

TurkeyPointCEm Resource

From: Rodgers, Frances (RER) [RodgeF@miamidade.gov] on behalf of Hefty, Lee (RER) [HeftyL@miamidade.gov]
Sent: Friday, May 22, 2015 5:57 PM
To: TurkeyPointCOLEIS Resource
Cc: Hefty, Lee (RER); Grossenbacher, Craig (RER); Otero, Luis (RER); Burzycki, Gwen (RER)
Subject: DEIS Comment Submittal from Miami-Dade County
Attachments: NFC DEIS Comment Letter May 2015 Attached Comment.pdf; 2013-11-05 - Proposed Recommended Order Filed By Miami-Dade County and NPCA.pdf; Figure 1.pdf; Figure_2.pdf

The attached correspondence is being forwarded to you on behalf of Mr. Lee N. Hefty, Regulatory and Economic Resources Assistant Director – Division of Environmental Resources Management (RER-DERM).

Frances Rodgers, Senior Executive Secretary
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As part of improving efficiency in our delivery of services to the businesses and residents of Miami-Dade County, the Department of Environmental Resources Management (DERM), and the County's Building, Consumer Services, Economic and Business Development, and Planning and Zoning functions have been merged to form the **Miami-Dade County Department of Regulatory and Economic Resources (RER)**. Please look for us under our new name.

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May 22, 2015

Ms. Cindy Bladey, Chief
Rules, Announcements, and Directives Branch
Division of Administrative Services
Office of Administration
Mail Stop: OWFN-12-H08
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Draft EIS for Combined Licenses for Proposed Turkey Point Nuclear Plant Units 6 and 7;
Docket ID NRC-2009-0337

Dear Ms. Bladey:

Miami-Dade County appreciates the opportunity to comment on the Draft Environmental Impact Statement (DEIS) for the Combined License for Proposed Turkey Point Units 6 & 7. The attached comments and questions are organized by topic.

Please contact Craig Grossenbacher at (305) 372-6522 if you have any questions regarding our comments.

Sincerely,

A handwritten signature in purple ink, appearing to read 'Lee N. Hefty', followed by a horizontal line.

Lee N. Hefty, RER Assistant Director
Division of Environmental Resources Management

Attachments

Delivering Excellence Every Day

TRANSMISSION CORRIDORS PROPOSED IN AND ADJACENT TO EVERGLADES NATIONAL PARK

Miami-Dade County asserts that the DEIS is inadequate with respect to the West transmission line corridor. It is our understanding that as a cooperating agency, the Army Corps of Engineers will use the EIS in their review and processing of the requisite regulatory permits for this proposed activity. However, the DEIS does not provide the Army Corps of Engineers with the information needed to support a *“decision to issue, deny, or issue with modifications a Department of the Army (DA) permit to perform certain dredge and fill activities in waters of the United States and to construct structures in navigable waters of the United States related to the project”* (DEIS Abstract, Lines 7-10). Specifically, the DEIS does not include an adequate alternatives analysis for the West transmission corridor.

Does the DEIS consider that the area of proposed impact within ENP is a designated UNESCO World Heritage Site in Danger, a Ramsar Wetland of International Importance, a Specially Protected area under the Cartagena Convention and an Outstanding Florida Water and a Miami-Dade County designated Area of Critical Environmental Concern where the proposed roads are specifically prohibited in portions of the proposed corridor?

If the Army Corps of Engineers will have to decide to issue, deny, or issue with modifications a Department of the Army (DA) permit for the portions of the West corridor that would be constructed within wetlands, shouldn't the DEIS provide all available information on what alternatives are potentially available?

Miami-Dade County requests that the NRC explain why only the West Preferred and West Consensus transmission corridors were considered as West corridor alternatives in the DEIS, when several alternatives for the West corridor were presented to the State of Florida and “all of the western alternate corridors met the criteria for certification” (State of Florida, Division of Administrative Hearings, Application No. PA 03-45A3, Florida Power & Light Company Turkey Point Units 6 & 7 Power Plant Siting Case No. 09-3575EPP, Recommended Order, Section III.C.2.d., paragraph 511). Miami-Dade County requests that the NRC explain why the DEIS does not provide information or analysis of all of the alternative corridors presented to the State of Florida, including the West Consensus and West Preferred corridors, that includes an assessment of which of these are practicable, which of the alternatives have less adverse impact on the aquatic environment, and which of the alternatives have other significant adverse environmental consequences.

Miami-Dade County requests that the DEIS be revised or a supplemental EIS performed in order to evaluate and compare all of the possible western alternate corridors that met the criteria for certification under provisions of the State of Florida Transmission Line Siting Act, and at a minimum, evaluate which of these are practicable (including which of the alternatives meet local regulatory and land use requirements), which of the alternatives have less adverse impact on the aquatic environment, and which of the alternatives have other significant adverse environmental consequences that the Army Corps of Engineers should consider.

It is Miami-Dade County's position that that the corridor submitted by the National Parks Conservation Association (NPCA) for certification by the State of Florida is the only proposed corridor other than the West Consensus corridor that could meet Miami-Dade County's strict environmental regulations for the East Everglades Area of Critical Environmental Concern. Miami-Dade County asserts that the NPCA corridor is a practicable alternative to the West Preferred corridor and has significantly less adverse impact on the aquatic environment because it does not require the construction of transmission lines and associated infrastructure within the current boundaries of Everglades National Park and because it avoids impacts to high quality wetlands in this area. This alternative therefore meets the requirements for the Section 404(b)(1) Guidelines that "no discharge of dredged or fill material into waters of the United States (including jurisdictional wetlands) shall be permitted if there is a practicable alternative that would have a less adverse impact on the aquatic environment, as long as the alternative does not have other significant adverse environmental consequences".

Miami-Dade County notes that the discussion on MDC's CDMP in Section 2.2.1.4 appears to be limited to selected policies within the Land Use Element; no references or summaries are provided for other CDMP elements. Miami-Dade County asks whether the NRC specifically considered the consistency of the proposed project with Land Use Element Policy LU-3A, which requires consistency with all elements of the CDMP, including Objectives CON-4, CON-7, and CON-9 of the Conservation, Aquifer Recharge and Drainage and Coastal Management Elements, as well as with all applicable environmental regulations; the referenced objectives and policies address protection of the aquatic environment and endangered and threatened species and consistency with the Comprehensive Everglades Restoration Program. If so, the NRC should provide citations from the DEIS where this information was presented. If the NRC did not consider the consistency of the proposed project with Land Use Element Policy LU-3A, including consistency with the referenced policies of the Conservation, Aquifer Recharge and Drainage Element, please provide an explanation for why this analysis was not performed.

Miami-Dade County requests that the NRC undertake a thorough review of the proposed project, and especially the West transmission corridor alternatives, for consistency with local land use objectives and policies and local environmental regulations prior to issuing the FEIS, and update the document conclusions accordingly. For example, how did the NRC evaluate the transmission lines for the proposed project with regards to the provisions of Land Use Element Policy LU-3A and Section 24-48.4 of the Miami-Dade County Code? This section of the Code provides for mitigation for projects that are otherwise acceptable under the evaluation factors provided in Section 24-48.3 of the Code, but that nevertheless result in adverse environmental impacts. Miami-Dade County notes that the mitigation methods elaborated in Section 24-48.4(1)-(4) of the Code must be considered in the priority order listed, and avoiding the impact altogether as provided in Section 24-48.4(1) is the first (and highest) priority, followed by minimizing impacts by limiting the degree or magnitude of the action or its implementation (Section 24-48.4(2)).

Please explain how the NRC justified consistency of the West Preferred corridor with the adopted local comprehensive plan and applicable environmental regulations, given the existence of a transmission line alternative (NPCA corridor) that has been accepted by both FPL and the State of Florida as certifiable (State of Florida, Division of Administrative Hearings, Application No. PA 03-45A3, Florida Power & Light Company Turkey Point Units 6 & 7 Power Plant Siting Case No. 09-3575EPP, Recommended Order, Section III.C.2.d., paragraph 511), does not have any fatal flaws, according to testimony presented by FPL's witness during the administrative hearings (Proposed Recommended Order filed by the National Parks Conservation Association and Miami-Dade County, State of Florida, Division of Administrative Hearings, Application No. PA 03-45A3, Florida Power & Light Company Turkey Point Units 6 & 7 Power Plant Siting Case No. 09-3575EPP, Section 11(a), Paragraph 165, attached), and which is fully consistent with Land Use Element Policy LU-3A because it meets the requirements of the Conservation, Aquifer Recharge and Drainage Element and other applicable CDMP policies, as well as Section 24-48.4(1) of the Miami-Dade County Code. The NPCA corridor avoids and minimizes adverse environmental impacts to the highest quality wetlands in the region because it: does not require that transmission lines or associated infrastructure be built within the current boundary of Everglades National Park; does not require a land swap that will reduce the overall size of Everglades National Park; avoids impacts to feeding and nesting habitat for the federally endangered snail kite by avoiding the high quality wetlands west of L-31N where feeding and nesting habitat for snail kites have been documented; and avoids impacts to the federally endangered wood stork by avoiding the 1-mile buffer zone between wood stork rookeries and high tension power lines that is recommended by the USFWS wood stork management plan. In addition, the NPCA corridor does not require the construction of transmission lines and associated road infrastructure in areas within the East Everglades Area of Critical Environmental Concern where roads are not allowed, and otherwise meets the environmental standards of Chapter 33B, Miami-Dade County Code.

AMERICAN CROCODILES AND DESIGNATED CRITICAL HABITAT

Appendix F Section 5.10 describes 270 acres of permanent loss of federally designated critical habitat for the American crocodile as a result of wetlands and surface waters that would be directly destroyed by the project and 211 acres of additional critical habitat that would be adversely affected for resident crocodiles. These impacts are being characterized in the DEIS as "unavoidable". In addition, at least one crocodile has already been killed by the project during construction of the first deep injection well for the Units 6 and 7 project according to the DEIS. Please clarify whether the USFWS has considered the cumulative impacts of this project in addition to the continuing degradation of adjacent critical habitat in and adjacent to the cooling canal system as temperatures and pollutant loads increase due to operation of Units 3 and 4.

Please be advised that MDC has issued land use approvals (Z-56-07) for this project that include consultation conditions between FPL, the USFWS and Miami-Dade County for this issue and this informal consultation was initiated. At the time, FPL agreed to the establishment of development setbacks to prevent both direct and indirect impacts to crocodile habitat and

these requirements are included within the land use approval. Has the NRC's analysis indicated any development setbacks that could reduce the acreage of impact to designated critical habitat for the crocodile? Have any other mitigation measures (beyond that proposed by the applicant) been identified through this review process, either by the NRC or USFWS to reduce these "unavoidable impacts"? An analysis of the cumulative impacts of the proposed project combined with the continuing degradation of adjacent critical habitat in and adjacent to the cooling canal system as temperatures and pollutant loads increase due to Units 3 and 4 is needed as part of this effort. MDC also requests information and clarification on the following issues:

- As part of the review for the American crocodile, have the cumulative impacts to areas adjacent to the cooling canals been considered including the continuing degradation of water quality throughout the cooling canals? For example, we understand that the USFWS has concurred with FPL that the water quality in the CCS surface water has become inappropriate for release of crocodile hatchlings due to increased salinity and temperature, and therefore all hatchlings last year were relocated to areas outside the cooling canals. Please confirm if our understanding is correct.
- Has the ongoing monitoring data on the adult crocodiles within this area been examined to determine whether there is any indication that the overall health of the adults may be decreasing or if their numbers are decreasing?

Has the NRC or FWS considered the indirect as well as cumulative impacts to the crocodile mitigation area that was required by the Army Corps for the unit 5 project? Should the degradation or loss of this habitat require mitigation since it was previously required as a regulatory action?

Pursuant to Condition 2 of Z-56-07, Miami-Dade County's Unusual Use Zoning approval for this project, MDC requests continued coordination with USFWS on the issue of the American crocodile and any required management actions or mitigation that may be required prior to finalization of the EIS.

RADIAL COLLECTOR WELLS PROPOSED ADJACENT TO BISCAYNE NATIONAL PARK

Miami-Dade County asserts that the DEIS is inadequate with respect to the proposed radial collector wellfield (RCW) that would be constructed under the tidal waters of Biscayne Bay. The Biscayne Model, discussed in Appendix G, does not accurately represent the current surface water salinity conditions of the CCS. Historic monitoring data indicate that the salinity of the surface waters of the CCS has been steadily increasing since the early 1970s and this modeling does not appear to take this fact into account. Furthermore, data from the more recently implemented Uprate monitoring indicates that the salinity of the CCS has increased even more rapidly after the uprate of the existing nuclear units (Units 3 & 4) was completed and both units returned operating back to full capacity (around May 27, 2013) reaching salinity levels that are nearly three (3) times that of seawater. The increased salinity of the CCS surface water has compromised the system's ability to reduce the water temperature so that it can be used for cooling of Units 3 & 4 and forced FPL to seek an NRC license amendment to increase the ultimate heat sink (UHS) water temperature limit for the plant's cooling canal system in July of 2014. In August of 2014, the NRC Staff approved the proposed license amendments increasing the temperature specification for the UHS from 100 °F to 104 °F. The increased salinity and temperature of the CCS have also forced FPL to seek alternative sources of water to discharge to the CCS in order to reduce the salinity and temperature of its surface waters in order to allow for the continued safe operation of the plant. The average post Uprate salinity at CCS surface water monitoring station TPSWCCS-1B between June 1, 2013 to April 30, 2015, is 76.35 PSU. Monitoring station TPSWCCS-1B is located in the vicinity of the NW corner of the CCS along canal 32, the station is equipped with water quality monitoring equipment that measures physical water parameters, including salinity, in one hour intervals. The CCS surface water salinity used for the model discussed in Appendix G was a constant 65 PSU. The use of salinity averages that underestimate the actual salinity of the CCS and that incorrectly assume that the salinity will not continue to increase over time is not appropriate as it does not simulate existing conditions and because it can lead to an underestimation of the impacts associated with CCS related issues including but not limited to salinity of the CCS groundwater plume that is mobilized by the operations of the proposed RCW.

MDC strongly emphasizes that the state certification for the Units 6 & 7 project, issued on May 19, 2013, was issued at a time when the impacts of the implementation of the Units 3 & 4 Uprate were not yet evident because some of the water quality monitoring data were either not yet available or had not yet been reviewed and analyzed. The most noteworthy issue to point out as it relates to the evaluation of the Units 6 & 7 project's proposed RCW is the significant increase in the tritium concentration at the deep well of monitoring well cluster TPGW10, which is located on Biscayne Bay slightly north and east of the Turkey Point Plant and within the cone of influence of the proposed RCW, see Figure 1. In September of 2012, tritium was identified by DEP, the SFWMD and MDC as the tracer to delineate vertical and horizontal extent of the CCS hypersaline plume. The increase in tritium concentration at TPGW-10D first became evident in the quarterly monitoring results for the June 2012 sampling, which coincides

with the time that Unit 3 was being uprated and not all circulating pumps were operating, see Figure 2 attached. MDC believes that this is a significant finding because it appears to suggest that mobilization of the CCS hypersaline plume under the bay towards the area where the RCW are proposed to be installed may have been facilitated by the reduction in operation of the CCS circulating pumps. It is important to note the results of the aquifer performance test that FPL provided in support of the proposed radial collector wells. Although FPL did not provide the types of data that MDC requested, the limited data that was provided should be carefully reviewed. Most noteworthy are the extremely high levels of sulfate detected in the monitoring wells during the test in addition to the elevated sulfate levels in the surface waters of Biscayne Bay. These data suggest that the highly contaminated water beneath the cooling canals was drawn into the surface waters of Biscayne Bay, albeit with a much lower pumping volume during the test than would be realized when the radial collector wells are in operation. Determining whether operation of the radial collector wells, which would be the largest well field in Miami-Dade County in terms of daily pumped volumes, would result in violations of applicable water quality standards in the tidal waters of Biscayne Bay including Biscayne National Park is necessary.

The results of the groundwater modeling discussed in Appendix G appear to indicate that the operation of the RCW would impact salinity in Biscayne Bay by capturing freshwater canal discharges to the bay. Specifically the last paragraph of page 35 of Appendix G concludes that *"... When the proximal canals are discharging fresh water into the bay and pumping is occurring, the pumping may capture this fresher water, preventing it from contributing to overall dilution of the bay."* Regarding water quality impacts of the RCW, It is stated on page 5-26, lines 35 to 38 of the DEIS that *"Operation of the RCWs, if and when needed during operation of Units 6 and 7 would not result in discharges to Biscayne Bay because they are used only to withdraw saltwater. Therefore, the staff determined that the impact of any potential changes in surface-water chemistry as a result of the use of the RCWs on Biscayne Bay water quality would be minor."* Based on this last statement it does not appear that DEIS evaluated the potential adverse impacts of operating the RCW resulting from its consumption of freshwater discharges to the bay on restoration projects aimed at reducing the salinity of Biscayne Bay through the rehydration of coastal wetlands to reestablish fresh water sheet flow patterns to the bay. One such restoration project includes the Comprehensive Everglades Restoration Plan (CERP) Biscayne Bay Coastal Wetlands project (BBCW).

It does not appear that potential adverse impacts to CERP were adequately evaluated during the DEIS process. CERP was approved by the U.S. Congress and has required and will require significant funding in the future for the implementation of the BBCW project. Therefore, the EIS should re-evaluate the impacts of the construction and operation of the proposed RCW to evaluate the project's consistency with CERP or a supplemental EIS should be performed.

Appendix G concludes in pages 38-39 that *"... If concerns regarding ecosystem or water-supply effects are of interest at a more local scale, more detailed modeling at the scale of interest incorporating processes represented in the Biscayne model, as well as additional analytical*

tools, is warranted". The appropriateness of the model is put into question by the summary of the model's limitations provided in the last paragraph of page 36 (continued into page 37).

Given the complexity of the current issues associated with the Cooling Canal System (CCS) and the uncertainty about its adverse hydrologic and other impacts, MDC believes that the recommendation for more detailed modeling is more than warranted for the EIS evaluation of the proposed RCW. The RCW in-and-of-themselves can potentially have significant hydrologic and other impacts which can likely exacerbate the existing CCS impacts. Did the NRC EIS reviewers conclude that the aforementioned recommendation for more detailed modeling was not warranted?

MDC therefore recommends that a model capable of providing a more detailed understanding of how the proposed RCW can influence the CCS hypersaline plume now and how it will influence it in the future when Units 3 & 4 are decommissioned and the CCS circulating pumps are either not operated at all or operated at a much reduced rate. This model needs a much higher resolution and needs to be able to identify source waters through particle tracking. Most importantly, any analysis that relies primarily on model output that predicts average salinities of Biscayne Bay across large areas as a surrogate for impacts is totally inadequate to examine hydrologic impacts to the aquifer and surface waters. In addition, if the model cannot determine whether water quality standards with Biscayne Bay would be violated by operation of the radial collector well field, then additional study would be warranted prior to approval either as part of this EIS or through a supplemental EIS.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: FLORIDA POWER & LIGHT COMPANY
FP&L TURKEY POINT NUCLEAR UNITS 6 & 7
PROJECT, POWER PLANT SITING APPLICATION
NO. PA03-45A3

DOAH CASE NO. 09-03575-EPP
DEP OGC CASE NO. 09-3107

PROPOSED RECOMMENDED ORDER FILED BY
THE NATIONAL PARKS CONSERVATION ASSOCIATION AND
MIAMI DADE COUNTY

Introduction

The National Parks Conservation Association (“NPCA”) and Miami-Dade County (“MDC”) present this Proposed Recommended Order in support of an ultimate determination that the FPL West Preferred, MDLPA AC-1, MDLPA AC-2, and the West Preferred/AC-2 hybrid transmission line corridors should not be certified¹ and that the alternative transmission line corridors proposed by NPCA or MDLPA AC-3 should be certified with conditions.

Proposed Findings of Fact

1) The Parties

a) National Parks Conservation Association

1. The National Parks Conservation Association is a non-partisan non-profit public interest membership organization that is a leading voice of the American people in protecting and enhancing our National Park System. Pre-Hearing Stip. at 28. NPCA has over 750,000 members and supporters nationwide, and over 17,000 members in

¹ On September 16, 2013, during the final hearing, FPL announced that it had reached a stipulation with the Miami-Dade Limestone Products Association (“MDLPA”) as to a hybrid corridor combining portions of the FPL West Preferred and MDLPA AC-2 corridors. FPL 411. On October 3, 2013, during the final hearing, FPL announced on the record that it was withdrawing its request for certification of the “West Secondary Corridor.” Vol. 60 at 8344.

