



Serial: NPD-MISC-2011-020
December 13, 2011

Mr. Osvaldo Collazo
Chief, North Permits Branch
Department of the Army
Jacksonville District Corps of Engineers
Panama City Regulatory Office
1002 West 23rd Street, Suite 350
Panama City, Florida 32405-3648

Levy Nuclear Plant/PEF
SAJ-2008-00490 (IP-GAH)
Wetland Mitigation Plan Implementation on Government Lands

Dear Mr. Collazo:

As you are aware, Progress Energy Florida, Inc. (PEF) has proposed to carry out some of the mitigation activities required to offset unavoidable impacts related to the Levy Nuclear Plant and associated transmission lines on lands owned by the State of Florida, Pasco County and Pinellas County. The purpose of this letter is to outline a process for establishing Memoranda of Agreements (MOAs) or Memoranda of Understanding (MOUs) between Progress Energy Florida (PEF), government (State or County) land owner entities, and the Corps to ensure proper implementation and ongoing maintenance of these proposed wetland mitigation activities. At a meeting held with you and your staff on November 22, 2011, Mr. Don Hambrick requested that we provide this outline for your staff's review.

In April 2010, PEF submitted the preliminary Wetland Mitigation Plan to the Florida Department of Environmental Protection providing a watershed-based approach to mitigation of impacts. In order to achieve the benefits of relying on a watershed approach to mitigation, projects on public lands were included in the plan. As part of this plan, mitigation projects were proposed on the following government owned lands:

- Florida Forest Service lands in the Goethe State Forest and the Homosassa Tract of the Withlacoochee State Forest,
- Pasco County's Five Mile Creek Preservation site, and
- Pinellas County's Brooker Creek Preserve.

The letters of agreement from these agencies, which were included in the April 2010 Wetland Mitigation Plan, are attached for your convenience.

On October 4, 2011, PEF submitted to the Corps, the "Levy Nuclear Plant and Associated Transmission Lines Wetland Mitigation Plan, Comprehensive Design Document" providing more design detail for the plan (Reference: Letter Serial NPD-MISC-2011-015).

Because there would not be a direct permitting relationship between the Corps and these State and local entities (although there will be a permitting relationship between the Corps and PEF), we would propose that these State and local entities enter into MOAs or MOUs with PEF and the Corps to provide an additional mechanism to ensure proper implementation and ongoing maintenance of these mitigation activities. If this process is found to be acceptable, PEF would negotiate MOAs or MOUs with the State and local entities that own or manage the land upon which PEF will be undertaking the mitigation activities.

We would propose that these MOAs or MOUs be structured and contain provisions as set forth below:

- 1) The MOA/MOUs would be among PEF, the State or county landowner, and the Corps. This would give the Corps a direct connection with the State or county landowner since that landowner would not be on the Corps permit issued to PEF. The MOA/MOUs would state the authority of the State or local government entity to enter into such an MOA/MOU.
- 2) The MOA/MOUs would specify that the State or county landowner has no plans and no funds available or committed to conduct the environmental restoration or enhancement activities PEF will conduct as part of its mitigation plan. Thus, absent the environmental mitigation activities performed by PEF, the restoration or enhancement work on this property would not be performed. This would demonstrate compliance with the requirements of 33 CFR 332.3(a)(3) which provides that credit for mitigation performed on public land is based solely on aquatic resource functions provided by the compensatory mitigation project over and above those provided by public programs already planned or in place.
- 3) The MOA/MOUs would require PEF to provide financial assurances to guarantee the completion of the mitigation activities and the perpetual management or maintenance of those activities. These financial assurances will be in the form of letters of credit, performance bonds, or trust funds as are prescribed for wetland mitigation banks. These financial assurances would provide that either the Corps or the State or county landowner could access the financial assurances if PEF failed to perform the mitigation work. This would address the requirements of 33 CFR 332.3(n) that require financial assurances sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed.
- 4) The MOA/MOUs would state that the State or county governmental entity grants access to PEF to conduct the mitigation activities and access to maintain the mitigation activities unless PEF and the State or county entity agree that the governmental entity will maintain the activity pursuant to the terms of the Corps permit. If the State or county governmental entity will maintain the mitigation activity, then PEF would grant the governmental entity a trust fund to provide funds to cover the cost of the perpetual maintenance. Note that 33 CFR 332.7(d) allows a permittee to transfer long-term management responsibilities to a land stewardship entity such as a public agency.
- 5) The MOA/MOUs would also provide that the governmental entity has reviewed PEF's proposed mitigation plan, and that the governmental entity finds that the mitigation activities are consistent with the land uses and management practices of the governmental entity. This would satisfy the requirements of 33 CFR 332.3(o) that the compensatory mitigation must comply with applicable state and local laws.

