

FOLEY

211653

ENTERED
Office of Proceedings

JUL 9 2004

June 23, 2004

FOLEY & LARDNER LLP
ATTORNEYS AT LAW

WASHINGTON HARBOUR
3000 K STREET, N.W., SUITE 500
WASHINGTON, D.C. 20007-5143
202.672.5300 TEL
202.672.5399 FAX
www.foley.com

WRITER'S DIRECT LINE
202672-5367
rvomeigent@foley.com EMAIL

CLIENT/MATTER NUMBER
037724-0101

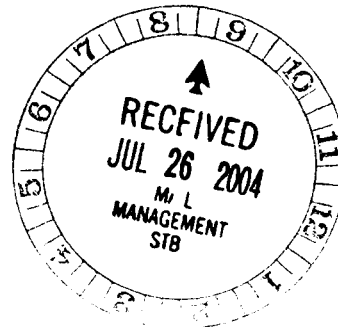
HAND DELIVERED

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Mercury Building, #711
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JUL 26 2004

Part of
Public Record



Re: Docket No. AB-400 (Sub-No. 4)
Application for Adverse Abandonment of Lee County, Florida
regarding
Seminole Gulf Railway, L.P. Adverse Abandonment
in Lee County, Florida

Dear Secretary Williams:

Please find the attached Verified Statements in support of the Application for Adverse Abandonment of Lee County, Florida ("Application") in the above referenced proceeding. The statements from Duane R. Swanson and J. Timothy Corson are originals of verified statements that were filed along with the Application; the statements of Dan Miller and Mitchell B. Nicholas are statements that Lee County received after filing the Application.

Also included is a letter from the Florida Department of State, Division of Historical Resources stating that the Department believes that no historical structures will be affected by the above referenced abandonment proceeding.

A copy of the attached documents has been served on all parties designated in the attached Certificate of Service. Additionally, please time stamp the extra copy of this letter to indicate receipt, and return it to me via courier.

BRUSSELS
CHICAGO
DENVER

DETROIT
JACKSONVILLE
LOS ANGELES
MADISON

MILWAUKEE
ORLANDO
SACRAMENTO
SAN DIEGO

SAN DIEGO/DEL MAR
SAN FRANCISCO
SILICON VALLEY
TALLAHASSEE

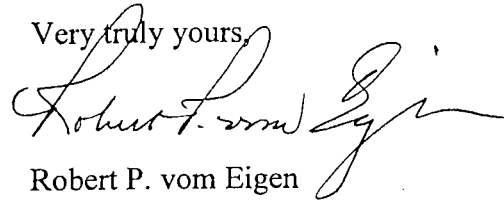
TAMPA
TOKYO
WASHINGTON, D.C.
WEST PALM BEACH

002.1237396.1

FFOLEY

The Honorable Vernon A. Williams
June 23, 2004
Page 2

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert P. vom Eigen".

Robert P. vom Eigen

cc: Joe Dettmar, Office of Proceedings

Enclosures (6): The verified statements of Duane R. Swanson, J. Timothy Corson, Dan Miller, and two verified statements from Mitchell B. Nicolas; letter from the Florida Department of State, Division of Historical Resources

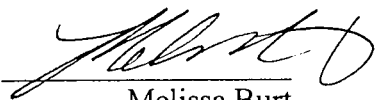
CERTIFICATE OF SERVICE
OF LEE COUNTY, FLORIDA

The undersigned hereby certifies that a copy of the VERIFIED STATEMENTS of Duane R. Swanson, J. Timothy Corson, Dan Miller, and Mitchell B. Nicolas and a LETTER from the Florida Department of State, Division of Historical Resources was served by overnight courier on the 23rd day of July 2004, on the following:

Peter Shudtz
Vice President - Federal Regulation
CSX Corporation
Suite 560
National Place
1331 Pennsylvania Avenue, N.W.
Washington, D. C. 20004

Joseph C. Fuller
Attorney for Seminole Gulf Railway, L.P.
PO Box 61407
Fort Myers, FL 33906

Eric M. Hocky
Attorneys for Seminole Gulf Railway, L.P.
Gollatz, Griffin & Ewing, P.C.
Four Penn Center, Suite 200
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808


Melissa Burt

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

STB Docket No. AB-400 (Sub- No. 4)