- Florida. Also, all parties have stipulated to NPCA's standing. *Id.* at 71; Shirreffs, Vol. 34: 4876.
2. Since 1919, NPCA has worked to protect the park system and preserve our nation's national, historical, and cultural heritage for present and future generations to come. During that time, it has been, and continues to be, NPCA's mission and function to influence governmental action in a manner that protects the environmental and other values of national park units. Shirreffs, Vol. 34 at 4877; Pre-Hearing Stip. at 28.
 3. The business address of NPCA is 450 N. Park Road, Suite 301, Hollywood, Florida 33021. Shirreffs, Vol. 34 at 4877.
 4. NPCA and its members regularly advocate for the protection of Everglades National Park and their natural, cultural, and recreational resources. Pre-Hearing Stip. at 28.
 5. A substantial number of NPCA members reside in Miami-Dade County. *Id.*
 6. NPCA members in Miami-Dade County and nationwide regularly take advantage of opportunities to visit Everglades National Park and to access their facilities and resources for personal, professional, and aesthetic reasons. *Id.*
 7. NPCA members feel very strongly that the national parks are the property of the American people and that for-profit utility power lines are not an appropriate use for a national park and are not in compliance with the Organic Act's fundamental rule of maintaining an unimpaired national park. Shirreffs, Vol. 34 at 4892-4893.
 8. The Organic Act's purpose is to conserve national parks, conserving their scenery and the natural and historic objects and the wildlife therein. *Id.* at 4853; NPCA 11. This is to provide the unimpaired enjoyment of national parks to future generations. *Id.*

9. NPCA intervenes in this action on its own institutional behalf, and also on behalf of its members, who have regularly, and will continue to, hike, fish, birdwatch, and otherwise enjoy the natural beauty and abundance of wildlife in the Everglades ecosystem, including wildlife that utilize critical wetlands and the surrounding area that would be impacted by current proposed transmission corridors. Pre-Hearing Stip. at 71.
10. NPCA became aware of this proceeding in 2009 through counsel after the Division of Administrative Hearings published FPL's submittal of its Site Certification Application to the Department of Environmental Protection in July 2009. *Id.* at 2. NPCA is an Intervenor in a related proceeding before the Atomic & Safety Licensing Board of the Nuclear Regulatory Commission, regarding FPL's application for a "combined license" for Units 6 & 7. *In the Matter of Florida Power & Light Company, Combined License Application for Turkey Point Units 6 & 7*, Docket Nos. 52-040 and 52-041, ASLBP No. 10-903-02-COL-BD01.
11. The action that is the subject of this proceeding is Florida Power & Light's proposal to site transmission lines within the existing boundary of Everglades National Park, constructing two 500-kilovolt (kV) single-circuit transmission lines and one 230-kV single-circuit transmission line using 135- to 150-ft-tall concrete poles directly embedded into the ground, with span lengths of 1,000 feet for the 500-kV lines, and 250-750 feet for the 230-kV line. Pre-Hearing Stip. at 66-67.
12. The ability of NPCA and its members to engage in educational and recreational activities in this area would be injured by the construction of current proposed transmission corridors in Everglades National Park. *Id.* at 28.

13. NPCA's substantial interest will be affected because current proposed transmission corridors are incompatible with the designated purpose of Everglades National Park, and with long-term Everglades restoration initiatives. *Id.* A transmission corridor in or adjacent to Everglades National Park will have negative impacts to natural systems, plant and animal populations, hydrology, and the character and integrity of the National Park. *Id.*

b) Miami-Dade County

14. Miami-Dade County is a political subdivision of the State of Florida. MDC is a statutory party to this Power Plant Siting Act certification proceeding pursuant to § 403.508(3)(a)7, Fla. Stat. On January 17, 2012, MDC submitted its Agency Report and Proposed Conditions for FPL Proposed Transmission Lines for Turkey Point Nuclear Units 6 & 7 (Transmission Line Agency Report) on the proposed transmission lines in FPL's proposed corridors associated with the Project to the DEP's Siting Coordination Office, pursuant to Section 403.507(2)(a)(2), F.S. MDC 9. On March 12, 2012, MDC submitted its Agency Supplemental Report and Proposed Conditions for the Pinecrest/Coral Gables Alternate Corridor and the Miami-Dade Limestone Products Association (MDLPA) Alternate Corridor 1. MDC 10; MDC 11. On February 1, 2013, MDC submitted its Agency Report on FPL's Proposed Turkey Point Nuclear Units 6 & 7 and Non-Transmission Associated Facilities. MDC 12. On March 22, 2013, MDC submitted its Agency Supplemental Reports and Proposed Conditions for the MDLPA AC-2, MDLPA AC-3, and National Parks Conservation Association (NPCA) Alternate Corridors. MDC 13; MDC 14.

2) The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors are Within, and Would Adversely Impact, the Natural Resources Within Everglades National Park

a) Everglades National Park maintains unique and important natural resources

15. Everglades National Park is one of the most unique and biologically diverse ecosystems in the United States. Richards, Vol. 36 at 5199; Pre-Hearing Stip. at 29. It contains the largest continuous stand of sawgrass prairie, the largest mangrove ecosystem in the western hemisphere, and one of the most significant breeding grounds for wading birds in North America. Pre-Hearing Stip. at 29. Protection of wetlands and wading bird populations were among the driving reasons for Congressional authorization of the Park in 1934.

16. The land through which portions of FPL's West Preferred Corridor and MDLPA AC-1 and AC-2 corridor would run is within the boundaries of Everglades National Park, and specifically within the boundaries of the East Everglades Expansion Area, as designated by the Everglades National Park Protection and Expansion Act of 1989.² Pre-Hearing Stip. at 120. Congress authorized the addition of about 109,000 acres of land on the northeast corner of Everglades National Park to include the central flow-way of the Everglades, known as Northeast Shark River Slough, and in order to "increase the level of protection and outstanding natural values of the Park" and "to

² As to the FPL West Preferred corridor, the specific segment is identified in MDC's Transmission Line Agency Report as the "West Preferred/Everglades National Park Segment." MDC 9 at 47. The portions of MDLPA AC-1 and AC-2 that run within the boundaries of Everglades National Park are reflected in MDC's Supplemental Transmission Line Agency Reports and are those portions that coextend with the West Preferred Corridor/Everglades National Park Segment on the west side of the L-31N. MDC 10 at 3; MDC 11 at 15 (Figure 1, AC-A). Unless specified otherwise, the terms "West Preferred," "MDLPA AC-1," and "MDLPA AC-2" refer to these segments, and the objections to the hybrid corridor are the same as those for the West Preferred and MDLPA AC-2 individually.

enhance and restore the ecological values, natural hydrologic conditions, and public enjoyment of the area.” Ring, Vol. 34 at 4830-31; NPCA 8.

17. The purpose of the Act is to increase the level of protection of the outstanding natural values of Everglades National Park and to enhance and restore the ecological values, natural hydrologic conditions, and public enjoyment of such area by adding the Northeast Shark River Slough and the East Everglades to Everglades National Park; and assure that the park is managed in order to maintain the natural abundance, diversity, and ecological integrity of native plants and animals, as well as the behavior of native animals, as a part of their ecosystem. The Act directs the Secretary of the Interior to manage the park *“to maintain the natural abundance, diversity and ecological integrity of native plants and animals, as well as the behavior of native plants and animals, as part of their ecosystem.”* NPCA 8.
18. The Park encompasses the Marjory Stoneman Douglas Wilderness, the largest legislated wilderness in the eastern United States. It is designated an International Biosphere Reserve and a Wetland of International Importance, and it remains on the list of World Heritage Sites in Danger because of the significantly altered conditions to the Everglades system that have occurred there by altering the natural flow of water. The site was inscribed on the endangered list in hopes of encouraging state parties to undertake the steps necessary to arrest any deterioration, and to restore the ecological conditions in the Everglades system. Ring, Vol. 34 at 4818-4824; Pre-Hearing Stip. at 29.
19. Everglades National Park is also designated under the Ramsar Treaty as a Wetland of International Importance, indicating that Everglades National Park is significant

- beyond simply being of national importance to the United States. It is significant to people around the world. Ring, Vol. 34 at 4824-4826; Pre-Hearing Stip. at 29.
20. Almost all of Everglades National Park is designated as wilderness under the Wilderness Act of 1964. This serves as an overlay of management direction for lands that are already in a protected status such as a national park. The National Park Service (“NPS”) is guided not to take a minimalist role with regards to management of those areas, particularly with regards to the development of any visitor facilities or manmade features. They are meant to be roadless and untrammeled by the hand of man. All of the East Everglades Expansion Area is eligible to be designated as wilderness under the Wilderness Act of 1964, and the National Park Service must conduct an evaluation of these lands to determine their eligibility. If FPL were granted authority to construct transmission lines and access roads in the Expansion Area, it would clearly no longer be eligible for designation as wilderness. Ring, Vol. 34 at 4826-4830.
21. In 1991, the NPS completed a Land Protection Plan that established priorities and commitments for implementing the 1989 Expansion Act, where it concluded that construction of utility lines and roads would not be compatible with the purposes of the Expansion Area. NPCA 9; Ring, Vol. 34 at 4851. It found that in the long-term, no private use of the land would be compatible with the goal of enhancing and restoring the ecology and hydroperiod of the East Everglades and Shark River Slough. Ring, Vol. 34 at 4848-49. The transmission lines proposed by FPL would be considered a private use. *Id.*

22. The East Everglades Expansion Act of 1989 authorized the Secretary of the Interior to acquire private inholdings within the Expansion area, including FPL's existing property (the location of the now-withdrawn West Secondary Corridor), and the government has in fact acquired numerous properties pursuant to that Act. NPCA 8.
23. FPL's West Preferred Corridor, and portions of MDLPA AC-1 and MDLPA AC-2 corridors all lay within this Expansion Area of Everglades National Park. Ring, Vol. 34 at 4835.
24. The Organic Act of 1916 established the National Park Service ("NPS"), giving it a core mission with regards to its management of units of the national park system around the country. The Organic Act finds that for all units of the national park system, the purpose is "to conserve -- to manage those parks for the purpose which is to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same, in such manner and in such means as will leave them unimpaired for the enjoyment of future generations." NPCA 11; Ring, Vol. 34 at 4853-55.
25. Even before the lands at issue were added to Everglades National Park, Miami-Dade County had independently designated them as part of the East Everglades Area of Critical Environmental Concern. Burzycki, Vol. 50 at 7067-71; MDC 1 (Ch. 33B, Art. II, Div. 2); MDC 40 at 1-2. In 1980, the East Everglades Resources Planning Project, a joint effort involving MDC, the South Florida Water Management District, the Florida Department of Environmental Regulation, and Everglades National Park, issued a "Proposed Management Plan for the East Everglades." MDC 40. Among other issues, the Management Plan noted that the "area's freshwater resources, its

wildlife and its vegetation, and the impact of future development on those resources are of paramount concern” and that the government agencies were concerned for “*the long term health of the water supply.*” *Id.* at 1 (emphasis added).

26. In 1981, to address the issues described in the Management Plan, the County Commission designated the area as the East Everglades Area of Critical Environmental Concern and adopted regulations to protect the functional integrity of natural ecosystems from inappropriate uses. MDC 1 (Ch. 33B, Art. II). The County Commission expressly declared:

The Board of County Commissioners of Metropolitan Miami-Dade County, Florida, hereby declares and finds that the creation of the area of critical environmental concern is essential to assure the protection and maintenance of the public health, safety and welfare of the present and future inhabitants of, and visitors to, Metropolitan Miami-Dade County. It is the purpose of this designation to protect the public health, safety and welfare by assuring orderly development of the designated area and *minimal degradation of those natural ecosystems* described in Section 33B-13; by requiring that *the functional integrity of natural ecosystems* as described in Section 33B-13 *is protected*; by *assuring the maintenance of the present surface and subsurface hydrology* within those lands described in Section 33B-13; by providing for the *protection of the ecological form and function of the Everglades National Park, its estuarine areas and adjacent wetlands*, and to maintain the capability of the natural environment to sustain a proposed use in the long term. This approach will ensure the integrated use of the physical, natural and social sciences and arts in the planning decision process to minimize adverse impacts upon, and to maximize the benefits and resources of, the area.

Id. (§ 33B-11) (emphasis added). As one of the County’s environmental experts, Gwen Burzycki, testified, “The concept behind the ordinance and the regulations contained therein was to limit land uses to those that would provide an opportunity for people -- private property rights for people to have use of their land while protecting the environmental values out here, and especially the aquifer storage capacity of the area, understanding that the county by this time had been divided into

flood protected and non-flood protected by the installation of the flood protection levee system on the west side.” Burzycki, Vol. 50 at 7067-68.

27. Considering the extra sensitivity of this area and the significance of its natural features to the regional ecology, it is especially noteworthy that none of FPL’s experts in transmission line siting, engineering, hydrology, or biology have ever sited a transmission corridor through a National Park. FPL 331; FPL 158; FPL 193; Simpson, Vol. 9 at 1255; Hronec, Vol. 19 at 2579-80. FPL’s experts in hydrology and biology have not conducted research within Everglades National Park, nor has FPL’s engineer participated in siting any facilities in federally protected lands in Florida. Gordon, Vol. 53 at 7428-29; Susi, Vol. 15 at 2083-85; Hronec, Vol. 19 at 2581. In addition, when conducting field trips to inform their opinions as to the viability and compatibility of the proposed corridors, FPL’s experts did not actually enter Everglades National Park. Gordon, Vol. 14 at 3571-74; Susi, Vol. 15 at 2083-85. Indeed, FPL’s surficial hydrology expert, Bernardo Susi, only visited the site by driving on the Levee road along the outer boundary of the Park, and his three “visits” were all during the dry season. Susi, Vol. 15 at 2084-85. He did not return to Everglades National Park to observe sheet-flow during the wet season. *Id.*
28. For the reasons explained further below, FPL’s West Preferred and MDLPA AC-1 and AC-2 corridors are incompatible with the Organic Act of 1916. Ring, Vol. 34 at 4852.
29. For the reasons explained further below, FPL’s West Preferred and MDLPA AC-1 and AC-2 corridors are incompatible with the East Everglades Expansion Act of 1989. *Id.* at 4852.

30. For the reasons explained further below, FPL's West Preferred and MDLPA AC-1 and AC-2 corridors are incompatible with Miami-Dade County's regulations governing the East Everglades Area of Critical Environmental Concern, set forth in Chapter 33B of the County Code.
31. Siting transmission lines west of Levee 31N ("L-31N") will fundamentally and negatively alter the character and integrity of Everglades National Park. Grossenbacher, Vol. 52 at 7327; Burzycki, Vol.51 at 7189-7191; Woerner, Vol. 49 at 6917-18, 7039-40.
32. As explained further below with regard to the NPCA and MDLPA AC-3 alternate corridors, feasible transmission line corridors that avoid all impacts to Everglades National Park exist. MDC 11; MDC 14.
33. Only a transmission line corridor that maximally avoids impacts to Everglades National Park should be certified. As discussed below, this is the NPCA corridor.

b) The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors Will Adversely Affect the Ecological Resources of Everglades National Park

34. The construction and operation of FPL's transmission line along the West Preferred Corridor will harm the ecological health of Everglades National Park. NPCA 6.
35. The affected area is a high quality wetland consisting of short hydroperiod marsh. The larger restoration goal of the state and federal efforts is to push it into a longer hydroperiod marsh. Richards, Vol. 36 at 5197; NPCA 40; Burzycki, Vol. 50 at 7067-68, 7084-86.
36. The NPS has expressed great concern over the environmental impacts of the corridors: "The construction of a large complex of transmission lines in this area

creates a perpetual risk to birds that is inconsistent with the goals of Everglades restoration projects.” The areas included the corridors include high quality wetlands, threatened and endangered species, and lands slated for restoration. NPCA 25.

37. FPL’s proposal to fill hundreds of acres of high quality wetlands with fill material will create a disturbed environment, which creates an opportunity for the invasion of exotic plant species. Richards, Vol. 36 at 5203. The exotic plants outcompete native plants, which in turn destroy the entire ecosystem by removing the species at the base of the food web. “If you want to preserve the Everglades, that’s a bad thing.” Richards, Vol. 36 at 5204.

c) The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors Will Adversely Affect the Hydrological Resources of Everglades National Park

38. FPL’s current proposal to construct culverts in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors would stop sheet flow. Sheet flow is a critical and unique characteristic of this part of the Everglades. Richards, Vol. 36 at 5198-99, 5202.

39. Filling the wetlands will create barriers to water flow, and in the Everglades, water flow is vital to maintain the quality of the environment. Burzycki, Vol. 51 at 7128. Water flow provides a constant stream of nutrients for the plants, which is essential so they can grow in much greater volume and productivity. *Id.* at 7128-7129.

40. The road and structure pads proposed by FPL would disrupt this water flow. *Id.* at 7129. The road cuts through high quality wetlands, and at every 500 feet the structure pads stick out, creating a three-sided box. *Id.* The water flow in the area would hit the road at an angle, so that box acts to retard the natural water flow, slowing it down. *Id.*

41. This changes the microclimate, changing the flora as a result of reduced water flow; different plants support slightly different aquatic invertebrates, which in turn impact other species, and so on up the food chain. *Id.*
42. Culverts have been shown to result in concentrating the nutrients in the water to very directed points (where the water flows through a culvert). This “nutrient loading” leads to an unnatural and harmful change in the vegetation of the Everglades. Richards, Vol. 36 at 5201-5203.
43. When there is a substantial amount of flooding, such as what we have seen this year, the water cannot flow through the culverts fast enough, and backs up alongside the road, slowing down and disrupting the sheet flow. Burzycki, Vol. 50 at 7094-7095.
44. The physical intrusion of the structure pads and the roads west of the L-31N would thus change the local hydrology and ecology of the area, and these changes would have a ripple effect throughout the Everglades system generally. *Id.* at 7121-7131.
45. FPL’s contention that it is possible to build a road with enough culverts so that it won’t disrupt this sheetflow is simply untrue. *Id.* at 7093.
46. FPL has conducted no analysis to ensure the FPL West Preferred Corridor will have no impacts on surficial hydrology, a condition of certification. Susi, Vol. 15 at 2093.
47. Generally, filling in wetlands east of the L-31N, where the NPCA and MDLPA AC-3 corridors lie, has little effect on storage and aquifer recharge because once it hits a certain level, the water that falls on the land east of the flood protection levee is shunted through canals that cut through the Miami Rock Ridge out to Biscayne Bay. Burzycki, Vol. 50 at 7084. Filling east of the levee would thus have less of an impact on local hydrology than filling wetlands west of the levee.

