic Preservation
500 South Bronough
Tallahassee, Florida 32399-0250

And by Hand Delivery to:

Michael W. Sole, Secretary
Thomas M. Beason, General Counsel
Jack Chisolm, Deputy General Counsel
Toni L. Sturtevant, Asst. Gen. Counsel
Lea Crandall, Agency Clerk
Dept. of Environmental Protection
3900 Commonwealth Blvd. - MS 35
Tallahassee, FL 32399-3000

Michael Halpin & Ann Seiler
Office of Siting Coordination
Dept. of Environmental Protection
2600 Blair Stone Road - MS 48
Tallahassee, FL 32399-3000


Jack Chisolm, Deputy General Counsel
Florida Bar Number 273473
DEPT. OF ENVIRONMENTAL PROTECTION
3900 Commonwealth Blvd. - MS 35
Tallahassee, FL 32399-3000
850-245-2242 facsimile 850-245-2302

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FLORIDA POWER AND LIGHT)
COMPANY BOBWHITE-MANATEE 230KV)
TRANSMISSION LINE PROJECT)
TRANSMISSION LINE SITING) Case No. 07-0105TL
APPLICATION NO. TA07-14)
_____))
_____)

RECOMMENDED ORDER

Pursuant to notice, the final hearing in this case was held on October 22 through 25 and October 29 through November 1, 2007, May 5 through 8 and May 12 through 15, 2008, in Sarasota, Manatee County, Florida, before Administrative Law Judge Bram D. E. Canter of the Division of Administrative Hearings.

APPEARANCES

For Applicant, Florida Power & Light Company:

Carolyn S. Raepple, Esquire
Virginia Daily, Esquire
Hopping, Green & Sams, P.A.
Post Office Box 6526
Tallahassee, Florida 32314-6526

For the Department of Environmental Protection:

Toni Sturtevant, Esquire
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32333-3000

For Manatee County:

Sarah A. Schenk, Esquire
Assistant County Attorney
Manatee County Attorney's Office
1112 Manatee Avenue West, Suite 969
Post Office Box 1000
Bradenton, Florida 34206-1000

For Sarasota County:

Stephen E. DeMarsh, Esquire
David Pearce, Esquire
Office of the County Attorney
1660 Ringling Boulevard, Second Floor
Sarasota, Florida 34236

For the Southwest Florida Water Management District:

Martha Moore, Esquire
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604-6899

For the Department of Transportation

Leon M. Biegalski, Esquire
Kimberly Menchion, Esquire
Assistant General Counsel
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399

For Schroeder-Manatee Ranch, Inc., and Lake Club Investors,
LLC:

W. Douglas Hall, Esquire
H. Ray Allen, II, Esquire
Dianne Triplett, Esquire
Carlton Fields, P.A.
Post Office Drawer 190
Tallahassee, Florida 32302

For Myakka Ranch Holdings, LLC; FC, LLC; Sarasota One, LLC;
John Cannon Homes - Eastmoor, LLC; Schwartz Farms, Inc.; Michael
and Jo Anne Schwartz:

Kevin S. Hennessy, Esquire
R. David Jackson, Esquire
Lewis, Longman & Walker, P.A.
1001 Third Avenue West, Suite 670
Bradenton, Florida 34205

For Gum Slough Preservation Foundation; Kittie L. Chapman;
East County Homeowners Organization, Inc.; and Hi Hat Ranch,
LLP:

Robert S. Wright, Esquire
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301

For ManaSota-88, Inc.:

Barbara G. Hines, Esquire
117 81st Street
Holmes Beach, Florida 34217

For John Falkner:

Roy W. Cohn, Esquire
2406 Watrous Avenue
Tampa, Florida 33629

For Pacific Land, Ltd.:

Maureen M. Daughton, Esquire
Broad & Cassel
215 S. Monroe Street, Suite 400
Tallahassee, Florida 32301

For The Concession Land Development, LLC; and The
Concession Golf Club, LLC:

Jon C. Moyle, Jr., Esquire
Anchors Smith Grimsley
The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301

For Michael, David, and Doanld Hunsader:

Paul F. Grondahl, Esquire
Mackey Law Group, P.A.
1402 Third Avenue West
Bradenton, Florida 34206

For Bridle Creek Home Owners Association, Inc.:

Keith Colabella, pro se
c/o Miller Management
2848 Proctor Road
Sarasota, Florida 34231

For Taylor & Fulton, Inc.:

Joel E. Roberts, Esquire
V. Nicholas Dancaescu
Gray Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801

STATEMENT OF THE ISSUES

This proceeding was conducted under the Florida Electrical Transmission Line Siting Act (TLSA), Sections 403.52 through 403.5365, Florida Statutes (2007)¹, to determine whether any of the proposed transmission line corridors for the Bobwhite-Manatee 230-kV transmission line (BWM Line) comply with the criteria in Section 403.529(4), Florida Statutes, and, if more than one corridor complies with the criteria, to determine which corridor has the least adverse impact regarding the criteria, including costs. If any of the "corridors proper for certification," as that term is defined in Section 403.522(10), Florida Statutes, is determined to have the least adverse impact, the Siting Board must determine whether the application

for the corridor should be approved in whole, with modifications or conditions, or denied. If the alternate corridor proposed by John Falkner (not a corridor proper for certification) is determined by the Siting Board to have the least adverse impact, certification shall be denied.

PRELIMINARY STATEMENT

FPL submitted a Petition to Determine Need for the Bobwhite-Manatee 230-kV Line to the Public Service Commission (PSC) on June 26, 2006. On August 28, 2006, the PSC issued its Final Order Determining the Need for an Electrical Transmission Line, in which the PSC determined that there is a need for the BWM Line.

On January 2, 2007, FPL filed its Application for Corridor Certification for the BWM Line with the Department of Environmental Protection (DEP). The Application requests certification of a new 230-kV overhead transmission line and related facilities connecting the existing Manatee substation at the Manatee Energy Center near Parrish in Manatee County to the proposed Bobwhite substation east of Interstate 75 and just north of Fruitville Road in Sarasota County. DEP determined that FPL's Application was complete on March 15, 2007.

The various reviewing agencies submitted reports on the proposed BWM Line. On April 27, 2007, DEP issued its Written Analysis on the Project, incorporating the reports of the

reviewing agencies and proposing a set of Conditions of Certification.

Schroeder-Manatee Ranch, Inc., and Lake Club Investors, LLC (SMR), Taylor & Fulton, Inc., and John Falkner filed notices formally proposing alternate corridors. SMR proposed ten alternate corridors, Taylor & Fulton proposed two alternate corridors, and Falkner proposed one alternate corridor. FPL and DEP accepted all of the alternate corridors for consideration in this proceeding. SMR and Taylor & Fulton filed additional information in support of their alternate corridors. Because Falkner did not file data to support his alternate corridor, the corridor was deemed withdrawn.

Following DEP's determination that the alternate corridor applications of SMR and Taylor & Fulton were incomplete, these applicants filed supplemental information. On July 26, 2007, DEP filed notice of its determination that the SMR and Taylor & Fulton alternate corridor filings were complete.

The various reviewing agencies submitted supplemental reports on the alternate corridors. On September 7, 2007, DEP issued its Supplemental Written Analysis on the Project, which also addressed the alternate corridors, and incorporated the supplemental reports of the reviewing agencies and proposed a comprehensive set of Conditions of Certification.

On October 9, 2007, SMR withdrew alternate corridors SMR #2 through SMR #9.

The certification hearing commenced October 22, 2007. On November 5, 2007, following eight days of hearing, several parties to the proceeding, including FPL, moved for a continuance to allow the submittal and consideration of new alternate corridors. The motion was granted and the certification hearing was continued to May 5, 2008.

In the interim, SMR proposed a new alternate corridor which was supported by FPL and 14 of the 17 non-government parties in the proceeding. Its proponents named this proposal the "Consensus Corridor." The Concession Land Development, LLC, and The Concession Golf Club, LLC ("The Concession") proposed the corridor originally submitted as SMR #1. Bridle Creek Homeowners Association (Bridle Creek) also proposed a new alternate corridor. On November 28, 2007, FPL and DEP accepted these three new alternate corridors.

Falkner proposed two new alternate corridors, Falkner A and Falkner B, which DEP accepted on November 28, 2007. However, FPL rejected both of Falkner's alternate corridors. Therefore, pursuant to Sections 403.522(10) and 403.5271(4), Florida Statutes, Falkner's alternate corridors are not "proper for certification."

On February 11, 2008, DEP filed a notices of incompleteness concerning the supporting data for the three new alternate corridors filed by SMR, The Concession, and Bridle Creek. After these parties filed additional information, DEP determined that their filings were complete.

The various reviewing agencies submitted supplemental reports on the new alternate corridors. On April 14, 2008, DEP issued an Addendum to its Staff Analysis on the Project, incorporating the supplemental reports of the reviewing agencies and proposing a revised comprehensive set of Conditions of Certification.

Prior to the recommencement of the hearing, SMR withdrew its alternate corridor SMR #10, and Bridle Creek withdrew its alternate corridor. At the certification hearing, Taylor & Fulton withdrew its two alternate corridors and Falkner withdrew Falkner Alternate Corridor B. Because Falkner Alternate Corridor A is the only remaining corridor proposed by Falkner, it is referred to hereafter simply as the Falkner Corridor.

At the conclusion of the certification hearing, there remained three corridors proper for certification: the FPL Original Corridor, the Consensus Corridor, and The Concession Corridor. Although not proper for certification, the Falkner Corridor is also presented because, if shown to have the least adverse impacts of all the proposed corridors, the Siting Board

must deny certification or allow FPL to amend its application to include the Falkner Corridor.

At the final hearing, Joint Exhibits numbered 1 through 19, and 22 were received into evidence. FPL presented the testimony of Robert Hahn, an expert in electrical engineering with experience in transmission line siting, permitting, and engineering; Jack Hochheimer, P.E., an expert in electrical engineering with a specialization in transmission line engineering, siting, permitting, and reliability; Analee Mayes, AICP, an expert in land use planning with a specialization in transmission line siting and public participation; Philip Simpson, an expert in wildlife biology and terrestrial ecology with a specialization in transmission line impacts to terrestrial ecological resources; Rick Teigland, P.E., an expert in electrical distribution system planning; William Mulcay, Director of the Peace River Electric Cooperative; Carlos Candelaria, an expert in electric transmission system planning and reliability; Martha McNeal, an expert in landscape architecture; and Karen Windon, an expert in disaster response and recovery. FPL Exhibits 1, 2, 4, 5, 9 through 26, 28 through 37, 45, 47 through 53, 58 through 62, 69 through 76, 77B, 78, 79, 81, 82, 84 through 86, 89 through 93, 95, 96, 98A, 98B, and 105 through 110 were received into evidence.

DEP presented the testimony of Ann Seiler, DEP's Siting Coordination Case Manager, and Michael Halpin, DEP's Director of the Siting Coordination Office. DEP Exhibits 1, 2, and 8 were received into evidence.

SMR presented the testimony of Rex Jensen, Todd Pokrywa, Jay Taylor, and Jeff Pardue, an expert in biology with specialized knowledge in transmission line permitting. SMR Exhibits 1 through 5, 13, 18, 19, 22, 26, 30, 31, 32A, 32B, 33, 35, 37, 38, 43, 45, 47, 51, 55, 64, 74, 86, 89, 90, 97, 99, 111 through 113, 116, and 117 were received into evidence.

The Concession presented the testimony of Kevin Daves. The Concession Exhibits 1, 5, 6, 18, 20, 24, and 26B were received into evidence.

John Falkner testified on his own behalf and presented the testimony of Vicente Ordax, Robert Hahn, Mark Byers, David Lippincott, Jack Hochheimer, Billy Heller, and Mary Clark (by deposition). Falkner Exhibits 5, 6, 8A, 8B, 10, 12, 13, 19, 20, 21, 24, 25 29, 39, and 40 were received into evidence.

The Hunsaders presented the testimony of Michael Hunsader. The Hunsaders' Exhibit 1 was received into evidence.

Myakka Ranch Holdings, LLC, FC, LLC, John Cannon Homes-Eastmoor, LLC, Schwartz Farms, Inc., Michael D. and Joanne Schwartz, and Sarasota One, LLC, presented the testimony of Dale Weidemiller, Dickson Clements, and Mary Anne G. Bowie (by

deposition), an expert in land use planning. Myakka Ranch Holdings, et al., Exhibits 1, 18, 25, 27 through 34, 41 through 43, 64 were received into evidence.

Gum Slough Preservation Foundation (GSPF) and ManaSota-88, Inc., presented the testimony of Susan Schoettle-Gumm and Robert Hueter. GSPF and ManaSota-88 Exhibits 1 and 6 through 12 were received into evidence.

East County Homeowners Organization (ECHO), Kittie L. Chapman, and ManaSota-88 presented the testimony of Richard Drummond, an expert in land use and comprehensive planning; Richard Gumm; Steve Bond; and Raymond Raud. Their Exhibits 1, 2 and 4 were received into evidence.

Hi Hat Ranch, LLP, and ManaSota-88 presented the testimony of Jim Turner. Hi Hat Ranch Exhibits 1 through 4 were received into evidence.

Sarasota County presented the testimony of Amy Meese, the Director of Natural Resources Division of Sarasota County. Sarasota County Exhibits 1 and 2 were received into evidence.

Manatee County presented the testimony of Laurie Suess, Director of Planning for Manatee County. Manatee County Exhibit 5 was received into evidence.

Pacific Land, Ltd. presented no witnesses, but Pacific Land Exhibits 4, 6, 9, 12, and 15 were received into evidence.

Public hearings were held during the evenings of October 24, 2007, and May 7, 2008, for the purpose of allowing members of the public to present evidence and testimony. Members of the public were placed under oath, testified, and were subject to cross-examination.² Several documents, compiled as Public Exhibits 1 and 2, were received into the public hearing record.

FPL's unopposed motion to protect the confidentiality of critical energy infrastructure information was granted.

SMR's motion in limine, requesting the exclusion of FPL evidence which SMR claimed to be contrary to evidence presented to the PSC, was denied.

FPL's motion to enforce certain pre-hearing stipulations, which John Falkner claimed were no longer binding on him, was granted.

FPL filed a motion in limine to preclude any party from offering evidence to refute the PSC's determination that the location of the BWM Line on a right-of-way (ROW) that is geographically separate from the existing common transmission line ROW will enhance electric system reliability. However, FPL also requested that the Administrative Law Judge receive any evidence which a party wished to present to refute the PSC determination in order to avoid the need for another evidentiary hearing in the event of a successful appeal on this issue. The

Administrative Law Judge denied FPL's motion in limine, because FPL did not want the evidence excluded, and required any party wishing to contest the determination to present their evidence at the final hearing.

The Concession presented a motion in limine requesting that participants at the final hearing be precluded from offering evidence relating to SMR's proposed mitigation of environmental impacts, arguing that mitigation of environmental impacts cannot be considered in determining the best corridor. The motion was denied.

Falkner moved for a view of the proposed transmission line corridors, which was denied.

The Transcript of the October 2007 hearing was filed with the Division of Administrative Hearings on April 23, 2008, and the Transcript of the May 2008 hearing was filed on May 28, 2008. The complete Transcript of the certification hearing is in 38-volumes.

The proposed recommended orders that were filed in the case were carefully considered by the Administrative Law Judge in the preparation of this Recommended Order.

FINDINGS OF FACT

A. The Parties

1. FPL is the electric utility that is applying for certification of the Bobwhite-Manatee 230kV Transmission Line.

2. DEP is the state agency with powers and duties to administer the TLSA, including the power and duty to process applications for certification and to act as a clearinghouse for agency comments on proposed corridors.

3. Sarasota County and Manatee County are political subdivisions of the State and the local governments with jurisdiction over the areas in which the BWM Line will be located.

4. Schroeder-Manatee Ranch, Inc. (SMR), is a Delaware corporation with its office in Bradenton, Florida. It owns real property in Manatee and Sarasota Counties, and is the developer of residential communities, including Lakewood Ranch.

5. Lake Club Investors, LLC (LCI), is a Florida limited liability company with its office in Winter Park, Florida. It owns property in Manatee County.

6. Gum Slough Preservation Foundation, Inc. (GSPF), is a Florida non-profit corporation with its office in Sarasota, Florida. GSPF was established with the primary objectives to protect and preserve the beauty and ecological values of Gum Slough.

7. Manasota-88, Inc., is a Florida not-for-profit corporation with its office in Nokomis, Florida. Manasota-88 was formed to protect and preserve the water quality and wildlife of Manatee and Sarasota Counties.

8. John Falkner is a resident of Myakka City, Florida, and the owner of real property in Manatee County.

9. Taylor & Fulton, Inc., is a Florida corporation with its office in Palmetto, Florida. It is the owner of real property in Manatee County.

10. Myakka Ranch Holdings, LLC, and FC, LLC, are Florida limited liability companies with separate offices in Bradenton, Florida. They own real property in Sarasota County.

11. The Concession Land Development, LLC, and The Concession Golf Club, LLC, are Florida limited liability companies with their office in Wichita, Kansas. They are the owners and managers, respectively, of The Concession residential development and The Concession Golf Club in Manatee County.

12. Kittie L. Chapman is a resident of Sarasota, Florida, and the owner of real property in Sarasota County.

13. John Cannon Homes-Eastmoor, LLC, is a Florida limited liability company with its office in Sarasota, Florida. It owns real property in Sarasota County.

15. Schwartz Farms, Inc., is a Florida corporation with its office in Sarasota, Florida. It owns real property in Sarasota County.

16. Michael D. and JoAnne Schwartz are residents and real property owners in Sarasota County.

17. Sarasota One, LLC, is a Florida limited liability company with its office in Bowie, Maryland. It owns real property in Sarasota County.

18. Pacific Land, Ltd, is a Florida limited liability company with its office in Palmetto, Florida. It owns real property in Manatee County.

19. East County Homeowners Organization, Inc., is a Florida non-profit corporation with its office in Sarasota, Florida. It was formed to protect the health, safety, and quality of life of the residents of eastern Sarasota County.

20. Hi Hat Ranch, LLP, is a Florida liability limited partnership with its office in Sarasota, Florida. It owns real property in Sarasota County.

21. Michael Hunsader, David Hunsader, and Donald Hunsader own real property in Manatee County.

22. Bridle Creek Home Owners Association, Inc. (BCHOA), is a Florida non-profit corporation with its office in Sarasota, Florida. BCHOA was formed to represent the owners of real property in the Bridle Creek residential community.

23. Manatee County, the Florida Department of Transportation, and the Southwest Florida Water Management District filed timely notices of their intent to be parties. Sarasota County filed a Notice of Appearance and participated as a party without objection.

B. The Need for the Bobwhite-Manatee Line

24. FPL is seeking certification of a transmission line to transmit electricity from the Manatee Energy Center, a generating facility near Parrish in Manatee County, to the proposed Bobwhite transmission substation near Fruitville Road in Sarasota County.

25. The service area for the proposed BWM Line is an area in Manatee County and Sarasota County that is south of the Manatee Energy Center, north of the planned Bobwhite substation, and east of I-75 and the existing 230kV transmission network.

26. The PSC determined that FPL had demonstrated the need for the BWM Line by December 2011 to:

(a) provide additional transmission reinforcement to the existing 230kV transmission network between Manatee and Ringling Substations in a reliable manner consistent with the North American Electric Reliability Corporation (NERC), and the Florida Reliability Coordinating Council (FRCC) and other applicable standards; (b) serve the increasing load and customer base in the projected service area; and (c) provide for another electrical feed via a separate right-of-way ("ROW") path, thereby reducing the impact of a loss of the existing transmission facilities on a common ROW.

27. The PSC recognized, however, that the "Siting Board will make the final determination concerning the exact length and route of the new line."

C. The Proposed Corridors (Depicted in FPL Exhibit 77B)

1. The FPL Original Corridor

a. Selection Process

28. FPL established a multi-disciplinary team to identify and evaluate routing alternatives. The team comprised a transmission line engineer, a land use planner, and an ecologist. Because FPL wanted geographic separation from the existing transmission lines that are located in a common ROW that is generally parallel to I-75, the western boundary of the team's study area began a mile east of this existing ROW.

29. The multi-disciplinary team gathered data on siting opportunities and constraints within the study area. The guidelines developed by the team to select route segments included maximizing collocation with existing or proposed roads, following property lines or section lines as much as possible, following disturbed paths through wetlands where practicable, and minimizing siting constraints such as airports, private airstrips, residential development, and the crossing of existing transmission lines. The team ultimately identified 62 route segments which could be assembled into 1,275 alternate routes for the BWM Line.

30. FPL engaged in an extensive public outreach program to gather public input regarding the BWM Line. The public outreach program was integrated with the corridor selection process so

that information was shared with the public and feedback from the public was used in evaluating alternate routes.

31. FPL's multi-disciplinary team evaluated the 1,275 routes quantitatively, using factors such as the number of homes and schools in proximity; the length of wetlands crossed; the length through existing parks, recreation areas or other designated conservation lands; the number of parcels or lots crossed; and estimated costs. The quantitative analysis was used as a screening tool to limit the number of routes that would receive more detailed analysis.

32. The route that received the highest ranking from the quantitative analysis is the same as The Concession Corridor. The FPL Original Corridor follows the route that was ranked eleventh.

33. The routes that correspond with the subsequently-filed Consensus Corridor and Falkner Corridor were not ranked in the initial screening process because they were not among the 1,275 evaluated routes. The Consensus Corridor passes through a conservation area that FPL's multi-disciplinary team assumed had to be avoided. The Falkner Corridor was not included because it is in FPL's existing transmission line ROW, which the team also assumed was not an option.

34. The team then evaluated the highest ranked routes, using both quantitative and qualitative criteria. The

qualitative criteria included the functional value of wetlands; the orientation of landing strips to the route; plans for new roads, road extensions and road widenings; proposed developments; "buildability" issues; and the need for future distribution substations.