SEMINOLE GULF RAILWAY, L.P.
ADVERSE ABANDONMENT
IN LEE COUNTY, FLORIDA

VERIFIED STATEMENT
OF

DAN MILLER

IN SUPPORT OF APPLICATION
FOR ADVERSE ABANDONMENT
BY LEE COUNTY, FLORIDA

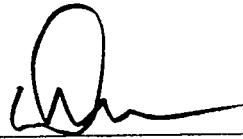
-
1. My name is Dan Miller, and I am a member of **DTB Properties, LLC**, located at Supply Drive, Lee County, Florida. My current responsibilities include managing member. As managing member, I am qualified to testify on behalf of **DTB Properties, LLC**.
 2. **DTB Properties, LLC** owns property located at Supply Drive and Alico Road, the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used for vacant land.
 3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur between approximately roadway engineering posts 33+35 and 79+95 ("Subject Rail Line"). We are not now customers of SGR, and we plan no use of our property that would benefit from

continued rail service. **DTB Properties, LLC** supports Lee County's application for abandonment of the Subject Rail Line. In fact, our land and the adjacent parcel are bound by a recorded agreement prohibiting any future use of the spur.

VERIFICATION

I, Dan Miller, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of DTB Properties, LLC (company). I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$20,000 or imprisonment up to five years for each offense.

Dated this 16 day of June, 2004.



Signature

Dan Miller

Print Name

Member

Title

DTB Properties, LLC

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

STB Docket No. AB-400(Sub-No.4)

**SEMINOLE GULF RAILWAY, L.P.
ADVERSE ABANDONMENT
IN LEE COUNTY, FLORIDA**

**VERIFIED STATEMENT
OF
DUANE R. SWANSON**

**IN SUPPORT OF APPLICATION
FOR ADVERSE ABANDONMENT
BY LEE COUNTY, FLORIDA**

1. My name is Duane R. Swanson, and I am the manager of Alico Industries, LLC located at 7751 Bayshore Road, N. Fort Myers, FL 33917. My current responsibilities include the management of Alico Industries, LLC. As manager, I am qualified to testify on behalf of Alico Industries, LLC.
2. Alico Industries, LLC owns property described on Exhibit "A" attached hereto, and is known as 16911 Gator Road, Fort Myers, FL 33912, the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used by Alico Industries, LLC's tenant, J.J. Taylor Distributing for a beer distribution business.
3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur

between approximately roadway engineering posts 33+35 and 79+95 ("Subject Rail Line").

Alico Industries, LLC is not now a customer of SGR, and we plan no use of our property that would benefit from continued rail service after January 9, 2005. The current tenant has a lease which provides for extensions through January 9, 2005, and as such when the tenant vacates the premises, the need for rail service will be completely discontinued. Therefore, Alico Industries, LLC supports Lee County's application for abandonment of the Subject Rail Line.

VERIFICATION

I, Duane R. Swanson, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Alico Industries, LLC. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000.00 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$20,000.00 or imprisonment up to five years for each offense.

Dated this 8 day of June, 2004.



Duane R. Swanson
Manager, Alico Industries, LLC

CONSENT AND JOINDER

SunTrust Bank, the Mortgagee on the property described in Exhibit "A" above, hereby joins in the above Verified Statement and consents to the adverse abandonment by Lee County, Florida of the Railroad Right-of-Way.

Dated on this 8 day of June, 2004.

SUNTRUST BANK

By: _____

~~Michael Durkin, Vice President~~

Gregory Guthrie, First Vice President

METRON

SURVEYING & MAPPING, LLC

LAND SURVEYORS • PLANNERS

—DESCRIPTION OF A PARCEL OF LAND LYING IN—
SECTION 5, TOWNSHIP 46 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA
(PARCEL "B")
(REVISED 2-19-2004)

A PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 5, TOWNSHIP 46 SOUTH, RANGE 25 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

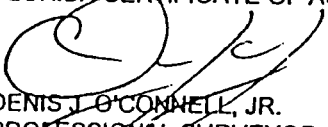
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 5; THENCE N.00°16'32"W., ALONG THE EAST LINE OF SAID SECTION 5 A DISTANCE OF 150.00 FEET; THENCE S.89°47'03"W., A DISTANCE OF 275.37 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.89°47'03"W., A DISTANCE OF 741.64 FEET; THENCE N.00°16'03"W., ALONG THE EAST LINE OF GATOR ROAD A DISTANCE OF 689.99 FEET; THENCE N.89°47'03"E., A DISTANCE OF 742.26 FEET; THENCE S.00°12'57"E., A DISTANCE OF 689.99 FEET TO THE POINT OF BEGINNING.