48. Filling wetlands west of the L-31N, where the FPL West Preferred, MDLPA AC-1, and AC-2 corridors lie, has a much different effect. West of the flood protection levee, the water naturally piles up and percolates into the aquifer through the porous soil. *Id.* at 7084-7085. Filling wetlands in this area would be like filling a box with Styrofoam pellets, taking up space and leaving less space for anything else, especially the storage capacity for water needed to recharge the aquifer. *Id.* The West Wellfield, which provides drinking water for the urbanized area of Miami-Dade County, receives a direct recharge from the East Everglades. *Id.* at 7085-86. The filling of wetlands in the FPL and MDLPA AC-1 and AC-2 corridors would thus have a direct and negative impact on the County's drinking water supply. *Id.*

49. The extent of wetland filling proposed by FPL within the East Everglades Area of Critical Environmental Concern, including the portions within Everglades National Park, is unprecedented in the history of MDC-authorized environmental permits. Grossenbacher, Vol. 52 at 7359-60. Filling within the East Everglades Area of Critical Concern is limited to a half acre or less of fill. *Id.*; Burzycki, Vol. 50 at 7095-7096; MDC 1 (§ 33B-26(a)(2)(a)). The amount of wetland filling proposed by FPL's West Preferred Corridor is up to 137 acres, which is over 200 times higher than a half acre. FPL 283 ¶ 12; Burzycki, Vol. 50 at 7097; MDC 22B.

d) The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors will destroy or adversely impact nesting and feeding habitats used by endangered species

50. The wetlands in the East Everglades Area of Critical Environmental Concern/Everglades National Park are high quality wetlands that are home to a

- variety of animals, including the federally listed wood stork and snail kite, which also nest in the immediate area of the proposed corridors. Burzycki, Vol. 51 at 7126.
51. Construction, maintenance, and management of the transmission lines within the existing boundary of Everglades National Park will have a negative impact on the wading bird populations that nest or have habitats in the area. MDC 22B; MDC 24. The FPL West Preferred, MDLPA AC-1, and AC-2 corridors pass through sensitive wood stork nesting and foraging habitat in northeastern Everglades National Park and eastern Water Conservation Area 3B. MDC 34. Specifically, the FPL West Preferred Corridor is adjacent to wading bird habitat and within foraging flight paths. The location of the FPL West Preferred Corridor poses a substantial risk to juvenile wading birds fledging from four identified colonies, with the wood stork facing the highest risk to its populations. Burzycki, Vol. 51 at 7137-44; MDC 34; FPL 359.
52. The area where the FPL West Preferred, MDLPA AC-1, and AC-2 corridors are being proposed is home to a variety of wading birds, waterfowl, and other wildlife. Burzycki, Vol. 51 at 7132-7133, 7135. Many of these birds are protected by the State as species of “special concern,” and the Snowy Egret is under State review for reclassification as “threatened.” *Id.* These birds are equally vulnerable to the impacts of the proposed corridors, but the species of greatest concern are the federally listed threatened and endangered species such as wood storks and snail kites. *Id.* The likely impacts to these species are so substantial that they preclude the approval of FPL West Preferred Corridor and the MDLPA AC-1 and AC-2 corridors. MDC 22.

53. The snail kite and wood stork are “charismatic megafauna” - large, glamorous species that generate interest in the general public, who visit the area to see the birds’ beauty first hand. Burzycki, Vol. 50 at 7055.
54. The wood stork is federally listed as endangered, and has been designated as a critical indicator species to measure the success of the Comprehensive Everglades Restoration Plan (“CERP”) projects. Cook, Vol. 30 at 4152.
55. The FPL West Preferred, MDLPA AC-1, and AC-2 corridors will block wood storks’ access to their foraging areas, precluding them from reaching their foraging areas without having to cross the transmission lines. Burzycki, Vol. 51 at 7139; MDC 34.
56. In particular, wood stork nesting areas include an 18-mile foraging area around their rookery. *Id.* at 7127.
57. Areas east of the flood protection levee dry out first as water levels draw down, making the areas west of the levee essential for foraging and to support nesting activity later into the nesting season because food remains there after other wetlands have already dried. *Id.* at 7127.
58. Filling in the area west of the L-31N disrupts the production and quality of habitat to produce foraging opportunities for wood storks and other species. *Id.* The filling of wetlands in the FPL West Preferred, MDLPA AC-1, and AC-2 corridors thus reduces foraging area. *Id.* at 7126-28.
59. Moreover, the the FPL West Preferred, MDLPA AC-1, and AC-2 corridors pass very close to wood stork colonies themselves. MDC 34. Even the United States Fish and Wildlife Service’s “Habitat Management Guidelines for the Wood Stork in the Southeast Region” provide that a transmission line corridor should not be built within

a colony or its foraging habitat. Cook, Vol. 30 at 4162-4163; MDC 24. In particular, the Habitat Management Guidelines provide:

[T]he probability that low flying storks, or inexperienced, newly fledged young will strike tall obstructions, requires that high-tension power lines be no closer than **one mile** (especially across open country or in wetlands) and tall transmission towers no closer than **3 miles** from active colonies. . . . Although storks may tolerate existing levels of human activities, it is important that these human activities not expand substantially.

MDC 24 at 7 (emphasis added).

60. In selecting its West Preferred Corridor, FPL opted not to abide by this federal guideline and instead based its corridor selection on a less rigorous standard enforced by the Florida Fish and Wildlife Conservation Commission, which only requires a survey of wading bird habitat within only 1/2-mile of a project location (as compared with up to 3 miles under the federal standards). Simpson, Vol. 9 at 1224-26.

61. Birds such as wood storks have a fairly long juvenile period where they are learning to fly, and the closer the lines and guy wires are to the colonies, the closer they are to the areas where the birds are learning to fly.³ Burzycki, Vol. 51 at 7143-44. Juvenile

³ FPL's avian expert, Dr. Caleb Gordon, suggested that wood storks leave the nest "within 48 hours of fledging" and concluded that they did not spend much time near the colony and that their exposure to hazards near the colony was reduced accordingly. Gordon, Vol. 53 at 7416-17. But Dr. Gordon did not describe how long the fledging period is or how long the juveniles spent learning to fly while still living in the colony, thus failing to consider how juvenile wood storks would be affected by close power lines. For an endangered species such as the wood stork, every juvenile is important to the survival of the species, and regardless of how long the birds spend in the nest, if they are learning to fly near a power line, they are at risk for a collision.

Moreover, the report Dr. Gordon cited to in his testimony came to a very different conclusion than he suggested:

The nestling period was truncated at 55 days after hatching, as birds were typically capable of flying by this time and had become independent of their nest sites. On average, however, ***juvenile storks remained associated with the colony and continued to be fed by their parents until at least 80 days old***. Nestlings were ***considered fledged only when they permanently left the colony***.

- wood storks are thus at greatest risk for collisions because they are attempting to fly but have yet to possess the skills to avoid obstacles. *Id.* It would be analogous to giving the keys of a car to a teenager and allowing them to drive on I-95, or allowing a toddler to cross a road: they can see the obstacles, but they are not yet able to avoid them. *Id.*
62. There is a time just before the nesting season where the birds are looking for nesting materials within a half-mile to a mile around their colony. Burzycki, Vol. 51 at 7141. Here the birds are flying low using flapping flight. *Id.* This flapping flight is less maneuverable and slower; the risk of collision is elevated because they are not able to maneuver around obstacles. *Id.* And they are not looking for obstacles; they are looking for nesting materials. *Id.* Following a collision, a broken neck is an instant fatality, a broken wing is a death sentence because the bird will not be able to find food. *Id.* at 7142. A spider web of guy wires, stretching out diagonally from every pole to the structure pad below, compounds this collision danger. *Id.* at 7124.
63. Neither the SFWMD's or the Florida Fish and Wildlife Conservation Commission's conditions of certification are sufficient to determine if the FPL West Preferred, MDLPA AC-1, or AC-2 corridors pose a risk to wood stork populations, because neither of those sets of conditions requires a preconstruction study of wading bird

Rebecca A. Hylton, *Survival, Movement Patterns, and Habitat Use of Juvenile Wood Storks, Mycteria Americana* 7 (Univ. of Fla. 2004) (emphasis added), available online at <http://ufdc.ufl.edu/UFE0007007/00001/1j>.

Gordon's unfamiliarity with these facts is understandable; his experience on this matter is limited to a broad study of birds in Uzbekistan. FPL 193. He has never specifically studied Wood Storks or worked in Everglades National Park. Gordon, Vol. 53 at 7428. His most geographically and substantively relevant work was a study regarding proposed windmills in the Everglades Agricultural Area, which is far away from Everglades National Park and is not in Miami-Dade County. *Id.* at 7429; FPL 193.

- colonies. Cook, Vol. 30 at 4185-87. The proposed conditions instead only call for a post-construction study, which means the assessment of risk would only be performed after the lines are built and the damage is done. *Id.* at 4187-89.
64. FPL's proposed mitigation technique to protect individual wood storks from collision—placing markers so birds can identify ground wires—is insufficient to fully mitigate collision impacts from the transmission lines. That mitigation technique might not reduce any impacts for juvenile wood storks, because the juveniles do not have the ability to even realize the markers signify an obstacle, and even if they did, they do not have the ability to move out of the way. *Id.* at 4188. The mitigation technique might not reduce impacts to adults, either, as some of the collision risk to adults is less the birds' ability to see the lines and more that the birds do not see the lines because they are distracted. *Id.*
65. The FPL West Preferred, MDLPA AC-1, and AC-2 corridors also pass through or in very close proximity to sensitive snail kite nesting habitat and foraging habitat on the west side of the L-31N. MDC 34; Gordon, Vol. 26 at 3531, 3551, 3669-71; Burzycki, Vol. 51 at 7157-62. The snail kite is an endangered species, the population of which had dropped precipitously several years ago to about 400 nesting pairs; under those circumstances, "one juvenile lost instead of fledging successfully is a big deal." Burzycki, Vol. 51 at 7133, 7162.
66. Snail kite nesting habitat generally consists of areas with woody vegetation and surrounding sawgrass clumps. *Id.* at 7167-68. Snail kites feed almost exclusively on apple snails, and they forage within close proximity to their nests. *Id.* at 7160-61, 7175-76. Apple snails are short-lived and live primarily in long hydroperiod

- wetlands. *Id.* In Miami-Dade County, wetlands containing enough apple snails to support nesting are only present on the west side of the Levee 31N and perhaps in the Pennsuco wetlands. *Id.* As such, the snail kites' food supplies, and thus their nesting opportunities, are extremely restricted. *Id.* at 7160.
67. Historic nesting locations are important indicators that appropriate snail kite habitat exists in that area. *Id.* at 7168-71. The suitability of a particular location for snail kite nesting or foraging depends on the hydrologic conditions and can vary from year to year: "if the water levels drop in this area and they dry out, there is no food . . . the snails are dead, the kites don't feed. They don't nest that year." *Id.* at 7173, 7175. In contrast, in a very wet year, snail kites would be "nesting in places they don't usually nest, because the food will be there." *Id.* at 7174-7175; Gordon, Vol. 26 at 3551.
68. Historic nesting locations, even ones that have not been used in recent years, are also very important to the survival of the species for another reason: snail kites are long-lived birds and have a high "natal fidelity," which means they first seek to nest in the places they were born. Burzycki, Vol. 51 at 7177. As such, under appropriate hydrologic conditions, snail kites are expected to return to the nesting locations in the vicinity of the West Preferred Corridor. *Id.* at 7171, 7177.
69. FPL's West Preferred Corridor would have an adverse impact on the snail kite nesting habitat and the surrounding foraging habitat. *Id.* First, the filling of wetlands to accommodate the transmission line facilities will destroy crucial foraging habitat directly. *Id.* at 7179. The installation also has an "edge effect" on the surrounding area because the proposed access roads may have side slopes that may not be suitable for producing food and because the fill also disturbs the microclimate in the

- immediate vicinity, changing the hydrology and the vegetation in the surrounding area, rendering the area less suitable for producing apple snails. *Id.* Moreover, snail kites nest in woody vegetation, and FPL removes woody vegetation under power lines. *Id.*
70. In addition to destroying foraging habitat and nesting sites, the proposed transmission line facilities in the West Preferred Corridor also degrade the foraging habitat by putting a “spider web of lines” as obstacles in the snail kites’ paths between nests located west of the corridor and foraging habitat located east of the proposed facilities. *Id.* at 7161. The web consists of two sets of curved lines, above and below 100 feet, plus the diagonal guy wires for the poles, placed every 500 feet. *Id.* at 7143. Indeed, nesting snail kites would have to negotiate this gauntlet of power lines and guy wires each time they access the supply of snails that is always available in the levee borrow canal on the east side of the Levee 31N. *Id.* at 7161.
71. As with the wood storks, the transmission line infrastructure is also a potentially fatal collision hazard for juvenile snail kites as they learn to fly. *Id.* at 7161-62.
72. When every bird is significant to the survival of the species, the direct and indirect impacts of the FPL West Preferred Corridor on the nesting, foraging, and fledging of snail kites present a significant threat to the species.
73. MDLPA AC-1 and AC-2 have a reduced negative impact on the snail kite because they divert from the West Preferred Corridor further south. MDLPA AC-1 would avoid a cluster of historic nest locations located within the West Preferred and reduce the obstruction of the birds’ path to the levee borrow canal. AC-2 is further south still, so avoids the same cluster of historic nest locations as AC-1 and further reduces

the obstruction of the birds' path to the levee borrow canal. In addition, AC-2 does not impact the same quality wetlands as are necessary for snail kite foraging. *Id.* at 7181-84; MDC 34.

3) **The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors Require the Construction of Roads that have not Been Shown to be Feasible.**

74. The construction of the roads necessary for construction, maintenance and other access for FPL's West Preferred, MDLPA AC-1, and MDLPA AC-2 corridors will require the filling of wetlands. Hronec, Vol. 19 at 2499-2501.
75. In some cases that will require elevating the roads substantially to avoid the higher water levels that exist in this part of the Everglades. *Id.* at 2502, 2515-2516.
76. It is also possible that raising and culverting roads will not be sufficient to maintain the required sheetflow of water in certain areas, and that instead the roads would have to be constructed "at grade" without fill. *Id.* at 2516-19; Susi, Vol. 15 at 2111-13, 2116-20. But whether at-grade roads would be practicable is a site-specific study that has yet to be done, and in any event might work in some areas of the corridors west of the L-31N but not in others. Hronec, Vol. 19 at 2516-19; Susi, Vol. 15 at 2111-13, 2116-20.
77. It has thus not yet been determined that the construction of these roads is feasible. Hronec, Vol. 19 at 2516-19; Susi, Vol. 15 at 2111-13, 2116-20.
78. The construction of the FPL West Preferred, MDLPA AC-1, and AC-2 corridors would also require the filling of Everglades wetlands to support construction of five structure pads per mile to support the poles, anchors, guy wires and related hardware, as well as vehicles. *Id.* at 2505-2508.

79. The FPL West Preferred, MDLPA AC-1, and AC-2 corridors run through Management Area 2A of the East Everglades Area of Critical Environmental Concern, as designated by the Miami-Dade County Code. Chapter 33B of the Code explicitly prohibits roads in Management Area 2A, thus negating the viability of these corridors. NPCA 31; Hronec, Vol. 19 at 2540-2545, 2548-2550.

4) The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors will Adversely Impact Everglades Restoration Efforts

80. The Comprehensive Everglades Restoration Plan, authorized by Congress in 2000, was the result of the many years' long effort of the South Florida Ecosystem Restoration Task Force and the Governor's Commission on a Sustainable South Florida that guided the United States Army Corps of Engineers' effort to come up with a comprehensive plan for restoration. Ring, Vol. 34 at 4815. It has been a partnership between the State of Florida and the federal government. *Id.*

81. The Modified Water Deliveries to Everglades National Park project, a foundation project for Everglades restoration and a precursor to CERP, was authorized in 1989 to reconnect the watersheds of Water Conservation Areas 3A and 3B with Everglades National Park by redirecting water flow to the historic flow channels in Northeast Shark River Slough and establishing natural hydrologic conditions. *Id.* at 4831.

82. Construction of the FPL West Preferred, MDLPA AC-1, or MDLPA AC-2 corridors would negatively affect the implementation of the Modified Water Deliveries Project. With regards to operation of a series of structures that were constructed for this restoration project, there could be significant constraints. And the structures in the

Modified Water Deliveries Project are only as useful as the operational flows that can subsequently come through it. *Id.* at 4841-4842.

83. The federal and state governments are spending billions of dollars to restore flow to those areas and to try to increase water amount and recreate sheet flow. The construction and operation of major transmission lines there represent barriers to flow and are inconsistent with restoration efforts. Richards, Vol. 36 at 5209.
84. FPL identifies Everglades National Park and Water Conservation Area 3 as “natural areas” associated with restoration efforts. FPL 152; Ammon, Vol. 23 at 3073. The FPL West Preferred and MDLPA AC-1 and AC-2 corridors lie within these natural areas of Everglades National Park and Water Conservation Area 3. By contrast, the NPCA Corridor lies within the Bird Drive Basin, which is not identified as a natural area associated with restoration efforts. FPL 152; Ammon, Vol. 23 at 3073-74.
85. The “Yellow Book”, or “Central and Southern Florida Comprehensive Review Study Final Integrated Feasibility Report and Programmatic Environmental Impact Statement” is the blueprint for Everglades restoration, as approved in the Comprehensive Everglades Restoration Plan by Congress in December of 2000. Ammon, Vol. 22 at 3019.
86. The “Yellow Book” outlined specific goals and objectives for the natural system. NPCA 49; Ammon, Vol. 23 at 3072.
87. The first of these goals is to increase total spatial extent of natural areas. Ammon, Vol. 23 at 3072. Filling in wetlands within Everglades National Park to build the FPL West Preferred, MDLPA AC-1, or MDLPA AC-2 corridors would decrease the spatial extent of wetlands in these natural areas associated with restoration efforts.

- Ammon, Vol. 23 at 3074. Constructing transmission lines in the FPL West Preferred, MDLPA AC-1, or MDLPA AC-2 corridors would be inconsistent with the first goal outlined in the “Yellow Book.”
88. The second key goal outlined in the “Yellow Book” is to improve habitat and functional quality. NPCA 49. Building structure pads and access roads in the FPL West Preferred, MDLPA AC-1, or MDLPA AC-2 corridors within Everglades National Park will impact the functional quality of those wetlands. Ammon, Vol. 23 at 3075. Constructing transmission lines in the FPL West Preferred, MDLPA AC-1, or MDLPA AC-2 corridors would thus be inconsistent with the second goal outlined in the “Yellow Book.”
89. The third key goal outlined in the “Yellow Book” is to improve native plant and animal species abundance and diversity. NPCA 49. The FPL West Preferred, MDLPA AC-1, and MDLPA AC-2 corridors will adversely impact native plant and animal species. The FPL West Preferred, MDLPA AC-1, or MDLPA AC-2 corridors have a larger amount of native wetland types that would be impacted, whereas the NPCA corridor largely impacts exotic species, which are detrimental to the local wetlands. NPCA 6; Davis, Vol. 36 at 5110.
90. The FPL West Preferred, MDLPA AC-1, and MDLPA AC-2 corridors would have an impact on the endangered wood stork. Burzycki, Vol. 51 at 7134-7135. Constructing transmission lines in the FPL West Preferred Corridor would be inconsistent with the third goal outlined in the “Yellow Book.”
91. FPL’s own expert in Everglades restoration, Kenneth Ammon, stated that in his opinion, it is less preferable to have a transmission corridor inside Everglades

- National Park than outside. Ammon, Vol. 23 at 3122-3124. This testimony was based on his 30-plus years of working in Everglades restoration efforts, water management efforts, with an intimate knowledge of Everglades National Park and its importance to South Florida and the nation and the international community. *Id.*
92. In addressing impacts to surficial hydrology, the design proposals for the FPL West Preferred Corridor failed to consider the federally authorized Tamiami Trail Next Steps project, which seeks to bridge 5.5 miles of Tamiami Trail to significantly increase water flows into Everglades National Park. Susi, Vol. 15 at 2101-2012; Cook, Vol. 30 at 4164-4165. The Tamiami Trail Next Steps project is designed to restore the hydrology of the Everglades, which is the key to its restoration. Cook, Vol. 30 at 4164-65.
93. Wading birds generally are essential as an indicator species to allow the state to monitor the health of the Everglades. Cook, Vol. 30 at 4152. Wading birds do very well when hydrologic conditions are perfect, but wading birds are very sensitive to any decline in those conditions. *Id.* They are not affected by pollution so much, or predators or human disturbance, but they are affected by changes to their food availability. *Id.* Their food availability is affected by altering the production of their prey, which is directly related to water quality. *Id.* Since they can fly, the birds are able to move to areas that provide a healthier environment. *Id.* at 4155. Because of this, we know almost instantaneously what areas are healthier in the Everglades. *Id.*
94. Monitoring birds in this manner has been done since the 1930s, before water management, before the canals, and before much of the Everglades was developed. *Id.* at 4156.

95. Wood storks are also an important indicator species because people like wading birds; they are beautiful, colorful, and were in part the catalyst for the creation of Everglades National Park, and for the Comprehensive Everglades Restoration Plan (“CERP”) itself. *Id.*
96. If the transmission lines affect the wood stork populations, they will be affecting conservation biology, and restoration science is a component of conservation biology. *Id.* at 4144-4145.
97. As explained further below with regard to the NPCA and MDLPA AC-3 alternate corridors, feasible transmission line corridors exist that avoid all impacts to Everglades restoration exist. MDC 11; MDC 14.
98. Only a transmission line corridor that maximally avoids impacts to Everglades restoration should be certified. As discussed below, this is the NPCA corridor.