35. From the more detailed analysis, a preferred route was selected by FPL. This corridor, described in FPL's application for certification, will be referred to as the FPL Original Corridor. The multi-disciplinary team then determined the varying widths of the FPL Original Corridor along its route that were needed to provide flexibility in locating the ROW within the corridor.

b. The Route of the FPL Original Corridor

36. The FPL Original Corridor exits the Manatee Energy Center north of State Road 62 (SR 62) and turns east for approximately one mile. The corridor then turns south along a section line for approximately five miles, in which area the corridor is approximately 3,000 feet wide. The corridor includes a lateral spur along an existing 50-foot-wide farm road, which is included in the corridor for the sole purpose of providing access to the transmission line from County Road 675 (CR 675). The corridor then intersects CR 675 and follows CR 675 to its intersection with SR 64, in which area the corridor is 400 feet wide and centered on the road. At the intersection

of SR 64, the corridor turns west and follows SR 64 for approximately three miles to its intersection with Dam Road. There, the corridor turns south and runs along section lines for approximately three miles, beginning with a width of 4,500 feet and narrowing to 3,000 feet, until it reaches University Parkway. At University Parkway, the corridor turns west and runs along the south side of the road to its intersection with Lorraine Road, in which area the corridor is at least 500 feet wide. At Lorraine Road, the corridor turns south along the road and is of varying width as it follows Lorraine Road to Dog Kennel Road and the proposed Bobwhite substation.

2. The Consensus Corridor

a. Selection Process

37. In November 2007, after eight days of hearing, FPL, SMR, and several other parties jointly requested a continuance of the certification hearing because their informal discussions indicated the possibility for agreement on corridor modifications that would resolve a number of disputes. The continuance was granted and the certification hearing was continued until May 2008.

38. In the interim, a number of parties reached agreement on a new corridor which they referred to as the Consensus Corridor. The areas of the Consensus Corridor that differed from the FPL Original Corridor were thoroughly studied and

inspected by consultants and experts hired by FPL and SMR. FPL re-initiated its public outreach program to inform the public about the new Consensus Corridor.

39. The Consensus Corridor is now the corridor preferred by FPL.

b. The Route of the Consensus Corridor

40. The Consensus Corridor is identical to the FPL Original Corridor from the Manatee Energy Center to SR 64. However, FPL and Pacific Land, Ltd, entered into an agreement wherein FPL agreed to locate the ROW "as close as reasonably practicable" to Pacific Land's west property boundary line.

41. The Consensus corridor follows SR 64 a shorter distance west than the FPL Original Corridor before it turns south, avoiding some of the frontage along Lake Manatee State Park. The Consensus Corridor is 500 feet wide as it turns south from SR 64 on property owned by Bradenton Motorsports, Inc., and continues south onto land owned by Taylor & Fulton, Inc. It then makes four 90-degree turns to form a "C" shape, or "notch," to follow Taylor & Fulton's eastern property boundary.³

42. When the Consensus corridor reaches Taylor & Fulton's southern property boundary, it turns west and rejoins the FPL Original Corridor. Along Taylor & Fulton's southern boundary, the corridor is located north of a drainage canal, and about 350 feet north of the Bridle Creek subdivision. In addition to this

setback from Bridle Creek, Taylor & Fulton has agreed to preserve the existing tree line between them.

43. Turning south from Taylor & Fulton's property, the Consensus Corridor generally follows the FPL Original Corridor, but the Consensus Corridor is narrower, providing about 200 feet more separation from the residential developments of Panther Ridge and The Concession.⁴ Along Bourneside Boulevard, the Consensus Corridor is shifted west to align with the eastern edge of the existing road pavement,⁵ which avoids some wetlands crossed by the FPL Original Corridor and provides a greater setback from The Concession residential development.

44. South of University Parkway, the Consensus Corridor departs substantially from the FPL Original Corridor to avoid the latter's impacts to SMR's residential developments. Rather than moving west all the way to Lorraine Road and following Lorraine Road south, the Consensus Corridor turns south almost immediately after reaching University Parkway, and meanders generally southward through the Heritage Ranch Conservation Easement (HRCE). The HRCE is a 1,972-acre tract of land owned by SMR, which is subject to a conservation easement acquired by Sarasota County. The Consensus corridor is 1,000 feet wide as it moves through the HRCE along an irregular line that generally follows existing field roads or fire lanes. The corridor exits the HRCE going west onto SMR-owned land, rejoins the FPL

Original Corridor along Lorraine Road, and then runs south to the proposed Bobwhite substation.

3. The Concession Corridor

45. The Concession Corridor (formerly SMR #1) is identical to the FPL Original Corridor from the Manatee Energy Center to SR 64. At the intersection of SR 64 and CR 675, The Concession Corridor continues to follow CR 675 to the intersection with SR 70. The corridor then extends southeast on SR 70 to Verna Road, which the corridor follows south to Verna Road's intersection with Fruitville Road. The Concession Corridor then follows Fruitville Road west to Dog Kennel Road, then north on Dog Kennel to the proposed site of the Bobwhite substation. From SR 64 to the Bobwhite substation, the corridor is 500 feet wide.

4. The Falkner Corridor

46. The Falkner Corridor stays in existing FPL transmission line ROW all the way from the Manatee Energy Center to the proposed Bobwhite substation. From the Manatee Energy Center, the Falkner Corridor heads west on the FPL ROW for approximately five miles. It then turns south and follows the ROW for approximately twenty miles, where it turns eastward and then southeastward for about five miles, until it reaches the area of the proposed Bobwhite substation. The Falkner Corridor is 400-to-500 feet wide.

D. Land Uses and Significant Natural Features

1. FPL Original Corridor

a. Manatee Energy Center to SR 64

47. All three of the corridors proper for certification incorporate this segment from the Manatee Energy Center to SR 64. The existing land uses in the area of the corridor are primarily agricultural. The future land uses in this area, as designated in the Manatee County Comprehensive Plan, are Major Public/Semi Public (P/SP-1), Agricultural/Rural (AG-R), and Major Recreation/Open Space (R-OS)

48. The P/SP-1 land use category applies only to the Manatee Energy Center. The AG-R land use category designates areas with long-term agricultural or rural residential character. Potential uses in this category include farms, rural residential, small retail and office commercial, mining, low-intensity recreational facilities, and schools. The maximum gross residential density is one dwelling unit per five acres. The R-OS land use category applies to Lake Manatee State Park, and recognizes these existing recreation and permanent open space land uses.

49. The ecological communities between the Manatee Energy Center and CR 675 include pine flatwoods, mixed oak-pine uplands, freshwater marshes, wet prairies, forested swamps, and small tributaries such as Gamble Creek, Tyre Creek, and

Waterhole Creek. The vegetative habitats are dominated by agricultural crops. The tributaries are narrow and have existing road crossings.

50. From CR 675 to SR 64, the FPL Original Corridor follows SR 675. The existing land uses on both sides of the road are primarily agricultural. The corridor crosses the Manatee River system, which includes Boggy Creek and Gilley Creek. There are scattered trees, including some large oak trees along portions of CR 675.

b. SR 64 to University Parkway

51. Lake Manatee State Park is on the north side of SR 64. On the south side are the DeSoto Speedway and Bradenton Motorsports Park, as well as a mix of other uses, including businesses, a nursery, a winery, and some residences. Between SR 64 and University Parkway, the existing land uses are primarily agricultural, except for the Panther Ridge and The Concession residential developments, which are just east of the FPL Original Corridor.

52. The future land uses in this area, as designated in the Manatee County Comprehensive Plan, are AG-R, R-OS (described above), Urban Fringe (UF-3), and Estate Rural (ER). The UF-3 land use category applies to a half-mile strip on the south side of SR 64, west of Dam Road, is for low-density residential use, generally developed through the planned unit development

concept, and residential support uses. The ER land use category is for clustered, low-density suburban, residential use with large tracts of open space for agricultural activities, low-intensity recreational use, environmental protection or other compatible open space uses. The maximum gross residential density is one dwelling unit per five acres.

53. The ecological communities in this area include mixed oak-pine uplands, pine flatwoods, shrub and brush land, freshwater marshes, and forested swamps along tributaries of the Manatee River. Along SR 64, the vegetative habitats and waterbodies include scattered shrub and pasture. Lake Manatee State Park contains pine flatwoods and xeric pine communities, except close to SR 64, where a fire break is maintained.

54. The FPL Original Corridor crosses the Braden River which is a Class I water. As the corridor approaches University Parkway, there are scattered uplands, several small marshes, and pasture land. Near The Concession development, there are four herbaceous wetlands along the eastern boundary of the corridor.

c. University Parkway to the Proposed Bobwhite Substation

55. The land in this area is largely undeveloped. Within the corridor, the land use is primarily agricultural. However, just north of the FPL Original Corridor is an SMR residential development under construction known as The Lake Club and a large-lot residential community to the west known as The Polo

Club. Closer to the Bobwhite substation site, there are large-lot residential developments east of the corridor.

56. University Parkway divides Manatee County and Sarasota County in this area. The small piece of the FPL Original Corridor that is north of University Parkway and in Manatee County is subject to AG-R (described above) and RES-1 future land use categories. RES-1 designates areas of low-density suburban residential environment, clustered low-density urban residential environment, and compatible agricultural facilities. The maximum gross residential density is one dwelling unit per acre.

57. The balance of future land uses in this segment of the FPL Original Corridor is subject to the Sarasota County Comprehensive Plan, and its Rural land use category. The primary function of the Rural category is to preserve agricultural lands and rural character, and residential development is limited to a maximum density of one dwelling unit per five acres. However, if elected by the developers, these lands can be subject to the Sarasota 2050 Resource Management Area (RMA) Supplement to the Future Land Use Element.

58. The Sarasota 2050 Plan creates several types of RMAs, which function as overlays that do not affect existing development rights of the underlying property owners. RMAs encourage the use of clustered development and the preservation

of open space and rural character. The FPL Original Corridor crosses three types of RMAs: Greenway, Village/Open Space, and Rural Heritage/Estate.

59. The Greenway RMA designates a network of riverine systems, floodplains, native habitats, storm surge areas and uplands as priority resources. Uses in Greenway RMAs are restricted to uses that are compatible with ecological functions and values. The Village/Open Space RMA provides for compact, mixed-use, pedestrian-friendly villages and hamlets within a system of large areas of permanent open space, designed to prevent urban sprawl. Villages have a maximum density within developed areas of five-to-six dwelling units per acre. The Rural Heritage/Estate RMA is intended to recognize and preserve the existing pattern of very low-density, large-lot estate developments, agriculture, and equestrian activities outside the urban service boundary.

60. The vegetative communities and habitats along University Parkway to Lorraine Road are dominated on the north side of the road by developing lands, and on the south side of the road by the HRCE and portions of Gum Slough. As the corridor proceeds westward, there are also scattered shrub and brush land, pine flatwoods, and scattered marshes and forested systems.

61. Along Lorraine Road, the vegetative communities and habitats include primarily shrub and brush land, various upland forested systems, some wetland forested systems, small marshes, and active mining east of Lorraine Road.

2. Land Uses and Significant Natural Features – The Consensus Corridor

a. Manatee Energy Center to SR 64

62. This segment of the Consensus Corridor is the same as the FPL Original Corridor and, therefore, has the same land uses and significant natural features as were previously described.

b. SR 64 to University Parkway

63. The Consensus Corridor is east of the FPL Original Corridor in the north half of this segment. There are large-acre agricultural land uses in this area, but the corridor is closer to residential development to the east. The future land use is AG-R (Agriculture/Rural), described previously.

c. University Parkway to the Bobwhite Substation

64. The Consensus Corridor meanders through the HRCE for most of this segment. The existing uses are cattle grazing, sod farming, and recreational hunting. The HRCE has a future land use designation as Greenway. The HRCE contains a portion of the Gum Slough swamp system as well as uplands of open pine flatwoods and improved pasture which serve as a buffer for the swamp system.

3. Land Uses and Significant Natural Features – The Concession Corridor

a. Manatee Energy Center to SR 64

65. This segment of The Concession Corridor is the same as the FPL Original Corridor and, therefore, has the same land uses and significant natural features as were previously described.

b. State Road 64 to Fruitville Road

66. The existing land uses in this area are a mix of large-lot residences and some agriculture. A large PUD, Panther Ridge, is just west of The Concession corridor. When The Concession Corridor turns south on Verna Road, it passes large wellfields owned by the City of Sarasota and through pastures and other agricultural uses on both sides of the road, with some residential development to the east.

67. The future land uses in this area, as designated in the Manatee County Comprehensive Plan, are AG-R and R-OS, which were described above.

68. The ecological communities in this area include pine flatwoods, shrub and brush lands, and freshwater marshes. Just south of SR 64, The Concession Corridor crosses Corbett Branch, which is a Class I tributary of the Manatee River. Along CR 675 and SR 70, are primarily developed lands or farmsteads. There are scattered trees and wetlands along SR 675. The corridor

along SR 70 crosses a slough. Along Verna Road, there are no significant natural features.

c. Fruitville Road to the Proposed Bobwhite Substation

69. In this area of The Concession Corridor, there are some existing residential and agricultural uses, as well as vacant land that is proposed for residential development. Fruitville Road (and The Concession Corridor) runs just north of the large Gum Slough System.

70. The future land uses in this area are subject to the Sarasota County Comprehensive Plan. The primary future land uses are Rural, which may be subject to the Sarasota 2050 RMA Supplement, as explained above; Major Government Uses (MGU), which applies to the existing city wellfield; and Greenway, which covers the Gum Slough system. There are also publicly owned lands south of Fruitville Road that are protected for environmental functions and values.

71. The ecological communities in this area are pine flatwoods, oak and pine uplands, shrub and brush lands, freshwater marshes, wet prairies, and forested swamps. On the western end of Fruitville Road, there are scattered wetlands and tributaries across the roadway, including Cow Pen Slough and Gum Slough.

4. Land Uses and Significant Natural Features – The Falkner Corridor

72. Falkner did not present a detailed description of the existing and future land uses or the significant environmental features in the areas through which the Falkner Corridor passes. In the ROW itself, of course, the existing use is electrical transmission lines. Along the corridor, however, there are areas of existing and future residential development. The corridor also passes over the Manatee River and its floodplain.

D. Transmission Line Design and Construction

73. FPL will ultimately construct the BWM Line within a ROW more narrow than the approved corridor. The width of the ROW will range from 10 feet to 75 feet. Pursuant to Section 403.522(10), Florida Statutes, after all property interests in the ROW are acquired, the boundaries of the corridor will shrink to the width of the ROW.

74. The proposed design for the BWM Line will be a single-pole un-guyed concrete structure, 65-to-100 feet above grade, with the phase conductors framed in a vertical or triangular configuration.

75. Each of the BWM Line's 3 phases is anticipated to utilize bundled 954-thousand circular mils, aluminum conductors (2 conductors per phase), with a steel reinforced alumoweld core. There will also be a smaller overhead ground wire to

provide shielding and lightning protection for the conductors. The maximum current rating for the BWM Line will be 2,990 amperes.

76. The span length between structures will vary between 250 feet and 700 feet, depending on site-specific ROW widths and other design considerations. Both pole height and span length will vary due to natural or man-made constraints such as wetlands, water bodies, property boundaries, existing utility poles, utility lines, and roadways. Shorter structures might be required in proximity to an airstrip, to comply with applicable clear zones, or to accommodate the wishes of underlying property owners.

77. The transmission line poles can accommodate the placement of electric distribution lines or communication cables beneath the transmission line's conductors, referred to as "underbuilding." For poles shorter than 85 feet, however, it is difficult to underbuild. Use of shorter poles also requires a wider ROW to comply with the electric and magnetic fields (EMF) requirements established in Florida Administrative Code Chapter 62-814.

78. Surveying the ROW to facilitate acquisition of the necessary property interests is a first step toward construction. Concurrently with surveying, FPL will work with the underlying landowners to determine the most appropriate

boundaries of the ROW and the location of poles within the ROW. Another early task is to determine where access roads or structure pads are needed.

79. After the ROW is established, the initial phase of construction involves clearing the ROW. Clearing the ROW will consist mainly of tree trimming in compliance with American National Standards Institute (ANSI) standards. Generally, trees that cannot be avoided and which exceed or are capable of exceeding 14 feet in height will have to be removed to ensure adequate clearance is maintained around the conductors, both vertically and horizontally.

80. In wetlands, trees capable of exceeding 14 feet will be removed by hand. Lower wetland vegetation will not be cleared.

81. After the ROW is cleared, any necessary access roads and structure pads will be constructed. To the greatest extent practicable, existing roads will be used. Improvements might be made to existing roads, depending on their condition. Where soil conditions will not support large construction and maintenance vehicles, usually in wet areas and areas with soft soil, FPL will probably construct new access roads and structure pads. Where new access roads are constructed, they will typically be 14 feet wide and at least six feet above seasonal high water.

82. Structure pads will typically extend about 20 feet around the pole, but, on at least one side, must extend at least 30 feet to accommodate the outriggers on the construction and maintenance equipment. Access roads and structure pads will not be paved. They will have culverts installed beneath them, when needed, to maintain preconstruction water flows in the area.

83. The next phase of construction involves the augering of holes, erection of poles, and backfilling of the holes. Poles are typically embedded 18-to-25 feet into the ground.

84. The poles are then "framed," which is the installation of the insulators and clamp hardware. If the pole is set at a location where the line turns a large angle, guy lines will be installed to compensate for the greater tension on the conductor. Then, the conductors and overhead ground wires are installed. The conductors are then tensioned to provide the proper design vertical clearances and "clipped in" to the insulator assemblies. The final stage of construction is ROW clean-up, smoothing of ruts, and placement of sod or seed as needed.

85. During all stages of construction, FPL will maintain traffic on any adjacent county, state or federal roadways in compliance with Department of Transportation (DOT) regulations.

86. Throughout construction, sedimentation management techniques (e.g., silt fences, turbidity screens, and hay

bales), will be employed as necessary to minimize potential impacts on water quality from erosion and sedimentation.

87. The entire construction process for the BWM Line will take 13-to-15 months.

F. Conditions of Certification

88. The construction, operation, and maintenance of the BWM Line in any of the corridors proper for certification must comply with the Conditions of Certification. The Conditions of Certification establish a review process through which the final right-of-way, access road, and transmission line structure locations will be reviewed by agencies with regulatory authority over the project.

89. The parties agree that the Conditions of Certification attached as Appendix I to DEP Exhibit 8 are consistent with applicable non-procedural requirements of the state, regional, and local agencies that have regulatory jurisdiction over the BWM Line.

90. FPL agrees to comply with the Conditions of Certification.

G. Agency Review of Corridors Proper for Certification

91. Local, regional, and state agencies with regulatory authority over the construction of the BWM Line reviewed the FPL Original Corridor application and each subsequent alternate

corridor application filed in this proceeding and submitted to DEP a report on matters within the agency's jurisdiction.

92. DEP's first Summary and Compilation of Agency Reports, dated April 27, 2007, addressed only the FPL Original Corridor. At that time, DEP reported that the FPL Original Corridor "can be certified so long as the conditions of certification are met." The other commenting agencies recommended that the FPL Original Corridor be certified, subject to the conditions of certification.

93. A revised Summary and Compilation of Agency reports was issued by DEP on September 7, 2007. It addressed the FPL Original Corridor and 12 alternate corridors. DEP stated that "any of the proposed corridors can be certified." The other commenting agencies, except for Manatee County and Sarasota County, had no objection to certification of any of the proposed corridors.

94. Manatee County recommended denial of four alternate corridors, including SMR #1, which is the same as The Concession Corridor. Sarasota County also expressed concerns about SMR #1.

95. DEP's most recent Addendum to Staff Analysis Report, dated May 5, 2008, compiled the updated reports of the reviewing agencies on the alternate corridors proper for certification, including the Consensus Corridor. Because the Falkner Corridor was rejected by FPL, Falkner did not submit supporting data for

the corridor and the agencies did not review or comment on the Falkner Corridor.

96. In the Addendum, Manatee County again recommended denial of The Concession Corridor.

H. Comparison of Corridor Impacts

1. The Effect of Paragraph 5 of the Settlement Agreement

97. In the second half of the certification hearing, an issue arose regarding the credibility of the testimony of witnesses for 15 non-governmental parties. These parties entered into a Settlement Agreement on November 7, 2007, which contained the following condition in paragraph 5:

The Parties agree that, through their pleadings and testimony, they shall urge the Administrative Law Judge to recommend, and the Siting Board to certify, the Consensus Corridor subject to the supplemental conditions of certification set forth below.

98. FPL and the other signatories to the agreement offered testimony to show that they had not entered into the agreement until they were genuinely convinced that the Consensus Corridor was the best of the proposed corridors. They asserted, therefore, that the credibility of the testimony offered in support of the Consensus Corridor is not diminished by the fact that the parties had contractually obligated themselves to support the Consensus Corridor in their testimony.

99. Paragraph 5 of the Settlement Agreement, however, also raises the question of whether witnesses for the signatories to the agreement felt free to express a subsequent change of opinion with respect to any aspect of the Consensus Corridor; a change of opinion which they reached either on their own or through cross-examination.

100. The Administrative Law Judge asked several of the witnesses whether their testimony was serving their oaths to tell the truth or their contractual obligation to support the Consensus Corridor. All the witnesses claimed allegiance to their oaths to tell the truth.

101. The credibility of the witnesses, based on their demeanor and other indices of veracity, was still discernable by the Administrative Law Judge, despite Paragraph 5 of the Settlement Agreement. Only one witness gave testimony that, in some respects, appeared to be based not on personal knowledge or genuine belief, but on the witness' sense of contractual obligation to support the Consensus Corridor.

2. Lack of Detailed Information for the Falkner Corridor

102. Because the Falkner Corridor was rejected by FPL, Falkner did not submit detailed information in support of his corridor and the agencies did not review it. Therefore, Falkner had the burden to present in the certification hearing all of

the information needed to fully evaluate the Falkner Corridor and to compare it to the corridors proper for certification.

