

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020978

1. REQUESTED MOTION:

ACTION REQUESTED: Approve and authorize the "Memorandum of Right-of-Way Consent Agreement" between Florida Power and Light Company and Lee County.

WHY ACTION IS NECESSARY: The Metro Parkway Extension mitigation project encompasses a section of FPL "Right of Way" within the Six Mile Cypress Slough Preserve.

WHAT ACTION ACCOMPLISHES: Lee County will enter into an agreement with FPL to obtain the "Right of Way" for exotic vegetation removal within the mitigation site for Metro Parkway extension.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 5

C11A

3. MEETING DATE:

09-10-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT Parks and Recreation
- C. DIVISION _____

BY: John Yarbrough, Director

John Yarbrough

7. BACKGROUND:

Florida Fish and Wildlife Commission requested the FPL "Right-of-Way" to be included in the Metro Parkway mitigation area. The mitigation project will restore 241.5 acres of Six Mile Cypress Slough Preserve. Initially, exotic vegetation will be removed from the site. The area will then be replanted with native vegetation. Funds will be set aside to assure maintenance of the initial exotic vegetation removal. The FPL "Right-of-Way" will undergo exotic vegetation removal but plants will not be planted within the access areas to FPL facilities. It is critical to the restoration project to remove nearby seed sources for exotic vegetation. This applies to the FPL "Right-of-Way" which bisects the mitigation site.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

CCM

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>[Signature]</i>	<i>[Signature]</i>			<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	Risk <i>[Signature]</i>	GC <i>[Signature]</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *8/29/02*
Time: *12 noon*
Forwarded To: *[Signature]*

RECEIVED BY
COUNTY ADMIN. *CA*
8/28
3:40 PM
FORWARDED TO: *BL*
8/29 11:30

Prepared by:
Mark L. Byers
Florida Power & Light Company
P.O. Box 1119
Sarasota, FL 34230-1119

MEMORANDUM OF RIGHT-OF-WAY CONSENT AGREEMENT

THIS MEMORANDUM OF RIGHT-OF-WAY CONSENT AGREEMENT dated this _____ day of _____, 20____, by and between _____, (hereinafter referred to as "Licensee"), and FLORIDA POWER & LIGHT COMPANY, a Florida corporation (hereinafter referred to as "Company").

WITNESSETH:

WHEREAS, on the _____ day of _____, 20____, Company and Licensee entered into a written Right-of-Way Consent Agreement, hereinafter referred to as the "Agreement" related to certain property situated in the County of _____, State of Florida as more particularly set forth in said Agreement and described in Exhibit "A" attached hereto and made a part hereof and hereinafter referred to as the "Lands", and

WHEREAS, the parties are desirous of placing their interest therein as a matter of public record.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the parties intending to be legally bound thereby, the parties hereto agree as follows:

1. The property described in Exhibit "A" is subject to a right-of-way in favor of Company recorded in Official Record Book _____ at Page _____ of the Public Records of _____ County, Florida.
2. The Agreement provides, among other things, Licensee's right to construct certain improvements upon the Lands including, but not limited to, lighting, landscaping, automobile parking, and the encroachment of building footers upon certain portions of the Lands subject to certain conditions and restrictions.
3. The Agreement is assignable to purchasers of all or a portion of the Lands provided that the purchasers assume the obligations under the Agreement and specifically acknowledge and agree that the use of the property and improvements to be

placed on the property are strictly limited to those depicted on a certain plan of improvement and are otherwise subject to the terms of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the date hereinabove written.

Witnesses:

COMPANY:

FLORIDA POWER & LIGHT COMPANY

Signature: _____

By: _____
Its: West Area Real Estate Manager
Print Name: C. W. Mathys

Name (Print): _____

Signature: _____

Name (Print): _____

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by C. W. Mathys, as West Area Real Estate Manager, of FLORIDA POWER & LIGHT COMPANY, a Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced a driver's license as identification and did take an oath.

(NOTARY SEAL)

Notary Public
Print Name: _____

My commission expires: _____

Commission Number: _____

(ACKNOWLEDGEMENTS CONTINUE ON NEXT PAGE)

Witnesses:

LICENSEE:

Signature: _____

By: _____

Its: _____

Print Name: _____

Name (Print): _____

Signature: _____

Name (Print): _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____, of _____, a Florida corporation, on behalf of the corporation. He/she is personally known to me or has produced a driver's license as identification and did take an oath.