5) **The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors Will Adversely Affect the Aesthetic Values of Everglades National Park and the East Everglades Area of Critical Environmental Concern**

99. Adverse impacts to the East Everglades are not exclusively environmental: visual impacts are also considered. Burzycki, Vol. 51 at 7188-7189.
100. Currently, the vista adjacent to the FPL West Preferred and MDLPA AC-1 and AC-2 corridors is unbroken, offering spectacular views of the vast Everglades wetlands dotted with little domes of the tree islands sticking up. *Id.* at 7189.
101. The FPL West Preferred and MDLPA AC-1 and AC-2 corridors would place large objects in the way, blocking the vista about every 500 feet. *Id.*

102. Bicyclists riding the L-31N north canal, who are legally allowed to do so by the SFWMD's recreational access guidelines, would also have their vistas interrupted by the proposed FPL West Preferred and MDLPA AC-1 corridors. *Id.*
103. Drivers on the Tamiami Trail (SW 8th Street) heading to Shark Valley and beyond would also have their view blocked by the FPL West Preferred Corridor. *Id.* at 7190. As an example, in central Florida driving on the Turnpike, there are large transmission lines from the St. Lucie Plant, and a driver's eyes are immediately drawn to this large object, because the surrounding vegetation is significantly lower than the lines and their towers. *Id.*
104. The linear construction of three transmission lines atop 135-150 foot towers will adversely affect the visual and aesthetic appeal of the Shark River Slough Archeological District, which is a Federal Registered National Historic District. Visitors to Everglades National Park, including NPCA members, will have their experience negatively impacted by this visual eyesore. Woerner, Vol. 49 at 6917-18.
105. The NPCA alternative corridor, which avoids impacts to the East Everglades Area of Critical Environmental Concern, including Everglades National Park, and also to Everglades restoration projects, would not have the adverse impacts that the FPL West Preferred and MDLPA AC-1 and AC-2 corridors would have. Grossenbacher, Vol. 52 at 7334, 7346-47.

6) The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors Are Inconsistent with Applicable Local Government Environmental Regulations

106. Miami-Dade County has promulgated numerous environmental regulations that are implicated by the transmission line project: in particular, the East Everglades

- Area of Critical Environmental regulations contained in Chapter 33B, Art. II of the County Code; the policies contained in the “Conservation, Aquifer Recharge and Drainage Element” of MDC’s Comprehensive Development Master Plan (“CDMP”); and the standards governing permits for work in wetland areas, set forth in Ch. 24, Art. IV, Div. 1 of the County Code. MDC 1; MDC 2
107. The East Everglades Area of Critical Environmental Concern regulations in Chapter 33B include the “East Everglades Zoning Overlay Ordinance.” MDC 1 (Ch. 33B, Art. II, Div. 2). Title notwithstanding, in addition to traditional zoning regulations, this ordinance contains environmental performance standards that are enforced by the County’s Division of Environmental Resources Management rather than the zoning department. Woerner, Vol. 49 at 6913-15; Hefty, Vol. 53 at 7448-50; MDC 1 (*e.g.*, §§ 33B-26, 33B-27, 33B-28(e)).
108. In the subject area, the eastern boundary of the County-designated East Everglades Area of Critical Environmental Concern is Levee 31N. MDC 33; MDC 40. The applicable segment of the West Preferred Corridor is wholly encompassed within this East Everglades Area of Critical Environmental Concern, as are MDLPA AC-1 and AC-2 for the portions of those corridors that include lands west of the L-31N. MDC 33; Simpson, Vol. 9 at 1233-34.
109. The Area of Critical Environmental Concern is subdivided into several “Management Areas,” which provide for different restrictions based on the environmental characteristics of those areas. MDC 36. From south to north, the FPL West Preferred and MDLPA AC-1 and AC-2 corridors all traverse Management

- Areas 1, 3B, 3C, 3A, and 2A. MDC 33. All of these Management Areas contain restrictions on fill, excavation, roads, clearing of native vegetation, and uses.
110. Significantly, all of these proposed corridors traverse Management Area 2A, which is the most restrictive. *Id.*; MDC 1 (§ 33B-26). Roads are expressly prohibited in Management Area 2A. MDC 1 (§ 33B-26). Indeed, the vision for Management Area 2A was to limit human activity such that lands would be accessed by swamp buggy and any houses, limited to one house per 40 acres, would be built on stilts. Burzycki, Vol. 50 at 7089-90; MDC 36. Furthermore, transmission line facilities are not among the uses expressly permitted, either as of right or conditionally, anywhere in the East Everglades Area of Critical Environmental Concern. MDC 1 (§§ 33B-25, 33B-26, 33B-27).
111. Without access roads, it would be infeasible to construct and maintain transmission line facilities in Management Area 2A. Hronec, Vol. 19 at 2547-51.
112. Notably, although the East Everglades ordinance provides that variances may be sought subject to the standards applicable to conditional uses, MDC 1 (§§ 33B-31, 33B-28), FPL has not applied for any such variance for either the transmission line facilities or for the access roads in Management Area 2A. Hronec, Vol. 19, 2551.
113. The standards applicable to conditional uses (and variances), which would govern the installation of facilities on the west side of the L-31N, are set forth in § 33B-28:

Sec. 33B-28. Same—General standards.

A conditional use permit may be granted only if the applicant demonstrates that:

- (a) The conditional use is consistent with the purposes, goals, objectives and standards of the East Everglades Management Plan;
- (b) The design of the proposed development minimizes adverse effects, including visual impacts of the proposed use on adjacent properties;

- (c) The proposed use will not have singular or cumulative adverse effect on the value of adjacent property;
- (d) The proposed use, singly or cumulatively, will not unduly burden essential public facilities and services including roadways, parking spaces, police and fire protection, drainage systems, refuse disposal, water and sewers, and schools;
- (e) The proposed use, singly or cumulatively, will not have any of the following irreversible effects on the ecological integrity of the East Everglades:
 - (1) Harmful obstruction or undesirable alteration of the natural flow of water within the area of work.
 - (2) Harmful or increased erosion, or adverse environmental impact resulting from changes in water quality or quantity.
 - (3) Adverse impact upon wetland flora and fauna within adjacent parcels.
 - (4) Adverse impact upon wetland flora and fauna within those portions of the subject property not proposed for development under the application.
 - (5) Material injury to adjoining land.

MDC 1; Burzycki, Vol. 51 at 7124.

- 114. Transmission lines could be approvable through variances in Management Area 1 (the “8 ½ Square Mile Area”), because the wetlands and ecological features in that area were significantly degraded by human activity that predated the adoption of the East Everglades ordinance. Burzycki, Vol. 51 at 7122-23.
- 115. Because of the significant adverse impacts to wetland flora, the natural flow of water, and nesting and foraging habitat for threatened and endangered species discussed above, the proposed transmission line facilities and access roads in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors do not satisfy the standards set forth in § 33B-28 of the County Code for installation within any Management Area other than Management Area 1. MDC 22B. Accordingly, the transmission lines and associated facilities west of the L-31N and outside of the 8 ½ Square Mile Area are incompatible with the East Everglades Area of Critical Environmental Concern.

116. The concepts and limitations of the East Everglades Area of Critical Environmental Concern are also reflected in the CDMP's Conservation Element. MDC 2. The CDMP is not simply a body of land development regulations like typical zoning ordinances: rather, the CDMP encompasses numerous areas of expertise and regulations administered by the County, including water and sewer programs and facilities, conservation, coastal management, and capital improvements. Woerner, Vol. 49 at 6898-901. Of particular import, the stated intent of the Conservation Element is "to identify, conserve, appropriately use, protect and restore the biological, geological and hydrological resources of Miami-Dade County." MDC 2 at IV-1.

117. The following objectives and policies of the Conservation Element are applicable to this application:

Objective CON-4: "The aquifer recharge and water storage capacity of the presently undeveloped areas in western and southern Miami-Dade County shall be maintained or increased."

Policy CON-4A: "The aquifer-recharge values of wetland areas shall be maintained and, where feasible, enhanced or restored. There shall be no further positive drainage of wetlands to accommodate urban development or agricultural uses."

Objective CON-7: "Miami-Dade County shall protect and preserve the biological and hydrological functions of the Future Wetlands identified in the Land Use Element. Future impacts to the biological functions of publicly and privately owned wetlands shall be mitigated. All privately owned wetlands identified by the South Florida Regional Planning Council as Natural Resources of Regional Significance and wetlands on Federal, State, or County land acquisition lists shall be supported as a high priority for public acquisition. Publicly acquired wetlands shall be restored and managed for their natural resource, habitat and hydrologic values."

Policy CON-7A: "The degradation or destruction of wetlands shall be limited to activities that 1) are necessary to prevent or eliminate a threat to public health, safety or welfare; or 2) are water dependent, clearly in the

public interest and no other reasonable alternative exists; or 3) are carried out in accordance with an approved basin management plan; or 4) are in areas that have been highly disturbed or degraded and where restoration of a wetland with an equal or greater value in accordance with federal, State and local regulations is feasible. Habitats critical to endangered or threatened species shall not be destroyed.”

Policy CON-7C: “Miami-Dade County shall continue to promote the restoration and maintenance of the natural, surface water flow regimes into, and through wetland systems such as the Shark River Slough, Everglades National Park and the saline wetlands of southeastern Miami-Dade County.”

Policy CON-7J: “In evaluating applications that will result in alterations to wetlands, Miami-Dade County shall consider the applications’ consistency with Comprehensive Everglades Restoration Program (CERP) objectives. Applications that are found to be inconsistent with CERP objectives may be denied.”

Objective CON-9: “Freshwater fish and wildlife shall be conserved and used in an environmentally sound manner and the net amount of habitat critical to federal, state or County designated endangered, threatened, or rare species or species of special concern shall be preserved.”

Policy CON-9A: “All activities that adversely affect habitat that is critical to federal or State designated, endangered or threatened species shall be prohibited unless such activity(ies) are a public necessity and there are no possible alternative sites where the activity(ies) can occur. (See Appendix B).”

Policy CON-9B: “All nesting, roosting and feeding habitats used by federal or State designated endangered or threatened species, shall be protected and buffered from surrounding development or activities, where necessary.”

Policy CON-9C: “Rookeries and nesting sites used by federal or State designated endangered or threatened species shall not be moved or destroyed.”

Woerner, Vol. 49 at 6928-33; MDC 2 at IV-6 – IV-7, IV-11 – IV-12, IV-16.

118. Because of the significant adverse impacts to wetland flora, the natural flow of water, and nesting and foraging habitat for threatened and endangered species discussed above, in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors,

the proposed transmission line facilities and access roads are inconsistent with the MDC CDMP Conservation Element. MDC 22B.

119. The requirements of Policy CON-7A are of particular note for the FPL West Preferred and MDLPA AC-1 and AC-2 corridors. FPL has failed to show that the destruction of wetlands to install these transmission line facilities west of the L-31N is necessary to prevent or eliminate a threat to public health, safety or welfare. FPL has failed to show that the transmission line facilities are water dependent. Given that the NPCA corridor and, to a lesser extent, the MDLPA AC-3 corridor are proper for certification and present significantly reduced wetland impacts, FPL has failed to show that no other reasonable alternative exists to installing transmission line facilities in these wetlands. Nor are these facilities being installed in accordance with an approved basin management plan. In addition, other than the 8 ½ Square Mile Area, FPL is not proposing to install the facilities in areas that have been highly disturbed or degraded. Finally, as set forth in the discussion on wood storks and snail kites above, the proposed transmission line facilities west of the L-31N destroy habitat that is critical to endangered or threatened species. MDC 22B. Accordingly, the transmission line facilities proposed in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors are inconsistent with Policy CON-7A.

120. The CDMP Land Use Element is also implicated. On the CDMP Land Use Plan Map, the corridors are, in relevant part, designated “Environmentally Protected Parks.” This designation applies to areas that are “mainly comprised [of] environmentally sensitive land and water areas,” and the policies reference the restrictions in the Area of Critical Environmental Concern ordinance and in the

National Park Service's management plan. Woerner, Vol. 49 at 6913-15; MDC 2 at I-52 - I-52.2; MDC 35. Even if these lands are removed from Everglades National Park, they will continue to be designated as Environmentally Protected Parks and to be governed by MDC Code Ch. 33B. Woerner, Vol. 49 at 6914; MDC 22B.

121. For the reasons explained above, in the FPL West Preferred and the MDLPA AC-1 and AC-2 corridors, and the proposed transmission line facilities and access roads are inconsistent with the County's CDMP. MDC 22B.

122. Finally, the County's environmental protection regulations governing permits for work in wetlands areas are also implicated by the FPL West Preferred and MDLPA AC-1 and AC-2 corridors. MDC 1 (Ch. 24, Art. IV, Div. 1 of the County Code); Grossenbacher, Vol. 52 at 7307-09. Of particular import is the evaluation criteria set forth in § 24-48.3(1). In pertinent part, § 24-48.3 provides:

Sec. 24-48.3. Factors for evaluation of permit applications; incomplete permit applications.

(1) The Department shall base its recommendation for approval, denial or approval subject to conditions, limitations, or restrictions, and the Board of County Commissioners shall make its decision for approval, denial, or approval subject to conditions, limitations or restrictions, for any of the permits provided for under this article, upon the following evaluation factors, when applicable:

(a) The potential adverse environmental impact and cumulative adverse environmental impact of the proposed work, including but not limited to the effect upon hydrology, water quality, water supply, wellfields, aquifer recharge, aesthetics, navigation, public health, historic values, air quality, marine and wildlife habitats, archeological values, wetland soils suitable for habitat, floral and faunal values, rare, threatened and endangered species, natural flood damage protection, wetland values, land use classification, recreation, and any other environmental values, affecting the public interest.

(b) Conformance with standard construction procedures and practices and design and performance standards, including but not limited to, all applicable portions of the Miami-Dade County Public Works Manual, Chapter 33B of the Code of Miami-Dade County, Florida, and Miami-

Dade County Ordinance No. 81-19 [codified as Sections 33D-1 through 33D-4], as all of same may be amended from time to time.

(c) The information provided by the comprehensive environmental impact statement, if required.

(d) Conformance with all applicable federal, state and local laws and regulations. Conformance with the Rules of the South Florida Water Management District set forth in Chapter 40E-40, Florida Administrative Code (F.A.C.), as same may be amended from time to time, pertaining to general surface water management permits within Miami-Dade County, and with the provisions contained in the “Basis of Review for Surface Water Management Permit Applications Within the South Florida Water Management District,” dated September 11, 2008, as same may be amended from time to time.

(e) Conformance with the Miami-Dade County Comprehensive Development Master Plan, Chapter 33B of the Code of Miami-Dade County, Florida, Miami-Dade County Ordinance No. 81-19 [codified as Sections 33D-1 through 33D-4], and the Miami-Dade County Manatee Protection Plan (a copy of which shall be made permanently available at the Department for reference by the public), as all of same may be amended from time to time. . . .

123. Because of the significant adverse impacts to wetland flora, the natural flow of water, and nesting and foraging habitat for threatened and endangered species discussed above, in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors, the proposed transmission line facilities and access roads do not satisfy the County standards for wetland permits. *See also* Grossenbacher, Vol. 52 at 7326-38; MDC 22B.

124. The transmission line facilities west of the L-31N proposed in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors also fail to satisfy the County’s standards for mitigation plans, as set forth in § 24-48.4. That regulation provides:

Sec. 24-48.4. Mitigation plans for projects otherwise acceptable but having adverse environmental impact.

For any project that is otherwise acceptable under the evaluation factors contained herein and permissible under all applicable laws, but that nevertheless results in adverse environmental impact, the applicant shall be required to mitigate this impact. The purpose of mitigation is solely to

compensate for unavoidable adverse environmental impacts. Mitigation should not be used to make an otherwise nonpermissible project permissible. Mitigation plans must maximize the preservation of existing natural resources. In determining mitigation procedures the term mitigation includes the following methods, *in the order of priority in which they should be utilized*:

- (1) *Avoiding the impact altogether* by not taking a certain action or parts of an action;
- (2) *Minimizing impacts* by limiting the degree or magnitude of the action or its implementation;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the impact by replacing or providing substitute resources or environments.

The Department of Environmental Resources Management shall adopt rules by ordinance to implement the foregoing evaluation factors.

MDC 2 (emphasis added). Thus, the County Code directs that projects first seek to avoid environmental impacts, then seek to minimize such impacts, and only if those first two options are unavailing, then provide mitigation for any unavoidable impacts. Grossenbacher, Vol. 52 at 7331-39.

125. Given that the NPCA corridor and, to a lesser extent, MDLPA AC-3 (and AC-2 to the extent it is east of the L-31N, *see supra* n.2), are proper for certification and present significantly reduced environmental impacts, FPL has failed to show that the transmission line facilities and access roads as proposed in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors satisfy the County's "avoidance and minimization" requirements. *Id.*; MDC 22B.

7) **The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors Are Inconsistent with Applicable Local Government Comprehensive Plans and Land Development Regulations**

a) *The corridors are inconsistent with the County's CDMP and East Everglades Zoning Overlay Ordinance*

126. For the reasons explained above, the transmission line facilities proposed on the west side of the L-31N in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors are incompatible with Everglades National Park. The proposed facilities are thus inconsistent with the County's CDMP Land Use Plan Map designation of "Environmentally Protected Park" and with the CDMP's Conservation, Aquifer Recharge and Drainage Element. Woerner, Vol. 49 at 6913-15, 6928-33; MDC 2 at I-52 - I-52.2, IV-6 – IV-7, IV-11 – IV-12, IV-16; MDC 35.

127. To the extent the regulations in Chapter 33B of the County Code governing the East Everglades Area of Critical Environmental Concern are construed as land development regulations, the proposed transmission line facilities are also inconsistent with the requirements of the East Everglades Zoning Overlay Ordinance, MDC 1 (Ch. 33B, Art. II, Div. 2), for the reasons explained above.

128. The FPL West Preferred and MDLPA AC-1 and AC-2 corridors are thus inconsistent with the County's comprehensive plan and land development regulations.

b) *The County's Zoning Regulations Require Dedications of Zoned Right-of-Way in any Corridor that Is Certified*

129. As to any corridor that is certified, the County's land development regulations would require dedications of zoned right-of-way. In particular, pursuant to § 33-46 of the County's Zoning Code, any activity that requires a permit, including a permit to install a transmission line pole on private property, requires the applicant to dedicate

- that portion of the applicant's lot lying within the zoned right-of-way for public road purposes. Lacau, Vol. 49 at 6864-6865; MDC 39.
130. Zoned rights-of-way in Miami-Dade County are established and identified at § 33-133 of the MDC Code. Lacau, Vol. 49 at 6864-6865; MDC 39. If MDC later determines that a public road is not necessary, land dedicated for public road purposes can be returned to the property owner upon approval of a road closing petition by the Board of County Commissioners. Lacau, Vol. 49 at 6890-6891.
131. The FPL project, in its entirety, includes a number of project features that intersect with zoned County rights-of-way. *Id.* at 6865.
132. Pursuant to § 33-46, FPL is required to dedicate to the public that portion of its property that lies within a zoned right-of-way. The locations where Project features would require FPL to dedicate land for public road purposes have been provisionally identified in MDC's Plant Agency Report, and the requirement to dedicate property in accordance with these code provisions has been identified in each of MDC's corridor agency reports. *Id.* at 6865-6866; MDC 38; MDC 9 at 28; MDC 10 at 24; MDC 11 at 32; MDC 12 at 5; MDC 14 at 23.
133. FPL would not be required to dedicate property in locations where it does not own the underlying property in fee. Lacau, Vol. 49 at 6872. In addition, FPL would not be required to dedicate property in any location previously identified by MDC if a project feature does not in fact intersect with a zoning right-of-way. *Id.* at 6885.
134. FPL has not requested a variance from the dedication requirements, even though variances are available under the County Code. MDC 1(§§ 33-46, 33-311(A)(4)(b),

County Code). The failure to dedicate land required for public right-of-way purposes would thus be a violation of the County's land development regulations.

