



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

211136

Office of the Secretary of the Surface Transportation Board
May 28, 2004

JUN 1 2004

HAND DELIVERED

Part of
Public Record

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



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

Dear Secretary Williams:

Please find the attached Petition, requesting a waiver of 49 C.F.R. § 1105.7(b) to permit service of the agencies listed in 1105.7(b) (1)-(10) ("the applicable agencies") with the Environmental and Historic Report ("the Report") and suggested transmittal letter at least seventeen days prior to an application being filed with the Surface Transportation Board ("the Board").

In addition, Lee County, FL ("Lee County") takes this opportunity to respond to a letter by Seminole Gulf Railway, L.P. ("SGLR"), filed with the Board on May 20, 2004. SGLR's letter alleges that the County's filings contain technical defects. To ensure that the Board can properly evaluate those allegations, Lee County offers the following responses.

First, SGLR states that there is not a dispute over the location of the eastern terminus of the portion of the line to be abandoned. This is incorrect. While there is no dispute that engineering station 79+95 is the eastern terminus of the portion to be abandoned, as stated in our Rebuttal filed on May 19, 2004, there is a dispute over where 79+95 is physically located in relation to the surrounding roads and landmarks. Lee County has been unable to locate system diagram maps of the Baker Spur in the Board's records or through the Florida Department of Transportation, and there are no physical markers in the vicinity of the abandoned line that clearly establish the physical location of station 79+95. But, as stated in Lee County's rebuttal, Lee County wishes to seek abandonment of the line up to the location of the previous abandonment, wherever that point might lie. If necessary, Lee County will take the appropriate steps to clarify the precise location of the abandonment and resolve the matter under state law once these proceedings have been completed.

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

002.1207160.1



The Honorable Vernon A. Williams
May 28, 2004
Page 2

A related matter is that SGLR claims that the maps accompanying Lee County's Report are not appropriate since they do not clearly define where engineering station 79+95 is in relation to surrounding landmarks and roadway stations. As previously noted, since Lee County believes that there is a dispute over the exact location of 79+55, it is impossible for them to submit a map that pinpoints 79+95, and instead, Lee County has submitted a map that reflects the limits of this dispute.¹ Additionally, Lee County notes that no topographical map of the less than 1 mile of track to be abandoned was available to them, so therefore, they submitted one aerial map and two schematic maps.² Regardless, the maps submitted to the Board are to scale and accurately depict the portion of line to be abandoned with enough precision that SGLR and the Board can easily correlate the submitted maps with any maps they might have at their disposal. Therefore, the maps submitted with the Report are appropriate.

SGLR also observes that the Report improperly served the "head of the County" as opposed to the County Commissioners. This is clearly a matter of form over substance. Not only does regulation 49 C.F.R. § 1105.7(b)(4) specifically state that the "head of the County" shall be served with the Report for consultation, but in this case it is Lee County that prepared the Report in the first place. There is no need for further consultation with the Lee County government.

Additionally, as discussed in the attached Petition, Lee County submitted its Report for consultation with the agencies listed in 1105.7(b)(1)-(10) on May 14, 2004, and served said Report on the Board and the parties to the transaction under 1152.20(c) on May 18, 2004. While a transmittal letter in the format suggested by the Appendix of 1105.11 was not used, Lee County has no reason to believe that any of the agencies receiving the Report were confused, since none have yet contacted us. But, to ensure that there would be no confusion among any of the applicable agencies, Lee County decided to re-serve the Report, including a transmittal letter using the wording suggested in the Appendix of 1105.11, on all the applicable agencies via Federal Express³ on May 24, 2003. A copy of the transmittal letter used and a shipping label are attached to this letter as Attachment B.

