


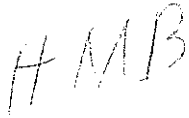
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MEMORANDUM

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney 

FROM: Henry M. Brown, Assistant County Attorney 

DATE: June 23, 2004

RE: Easement Holder: Progress Energy Corporation
Owner: Seminole County
Lake Drive Project
Parcel Nos. 168, 768 and 765
Seminole County v. Elliott, et al.
Case No. 2004-CA-561-13-W

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 interests of Progress Energy Corporation ("PEC") relating to Lake Drive, particularly Parcel Nos. 168, 768, and 765. These parcels were acquired by the County by virtue of an order of taking and deposit.

The BCC adopted Resolution No. 2003-R-133, on August 26, 2003, authorizing the acquisition of parcels on Lake Drive, and finding that the Lake Drive road improvement project was necessary and serves a public purpose and is in the best interests of the citizens of Seminole County.

PEC has executed a recordable instrument, entitled Subordination of Utility Interests. County staff requests that the BCC accept and execute this Subordination of Utility Interests for filing in land records. A copy of the subordination agreement is attached as Exhibit A.

PEC's interests in the referenced property are easements for distribution of power and maintenance of power poles and lines. PEC has provided the subordination of its easement interests without charge. This agreement will allow PEC to be dropped as a party in the *Elliott* case relating to Parcel Nos. 168, 768 and 765.

HMB/sb
Exhibit A - Copy of Subordination Agreement

SUBORDINATION OF UTILITY INTERESTS

THIS AGREEMENT, entered into this _____ day of _____, 2004, by and between **PROGRESS ENERGY CORPORATION f/k/a FLORIDA POWER CORPORATION**, whose address is 100 Central Avenue, St. Petersburg, Florida 33701-4306, 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 **LAKE DRIVE**; and

WHEREAS, the proposed use of these lands for use as right-of-way for additional traffic lanes and improved drainage facilities purposes on **LAKE DRIVE** 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 easements with new easements 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.: 168
TAX I.D. NO.: 09-21-30-5BM-0B00-0270

A part of Lot 27, Block "B", Sportsman's Paradise, according to the plat thereof recorded in Plat Book 8, pages 12 and 13 and a part of that parcel of land described in Official Record Book 992, page 952 as recorded in the Public Records of Seminole County, Florida, being that portion of Section 10, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Begin at the Southeast corner of Lot 27, Block "B" of Sportsman's Paradise, according to the Plat thereof, as recorded in Plat Book 8, pages 12 and 13, Public Records of Seminole County, Florida; thence S52°35'02"W along the South line of said Lot 27 a distance of 99.89 feet to the Southwest corner of said Lot 27; thence N37°22'42"W along the West line of said Lot 27 a distance of 6.14 feet; thence, departing said West line, run N56°06'09"E a distance of 100.07 feet to the Point of Beginning.

Containing 307 square feet, more or less.

AND

TEMPORARY CONSTRUCTION EASEMENT

PARCEL NO.: 768

TAX I.D. NO.: 09-21-30-5BM-0B00-0270

A part of Lot 27, Block "B", Sportsman's Paradise, according to the plat thereof recorded in Plat Book 8, pages 12 and 13 and a part of that parcel of land described in Official Record Book 992, page 952 as recorded in the Public Records of Seminole County, Florida, being that portion of Section 10, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Begin at the Southeast corner of Lot 27, Block "B" of Sportsman's Paradise, according to the Plat thereof, as recorded in Plat Book 8, pages 12 and 13, Public Records of Seminole County, Florida; thence run S56°06'09"W, a distance of 38.21 feet; thence N36°39'06"W, a distance of 31.64 feet; thence, run N52°29'26"E, a distance of 37.73 feet to Northeast line of said Lot 27; thence run S37°23'24"E along said Northeast line a distance of 34.04 feet to the Point of Beginning.

Containing 1246 square feet, more or less.