103. Falkner contends that his right to due process was violated because "FPL prevented the public and government agencies from fully considering the proposal to build the BWM Line in the existing FPL right-of-way." The evidence offered by Falkner in support of his due process claim, however, amounts to nothing more than discussions between FPL and governmental parties about TSLA procedures and the effect of the PSC need determination. The governmental parties remained free to disagree with FPL and to take whatever related action they deemed appropriate. FPL had no power to "prevent" action by a governmental party. Section 403.526(4), Florida Statutes, provides that the failure of an agency to submit a report is not grounds to deny or condition certification.

104. In several respects, Falkner failed to present the detailed information needed to fully evaluate the Falkner Corridor. For example, the potential environmental impacts associated with the Falkner Corridor (especially the impacts associated with crossing of the Manatee River) were described in less detail than was done in the case of the corridors proper for certification. The record evidence regarding the existing and future land uses adjacent to the Falkner Corridor is also inadequate to make detailed findings on that subject.

3. The Certification Criteria

105. Section 403.529(4), Florida Statutes, provides:

In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location of the transmission line corridor and the construction, operation, and maintenance of the transmission line will:

- (a) Ensure electric power system reliability and integrity;
- (b) Meet the electrical energy needs of the state in an orderly, economical, and timely fashion;
- (c) Comply with applicable nonprocedural requirements of the agencies;
- (d) Be consistent with the applicable provisions of local government comprehensive plans, if any; and
- (e) Effect a reasonable balance between the need for the transmission line as a means of providing reliable, economically efficient electric energy, as determined by the commission, under s. 403.537, and the impact upon the public and the environment resulting from the location of the transmission corridor and the construction, operation, and maintenance of the transmission lines.

The three corridors proper for certification and the Falkner Corridor will be compared below with respect to each certification criterion.

a. Ensure Electric Power System Reliability and Integrity

106. The PSC determined that locating the BWM Line in a geographically separate ROW from the existing common ROW would enhance the electric system reliability benefits of the new line. The Administrative Law Judge ruled that this determination by the PSC did not preclude Falkner or any other party from presenting evidence regarding electric system reliability.

107. The Florida Reliability Coordinating Council (FRCC) is a component of the North American Electric Reliability Corporation (NERC). FRCC's primary purpose is to ensure electric system reliability in Florida. FRCC has adopted NERC's planning standards, which are mandatory and enforced by the Federal Energy Regulatory Commission.

108. All four proposed corridors would be equally able to achieve the reliability standards established by NERC for "single contingency" events, those that result from the loss of a single element such as a generator or a transmission circuit. The reliability issue in dispute in this proceeding relates to the potential for the loss of all circuits on a common ROW, referred to as a "corridor outage."

109. NERC planning standard TPL-004 requires electric utilities to plan for and mitigate the system performance problems that could occur during a corridor outage. The key to

maintaining adequate system performance during a corridor outage is reinforcement elsewhere in the transmission system.

110. FPL's records from 1985 to date show that FPL has experienced eight corridor outages in that period. Corridor outages have been caused by, among other things, fires, airplanes contacting the lines, hurricanes, tornados, and lightning. These are all events that could occur in the common ROW that is the Falkner Corridor.

111. Vince Ordax, FPL's former supervisor of local area transmission planning, testified that a corridor outage with the BWM Line in the Falkner Corridor could possibly trigger cascading, or uncontrollable, outages. A simulation performed under the direction of Carlos Candelaria, an expert in transmission planning, also showed that a cascading outage could occur, resulting in a blackout lasting hours and affecting 500,000 customers. Such a blackout would jeopardize public health, safety and welfare.

112. FPL admits, and it is understood in the electric utility industry, that the probability of a corridor outage is very low.

113. Falkner agrees that "if the BWM Line is built in the existing right-of-way, and if there is a corridor outage, a cascading outage might result causing customer service interruption of up to 4-6 hours." Falkner further agrees that,

"If the BWM Line is built in a geographically separate corridor . . . then a cascading outage is unlikely and customer service interruptions should be resolved in minutes, not hours."

Falkner's position is that this difference in system reliability is not significant and does not prevent an ultimate finding that the Falkner Corridor would have the least adverse impact when all the certification criteria are considered.

114. The preponderance of the evidence presented shows that geographic separation of the BWM line from the existing ROW would improve system reliability with respect to system performance in the event of a corridor outage. Placement of the BWM Line in the Falkner Corridor would reduce system reliability in the event of a corridor outage. This enhancement of system reliability is a part of the need for the BWM Line as determined by the PSC.

115. There is an airstrip that is in active use that is perpendicular to Fruitville Road within The Concession Corridor. The proximity of an airstrip to the BWM Line poses a risk of a plane striking the line.

116. The Consensus and FPL Original Corridors are the same length, about 26 miles. The Concession Corridor is 3.3 miles longer and the Falkner Corridor is 2.5 miles longer. A shorter line reduces line losses and exposure to reliability risks, such as lightning or falling trees. However, the differences in the

lengths of the four corridors under review are not significant with regard to system reliability.

117. Electric system integrity addresses the adequacy of design and strength of the transmission line to withstand various events. The BWM Line will be constructed, operated, and maintained in compliance with all applicable design codes, including the National Electrical Safety Code, DEP's regulations on electric and magnetic fields (Florida Administrative Code Chapter 62-814), the Florida DOT Utility Accommodation Manual, Manatee County and Sarasota County noise ordinances, and the standards of the American Society of Civil Engineers, the Institute of Electronic and Electrical Engineers, American Society of Testing Materials, NERC standards, as well as FPL's own internal standards.

118. If the BWM Line were constructed in the Falkner Corridor, several structures would have to be built in the open water and floodplain of the Manatee River. Maintenance of these structures would be more difficult and the replacement of poles and some other major components would require barges or helicopters.

119. The FPL Original Corridor, the Consensus Corridor, and The Concession Corridor are on nearly equal footing with regard to this particular certification criterion, with the Concession Corridor slightly less attractive. The Falkner

Corridor has the greatest potential for adverse impact with regard to this criterion.

b. Meet the Electrical Energy Needs of the State in an Orderly and Timely Fashion

120. In its need determination for the BWM Line, the PSC determined that the line must be in service by December 2011 to preserve electric system reliability and integrity. The design, construction, and operation of the BWM Line can be accomplished in an orderly and timely fashion and in compliance with the conditions of certification in any of the corridors proper for certification.

121. FPL contends that there was an insufficient showing that the BWM Line could be constructed, operated and maintained in the Falkner Corridor in compliance with the conditions of certification and, therefore, an insufficient showing that a new transmission line in the Falkner Corridor could meet the area's electric energy needs in an orderly and timely fashion.

122. FPL's position is based in part on its belief that it would be difficult and perhaps impossible to obtain agency approvals for the wetland impacts associated with the crossing of the Manatee River in the Falkner Corridor. Although the record evidence indicates that a transmission line in the Falkner Corridor would have wetland impacts associated with its

crossing of the Manatee River, the evidence is insufficient to demonstrate that a permit could not be obtained.

123. Some questions remain about whether the BWM Line could physically fit within the existing common ROW in the area south of SR 70 where a Peace River Electric Cooperative (PRECO) transmission line, called the Crawley tap, is located within it or in locations requiring the BWM Line to turn corners where guying would be needed.

124. Within the next 10 or 15 years, FPL and PRECO plan to place four new distribution substations east of Interstate 75 in Manatee County and Sarasota County to serve future growth. Placing the BWM Line in a corridor east of the existing common ROW would more efficiently integrate these future distribution substations than placing the transmission line in the Falkner Corridor.

125. Placement of the BWM Line in one of the corridors proper for certification would facilitate the building of an integrated system that could be efficiently expanded in the future as this area continues to develop. The Falkner Corridor, because it is on the western edge of the service area, would be less able to provide these benefits.

126. The Concession asserts that its corridor has the unique advantage of passing FPL property that was purchased many years ago for a future distribution substation, referred to as

the Oakford site. However, because of the uncertainties associated with whether and when the Oakford site will ultimately be used, how other planned substations will be integrated, and their costs, the proximity of the Oakford site to the Concession Corridor cannot be assigned much weight at this time.

127. The FPL Original Corridor, the Consensus Corridor, and The Concession Corridor are all on essentially equal footing with regard to this particular certification criterion. The Falkner Corridor has some potential adverse impact with regard to this criterion.

c. Comply with Applicable Nonprocedural Requirements of the Agencies

128. The construction, operation and maintenance of the BWM Line on any of the corridors proper for certification, subject to the conditions of certification proposed by the DEP, will comply with the applicable nonprocedural requirements of agencies.

129. Described earlier, but also relevant to this particular certification criterion, is FPL's contention that it would be difficult and perhaps impossible to obtain agency approvals for the wetland impacts associated with the transmission line crossing of the Manatee River in the Falkner Corridor. FPL suggests that the availability of the alternative

river-crossing along CR 675 in the corridors proper for certification would pose a problem in demonstrating that a transmission line in the Falkner Corridor avoided or minimized wetland impacts. However, the Falkner Corridor would only be certified by the Siting Board if it determined that the Falkner Corridor had the least adverse impacts regarding the criteria in Section 403.529(4), Florida Statutes. Such a determination made in this integrated certification proceeding would have to be considered in the wetland permitting process.

130. As stated above, the record evidence is insufficient to find that the Falkner Corridor could not be approved due to its wetland impacts.

131. Falkner did not show, and it was not conceded by FPL, that the BWM Line could be constructed in the Falkner Corridor in compliance with the EMF standards.

132. The FPL Original Corridor, the Consensus Corridor, and The Concession Corridor are all on an equal footing with regard to this particular certification criterion. The Falkner Corridor has more potential adverse impact with regard to this criterion.

d. Consistency with Applicable Local Government Comprehensive Plans

133. The Manatee County Comprehensive Plan has no provisions specifically addressing transmission lines. Policy

GS 2.4 of the Sarasota County Comprehensive Plan discourages the crossing of Greenway RMAs by utilities, but allows a utility crossing when it shown to be necessary to ensure the health, safety and welfare of the citizenry. A utility crossing must be designed to have minimal impacts on the environment.

134. The Consensus Corridor crosses a Greenway RMA in Sarasota County within the HRCE. Sarasota County has authorized placement of the BWM Line across the HRCE if the Consensus Corridor is certified.⁶

135. In the Sarasota County Comprehensive Plan, Future Land Use Objective VOS 5 and Policy VOS 5.2 require protection of the "open vistas" and "integrity of the rural character" of Fruitville and Verna Roads.

136. Because transmission lines are commonly placed in rural settings, FPL asserts that a transmission line is consistent with rural character. The comments of the public show this notion is not generally accepted. Although it is undisputed that transmission lines are commonly placed in rural areas, there appears to be almost unanimity in the belief that a transmission line reduces the quality of a rural vista.

137. Neither Manatee County nor Sarasota County asserted in this proceeding that any of the four proposed corridors is inconsistent with the applicable provisions of its comprehensive plan. However, the TLSA requires a consideration of "the extent

to which” the proposed corridors are consistent with local government comprehensive plans.

138. Because Sarasota County has recognized the special character of the Verna Road/Fruitville Road area and adopted policies that seek to preserve its open vistas and rural character, The Concession Corridor along Verna Road and Fruitville Road presents a “negative” with respect to this criterion.

139. The Consensus Corridor also presents a consistency issue under the Sarasota County Comprehensive Plan because the corridor crosses through the HRCE. However, due to the mitigation proposed as part of the corridor proposal (discussed in the next section), there is a net positive furtherance of the relevant comprehensive plan goals, objectives, and policies regarding environmental protection, generally, and the HCRE, specifically.

140. The four proposed corridors are not far apart with respect to this particular certification criterion, but, as explained above, there is an advantage with The Consensus Corridor and a disadvantage with The Concession Corridor.

e. Effecting a Reasonable Balance Between the Need for the Transmission Line and the Impact Upon the Public and the Environment

i. Proximity to Residences

141. There is no route between the Manatee Energy Center and the proposed Bobwhite substation that would make the BWM Line unseen from residences. Of the corridors proper for certification, the Consensus Corridor has the fewest homes within 600 feet and The Concession Corridor has the most. The Consensus Corridor has 40 existing homes within 600 feet, the FPL Original Corridor has 54, and The Concession Corridor has 189.

142. The record does not show how many existing homes or residential lots are within 600 feet of the Falkner Corridor, but the Falkner Corridor passes through or by residential developments and urban areas.

Taylor & Fulton/the Hunsaders/Bridle Creek

143. The FPL Original Corridor, south from SR 64, begins at Dam Road and travels south through a large tract of agricultural land owned by Taylor & Fulton. Manatee County plans to extend Dam Road north from University Parkway to SR 64, and the FPL Original Corridor would be aligned with Dam Road through the Taylor & Fulton property. Collocation with Dam Road, compatibility with the existing agricultural uses, and avoidance of the residential land uses to the east and west were

some of the reasons given by FPL for selecting this segment of the corridor as part of the FPL Original Corridor.

144. The Consensus Corridor in this segment is derived from an agreement between FPL and Taylor & Fulton to have the BWM Line follow Taylor & Fulton's eastern property boundary. Jay Taylor testified that this location would cause less impact to the future development of the Taylor & Fulton property.

145. In order to follow Taylor & Fulton's eastern property boundary, it is necessary to construct the BWM Line in a "C"-shaped notch. The notch adds about one mile of transmission line, compared to a straight line. FPL asserts that such notches are not unusual and FPL has created notches in other areas of the State to follow property boundaries or to avoid wetlands. However, the only examples presented by FPL were notches with much longer sides. The notch in the Consensus Corridor creates a tight "C" shape, with the sides close to each other. From several vantage points around the notch, a viewer would see two, three, or even four transmission lines.

146. There are technical solutions for transmission lines that turn sharp angles, so the tight turns in the proposed notch can be engineered and built. The problem created by the proposed notch in the Consensus Corridor is not an engineering issue, but a problem of extreme visual impact on adjacent properties. The complaints and concerns expressed by many

persons and parties in this proceeding were over the prospect of a single linear “eyesore.” The notch in the Consensus Corridor, however, would make it appear that there were three or four separate transmission lines built close together and running in different directions. This dramatic difference undermines attempts to describe the Consensus Corridor as more favorable than the FPL Original Corridor in this segment.

147. The Hunsaders own property that would be surrounded on three sides by the BWM Line in the notch of the Consensus Corridor. In this area, the Hunsaders host the annual Hunsader festival, a rural community festival that attracts thousands of people.

148. Collocation with existing or planned roads is an important consideration in transmission line siting. The FPL Original Corridor south of SR 64 is collocated with the future Dam Road extension. The Consensus Corridor would provide an opportunity to collocate with existing farm roads on the Taylor & Fulton property, but collocation with Dam Road is the better of these alternatives.

149. Although Taylor & Fulton claims that the Consensus Corridor would cause significantly adverse impact to its property, the evidence offered in support of this claim was not persuasive. Agricultural uses are relatively unaffected by a transmission line. Unlike SMR, Taylor & Fulton has no specific

future development plans for its property. Its concern regarding the impacts of the BWM Line on future development is speculative.

150. The Dam Road extension (four-lanes) will divide the Taylor & Fulton lands into two distinct areas, east and west of the road. The BWM Line would run along one side of Dam Road. It will be Dam Road, not the BWM line, that will be the primary feature that Taylor & Fulton will have to incorporate into its future development plans. Moreover, the potential adverse impacts to Taylor & Fulton's future development interests must be considered in conjunction with the fact that Dam Road and the BWM Line are both major public infrastructure projects that will provide substantial future benefits to Taylor & Fulton and the other developers in that area.

151. FPL and other parties emphasized in this proceeding that when a transmission line is constructed in rural areas in advance of residential development, there are many options and techniques available to a developer to integrate the transmission line into future development plans in order to minimize its visual impact. In the future development of Taylor & Fulton's agricultural lands, Taylor & Fulton will have these same development options and techniques.

152. The difference between the three-sided notch and a simple line defies simple comparisons, such as the numbers of

current residents in the vicinity of the Consensus Corridor versus the FPL Original Corridor in this segment.

153. In order to assuage the concerns of the residents of the Bridle Creek subdivision on the south side of the Consensus Corridor where it runs back to the west to join the FPL Original Corridor alignment, Taylor & Fulton agreed to have the BWM Line located on the north side of a drainage canal and a line of trees so that the BWM Line would be screened from Bridle Creek. Taylor & Fulton would not remove the trees in this area if the BWM Line is constructed within the Consensus Corridor.

154. FPL has agreed to the following condition, to be added to the Conditions of Certification as No. XVIII(F), if the Consensus Corridor is certified:

To the extent feasible, and upon request by the Bridle Creek Homeowners Association (BCHOA), FPL shall consult with Taylor & Fulton, Inc. and BCHOA in the design of the transmission line to: 1) keep the pole heights along the northern BCHOA property boundary to the minimum height that is practicable, consistent with the desires of Taylor & Fulton, and in compliance with the requirements of the National Electrical Safety Code and good engineering practices; and 2) work collaboratively to locate the poles in such a way as to accommodate the BCHOA to the extent practicable, consistent with the wishes of Taylor & Fulton, and in compliance with the requirements of the National Electrical Safety Code and good engineering practices.

The Concession's Entrance

155. The Concession's main concern is the impact of the BWM Line on its entrance. An attractive entrance is an important aspect of a residential development. The Concession believes the BWM Line in the FPL Original Corridor and the Consensus Corridor would substantially diminish the attractiveness of its entrance and harm the marketability of lots and homes within The Concession.

156. Although The Concession did not join in the Settlement Agreement that resulted in the Consensus Corridor, the Consensus Corridor was designed to reduce the potential impacts of the BWM Line on The Concession's entrance and property. FPL has agreed to locate the BWM Line along the west side of four-lane Bourneside Boulevard, the opposite side of Bourneside Boulevard from The Concession's entrance. The transmission line would not cross over The Concession's entrance road. In this area, the BWM Line would be 450 feet from The Concession golf course and 832 feet from the nearest residential lot.

157. The Concession has opportunities to reduce the visual impact of the line with landscaping.

158. The Concession's entrance is not currently unblemished. A 250-foot telecommunications tower is located on SMR's property several hundred feet from The Concession

entrance. The tower was constructed before The Concession purchased its property, and the tower operator has a lease which allows the tower to remain there for many years.

159. The telecommunications tower affects the siting of the BWM Line in this area. Telecommunications towers must be separated from high voltage power lines by a distance equal to the tower's height. Therefore, the BWM Line must be located at least 250 feet from the tower.

160. The Concession presented no direct evidence that the prospect of the BWM line near the entrance to The Concession residential development has harmed lot or home sales. The presence of the telecommunications tower was not shown to have affected sales.

161. FPL has agreed to the following condition of certification, to be added to the Conditions of Certification contained in Exhibit DEP-8, as No. XVIII(D):

In the area of the planned Dam Road/Bourneside Boulevard extension ("Extension"), south of SR 64 and north of University Parkway and connecting with SR 70, FPL shall coordinate to the extent practicable with Manatee County Transportation Department and the underlying property owners regarding the location of the ROW for the Extension and the ROW for the BWM Line. If either Manatee County or the property owner(s) decline to participate in the coordination effort, FPL shall coordinate with the cooperating entity.

162. FPL has agreed to the following condition of certification, to be added to the Conditions of Certification contained in Exhibit DEP-8, as No. XVIII(E):

During design of the BWM Line, FPL shall locate poles, to the extent practicable and in compliance with the requirements of the National Electrical Safety Code and good engineering practices, to maximize the space between a pole and the primary entrance of a major residential subdivision, using typical structures, and within the ROW alignment.

163. FPL has agreed to the following condition of certification, to be added to the Conditions of Certification contained in Exhibit DEP-8 as No. XXVII(B):

To the extent practicable and consistent with safe operation and ongoing maintenance practices for the BWM Line, and in compliance with the requirements of Section 163.3209, F.S. (2007) and FPL's Transmission Vegetation Management Procedures [which have been filed with NERC and are mandatory], after construction of the BWM Line is complete, FPL shall allow underlying property owners along the BWM Line ROW to plant vegetation within the ROW. Vegetation planted within the ROW shall not have a mature height of more than 14 ft from natural ground grade and must maintain at least 75 ft of clear space around the base of the structure and must not be located so as to impede access to the BWM Line for routine and emergency maintenance. Plans for vegetation planting along the BWM Line ROW shall be reviewed and approved by FPL to ensure compatibility with the access, operation and maintenance of the facility; if compatible, the planting must be permitted.

164. These three conditions of certification would provide opportunities to reduce the visual impact of the BWM Line in the Consensus Corridor on The Concession's entrance.

165. The Concession proposes a condition of certification that would require the BWM Line to be constructed several hundred feet west of Bourneside Boulevard, on SMR property. However, this would create substantial interference with SMR's Lake Club development, part of an approved Development of Regional Impact. The adverse impacts to the Lake Club would be disproportionately greater than the adverse impacts to The Concession's entrance caused by the Consensus Corridor.

University Parkway

166. FPL and SMR have agreed to work together on the design of the BWM Line, including ROW location, pole height, and framing configuration, in the areas of University Parkway and Bourneside Boulevard to minimize the visibility of the poles.

167. With respect to the area south of University Parkway, the Consensus Corridor has fewer impacts on existing and future residences than the FPL Original Corridor because the Consensus Corridor is more distant from residences. It avoids crossing lands designated for future Village Land Use on the Sarasota 2050 Plan and as RES-1 on the Manatee Future Land Use Map.

CR 675, Verna Road, and Fruitville Road

168. The Concession Corridor is close to and would adversely impact more existing homes and approved future residential lots than the FPL Original Corridor and Consensus Corridor. CR 675, Verna Road, and Fruitville Road have narrow rights-of-way, with homes closer to the roads, and less opportunity for landscaped screening.

