



Interoffice Memorandum

May 4, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Joseph C. Kunkel, P. E., Director, Public Works Department

Handwritten signature of Joseph C. Kunkel in black ink.

CONTACT PERSON: Michael J. Drozeck, P. E., CFM, Manager MJD
Stormwater Management Division
PHONE NUMBER: (407) 836-7945

**SUBJ: Orlo Vista Flood Mitigation Project – Duke Energy Florida LLC
Encroachment Agreement**

The Stormwater Management Division, Real Estate Management (REM), and the County Attorney's Office have worked together in order to obtain an Encroachment Agreement with Duke Energy Florida LLC. This encroachment agreement will allow the County to perform the construction activities associated with the Orlo Vista Flood Mitigation Project. These activities include the installation of three new 48" RCP culverts to provide necessary connectivity between the ponds and the installation of a new force main (48" HDPE pipe) that will be connected to the existing force main to convey water to Shingle Creek.

Prior to obtaining the Encroachment Agreement, a meeting was held with Duke Energy to discuss our force main layout and resulted in design modifications in order to comply with their requirements. On April 10, 2020, Duke Energy submitted a draft of the Encroachment Agreement and provided it to the County. Several meetings with REM and the County Attorney's office were held to review the draft agreement and comments were provided to Duke Energy on December 22, 2020.

On April 24, 2021, Duke Energy Florida LLC, provided a Final Encroachment Agreement. The County Attorney's office has reviewed it and has no objections executing this Encroachment Agreement.

Action Requested: Approval and execution of Encroachment Agreement between Duke Energy Florida, LLC to Orange County for the Orlo Vista Flood Mitigation project. District 6.

MD/DN/mh

BCC Mtg. Date: June 8, 2021

Prepared By:
Manny Vilaret, Esq.
Vilaret Law, PLLC
10901 Danka Circle, Suite C
Saint Petersburg, Florida 33716

Return to:
Duke Energy
Attn: Land and Facilities Support Services
3300 Exchange Place, NP4A
Lake Mary, FL 32746

Site: 108753 LU: 1724153 Proj: 108753-463429
Orange County BCC
Orlo Vista Flood Mitigation
WWW-111 to WWW-116
Property Tax ID #30-22-29-0000-00-069

ENCROACHMENT AGREEMENT

JUN 08 2021

THIS ENCROACHMENT AGREEMENT, issued this day of , 2021, between **Duke Energy Florida, LLC, a Florida Limited Liability Company, d/b/a Duke Energy**, 3300 Exchange Place, Lake Mary, FL 32746, ("**DUKE ENERGY**" herein), to **Orange County**, a charter county and political subdivision of the State of Florida, ("**APPLICANT**" herein);

W I T N E S S E T H

WHEREAS, **DUKE ENERGY** is owner, possessor and user of a right-of-way and/or easement recorded in **Deed Book 810 at Page 494**, of the public records of **Orange County**, Florida, **being generally located in the SW ¼ of Section 30, Township 22 South, Range 29 East**, said right-of-way and/or easement giving **DUKE ENERGY** the right by appropriate legal means, to restrict any occupancy or utilization of the established right-of-way and/or easement which would or could interfere with the safe and efficient operation and maintenance of **DUKE ENERGY's** existing and future high voltage electric transmission and distribution lines and related facilities located thereon; and

WHEREAS, **APPLICANT** and **APPLICANT's** representatives and agents now have or will have some right, title or interest in the lands encumbered by **DUKE ENERGY's** right-of-way and/or easement and desires to occupy and utilize a portion of **APPLICANT's** lands for the purpose of construction, installation and maintenance of stormwater management facilities as shown on the Construction Plans attached hereto as **Composite Exhibit "A"** and made a part hereof, including, but not limited to, for the following: (a) excavating the existing stormwater ponds deeper to provide additional flood mitigation volume, (b) construction of a new pump station, (c) installation of three (3) new 48" RCP culverts to provide necessary connectivity between the ponds and (d) installation of a new 48" HDPE pipe force main that will be connected to the existing force main to convey water to Shingle Creek, and all matters related to the foregoing (a) through (d) (sometimes referred to as "**APPLICANT's** Utilization"). The **APPLICANT's** Utilization shall be subject to the limitations set forth in the Specific Requirements attached as **Exhibit "B"** pertaining to using said right-of-way and/or easement in only such manner as will insure the continued safe and efficient operation and maintenance of **DUKE ENERGY's** existing and future high voltage electric transmission and distribution lines and related facilities located thereon.