Finally, SGLR claims that expedited handling of this abandonment is unnecessary because Lee County has been planning the Alico Road expansion project for years. Regardless of the length of time taken to plan the widening of Alico Road, J.J. Taylor's decision to move their facility off of the Baker Spur, thereby removing the sole active shipper on the line, is a recent development. Additionally, the full cost of installing a grade crossing as part of the road widening project was not known until SGLR submitted its Proposal and Quote on the project to Lee County. The Proposal

¹ The maps submitted as part of the Report are attached as Attachment A. The disputed location of 79+95 is represented on the map by a dotted line showing the eastern terminus of the line to be abandoned.

² See 49 C.F.R. § 1105.8(d)(1), which asks that a topographical or *other sufficiently detailed map* be included in Historic Reports.

³ Note that the U.S. Natural Resources Conservation Center could not be served via Federal Express since its address is a P.O. Box, so it was therefore served a copy of the Report and Transmittal Letter via U.S. Mail on May 24, 2004.

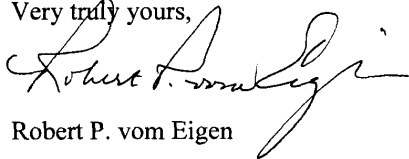
FOLEY

The Honorable Vernon A. Williams
May 28, 2004
Page 3

and Quote are attached to Lee County's Rebuttal, which was filed with the Board on May 19, 2004. Therefore, it was not until recently that the County realized that filing for an Adverse Abandonment with the Board could save the Lee County taxpayers a substantial amount of money, and at that time, the County Commissioners approved the hiring of attorneys to file said Application. Additionally, the reason why Board action is needed expeditiously is because the road widening project has already begun, and as stated in Lee County's Petition, first filed May 3, 2004, any delays in construction caused by Lee County will result in penalty fees by the contractor. If the Board's resolution of this matter is not forthcoming on an expedited basis, construction will be delayed because the County will not know if it must install a costly grade crossing or not.

Please time stamp the extra copy of this letter and the accompanying Petition to indicate receipt, and return via courier or in the stamped, self-addressed envelope provided for your convenience.