The Falkner Corridor

169. The number and proximity of existing and future homes along the Falkner Corridor was not shown. There already are multiple transmission lines in the Falkner Corridor, so for many persons living near the corridor, the incremental increase in the visual impact of adding another transmission line in the corridor should be relatively small. Nevertheless, the overall impact of the Falkner Corridor in this respect is unknown.

ii. Electric and Magnetic Fields

170. Some members of the public expressed concern at the public hearings and through letters submitted to the Administrative Law Judge about the potential for health effects from electric and magnetic fields (EMF). However, EMF standards have already been established for the protection of human health and safety and would apply to a transmission line constructed in any corridor certified by the Siting Board. Neither the Administrative Law Judge nor the Siting Board has authority in

this certification proceeding to determine the appropriateness of any EMF standard.

171. FPL provided reasonable assurances that the BWM Line, if built within any of the corridors proper for certification, will comply with the EMF standards. Falkner did not show, and it was not conceded by FPL, that the BWM Line could be constructed in the Falkner Corridor in compliance with the EMF standards.

iii. Environmental Impacts

172. No matter what corridor is certified, FPL has agreed to follow a number of procedures to avoid and minimize the impacts to wetlands. For example, wetlands will be spanned wherever possible so poles or pads are not placed in wetlands. The transmission line will follow disturbed areas when possible. FPL has agreed to use restrictive clearing practices in forested wetlands, removing only trees taller than 14 feet and leaving the understory vegetation in place. Where fill is required, FPL will install culverts to maintain water movement. FPL will appropriately mitigate for wetland impacts that cannot be avoided.

173. The FPL Original Corridor and Consensus Corridor are wide in some areas for the purpose of providing flexibility to avoid natural vegetated communities and waterbodies to the greatest degree possible. The FPL Original Corridor and

Consensus Corridor can be constructed without significant disturbance to wetlands. The Concession Corridor is narrower, but generally follows areas that are already disturbed and can also be constructed without significant disturbance to wetlands.

174. Based on a simple calculation of total wetlands that are crossed by the corridors, The Concession contends that it would have the least environmental impact. That is a simplistic analysis that fails to account for the fact that, in any of the corridors proper for certification, FPL will probably be able to avoid significant impacts to the wetlands.

175. All of the corridors proper for certification cross the Manatee River and Gilley Creek on existing bridge crossings without any poles needing to be placed in open water or wetlands. These crossings would be accomplished by spanning over the water, upland-to-upland.

176. The BWM Line in the three corridors proper for certification would be collocated with CR 675 at the Edward Chance Preserve, adjacent to the Preserve's parking lot. The pristine, natural areas of the preserve would not be disturbed.

177. For most of the Falkner Corridor, a new transmission line in the existing ROW would appear to have no wetland impacts, but the Falkner Corridor crosses the Manatee River at a much wider point than the other three corridors. Building the BWM Line in the Falkner Corridor would require placing at least

four structures within the Manatee River, and 7-to-8 structures in the adjacent floodplain.

178. Four miles south of SR 64, the Consensus Corridor and FPL Original Corridor cross the Braden River. The river is narrow within these corridors and can be spanned. The Concession Corridor and Falkner Corridor do not cross the Braden River.

179. The Concession Corridor crosses Gum Slough and Cow Pen Slough on Fruitville Road, and Wolf Slough on CR 675 south of SR 64. The other proposed corridors do not cross these sloughs. However, no significant impacts to these wetlands are expected to occur if the BWM Line is constructed in The Concession Corridor.

180. The construction, operation, and maintenance of the BWM Line in any of the corridors proper for certification is not expected to adversely impact any listed species or their habitats. There are no known listed plant species within the proposed corridors. However, there are conditions of certification which require FPL to survey for and protect any listed plant species found after certification of the BWM Line.

181. Much of the wildlife habitat within the proposed corridors has been disturbed by roads, farming operations, and other man-induced impacts. No listed wildlife species are known to use the lands within the proposed corridors. FPL is required

by the conditions of certification to protect any listed species that are found after certification of the BWM Line.

182. The significant wildlife habitats (for non-listed species) in the corridors proper for certification are either avoided or, in the case of the Consensus Corridor's location in the HRCE, the impacts are mitigated by measures to protect more wildlife habitat.

183. There are some large live oak trees along CR 675. FPL can avoid or minimize impacts to those trees. In addition, FPL has agreed to the following additional condition of certification to be added as Condition No. XVIII(G) to the Conditions of Certification:

When establishing the ROW location and constructing the transmission line, the Licensee shall minimize impacts to pre-existing natural features and minimize tree removal and trimming of vegetation, to the extent feasible and in compliance with Section 163.3209, Fla. Stat. (2007), which incorporates by reference National Electrical Reliability Corporation (NERC) standard FAC-003-1, American National Standards Institute (ANSI) standards A300 (Part I)-2001 and Z133.1-2000, and NESC standards adopted by the Florida Public Service Commission.

Heritage Ranch Conservation Easement (HRCE) and Mitigation

184. The Consensus Corridor is the only corridor that goes through the HRCE. The BWM Line would involve 18-to-28 acres of transmission line ROW in the 1,972-acre HRCE, depending on pole

height and EMF-related ROW width requirements. The Consensus Corridor is near the western edge of the HRCE, which is primarily improved pasture and pine flatwoods, and follows jeep trails and fire breaks for much of its length. No unique or significant wildlife habitat exists in the corridor. No wetlands or important environmental features of the HRCE would have to be disturbed. The environmental functions of the HRCE would not be impaired.

185. Although the HRCE is in a conservation land use designation, the portion of the HRCE within the Consensus Corridor is not environmentally sensitive, but serves as a buffer to the environmentally sensitive Gum Slough system. Sarasota County, the holder of the HRCE conservation easement, has approved the construction, operation and maintenance of the BWM Line within the HRCE in the Consensus Corridor.

186. SMR has agreed to add 140 acres to the HRCE if the Consensus Corridor is certified. These 140 acres include portions of Gum Slough and large isolated wetlands. Protection of these additional lands would provide wildlife habitat and water quality benefits.

187. SMR would also protect 470 acres of additional lands contiguous to the HRCE with restrictive covenants. The 470 acres include wetland systems, such as Cow Pen Slough, which would be protected from future development. The restrictive

covenants require SMR to ensure that these wetlands are maintained in as good an ecological condition and functionality as currently exists, or better. The restrictive covenants would aid in the protection and preservation of the natural drainage pattern in the area, and would provide a benefit to the Gum Slough system for wildlife habitat and water quality.

Summary of Environmental Impacts

188. At this level of analysis, it is impossible to predict the unavoidable environmental wetland impacts that would be associated with each of the corridors proper for certification. As required by the Conditions of Certification, the construction of the BWM Line in any certified corridor must comply with the wetland regulatory standards applicable to such projects.

189. The three corridors proper for certification have some potential for environmental impacts, but for all of these corridors, the environmental impacts should be relatively minor. However, the Consensus Corridor is the best of the three proposals because it presents an opportunity for a net environmental benefit with SMR's offer to protect 600 more acres of sensitive lands. The Falkner Corridor has the greatest potential for adverse environmental impacts because of the need to place structures in the Manatee River and its floodplain.

iv. Costs

190. The FPL Original Corridor is estimated to cost about \$25.5 million, the most of the three corridors proper for certification. The Consensus Corridor is estimated to cost \$3.3 million less, primarily due to the agreements with Taylor & Fulton and SMR regarding ROW acquisition. The Concession Corridor is estimated to cost \$500,000 less than the Consensus Corridor.

191. The difference between the estimated costs for the Consensus Corridor and The Concession Corridor, \$500,000, represents a small percentage of the total project costs, especially in light of the margin of error in these cost estimates. Even a cost differential of \$3 million, at this early stage of planning and cost analysis, is not a substantial difference.

192. The estimated cost of placing the BWM Line within the existing common ROW in the Falkner Corridor was not clearly established in the record. Falkner used 2006-2007 cost estimates to argue that the Falkner Corridor would cost millions less than the other corridors.

193. FPL states that the FPL Corridor would require that transmission lines be looped in and out from the existing common ROW to FPL's future distribution substations, adding over \$7 million of costs when compared to a geographically separate

corridor. However, there is insufficient evidence in the record regarding the costs associated with future substations and connecting transmission lines to meaningfully compare the four corridors with regard to these and other future system components.

194. The preponderance of the credible evidence shows that the BWM Line in the Falkner Corridor would probably cost the least to build. However, the record evidence is not sufficient to state how much less the Falkner Corridor would cost.

v. Other Issues

195. The Concession Corridor and Falkner Corridor avoid impacts to Lake Manatee State Park. The potential impacts of the FPL Corridor and Consensus Corridor on the park would be small, but the Consensus Corridor would have less impact because it avoids the Park's entrance and reduces the BWM Line's length along the park boundary on SR 64 by about one mile.

196. Within the park, the BWM Line would likely be screened from view by trees in the park. There should be no adverse ecological impacts to the park. If the BWM Line is located in the Consensus Corridor or FPL Original Corridor, FPL would first try to place the line in the road ROW. If that were not possible, FPL would locate the line just inside the Park's fence in an area already cleared.

197. With respect to traffic interruption during construction of the BWM Line, the Consensus Corridor and FPL Original Corridor would have equally small impact. Construction of the BWM Line in The Concession Corridor along CR 675 (south of SR 64), SR 70, Verna Road, and Fruitville Road would likely require intermittent closure of at least one lane of traffic for the 2-to-3 month construction period.

vi. Summary Regarding The Balancing of Need and Impact

198. All three corridors proper for certification would cause adverse impacts to the public which can be avoided without jeopardizing the objectives of the TLSA and without losing the benefits associated with integrating the BWM Line with existing and future land uses. However, the TLSA clearly contemplates that a proposed corridor can cause adverse impacts to the public and the environment, but still meet the criteria for certification.

199. The three corridors proper for certification are found to meet this criterion because none would cause adverse impacts to the public and the environment that are so great that they outweigh the need or benefits of constructing the BWM Line. The evidence submitted for the Falkner Corridor, however, was insufficient to make a finding regarding this particular criterion.

I. The Corridor that would have the Least Adverse Impact

200. Section 403.529(5)(b), Florida Statutes, provides that the Siting Board shall deny certification if it determines that a rejected corridor has the least adverse impact with regard to the certification criteria. The Falkner Corridor has more potential for adverse impact regarding some of the certification criteria than the corridors proper for certification. For some certification criteria, insufficient evidence was presented regarding the Falkner Corridor to make a meaningful comparison with the corridors proper for certification. Therefore, the record evidence does not support a finding that the Falkner Corridor has the least adverse impact regarding the criteria in Section 403.529(4), Florida Statutes.

201. If two or more corridors proper for certification meet the statutory criteria, certification must be granted to the corridor that has the least adverse impact regarding the criteria in Section 403.529(4) Florida Statutes, including costs. § 403.529(5)(c), Fla. Stat. Because the FPL Original Corridor, the Consensus Corridor, and The Concession Corridor meet the certification criteria, it must be determined which of them would have the least adverse impact.

202. During the certification hearing, the parties promoted one corridor over another based on the advantages and disadvantages associated with their various segments. However,

the preponderance of the evidence demonstrates that the best combination of corridor segments, creating a corridor that has the least adverse impact and effects the best balance between the need for the BWM Line and impacts upon the public and the environment, is not one of the corridors proper for certification.

203. The Consensus Corridor does not effect the best balance between the need for the transmission line and the impact on the public because it includes substantial adverse impacts on the public in the area of the notch on Taylor & Fulton's property that are unnecessary and avoidable. The avoidance of these impacts, the opportunity to collocate the BWM Line with the Dam Road extension, and several other advantages described by FPL in its corridor application and in the evidence presented by FPL during the first part of the certification hearing, make the FPL Original Corridor preferable in this area of Manatee County.

204. The best combination of corridor segments is the FPL Original Corridor from the Manatee Energy Center to the point where it is perpendicular to Taylor & Fulton's southern property boundary, and then continuing south in the Consensus Corridor to the proposed Bobwhite substation.

CONCLUSIONS OF LAW

205. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this proceeding pursuant to Sections 120.569, 120.57(1), and 403.525, Florida Statutes.

206. The standing of the parties was not disputed. All the parties that participated in this certification proceeding have standing to participate as parties. FPL, DEP, and the parties who filed alternate corridor applications are necessary parties in this proceeding. Manatee County, Florida Department of Transportation, and Southwest Florida Water Management District filed timely notices of their intent to be parties. Sarasota County filed a Notice of Appearance and participated as a party without objection. All other Intervenorors have standing to participate because they have substantial interests that are affected and being determined by the proceeding.

207. The intent of this certification process is:

to fully balance the need for transmission lines with the broad interests of the public in order to effect a reasonable balance between the need for the facility as a means of providing reliable, economical, and efficient electrical energy and the impact on the public and the environment resulting from the location of the transmission line corridor and the construction, operation and maintenance of the transmission lines.

§ 403.521, Fla. Stat.

208. The Legislature has established a two-part transmission line certification process which begins with the PSC's determination of the need for the proposed transmission line and related matters within its jurisdiction deemed relevant to the determination of need. See § 403.537, Fla. Stat. The PSC's determination of need is binding on all parties to the certification proceeding. Id. The Governor and Cabinet, sitting as the Siting Board, must then determine whether, and the extent to which, each proposed corridor and its construction, operation, and maintenance will satisfy the statutory criteria set forth in Section 403.529(4) Florida Statutes:

- (a) Ensure electric power system reliability and integrity;
- (b) Meet the electrical energy needs of the state in an orderly, economical, and timely fashion;
- (c) Comply with applicable nonprocedural requirements of the agencies;
- (d) Be consistent with the applicable provisions of local government comprehensive plans, if any; and
- (e) Effect a reasonable balance between the need for the transmission line as a means of providing reliable, economically efficient electric energy, as determined by the commission, under s. 403.537, and the impact upon the public and the environment resulting from the location of the transmission corridor and the construction,

operation, and maintenance of the transmission lines.

209. The TLSA requires, in Section 403.529(4)(a), Florida Statutes, that the Administrative Law Judge and the Siting Board to determine whether the proposed corridors ensure electric power system reliability. Therefore, the PSC's findings regarding system reliability that are made as part of the PSC determination of need do not foreclose an independent assessment of system reliability in this certification proceeding.

210. Section 403.529(4)(d), Florida Statutes, requires the Siting Board to consider whether, and the extent to which, a transmission line corridor would be "consistent with applicable provisions of local government comprehensive plans, if any." FPL contends that, because transmission lines are excluded from the definition of "development" in the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, the local government comprehensive plans of Manatee and Sarasota Counties are not "applicable" to the BWM Line and no determination of consistency is required.

211. Although the construction of an electric transmission line in an established right-of-way is not "development" under Chapter 163, Florida Statutes, and the TLSA was not intended to require an applicant to demonstrate consistency with a local

government's Future Land Use Map, the broadly-stated goals, objectives, and policies of comprehensive plans have meaning apart from the regulation of development and must be considered in determining whether a proposed corridor meets the criterion in Section 403.509(4)(d), Florida Statutes.

212. If two or more corridors proper for certification meet the statutory criteria, certification must be granted to the corridor that has the least adverse impact regarding the criteria in Section 403.529(4) Florida Statutes, including costs. See § 403.529(5)(c), Fla. Stat.

213. The corridors proper for certification are those addressed in the application, in any amendments to the application, and in notices of acceptance of proposed alternate corridors. See § 403.522(10), Fla. Stat. Because FPL rejected the Falkner Corridor, it is not a corridor proper for certification.

214. Section 403.5271(3)(a), Florida Statutes, refers to the "rejection of a proposed alternate corridor by the applicant or the department," but the TLSA does not identify any criteria that govern the decision to reject a corridor. Florida Administrative Code Rule 62-17.625(1) sets forth the criteria that DEP uses to determine whether it will reject a proposed alternate corridor:

(a) The alternate does not have appropriate end points which connect to the remainder of the transmission line.

(b) The quality of the filing is so poor as to make it difficult for the department to evaluate the proposal.

(c) Failure to submit the information required by section 405.527(5)(a), F.S.; however, this shall be without prejudice to refile within the timeframes set forth in Section 403.527(5), F.S.

215. If the Siting Board finds that a rejected corridor has the least adverse impact regarding the statutory criteria, certification must be denied and the applicant allowed to submit an amended application. § 403.529(5)(b), Fla. Stat.

216. The Concession argues that the mitigation of environmental impacts should not be considered by the Administrative Law Judge or the Siting Board in determining which proposed corridor has the least adverse impact regarding the criteria in Section 403.529(4), Florida Statutes. There is no provision of the TLSA that prohibits the consideration of environmental mitigation. The TLSA is intended to be a "centralized and coordinated licensing process" for siting electric transmission lines. See § 403.521, Fla. Stat. Certification under the TLSA is in lieu of any license or permit required by any state, regional, or local agency under state law or local ordinance. See § 403.531(3)(a), Fla. Stat. Mitigation of environmental impacts is routinely considered and can be

approved under the substantive permitting procedures that are supplanted by the TLSA.

217. DEP, charged with administering the TLSA, interprets the TLSA to allow for the consideration of proposed environmental mitigation.

218. The Siting Board has already established a precedent for considering and accepting environmental mitigation in the selection of a transmission line corridor, in In Re: Florida Power & Light Company Levee-Midway 500 kV Transmission Line Corridor Certification Application No. TA89-0, DOAH Case No. 89-0279TL (Mar. 2, 1990), affirmed, Fla. Sugar Cane League v. State of Florida, 580 So. 2d 846, 850-51 (Fla. 1st DCA 1991).

219. Each party proposing a corridor has the burden of proving, through a preponderance of competent substantial evidence, that the corridor meets the criteria in Section 403.529(4), Florida Statutes. See § 403.5271(3)(b), Fla. Stat. See also Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). The FPL Original Corridor, the Consensus Corridor, and The Concession Corridor were shown by a preponderance of the evidence to meet the certification criteria. Falkner did not meet his burden to prove that the Falkner Corridor would meet the certification criteria.

220. Falkner claimed that his right to due process was violated by FPL's rejection of his proposed corridor and FPL's

discussions with Sarasota County and Manatee County representatives in which FPL asserted that it was unnecessary for the counties to review and comment on the Falkner Corridor. To the extent that Falkner's due process claim is an attack on the procedures of the TLSA, it cannot be raised in this certification proceeding. See Key Haven Associated Enterprises, Inc. v. Board of Trustees of Internal Imp. Fund, 427 So. 2d 153 (Fla. 1982); Dep't of Revenue v. Young American Builders, 330 So. 2d 864 (Fla. 1st DCA 1976). The statements made by FPL in its discussions with Sarasota County and Manatee County did not control the actions of those governments. No timely motion or demand for specific relief was made by Falkner. Falkner's due process claim was not properly raised, alleged, or proven.

221. The definition of "corridor" in Section 403.522(10), Florida Statutes, is broad enough to include any area proposed by any party for the location of the transmission line ROW, and to allow the Siting Board to certify a corridor that combines segments of two or more corridors proper for certification. All parts of a corridor that combines segments from corridors proper for certification would have been included in the public notices required by the TLSA. All parts of such a corridor would have been subject to detailed description and analysis in the proceeding. Combining segments, therefore, satisfies the fundamental requirements of the TLSA to provide notice to all

affected persons and to conduct a thorough review of the proposed corridor.

222. The Siting Board is authorized to approve a certification application "with modifications." § 403.529(4), Fla. Stat. "Certification" is defined to mean approval by the Siting Board of a corridor proper for certification "with the changes or conditions as the siting board deems appropriate." § 403.522(7), Fla. Stat.

223. DEP interprets the TLSA to authorize the Siting Board to certify a corridor that is a combination of segments proposed in the corridors proper for certification.

224. The Siting Board has already established a precedent for certifying a corridor that is a combination of segments from two or more proposed corridors. In the Levee-Midway 500 kV TLSA proceeding, the corridor ultimately certified by the Siting Board included parts of the FPL Primary Corridor and two alternate corridors. The certified corridor was not proposed in its entirety by any party or addressed in any single application. In Re: Fla. Power & Light Co. Levee-Midway 500 kV Transmission Line Corridor, supra.

225. The preponderance of the evidence presented at the certification hearing demonstrates that the corridor with the least adverse impact regarding the criteria in Section 403.509(4), Florida Statutes, is the FPL Original Corridor from

the Manatee Energy Center to the point where it is perpendicular to Taylor & Fulton's southern property boundary, and then continuing south in the Consensus Corridor to the proposed Bobwhite substation.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Siting Board enter a Final Order that

1. certifies the corridor for the BWM Line as consisting of the FPL Original Corridor from the Manatee Energy Center to the point where it is perpendicular to Taylor & Fulton's southern property boundary, and then continuing south in the Consensus Corridor to the proposed Bobwhite substation; and
2. that is subject to the Conditions of Certification that were entered into the hearing record as DEP Exhibit 8; and
3. that is subject to the additional conditions agreed to by FPL and cited in paragraphs 161 through 163, and 183, of this Recommended Order; and
4. that incorporates the terms set forth as paragraphs 5A through 5D of the Settlement Agreement entered into the record as FPL Exhibit 91, or comparable terms that provide for the environmental mitigation described therein, as conditions of this certification.

DONE AND ENTERED this 11th day of August, 2008, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of August, 2008.

ENDNOTES

^{1/} All references to the Florida Statutes are to the 2007 codification unless otherwise noted.

^{2/} Falkner claims that cross-examination of witnesses was not permitted at the May 2008 public hearing, but no such order or ruling was issued by the Administrative Law Judge.

^{3/} The corridor turns west for 0.5 miles, then south for 0.6 miles, then east for 0.5 miles, and then south again.

^{4/} The corridor's eastern boundary is 200 feet from the Panther Ridge development and over 800 feet from the nearest lot in The Concession development.

^{5/} The BWM Line would be located on the west side of Bourneside Boulevard.

^{6/} The HRCE was created pursuant to Section 704.06, Florida Statutes. The statute authorizes the easement holder (in this case, Sarasota County) to "voluntarily negotiate the sale or utilization of such lands or easement for the construction and

operation of linear facilities, including electric transmission and distribution facilities."