NOW, THEREFORE, for and in consideration of the mutual promises and benefits herein provided, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

- A. DUKE ENERGY shall interpose no objection to APPLICANT's utilization of the designated portion of the APPLICANT's lands vis-a-vis DUKE ENERGY's right-of-way and/or easement for so long as APPLICANT's utilization complies with and conforms to the locations on **Exhibit "A"** and the conditions and requirements set forth in **Exhibit "B"**.
- B. Compliance with said location and conditions specified on said **Exhibits "A" and "B"** is necessary to make APPLICANT's Utilization of DUKE ENERGY's right-of-way and/or easement consistent with the safe and efficient operation and maintenance of the existing and future high voltage electric transmission and distribution lines located thereon, and, therefore, APPLICANT's failure to comply with any of said locations and conditions shall constitute an infringement upon the rights and restrictions belonging to DUKE ENERGY pursuant to said right-of-way and/or easement.
- C. All of APPLICANT's operations, activities and equipment used within DUKE ENERGY's right-of-way and/or easement beneath or in proximity to any of DUKE ENERGY's electrical facilities shall, at all times, be in strict compliance with applicable provisions of the National Electrical Safety Code (NESC), the Occupational Safety and Health Act of 1971 (OSHA), and OSHA Crane Construction Standards For Power Line Safety, Sections 1926.1408 & .1409. APPLICANT is further notified and hereby agrees to so notify any of APPLICANT's employees, agents, contractors, representatives, or other persons engaging in APPLICANT's activities upon said right-of-way and/or easement with APPLICANT's knowledge and under APPLICANT's supervision or control, that extreme caution is necessary around all of DUKE ENERGY's electrical facilities, supporting structures, anchor guys or related appurtenances, and in the event of any damages or injuries, APPLICANT shall immediately report the nature and extent thereof to DUKE ENERGY's nearest local office.
- D. The validity of this Encroachment Agreement is contingent upon APPLICANT first obtaining proper zoning approval and/or permit from the appropriate governmental body or public agency having jurisdiction over such utilization at this location, if required. If such zoning approval is not secured, this ENCROACHMENT AGREEMENT will be null and void.
- E. DUKE ENERGY shall not be liable for any damages to APPLICANT's Utilization whatsoever resulting from DUKE ENERGY's continued use and occupancy of the right-of-way and/or easement, unless DUKE ENERGY's gross negligence or willful misconduct causes damages to APPLICANT's Utilization.
- F. DUKE ENERGY's Central Florida Transmission Asset Protection Specialist or Transmission Asset Protection Management shall be notified by APPLICANT at least fourteen (14) days prior to APPLICANT's commencement of initial construction activities within DUKE ENERGY's right-of-way and/or easement.
- G. A thirty foot (30') wide non-exclusive accessway shall be retained along the length of the right-of-way and/or easement and to all transmission structures for use by DUKE ENERGY for emergency access, normal maintenance and patrol purposes.
- H. APPLICANT shall not use any equipment capable of extending over twelve (12') feet in height above natural ground within DUKE ENERGY's right-of-way and/or easement without prior written approval from DUKE ENERGY.