CONTAINING 11.75 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN)

BEARINGS ARE BASED ON THE EAST LINE OF THE OF SECTION 5 BEING S.00°16'32"E.

METRON SURVEYING & MAPPING, LLC
FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071


DENIS J. O'CONNELL, JR.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5430

LDC

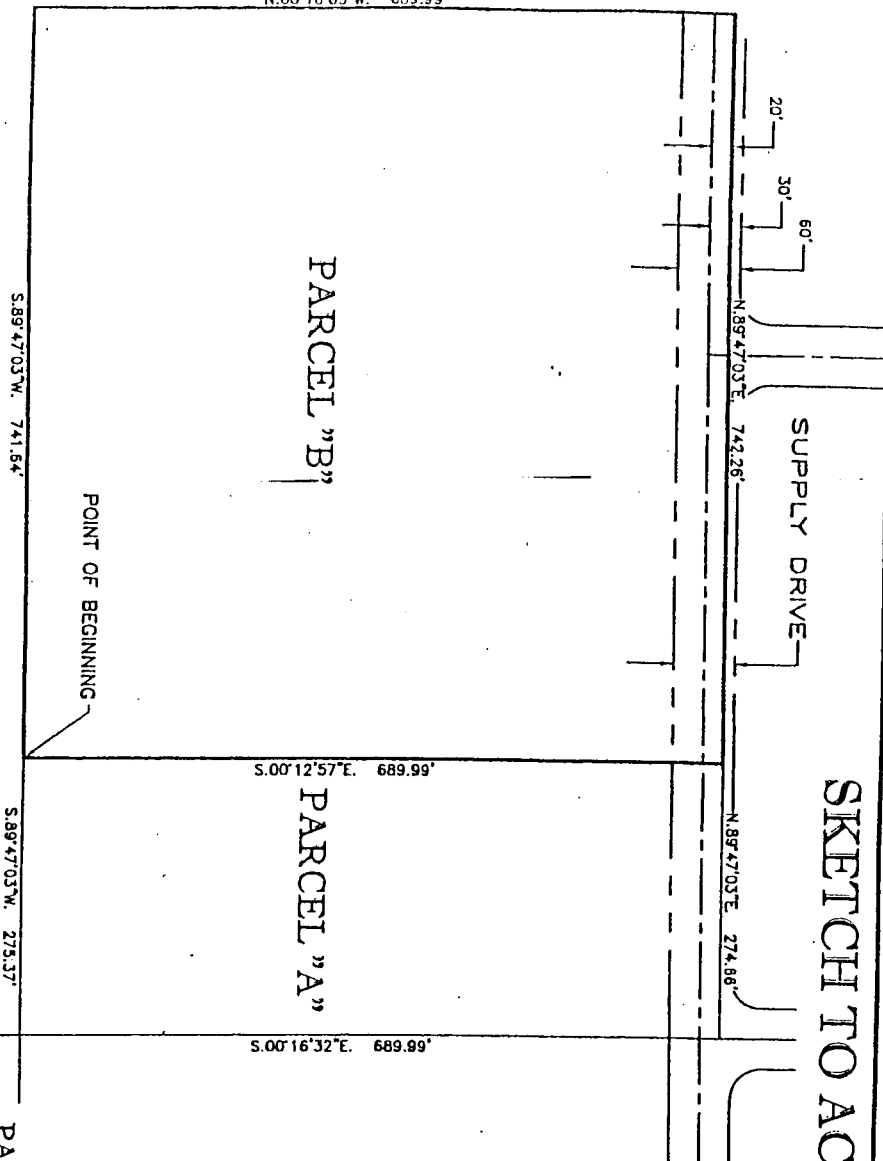
FEB 23 2004

APPROVED

GATOR ROAD
N.00°16'03"W. 689.99'

* SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION *

REVISED: 2-19-2004



SKETCH TO ACCOMPANY DESCRIPTION

LDC

FEB 23 2004

APPROVED

* THIS IS NOT A SURVEY *

BY:
 DENIS J. O'CONNELL SR.
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA CERTIFICATE NO. LS# 5430

DATE SIGNED: 2/19/04

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A
 FLORIDA LICENSED SURVEYOR AND MAPPER.