COPIES FURNISHED:

Lea Crandall, Agency Clerk
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Tom Beason, General Counsel
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Michael W. Sole, Secretary
Department of Environmental Protection
Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

James V. Antista, General Counsel
Florida Fish and Wildlife Commission
Bryant Building, Room 108
620 South Meridian Street
Tallahassee, Florida 32399-1600

Martha Carter Brown, Esquire
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Elizabeth Donley, General Counsel
Southwest Florida Regional Planning Council
1926 Victoria Avenue
Fort Myers, Florida 33901

Kelly A. Martinson, Esquire
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

Carolyn S. Raepple, Esquire
Hopping, Green & Sams, P.A.
Post Office Box 6526
Tallahassee, Florida 32314-6526

Robert M. Fournier, Esquire
Fournier & Connolly, P.A.
One South School Avenue, Suite 700
Sarasota, Florida 34237-6014

Laura Kammerer
Bureau of Historic Preservation
R. A. Gray Building
500 South Bronough
Tallahassee, Florida 32399

Barton Bibler
Department of Health
Environmental Engineering
4042 Bald Cypress Way
Tallahassee, Florida 32399-1742

Martha A. Moore, Esquire
Southwest Florida Water Management District
2379 Broad Street
Brooksville, Florida 34604-6899

Toni Sturtevant, Esquire
Department of Environmental Protection
Douglas Building, Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32333-3000

Glenn Compton, Chairman
ManaSoto-88, Inc.
Post Office Box 1728
Nokomis, Florida 34274

Jon C. Moyle, Jr., Esquire
Moyle, Flanigan, Katz, Kollins,
Raymond & Sheehan, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301

Donald D. Conn, Esquire
Tampa Bay Regional Planning Council
4000 Gateway Centre Boulevard
Suite 100
Pinellas Park, Florida 33782

Barbara G. Hines, Esquire
117 81st Street
Holmes Beach, Florida 34217

Maureen McCarthy Daughton, Esquire
Broad and Cassel
215 South Monroe Street, Suite 400
Post Office Drawer 11300
Tallahassee, Florida 32301

Leon M. Biegalski, Esquire
Department of Transportation
605 Suwannee Street, Mail Stop 58
Tallahassee, Florida 32399-0450

Sarah A. Schenk, Esquire
Manatee County Attorney's Office
Post Office Box 1000
Bradenton, Florida 34206-1000

Edgar Lopez, Esquire
Richard N. Milian, P.A.
390 North Orange Avenue
Suite 1100
Orlando, Florida 32801

W. Douglas Hall, Esquire
Carlton Fields, P.A.
Post Office Drawer 190
Tallahassee, Florida 32302-0190

David M. Pearce, Esquire
Sarasota County Attorney's Office
1660 Ringling Boulevard, 2nd Floor
Sarasota, Florida 34236

H. Ray Allen, II, Esquire
Carlton Fields, P.A.
4221 West Boy Scout Boulevard, Suite 1000
Tampa, Florida 33607

V. Nicholas Dancaescu, Esquire
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801

Roy W. Cohn, Esquire
Roy W. Cohn, PLC
2406 Watrous Avenue
Tampa, Florida 33629

Paul F. Grondahl, Esquire
Mackey Law Group, P.A.
1402 Third Avenue West
Bradenton, Florida 34205

Kevin S. Hennessy, Esquire
Lewis, Longman & Walker, P.A.
1001 Third Avenue West, Suite 670
Bradenton, Florida 34205-7848

Robert Scheffel Wright, Esquire
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301

John Falkner
35100 State Road 64 East
Myakka City, Florida 34251

Forrest Watson
Department of Agriculture &
Consumer Services
Division of Forestry
3125 Conner Boulevard
Tallahassee, Florida 32399-1650

Brian Brattebo, Esquire
Florida Power & Light Company
Post Office Box 14000
Juno Beach, Florida 33408

Keith Colabella
Bridle Creek Home Owners Association
19307 64th Avenue East
Bradenton, Florida 34211-7568

Alexis M. Yarbrough, General Counsel
Department of Transportation
Haydon Burns Building
605 Suwannee Street, Mail Stop 58
Tallahassee, Florida 32399-0450

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

STATE OF FLORIDA
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



BOBWHITE-MANATEE 230-kV TRANSMISSION LINE
FLORIDA POWER & LIGHT

CONDITIONS OF CERTIFICATION

Certified November 6, 2008

Exhibit B

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I. CERTIFICATION CONTROL

A. Under the control of these Conditions of Certification, Florida Power & Light Company (FPL) will construct and operate a 230-kilovolt (kV) transmission line consisting of an approximately 25-30 mile transmission line connecting the Manatee Energy Center near Parrish in Manatee County to a proposed new substation east of I-75 in Sarasota County.

B. These Conditions of Certification, unless specifically amended or modified, are binding upon FPL and shall apply to the construction, operation and maintenance of the certified facility. If a conflict should occur between the design criteria of this project and the Conditions of Certification, the Conditions shall prevail unless amended or modified. In any conflict between any of these Conditions of Certification, the more specific condition governs.

I. Citation: Section 403.531, F.S. (2006).

II. APPLICABLE RULES

The construction and operation of the certified transmission line shall be in accordance with all applicable non-procedural provisions of Florida Statutes and Florida Administrative Code, including, but not limited to, the following regulations, except to the extent a variance, exception, exemption or other relief is granted in the final order of certification: Chapter 403 (Environmental Control), Florida Statutes (F.S.), and Chapters 40D-4 (Individual Environmental Resource Permits), 40D-9 (District Land Use Rules), 62-4 (Permits), 62-17 Part II (Transmission Line Siting Act), 62-301 (Surface Waters of the State), 62-302 (Surface Water Quality Standards), 62-330 (Environmental Resource Permitting), 62-340 (Delineation of the Landward Extent of Wetlands and Surface Waters), 62-343 (Environmental Resource Permit Procedures), 62-345 (Uniform Mitigation Assessment Method) and 62-814 (Electric and Magnetic Fields), Florida Administrative Code (F.A.C.).

II. Citation: Section 403.531, F.S. (2006).

III. DEFINITIONS

Unless otherwise indicated herein, the meaning of terms used herein shall be governed by the definitions contained in Chapters 373 and 403, Florida Statutes, and any regulation adopted pursuant thereto. In the event of any dispute over the meaning of a term used in these conditions which is not defined in such statutes or regulations, such dispute shall be resolved by reference to the most relevant definitions contained in any other state or federal statute or regulation or, in the alternative by the use of the commonly accepted meaning as determined by the Department. In addition, the following shall apply:

A. "Application" shall mean the Application for Corridor Certification for the Florida Power & Light Company Bobwhite-Manatee transmission line.

B. "Complete" shall mean the post-certification filing provides the data required by the relevant Condition of Certification.

C. "DCA" shall mean the Florida Department of Community Affairs.

D. "DEP" or "Department" shall mean the Florida Department of Environmental Protection.

E. "DHR" shall mean the Florida Department of State, Division of Historical Resources.

F. "DOT" shall mean the Florida Department of Transportation.

G. "Emergency conditions" shall mean urgent circumstances involving potential adverse consequences to human life or property as a result of weather conditions or other calamity, and necessitating new or replacement transmission line components or access facilities.

H. "Facility" or "Project" shall mean the Bobwhite-Manatee 230-kV electrical "transmission line" as defined in Section 403.522(21), F.S.

I. "Feasible" or "practicable" shall mean reasonably achievable considering a balance of land use impacts, environmental impacts, engineering constraints, and costs.

J. "FWC" shall mean the Florida Fish and Wildlife Conservation Commission.

K. "FPL" shall mean Florida Power & Light Company, the Applicant/Licensee.

L. "Licensee" shall mean FPL, which has obtained a certification order for the subject electrical transmission line.

M. "Listed species" shall mean the species listed in Table 2.3-3 or Table 2.3-2 of the Application as endangered, threatened or species of special concern by FWC, the Florida Department of Agriculture and Consumer Services, or the U.S. Fish and Wildlife Service.

N. "Post-certification submittal" shall mean a submittal made by FPL pursuant to a Condition of Certification.

O. "ROW" shall mean the transmission line right-of-way to be selected by FPL within the certified corridor in accordance with the Conditions of Certification.

P. "SWFWMD" shall mean the Southwest Florida Water Management District.

Q. "State water quality standards" shall mean the numerical and narrative criteria applied to specific water uses or classifications set forth in Chapter 62-302, F.A.C., as revised through December 7, 2006.

R. "Transmission line" shall mean the Florida Power & Light Company Bobwhite-Manatee 230-kV transmission line.

S. "Wetlands" shall mean those areas meeting the definition set forth in Section 373.019(25), F.S., as delineated pursuant to Chapter 62-340, F.A.C., and ratified by Section 373.4211, F.S.

III. Citation: Section 403.531, F.S. (2006).

IV. DESIGN AND PERFORMANCE CRITERIA

Certification, including these Conditions of Certification, is predicated upon preliminary design ranges and performance criteria. Final engineering design will be within the range described in the Application and explained at the certification hearing. Conformance to those criteria, unless specifically modified in accordance with Section 403.5315, Florida Statutes, and Rule 62-17.680, F.A.C., is binding upon FPL in the design, construction, operation and maintenance of the certified transmission line. In any instance where a conflict occurs between the Application's design criteria and the Conditions of Certification, the Conditions shall prevail.

IV. Citation: Section 403.531, F.S. (2006).

V. RIGHT OF ENTRY/MONITORING

A. Upon presentation of credentials or other documents as may be required by law, FPL shall allow authorized representatives of DEP or other agencies with jurisdiction over a portion of the ROW:

1. At reasonable times, to enter upon the ROW in order to monitor activities within their respective jurisdictions for purposes of assessing compliance with this certification; or
2. During business hours, to enter FPL's premises in which records are required to be kept under this certification; and to have access to and copy any records required to be kept under this certification.

B. When requested by DEP, on its own behalf or on behalf of another agency with regulatory jurisdiction, FPL shall within 10 working days or such longer period as may be mutually agreed upon by DEP and the Licensee furnish any information required by law, which is needed to determine compliance with the certification. If FPL becomes aware that relevant facts were not submitted or were incorrect in the Application or in any report to DEP or other agencies, such facts or information shall be corrected promptly.

V. Citation: Section 403.531, F.S. (2006).

VI. EMERGENCY REPORTING

Replacement of ROW access roads or transmission lines constructed under this certification necessitated by emergency conditions shall not be considered a modification pursuant to Section 403.5315, F.S. (2006). An oral report of the emergency shall be made to DEP as soon as possible. Within 14 calendar days after correction of an emergency, which would require FPL to perform an activity not in accordance with the Conditions of Certification, a report to DEP shall be made outlining the details of the emergency and the steps taken for its temporary relief. The report shall be a written description of all of the work performed and shall set forth any pollution control measures or mitigative measures which were utilized or are being utilized to prevent pollution of waters, harm to sensitive areas, or alteration of archaeological or historical resources.

VI. Citation: Section 403.531, F.S. (2006).

VII. CERTIFIED CORRIDOR

The certified corridor is attached hereto in Attachment 1.

VII. Citation: Section 403.531, F.S. (2006).

VIII. PROCEDURES FOR POST-CERTIFICATION SUBMITTALS

A. Purpose of Submittals

Conditions of Certification which provide for the post-certification submittal of information to DEP or other agencies by FPL are for the purpose of facilitating the agencies' monitoring of the effects arising from the location of the ROW and the construction and maintenance of the transmission line. This monitoring is for DEP to assure, in consultation with other agencies with applicable regulatory jurisdiction, continued compliance with the Conditions of Certification, without any further agency action.

B. Filings

1. All post-certification submittals of information by FPL are to be filed with the DEP Siting Coordination Office, the DEP Southwest District Office, and any other agency that is required to receive a submittal by any Condition of Certification. As required by Section 403.5317, F.S., each post-certification submittal will be reviewed by each agency with regulatory authority over the matters addressed in the submittal on an expedited and priority basis.

2. The Licensee shall provide within 90 days after certification a complete summary of those submittals identified in the Conditions of Certification where due-dates for information required of the Licensee are identified. Such submittals shall include, but are not limited to, monitoring reports, management plans, wildlife surveys, etc. The summary shall be provided to the DEP Siting Coordination Office and any affected agency or agency subunit to whom the submittal is required to be provided, in a sortable spreadsheet, via CD and hard copy, in the format identified below or equivalent.

Condition Number	Requirement and timeframe	Due Date	Name of Agency or agency subunit to whom the submittal is required to be provided

C. Completeness

DEP shall promptly review each post-certification submittal for completeness. This review may include consultation with the other agency(ies) receiving the post-certification submittal with regulatory jurisdiction over the matter addressed in the submittal. DEP's finding of completeness shall specify the area of the right-of-way affected, and shall not delay further processing of the post-certification submittal for non-affected areas. FPL may request that DEP Siting Coordination Office hold a meeting within 15 days after submittal to discuss any completeness issues. FPL may continue to supplement the submittal with additional information through the 25th day.

If any portion of a post-certification submittal is found to be incomplete, FPL shall be so notified. Failure to issue such a notice within 30 days after filing of the submittal shall constitute a finding of completeness. Subsequent findings of incompleteness, if any, shall address only the newly filed information.

D. Interagency Meetings

DEP may conduct an interagency meeting with other agencies, which received a post-certification submittal. The purpose of such an interagency meeting shall be for the agencies with regulatory jurisdiction over the matters addressed in the post-certification submittal to discuss whether reasonable assurance of compliance with the Conditions of Certification has been provided. Failure of DEP to conduct an interagency meeting or any agency to attend an interagency meeting shall not be grounds for DEP to withhold a determination of compliance with these Conditions nor to delay the timeframes for review established by these Conditions. At DEP's request, FPL shall conduct a field inspection with the agency representative in conjunction with the interagency meeting.

E. Reasonable Assurances of Compliance

DEP shall give written notification on an expedited and priority basis, but in any event within no more than 90 days, to FPL and the other agency(ies) to which the post-certification information was submitted of its determination whether there is reasonable assurance of compliance with the conditions of certification. If it is determined that reasonable assurance has not been provided, FPL shall be notified with particularity of the deficiencies and possible corrective measures suggested. Failure to notify FPL in writing within 90 days of receipt of a complete post-certification submittal shall constitute a compliance determination.

F. Commencement of Construction

If DEP does not object within the time period specified in paragraph E. above, FPL may begin construction pursuant to the terms of the Conditions of Certification and the subsequently submitted construction details.

G. Water Quality Certification

For each post-certification submittal which addresses matters within DEP's environmental resource permitting jurisdiction, DEP shall provide to the U.S. Army Corps of Engineers (USCOE) a letter in accordance with DEP Rule 62-17.665(7)(f), F.A.C. This letter shall be sent concurrently with a determination of compliance pursuant to paragraph E. above, or immediately upon request by FPL more than 90 days after the filing of a complete post-certification submittal addressing matters within DEP's environmental resource permitting jurisdiction.

H. Coastal Zone Consistency

Pursuant to Section 380.23, F.S., DEP's letter to the USCOE under paragraph G above constitutes the state's concurrence that the licensed activity or use is consistent with the federally approved program under the Florida Coastal Management Act.

I. Revisions to Design Previously Reviewed for Compliance

The Licensee shall submit to DEP, for its review, any proposed revisions to the project's site specific design that were previously reviewed for compliance with these Conditions during the post-certification review process. Such submittals shall include the same type of information required for the original submittal and shall be submitted prior to construction/implementation.

J. Variation to Submittal Requirements

DEP, in consultation with the appropriate agencies that have regulatory authority over a matter to be addressed in a post-certification submittal, and FPL may jointly agree to vary any of the post-certification submittal requirements, provided the information submitted is sufficient to provide reasonable assurances of compliance with these Conditions of Certification.

K. Disputes

Any agency which received a post-certification submittal pursuant to these Conditions may dispute a determination that a submittal provides reasonable assurances of compliance with the Conditions of Certification made by DEP on matters within that agency's jurisdiction by following the procedures set forth in Chapter 120, F.S. The agency's statement disputing DEP's determination shall state with particularity the location to which the agency's dispute relates. Work in areas other than the location to which the agency's dispute relates will not be affected by the agency's dispute.

VIII. Citations: Sections 403.531, 403.5317, 373.413, 373.416, 120.569, and 380.23, F.S. (2006); Rules 62-17.600, 62-17.665, and 40D-4.101, F.A.C, 62-17.191, F.A.C.

IX. DISPUTE RESOLUTION

If a situation arises in which mutual agreement cannot be reached between DEP and another agency receiving a post-certification submittal or between DEP and FPL regarding compliance with the Conditions of Certification, then the matter shall be immediately referred to the Division of Administrative Hearings (DOAH) for disposition in accordance with the provisions of Chapter 120, F.S. FPL or DEP may request DOAH to establish an expedited schedule for the processing of such a dispute.

IX. Citations: Sections 403.5317, 403.531, and 120.57, F.S. (2006).

X. SEVERABILITY

The provisions of this certification are severable, and if any provision of this certification or the application of any provision of this certification to any circumstance is held invalid, the remainder of the certification or the application or such provision to other circumstances shall not be affected thereby.

X. Citation: Section 403.531, F.S. (2006).

XI. ENFORCEMENT

A. The terms, conditions, requirements, limitations and restrictions set forth in these Conditions of Certification are binding and enforceable pursuant to Sections 403.141, 403.161, and 403.533, F.S. Any noncompliance by FPL with a Condition of Certification constitutes a violation of Chapter 403, F.S., and is grounds for enforcement action, permit termination, permit revocation, or permit revision. The Licensee is placed on notice that the Department will review this certification periodically and may initiate enforcement action for any violation of these Conditions.

B. All records, notes, monitoring data and other information relating to the construction or operation of this certified transmission line which are submitted to the Department may be used by the Department as evidence in any enforcement case involving the certified source arising under the Florida Statutes or Department rules, except where such evidence shall only be used to the extent it is consistent with the Florida Rules of Civil Procedure and appropriate evidentiary rules.

XI. Citations: Section 403.141, 403.161 and 403.533, F.S. (2006).

XII. REVOCATION OR SUSPENSION

This certification may be suspended or revoked pursuant to Section 403.532, Florida Statutes.

XII. Citation: Section 403.532, F.S. (2006).

XIII. PROPERTY RIGHTS

Except as provided in Section 403.531(3)(b), F.S., the issuance of this certification does not convey any property rights in either real or personal property, or any exclusive privileges thereto. The Licensee shall obtain title, lease, easement, or right of use from the State of Florida to any sovereignty submerged or other state-owned lands occupied by the right-of-way for the transmission line. Section 403.531(3)(b), F.S., provides that, on certification, any license, easement, or other interest in state lands, except those the title of which

is vested in the Board of Trustees of the Internal Improvement Trust Fund, shall be issued by the appropriate agency as a ministerial act.

XIII. Citation: Section 403.531, F.S. (2006).

XIV. PROCEDURAL RIGHTS

No term or Condition of Certification shall be interpreted to preclude the post-certification exercise by the Licensee of whatever procedural rights it may have under Chapter 120, F.S.

XIV. Citation: Chapter 120, F.S. (2006).

XV. MODIFICATION OF CERTIFICATION

A. Pursuant to Section 403.5315(1), F.S., Section 120.569(2)(n), F.S., and Rule 62-17.680, F.A.C., the Siting Board hereby delegates the authority to the Secretary of the Department of Environmental Protection to modify these Conditions of Certification, after notice and receipt of no objection by a party or other substantially affected person. In addition, the Secretary of the Department is delegated the authority to modify conditions as follows:

1. The Secretary of the Department may modify any condition of this certification after notice and opportunity for hearing.

2. The Secretary of the Department may grant modifications necessary to meet licensing conditions or requirements imposed on FPL by any federal regulatory agency. FPL shall notify DEP at least 30 days prior to the issuance of the federal license that would require such a modification, if known, or in any event, as soon as the federal agency notifies FPL.

3. The Secretary of the Department may authorize the reconstruction of the ROW or transmission line necessary to avoid or mitigate an emergency condition. Such a modification shall be obtained only when an emergency replacement of a transmission line pursuant to Rule 62-17.695, F.A.C., is not required or when an emergency replacement must be further modified after the emergency conditions requiring the original reconstruction are no longer present.

B. DEP shall give written notice to the parties to the original certification, at their last address of record, of any requests for modification filed by FPL.

XV. Citations: Sections 120.569(2)(n) and 403.5315, F.S. (2006); Rules 62-17.680 and 62-17.695, F.A.C.

XVI. SUBMITTALS AND NOTICES REQUIRED BY CONDITIONS

Post-certification submittals and notices shall be sent, as specified in these Conditions, to the agencies specified in these conditions at the following addresses, unless FPL and DEP are notified in writing of an agency's change in address for such submittals and notices:

Florida Department of Environmental Protection
Siting Coordination Office, MS 48
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Florida Department of Environmental Protection
Southwest District Office
13051 N Telecom Parkway
Temple Terrace, FL 33637-0926

Florida Department of Community Affairs
Office of the Secretary
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Florida Fish & Wildlife Conservation Commission
Office of Policy and Stakeholder Coordination
620 South Meridian Street
Tallahassee, FL 32399-1600

Southwest Florida Regional Planning Council
Office of the Executive Director
1926 Victoria Avenue
Fort Myers, FL 33901-3414

Southwest Florida Water Management District
Office of General Counsel
2379 Broad Street
Brooksville, FL 34604-6899

Florida Department of Transportation
Director of Planning and Production, District 1
P. O. Box 1249
Bartow, FL 33831-1249

Sarasota County Resource Protection
1660 Ringling Blvd.
Sarasota, FL 34236

Plan Implementation Administrator
Manatee County Planning Department
1112 Manatee Avenue West
Fourth Floor, Suite 401
Bradenton, FL 34206
Copy: Office of the County Attorney
Manatee County
1112 Manatee Avenue West
Ste. 969
Bradenton, FL 34206

Tampa Bay Regional Planning Council
4000 Gateway Centre Blvd.
Ste. 100
Pinellas Park, FL 33782

Florida Department of Agriculture and Consumer Services
Division of Forestry
3125 Conner Boulevard
Tallahassee, Florida 32399-1650

U.S. Fish and Wildlife Services
1339 20th Street
Vero Beach, FL 32960

XVI. Citation: Section 403.531, F.S. (2006).

XVII. TRANSFER OF CERTIFICATION

This certification is transferable, upon Department approval, to an entity determined to be competent to construct, operate and maintain the transmission line in accordance with these Conditions of Certification. A transfer of certification of all or part of a certified facility shall be initiated by the Licensee's filing with the Department and the parties a notice of intent to transfer certification to a new licensee. The notice of intent shall identify the intended new certification holder or licensee and the identity of the entity responsible for compliance with the certification. The provisions of Chapter 120, F.S., will apply to the Department's approval or denial of the transfer.