- I. APPLICANT shall adhere to provisions in OSHA and NESC regarding clearances between ground level and electric conductors. Any grade changes shall be submitted to Central Florida Transmission Asset Protection Specialist or Transmission Asset Protection Management for review and approval prior to grading revisions.
- J. Any fencing improvements shall be submitted to Central Florida Transmission Asset Protection Specialist or Transmission Asset Protection Management for review and approval prior to construction. If the utilization area is fenced, APPLICANT shall install a sixteen (16") foot wide gate along each fenced boundary within the right-of-way and/or easement making that portion of the right-of-way and/or easement accessible to DUKE ENERGY. APPLICANT shall ground each gate and fence in accordance with the National Electric Safety Code. APPLICANT may secure each gate with a chain and lock and DUKE ENERGY shall install an additional lock creating an interlocking padlock system.
- K. APPLICANT shall assume the sole duty, responsibility and obligation of mowing and otherwise maintaining the surface of the portion of DUKE ENERGY's right-of-way and/or easement upon and across APPLICANT's utilization in a condition compatible with the surrounding area.
- L. The entire disturbed area within DUKE ENERGY's right-of-way and/or easement, including DUKE ENERGY's patrol road, shall be restored by APPLICANT to a condition as good as that which existed prior to APPLICANT's construction.
- M. Upon completion of construction, APPLICANT shall notify DUKE ENERGY's Central Florida Transmission Asset Protection Specialist for inspection of DUKE ENERGY's right-of-way and/or easement.
- N. APPLICANT shall furnish DUKE ENERGY's Central Florida Transmission Asset Protection Specialist with a set of as-built drawings of the utilization area within thirty (30) days of completion of construction, sealed by a registered surveyor, noting the location of APPLICANT's improvements within DUKE ENERGY's right-of-way and/or easement and DUKE ENERGY's nearest structures.
- O. DUKE ENERGY does not guarantee that APPLICANT's Utilization will be completely compatible with the safe and efficient operation and maintenance of DUKE ENERGY's existing and future high voltage electric transmission and distribution lines within DUKE ENERGY's right of way and /or easement. In the event that APPLICANT's Utilization interferes with DUKE ENERGY's present or future use of the subject real property, DUKE ENERGY shall notify APPLICANT and give APPLICANT reasonable time to adjust its facilities; if that is not practicable, then APPLICANT agrees to relocate or adjust its facilities and/or improvements at APPLICANT's sole cost and expense. APPLICANT further agrees to reimburse DUKE ENERGY for all reasonable expenses associated with (a) the relocation of any existing DUKE ENERGY facilities necessitated by APPLICANT's Utilization and (b) all reasonable costs associated which any DUKE ENERGY safety inspectors deem reasonably necessary during or caused by the construction, operation, or maintenance of APPLICANT's facilities or improvements. In the event that DUKE ENERGY exercises its rights to install additional electrical facilities within the land that is the subject of this Encroachment Agreement, DUKE ENERGY shall provide reasonable written notice to APPLICANT, and shall not be obligated to repair, replace or reimburse APPLICANT for costs of any of APPLICANT's improvements placed upon the property.