(NOTARY SEAL)

Notary Public

Print Name: _____

My commission expires: _____

Commission Number: _____

RIGHT-OF-WAY CONSENT AGREEMENT

FLORIDA POWER & LIGHT COMPANY, a Florida corporation, whose mailing address is P.O. Box 14000, Juno Beach, Florida 33408-0420, Attn: Corporate Real Estate Department, hereinafter referred to as "Company", hereby consents to the LEE COUNTY, a political subdivision of the State of Florida, whose mailing address is P.O. Box 398, Fort Myers, Florida 33902-0398, hereinafter referred to as "Licensee", using an area within Company's right-of-way granted by that certain agreement recorded in Misc. Book 32, at Page 247, Public Records of Lee County, Florida. The said area within Company's right-of-way, is hereinafter referred to as the "Lands". The use of the Lands by Licensee, shall be solely for the purpose of exotic vegetation removal and periodic exotic vegetation maintenance events. Said use will occur within the following area: immediately south of FPL pole number 76M7 extending to approximately 770 feet south of pole number 76M8. No plantings, dredging, filling or other activities are proposed that may adversely affect the utilization or accessibility of FPL facilities.

In consideration for Company's consent and for the other mutual covenants set forth below, and for Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Licensee agrees to obtain all necessary rights from the owners of the Lands in the event Licensee does not own said Lands; to obtain any and all applicable federal, state, and local permits required in connection with Licensee's use of the Lands; and at all times, to comply with all requirements of all federal, state, and local laws, ordinances, rules and regulations applicable or pertaining to the use of the Lands by Licensee pursuant to this Agreement.

2. Licensee understands and agrees that the use of the Lands pursuant to this Agreement is subordinate to the rights and interest of Company in and to the Lands and agrees to notify its employees, agents, and contractors accordingly. Company specifically reserves the right to maintain its facilities located on the Lands; to make improvements; add additional facilities; maintain, construct or alter roads; maintain any facilities, devices, or improvements on the Lands which aid in or are necessary to Company's business or operations; and the right to enter upon the Lands at all times for such purposes. Licensee understands that in the exercise of such rights and interest, Company from time-to-time may require Licensee, to relocate, alter, or remove its facilities and equipment, including parking spaces and areas, and other improvements made by Licensee pursuant to this Agreement which interfere with or prevent Company, in its opinion, from properly and safely constructing, improving, and maintaining its facilities. Licensee agrees to relocate, alter, or remove said facilities, equipment, parking spaces and areas, and other improvements within thirty (30) days of receiving notice from Company to do so. Such relocation, alteration, or removal will be made at the sole cost and expense of Licensee and at no cost and expense to Company; provided however, should Licensee, for any reason, fail to make such relocation, alteration, or removal, Company retains the right to enter upon the Lands and make said relocation, alteration, or removal of Licensee's facilities, equipment, parking spaces and areas, and other improvements and Licensee hereby agrees to reimburse Company for all of its costs and expense incurred in connection therewith upon demand.

3. Licensee agrees that it will not use the Lands in any manner which, in the opinion of Company, may tend to interfere with Company's use of the Lands or may tend to cause a hazardous condition to exist. Licensee agrees that no hazardous substance, as the term is defined in Section 101 (14) of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") (42 USC Section 9601 [14]), petroleum products, liquids or flammables shall be placed on, under, transported across, or stored on the Lands, which restricts, impairs, interferes with, or hinders the use of the Lands by Company or the exercise by Company of any of its rights thereto. Licensee agrees further that in the event it should create a hazardous condition, then upon notification by Company, Licensee shall, within seventy-two (72) hours, at its sole cost and expense, correct such condition or situation; provided however that the Company retains the right to enter upon the Lands and correct any such condition or situation at any time and, by its execution hereof, Licensee hereby agrees to indemnify and hold harmless Company from all loss, damage or injury resulting from Licensee's failure to comply with the provisions of this Agreement.

4. Licensee hereby agrees and covenants to prohibit its agents, employees, and contractors from using any tools, equipment, or machinery on the Lands capable of extending greater than fourteen (14) feet above existing grade and further agrees that no dynamite or other explosives shall be used within the Lands and that no alteration of the existing terrain, including the use of the Lands by Licensee as provided herein, shall be made which will result in preventing Company access to its facilities located within said Lands. Unless otherwise provided herein, Licensee agrees to maintain a forty (40) foot wide setback, twenty (20) feet on each side, from Company's facilities.

5. Trees, shrubs, and other foliage planted or to be planted upon the Lands by Licensee are not to exceed a height of fourteen (14) feet above existing grade.

6. Outdoor lighting installed or to be installed upon the Lands by Licensee are not to exceed a height of fourteen (14) feet above existing grade and all poles or standards supporting light fixtures are to be of a non-metallic material.