8) **The FPL West Preferred and MDLPA AC-1 and AC-2 Corridors Depend Upon Speculation that the Secretary of the Interior Will Approve a Land Swap in the Face of Great Opposition**

135. Some of the land identified for the FPL West Preferred and MDLPA AC-1 and AC-2 corridors is currently land owned by the federal government as part of Everglades National Park. Construction of transmission line facilities on these lands would require a reduction of 260 acres within the authorized boundary of Everglades National Park by adjusting the boundary to exclude lands conveyed to FPL, in violation of the intent and directive of the Everglades National Park Expansion Act. Up to 137 acres of wetlands currently within the Park boundary would be filled for construction of the access roads and pads. FPL 283; MDC 22B (estimating up to 118 acres filled).

136. FPL's West Preferred Corridor and MDLPA AC-1 and AC-2 can only be constructed if the Secretary of the Interior agrees to deed land through which the corridor would travel to FPL in exchange for lands owned by FPL within the Park boundaries (the lands previously proposed for the West Secondary Corridor). Hronec, Vol. 19 at 2585.

137. Assuming the land swap takes place, the FPL West Preferred Corridor would no longer be with the boundaries of Everglades National Park, and the existing lands owned by FPL in Shark River Slough would be owned by the National Park Service.

Ammon, Vol. 23 at 3105-3106. But the land swap is dependent on the approval of the National Park Service (“NPS”). *Id.*; Hronec, Vol. 19 at 2585.

138. Such “land swaps” are uncommon and very difficult to achieve; they must have a specific purpose that enhances the park and not cause any degradation or net loss to the park or park land. Ring, Vol. 34 at 4836. Building transmission lines in these areas would be detrimental both to the hydrology and ecology of the Park. *Id.* at 4840-4841.

139. While minor modifications of the Park boundary are authorized under the Everglades Expansion Act, the threshold for such a modification is 25 acres; FPL’s current proposal is significantly higher than that threshold. *Id.* at 4036.

140. This “land swap” idea is highly speculative, dependent upon a future discretionary decision by the Secretary of the Interior to execute the swap, which is itself subject to a variety of federal laws designed to protect the natural resources within Everglades National Park and to potentially lengthy legal challenges to the Secretary’s decision. Hronec, Vol. 19 at 2585-2589, 2612-2613; Halpern, Vol. 35 at 4997-4998.

141. The NPS has been attempting to acquire FPL’s property since 1996. NPS intends to acquire FPL’s existing property within Everglades National Park to manage it in its natural condition. NPCA Ex. 25.

142. According to the NPS, there continue to be many uncertainties regarding the land swap, and it is not a foregone conclusion that the NPS will decide to exchange lands. An NPS decision to acquire FPL’s property outright, rather than through a land swap, would result in no land within the existing Park boundary being available for placement of transmission lines. NPCA 25.

143. The NPS is currently undergoing an environmental analysis and preparing an Environmental Impact Statement (“EIS”), pursuant to the National Environmental Policy Act, to identify possible alternatives associated with the land swap. The EIS will evaluate options and potential impacts for acquiring lands owned by FPL within Everglades National Park (those lands previously proposed for the West Secondary Corridor). The NPS must decide whether to exchange NPS lands (as identified in the West Preferred Corridor) for FPL's lands within the Park boundary or to acquire FPL's lands by purchase, eminent domain, or by other means. NPCA 25.
144. During the scoping period for the EIS, the Park Service received more than 10,000 comments from the public, 99% of which were opposed to the land swap. Hronec, Vol. 19 at 2609; Shirreffs, Vol. 34 at 4882. Given the controversy associated with this proposal, the likelihood for litigation is high. Halpern, Vol. 35 at 5013; NPCA 7.
145. FPL’s West Preferred Corridor can only be constructed if the Secretary of the Interior agrees to deed land through which the corridor would travel to FPL in exchange for lands owned by FPL. Hronec, Vol. 19 at 2585.
146. The failure of this land swap to materialize would be a fatal flaw for any corridor that includes land within the current boundaries of Everglades National Park. Hronec, Vol. 19 at 2589. As such, if the land swap fails, the FPL West Preferred and MDLPA AC-1 and AC-2 corridors could not be constructed.
147. Moreover, even if the land swap were to be consummated, the lands would remain within the County’s East Everglades Area of Critical Environmental Concern and would continue to be subject to the requirements of Chapters 24 and 33B of the

Miami-Dade County Code. MDC 1 (Ch. 33B, Art. II); MDC 33; Simpson, Vol. 9 at 1233-34; Hronec, Vol. 19 at 2543-44; Woerner, Vol. 49 at 6914-15. As stated previously, the construction of transmission line facilities in these areas would conflict with the requirements of Miami-Dade County Code Chapters 24 and 33B.

9) FPL's Comparison of the Six Proposed Western Corridors is Misleading and Based Upon Flawed Assumptions

148. FPL's comparison as to the relative merits of each of the proposed western corridors assumes that the "land swap" between FPL and the U.S. Department of the Interior is consummated. FPL 283; Simpson, Vol. 9 at 1198-1200. As explained above, FPL's assumption is highly speculative, as it ignores both the many legal and procedural hurdles that remain and the great public opposition to the swap. Hronec, Vol. 19 at 2609; Shirreffs, Vol. 34 at 4882; Halpern, Vol. 35 at 5013; NPCA 7; NPCA 25. FPL's comparison chart did not present any analysis of the relative impacts should the land swap fail.

149. The individual criteria that FPL's experts selected and analyzed to compare the different corridors, and to reach the conclusion that the FPL West Preferred Corridor was indeed the preferred choice, were also all premised on the land swap being consummated. Simpson, Vol. 9 at 1198-1200. In addition, many of these criteria were misleading. Halpern, Vol. 35 at 4976-77.

150. FPL's definition of "conservation lands" impacted by the proposed corridors assumed that the West Preferred Corridor would no longer contain conservation lands because the land swap would remove those lands from the boundaries of Everglades National Park, but ignored the designation of those same lands within Miami-Dade

County's East Everglades Area of Critical Environmental Concern; in short, FPL ignored the fact that the County would continue to consider them conservation lands regardless of the land swap. MDC 1 (Ch. 33B, Art. II); MDC 33; Simpson, Vol. 9 at 1233-34; Hronec, Vol. 19 at 2543-44; Woerner, Vol. 49 at 6914-15; Curtis, Vol. 28 at 3914-19, 3924-25.

151. FPL's other criteria provided a higher "grading" to FPL's West Preferred Corridor, although the criteria were inappropriately used. In particular, FPL specifically identified impacts to the Bird Drive Basin/North Trail Basin but not to the Everglades National Park/East Everglades Area of Critical Environmental Concern, even though the Bird Drive Basin/North Trail Basin wetlands are significantly degraded and are less significant to the overall ecology of the region. Simpson, Vol. 9 at 1285-86; Curtis, Vol. 28 at 3883-90, 3914-19, 3924-25.

152. FPL also favored the West Preferred under the criterion of "Government-owned land with no FPL rights within ROW" by assuming that the contraction of Everglades National Park through the land swap would occur without any hurdles or further extensive process, but that use of other government lands, such as those owned by MDC or the SFWMD, would be intolerably complex, even if the governments' proprietary authority over those other, less sensitive lands might be easier to negotiate; indeed, FPL has not even inquired as to the availability of those other, less environmentally fragile government lands. *Id.* at 1220-23, 1286-91. In fact, as set forth in a Stipulation filed on November 5, 2013, SFWMD and MDC have stipulated that property rights in those lands could be made available to FPL subject to reasonable conditions. *See infra* ¶¶ 189-90.

153. Similarly, FPL favored the West Preferred under the criterion of “risk of conflict with future roadway expansion or widening projects” based on “rumors” that roadways in other corridors were “potentially being expanded or thought about, but not in an immediate planning horizon.” *Id.* at 1291-92. No testimony substantiating those rumors was adduced during the final hearing.

154. FPL also overstated the cost of acquiring right-of-way in the NPCA corridor while underestimating the cost, including likely litigation costs, associated with the land swap. Hronec, Vol 19 at 2604-11; Halpern, Vol. 35 at 5001, 5040; *see infra* ¶¶ 174-177.

155. Removing the assumption that the land swap is a *fait accompli* changes the entire grading of the comparison, resulting in a more favorable view of NPCA’s corridor, and a less favorable view of FPL’s West Preferred Corridor. Simpson, Vol. 9 at 1269 (regarding criteria #2), 1273 (regarding criteria #3), 1284 (regarding criteria #4), 1286 (regarding criteria #5), 1288 (regarding criteria #7), 1294 (regarding criteria #10), 1308-1309 (regarding criteria #13), 1290-91 (regarding all criteria); Curtis, Vol. 28 at 3938-39 (regarding criteria #11).

10) The NPCA Corridor was Developed in Collaboration with FPL, MDLPA, and All Involved Local, State, and Federal Agencies to Develop a True Consensus Corridor.

156. In siting a transmission line, it is industry standard to avoid environmental impacts first, minimize second, and last, if you have to, mitigate. Halpern, Vol. 35 at 4972-4973. Here, the best way to avoid impacts was to site the corridor outside of Everglades National Park. *Id.* Avoidance is the simplest way to approach it and is the

- preferred method of experts. National parks are areas to be excluded from consideration for transmission line siting. *Id.* at 4974.
157. NPCA has opposed the proposed land swap between FPL and the Everglades National Park since first learning of the proposal in 2009. Shirreffs, Vol. 34 at 4880-4881. Instead, NPCA requested that the National Park Service fulfill its obligations as it was originally directed by Congress in the East Everglades Expansion Act of 1989 to acquire FPL's inholdings (privately owned lands inside the designated boundary of Everglades National Park). *Id.*
158. Numerous inholdings within national park boundaries exist all over the country. NPCA believes it would be extremely poor public policy to simply be reducing the boundary of national parks that were designated by Congress in order to accommodate a series of land swaps that could significantly diminish the quality of the national park experience, as well as the ecological integrity of the Park. *Id.*
159. This location in particular, in the East Everglades Expansion Area, is considered some of the highest quality wetlands and is home to endangered species that are within Everglades National Park. *Id.* at 4882; Grossenbacher, Vol. 52 at 7336-37. NPCA believes it would be highly inappropriate to take that taxpayer-owned land and swap it out to give to a privately-held utility to build transmission lines. Shirreffs, Vol. 34 at 4882.
160. NPCA communicated with various agencies involved in the land swap process, and was hearing concerns about FPL's proposed corridors. NPCA saw opportunities to explore an opportunity for a different corridor that had fewer impacts to the natural

environment, could have reasonable cost, and could get the transmission corridor outside of Everglades National Park. *Id.* at 4887-4888.

161. NPCA convened a meeting including FPL, MDLPA, the South Florida Water Management District, the Miccosukee Tribe of Indians, DEP, Miami-Dade County, and the NPS to identify what goals and constraints existed in trying to find a consensus corridor, included staying away from the existing community and population and maintaining as low cost as possible to make it a feasible corridor. *Id.* at 4888.

162. As these participants developed what is now considered the NPCA corridor as a consensus corridor, all of the agencies and participants shared concerns, including, among other things, concerns about threatened and endangered species, impacts to hydrology and other restoration projects that could be important in that area. *Id.* at 4882.

163. As a result of this collaborative effort, and as part of its environmental analysis of the proposed land swap, the National Park Service authorized a study of potential corridors that FPL did not consider and that were outside Everglades National Park.

164. The NPCA corridor strikes the best balance between avoiding impacts to a national treasure, maintaining low costs, and ensuring that a transmission corridor can be built to supply a community's electrical needs. *Id.*

11) The NPCA and MDLPA AC-3 Corridors are the only western transmission line corridors that effect a reasonable balance between the need for the facilities and the impacts upon natural resources.

a) The NPCA Corridor Has No Fatal Flaws and Is Practicable

165. The Alternative Corridor Proposed by NPCA has no fatal flaws. It is cost effective, viable and available to be implemented, in other words, practicable. Hronec, Vol. 19 at 2589-2590.

166. The NPCA Corridor presents no conflicts with future roadway expansion or widening projects. Halpern, Vol. 35 at 4987-4988.

167. While FPL's traffic expert claims there is a potential for conflict, he was unable to identify any scenario that would require anything more than simple coordination and communication between FPL and the Florida Department of Transportation. Vargas, Vol. 25 at 3379-92.

168. The NPCA Corridor presents no conflicts with existing or planned development. Halpern, Vol. 35 at 4987-4989, 4992.

169. The NPCA Corridor presents no conflicts with, and is compatible with, agricultural lands. Davis, Vol. 36 at 5116.

170. NPCA's proposed corridor poses no insurmountable land acquisition conflicts. None of the public agencies owning land or encumbrances within that corridor have expressed any concerns about the potential use of their lands. Davis, Vol. 36 at 5148-5149; Stipulation between MDC, SFWMD, and NPCA Regarding NPCA's Proposed Alternate Western Corridor and Conditions of Certification, November 4, 2013.

171. The NPCA Corridor is the best option for balancing all of the statutory considerations. Halpern, Vol. 35 at 5023.

172. The NPCA Corridor was selected after extensive site inspections. *Id.*

173. The NPCA and MDLPA AC-3 corridors are the least hydrologically complex to design and construct. The FPL West Preferred, MDLPA AC-1, and MDLPA AC-2 corridors are more hydrologically complex to design and construct. Susi, Vol. 15 at 2076.

b) The NPCA Corridor Is the Most Cost-Effective

174. It is undisputed that the NPCA Corridor is the most cost-effective to construct and mitigate, costing \$50-60 million less than the FPL West Preferred and MDLPA AC-1 Corridors. NPCA 13. FPL's West Preferred Corridor is predicted to cost \$221.7-\$232.1 million to construct and mitigate; NPCA's Corridor is predicted to cost \$171.8 million to construct and mitigate. NPCA 13.

175. The cost to acquire all the lands necessary for NPCA's corridor is uncertain. But by using data collected from the Miami-Dade Property Appraiser's Office, discussions with other utilities and right-of-way experts, and applying methodology previously used in similar projects, NPCA's analysis indicates the cost for right-of-way acquisition will be approximately \$23.3 million. NPCA 6; Davis, Vol. 36 at 5119-22.

176. FPL's analysis indicates the cost for right-of-way acquisition for NPCA's corridor will be approximately \$67.8 million, which includes the potential costs associated with negotiation and litigation, and assumed a cost of 510% of the market value. NPCA 13; Hronec, Vol. 19 at 2604; Halpern, Vol. 35 at 5040. Such a high multiplier is unheard-of among right-of-way firms and utilities that conduct this type of

acquisition; acquisition cost multipliers are more typically set at 200-250% on the high end. Halpern, Vol. 35 at 5001.

177. In its original analysis, FPL also assumed a cost of only \$2.5 million associated with the acquisition of its West Preferred Corridor inside current Everglades National Park boundaries. NPCA 13. Although FPL included potential negotiation and litigation costs in its analysis of NPCA's corridor, FPL did not include the potential costs associated with negotiation and litigation for the land swap or any other land acquisition. Hronec, Vol. 19 at 2604. FPL's transmission line siting expert conceded that this number should be increased to similarly account for the corridor factor used in the analysis of NPCA's corridor. Hronec, Vol. 19 at 2604-2611. This would increase the acquisition cost of FPL's West Preferred Corridor to \$12.75 million, and the overall cost of the Corridor to \$234.45-\$244.85 million. FPL's analysis, even with its flawed figures for acquisition of the right-of-way for the NPCA corridor, states that the overall cost for the NPCA corridor will be \$239.6 million.

c) The MDLPA AC-3 Corridor Is Practicable

178. The MDLPA AC-3 corridor is practicable. Hronec, Vol. 19 at 2590.

179. MDLPA AC-3, however, is flawed in that a small portion (where it intersects with the West Preferred Corridor on the southern end) includes land within Everglades National Park, albeit to a much lesser extent than the other FPL and MDLPA corridors. MDC 11 at 6-7, 15; Burzycki, Vol. 50 at 7109; Burzycki, Vol. 51 at 7194-97.

d) The NPCA and MDLPA AC-3 Corridors Will Not Interfere with any Currently Authorized, Non-Speculative Uses of the Property Held by Limonar Development, Inc.

180. Limonar currently owns 485 acres of land within land designated as “Agriculture” in the Miami-Dade County Comprehensive Development Master Plan (CDMP). The NPCA and MDLPA AC-3 corridors cross some of these lands.
181. If the NPCA Corridor is certified, the current uses permitted on Limonar’s land—principally, farming and rural residential uses—would remain. Davis, Vol. 36 at 5114-16; Woerner, Vol. 49 at 6942-45. A transmission line is not *per se* inconsistent with the existing agricultural use of the property under its current planning and zoning designations. *Id.*; Curtis, Vol. 28 at 3891, 3934.
182. Limonar’s “proposal” for a “Green City” would require an application to Miami-Dade County to amend the Urban Development Boundary, a zoning application to the Miami-Dade County, permits from the Miami-Dade County’s Division of Environmental Resources Management, building permits, and an attempt to secure a plat. To date, Limonar has filed no such applications. Woerner, Vol. 49 at 6942-45.
183. NPCA did not take into account any potential future development of lands within its corridor, as it is purely speculative about where exactly development may occur in the future. It is only reasonable to evaluate the proposal based on current permitted uses of the land. Davis, Vol. 36 at 5115-16.
184. Limonar never presented any evidence that its plans for “Green City” are anything more than speculation. Limonar’s only witness admitted that the proposal was “future possible development, no guarantees,” Valle, Vol. 41 at 5825, and Limonar’s own attorney later characterized that testimony as, “[T]hese are plans for the future, which he has said no guarantees, just something they would like to do.” *id.* at 5827.

Limonar's "charrette" was a meeting between three private consultants hired by the property owners, and did not include public participation "because it was so speculative." *Id.* at 5834.

e) Government-owned lands within the NPCA Corridor do not pose a serious obstacle to acquisition of Right-of-Way for the Transmission Line Facilities

185. The SFWMD owns lands within the NPCA corridor that are encumbered by obligations to the U.S. Department of the Interior ("DOI") under a Land and Water Conservation Fund Grant. NPCA 63.

186. Since 2012, when SFWMD removed the Bird Drive Recharge Plan from consideration as a project under CERP, SFWMD has committed to coordinate with DOI to reconcile its obligations under the Land and Water Conservation Fund Grant. NPCA 63; Strowd, Vol. 44 at 6222-23.

187. SFWMD is currently reviewing public lands that could be sold as surplus, and its lands within the Bird Drive basin are being considered as part of that review. Shirreffs, Vol. 34 at 4896-97.

188. The U.S. Fish & Wildlife Service, the relevant agency from DOI, has expressed a willingness to work with the National Park Service and SFWMD to resolve any issues regarding their interests on properties in a manner favorable to the use of those SFWMD lands for other purposes, including transmission lines. Shirreffs, Vol. 34 at 4898-4900; NPCA 65.

189. SFWMD has agreed to provide FPL with the opportunity to acquire land interest in any SFWMD property necessary for the construction, operation, and maintenance of the proposed transmission lines in the NPCA corridor. Stipulation between MDC, SFWMD, and NPCA ¶ 17. SFWMD has agreed to work in good faith to assist in

removing or transferring the federal grant restrictions that may apply on SFWMD property for encumbered parcels that are necessary for construction, operation, and maintenance of the proposed transmission lines with the NPCA corridor. *Id.*

190. MDC also owns land within the NPCA Alternate Corridor. MDC has also agreed to provide FPL with the opportunity to acquire land interests in any County-owned property necessary for the construction, operation, and maintenance of electrical transmission lines within these lands, subject to conditions of certification. *Id.* ¶ 15. MDC has also agreed to work in good faith with FPL to remove any proprietary constraints that are within the County's sole control that would make FPL's use of the corridor impracticable. *Id.* ¶ 16.

191. Limonar claims it was deliberately excluded from NPCA's corridor selection process. But Limonar's representatives did meet with Dawn Shirreffs on behalf of NPCA to request that their property be avoided. Shirreffs, Vol. 34 at 4907-4908. Moreover, corridor proponents are not required to provide notice of their actions outside of this formal hearing process, and Limonar has had a full opportunity to present its arguments in this proceeding.

f) The NPCA and MDLPA AC-3 Corridors will have the least impact on fish and wildlife, water resources, and other natural resources of the state

192. Using existing infrastructure and existing linear facilities is much less disruptive and clearly more environmentally sound. Ammon, Vol. 23 at 3113.