XVII. Citations: Section 403.531, F.S. (2006); Chapter 120, F.S.; Rules 62-17.211 and 40D-4.351, F.A.C.

XVIII. ROW LOCATION

A. FPL shall co-locate the transmission line ROW to the extent feasible within or adjacent to existing public rights-of-way for those portions of the corridor which include such existing public rights-of-way. To the extent a

widened road right-of-way has been acquired by the appropriate governmental agency at the time of final transmission line design, FPL's design shall reflect that new widened right-of-way.

B. FPL will consult with State Park officials prior to placement of the transmission line within park boundaries should placement of the transmission line involve park property. In the event an easement over park property becomes necessary, FPL will provide, as a post-certification submittal to the Florida Department of Environmental Protection, Division of State Lands, the applicable information required by the Board of Trustees of the Internal Improvement Trust Fund for an upland easement.

C. To the extent feasible FPL shall locate the transmission line right-of-way so as to avoid the taking of homes.

XVIII. Citations: Sections 403.526(2)(b)3, 403.522(18), 403.526(2)(a)5, and 258.007(4), F.S. (2006).

XIX. PROCESS FOR REVIEW OF ROW LOCATION

A. Prior to the finalization of the ROW location, three copies of the most recent available aerial photographs at a scale of 1" = 400' with wetland locations generally identified shall be submitted to DEP Siting Coordination Office, and one copy each to DEP Southwest District Office, SWFWMD, TBRPC, DOT, DCA, Manatee County and Sarasota County, delineating the certified corridor, and the selected transmission line ROW. In addition, FPL shall note on the aerial photographs new construction within the corridor that has occurred since the photograph was taken. FPL shall notify all parties of such filing and, if needed, shall meet with DEP to discuss the ROW location. This information may be submitted in segments. The agencies receiving the aerial photographs from FPL shall have an opportunity to review the photographs and to notify DEP, within 12 days of FPL's submittal of the aerial photographs to the agencies, of any apparent conflicts with the requirements of the Conditions of Certification. However, this paragraph shall not operate to avoid the need for post-certification submittals and compliance reviews otherwise required by the Conditions of Certification.

B. After review of the aerial photographs and comments from the other reviewing agencies, if DEP Siting Coordination Office has reason to believe that the construction of the transmission line, access roads or pads within FPL's designated ROW cannot be accomplished in compliance with the Conditions of Certification, FPL shall be so notified in writing, with copies to other parties to the certification proceeding of the particular basis for DEP's conclusion, and possible corrective measures which would bring the Project into compliance. If such notice is not received within 15 days of FPL's submittal of the aerial photographs to the agencies, FPL may proceed with design of the transmission line on the noticed ROW.

C. The acquisition of a particular ROW or the expenditure of funds toward acquisition of a particular ROW prior to the agencies' review pursuant to this condition will be at FPL's risk, and no party will be stopped by such acquisition to seek disapproval of the construction of the transmission line or access road within the ROW in accordance with these Conditions of Certification.

D. After FPL has acquired interest in the entire length of the transmission line ROW, FPL shall:

1. File a statement with the clerk of the circuit court for each county through which the corridor passes certifying that all lands required for the transmission line ROW within the corridor have been acquired. FPL shall also file with the county Planning Department a map at the scale of 1" = 400' showing the boundaries of the acquired ROW.

2. File with DEP Siting Coordination Office a map at a scale of 1" = 400' showing the boundaries of the acquired ROW, if such boundaries are different from those shown in the filing required by paragraph A above. Such maps shall comply with the requirements of paragraph A. If the boundaries have not changed, FPL shall file a statement with DEP Siting Coordination Office accordingly.

E. Once the ROW has been determined FPL will submit information that is consistent with information typically submitted for County ROW permits.

XIX. Citations: Sections 403.531 and 403.5312, F.S. (2006); Rule 62-17.600(4), F.A.C.

XX. ROW SURVEYS

A. Listed Species

1. *Listed Species Occurring or Potentially Occurring in the Corridor:*

State-listed species occurring or potentially occurring within the preferred corridor footprint include but are not limited to the wood stork (*Mycteria americana*), which is listed as endangered; the eastern indigo snake (*Drymarchon corais couperi*), the bald eagle (*Haliaeetus leucocephalus*), Florida sandhill crane (*Grus canadensis pratensis*), the gopher tortoise (*Gopherus polyphemus*), and southeastern American kestrel (*Falco sparverius paulus*), all listed as threatened; gopher frog (*Rana capito*), Florida burrowing owl (*Athene cunicularia floridana*), limpkin (*Aramus guarauna*), little blue heron (*Egretta caerulea*), roseate spoonbill (*Platalea ajaja*), snowy egret (*Egretta thula*), tricolored heron (*Egretta tricolor*), white ibis (*Eudocimus albus*), and Sherman's fox squirrel (*Sciurus niger shermani*), all listed as species of special concern.

2. *Listed Species Survey.*

Before land clearing and construction activities within the ROW, where access is available, FPL shall conduct an assessment for listed species in the final right-of-way which will note all habitat, occurrence or evidence of listed species in the right-of-way. Listed species to be included in this survey shall include those listed as endangered, threatened or of special concern by Florida Fish and Wildlife Conservation Commission or those listed as endangered or threatened by U.S. Fish and Wildlife Service.

a. This survey shall be conducted in accordance with USFWS/FFWCC guidelines and methodologies by a person or firm that is knowledgeable and experienced in conducting flora and fauna surveys for listed species.

b. This survey shall identify any wading bird colonies within one-half mile of the project ROW that may be affected.

c. This survey shall identify locations of breeding locations, nests, and burrows for listed wildlife species. Nests and burrows may be recorded with GPS coordinates, identified on an aerial photograph, and submitted with the final listed species report. Although nests and burrows may be recorded individually with GPS, the FWC prefers that a protection radius surrounding nest sites and burrows be included, rather than individual nests and burrows, and be physically marked so that clearing and construction will avoid impacting them.

d. This survey shall include an estimate of the acreage and percent cover of each existing vegetation community (Florida Land Use, Cover and Forms Classification System, or FLUCFCS, at the third degree of detail) including a wildlife-based habitat classification scheme such as the Comprehensive Wildlife Conservation Strategy (FWC 2005), Descriptions of Vegetation and Land Cover Types (FWC 2004), or Natural Communities Guide (FNAI 1990) of each community that is contained within the final ROW prior to land clearing and construction activities using GIS.

3. *Listed Species Locations*

Where any suitable habitat and evidence is found of the presence of listed species along the ROW, FPL will report those locations to, and confer with, the appropriate regulatory agencies for possible additional pre-clearing surveys and to identify potential mitigation, or avoidance recommendations. If pre-clearing surveys are required, they shall be timed to be reasonably compatible with the construction schedule, considering the in-service date specified in the Public Service Commission's need determination. FPL will not construct in areas where evidence of listed species was identified during the initial survey until the particular listed species issues have been resolved.

a. *Listed Wildlife Species*: If listed wildlife species are found, their presence shall be reported to the DEP Siting Coordination Office, the DEP Southwest District Office, the FFWCC's Office of Policy and Stakeholder Coordination, the SWFWMD, Manatee County, Sarasota County and U.S. Fish and Wildlife Service.

b. *Listed Vegetation Species*: If listed vegetation species are found on public land or water, their presence shall be reported to the DEP Siting Coordination Office and the Florida Department of Agriculture and Consumer Services. Listed wildlife species and listed vegetation species on public land or water shall not be disturbed, if practicable. If avoidance is not practicable, FPL shall consult with DEP, FFWCC, and, if necessary, the U. S. Fish and Wildlife Service for listed wildlife species, and with the Florida Department of Agriculture and Consumer Services for listed vegetation species on public land or water, to determine the steps appropriate for the species involved which are to be taken to avoid, minimize, mitigate, or otherwise appropriately address impacts within each agency's respective jurisdiction. For wildlife species, these steps shall be memorialized in a Wildlife Management Plan and submitted to DEP, FFWCC and Manatee and Sarasota Counties.

4. *Low water crossings*

Where applicable, FPL will place low-water crossings to provide larger surface areas for wetland-dependent wildlife species.

B. Cultural Resources

After the ROW has been selected, FPL shall conduct a survey of sensitive cultural resource areas, as determined in consultation with the Department of State, Division of Historical Resources (DHR) and Sarasota County, where they are crossed by the ROW. A qualified cultural resources consultant will identify an appropriate work plan for this project based on a thorough review of the certified corridor. Prior to beginning any field work, the work plan will be reviewed in consultation with DHR and the County, upon the County's request for such consultation. Upon completion of the survey, the results will be compiled into a report which shall be submitted to DHR and Sarasota County. If practicable, sites considered to be eligible for the National Register shall be avoided during construction of the transmission line and access roads, and subsequently during maintenance of the ROWs. If avoidance by the proposed ROW of any discovered sites is not practicable, impact shall be mitigated through archaeological salvage operations or other methods acceptable to DHR and/or Sarasota County, as appropriate.

If historical or archaeological artifacts are discovered at any time within the project site, FPL shall stop work immediately and shall notify the DEP Southwest District office and the Bureau of Historic Preservation, Division of Historical Resources, R.A. Gray Building, Tallahassee, Florida 32399-0250,

telephone number (850) 487-2073, and FPL shall consult with DHR and Sarasota County (as appropriate) to determine appropriate action.

XX. Citations: Sections 267.061 and 403.531, and Chapter 372, F.S. (2006); Sarasota County Code, Article III, Chapter 66.

XXI. ACTIVITIES IN WETLANDS

A. Informational Submittals for Activities Within Wetlands or Other Surface Waters

1. Prior to the projected commencement of construction of any portion of the transmission line in wetlands or other surface waters, FPL shall provide to DEP's Southwest District Environmental Resource Permitting Section and the U.S. Army Corps of Engineers all information necessary for a complete *Joint Environmental Resource Permit application*, DEP Form No. 62-343.900(1), with copies to the Tampa Bay Regional Planning Council and SWFWMD for informational purposes and Manatee and Sarasota Counties. Information may be submitted by discrete sections of the ROW; FPL shall consult with the DEP to identify mutually agreeable sections for purposes of wetlands submittals. The completed form for each section shall be reviewed pursuant to Condition VIII. "Construction" in this context shall include land clearing, excavation, the placement of structure pads, access roads, culverts, fill materials, and related activities. Construction activities shall not include the stringing of conductors.

2. FPL shall provide reasonable assurance that the construction, operation and maintenance of the proposed facilities, including any access roads and structures constructed within wetlands and other surface waters, satisfy the criteria set forth in Rules 40D-4.301 and 40D-4.302, F.A.C., and the applicable portions of Part B, Basis of Review of SWFWMD's Environmental Resource Permitting Information Manual. Pursuant to Rule 62-17.665(7)(d), F.A.C., the Licensee shall provide sufficient information on a post-certification basis to demonstrate that there is reasonable assurance of compliance with SWFWMD substantive requirements.

3. The post-certification submittal shall include a signed and sealed Professional Land Surveyors' survey of wetland and surface water areas as defined pursuant to Chapter 62-340, F.A.C., and verified by appropriate agency staff. Available SWFWMD-approved wetland and surface water verifications within the boundaries of the FPL ROW may be used and reproduced for this delineation consideration.

XXI.A. Citations: Sections 373.414, 373.416, 403.526(2)(b)3., 403.522(18), 403.526(2)(a)5., F.S. (2006); Rules 40D-4.091, 40D-4.101, 40D-4.301, 40D-4.302, and 62-17.665(7)(d), F.A.C.; and Chapter 62-340, F.A.C.; Sarasota County Code, Chapter 54, Article VII.

B. Consultation with Wetland Agencies

At the request of FPL, DEP Siting Coordination Office may conduct an interagency meeting for FPL to consult with the wetlands resource permitting staffs of DEP and SWFWMD, and the FWC's staff, prior to the finalization of possible access road locations, transmission line structure locations, and the establishment of water control structure types and general locations in wetlands which are to be reflected in any post-certification submittals. At DEP's request, FPL shall conduct a field inspection with the agencies' staff representatives in conjunction with the interagency meeting.

XXI.B. Citation: Section 403.523, F.S. (2006).

C. Reduction and Elimination of Impacts

1. Access Roads, Culverts, and Structures

a. Where the ROW crosses wetlands or other surface waters, FPL shall utilize adjacent existing FPL access roads and public roads for access to the transmission line ROW for construction, operation and maintenance purposes to the extent practicable.

b. All access roads and structure pads which must be constructed in areas where an existing FPL access road or public road is not available shall be constructed in a manner which reduces or eliminates adverse impacts to on-site and adjacent wetlands to the extent practicable. FPL shall be deemed to have satisfied this condition if the access and finger roads satisfy the criteria of Rules 40D-4.301 and 40D-4.302, F.A.C.

c. Where practicable, FPL shall make an effort to reduce or eliminate impacts to wetlands and other surface waters within the certified corridor except as otherwise provided in section 3.2.1.2 of Part B, Basis of Review of SWFWMD's Environmental Resource Permitting Information Manual. The length of the span between transmission line structures shall be varied as appropriate and other design changes, which shall include but not be limited to a reduction in pad size, elimination of access roads, use of finger fill from existing ROWs and/or modification of construction techniques shall be considered to eliminate or reduce wetland impacts, except where otherwise provided by section 3.2.1.2.

d. To the extent practicable and utilizing the typical structures shown in the Application, access roads, culverts and structures shall be located to avoid conflict with existing underground water and sewer facilities properly documented in county records.

e. In the event temporary fill is used to facilitate construction of the transmission line, the temporary fill shall be removed where necessary to minimize impacts to wetlands or habitats of listed species.

2. *Wetland Clearing*

a. FPL shall use only restrictive clearing practices during construction and maintenance of the transmission line where it crosses forested wetlands. Restrictive clearing, as used in this condition, is the removal of vegetation by hand, usually with chain saws, or with low-ground-pressure shear or rotary machines to reduce soil compaction and damage to ground cover. These methods may be used alone or in combination, as may be appropriate for specific sites. All cut vegetation must be removed from wetlands unless other techniques, such as mulching or burning in place, are agreed to by DEP Siting Coordination Office and Sarasota County (for portions of the line located in Sarasota County) in the post-certification review process. Restrictive clearing includes the removal of vegetation from areas extending from the transmission line centerline to 31 feet on each side of the outer conductors, along new access roads, and in the structure pad areas (approximately 60 feet by 50 feet). Removable construction matting in conjunction with best management practices may be used in wetlands to support equipment. The remainder of the ROW in wetland areas, beyond 31 feet on either side of the outer conductors and the structure pads, shall not be cleared; however, vegetation that has an expected mature height greater than 14 feet may be removed. In addition, danger timber (trees or limbs likely to contact a conductor if felled) within or outside the right-of-way may be removed.

b. Tree stumps under the conductors, within access roads and in the structure pads may be removed, sheared, or ground to 6 inches below the ground line to allow for travel and construction activities. Tree stumps in the area beyond 20 feet on either side of the outer conductors shall be left in place to preserve the root mat.

XXI.C. Citations: Sections 373.414 and 373.416, F.S. (2006); Rules 40D-4.091, 40D-4.101, 40D-4.301, 40D-4.302, and 40D-4.381, F.A.C.

XXII. MITIGATION

A. Mitigation may not be required by DEP if the project is not located within wetlands, is not expected to adversely impact wetlands or complies with the following conditions:

1. All permanent fill shall be at grade. Fill shall be limited to that necessary for the electrical support structures, towers, poles, guy wires, stabilizing backfill, and at-grade access roads limited to 20-foot widths; and

2. The Licensee may utilize access and work areas limited to the following: a linear access area of up to 25 feet wide between electrical support structures, an access area of up to 25 feet wide to electrical support structures from the edge of the right-of-way, and a work area around the electrical support structures, towers, poles, and guy wires. These areas may be cleared to ground, including removal of stumps as necessary; and

3. Vegetation within wetlands may be cut or removed no lower than the soil surface under the conductor, and 20 feet to either side of the outermost conductor, while maintaining the remainder of the project right-of-way within the wetland by selectively clearing vegetation which has an expected mature height above 14 feet. Brazilian pepper, Australian pine, and melaleuca shall be eradicated throughout the wetland portions of the right-of-way; and

4. Erosion control methods shall be implemented as necessary to ensure that state water quality standards for turbidity are met. Diversion and impoundment of surface waters shall be minimized; and

5. The proposed construction and clearing shall not adversely affect threatened and endangered species; and

6. The proposed construction and clearing shall not result in a permanent change in existing ground surface elevation.

7. Where fill is placed in wetlands, the clearing to ground of forested wetlands is restricted to 4.0 acres per 10-mile section of the project, with no more than one impact site exceeding 0.5 acres. The impact site which exceeds 0.5 acres shall not exceed 2.0 acres. The total forested wetland clearing to the ground per 10-mile section shall not exceed 15 acres. The 10-mile sections shall be measured from the beginning to the terminus, or vice versa, and the section shall not end in a wetland.

8. Clearing or fill must not occur within 550 feet from the shoreline of a named waterbody designated as an Outstanding Florida Waterbody (OFW).

B. If the project does not comply with the requirements of paragraph A above, mitigation can be required. For construction in wetlands that does not comply with those requirements, FPL shall propose a mitigation plan as a post-certification submittal under Condition VIII. The following information shall be provided to the DEP Southwest District Environmental Resource Permitting Section for review and to Manatee County, for portions of the line located in Manatee County, for informational purposes:

1. detailed description, location map, and recent aerial photograph of each wetland impact area in which the Rule 62-341.620(2)(b)-(i), F.A.C., limitations were not met;
2. acreage of the type and quality of wetland being impacted at each such site;
3. narrative, drawings, location map, and aerial photographs showing and explaining the proposed mitigation, or in the case of a mitigation bank, the name and location of the bank;
4. detailed description of the existing conditions at the impact site and, unless a mitigation bank is proposed, at the mitigation area;
5. acreage and wetland type of the proposed mitigation, or for a mitigation bank, the type and number of credits;
6. if not a mitigation bank, documentation providing reasonable assurance that the proposed mitigation will be successful; and
7. an analysis pursuant to Chapter 62-345, F.A.C., to the extent applicable.
8. To the extent mitigation will be provided from a mitigation bank, a credit reservation letter will be provided from the selected bank demonstrating the necessary credits are being set aside to offset project impacts.

C. Mitigation plans must be found to fully offset the functions and values provided by wetlands that will be degraded or eliminated to the abundance and diversity of fish, wildlife and listed species, and the habitat of fish, wildlife and listed species. DEP will work with FPL in the development of acceptable mitigation plans. The mitigation plans proposed by FPL shall be submitted for review and compliance monitoring to DEP under Condition VIII.

D. If DEP, upon review of the proposed mitigation plan, determines that the proposed mitigation is inadequate to offset the loss of wetland values described above from this project, FPL may propose additional or alternative mitigation or dispute the determination pursuant to Condition IX.

E. If the proposed mitigation plan is deemed acceptable by DEP and does not involve the use of a mitigation bank, the construction conditions, success criteria and a monitoring plan will be incorporated into the construction conditions as an Attachment.

F. No construction within wetlands subject to the regulatory jurisdiction of DEP that does not comply with the non-procedural limitations of Rule 62-

341.620(2)(b)-(i), F.A.C., or paragraph A above, shall commence until DEP approves a mitigation plan, and, if a bank is not used, mitigation construction conditions, success criteria and a monitoring plan are incorporated into the certification conditions.

G. FPL shall be deemed to have met the requirements of this condition if FPL satisfies the criteria of either Section 3.3 or Appendix 4(3) of the Basis of Review for Environmental Resource Permit Applications (February 2007), and Chapter 62-345, F.A.C., if applicable.

XXII. Citations: Sections 373.414, 403.531, and 403.814(6), F.S. (2006); Rules 40D-4.091, 40D-4.301, 40D-4.302, 62-341.620, F.A.C., and Chapter 62-345, F.A.C.

XXIII. DRAINAGE AND EROSION CONTROL

A. Maintenance of Drainage/Hydroperiod

1. FPL shall employ best management practices, construction techniques, and adequate culverting in order to maintain existing drainage patterns along the transmission line ROW. Within all wetland areas affected, wetland control elevations shall be established and maintained. This condition shall not preclude FPL from improving preconstruction hydroperiods provided such improvement can be achieved in compliance with the other Conditions of Certification. FPL shall be deemed to have satisfied this condition if the access and finger roads satisfy the criteria of Rules 40D-4.301 and 40D-4.302, F.A.C.

2. Access roads and other nonexempt surface water management system facilities constructed in upland areas shall meet the conditions set forth in Rules 40D-4.301 and 40D-4.302, F.A.C., and applicable provisions of Part B, Basis of Review of SWFWMD's Environmental Resource Permitting Information Manual, including but not limited to Section 4.4.

XXIII.A. Citations: Sections 373.416 and 403.531, F.S. (2006); Rules 40D-4.091, 40D-4.301, and 40D-4.302, F.A.C.

B. Erosion/Runoff Control

1. FPL shall compact or otherwise stabilize any fill material placed around newly installed structures, to reduce erosion, turbidity, nutrient loading and sedimentation in the receiving waters.

2. Grass seed and mulch or sod must be installed and maintained on exposed slopes prior to finalization of construction, and at all times measures must be taken to prevent erosion, sedimentation or turbid discharges into wetlands and or waters of the state, where the soils have been disturbed during construction.

