



COUNTY ATTORNEY'S OFFICE
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Robert A. McMillan, County Attorney

FROM: Al Schwarz, Assistant County Attorney *AS*
Ext. 5736

CONCUR: Pam Hastings, Administrative Manager/Public Works Department
David V. Nichols, P.E./Principal Engineer/Engineering Division *DVN*
3-31-06

DATE: April 4, 2006

SUBJECT: Easement Holder:
Florida Power Corporation d/b/a Progress Energy Florida, Inc.
Bunnell Road improvement project
Parcel No. 151
Seminole County v. Allen, et al
Case No. 2005-CA-2194-13-G

This Memorandum requests approval by the Board of County Commissioners (BCC) and execution by the Chairman of a Subordination of Utility Interests agreement with respect to the Easement and Distribution Easement interest of Florida Power Corporation d/b/a Progress Energy of Florida, Inc. "PEC", relating to Bunnell Road particularly Parcel No 151. The referenced parcel has been acquired by Order of Take.

The BCC adopted Resolution Nos. 2004-R-72 on April 13, 2004, 2005-R-124 on July 26, 2005, and 2005-R-163 on September 13, 2005, authorizing the acquisition of Parcel No. 151 and finding that the Bunnell Road improvement project is necessary and serves a public purpose and is in the best interests of the citizens of Seminole County.

PEC has signed and tendered a recordable instrument, entitled Subordination of Utility Interests for filing in the land records. Please see location map attached as Composite Exhibit A and a copy of the Subordination agreement attached as Composite Exhibit B.

PEC's interest in the referenced property includes an Easement for construction, operation and maintenance of overhead and underground electric utility facilities. PEC has agreed to provide the subordination of its easement interest without charge. This will also preclude PEC's involvement in the referenced case.

AHS/krc

Attachments:

Composite Exhibit A - Location Map

Composite Exhibit B - Subordination Agreement

P:\USERS\KCURRY\MY DOCUMENTS\MEMORANDUMS\AGENDA ITEM\AGENDA ITEM BUNNELL ROAD *5* KIRK PEC SUBORDINATION.DOC

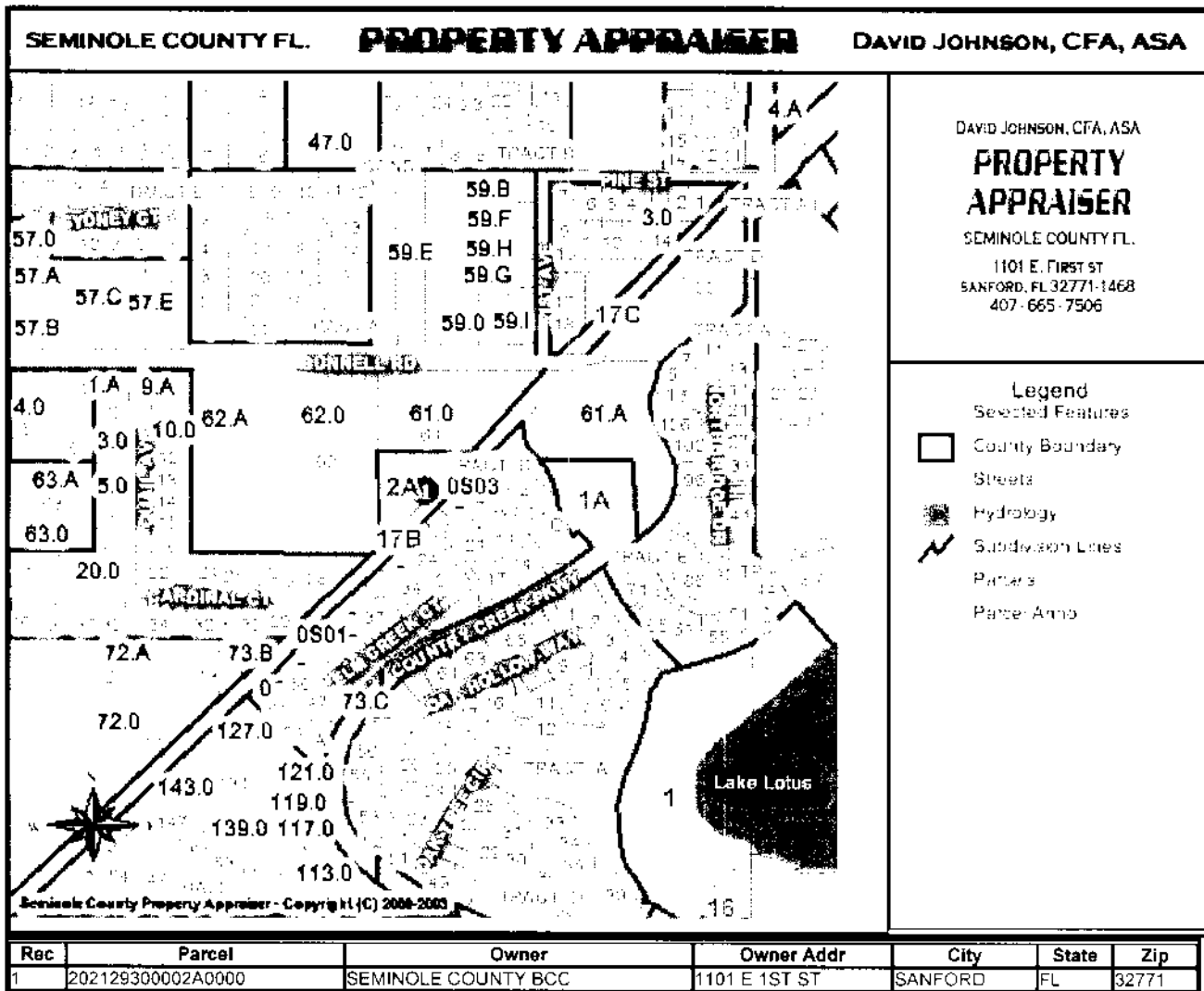


EXHIBIT A

SUBORDINATION OF UTILITY INTERESTS

THIS AGREEMENT, entered into this _____ day of _____, 2006, by and between FLORIDA POWER CORPORATION d/b/a PROGRESS ENERGY FLORIDA, INC., whose address is 100 Central Avenue, St. Petersburg, Florida 33701, hereinafter referred to as the "COMPANY", and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY".

WITNESSETH:

WHEREAS, the COMPANY presently has an interest in certain lands that have been determined necessary for use as right-of-way for additional traffic lanes and improved drainage facilities on **Bunnell Road**; and

WHEREAS, the proposed use of these lands for use as right-of-way for additional traffic lanes and improved drainage facilities purposes on **Bunnell Road** will require subordination of the interest claimed in such lands by the COMPANY to the COUNTY; and

WHEREAS, the COUNTY is willing to pay to have the COMPANY's facilities relocated, if necessary, or to replace COMPANY's easement with new easement encumbering different lands if necessary, to prevent conflict between the facilities so that the benefits of each may be retained,

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, the COMPANY and the COUNTY agree as follows:

THE COMPANY subordinates any and all of its interest in the lands described as follows:

**Fee Simple
Parcel No. 151**

Bunnell Road

A part of the property described in Official Records Book 3948, Page 604 as recorded in Public Records of Seminole County, Florida, being that portion of Section 20, Township 21 South, Range 29 East.

described as follows:

COMMENCE at the Northwest corner of Lot 61, McNeil's Orange Villa according to the plat thereof as recorded in Plat Book 2, Pages 99 and 100, Public Records of Seminole County, Florida; thence South 00°16'10" West, a distance of 296.82 feet along the West line of said Lot 61 to a point 338.00 feet North of the Southwest corner of the Northeast ¼ of the

EXHIBIT B

Northeast ¼ of Section 20, Township 21 South, range 29 East and the POINT OF BEGINNING; thence South 89°30'55" East, a distance of 308.56 feet along the North Line of the South 338.00 feet of the Northeast ¼ of the Northeast ¼ of said Section 20 to the West Right-of-Way line of the Seaboard Coastline Railroad and a point on a non-tangent curve concave Northwesterly having a radius of 5880.35 feet, a central angle of 03°41'18" and a chord of 378.48 feet that bears South 45°13'50" West; thence Southwesterly along the arc of said curve, a distance of 378.54 feet to the point of tangency; thence continuing along said Right-of-Way line South 47°04'30" West, a distance of 56.40 feet to the West line said Northeast ¼ of the Northeast ¼ of Section 20; thence North 00°16'10" East along said West line, a distance of 307.57 feet to the POINT OF BEGINNING.