193. The FPL West Preferred, MDLPA AC-1, and MDLPA AC-2 corridors could generally not be built on top of the existing linear facilities on the west side of the L-31N; they could only be built parallel or perpendicular to those existing facilities,

which would destroy sensitive and important wetlands. Ammon, Vol. 23 at 3125-31; Strowd, Vol. 44 at 6209-14, 6227-34.

194. The NPCA corridor is the best alternative for avoiding impacts to wood storks and snail kites. Burzycki, Vol. 51 at 7186, at 17-20. MDLPA AC-3 is the second best. *Id.* at 7184-7185.
195. The greatest risk factor to birds regarding transmission lines is when the lines are placed in open wetland habitat. Cook, Vol. 30 at 4169.
196. The MDLPA AC-3 corridor has a minimal impact on the snail kite and wood stork because it diverges from the FPL West Preferred Corridor at the next most southern place and turns east well away from documented nesting habitat and subsequently goes through agricultural lands with no forage value and short hydroperiod wetlands that are low quality with respect to forage production for snail kites. Burzycki, Vol. 51 at 7185.
197. The NPCA is the best alternative for the endangered avian species. *Id.* It has the least impact on habitat because it goes through only Management Area 1 (the 8 ½ Square Mile Area) of the East Everglades Area of Critical Environmental Concern, which has already been altered by human activity, as evidenced by this area having the most permitted uses. *Id.* at 7122-7123, 7185. The NPCA Corridor then goes through agricultural lands with no forage value and short hydroperiod wetlands that are low quality with respect to forage production for snail kites. The NPCA Corridor also puts no transmission lines between nesting habitat and known foraging areas. *Id.* at 7185-7186; Davis, Vol. 36 at 5112; Cook, Vol. 30 at 4189.

198. There is also simply less risk of endangered bird collisions with the NPCA Corridor. Cook, Vol. 30 at 4190.
199. The NPCA corridor has the least impact to the natural resources of the area; the NPCA corridor will have less qualitative and quantitative impacts on wetlands than all other corridors. Davis, Vol. 36 at 5122-5123; MDC 22B. First, the estimated amount of total wetland impact is lowest overall, and second, impacts would be to lower quality wetlands filled with more invasive exotic species than the native species found within Everglades National Park. Davis, Vol. 36 at 5122-5123; MDC 22B. As one of Miami-Dade County's environmental experts, Craig Grossenbacher, testified, "[B]y certification of the NPCA corridor, we could avoid all of the impacts in these high-quality wetlands within the East Everglades Area of Critical Concern, within the Water Conservation Areas, and at the same time, have a much smaller amount of wetland impacts elsewhere. Grossenbacher, Vol. 52 at 7335.
200. The NPCA corridor has the least impact on the water resources of the area; the NPCA corridor has the least issues related to water flow in the Everglades because it only goes through the 8 ½ Square Mile Area. Burzycki, Vol. 51 at 7131-7132. This area has been highly divided by small agricultural roads that are full of pot holes and low spots, so the water flows extremely slow in this area. *Id.* By placing a corridor in this area, using existing roads and infrastructure, the disturbance would be relatively minor because of the issues that already exist in this area. *Id.*

Proposed Conclusions of Law and Conditions of Certification

1) Standing

201. NPCA is a “person” within the meaning of section 403.503(23), Florida Statutes, and qualifies for intervention in this proceeding pursuant to section 403.508(3)(e), Florida Statutes, and section 403.527(2)(c)(3), Florida Statutes as its substantial interests are affected and are being determined by this proceeding. Additionally, all parties have stipulated to NPCA’s standing. Hearing Transcript Vol. 34 4876:16-22.

202. Miami-Dade County has standing as a local government pursuant to § 403.508(3)(a)(7), Fla. Stat.

2) Transmission Line Facilities that Are Not Built in Rights-of-Way that Preexisted Certification Are Subject to Local Comprehensive Plans and Land Development Regulations.

a) The Statute Does Not Preempt Local Land Development Regulation

203. FPL claims that its (1) proposed electrical transmission lines and corridors, (2) access roads to facilitate construction and maintenance of such lines, and (3) pipelines for reclaimed water and potable water are exempt from consideration as to consistency with local government comprehensive plans and land development regulations pursuant to §§ 403.50665 and 403.509(3)(c), Fla. Stat. See FPL Memorandum of Law (filed June 28, 2013) (“FPL Memo”). This argument is limited to consistency with local land development regulations, not environmental regulations. FPL has not contested that they are exempt from the non-procedural requirements of the County’s local environmental regulations set forth in Chapter 24 of the County Code.

204. FPL argues that local land development regulation is preempted because the purpose and scope of the Power Plan Siting Act (“PPSA”) reflects a “legislative rationale for preemption.” FPL Memo at 3, 9. There is no showing of express or clear preemption of local land development authority in this area by the State, nor does FPL attempt to argue that there has been an express or clear preemption. Instead, FPL argues for an implied preemption.
205. It is well established that “implied preemptions” are “severely restricted and strongly disfavored.” *Exile v. Miami-Dade Cnty.*, 35 So. 3d 118, 119 (Fla. 3d DCA 2010); *see also Browning v. Sarasota Alliance for Fair Elections, Inc.*, 968 So. 2d 637 (Fla. 2d DCA 2007) (“It generally serves no useful public policy to prohibit local government from deciding local issues.”), *rev’d on other grounds* 28 So. 3d 880 (Fla. 2010); *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984); *Phantom of Clearwater v. Pinellas County*, 894 So. 2d 1011, 1019 (Fla. 2d DCA 2005) (“[I]f the legislature can easily create express preemption by including clear language in a statute, there is little justification for the courts to insert such words into a statute. In the absence of express preemption, normally a determination based upon any direct conflict between the statute and a local law . . . is adequate to solve a power struggle between existing statutes and newly created ordinances.”), *approved sub. nom., Phantom of Brevard v. Brevard County*, 3 So. 3d 309, 315 (Fla. 2009); *Lowe v. Broward County*, 766 So. 2d 1199, 1207 (Fla. 4th DCA 2000) (“The courts should be careful in imputing intent on behalf of the Legislature to preclude a local elected governing body from exercising its home rule powers.”), *review denied*, 789 So. 2d 346 (2001).

206. Construing preemption narrowly is particularly important in the case of Miami-Dade County, which enjoys unique Home Rule powers derived from the Florida Constitution. The Florida Supreme Court has noted that “the metropolitan government of Miami-Dade County is unique in this state due to its constitutional home rule amendment.” *Metropolitan Dade County v. City of Miami*, 396 So. 2d 144, 146 (Fla. 1980); *see also* Art. VIII, §11, Fla. Const. of 1885 (1956), *retained in*, Art. VIII, §6 (a) and (e), n. 3, Fla. Const. of 1968 (the “Home Rule Amendment”).⁴ The Home Rule Amendment “gives Dade County numerous powers which set Dade apart from the state’s other counties.” *Metropolitan Dade County*, 396 So. 2d at 146. Miami-Dade County is a novel “experiment in government.” *Dade County v. Young Democratic Club of Dade County*, 104 So. 636, 639 (Fla. 1958). It constitutes “a new form of government in our state found only in Dade County. Any effort to describe it or liken it to either municipal or usual county government is likely to be inaccurate, erroneous and lead to confusion.” *County of Dade v. Saffron*, 173 So. 2d 138, 140 (Fla. 1965). Upon the adoption of the Home Rule Charter, the Miami-Dade County Board of County Commissioners “exercises the powers formerly vested in the state legislature with respect to the affairs, property and government of Dade County and all the municipalities within its territorial limits.” *State v. Dade County*, 142 So. 2d 79, 85 (Fla. 1962). Simply put, the Supreme Court held, “[w]hen the electors of Dade

⁴ In 1956, Florida voters amended the then-existing 1885 Florida Constitution and authorized the people of Miami-Dade County to adopt a charter to create a county government with one-of-a-kind home rule powers. Art. VIII, §11, Fla. Const. of 1885 (1956), *retained in*, Art. VIII, §6 (a) and (e), n. 3, Fla. Const. of 1968. The next year, the people of Miami-Dade County adopted a charter creating a comprehensive, regional, “metropolitan” government within the borders of the County government with the expansive powers authorized by the Home Rule Amendment (hereinafter “the Home Rule Charter”). When the 1968 Constitution was subsequently adopted, the Home Rule Amendment to the Constitution was expressly retained. *Id.*

- County adopted the home rule charter on May 21, 1957, *the authority of the Legislature in affairs of local government in Dade County ceased to exist.*” *Chase v. Cowart*, 102 So. 2d 147, 150 (Fla. 1958) (emphasis added).
207. In those rare situations where courts find implied preemptions, “[t]he scope of the preemption should also be limited to the specific area where the Legislature has expressed their will to be the sole regulator.” *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).
208. Here, contrary to the portions of the statute that FPL selectively presents, the PPSA explicitly contemplates an analysis of *local* land use consistency rather than preemption. §§ 403.50665, 403.508(c), 403.509(3)(c), Fla. Stat. Indeed, the PPSA’s statement of legislative intent, which FPL only partially quotes, provides that one of the statute’s many purposes is to balance “the pressing need for increased power generation facilities” with ensuring that those facilities “*will not unduly conflict with the goals established by the applicable local comprehensive plans.*” § 403.502, Fla. Stat. (emphasis added).
209. The purported preemption applies only to the “regulation and certification of electrical power plant sites.” § 403.510(2), Fla. Stat. *See Seminole Tribe of Florida v. Hendry County*, 114 So. 3d 1073, 1076 (Fla. 2d DCA 2013) (“In determining whether a power plant certification application should be approved, the power plant siting board must consider, among several factors, whether the location, construction, and operation of the power plant will ‘[b]e consistent with applicable local government comprehensive plans and land development regulations.’

§ 403.509(3)(c).”). Moreover, the Community Planning Act itself provides that its provisions govern conflicts with other statutes related to land development:

Where this act may be in conflict with any other provision or provisions of law relating to local governments having authority to regulate the development of land, ***the provisions of this act shall govern unless the provisions of this act are met or exceeded by such other provision*** or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or chapter 166.

§ 163.3211, Fla. Stat. (emphasis added)

210. Because an implied preemption must be narrowly construed, Miami-Dade County is not preempted from seeking enforcement of its land development regulations over the transmission line facilities in this proceeding.

b) Construction of a Transmission Line on Land that Is Not Currently Right-of-Way Constitutes Development.

211. FPL also argues that the transmission line facilities do not constitute “development,” as defined in § 380.04(3)(b), Fla. Stat., because they involve work done by a utility in “established rights-of-way,” and they are thus exempt from consistency with local land development regulations. FPL Memo at 9. FPL’s argument rests on its interpretation that “established” means established ***at any time***—past, present, ***or future***. As FPL argues in its brief: “An ‘established’ right of way is not the same as an ‘existing’ or ‘pre-existing’ right of way. An established right of way is one for which the right of access is acquired by the utility at any time.” FPL Memo at 11 n.5. This is an absurdly circular argument.

212. Merriam-Webster defines “establish” as, “to bring into existence.” <http://www.merriam-webster.com/dictionary/established?show=0&t=1383102177>.

“Established,” which is the past tense, thus means “brought into existence.” Where the language of a statute is clear and unambiguous it must be accorded its plain meaning. *Bd. of County Comm’rs of Monroe County v. Fla. Dep’t of Cmty Affairs*, 560 So.2d 240, 242 (Fla. 3d DCA 1990) (citing *Citizens of the State of Fla. v. Pub. Serv. Comm’n*, 425 So.2d 534 (Fla. 1982)); *Trushin v. State*, 475 So.2d 1290 (Fla. 3d DCA 1985). Furthermore, “[t]he use of a particular verb tense in a statute can be a significant indicator of the legislature's intention.” *Martin v. City of Albany*, 320 Or. 175, 181, 880 P.2d 926 (1994).

213. In the context of § 380.04, Fla. Stat., then, the plain meaning of “established” refers to something that already exists. Indeed, as Mark Woerner, the County’s expert land use planner who has been charged with applying and interpreting that statute for applications heard by the County, testified, “established rights-of-way” means “[r]ights-of-way that are existing[,] that have already been authorized, the land is already in some ownership for these purposes, for these different types of utilities.” Woerner, Vol. 49 at 6947.⁵

214. Had the Legislature intended to leave the exemption unmoored in time, it could have specifically applied the exemption to rights-of-way “established at any time,” or, more simply, excluded the term “established” altogether. But the term “established” having been inserted in the statute without further qualification, that word must now be given effect. *Gulfstream Park Racing Ass’n, Inc. v. Tampa Bay Downs, Inc.*, 948 So. 2d 599, 605-06 (Fla. 2006) (“If the language pertaining to the ‘rebroadcast of

⁵ Notably, FPL does not even own the land in the West Preferred Corridor/Everglades National Park segment, as that interest is to be acquired only if the “land swap” is consummated. See *supra* ¶¶ 134-36.

simulcast signals’ also refers only to signals of live races transmitted from in-state facilities, as Gulfstream argues, this language adds absolutely nothing to the meaning of the statute, contrary to accepted rules of statutory construction. . . . This principle dictates that the language pertaining to a “rebroadcast of simulcast signals” must be given some independent meaning and field of operation.”); *Hechtman v. Nations Title Ins. of New York*, 840 So. 2d 993, 996 (Fla. 2003) (“It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage.”); *Florida Dept. of Revenue v. Florida Mun. Power Agency*, 789 So. 2d 320, 324 (Fla. 2001) (“This Court does not have the authority to strike a modifying clause where such a revision would substantively change the entire meaning of the statute in a manner contrary to its plain meaning. Under fundamental principles of separation of powers, courts cannot judicially alter the wording of statutes where the Legislature clearly has not done so. A court's function is to interpret statutes as they are written and give effect to each word in the statute.”). By reading “established” without any temporal limitation, FPL has rendered the word mere surplusage, and its interpretation therefore cannot withstand scrutiny.

215. In support of its interpretation, FPL points to a TLSA provision, § 403.524(2)(c), Fla. Stat., that addresses exemptions for construction in rights-of-way. FPL Memo at 11 n.5 (citing to exemption where right-of-way was “established at least 5 years before notice of the start of construction”). FPL is not proceeding under the TLSA here, and FPL’s carefully pruned quote from the TLSA ignores the most important provision in that TLSA subsection. In § 403.524(2)(c) of the TLSA, the Florida

Legislature specifically provided that, for purposes of that act, “[e]stablished rights-of-way *include rights-of-way established at any time*.” (emphasis added). Under the PPSA, by contrast, the Florida Legislature incorporated only the definitions from § 380.04, which do not provide any such qualification. See §§ 403.50665 and 403.509(3)(c), Fla. Stat. “Under the principle of statutory construction, *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another.” *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996). There is simply no rule of statutory construction under which FPL’s self-serving interpretation makes sense.⁶

216. The First District Court of Appeal recently rejected an argument similar to the one advanced by FPL here, holding that an unexecuted plan to create a right-of-way at some point in the future could not be construed as having in fact created that right-of-way. See *Clipper Bay Investments, LLC v. State Dep’t of Transp.*, 117 So. 3d 7 (Fla. 1st DCA), *reh’g denied*, (2013). *Clipper Bay* concerned, not the PPSA, but the Marketable Record Title Act (MRTA), and the exception contained therein for “rights, interest or servitude in the nature of easements, rights-of-way and terminal facilities, including those of a public utility or of a governmental agency, so long as the same are used” § 712.03(5), Fla. Stat. Although MRTA does not employ the qualifier “established,” the case is nonetheless instructive because the decision turned on when (or even if) the right-of-way came into existence. FDOT’s only

⁶ The provision that FPL selectively quotes does not save their argument. FPL points to the sentence in § 403.524(2)(c) that provides, “the transmission line right-of-way must have been established at least 5 years before notice of the start of construction,” and argues that because that sentence provided a 5-year minimum period to establish the right-of-way, then the absence of a minimum time for establishment in § 380.04 means that there is no time limitation whatsoever—past, present, or future. FPL Memo at 11 n.5. That argument defies logic.

evidence was an unrecorded right-of-way map, without supporting testimony to explain its import, and FDOT otherwise presented no evidence that the land had ever actually been used, devoted, or required for public right-of-way. *Clipper Bay*, 117 So. 3d at 15. The Court “reject[ed] FDOT's argument that any land purchased in conjunction with a roadway project or any land owned by FDOT will automatically be protected as right-of-way under MRTA.” *Id.*

217. Notably, in *Clipper Bay*, whether land qualified as “right-of-way” was broadly construed to include not only present use but also other evidence that the land was or had ever been “devoted to or required for [transportation] use.” *Id.* at 15; *see also* § 334.03(21) (defining “right-of-way”). An unqualified reference to “right-of-way” could thus be construed to provide for future development. § 334.032(21), Fla. Stat. In the context of the PPSA and § 380.04, then, the qualifier “established” would not be necessary to leave room for future development or future planning of a right-of-way. The term “established” would only be meaningful if it contained a temporal limitation, i.e., that the right-of-way had been brought into existence prior to certification. FPL concedes that there is no existing right-of-way where many of the proposed facilities are to be located. Those facilities are therefore not exempt from consistency with local government comprehensive plans and land development regulations.

218. FPL’s interpretation also leads to an absurd result: to avoid compliance with local land development regulations, a utility need do nothing more than file a request for transmission line corridor certification, and the corridor magically and immediately falls into the exemption. It is well-established that construction of a statute that

would lead to an absurd result is to be avoided. *Crum v. State*, 56 So. 3d 102 (Fla. 5th DCA 2011); *State v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002) (“A basic tenet of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences.”); *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (“[C]ourts of this state are without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.”).

219. FPL asserts that “there is ample case law demonstrating that the exclusions from the definition of ‘development’ have preempted local government jurisdiction under Chapter 163, part II, F.S.” and that “[t]he law is settled on this point.” But a review of the cases in FPL’s string cite, FPL Memo at 14-15, reveals that each involved either: (i) pre-existing rights-of-way (an exemption the County does not contest)⁷; or (ii) an agricultural exemption from ad valorem taxation, wholly inapposite to the application here.⁸ In sum, none applies to the current situation, in which FPL seeks to

⁷ See *Rinker Materials Corp. v. Town of Lake Park*, 494 So. 2d 1123, 1126 (Fla. 1986) (“[T]here is nothing in the record to suggest that the improvements envisioned by this project are outside the Town’s existing rights of way, there is no requirement that they be consistent with the Town’s Comprehensive Land Use Plan.”); *St. Johns Cnty. v. Dep’t of Cmty. Affairs*, 836 So. 2d 1034, 1037 (Fla. 5th DCA 2002) (“*Rinker* makes all road and utility improvements completed within existing rights-of-way exempt”); *Robbins v. City of Miami Beach*, 664 So. 2d 1150, 1151 (Fla. 3d DCA 1995) (“Without question, the streetscape project involves work within the boundaries of the City’s right-of-way. Hence, the subject resolution cannot properly be deemed a development order subject to challenge under section 163.3215.”); *Bd. of County Commrs. of Monroe County v. Dept. of Community Affairs*, 560 So. 2d 240 (Fla. 3d DCA 1990) (“We note that no evidence was presented that any of the work the County performed on the road was outside the boundaries of the right-of-way. Further, the FDCA did not argue that Monroe County’s road work was outside the boundaries of the right-of-way.”).

⁸ See *Love PGI Partners, LP v. Schultz*, 706 So. 2d 887, 896 (Fla. 5th DCA 1998) (“Comprehensive plans adopted pursuant to chapter 163 are intended to regulate and control

develop a brand new transmission line outside of existing right-of-way on land that, in many places, it does not even currently own.

220. FPL's assertion that the associated facilities are not "development" is also rooted in the Department of Community Affairs (DCA) final order in *In re: Petition for Declaratory Statement filed by George M. Hughes and Barbara Knowles* (Case No. DCA-03-DEC-295). But that administrative determination was not appealed or otherwise subject to judicial review. For all of the reasons explained above, its construction of "established right of way" is contrary to established principles of statutory construction, and, therefore, is not entitled to customary deference.