3. To control runoff which may reach and thereby pollute waters of the state, necessary measures shall be utilized to settle, filter, treat or absorb silt-containing or pollutant-laden storm water to ensure against spillage or discharge of excavated material that may cause turbidity in excess of 29 Nephelometric Turbidity Units (NTU) above background in waters of the state. Control measures may consist of sediment traps, barriers, berms, and vegetation plantings, and must be maintained in effective condition at all locations where sediment has the potential to reach nearby wetlands until construction in the area is completed and disturbed soil areas are stabilized. Exposed or disturbed soil shall be protected and stabilized as soon as possible to minimize silt and sediment-laden runoff. The pH of the runoff shall be kept within the range of 6.0 to 8.5. FPL shall comply with the applicable nonprocedural requirements in Rule 40D-4, F.A.C.

4. FPL shall ensure that adjacent properties are not impacted by wind erosion, or emissions of unconfined particulate matter in accordance with Rule 62-296.320(4)(c)1., F.A.C., by taking appropriate measures to stabilize affected areas.

XXIII.B. Citations: Section 403.531, F.S. (2006); Rules 40D-4.381, and 62-296.320, F.A.C.; Sarasota County, Chapter 54, Article VII.

XXIV. CONSTRUCTION PRACTICES

A. Open Burning

Any open burning in connection with initial land clearing shall be in accordance with the non-procedural requirements of Chapter 62-256, F.A.C., Chapter 5I-2, F.A.C., Uniform Fire Code Section 33.101, Addendum. Prior to any burning of construction-generated material, after initial land clearing that is allowed to be burned in accordance with Chapter 62-256, F.A.C., FPL shall seek approval from the DEP Southwest District Office whose approval may be granted in conjunction with the Division of Forestry. Burning shall not occur if not approved by the appropriate agency or if the Department or the Division of Forestry has issued a ban on burning due to fire safety conditions or due to air pollution conditions. A copy of any submittal by FPL relating to open burning in Manatee County shall be sent to Manatee County for informational purposes.

XXIV.A. Citations: Section 403.531, F. S. (2006); Chapters 5I-2 and 62-256, F.A.C.

B. Solid Wastes

Solid wastes resulting from construction shall be disposed of in accordance with the non-procedural requirements of applicable regulations of Chapter 62-701, F.A.C.

XXIV.B. Citations: Section 403.531, F.S. (2006); Chapter 62-701, F.A.C.

C. Hazardous Substances and Spills

1. If hazardous substances are used in the construction or maintenance of the transmission line, FPL shall provide the DEP with reasonable assurances that such hazardous substances will not enter stormwater drains or waterbodies.

2. Fuel and other petroleum product spills that enter stormwater drains or waterbodies, or fuel and other petroleum product spills that are in excess of 25 gallons shall be contained, cleaned up, and immediately reported to Water Resources (ph: 941.861.5000; fax: 941.861.0986). Smaller ground surface spills shall be cleaned up as soon as practical.

XXIV.C. Citations: Sections 403.531 and 403.414, F.S. (2006); Chapter 40D-4, F.A.C.; Sarasota County Code, Chapter 54, Article VII.

XXV. ELECTRIC AND MAGNETIC FIELD EFFECTS

A. Bee Hives

FPL shall advise beekeepers, known at the time the ROW is established or acquired, having bee hives within or near the ROW of the potential effect of the transmission line on bee hives.

XXV.A. Citation: Section 403.531, F.S. (2006).

B. Radio and Television Interference

FPL shall investigate all complaints and take appropriate corrective action for impacts to radio or television reception caused by the proposed transmission line.

XXV.B. Citation: Section 403.531, F.S. (2006).

C. Electric and Magnetic Fields

The Bobwhite-Manatee 230-kV transmission line shall comply with the applicable electric and magnetic field standards set forth in Chapter 62-814, F.A.C. The electric and magnetic fields associated with any configuration developed during the final design of this project that is not shown in the Application shall be provided to DEP on DEP Form 62-814.900 at least 90 days prior to the start of construction, or such shorter time period to which the DEP Siting Coordination Office agrees, as required by Rule 62-814.520(3), F.A.C.

XXV.C. Citations: Section 403.523(10), F.S. (2006); Chapter 62-814, F.A.C.

XXVI. HERBICIDES

Herbicides applied in the ROW shall only be those registered by the U.S. Environmental Protection Agency and which have state approval. Herbicide application rates and concentrations will be in accordance with label directions and will be carried out by a licensed applicator, meeting all federal, state and local regulations. Herbicide applications shall be selectively applied to targeted vegetation. Broadcast application of herbicide shall not be used in the ROW unless effects on non-targeted vegetation are minimized.

XXVI. Citations: Sections 403.061, 403.088, 487.031 and 487.041, F.S. (2006).

XXVII. OPERATION AND MAINTENANCE OF FACILITIES

FPL shall properly operate and maintain the transmission line to achieve compliance with the Conditions of Certification.

XXVII. Citation: Section 403.531, F.S. (2006).

XXVIII. SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT (SWFWMD)

A. To the extent practicable and utilizing the typical structures shown in the Application, access roads, culverts and structures shall be located to avoid conflict with existing surface water management systems as documented in SWFWMD records. On lands owned or controlled by SWFWMD, access roads, culverts and structures shall be located to avoid conflict with SWFWMD land use and management plans.

B. In the event that any portion of the right-of-way is located on lands owned or controlled by SWFWMD as authorized by this Certification, the width of the right-of-way shall be the minimum necessary for construction, operation and maintenance of the transmission line on SWFWMD lands. Any access road constructed by the Licensee on SWFWMD lands within the right-of-way shall be maintained by the Licensee and available for use by SWFWMD.

C. Prior to the commencement of any activities associated with any portion of the transmission line that will cross over, on, under, or otherwise use SWFWMD lands, the Licensee shall provide a survey of the transmission line right-of-way ("Right-of-Way Survey") to be located on SWFWMD lands. The survey shall be prepared using procedures acceptable to the District and signed and sealed by a registered surveyor pursuant to Chapter 472, F.S.

D. For any transmission line easement that will cross over, on, under, or otherwise use SWFWMD lands, Licensee shall submit for review and written

approval an independent appraisal of the land described by the Right-of-way Survey. Licensee shall submit to SWFWMD funds in an amount agreed upon by SWFWMD and Licensee sufficient to compensate SWFWMD for the loss of intended use of the land within the transmission line's right-of-way that is located on SWFWMD lands. Any property rights obtained to secure the right-of-way will be issued by the SWFWMD as a ministerial act, and the terms and conditions will be negotiated between the Licensee and the SWFWMD.

E. In the event Licensee seeks to use SWFWMD lands outside of the transmission line right-of-way for access during construction of the transmission line or for inspection and maintenance after construction, Licensee shall submit to SWFWMD a detailed plan identifying the proposed route, type and number of vehicles to be used and the frequency of such use. All use of lands prior to conveyance of a right-of-way easement by SWFWMD including, but not limited to survey or engineering work, or use of SWFWMD lands outside of the transmission line right-of-way, once conveyed, shall be in accordance with SWFWMD land management requirements as set forth in Section 373.1391, F.S., and SWFWMD Land Use Rules, Chapter 40D-9, F.A.C.

F. Prior to commencement of construction on any SWFWMD lands, Licensee shall contact the SWFWMD to arrange a pre-construction meeting on-site.

XXVIII. Citations: Sections 403.526(2)(a)2., 373.085, 373.089, 373.093, 373.099, 373.414 and 373.416, F.S. (2006); Chapter 40D-4, Rules 40D-4 .301 and 40D-4.302, and Chapter 40D-9, F.A.C.

XXIX. FLORIDA DEPARTMENT OF TRANSPORTATION

A. Post-Certification Reviews of FDOT Matters

1. Access Management to the State Highway System:

Any access to the State Highway System will be subject to the requirements of Rule Chapters 14-96, State Highway System Connection Permits, and 14-97, Access Management Classification System and Standards, F.A.C.

2. Overweight or Overdimensional Loads:

Operation of overweight or overdimensional loads by FPL on State transportation facilities during construction and operation of the transmission line will be subject to safety and permitting requirements of Chapter 316, F.S., and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

3. *Use of State of Florida Right-of-Way or Transportation Facilities:*

All usage and crossing of State of Florida right-of-way or transportation facilities will be subject to Rule Chapter 14-46, Utilities Installation or Adjustment, F.A.C.; Florida Department of Transportation's Utility Accommodation Manual (Document 710-020-001); Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Standard Specifications for Road and Bridge Construction; and pertinent sections of the Florida Department of Transportation's Project Development and Environmental Manual. Although there is no major widening of the facilities in the area of the project planned in the foreseeable future, State Road 70 has been identified as a Florida Intrastate Highway System (FIHS) and an emerging Strategic Intermodal System's (SIS) facility. The placement of the transmission line should take into consideration the possible widening of this facility to the extent practicable. If future widening should be required, the cost of relocating or reconstructing the transmission line will be borne by FPL to the extent required by Section 337.403, F.S., and Rule Chapter 14-46, F.A.C.

4. *Standards:*

The Manual on Uniform Traffic Control Devices; Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida Department of Transportation's Standard Specifications for Road and Bridge Construction; Florida Department of Transportation's Utility Accommodation Manual; and pertinent sections of the Department of Transportation's Project Development and Environmental Manual will be adhered to in all circumstances involving the State Highway System and other transportation facilities.

5. *Drainage:*

Any drainage onto State of Florida right-of-way and transportation facilities will be subject to the requirements of Rule Chapter 14-86, Drainage Connections, F.A.C., including the attainment of any permit required thereby.

6. *Use of Air Space:*

Any newly proposed structure or alteration of an existing structure will be subject to the requirements of Chapter 333, F.S., and Rule 14-60.009, Airspace Protection, F.A.C. Additionally, notification to the Federal Aviation Administration (FAA) is required prior to beginning construction, if the structure exceeds notification requirements of 14 CFR Part 77, Objects Affecting Navigable Airspace, Subpart B, Notice of Construction or Alteration. Notification will be provided to FAA Southern Region Headquarters using FAA Form 7460-1, Notice of Proposed Construction or Alteration in accordance with instructions therein. A subsequent Determination by the FAA stating that the structure exceeds any federal obstruction standard of 14 CFR Part 77, Subpart C for any structure that is located within a 10-nautical-mile radius of the geographic center of a public-use airport or military airfield in Florida will be required to submit

information for an Airspace Obstruction Permit from the Florida Department of Transportation or variance from local government depending on the entity with jurisdictional authority over the site of the proposed structure. The FAA Determination regarding the structure serves only as a review of its impact on federal airspace and is not an authorization to proceed with any construction. However, FAA recommendations for marking and/or lighting of the proposed structure are made mandatory by Florida law. For a site under Florida Department of Transportation jurisdiction, application will be made by submitting Florida Department of Transportation Form 725-040-11, Airspace Obstruction Permit Application, in accordance with the instructions therein.

B. Best Management Practices

1. Traffic control during facility construction and maintenance will be subject to the standards contained in the Manual on Uniform Traffic Control Devices; Rule Chapter 14-94, Statewide Minimum Level of Service Standards, F.A.C.; Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operation on the State Highway System; Florida Department of Transportation's Standard Specifications for Road and Bridge Construction; and Florida Department of Transportation's Utility Accommodation Manual, whichever is more stringent.

2. It is recommended that FPL encourage transportation demand management techniques by doing the following:

- a. Placing a bulletin board on site for car pooling advertisements.
- b. Requiring that heavy construction vehicles remain onsite for the duration of construction to the extent practicable.

3. If FPL uses contractors for the delivery of any overweight or overdimensional loads to the site during construction, FPL should ensure that its contractors adhere to the necessary standards and receive the necessary permits required under Chapter 316, F.S., and Rule Chapter 14-26, Safety Regulations and Permit Fees for Overweight and Overdimensional Vehicles, F.A.C.

XXIX. Citations: Chapters 14-26, 14-46, 14-86, 14-94, 14-96, and 14-97, F.A.C.; Chapter 316, F.S. (2006); Sections 337.401-404, F.S. (2006); 14 C.F.R. Part 77.

XXX. SARASOTA COUNTY

A. Crossing of Sarasota County ROW or Other County Property

All lines crossing Sarasota County right-of-way and/or other county property will be designed for compliance with applicable county standards, as found in the Sarasota County ROW Use Permit Application Form.

B. Traffic Operations

1. FPL shall minimize the impacts of the transmission lines on intersection improvement projects to the extent practicable. All transmission line poles should be located outside of the ultimate configuration for all currently designed and acquired future signalized intersections. Potentially impacted intersections in the corridor are listed below:

- University Blvd at Lorraine Road
- Fruitville Rd at Dog Kennel Rd.

2. To the extent practicable FPL shall minimize impact to Sarasota County lighting improvement project for the future thoroughfare "Bee Ridge/Iona Extension" (currently Lorraine Rd) and, upon request of the County, confer with Sarasota County.

3. If any construction is within two feet of the edge of travel way, a signed, sealed, site specific Maintenance of Traffic (MOT) plan shall be developed in consultation with the Sarasota County Traffic Engineering and Operations office. The MOT plan shall include construction entrances and exits.

C. Construction

1. A post-certification submittal of FPL's final design plan including pole locations throughout the entire right-of-way within Sarasota County shall be provided to the Sarasota County Permitting and Inspection Services.

2. Sarasota County Resource Protection shall, for informational purposes, receive copies of the Post Certification Submittals identified in Conditions XX(A) and XXI(A)(1) for the portions of the transmission line within Sarasota County.

D. Heritage Ranch Conservation Easement

For the portion of the line located within the Heritage Ranch Conservation Easement, FPL shall be bound by the Utility Easement granted to FPL by Sarasota County.

XXX. Citations: Sarasota County Code, Ordinance No. 2007-028, Chapters 74, 94, 122 and Appendix A.

XXXI. MANATEE COUNTY

A. Final Design Submittal

1. A post-certification submittal of FPL's final design plan including pole locations throughout the entire right-of-way within Manatee County shall be provided to Manatee County showing:

- a. All protected trees over 4" dbh to be removed outside the FPL ROW for the transmission line, access road and drainage installation. Protection measure for trees proposed for preservation shall be detailed.
- b. Contractor information, including a twenty-four hour, seven-day contact and phone numbers.
- c. Show the location of any proposed school or park sites within one-quarter mile of the transmission line location on the final design plan.
- d. Proposed locations and dimensions of all access roads.

2. Show as existing site conditions within the FPL ROW on the final design plan the following:

- a. The name, location and width of existing or platted street public right-of-way within or contiguous to the right-of-way.
- b. Approximate location, size and depth of sewers, water mains and storm drains, and approximate location of power and phone lines; within the right-of-way.
- c. Location and size of easements for all the above ground utilities, such as electric power lines, within the right-of-way.
- d. Topographic contours on one-foot intervals based on mean sea-level datum.

B. Crossing of Manatee County ROW or Other County Property

All lines crossing Manatee County ROW or other county property will be designed for compliance with applicable county standards, as found in the Manatee County ROW Use Permit Application Form.

C. Collocation within Regional Water Supply System.

FPL shall confer with Manatee County, upon the County's request, to discuss the ability to co-locate the proposed Peace River/Manasota Regional Water Supply Authority Regional Integrated Loop System within the proposed transmission line right-of-way. (Ref. proposed Integrated Regional Water Supply Master Plan, December 2006, Appendix 0).

D. Public Recreational Trails.

FPL shall confer with Manatee County, upon the County's request, to discuss the ability to co-locate public recreational trails within the proposed transmission line right-of-way.

XXXI. Citations: Manatee County Code §2-28-21 and Appendix A thereto; Manatee County, ordinance No. 06-13 amending the Manatee County Comprehensive Plan initially adopted by Ordinance No. 89-01 as amended.

Attachment 1: Certified Corridor Location Map

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of the 7th day of November, 2007 by and among the following individuals and entities (each being a "Party" and collectively being the "Parties"):

1. Florida Power and Light Company ("FPL")
2. Schroeder-Manatee Ranch, Inc. ("SMR")
3. Lake Club Investors, LLC ("LCI")
4. Gum Slough Preservation Foundation, Inc. ("GSPF")
5. Manasota-88, Inc. ("Manasota 88")
6. Taylor and Fulton, Inc. ("Taylor")
7. Myakka Ranch Holdings, LLC ("Myakka Ranch")
8. FC, LLC ("FC")
9. Kittie L. Chapman ("Chapman")
10. John Cannon Homes-Eastmoor, LLC ("Cannon")
11. Schwartz Farms, Inc. ("Schwartz Farms")
12. Michael D. and Joanne Schwartz ("Schwartz")
13. Sarasota One, LLC ("Sarasota One")
14. East County Homeowners Organization, Inc. ("ECHO")
15. Hi-Hat Ranch, LLLP ("Hi Hat")

WHEREAS, the Parties are parties to that certain proceeding (the "Case") under Transmission Line Siting Application No. TA07-14, DOAH Case No. 07-105TL; OGC Case No. 07-1126; and

WHEREAS, the Parties wish to document in this Agreement the actions that they will take in an attempt to resolve the Case;

NOW, THEREFORE, in consideration of the benefits that each Party perceives may accrue to it from such a resolution of the Case, the undersigned Parties do hereby agree as follows:

1. The Parties shall as soon as possible jointly execute and file a motion requesting that the Administrative Law Judge in the Case extend the deadline for filing of alternate corridors to November 26, 2007.

2. If the foregoing motion is granted, SMR shall prepare and file, and the Parties agree to support, an alternate corridor application (the "Consensus Application") for a corridor (the "Consensus Corridor") that is identical to, and incorporates by reference, the FPL Preferred Corridor and the Taylor & Fulton #2 Alternate Corridor (as defined in the Case pleadings) except in the respects identified below. FPL shall cooperate with SMR in the preparation of the Consensus Application, making available information and materials in its possession or under its control relevant to the Consensus Corridor and making available FPL personnel and consultants to assist in preparation of the

Consensus Application. Upon request, any Party to this Agreement may review a current draft of the Consensus Application and submit comments for consideration. SMR and FPL shall, in cooperation and consultation with any Party who has submitted additional comments, jointly review and approve the contents of the Consensus Application prior to its filing. SMR shall use its best efforts to complete the Consensus Application so that it can be filed prior to the deadline set by the Administrative Law Judge, and thereafter shall promptly provide any additional information required to obtain a completeness determination. No Party to this Agreement shall file any other alternate corridor in this proceeding.

3. The Consensus Corridor shall differ from the FPL Preferred Corridor in the following respects:

A. Approximately one-half (1/2) of a mile west of the current eastern end of University Parkway, the Consensus Corridor will depart in a southwesterly direction and follow the path of the black line on the aerial photograph attached hereto as Map #1, reuniting with the FPL Preferred Corridor at Lorraine Road near the southern boundary of the property of SMR.

B. The Taylor Alternate #2 will be utilized, provided that the portion over property of Bradenton Motorsport, Inc., may be widened to include additional property of Bradenton Motorsport, Inc., if requested by the property owner.

C. The FPL Preferred Corridor shall be narrowed as described below in paragraph 5.G.

4. Prior to resumption of the certification hearing each of the undersigned Parties shall file a written statement urging the Administrative Law Judge to recommend certification of, and the Siting Board to certify, the Consensus Corridor.

5. The Parties agree that, through their pleadings and testimony, they shall urge the Administrative Law Judge to recommend, and the Siting Board to certify, the Consensus Corridor subject to the supplemental conditions of certification set forth below. Provided that all of such supplemental conditions are imposed in substantially the form set forth below, each Party whose action is called for in any such certification condition agrees that it will perform in compliance with such condition to the extent imposed as a condition of certification on the Consensus Corridor. Such conditions are as follows:

A. The Consensus Corridor will depart from the FPL Preferred Corridor approximately one-half (1/2) of a mile west of the currently existing eastern end of University Parkway, turning southwest on an irregular course. An initial estimate of the centerline of the portion of the Consensus Corridor south of University Parkway is depicted on Map #1. For purposes of certification, the Consensus Corridor within the Heritage Ranch Conservation Easement ("HRCE") after leaving University Parkway will be 1000 feet wide centered on the

line depicted on Map #1. The final right-of-way within the HRCE will be determined after a more detailed examination of environmental and other considerations consistent with the Conditions of Certification. The Consensus Corridor will exit the HRCE at the approximate location depicted on Map #1, then hug the westerly and northerly boundaries of the HRCE (having a maximum corridor width of 750 feet, for purposes of Certification, on the outside of the HRCE boundary) until it connects to the Lorraine Road section of the Preferred Corridor, then it will follow the Preferred Corridor down to the Bobwhite substation. The Bobwhite-Manatee Transmission Line along University Parkway and on through the intersection of the Consensus Corridor with Lorraine Road will be designed to minimize visibility of the poles from adjacent existing and proposed residential areas, as reasonably achievable, by FPL consulting with SMR in developing the final right-of-way location, pole height and framing configuration in this area. FPL will use best efforts to minimize impacts on trees and surface water flow within the HRCE. That effort may include utilizing existing access roads (within and outside the Consensus Corridor) and unimproved land that can support construction equipment, installing low environmental impact at-grade roads and pads that permit surface water flow over them, and/or replacing certain existing raised bed farm roads with said at-grade roads and pads. SMR shall have the right to review and comment on FPL's plans, and FPL shall use good faith efforts to ensure that such plans do not interfere with SMR's obligations under the Habitat Management Plan for the HRCE.