Very truly yours,



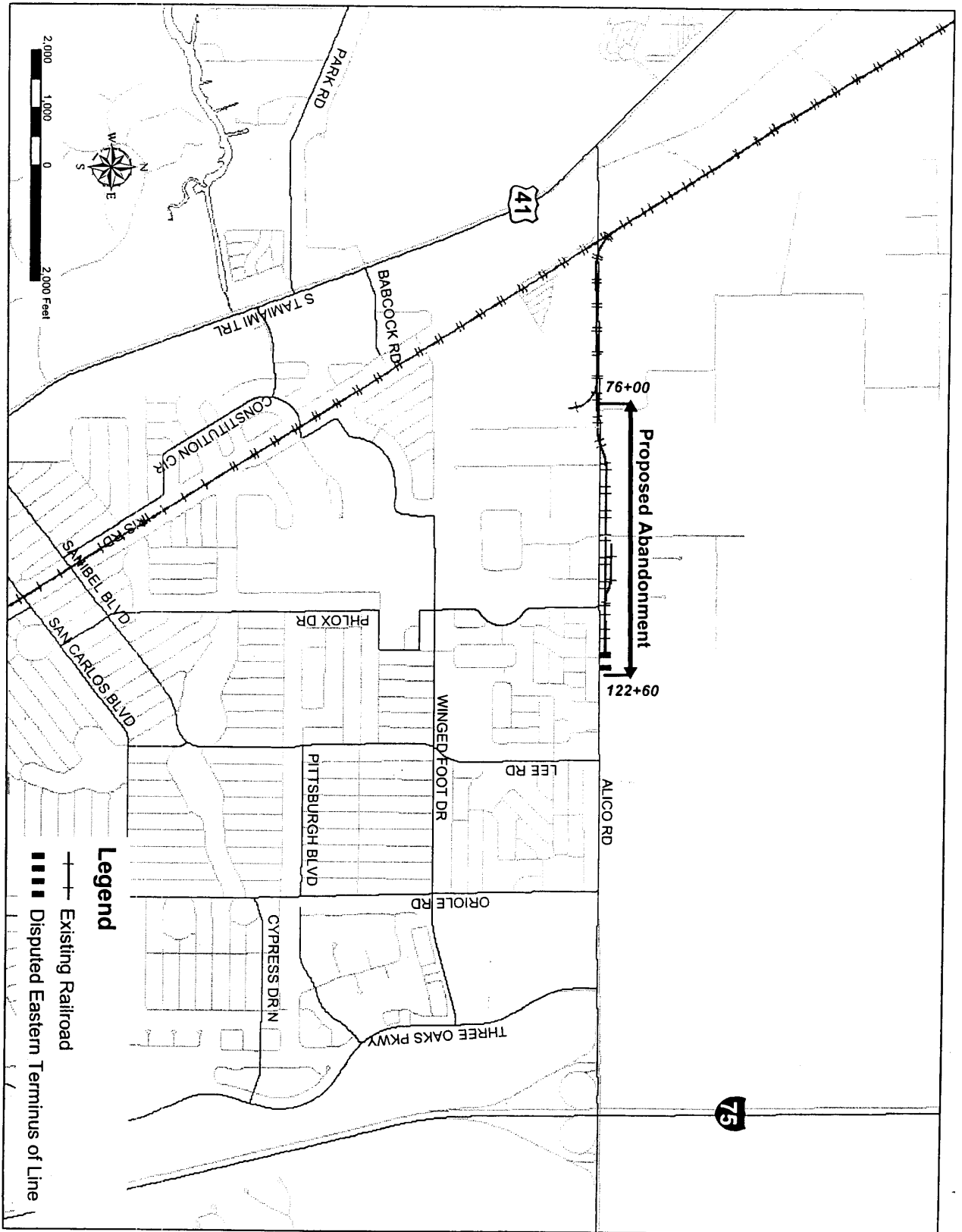
Robert P. vom Eigen

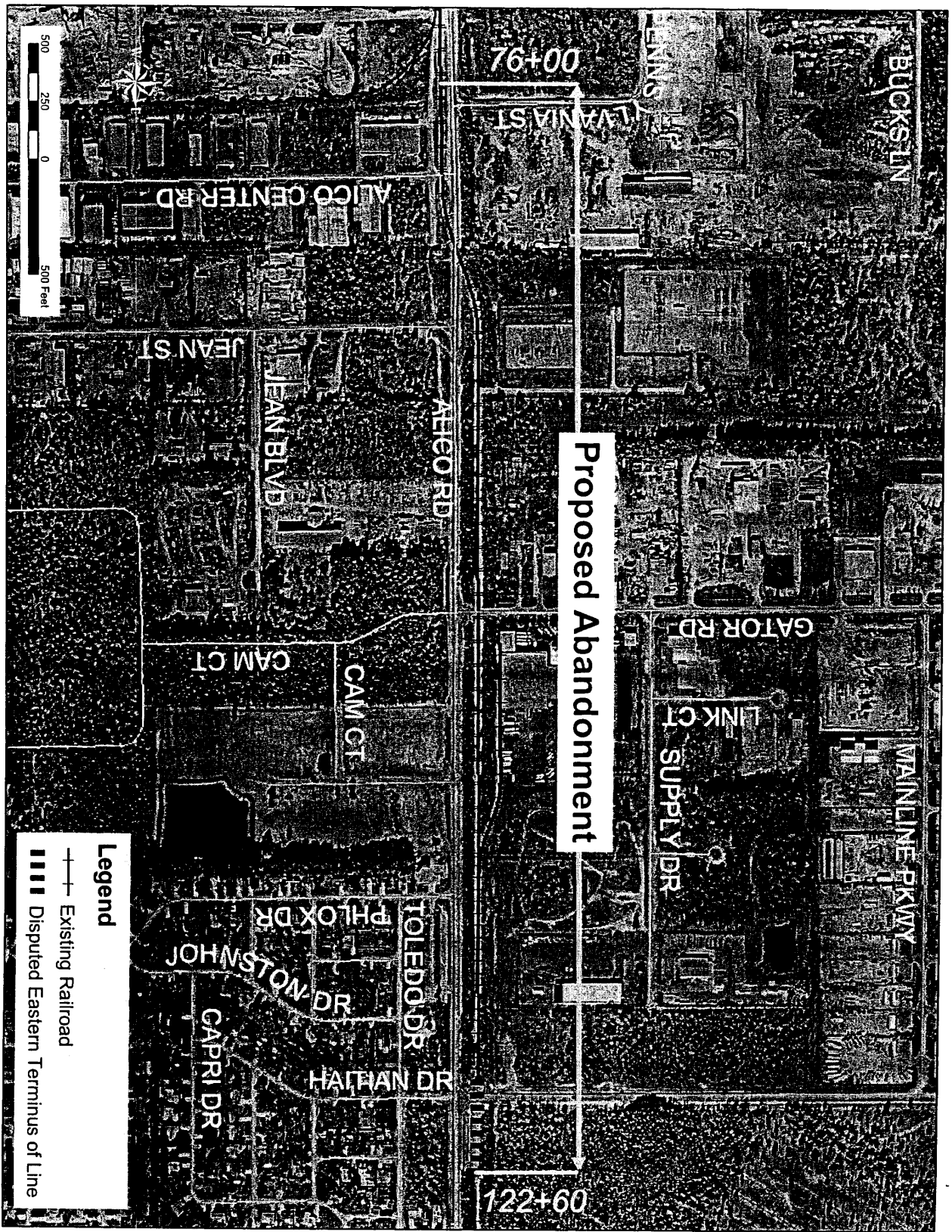
Enclosures: Petition for Waiver, Sample of Transmittal Letter and accompanying shipping documentation, Maps of the Baker Spur