- P. APPLICANT hereby expressly understands, covenants and agrees (a) that nothing contained in this ENCROACHMENT AGREEMENT is intended to or shall increase DUKE ENERGY's liability for personal injury or death or for any property damage, (b) that DUKE ENERGY does not assume any such additional liability, (c) that liability arising out of the utilization and occupancy of DUKE ENERGY's right-of-way and/or easement by APPLICANT and APPLICANT's employees, agents, contractors, invitees, or any representative, is hereby assumed by APPLICANT and shall be at the sole and exclusive risk of APPLICANT, (d) that APPLICANT shall answer and satisfy any and all complaints or inquiries relative to APPLICANT's Utilization of DUKE ENERGY's right-of-way and/or easement, (e) that APPLICANT shall protect, defend, hold harmless, and indemnify DUKE ENERGY, its directors, officers, employees, representatives, agents and contractors, to the extent and within the limitations of Section 768.28, Florida Statutes, from and against any and all actions, claims, damages, and/or loss, including costs and attorney's fees, occasioned by or growing out of any actual or claimed usage or condition of DUKE ENERGY's right-of-way and/or easement arising in any manner whatsoever, directly or indirectly, by reason this ENCROACHMENT AGREEMENT or APPLICANT's Utilization thereof, and (f) that APPLICANT covenants not to interfere with DUKE ENERGY's existing and future high voltage electric transmission and distribution lines and related facilities in any manner whatsoever and shall fully indemnify DUKE ENERGY to the extent and within the limitations of Section 768.28, Florida Statutes, from any and all losses as in this Section P "subparagraph (e)" above resulting from such interference.
- Q. As a safeguard for Paragraph "P" above, APPLICANT will maintain a certified Self-Insurance Program for general liability and automobile liability with coverage limits of not less than the sovereign immunity limits set forth in Section 768.28, Florida Statutes. The APPLICANT will also maintain Workers' Compensation and Employers' Liability covering its employees and officials in accordance with Florida Statute Chapter 440. APPLICANT will cause all of its contractors to carry, policies of insurance acceptable to DUKE ENERGY with respect to Commercial General Liability insuring against all risks to all persons or entities which may sustain property damage or personal injury as a result of the acts and omissions of its contractors, with limits not less than \$1,000,000 each person and \$2,000,000 each occurrence, in addition to statutory workers' compensation and employers' liability insurance, business auto liability and contractor's pollution liability, if the work involves the use or removal of hazardous materials. DUKE ENERGY shall be named as an additional insured on such insurance policies. APPLICANT will have the insurance policies mentioned endorsed by its insurance carrier to also provide blanket contractual coverage expressly with respect to Paragraph "P" above, to the full limits of and for the liabilities insured under said policies. Prior to commencing initial construction activities within the right-of-way and/or easement, APPLICANT will furnish DUKE ENERGY with a fully completed certificate of insurance, in duplicate, evidencing insurance coverage of the liability assumed under said Paragraph "P".
- R. If APPLICANT is not the current owner of the fee simple title to the lands underlying DUKE ENERGY's right-of-way and/or easement, APPLICANT shall obtain a legally sufficient right-of-way and/or easement or license from the present owner(s) of the fee simple title to the lands underlying DUKE ENERGY's right-of-way and/or easement signifying the permission of such owner(s) for APPLICANT's Utilization of said lands, and APPLICANT shall furnish to DUKE ENERGY's Florida Transmission Area Encroachment Agent a copy of each such right-of-way and/or easement or license prior to APPLICANT's commencing activities within DUKE ENERGY's right-of-way and/or easement.

- S. APPLICANT shall be responsible for clean-up of any and all APPLICANT's spills which may occur within DUKE ENERGY's right-of-way and/or easement. If a spill occurs, APPLICANT shall immediately report the nature and extent of the spill to DUKE ENERGY's nearest local office.
- T. Except as shown on **Composite Exhibit "A"**, APPLICANT shall not plant any trees or shrubbery within DUKE ENERGY's right-of-way and/or easement without prior written approval of DUKE ENERGY.
- U. APPLICANT agrees that DUKE ENERGY's right-of-way and/or easement shall not be used to satisfy wetland mitigation requirements.
- V. All covenants, terms, provisions and conditions herein contained shall run with the land and shall be binding upon and shall inure and extend to and be obligatory upon the parties and their heirs, successors, lessees, and assigns.
- W. APPLICANT agrees that if construction does not commence within eighteen (18) months of the date of this Encroachment Agreement, the Encroachment Agreement will become null and void, unless extended by mutual agreement of the parties acting in good faith.
- X. APPLICANT covenants and agrees to adhere to the Provisions of Duke Energy's easement recorded in O.R. Book 810 at Page 494 of the public records of Orange County, Florida, which requires that Applicant agrees that no trees, buildings, structures or obstacles will be located or constructed within the Easement Area nor shall ground elevation be altered more than two (2") feet without prior written permission from Duke Energy.
- Y. APPLICANT shall adhere at all times to DUKE ENERGY's User Guidelines for Electric Transmission Easements for all activities within DUKE ENERGY's right-of-way and/or easement, which are attached hereto as **Exhibit "C"**, incorporated herein by reference and made a part hereof.
- Z. APPLICANT agrees that if any portion of the Utilization is to be abandoned by APPLICANT, these facilities may be abandoned in place as located. The entire portion of the abandoned facilities shall be filled in by APPLICANT with flowable fill, at APPLICANT's sole cost and expense, with the APPLICANT being obligated to provide a means to prove a 100% success rate of fill as being achieved in all voids, both inside and outside of the abandoned pipeline, at APPLICANT's sole cost and expense.
- AA. This Encroachment Agreement may be executed in identical counterparts, which, when taken together, shall constitute the single and same agreement concerning this subject matter. This document may be executed by electronic facsimile signatures, which shall be deemed original signatures for all purposes hereof.