221. If the statutory construction that DCA or DEP give to § 380.04 is wrong, that interpretation is not entitled to deference. *Florida Hosp. v. Agency for Health Care Admin.*, 823 So.2d 844, 848 (Fla. 1st DCA 2002) ("[A] court need not defer to an agency's construction or application of a statute if special agency expertise is not required, or if the agency's interpretation conflicts with the plain and ordinary meaning of the statute."). *See also, e.g., Verizon Florida, Inc. v. Jacobs*, 810 So.2d 906 (Fla. 2002) (reversing a decision of the PSC as a clearly erroneous application of an unambiguous statute); *Palm Beach County Canvassing Bd. v. Harris*, 772 So.2d 1273, 1283 (Fla. 2000) (declining to defer to agency opinion as contrary to law and in conflict with the plain meaning of statute); *Arza v. Florida Elections Comm'n*, 907 So.2d 604, 606 (Fla. 3d DCA 2005) (overturning agency decision as clearly erroneous where statute was unambiguous).

"development," as defined by the statute and the Code. They are intended to have no impact on classification of lands as agricultural for ad valorem tax purposes, pursuant to section 193.3194(5)."), *approved*, 731 So. 2d 1270 (Fla. 1999).

222. Further, an examination of the cases cited in *Hughes* in support of DCA's determination reveals that each of those cases involved *preexisting* rights of way. See *Bd of County Comm'rs of Monroe County v. Fla. Dep't of Cmty. Affairs*, 560 So. 2d 240, 242(Fla. 3d DCA 1990) (Monroe County acquired a right of way which had been previously subject to an easement for a private accessway for residents of a subdivision; and it qualified for a different exemption, for "work by a highway or road agency... for the maintenance or improvement of a road"); *Friends of Mantanzas, Inc. v. Dep't of Env'tl. Prot.*, 729 So. 2d 437 (Fla. 5th DCA 1999) (concerning a proposed extension of a twelve-inch water main for six miles along rights-of-way for U.S. 1 and SR 206 to DOT rest areas on Interstate 95, and a similar proposed extension of a twelve-inch sewer transmission line along the same route, to serve the same rest areas.).

223. Likewise, the plain language of section § 380.04(3)(h), Fla. Stat., does not provide the exemption that FPL seeks. Section 380.04(3)(h) exempts from the definition of "development" the "creation . . . of rights of access, easements, or other rights in land." But certification of a transmission line corridor does not constitute "creation" of a right of access. The transmission line corridor is distinct from the transmission line right-of-way. § 403.522 (23), Fla. Stat. (defining "transmission line right-of-way"). As FPL's own transmission line process manager, Phil Simpson, explained, the transmission line rights-of-way must be in the corridor, but the corridor itself is not the right of way. Simpson, Vol. 8 at 1081-82 (defining route, corridor, and right-of-way). In fact, the rights of way associated with such a corridor must be acquired by the applicant and identified to DEP after certification. *Id.*

224. If the unappealed final order of another administrative agency is controlling, it would render meaningless unequivocal portions of the PPSA and violate the clear intention of the Legislature. *See A. Duda & Sons, Inc. v. St. Johns River Water Mgmt. Dist.*, 17 So. 3d 738, 744-745 (Fla. 5th DCA 2009) (“An agency may not redefine statutory terms to modify the meaning of a statute. Nor may an agency apply a construction which conflicts with the plain language of the statute. If an agency rule contravenes a statute, it must be rejected as an invalid exercise of delegated legislative authority.”) (internal citations omitted); *Campus Commc’ns, Inc. v. Dep’t of Revenue*, 473 So. 2d 1290, 1292 (Fla. 1985) (“If the legislature delegates certain authority to an administrative agency, the agency acts unconstitutionally if it attempts to ‘enlarge, modify or contravene’ the grant of authority.”).

225. For the foregoing reasons, this Court must reject FPL’s argument that the transmission line facilities proposed for installation outside of preexisting rights-of-way are exempt from land use consistency review. And for the reasons set forth above, the FPL West Preferred and MDLPA AC-1 and AC-2 corridors are inconsistent with Miami-Dade County’s Comprehensive Development Master Plan and its land development regulations, including the County’s East Everglades Zoning Overlay Ordinance to the extent it is construed as a zoning regulation rather than as an environmental regulation.

3) The NPCA Corridor Has the Least Adverse Impacts, and Only the NPCA or MDLPA AC-3 Corridors Can Be Approved.

226. Certification of the transmission lines and associated facilities is governed by § 403.509, Fla. Stat. In relevant part, the statute provides the following evaluation factors:

(3) 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, construction, and operation of the electrical power plant will:

(a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.

(b) ***Comply with applicable nonprocedural requirements of agencies.***

(c) ***Be consistent with applicable local government comprehensive plans and land development regulations.***

(d) Meet the electrical energy needs of the state in an orderly, reliable, and timely fashion.

(e) ***Effect a reasonable balance between the need for the facility as established pursuant to s. 403.519 and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources*** of the state resulting from the construction and operation of the facility.

(f) ***Minimize***, through the use of reasonable and available methods, ***the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.***

(g) Serve and protect the broad interests of the public.

(4)(a) Any transmission line corridor certified by the board, or secretary if applicable, shall meet the criteria of this section. When more than one transmission line corridor is proper for certification under s. 403.503(11) and meets the criteria of this section, the board, or secretary if applicable, ***shall certify the transmission line corridor that has the least adverse impact*** regarding the criteria in subsection (3), including costs.

§ 403.509, Fla. Stat. (emphasis added).

227. In either the FPL West Preferred or the MDLPA AC-1 or AC-2 corridors, transmission lines will be sited within areas that are to be managed for Everglades restoration, environmental protection, and other conservation purposes. The

construction and operation of several miles of transmission lines within these areas, and the resulting loss of hundreds of acres of wetland resources and endangered species habitat, conflicts with the restoration, protection, and conservation purposes of these lands. Because of the significant adverse impacts to wetland flora, the natural flow of water, and nesting and foraging habitat for threatened and endangered species discussed above, the FPL West Preferred and the MDLPA AC-1 and AC-2 corridors fail to adequately minimize adverse effects on the environment and the ecology of the land and its wildlife.

228. MDC has stricter provisions for avoidance and minimization of impacts to wetland areas than other regulatory agencies. Grossenbacher, Vol. 53 at 7387, 7391-92, 7409. State law does not require FPL to reduce or eliminate impacts to wetlands or other surface waters if certain conditions apply. SFWMD Basis of Review for Environmental Resource Permit Applications 4.2.1.2. FDEP and SFWMD thus recommended approval of all corridors subject to conditions. As discussed above, § 24-48.4 of the County Code instead requires a hierarchy of mitigation options that prioritize avoidance of impacts first, followed by minimization, and only after those opportunities have been exhausted can mitigation be considered. In keeping with its stricter regulations, Miami-Dade County performed a comparative analysis to consider avoidance and minimization of impacts not just within each corridor but across the corridors. MDC 22B; Grossenbacher, Vol. 53 at 7408-7409. By contrast, neither the South Florida Water Management District nor the Florida Department of Environmental Protection compared the impacts of one corridor against the impacts of the others. Strowd, Vol. 44 at 6198-99; Seiler, Vol. 40 at 5792-93, 5797.

229. The FPL West Preferred and the MDLPA AC-1 or AC-2 corridors fail to satisfy the requirements of the County's environmental regulations in the Conservation Element and Land Use Element of the CDMP, in Ch. 33B of the County Code, which governs the use and development of the ecologically sensitive and important East Everglades Area of Critical Environmental Concern, and in Ch. 24 of the County Code, which governs permits for work in wetlands.
230. Certification of the NPCA corridor would avoid all impacts in the high quality wetlands within the East Everglades Area of Critical Environmental Concern and Water Conservation Areas, including impacts to threatened or endangered species habitats in these areas. Grossenbacher Vol. 52 at 7335-7336. All agencies have indicated that the NPCA corridor is proper for certification.
231. Accordingly, the facilities proposed in the FPL West Preferred and the MDLPA AC-1 or AC-2 corridors do not comply with the applicable nonprocedural requirements of Miami-Dade County, the local government with jurisdiction over the affected area.
232. For similar reasons, the facilities proposed in the FPL West Preferred and the MDLPA AC-1 or AC-2 corridors are not consistent with the County's comprehensive plan and land development regulations.
233. The environmental and ecological impact is not outweighed by the need for the facility. As demonstrated by the adequate alternative transmission line locations that have been proposed in this proceeding, the FPL West Preferred and the MDLPA AC-1 and AC-2 corridors do not effect a reasonable balance between need and impact.

234. FPL has failed to demonstrate that the NPCA or MDLPA AC-3 corridors are cost-prohibitive, particularly when considering the objections, litigation, and delays that consummation of the “land swap” within Everglades National Park will entail.
235. In sum, the transmission line facilities proposed west of the L-31N in the FPL West Preferred and the MDLPA AC-1 or AC-2 corridors contain the greatest adverse impacts to the internationally recognized ecological treasure that is Everglades National Park. *See supra* ¶¶ 35-105; MDC 22B.
236. Only the NPCA corridor or the MDLPA AC-3 may be certified. § 403.509(4), Fla. Stat.
237. The NPCA corridor has the least adverse impacts regarding the criteria in § 403.509(3). In the NPCA or MDLPA AC-3 corridor, but not in the FPL West Preferred Corridor or MDLPA AC-1 or AC-2 corridors, the proposed west transmission line could be constructed, operated, and maintained in compliance with § 403.509(3)(e), so as to effect a reasonable balance between the need for the transmission line and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation.
238. The NPCA alternate corridor best effects a reasonable balance between the need for the transmission line and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation. § 403.509(3)(e), Fla. Stat.
239. In the NPCA or MDLPA AC-3 corridor, but not in the FPL West Preferred Corridor or MDLPA AC-1 or AC-2, the proposed west transmission line could be

- constructed, operated, and maintained in compliance with § 403.509(3)(f), Fla. Stat., so as to minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.
240. The NPCA corridor best minimizes, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life. § 403.509(3)(f), Fla. Stat.
241. In the NPCA or MDLPA AC-3 corridor, but not in the FPL West Preferred Corridor or MDLPA AC-1 or AC-2, the proposed west transmission line could be constructed, operated, and maintained in compliance with § 403.509(3)(c), Fla. Stat. so as to be consistent with applicable local government comprehensive plans and land development regulations.
242. The location of transmission lines in the FPL West Preferred and the MDLPA AC-1 and AC-2 corridors would result in the degradation of a national park, impede federal and state restoration efforts, and result in the loss of up to approximately 118 acres of wetlands within the East Everglades Area of Critical Environmental Concern and up to approximately 308 acres of wetlands for the entire West corridor. In addition, the location of transmission lines in the FPL West Preferred and MDLPA AC-1 and AC-2 corridors would degrade and fragment important endangered species habitat and cause significant adverse impacts to the ecology of the land and its wildlife and the ecology of state waters. MDC 22B; SCA Appendix 10.4, ERP Section 1, part 3, Table 1.

243. Neither the FPL West Preferred nor the MDLPA AC-1 or AC-2 corridors is consistent with applicable provisions of local government comprehensive plans because they are inconsistent with provisions of the Miami-Dade County Comprehensive Development Master Plan (CDMP). These provisions include, among others, the Land Use Plan Map designation of “Environmentally Protected Parks.” The construction and operation of several miles of transmission lines within these areas and the resulting loss of hundreds of acres of wetland resources conflicts with the restoration, protection, and conservation purposes of these land use designations as set forth in the CDMP. Woerner, Vol. 49 at 6913-18; MDC 9 at 55-61; MDC 7-12.

244. As currently proposed, neither the FPL West Preferred Corridor nor the MDLPA AC-1 or AC-2 effect a reasonable balance between the need for electricity and the impact upon the public and the environment. The lines will significantly degrade the scenic vistas of Everglades National Park and the East Everglades Area of Critical Environmental Concern, impede restoration efforts, and result in significant impacts to wetlands and wildlife. Richards, Vol. 36 at 5204; Burzycki, Vol. 51 at 7128, 7177-79, 7189; Ring, Vol. 34 at 4815; Cook, Vol. 30 at 4181.

4) Conditions of Certification

245. Because the project facilities that will not be built within preexisting rights-of-way are not exempt from land use consistency, where those project facilities intersect with a planned right-of-way, FPL is required to dedicate land for right-of-way

purposes in accordance with §§ 33-46 and 33-133 of the County Code. Accordingly, any project facilities that are certified shall be subject to the following conditions:

- a) Prior to any clearing or construction associated with the transmission lines, including clearing or construction associated with any related mitigation to compensate for unavoidable adverse environmental impacts in the West Corridor Divergence Area, FPL shall dedicate or otherwise convey to Miami-Dade County the land needed for streets, roads, and public ways pursuant to § 33-133, Code of Miami-Dade County. For those areas outside the Urban Development Boundary (UDB), this shall only apply to the extent that FPL owns the properties in fee simple that are adjacent to or overlapping with section lines or section line rights-of-way. For those areas inside the UDB this shall only apply to the extent that FPL owns the properties in fee simple that are adjacent to or overlapping with MDC-required rights-of-way. Dedication or conveyance documents, as appropriate, shall be executed by FPL prior to any clearing or construction within any of the approved transmission corridors. “West Corridor Divergence Area” refers to the segments of the Western Corridor from SW 120th Street to the Levee Substation.
- b) Prior to any clearing or construction associated with the plant and non-transmission facilities including the mitigation areas, FPL agrees that, to the extent it owns the properties in fee simple that are adjacent to or overlapping with the following section lines or half-section lines, it will dedicate the land necessary for the required right-of-way widths set forth in Section 33-133, Code of Miami-Dade County: SW 107 Avenue between SW 304 Street (King’s Highway) and SW 328 Street (North Canal Drive), SW 112 Avenue between SW 304 Street and SW 328 Street (North Canal Drive), SW 117 Avenue between SW 328 Street (North Canal Drive) and SW 344 Street (Palm Drive), SW 344 Street (Palm Drive) between SW 107 Avenue and the L-31E right of way.

[MDC Code, §§ 33-46, 33-133]

246. In addition to the Proposed Conditions of Certification set forth by the Florida Department of Environmental Protection, the segments of the Western Corridor from SW 120th Street to the Levee Substation (the “West Corridor Divergence Area”) shall also be subject to the following conditions:

(a) Access Roads

- (i) FPL's use of access roadways shall be in accordance with all applicable non-procedural requirements of MDC Code, Chapter 24 and Chapter 33B.
- (ii) FPL shall utilize adjacent existing public roads for access to the ROW for construction, operation, and/or maintenance purposes, wherever possible.
- (iii) FPL must design transmission and access road structures for minimal ground coverage and minimal impact on hydrology, ecosystems, and habitats for alignments intersecting the area designated Environmental Protection on the CDMP. Consistency with all wetlands restoration plans for the general area, including CERP, applicable environmental regulations, and policies of the CDMP will be required through reviews by County staff. Expansions to existing uses must demonstrate through design and engineering that biologic and hydrologic functions inherent to these areas will be preserved.
- (iv) All construction access roadways within the Pennsuco wetlands shall be temporary only and shall be removed once construction of the transmission lines is complete.
- (v) No utility infrastructure or access/maintenance roads shall be located on or above the ground within the current boundary of Trail Glades Range. Access roads, transmission towers and accessory structures adjacent to Trail Glades Range Park property shall be located and constructed in a manner that minimizes impacts on adjacent park land.
- (vi) FPL shall design utility infrastructure and/or any associated roadways located within parcels owned by Miami-Dade County Water and Sewer Department so as to not interfere with construction, access, operation or maintenance of Miami-Dade County's existing or planned water or sewer infrastructure for the West Wellfield.
- (vii) Proposed access roadways shall not impact and shall not encroach into wetlands or tree islands located within the interior of the C-4 Emergency Detention Basin operated by the South Florida Water Management District.

[MDC Code Chapters 24 and 33B, Miami-Dade County Section 24-48, CDMP text, Land Use Element p. I-64, I-65, and I-68, CDMP Objective LU-3, Policies LU-3A and LU-3B, Objective CM-1, Policies CM-1A, CM-1B and CM-1E, Policy TC-4C]

(b) Protected Tree and Vegetation

- (i) All tree islands shall be preserved within the Bird Drive Everglades and North Trail Wetland Basins.
- (ii) Tree islands characterized by native vegetation shall be preserved in all management areas in the East Everglades Area of Critical Environmental Concern, including agricultural areas.

- (iii) Impacts to tree islands and other forested wetlands shall not be mitigated at the Hole In the Donut (HID). Wetland impacts mitigated at HID shall be in-kind only. (§§ 24-7(1), 24-48.3 and 24-48.4, County Code; United States Army Corps of Engineers requirement).

[MDC Code Section 24-48.3(5)(b); MDC Code Section 33B-26(d)]

(c) *General Wetland Conditions*

- (i) Impacts shall be avoided and minimized in all wetland areas. No less than 90 days prior to commencement of work within each segment of transmission line right-of-way that is located within or impacts wetlands (including site clearing or other preparation work), FPL shall provide Miami-Dade County RER-DERM with complete and detailed plans, and construction methodology, for all proposed work within the transmission corridor. This information shall be provided as a post certification submittal for review and approval by RER-DERM, and shall be of sufficient detail for the County to evaluate the proposed work for conformance with ERP regulations as well as the Miami-Dade County CDMP, Chapter 33B, and Section 24-48, Miami-Dade County Code. The proposed work shall demonstrate that all avoidable impacts associated with roads and other infrastructure to be located within and adjacent to the wetland portions of the transmission corridors have been eliminated and that unavoidable impacts have been minimized, and that the project design maximizes preservation of existing natural resources as required pursuant to Section 24-48.4 Miami-Dade County Code. The proposed design and construction of the transmission lines shall incorporate features that avoid and minimize impacts to natural resources including but not limited to wetlands, flora, fauna, and rare, threatened and endangered species. This may include but is not limited to selective placement of transmission line infrastructure, varying the transmission line structure span length as appropriate, use of reduced fill pad size, elimination of fill pads for transmission line structures, elimination of access roads where not necessary, construction of access roads at wetland grade, undergrounding of transmission lines, collocation with existing features, and modification of construction techniques to eliminate avoidable impacts and reduce unavoidable impacts. FPL shall be responsible for the cost associated with undergrounding transmission lines. Access roads, culverts and all other structures shall be located to avoid conflict with existing underground utilities including but not limited to water and sewer facilities. In the event temporary fill is used in wetlands to facilitate construction of the transmission line, the temporary fill shall be removed and the wetlands restored after construction to minimize impacts to wetlands. RER-DERM will review the submittal for compliance with the requirements of this condition and the requirements of the Miami-Dade County Code and FPL shall modify the plan as necessary to comply with these requirements.

Work on portions of the transmission lines within wetlands as well as any other portions impacting wetlands shall not commence until RER-DERM has approved the submittal through a determination that it meets the requirements of this condition, the Miami-Dade County Public Works Manual and Chapters 24 and 33B, of the Miami-Dade County Code. *CDMP Land Use Element p. I-75, "Wetland Areas", Objective LU-3, Policy LU-3A, LU-3B, Conservation, Aquifer Recharge and Drainage Element Objective CON-7.*

- (ii) FPL, through its design, construction, maintenance and operation of infrastructure to be located within the transmission corridors, shall actively support, to the greatest extent applicable, the restoration and maintenance of surface water flow through wetland systems of the Shark River Slough, Everglades National Park, and the saline wetlands of southeastern Miami-Dade County. Any work, use, alteration or construction that constrains or prevents the restoration or maintenance of water flow is prohibited. *[Miami-Dade County Code Sections 24-7 and 24-48, CDMP Objective LU-3, Policies LU-3A, LU-3B and LU-3C, Objective CON-7, Policies CON-7C and CON-7J and Objective CM-1, Policy CM-1B]*
- (iii) Pursuant to Section 24-48.3(1)(e), Code of Miami-Dade County, conformance with the Miami-Dade CDMP and Chapter 33B of the Code of Miami-Dade County is required in the West Corridor Divergence Area. Section 24-48.3(1)(i) requires maximum protection of wetland hydrological and biological functions by limiting the amount of fill that can be placed in wetlands to the minimum amount necessary on site to provide for the land usage alternative which results in the least adverse environmental impact and the least cumulative adverse impact. *[MDC Code Sections 24-48.3(1)(e),(i), Section 33B, CDMP Objective LU-3, Objective CON-7, Objective CON-9]*

(d) *Conditions for Wetland Mitigation*

- (i) A complete and detailed comprehensive wetlands mitigation plan for the West Corridor Divergence Area, that addresses both permanent and temporary impacts, shall be submitted to MDC for review within 6 months of certification. The plan shall demonstrate compliance with all of the requirements of Section 24-48.4 of the MDC Code as well as applicable state and federal regulations. In addition, because the maintenance of the transmission lines once constructed will require continual impacts to wetlands and other natural areas, the mitigation plan shall fully address these continuing impacts. *[CDMP Objective CON-7, Policy CON-7A, Objective CM-1, Policy CM-1E, and Objective CON-9, MDC Code Chapter 33 and Chapter 24 Sections 24-7 and 24-48, Condition 9 of MDC Resolution No. Z-56-07, Basis of Review Section 4.3.1.2]*
- (ii) For adverse environmental impacts that occur within the West Corridor Divergence Area, FPL shall be required to mitigate these impacts, pursuant to Section 24-48.4 of the MDC Code. The purpose of mitigation

is solely to compensate for unavoidable adverse environmental impacts. Mitigation should not be used to make an otherwise nonpermissible project permissible. FPL's mitigation plan must maximize the preservation of existing natural resources. In determining mitigation procedures the term mitigation includes the following methods, in the order of priority in which they should be utilized:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action or its implementation;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) Compensating for the impact by replacing or providing substitute resources or environments.