7. Sprinkler systems installed or to be installed by Licensee upon the Lands are to be constructed of a non-metallic material and sprinkler heads are to be set so the spray height does not exceed fourteen (14) feet above existing grade and does not make contact with any Company's facilities. Aboveground systems shall not be installed within or across Company patrol or finger roads and underground systems crossing said patrol and finger roads are to be buried at a minimum depth of one (1) foot below existing road grade.

8. Licensee agrees to warn its employees, agents, contractors and invitees of the fact that the electrical facilities and appurtenances installed or to be installed by Company within the Lands are of high voltage electricity and agrees to use all safety and precautionary measures when working under or near Company's facilities.

9. Licensee agrees, at all times, to maintain and keep the Lands clean and free of debris. Except as provided herein, Licensee further understands and agrees that certain uses of the Lands are specifically prohibited; such uses include but are not limited to recreational purposes,

hunting and camping, and Licensee agrees to notify its employees, agents, contractors, and invitees accordingly.

10. The use of the Lands by Licensee shall be at the sole risk and expense of Licensee, and Company is specifically relieved of any responsibility for damage or loss to Licensee or other persons resulting from Company's use of the Lands for its purposes.

11. Notwithstanding any provision contained herein, Licensee agrees to reimburse Company for all cost and expense for any damage to Company's facilities resulting from Licensee's use of the Lands and agrees that if, in the opinion of Company, it becomes necessary as a result of Licensee's use of the Lands for Company to relocate, rearrange or change any of its facilities, to promptly reimburse Company for all cost and expense involved with such relocation, rearrangement or change.

12. Each party hereto agrees that it shall be responsible for its own negligent acts or omissions. Nothing contained in the Section shall be construed to be a waiver or any protections under sovereign immunity, Section 768.28, Florida Statutes, or any other similar provision of law. Nothing contained herein shall be construed to be a consent by either party to be sued by third parties in any matter arising out of this Agreement.

13. The Board of Lee County Commissioners is self insured for all liability claims and related expenses pursuant to the provisions of Florida Statute 768.28.

14. This Agreement will become effective upon execution by Company and Licensee and will remain in full force and effect until completion of Licensee's use of the Lands pursuant to this Agreement, unless earlier terminated upon ninety (90) days written notice by Company to Licensee, or at the option of Company, immediately upon Licensee failing to comply with or to abide by any or all of the provisions contained herein.

15. The use granted herein as shown on Exhibit "A" shall be under construction by Licensee within one (1) year of the effective date of this Agreement and the construction shall be diligently pursued to completion. Licensee shall give Company ten (10) days prior written notice of its commencement of construction. "Under construction" is the continuous physical activity of placing the foundation or continuation of construction above the foundation of any structure or improvement permitted hereunder. Under construction does not include application for or obtaining a building permit, a site plan approval or zoning approval from the appropriate local government agency having jurisdiction over the activity, purchasing construction materials, placing such construction materials on the site, clearing or grading the site (if permitted) in anticipation of construction, site surveying, landscaping work or reactivating construction after substantially all construction activity has remained stopped for a period of two (2) months or more. Licensee acknowledges that failure to have the use under construction within the one (1) year time period will result in immediate termination of this Agreement in accordance with Paragraph 14 herein for failing to comply with the provisions contained herein unless Licensor grants a written extension for a mutually agreed upon time. Any request for an extension of time shall be submitted in writing by Licensee no later than thirty (30) days prior to the expiration of the one (1) year period for the project to be under construction.

16. The term "Licensee" shall be construed as embracing such number and gender as the character of the party or parties require(s) and the obligations contained herein shall be absolute and primary and shall be complete and binding as to each, including its successors and assigns, upon this Agreement being executed by Licensee and subject to no conditions precedent or otherwise.

17. Should any provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. In the event of any litigation arising out of enforcement of this Consent Agreement, the prevailing party in such litigation shall be entitled to recovery of all costs, including reasonable attorneys' fees.

18. Licensee may assign its rights and obligations under this Agreement to a solvent party upon prior written consent of the company, which consent shall not be unreasonably withheld.

The parties have executed this Agreement this _____ day of _____, 2002.

Witnesses:

FLORIDA POWER & LIGHT COMPANY

Signature:
Print Name: _____

By: _____
Its: West Area Real Estate Manager
Print Name: C. W. Mathys

Signature:
Print Name: _____

Witnesses:

LICENSEE:
LEE COUNTY

Signature:
Print Name: _____

By: _____
Its: _____
Print Name: _____

Signature:
Print Name: _____

CCC/DGE