cc: Joe Dettmar, Office of Proceedings

ATTACHMENT A

Maps of the Baker Spur Line





BUCKS LN

MAINLINE PKWY

GATOR RD

LINK CT

SUPPLY DR

Proposed Abandonment

76+00

122+60

PENNS
YLVANIA ST

ALICO RD

ALICO CENTER RD

JEAN BLVD

JEAN ST

CAM CT

CAM CT

TOLEDO DR

PHLOX DR

JOHNSTON DR

HAITIAN DR

CAPRI DR



Legend

—+— Existing Railroad

||||| Disputed Eastern Terminus of Line

ATTACHMENT B

Sample Transmittal Letter
and shipping label



May 24, 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
202.672.5367
rvomeigen@foley.com EMAIL

CLIENT/MATTER NUMBER
037724-0101

Florida State Clearinghouse
The Department of Community Affairs
Executive Office of the Governor - OPB
2555 Shurnard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. AB-400 (Sub. No. 4)
Application for Adverse Abandonment of the Baker Spur,
Environmental and Historic Report

Dear Sir/Madam:

On May 14, 2004, your organization was served, via first class mail, with the attached Environmental and Historic Report supporting the application for adverse abandonment of Lee County, Florida. Included with that Report was a copy of the transmittal letter from Lee County to the Surface Transportation Board (STB). However, we inadvertently did not include a formal transmittal letter as contemplated by 49 C.F.R. § 1105.11. In order to eliminate any confusion, we are sending you this formal transmittal letter containing the wording contemplated by the appendix to 49 C.F.R. § 1105.11 along with another copy of Lee County's Environmental and Historic Report that is identical to the one previously received by your organization.

On or about June 10, 2004, we are filing with the STB an application seeking authority to abandon a portion of Seminole Gulf Railroad's Baker Spur located in Lee County, Florida, between engineering posts 79+95 and 33+35 +/-, which corresponds to parallel Alico Road mile markers 122+60 and 76+00, respectively.¹ Attached is an Environmental and Historic Report describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423, telephone (202) 565-1592 and refer to the above Docket No. AB-400 (Sub. No. 4).

¹ Note that there is some confusion about where engineering station 79+95 is located. But, 79+95 is the western terminus of a previous abandonment and Lee County seeks the abandonment of the Baker Spur up to that point.