Containing 48,563 square feet (1.11 Acres), more or less.

Parcel I.D. No.: 20-21-29-300-002A-0000

to the interest of the COUNTY, its successors, or assigns, for the purpose of constructing, improving, maintaining and operating a road, including drainage facilities, over, through, upon, and/or across such lands, including, but not limited to, the claim of interest based on the following:

NATURE OF ENCUMBRANCE	DATE	FROM OR AGAINST	IN FAVOR OF	RECORDED BOOK/PAGE
Easement <i>TK</i>	03/01/79	Guardian Mortgage Investors	Florida Corporation Progress Florida, Inc. Power d/b/a Energy	1215/0999

PROVIDED that the COMPANY has the following rights:

1. The COMPANY shall have the right to construct, operate, maintain, remove, and relocate facilities on, within, and upon the lands described herein. Any new construction or relocation of facilities within the lands will be subject to prior approval by the COUNTY's Engineer.

2. The COMPANY shall have a reasonable right to enter upon the lands described herein for the purposes outlined in Paragraph 1 above, including the right to trim such trees, brush, and growth which might endanger or interfere with such facilities, provided that such rights do not interfere with the operation and safety of the COUNTY's facilities.

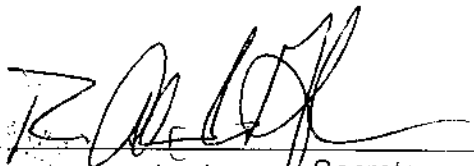
3. The COMPANY agrees to repair any damage to COUNTY facilities and to indemnify the COUNTY against any loss or damage resulting from the COMPANY exercising its rights outlined in Paragraphs 1 and 2 above.

4. Should the COUNTY require the COMPANY to alter, adjust, or relocate its facilities located within said lands, the COUNTY hereby agrees to pay the cost of such alteration, adjustment or relocation, including, but not limited to the cost of acquiring appropriate replacement easements. Any relocation, alteration or removal of COMPANY'S facilities not required by the COUNTY shall be performed at COMPANY'S sole cost and expense.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

ATTEST: R. Alexander Glenn

FLORIDA POWER CORPORATION
d/b/a PROGRESS ENERGY FLORIDA, INC.


Assistant, Secretary

By: 
Sarah S. Rogers, Vice President

(CORPORATE SEAL)

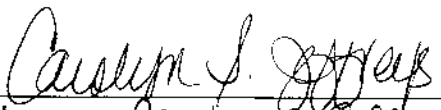
Date: 3-13-06

STATE OF NC
COUNTY OF Wake

3300 Exchange Place
Lake Mary, Florida 32746



I HEREBY CERTIFY that, on this 13th day of March, 2006, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Sarah S. Rogers, and R. Alexander Glenn, as Vice President and Secretary, respectively, of FLORIDA POWER CORPORATION d/b/a PROGRESS ENERGY FLORIDA, INC., a corporation organized under the laws of the State of Florida, who are personally known to me or who have produced + NCCL as identification. They acknowledged before me that they executed the foregoing instrument as such officers in the name and on behalf of the corporation, and that they also affixed thereto the official seal of the corporation.


Print Name Carolyn S. Jeffreys
Notary Public in and for the County
and State Aforementioned
My commission expires: 4/24/06

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON D. HENLEY, CHAIRMAN

Date: _____

For the use and reliance of
Seminole County only. Ap-
proved as to form and legal
sufficiency.

As authorized for execution by the Board
of County Commissioners at its _____
2006, regular meeting.

County Attorney

HMB/krc
10/27/05

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