B. SMR will create and record a restrictive covenant on the property cross-hatched on the attached Map #2. The covenant will prohibit the construction of any building or golf course or paved road or paved trail within the area. The covenant will be subject to review and approval by Sarasota County and Manasota-88, will include only the terms and conditions set forth in this paragraph, and will be enforceable in law or equity by Sarasota County. Promptly after execution of this agreement, SMR will retain a third-party environmental consultant to draft a conservation land management plan ("CLMP") applicable to the jurisdictional wetlands and appropriate (determined pursuant to applicable County or SWFWMD regulations) buffers in the approximate areas outlined in black on Map #2. The purposes of the CLMP shall be to ensure that the wetland systems in the areas outlined in black on Map#2 are maintained in as good or better environmental and ecological condition and functionality as they exist as of November 5, 2007. SMR will provide Manasota-88 with a copy of the draft CLMP for their review, and Manasota-88 will have 14 days to review the draft CLMP and submit their written suggestions and concerns to SMR and Sarasota County. SMR agrees to give good-faith consideration to any such written suggestions and concerns before submitting the draft CLMP to Sarasota County for approval and implementation. Contemporaneously with filing any application for modification of the CLMP, SMR will deliver a copy of such application to Manasota-88. Manasota-88 shall have the right, upon reasonable notice to SMR, to retain a third-party environmental consultant to inspect the area, accompanied by up to two (2) members of Manasota-88, at a

mutually-agreed time and to submit a report of its findings to the County. The covenant will be perpetual. For purposes of County approval of any Hamlet development plan under the Sarasota 2050 ordinance, the Parties to this Agreement agree that they do not consider the covenant to be, and will not attempt to enforce the covenant as, a pre-existing condition that would deprive SMR of any density transfer, conservation area, buffer area or other benefits available in connection with the development of the Hamlet plan.

C. SMR will add to the HRCE the property cross-hatched on the attached Map #3. Such addition will be subject to the following provisions.

(1) It is anticipated that the easterly extension of University Parkway will be located to the north of this area, but to the extent required by the applicable county, encroachments into this area may be made as needed for such project.

(2) SMR will seek permission to construct a southerly extension of Dam Road from the University Parkway extension into the land lying to the east of the cross-hatched property (thus eliminating the planned southerly extension of Dam Road from its existing terminus down through the cross-hatched area.) If Dam Road must be extended south prior to the construction of the University Parkway extension or if SMR is not permitted to build Dam Road south from the University Parkway extension, then SMR or the County may construct the Dam Road extension within the HRCE.

(3) Upon construction of the southerly Dam Road extension from the University Parkway extension, SMR will remove the existing culverted shell road that crosses Gum Slough in the cross-hatched area and restore the banks to a condition consistent with the terrain upstream and downstream of the crossing. The HRCE will be amended to include a 100-foot wide buffer along the southerly boundary of the cross-hatched area in which no row crops or citrus farming will be permitted.

D. SMR will amend the HRCE to add the area outlined on Map #4. SMR will pay any survey costs, recording fees and document stamps related to implementation of the covenants and HRCE modifications identified in paragraphs A, B, C and D. The conservation easements, amendments to the HRCE, and the restrictive covenants required by paragraphs B, C, and D shall be created and recorded so as to become legally effective within ten (10) working days after conveyance of the transmission line easement(s) by SMR to FPL. After the date hereof, unless this Agreement is terminated, SMR will not make any material changes to the areas to be subjected to additional restrictive covenants pursuant to subsections B, C, and D if such changes would be prohibited by such additional covenants when effective.

E. In recognition of the additional cost and delay incurred to implement this settlement, SMR and LCI shall, within thirty (30) days following confirmation of the ROW location by DEP Siting Coordination pursuant to Condition No. XIX(B), voluntarily convey to FPL the required transmission line

easement(s) pursuant to the terms and conditions of a separate agreement between FPL and SMR. In order to obtain the consent of Sarasota County to amend the HRCE as required hereby, SMR shall create the conservation easements and covenants specified above in conditions B, C and D and shall be responsible for using its best efforts to reach a mutually acceptable agreement with Sarasota County to implement the provisions of this Agreement, without undue economic hardship on SMR. As a condition of imposing the covenant or expanding the HRCE, SMR must receive written confirmation from the Sarasota County Commission that SMR may transfer density from lands so burdened for use in subsequent developments. FPL shall pay SMR compensation as set forth in a separate concurrent agreement between FPL and SMR.

F. In recognition of additional cost and delay incurred to implement this settlement, Taylor shall, within sixty (60) days following final certification, voluntarily convey to FPL the required transmission line and buffer easement(s) pursuant to the terms and conditions of a separate agreement between FPL and Taylor. The easement areas will include an additional buffer area approximately 200 feet in width along the southerly boundary adjacent to the Panther Ridge subdivision, as more specifically described in the separate concurrent agreement between FPL and Taylor. The agreement referenced in this paragraph F shall not be subject to paragraph 7 below.

G. From the south side of University Parkway north to the end of the existing Dam Road extension (aka Bourneside Blvd), the Bobwhite-Manatee Transmission Line will be located to the west of Dam Road and will be designed to minimize visibility of the line from adjacent existing and proposed residential areas, as reasonably achievable. FPL will consult with SMR in developing the final pole height and framing configuration in this area. From the end of the existing Dam Road extension (aka Bourneside Blvd) north to SR 70, the poles will be located a minimum of 450 feet west of the SMR/Concession joint property line.

6. Parties can make further agreements consistent with this Agreement on matters pertaining to their interests, without adverse impacts on other Parties, without the need for all Parties to this Agreement to approve such further agreements.

7. The effectiveness of this Agreement is conditioned upon obtaining all approvals of Sarasota County contemplated under this Agreement. The Parties shall cooperate to obtain such approvals and amendments as soon as possible. If the Sarasota County Commission has not adopted a resolution in support of this Agreement acceptable to FPL by the date of the Sarasota County Commission's first meeting in January 2008, FPL may terminate this agreement. If the Sarasota County Commission has not issued the approvals contemplated

under this Agreement by February 11, 2008, then FPL may terminate this Agreement.

8. All provisions of this Agreement are enforceable in law and equity by any Party to this Agreement against any other Party to this Agreement.

9. This Agreement may be executed in counterparts, which shall constitute one and the same agreement. Signatures submitted by facsimile transmission shall be deemed original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

FLORIDA POWER AND LIGHT COMPANY

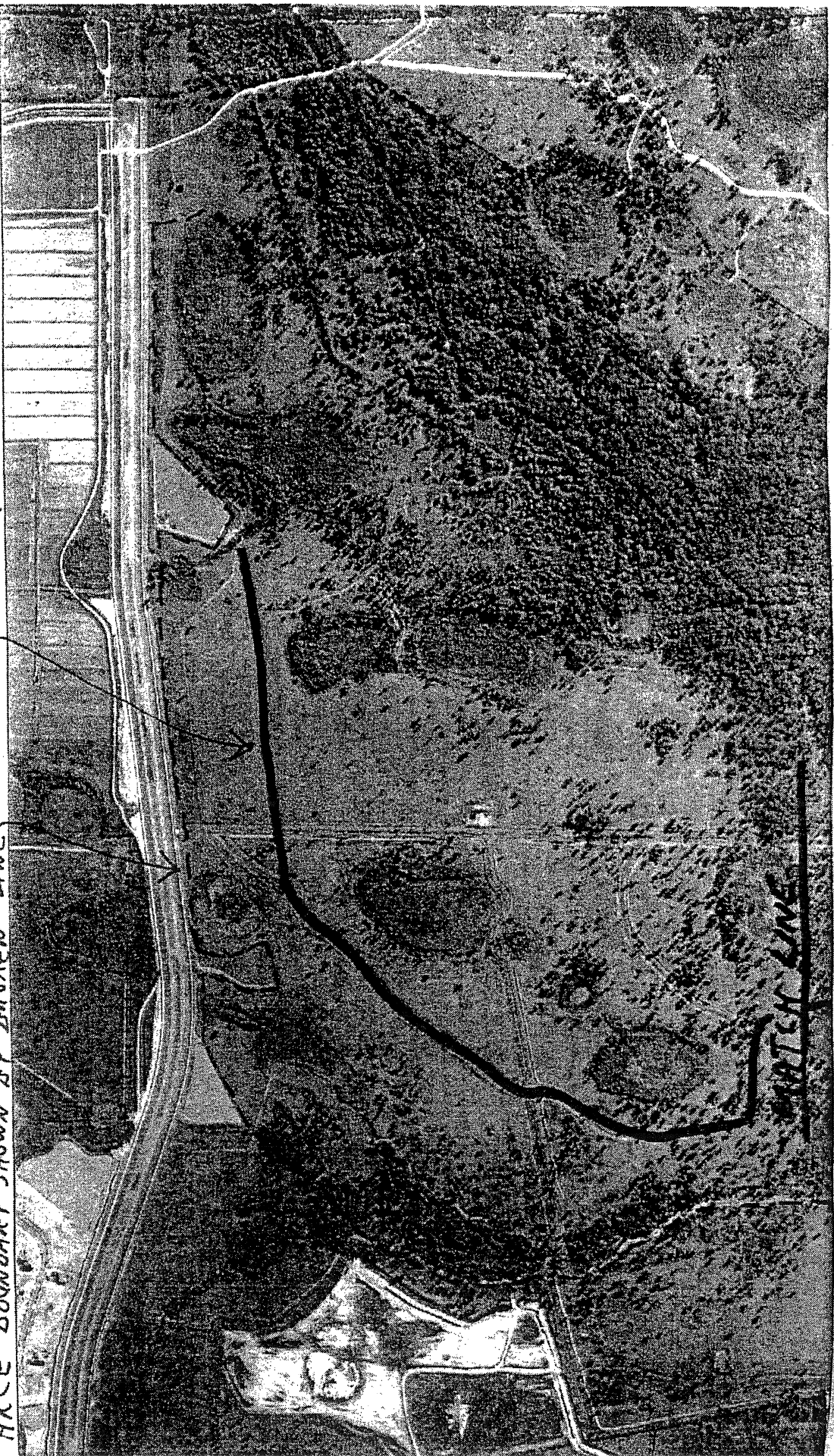
By: James A. Keener

Name: JAMES A. KEENER

Title: V.P. TRANSMISSION & Substation

MAP #1 PAGE 1 OF 2

CONSENSUS CORRIDOR CENTERLINE SHOWN BY SOLID LINE
HRCCE BOUNDARY SHOWN BY BROKEN LINE

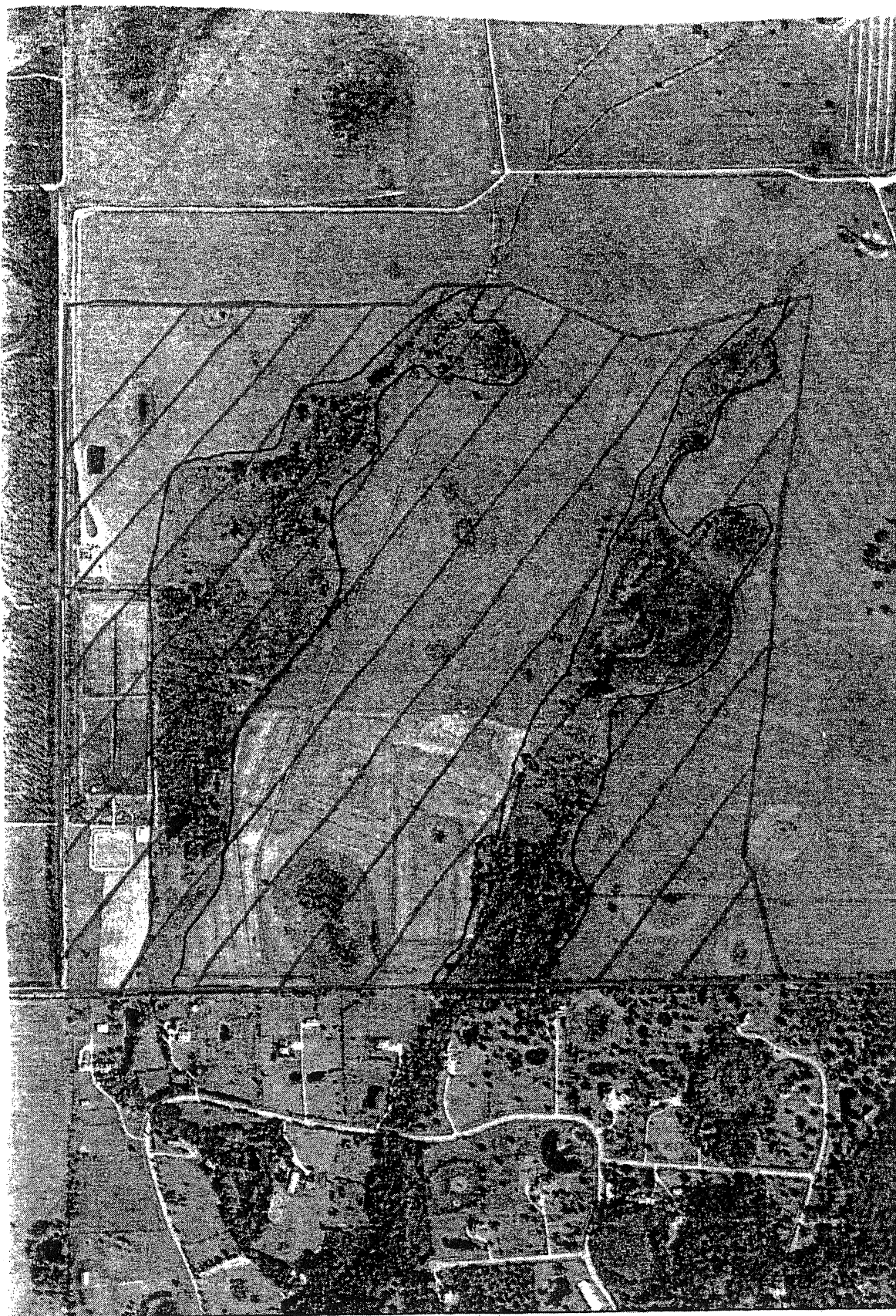


MATCH LINE

MAP #1
PAGE 2 OF 2

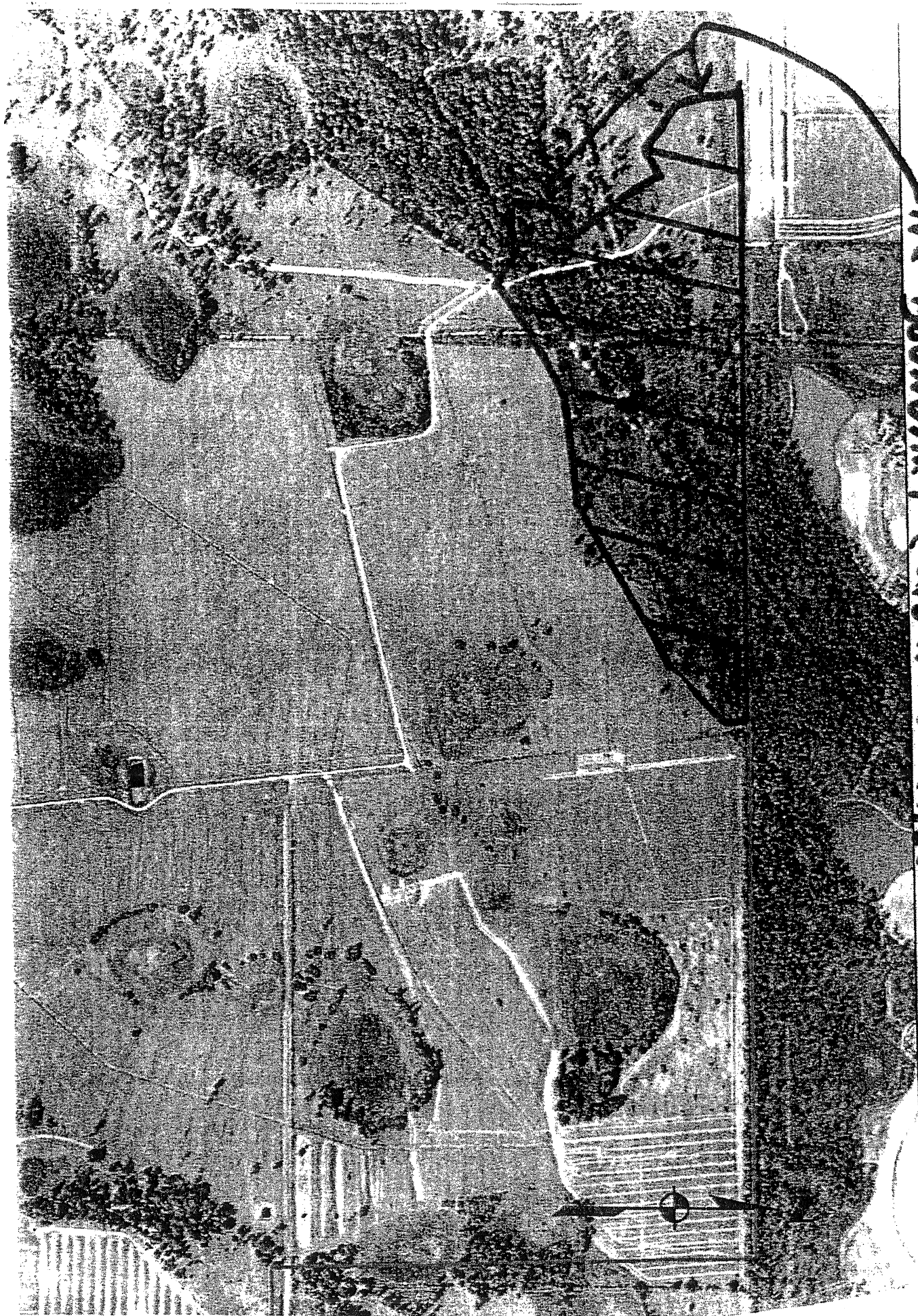


2



3

NE BOUNDARY EXISTING EASEMENT



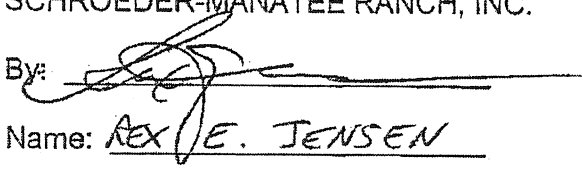
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CONSERVATION
EASEMENT
ADDITION



SETTLEMENT AGREEMENT

SCHROEDER-MANATEE RANCH, INC.

By: 

Name: ALEX E. JENSEN

Title: PRESIDENT

LAKE CLUB INVESTORS, LLC

By its Manager, JCAG Management, LLC

By: _____

Name: _____

Title: _____

SETTLEMENT AGREEMENT

SCHROEDER-MANATEE RANCH, INC.

By: _____

Name: _____

Title: _____

LAKE CLUB INVESTORS, LLC

By its Manager, JCAG Management, LLC

By: Andrew M. Gardner

Name: Andrew M. Gardner

Title: Manager

SETTLEMENT AGREEMENT

GUM SLOUGH PRESERVATION FOUNDATION, INC.

By: Robert Schettel Wright

Name: ROBERT SCHELTEL WRIGHT

Title: ATTORNEY

SETTLEMENT AGREEMENT

MANASOTA-88, INC.

By: Barbara L. Hines

Name: Barbara L. Hines

Title: Attorney

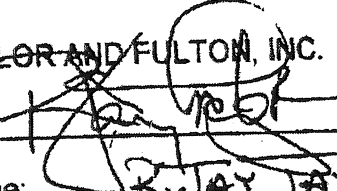
11/06/2007 16:27 FAX 941 723 2969

TAYLOR & FULTON

002/002

SETTLEMENT AGREEMENT

TAYLOR AND FULTON, INC.

By: 

Name: R. JAY TAYLOR

Title: PRESIDENT

Received Time Nov. 6. 3:20PM

SETTLEMENT AGREEMENT

MYAKKA RANCH HOLDINGS, LLC

By: 

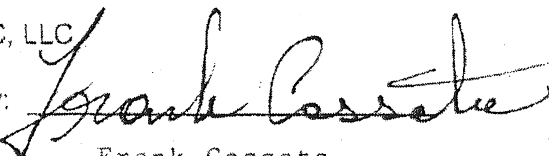
Name: Patrick K. Neal

Title: Manager

SETTLEMENT AGREEMENT

FC, LLC

By:

A handwritten signature in dark ink, appearing to read "Frank Cassata", is written over a horizontal line.

Name: Frank Cassata

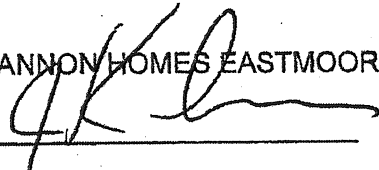
Title: Manager

SETTLEMENT AGREEMENT

Robert Steffel Wright, attorney for
KITTIE L. CHAPMAN

SETTLEMENT AGREEMENT

JOHN CANNON HOMES EASTMOOR, LLC

By: _____

Name: John K. Cannon

Title: Managing Member

SETTLEMENT AGREEMENT

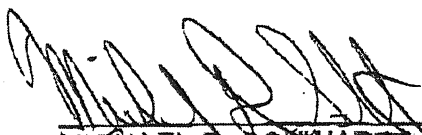
SCHWARTZ FARMS, INC.

By: 

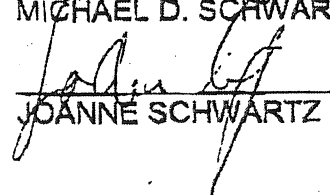
Name: Michael Schwartz

Title: President

SETTLEMENT AGREEMENT



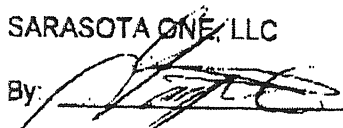
MICHAEL D. SCHWARTZ



JOANNE SCHWARTZ

SETTLEMENT AGREEMENT

SARASOTA ONE, LLC

By: 

Name:

GARY T. WEISMAN

Title:

MANAGING DIRECTOR

SETTLEMENT AGREEMENT

EAST COUNTY HOMEOWNERS ORGANIZATION, INC.

By: Robert Scheffel Wright

Name: ROBERT SCHEFFEL WRIGHT

Title: ATTORNEY

SETTLEMENT AGREEMENT

HI-HAT RANCH, LLLP

By: Robert Schettel Wright

Name: ROBERT SCHEFFEL WRIGHT

Title: ATTORNEY