[MDC Code, Section 24-48.4]

- (iii) All avoidable wetland impacts are prohibited in the West Corridor Divergence Area. Mitigation shall maximize preservation of existing natural resources by occurring to the extent possible within the same wetland area in which the impacts occur. If there are insufficient mitigation opportunities available in the same wetland area in which the impacts occur to rectify the impact through repair, rehabilitation, or restoration of the affected environment or to reduce/eliminate the impact over time by preservation or maintenance operations, FPL may mitigate for unavoidable wetland impacts within adjacent or nearby wetland basins or may purchase credits in a mitigation bank if such mitigation is determined to be acceptable pursuant to Section 24-48.4 of the MDC Code. [CDMP Objective CON-7, Policy CON-7A, Objective CM-1, Policy CM-1 E, and Objective CON-9, MDC Code Sections 24-7 and 24-48, Basis of Review Section 4.3.1.2]
- (iv) In the West Corridor Divergence Area, FPL shall perform mitigation in a manner consistent with Everglades Restoration projects including but not limited to CERP and the Modified Water Delivery Project. Mitigation shall not prohibit, delay or otherwise constrain Everglades Restoration projects. [MDC Code, Section 24-8.3(1)(a), (b), (d), (e), (i)(i), CDMP Objective LU-3, Policy LU-3C, Objective CON-7, Policies CON-7C and CON-7J]
- (v) If any transmission infrastructure will be placed within the East Everglades Area of Critical Environmental Concern, FPL shall, within 30 days after the corridor is certified, place a permanent conservation and flowage covenant or easement in favor of MDC and SFWMD on all FPL owned lands and easements held by FPL that are located within the current boundaries of Everglades National Park. Current boundaries are defined as the Park boundaries at the time of PPSA application submittal. The lands to be placed under conservation and flowage covenant or easement

shall be included as a preservation component of the required mitigation for the West Corridor Divergence Area. Language for the conservation and flowage covenant or easement shall be approved by MDC based on a coordinated review by MDC and SFWMD. The approved covenant or easement shall be executed by FPL and recorded by MDC in the public records of Miami-Dade County after acceptance of the finalized language. No clearing or construction within the West Corridor shall occur until the covenant or easement has been executed and recorded in the public records. The overarching purpose of this condition is twofold. First, it ensures that adverse environmental impacts, as defined in Section 24-5 of the MDC Code, that occur in the West Corridor Divergence Area, are mitigated according to the hierarchy of Section 24-48 of the MDC Code including avoidance and minimization of impacts and it ensures that the preservation of existing natural resources is maximized as required by Code. Second, it ensures an increase in the project's consistency with Everglades restoration projects, including but not limited to the Comprehensive Everglades Restoration Project (CERP) and the Modified Water Deliveries Project. [MDC Code Sections 24-5 (definition for adverse environmental impact), 24-7 and 24-48, including but not limited to Sections 24-48.2(II)(B)(10)(c), 24-48.4, 33B-26 and 33B-28, CDMP Objective LU-3, Policies LU-3A and LU-3C, Objective CON-7, Policy CON-7C]

(vi) Pursuant to Section 24-48.4(1-5) of the Miami-Dade County Code, impacts to wetlands, including but not limited to impacts to wetland hydrological and biological functions, shall be avoided and minimized in the West Corridor Divergence Area. Pursuant to Section 24-48.2(II)(A)(4)(i-iv), Miami-Dade County Code, FPL shall not cause harmful obstruction or undesirable alteration of the natural flow of water, material injury to adjacent property, or adverse environmental impact in this area. No construction shall commence within the West Transmission Corridor until FPL demonstrates compliance with this COC. [MDC Code Sections 24-48.2, 24-48.4]

(vii) Due to the uncertainty of the timing of any mitigation proposed at the Hole In the Donut (HID) because it is not being proposed "up-front" and because it is not known when the wetland impacts will occur, reasonable assurance must be provided that sufficient area will be available at HID at the time the wetland impacts would be mitigated. Therefore, for any mitigation to be acceptable at the HID as currently proposed for wetlands impacts associated with the transmission corridor infrastructure, reasonable assurance shall be provided to the agencies demonstrating that adequate credits will be available at HID for restoration work not yet performed at the time the proposed wetland impacts would begin. Unless the credits and location(s) are permanently reserved at HID by purchase in advance of the work or some equivalent assurance is provided that the mitigation opportunity at HID will continue to exist at the time the mitigation is to be utilized, acceptance of mitigation at HID

cannot be pre-approved in advance by Miami-Dade County under applicable regulations including Chapter 24 of the Miami-Dade County Code. FPL shall, in coordination with Everglades National Park as the HID mitigation bank manager, identify the specific location(s) and boundary(ies) of any mitigation proposed within HID in a post certification submittal to FDEP and MDC RER-DERM. To be acceptable to Miami-Dade County, the submittal shall be sufficient in detail to confirm that the required amount of mitigation would be provided in the form of wetland restoration at HID in an area or area(s) yet to be restored at the time this mitigation commences. The submittal must also demonstrate the bank manager's agreement to reserve the area(s) for FPL until this mitigation is performed. The required mitigation shall be based on the actual amount and locations of wetland impacts and the mitigation ratios required by Miami-Dade County as specified herein below. The Basis of Review, the Uniform Mitigation Assessment Methodology and Chapter 24 of the Miami-Dade County Code.

- (viii) For any mitigation to be acceptable at the HID, ratios required as a condition of certification shall not be less than those required by Miami-Dade County pursuant to its evaluation under the Basis of Review, the Uniform Mitigation Assessment Methodology, the CDMP and Chapter 24 of the Miami-Dade County Code. The minimum required ratios determined by Miami-Dade County vary between and within segments due to the varying quality of the wetlands and are included as a component of the MDC Transmission Agency filed on January 17, 2012. These ratios are based on the quality of the wetlands at the time of corridor certification and it is acknowledged that their quality may change in the future before proposed impacts would occur. If wetland quality changes in any segment of an approved transmission corridor prior to the proposed impact to the extent that the ratio may need to be adjusted, FPL or the agencies may request that the required ratio be reevaluated at that time and a new ratio, if appropriate, shall be established for that segment upon approval by the wetland regulatory agencies. The Basis of Review, the Uniform Mitigation Assessment Methodology, the CDMP and Chapter 24 of the Miami-Dade County Code.

(e) *Condition to maintain sheet-flow in specific wetland sloughs*

- (i) Sheet-flow impacts are prohibited to wetland sloughs important to the Everglades and Everglades restoration including Wink-eye slough, Taylor slough, and Northeast Shark River slough. In addition, FPL shall not constrain the restoration and maintenance of these natural surface water flows pursuant to the CDMP in any areas where the transmission corridors would cross these natural features. Any construction work including preconstruction earthwork in these slough areas crossed by the FPL transmission line corridor shall maintain an equivalent level of sheet-flow to that which currently exists in these sloughs. FPL shall identify access

and maintenance road design and construction techniques such as elevated roadways to bridge the slough features, stabilized at-grade roads or geoswales that would not extend above existing wetland grades in these slough areas, or other design alternatives that will maintain an equivalent level of sheet-flow to that which currently exists in these sloughs. *Miami-Dade County Code Chapter 33, Chapter 24 Sections 24-7 and 24-48, Condition 17 of Miami-Dade County Resolution Z-56-07, CDMP Objective LU-3, Policies LU-3A and LU-3B and LU-3C, Objective CM-1, Policy CM-1B, and Objective CON-7, Policies CON-7C and CON-7J.*

- (ii) At least ninety (90) days prior to beginning construction of the transmission lines or any associated roadways including but not limited to preconstruction earthwork or clearing, FPL shall provide to RER-DERM for review and approval, design details and information demonstrating preservation of sheet-flow in wetland slough areas consistent with the applicable substantive requirements of Miami-Dade County, including requirements of Miami-Dade County Resolution No. Z-56-07, the CDMP and the Miami-Dade County Code. FPL shall not commence work within the transmission line corridors until RER-DERM and FDEP have determined that the design as well as construction techniques meet all requirements of this condition. *Miami-Dade County Code Chapter 33, Condition 7 Miami-Dade County Resolution Z-56-07.*
- (iii) Sheet flow impacts, as a result of the proposed transmission line project, are prohibited to wetland sloughs important to the Everglades and Everglades restoration including Wink-eye slough, Taylor slough, and Northeast Shark River slough. In addition, FPL shall not constrain the restoration and maintenance of these natural surface water flows pursuant to the CDMP in any areas where the transmission corridors would cross these natural features. Any construction work including preconstruction earthwork in these slough areas crossed by the FPL transmission line corridor shall maintain an equivalent level of sheet-flow to that which currently exists in these sloughs. FPL shall identify access and maintenance road design and construction techniques such as elevated roadways to bridge the slough features, stabilized at-grade roads or geoswales that would not extend above existing wetland grades in these slough areas, or other design alternatives that will maintain an equivalent level of sheet-flow to that which currently exists in these sloughs. These design and construction techniques shall also be sufficient to accommodate the increased flowage anticipated from planned restoration projects such as the 50-cfs pump proposed to be constructed linking the Florida City Canal with Wink Eye Slough under the CERP BBCW Alternative O project.

(f) Trail Glades Park Specific Conditions

- (i) FPL shall comply with the applicable non-procedural requirements of Chapter 26, MDC Code relative to Trail Glades Range Park.

- (ii) No utility infrastructure or access/maintenance roads shall be located on or above the ground within the current boundary of Trail Glades Range.
- (iii) Access roads, transmission towers and accessory structures adjacent to Trail Glades Range Park property shall be located and constructed in a manner that minimizes impacts on adjacent park land.
- (iv) FPL shall work with Miami-Dade County Parks, Recreation and Open Space Department prior to the construction of any access improvements adjacent to Trail Glades Range Park to ensure that proposed improvements do not impact current park access or planned improvements.
- (v) A courtesy review of the proposed vegetation to be impacted or removed adjacent to Trail Glades Range Park shall be provided to the County.

[MDC Code, Chapter 26]

- (g) Construction of the proposed Eastern and Western transmission line corridors and related new infrastructure is contingent on certification and construction of the proposed Turkey Point Nuclear Units 6 & 7. If the proposed power generating units are not certified and constructed, additional transmission lines are prohibited in the Eastern and Western transmission line corridors. [MDC Home Rule Charter, Section 1.01(A)(12), (14), (21),(23)]
- (h) Notwithstanding any other conditions of certification or stipulations between FPL and MDC, and pursuant to Section 24-27 of Miami Dade Code, FPL shall not cause, or allow to be caused, any nuisance as defined in 24-5 and/or 24-48 as a result of the construction, operation, or maintenance of the transmission features of the project. [MDC Code Chapter 24, Section 24-7(1)].
- (i) This certification does not authorize unpermitted Adverse Environmental Impacts (AEI) as defined in Section 24-5 of the Code of Miami-Dade County. Any unpermitted AEI that occur as a result of the construction, maintenance, or operation of the Transmission components of the project shall be addressed in accordance with the General Conditions of Certification or such other applicable law. [MDC Code Chapter 24, Sections 24-5, 24-48.1]
- (j) The design and location of FPL's transmission infrastructure in the West Corridor Divergence Area shall meet all applicable Miami Dade County requirements for protection of floral and faunal threatened or endangered species, including but not limited to provisions in Section 24-48.3(1)(b), (d), (e), and by reference CDMP Objectives CON-7 and CON-9, CDMP Policies CON-7A, CON-9A, CON-9B, CON-9C, and CON-9E, Section 24-48.3(1)(h) and (i) of the MDC Code; Section 24-48.4(1-5), and Section 24-49.2(4)(I)(1)(a), (b)(i-ii) of the MDC Code that require maximum preservation and protection for federal or State designated threatened or endangered species and their habitat. FPL shall demonstrate that all applicable County requirements for protection of floral and faunal threatened

or endangered species and their habitats have been met in a post-certification submittal to RER-DERM that is provided prior to final design of the transmission infrastructure. This post-certification submittal shall present the results of comprehensive pre-construction plant and wildlife surveys conducted in the transmission right of way and within 1 mile of the transmission right of way for listed wildlife species, pursuant to Section 24-7(3) of the MDC Code. Survey methodology shall include but not be limited to aerial surveys (including but not limited to follow flight surveys), ground surveys, and other methods for locating wildlife travel corridors in relation to transmission infrastructure plus identification of feeding, foraging, roosting, resting, nesting, and burrowing areas within or adjacent to the transmission corridor. All surveys shall be conducted by a person or firm that is knowledgeable and experienced in conducting flora and fauna surveys for each potentially occurring listed species and shall follow accepted professional standards, including appropriate timing to coincide with periods of reproduction and/or other critical life activities. Electronic copies of all GIS files used to create the survey report(s) shall be submitted to MDC and FWC as part of the reporting requirements, except for plant species that are endangered or threatened at state or federal levels, for which GIS location records shall be deposited with a non-governmental organization that is mutually agreeable to both FPL and MDC. The post-certification submittal shall incorporate current and historic information on use of the survey area by threatened or endangered wildlife species to identify location, size, and type of habitat utilized or likely to be utilized by threatened or endangered wildlife species within the transmission right of way and surrounding 1-mile buffer. The post-certification submittal shall demonstrate that FPL has used this information in design of the transmission infrastructure to meet applicable provisions in the MDC Code and CDMP for maximum preservation and protection for federal or State designated threatened or endangered floral and faunal species and their habitat. The post-certification submittal shall demonstrate that appropriate mitigation for unavoidable adverse environmental impacts to federal or State designated threatened or endangered floral and faunal species and their habitat has been provided, pursuant to Section 24-48.4(1-5) of the MDC Code. The post-certification submittal shall also present a program for post-construction surveys to demonstrate FPL's continuing compliance with applicable provisions in the MDC Code and CDMP for maximum preservation and protection for federal or State designated threatened or endangered species and their habitat. All earthwork within the transmission ROW including pre-construction clearing, shall be prohibited until FPL demonstrates compliance with this condition. *[Section 24-7(3) of the MDC Code, Section 24-48.3(1)(b), (d), (e), and by reference CDMP Objectives CON-7 and CON-9, CDMP Policies CON-7A, CON-9A, CON-9B, CON-9C, and CON-9E, Section 24-48.3(1)(h) and (i) of the MDC Code; Section 24-48.4(1-5) of the MDC Code, and Section 24-49.2(4)(I)(1)(a) and (b)(i-ii) of the MDC Code]*

- (k) In the West Corridor Divergence Area, FPL shall protect and buffer all nesting, roosting and feeding habitats that are used by federal or state designated endangered or threatened species from surrounding development or activities and shall not move or destroy rookeries and nesting sites used by federal or State designated or threatened species.[MDC Code Chapter 24, Section 24-48.3(1)(e), CDMP Objective CON-9, Policies CON-9B and CON-9C]
- (l) In the West Corridor Divergence Area, habitats of endangered or threatened species including but not limited to nesting or foraging habitat for snail kites shall not be degraded or destroyed as a result of the project including construction, installation and subsequent maintenance of the proposed transmission lines and associated infrastructure, including maintenance roads. [CDMP Objective CON-7, Policy CON-7A, and Objective CM-1, Policy CM-1E]
- (m) Construction of transmission line infrastructure within the current boundaries of Everglades National Park is prohibited. Current boundaries are defined as the Park boundaries at the time of PPSA application submittal. [MDC Code, Section 24-48.3(1)(e), CDMP Objective LU-3, Policies LU-3A, LU-3B, LU-3C]
- (n) The construction, operation and maintenance of all transmission line infrastructure shall be in full compliance with applicable non-procedural requirements of Chapter 24 and the MDC Public Works Manual. [MDC Code, Chapter 24]
- (o) The construction, operation and maintenance of all transmission line infrastructure in the East Everglades Area of Critical Environmental Concern shall be in full compliance with all applicable non-procedural requirements of Section 33B, including but not limited to Sections 33B-26 and 33B-28 of the MDC Code. [MDC Code, Section 24-48.3(1)(b), Section 24-48.3(1)(e), Chapter 33B]
- (p) Filling in excess of one-half acre in the East Everglades Area of Critical Environmental Concern is prohibited. [MDC Code, Section 24-48.3(1)(b), Section 24-48.3(1)(e), Section 33B-26(a)(2)]
- (q) Roads are prohibited in Management Area 2A of the East Everglades Area of Critical Environmental Concern. [MDC Code, Section 24-48.3(1)(b), Section 24-48.3(1)(e), Section 33B-26(c)(1)-(2)]
- (r) Pursuant to Section 24-48.3(5)(b) of the MDC Code, FPL shall preserve all tree islands located within the transmission right of way in the Bird Drive Everglades Basin or the North Trail Basin, if any. [MDC Code Section 24-48.3(5)(b)]

- (s) Pursuant to Section 33B-26(d) of the MDC Code, FPL shall preserve all tree islands, including their canopy, that occur within any transmission right of way located in the East Everglades Area of Critical Environmental Concern, including agricultural areas. [MDC Code Section 33B-26(d)]
- (t) For any portion of the transmission line rights of way that crosses MDC-owned lands, including but not limited to MDC rights of way and MDC parks, FPL shall not remove, harvest, damage, or destroy any plant listed as endangered, threatened, or commercially exploited without first obtaining the written permission of MDC as the landowner and without prior or concurrent mitigation approved by MDC as the landowner. [§ 581.185(3)(a)-(c), F. S.]
- (u) Within any portion of the transmission line right of way that is located within the West Corridor Divergence Area and that crosses public lands, including but not limited to rights of way and parks, FPL shall not remove, harvest, damage, or destroy any plant listed as endangered, threatened, or commercially exploited without first obtaining the written permission of the applicable public agency as the landowner and without prior or concurrent mitigation approved by the applicable public agency as the landowner. [§ 581.185(3)(a)-(c), F. S.]
- (v) Should upland construction of transmission line or associated infrastructure damage or require removal of any upland trees within certified corridors, FPL shall be required to preserve specimen trees (trunk > 18 inch diameter at breast height) to the extent practicable, and replace upland tree canopy in accordance with the requirements of Chapter 24, Section 24-49 of the Miami-Dade County Code. FPL shall also replace upland tree canopy in accordance with Chapter 24, Section 24-49 of the Miami-Dade County Code when maintenance is required that results in the effective destruction or removal of upland trees. [MDC Code Chapter 24, Section 24-49 and the existing site certification]

Conclusion

WHEREFORE, the National Parks Conservation Association and Miami-Dade County respectfully request that the ALJ enter a Recommended Order recommending that the FPL West Preferred, MDLPA AC-2, MDLPA AC-1, and West Preferred/AC-2 hybrid transmission line corridors be denied certification as to the segments west of the L-31N and between SW 120th Street and the Levee substation, and that the NPCA and MDLPA AC-3 alternate transmission line corridors be certified instead.

Respectfully submitted this 4th day of November 2013.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing have been provided by e-mail to the parties below this 5th day of November, 2013.

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Figure 1



Figure 2
TPGW10 Tritium Results
 June 2010 to December 2013