IN WITNESS WHEREOF, the parties have caused this ENCROACHMENT AGREEMENT to be executed as of the day and year first above written.

APPLICANT:

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

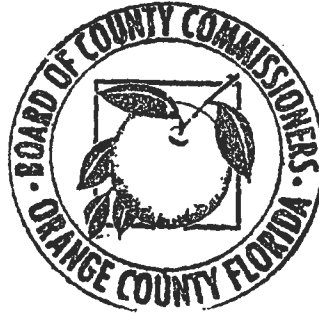
By: *Jerry L. Demings*

for Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
as Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Print Name: **Katie Smith**



IN WITNESS WHEREOF, the parties have caused this ENCROACHMENT AGREEMENT to be executed as of the day and year first above written.

DUKE ENERGY:

Duke Energy Florida, LLC, a Florida Limited Liability Company, d/b/a Duke Energy

Karen Adams

By: Karen Adams- Manager, Land Services II

WITNESSED BY:

Michael Adams

Signature of First Witness

Michael Adams

Print Name of First Witness

Caroline B. Michie

Signature of Second Witness

Caroline B Michie

Print Name of Second Witness

State of Florida)
County of Volusia) ss

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 31 day of August, 2021, by Karen Adams as Manager, Land Services II of Duke Energy Florida, LLC, a Florida limited liability company d/b/a Duke Energy, on behalf of the company. She personally appeared before me at the time of notarization, and is personally known to me.

NOTARY SEAL



CAROLINE B. MICHIE
Commission # HH 131762
Expires June 5, 2025
Bonded Thru Budget Notary Services