PARCEL "B"

SKETCH OF DESCRIPTION



METRON
 SURVEYING & MAPPING, LLC
 LAND SURVEYORS-PLANNERS
 LBN 7071

5245 RAISER WAY, SUITE #2
 FORT MYERS, FLORIDA 33907
 PHONE: (239) 275-8575
 FAX: (239) 275-8457
 www.metronfl.com

FILE NAME	FIELD BOOK/INDEX	DATE	SCALE	CHECKED BY	DATE	SHEET
5347SK1.DWG	N/A	01-08-2004	1" = 150'	SMS	5-46-25	2 OF 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

STB Docket No. AB-400 (Sub- No. 4)

**SEMINOLE GULF RAILWAY, L.P.
ADVERSE ABANDONMENT
IN LEE COUNTY, FL**

**VERIFIED STATEMENT
OF
J. TIMOTHY CORSON**

**IN SUPPORT OF APPLICATION
FOR ADVERSE ABANDONMENT
BY LEE COUNTY, FL**

1. My name is J. Timothy Corson, and I am the West Area Corporate Real Estate Manager for Florida Power & Light Company located at 1177 N. Lime Avenue, Sarasota, FL.
2. FP&L owns property located in Section 5, Township 46s, Range 25e in Lee County, FL., the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used as an Electrical Distribution Substation, known as the San Carlos Substation.
3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur between approximately railroad engineering stations 33+35+/- and 79+95 ("Subject Rail Line"), which correspond approximately to Alico road stations 76+00 and 122+60, respectively. We are now using a portion of the Baker Spur line west of Alico road station 79+00 to transload

generators for our Alico Road facility and other nearby facilities. FP&L brings generators and other heavy equipment via rail to the portion of the Baker Spur to the south and west of the Subject Line, where the items are loaded onto trucks and transported to their final destination. Use of the Baker Spur to the west of 79+00 to transload generators and other heavy equipment is very important to FP&L.

4. In light of the foregoing, we have received assurances from Lee County that its application for adverse abandonment will not interfere with FP&L's current use of the Baker Spur line. Lee County has assured FP&L that its Application will request that the western terminus of the abandonment be at Alico Road station 79+00, which is parallel to railroad engineering station 36+35 +/-, west of Alico Center Road, and 300 feet east of the original abandonment as proposed in Lee County's previous notices. This will allow FP&L continued use of the Baker Spur Line. Based upon this commitment by Lee County, FP&L does not oppose Lee County's application for abandonment of the Baker Spur east of Alico Road station 79+00.

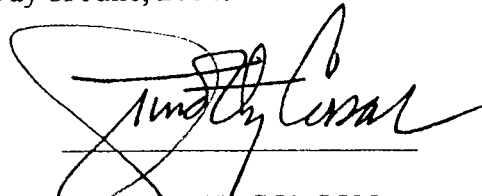
VERIFICATION

State of Florida

Sarasota County

I, J. Timothy Corson, West Area Corporate Real Estate Manager of Florida Power & Light ("FP&L"); declare that: (a) I have been authorized by FP&L to verify and file with the Surface Transportation Board the foregoing statement in STB AB-400 (Sub-No. 4); (b) I have carefully examined the foregoing Verified Statement; (c) I have knowledge of the facts and matters relied upon in the statement; and (d) All representations set forth herein are true and correct to the best of my knowledge, information, and belief.

Dated at Lee County, Florida, this 16th Day of June, 2004.


J. TIMOTHY CORSON

Subscribed and sworn to before me J. Timothy Corson
MARK L. BYERS in and for the State and County
above named, this 16th day of June, 2004. My Commission expires Nov. 2, 2004



Mark L. Byers
Commission # CC 979229
Expires Nov. 2, 2004
Bonded Thru
Atlantic Bonding Co., Inc.



**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

STB Docket No. AB-400 (Sub- No. 4)

**SEMINOLE GULF RAILWAY, L.P.
ADVERSE ABANDONMENT
IN LEE COUNTY, FLORIDA**

**VERIFIED STATEMENT
OF**

MITCHELL BRUCE NICHOLAS

**IN SUPPORT OF APPLICATION
FOR ADVERSE ABANDONMENT
BY LEE COUNTY, FLORIDA**

-
1. My name is Mitchell B. Nicholas, and I am the Owner of **Joe & Bruce, LLC** which owns property located at parcel 121, strap no. 04-46-25-00-00001.003A, Lee County, Florida. My current responsibilities include management. As Owner, I am qualified to testify on behalf of **Joe & Bruce, LLC**.
 2. **Joe & Bruce, LLC** owns property located at parcel 121, strap no. 04-46-25-00-00001.003A, the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used for investment.
 3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur between approximately roadway engineering posts 33+35 and 79+95 ("Subject Rail Line"). We

are not now customers of SGR, and we plan no use of our property that would benefit from continued rail service. **Joe & Bruce, LLC** supports Lee County's application for abandonment of the Subject Rail Line.