BRUSSELS
CHICAGO
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

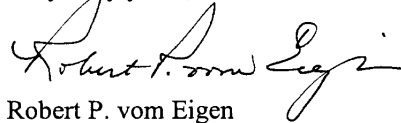
002.1204545.1

Florida State Clearinghouse
May 24, 2004
Page 2

Because the applicable statutes and regulations impose stringent deadline for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks².

Your comments will be considered by the Board in evaluating the environmental or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is the undersigned, who may be contacted by telephone at 202-672-5300 or by mail at Foley & Lardner, 3000 K Street, N.W., Washington, DC 20007.

Very truly yours,



Robert P. vom Eigen

Enclosures (1)

² Note that since the Report has not been changed and the first transmittal letter included all relevant information (party names, addresses, and the STB Docket Number), a response would be appreciated within three weeks of the date of which you received the first Environmental and Historic Report.

CERTIFICATE OF SERVICE
OF THE
COMBINED ENVIRONMENTAL AND HISTORIC REPORT

The undersigned hereby certifies that a copy of the COMBINED HISTORICAL AND ENVIRONMENTAL REPORT OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was served by overnight courier, on the 24 day of May 2004, on the following:

State Clearinghouse:

Florida State Clearinghouse
The Department of Community Affairs
Executive Office of the Governor – OPB
2555 Shumard Oak Boulevard
Tallahassee, FL 32399

State Environmental Protection Agency :

Department of Environmental Protection, M.S. 49
3900 Commonwealth Boulevard
Tallahassee, FL 32399

State Coastal Zone Management Agency:

Florida Coastal Management Program
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Head of County (Planning):

Paul O'Connor
1500 Monroe St.
Fort Myers, FL 33901 or

Environmental Protection Agency (regional office):
Region 4

United States Environmental Protection Agency
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-3104

U.S. Fish and Wildlife:

Region 4

U.S. Fish and Wildlife Service
Century Center
1875 Century Boulevard
Atlanta, GA 30345

U.S. Army Corps of Engineers:

U.S. Army Corps of Engineers
Jacksonville District
Prudential Building
701 San Marco Blvd.
Jacksonville, FL 32207

National Park Service:

U.S. National Park Service
100 Alabama Street, S.W.
Atlanta, GA 30303

National Geodetic Survey:

National Oceanic and Atmospheric Administration
National Geodetic Survey
1315 East-West Highway
Silver Spring, MD 20910-3292

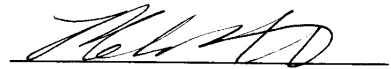
State Historical Preservation Office:

State Historical Preservation Office
Division of Historical Resources
500 South Bronough Street, Room 305
Tallahassee, FL 32399

The undersigned hereby certifies that a copy of the COMBINED HISTORICAL AND ENVIRONMENTAL REPORT OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was served by first class, pre-paid, U.S. mail, on the 24 day of May 2004, on the following:

U.S. Natural Resources Conservation Service:

State National Resource Conservation Service
USDA Natural Resource Conservation Service
P. O. Box 14510
Gainesville, FL 32614


Melissa A. Burt

FEDERAL EXPRESS POWERSHIP FORM

Business Code Contact Name Company Address City, State Zip	May 24, 2004 Florida State Clearinghouse The Department of Community Affairs Executive Office of the Governor – OPB 2555 Shumard Oak Boulevard Tallahassee, FL 32399	Country USA	Account	Phone:
Service Payment References Dept/Notes Spcl Handling Tracking# Carriage Value	NEXT MORNING DELIVERY ROBERT VOM EIGEN CHARGE: 999100/0902			
05/24/04 Trk#648757250249 R# 2 Pkg#648757250249 Pmt: 1, PL XXX 8.12 FEXP PL XXX 8.12 Wt: 1.00 LB <i>[Signature]</i> / 6K				
{DEPARTMENT USE ONLY}				
Packages	Weight	Dec Value		
1.				
2.				
3.				
4.				

A.