- 6) The MOA/MOUs would provide that the State or county government agrees in perpetuity to not allow any uses of its land that would be inconsistent with PEF's mitigation construction activities or perpetual management activities. This would satisfy the requirements of 33 CFR 332.7(a) requiring long term site protection mechanisms.
- 7) The MOA/MOUs would provide that either (a) PEF would undertake long-term management activities on the mitigation sites; or (b) the State or county landowner agrees to undertake long-term management activities on the mitigation sites using funds generated from a trust fund (or similar financial mechanism) established by PEF. As such, the Corps could enforce the long-term management obligations against PEF through the Corps permit or could enforce the long-term management obligations against the State or county landowner through the MOA/MOUs. This would satisfy the requirements of 33 CFR 332.7(d)(4) requiring a mechanism for long-term management of a mitigation site.

For negotiation of these MOA/MOUs to be successful, PEF would need to understand that the Corps has no technical problems with the proposed mitigation design described in the Comprehensive Design Document that was submitted on October 4, 2011.

Please review the suggestions provided in this letter and let us know your thoughts regarding this proposed process for implementation and ongoing maintenance of the mitigation activities that would occur on government owned lands. If you approve of this approach, PEF would begin preparing an MOA/MOU template for your review and approval. Upon receiving your review and approval of the MOA/MOU template, PEF would then negotiate an individual MOA/MOU with the State Division of Forestry, Pasco County, and Pinellas County.

If you have any questions regarding this letter, or need additional information, please contact me at (919) 546-6992 or Paul Snead at (919) 546-2836.

Sincerely,



Robert Kitchen
Manager, Nuclear Plant Licensing
New Generation Programs & Projects

Attachments

cc: Gordon Donald Hambrick, USACE
Douglas Bruner, USNRC
David Pritchett, EPA
Paul Gagliano, EPA



Florida Department of Agriculture and Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol • Tallahassee, FL 32399-0800
www.doacs.state.fl.us

Respond to:
Florida Division of Forestry
3125 Conner Boulevard
Tallahassee, Florida 32399-1650
Telephone: 850-488-4274

March 5, 2010

Mr. Jim Maher
Program Administrator
Submerged Lands and Environmental Resource Permitting
Florida Department of Environmental Protection
7825 Baymeadows Way, Suite B-200
Jacksonville, Florida 32256

Dear Mr. Maher:

This letter is in reference to the off-site mitigation proposed by Progress Energy Florida (PEF) for its Levy Nuclear Plant and associated facilities. The site certification order is PPSA No. PA08-51. This letter is intended to provide PEF with authority to evaluate mitigation options on the Goethe State Forest and the Homosassa Tract of the Withlacoochee State Forest, with the ultimate intention of granting conceptual approval to the work proposed by PEF on both State Forests.

The Division of Forestry (DOF) understands that this proposal is a continuing part of the mitigation post-certification process and that more detailed planning will be developed, pending approval of FDEP. Once a formal restoration plan has been developed for project work involving either or both properties under DOF responsibility the Division of Forestry intends to cooperate fully with PEF to bring the restoration projects to fruition according to the permit requirements.

The Division of Forestry, based on several communications with PEF and their representatives over the last few months, has determined that this project is consistent with the resource management plans for each Forest. As proposed, restoration activities will neither impede scheduled DOF resource management activities nor create any negative impacts to DOF resource units.



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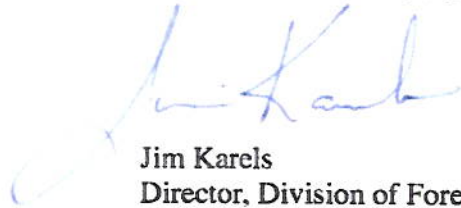
Mr. Jim Maher
March 5, 2010
Page Two

Additionally, the Division of Forestry does not currently have any plans or funding to complete work described in this proposal in the foreseeable future. It is understood that upon completion of the mitigation project and PEF satisfying all of the success criteria of the post-certification conditions and applicable state and federal permits that responsibility of maintaining and protecting the mitigation site will revert back to the Division of Forestry.