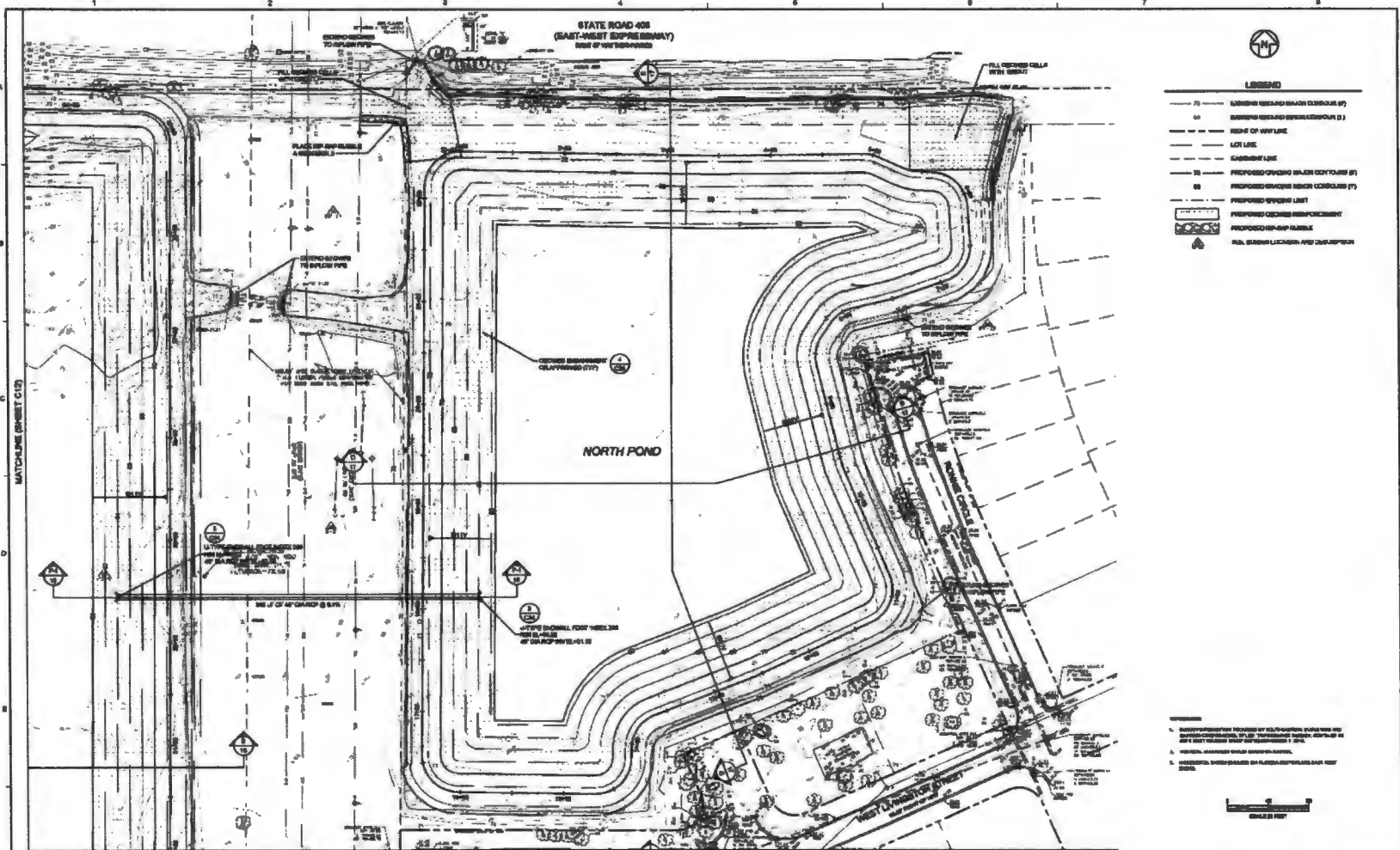
Caroline B. Michie

Print Name: Caroline B. Michie

Notary Public

Serial Number: HH 131762

My Commission Expires: 6-5-2025



- LEGEND**
- 10' --- EXISTING HIGHER ELEVATION CONTOUR (10')
 - 00 --- EXISTING HIGHER ELEVATION CONTOUR (0')
 - --- SIDE OF WAY LINE
 - --- LOT LINE
 - --- CATCHMENT LINE
 - 10 --- PROPOSED CHANGING GRADE CONTOUR (10')
 - 00 --- PROPOSED CHANGING GRADE CONTOUR (0')
 - --- PROPOSED STORM LINE
 - --- PROPOSED CATCHMENT AREA
 - --- PROPOSED MANHOLE
 - --- RAIL, BARRIERS, LIGHTS AND CHIMNEYS

- NOTES**
1. ALL PROPOSED WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, PART 700, CHAPTER 1000, SECTION 1000.01.
 2. VERIFY ALL EXISTING UTILITIES PRIOR TO CONSTRUCTION.
 3. VERIFY ALL EXISTING ELEVATIONS PRIOR TO CONSTRUCTION.