VERIFICATION

MITCHELL

I, B. NICHOLAS, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of JOE & BRUCE, LLC (company). I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$20,000 or imprisonment up to five years for each offense.

Dated this 21ST day of JUNE, 2004.


SignatureMITCHELL BRUCE NICHOLAS
Print NameOWNER
Title

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

STB Docket No. AB-400 (Sub- No. 4)

**SEMINOLE GULF RAILWAY, L.P.
ADVERSE ABANDONMENT
IN LEE COUNTY, FLORIDA**

**VERIFIED STATEMENT
OF**

MITCHELL B. NICHOLAS

**IN SUPPORT OF APPLICATION
FOR ADVERSE ABANDONMENT
BY LEE COUNTY, FLORIDA**

-
1. My name is Mitchell B. Nicholas, and I am the Owner of **West Coast Roofing & Waterproofing, Inc.**, located at 8090 Supply Drive, Lee County, Florida. My current responsibilities include management. As Owner, I am qualified to testify on behalf of **West Coast Roofing & Waterproofing, Inc.**
 2. **West Coast Roofing & Waterproofing, Inc.** owns property located at 8090 Supply Drive and Alico Road, the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used for contracting.
 3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur between approximately roadway engineering posts 33+35 and 79+95 ("Subject Rail Line"). We

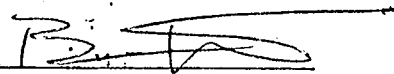
are not now customers of SGR, and we plan no use of our property that would benefit from continued rail service. **West Coast Roofing & Waterproofing, Inc.** supports Lee County's application for abandonment of the Subject Rail Line.

VERIFICATION

MITCHELL
I, B. NICHOLAS, declare under penalty of perjury, under the laws of the United

States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of WEST COAST ROOFING & WATERPROOFING, INC. (company). I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$20,000 or imprisonment up to five years for each offense.

Dated this 21st day of JUNE, 2004.


Signature

MITCHELL B. NICHOLAS
Print Name

PRESIDENT / OWNER
Title



6/23/04

cc MBURT

FLORIDA DEPARTMENT OF STATE
Glenda E. Hood
Secretary of State
DIVISION OF HISTORICAL RESOURCES

Mr. Robert P. vom Eigen
Foley & Lardner LLP
3000 K Street, N.W., Suite 500
Washington, DC 20007-5143

June 16, 2004

RE: DHR Project File Number: 2004-4706-B
Additional Information Received by DHR May 25, 2004
Surface Transportation Board - Line Abandonment
Docket No. AB-400 (Sub-No. 4) - Seminole Gulf Railway, L.P.
Adverse Abandonment - Baker Spur
Lee County

Dear Mr. vom Eigen:

Our office received and reviewed additional information for the above referenced project in accordance with Section 106 of the *National Historic Preservation Act of 1966*, as amended and *36 CFR Part 800: Protection of Historic Properties*. The State Historic Preservation Officer is to advise Federal agencies as they identify historic properties (listed or eligible for listing, in the *National Register of Historic Places*), assess effects upon them, and consider alternatives to avoid or minimize adverse effects.

Based on the additional information provided, it is still the opinion of this office that no historic properties will be affected by this undertaking.

If you have any questions concerning our comments, please contact Scott Edwards, Historic Preservationist, by electronic mail sedwards@dos.state.fl.us, or at 850-245-6333 or 800-847-7278.

Sincerely,

Laura A. Kammerer, Supervisor

for Frederick Gaske, Director, and
Deputy State Historic Preservation Officer

500 S. Bronough Street • Tallahassee, FL 32399-0250 • <http://www.flheritage.com>

☐ Director's Office
(850) 245-6300 • FAX: 245-6435

☐ Archaeological Research
(850) 245-6444 • FAX: 245-6436

☒ Historic Preservation
(850) 245-6333 • FAX: 245-6437

☐ Historical Museums
(850) 245-6400 • FAX: 245-6433

☐ Palm Beach Regional Office
(561) 279-1475 • FAX: 279-1476

☐ St. Augustine Regional Office
(904) 825-5045 • FAX: 825-5044

☐ Tampa Regional Office
(813) 272-3843 • FAX: 272-2340