We look forward to working with PEF and the state and federal permitting agencies in this endeavor.

Sincerely,

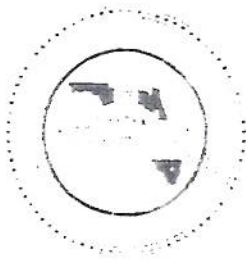
CHARLES H. BRONSON
COMMISSIONER OF AGRICULTURE



Jim Karels
Director, Division of Forestry

JRK/tg/vr

cc: Jeff Vowell, Chief, Field Operations
Steve Jennings, Chief, Forest Management
Winnie Schreiber, Manager, Withlacoochee Forest Center
Mike Penn, Resource Administrator, Withlacoochee Forest Center
Don West, Manager, Waccasassa Forest Center
Tom Gilpin, Wetland Restoration Specialist



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COUNTY ADMINISTRATOR'S OFFICE
WEST PASCO GOVERNMENT CENTER
7530 LITTLE ROAD, SUITE 340
NEW PORT RICHEY, FL 34654
E-MAIL: pcadmin@pascocountyfl.net

April 10, 2010

Ms. Amy Dierolf, Lead Environmental Specialist
Nuclear Plant Development Progress Energy Florida
PO Box 14042
St. Petersburg, FL 33733

Re: Mitigation Sites in Pasco County

Dear Ms. Dierolf:

Please accept this letter as confirmation of Pasco County's intent to allow Progress Energy to perform mitigation on a county-owned site for Progress Energy's Levy County nuclear power plant and power line corridors project (PPSA No. PA08-51). In the event that Progress Energy determines that the Five Mile Creek Preservation site, which has been the focus of recent conversations, is not suitable, Pasco County is willing to work with Progress Energy and its consultants in the identification of other locations.

In order to identify a suitable location, Pasco County will provide available GIS and survey data, site descriptions and site access to Progress Energy and its consultants. Upon the identification of a mutually-suitable location, Pasco County will enter into an agreement, subject to the Board of County Commissioners approval with Progress Energy, identifying the location of the site and specifying the work to be performed by Progress Energy. All design work, permitting and construction will be performed and paid for by Progress Energy. Pasco County will necessarily require the right to review, comment and approve the proposed mitigation project.

This notice of intent is subject to Board of County Commissioners' approval after the site has been finalized and the agreement finalized. We look forward to working with Progress Energy and the state and federal permitting agencies in this endeavor.

Sincerely,

John J. Gallagher
County Administrator

BT ML B RJT pp

cc: Michele L. Baker, Chief Assistant County Administrator
Ronald Daniel, Acting Program Manager, Environmental Lands Division
Robert Tietz, Biologist, Environmental Lands Division

**BOARD OF COUNTY
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March 18, 2010



William M. Davis
Bureau Director

Jim Maher
Program Administrator
Submerged Lands and Environmental Resource Permitting
Florida Department of Environmental Protection
Northeast District Office
7825 Baymeadows Way, Suite B200
Jacksonville, FL 32256

Dear Mr. Maher:

This letter is in reference to the off-site mitigation proposed by Progress Energy Florida ("PEF") for its Levy Nuclear Plant and associated facilities. The site certification order is PPSA No. PA08-51. This letter is intended to provide PEF with authority to evaluate mitigation options on Pinellas County property and to give conceptual approval to the work proposed by PEF on the Brooker Creek Preserve located in Pinellas County.

Pinellas County understands that this proposal is a continuing part of the mitigation post-certification process and that more detailed planning may be developed, pending approval of FDEP. Based on PEF's description of the proposed activities, the County has determined that this project is consistent with the County's plans, and will not create any negative impacts to our management activities.

Additionally, the County does not currently have any funding to complete work described in this proposal in the foreseeable future. It is understood that PEF, upon completion of the mitigation project, will ensure that all success criteria of post-certification conditions and applicable federal permits are satisfied.

We look forward to working with PEF and the state and federal permitting agencies in this endeavor.

Sincerely,

William M. Davis, Bureau Director
Department of Environmental Management

cc: Dr. Steven J. Harper, Ph.D.
Gail Simpson
Melissa Seixas

PLEASE ADDRESS REPLY TO:
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