Parcel No.: 168/768/765
Lake Drive
Seminole County, Florida

PARCEL NO.: 765
TAX I.D. NO.: 09-21-30-5BM-0B00-0290
09-21-30-5BM-0B00-029A
09-21-30-5BM-0B00-0300

A part of Lots 29 and 30, Block "B" of Sportsman's Paradise, according to the plat thereof as recorded in Plat Book 8, Pages 12 and 13 of the Public Records of Seminole County, Florida, lying in Section 9, Township 21 South, Range 30 East, Seminole County, Florida,

described as follows:

Begin at the Southeast corner of said Lot 29, Block "B" of Sportsman's Paradise, said point being on the existing Northerly right of way line of Seminola Boulevard according to said plat of Sportsman's Paradise; thence S52°35'02"W along said Northerly right of way line a distance of 29.63 feet; thence departing said Northerly right of way line run N02°18'08"E a distance of 35.11 feet; thence N52°35'41"E a distance of 33.00 feet; thence S77°10'25"E a distance of 35.29 feet to a point on the aforesaid existing Northerly right of way line of Seminola Boulevard, said point also being a point on a non-tangent curve concave Southeasterly, having a radius of 1985.08 feet and a chord bearing of S52°54'40"W; thence run Southwesterly along the arc of said curve and said Northerly right of way line through a central angle of 00°39'15" a distance of 22.66 feet to the point of tangency; thence run S52°35'02"W and continue along said Northerly right of way a distance of 25.71 feet to the Point of Beginning.

Containing 1,498 square feet, more or less.

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 |
|-----------------------|----------|--|---|--------------------|
| Distribution Easement | 7/15/70 | Stuart Antis and Elayne Antis, his wife | Progress Energy Corporation f/k/a Florida Power Corp. | 789/611 |
| Distribution Easement | 10/17/83 | Peter S. Elliott and Louise B. Elliott, husband and wife | Progress Energy Corporation f/k/a Florida Power Corp. | 1512/0329 |
| Distribution Easement | 6/21/85 | Seminole Commerce Center II | Progress Energy Corporation f/k/a Florida Power Corp. | 1842/1734 |

PROVIDED that the COMPANY has the following rights:

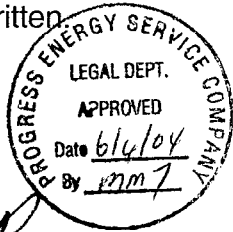
1. The COMPANY shall have the right to construct, operate, maintain, remove, and relocate facilities on, within, and upon the lands described herein. Any new construction or relocation of facilities within the lands will be subject to prior approval by the County Engineer of Seminole County.
2. The COMPANY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

Parcel No.: 168/768/765
Lake Drive
Seminole County, Florida

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:

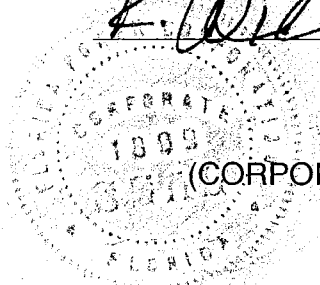


PROGRESS ENERGY CORPORATION f/k/a
FLORIDA POWER CORPORATION

[Signature]
, Secretary

By: [Signature]
Print name: _____
as its Vice President

Date: June 14, 2004



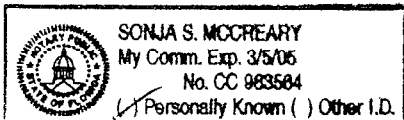
(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

I HEREBY CERTIFY that, on this 14th day of June, 2004, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Sarah S. Rogers, and _____ as Vice President and _____ Secretary, respectively, of Progress Energy Florida, a corporation organized under the laws of the State of Florida, who are personally known to me or who have produced _____ 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.

(NOTARY SEAL)

[Signature]
Print Name: Sonja S. McCreary
Notary Public in and for the County
and State Aforementioned
My commission expires: 3-5-05



Parcel No.: 168/768/765
Lake Drive
Seminole County, Florida

ATTEST:

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

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

By: _____
DARYL G. MCLAIN, 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 _____
2004, regular meeting.



County Attorney

HMB/sb
05/19/04