NO.	DATE	BY	DESCRIPTION

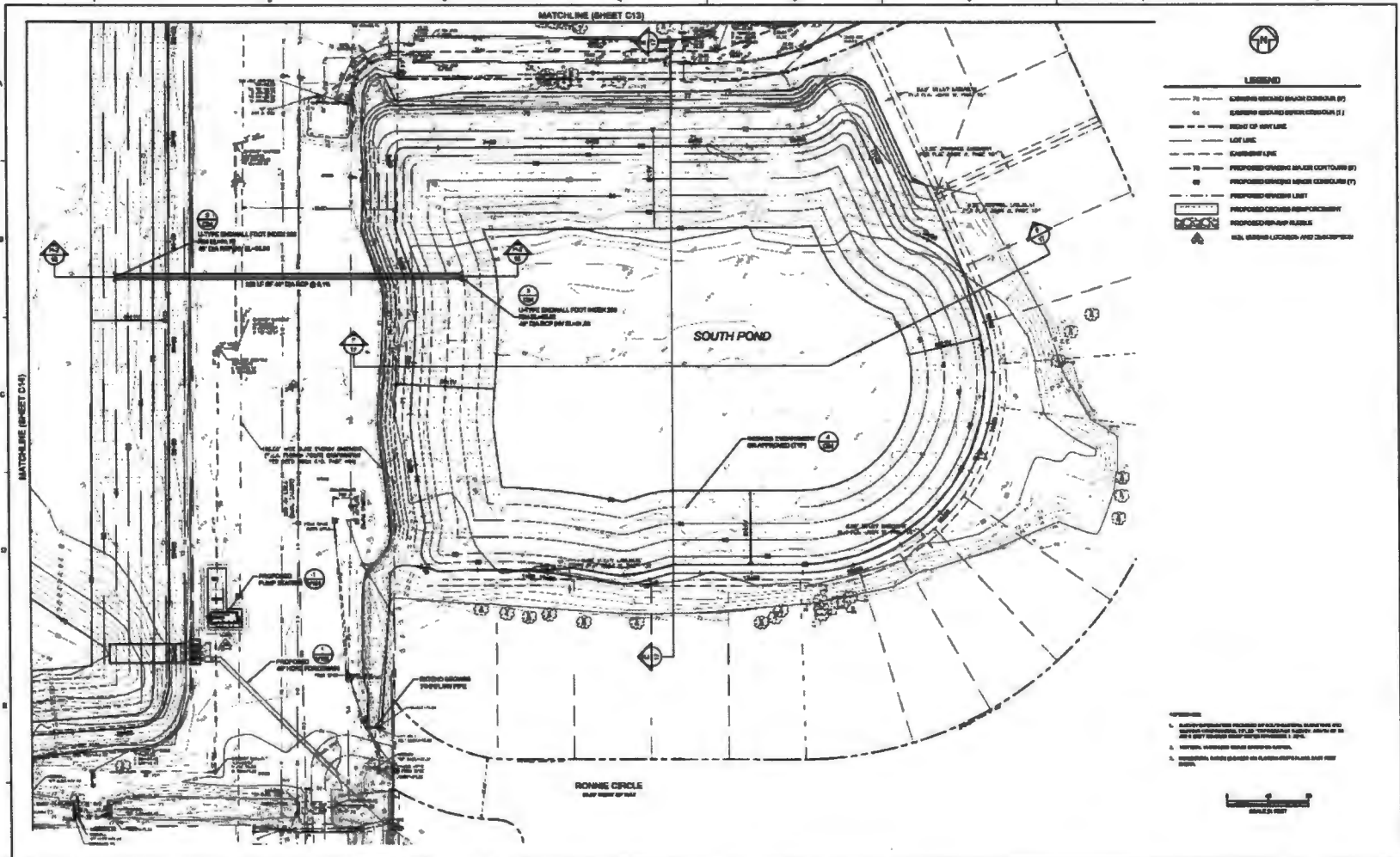
PROJECT: PROPOSED GRADING AND DRAINAGE PLAN
 CLIENT: ORLO VISTA FLOOD MITIGATION PROJECT
 LOCATION: ORANGE COUNTY, ORLANDO FLORIDA
 DATE: 08/20/2024
 DRAWING NO.: 24-00000-01
 SHEET NO.: C13
 TOTAL SHEETS: 13
 DESIGNER: [Signature]
 CHECKED: [Signature]
 APPROVED: [Signature]

PROPOSED GRADING AND DRAINAGE PLAN
ORLO VISTA FLOOD MITIGATION PROJECT
 ORANGE COUNTY, ORLANDO FLORIDA



Geosyntec
 CONSULTANTS
 1000 W. WINDY HILL BLVD. SUITE 100
 ORLANDO, FLORIDA 32835
 TEL: 407.261.1000
 FAX: 407.261.1001
 WWW.GEOSYNTEC.COM

DATE	08/20/2024
PROJECT NO.	24-00000
DRAWING NO.	24-00000-01
SHEET NO.	C13
TOTAL SHEETS	13



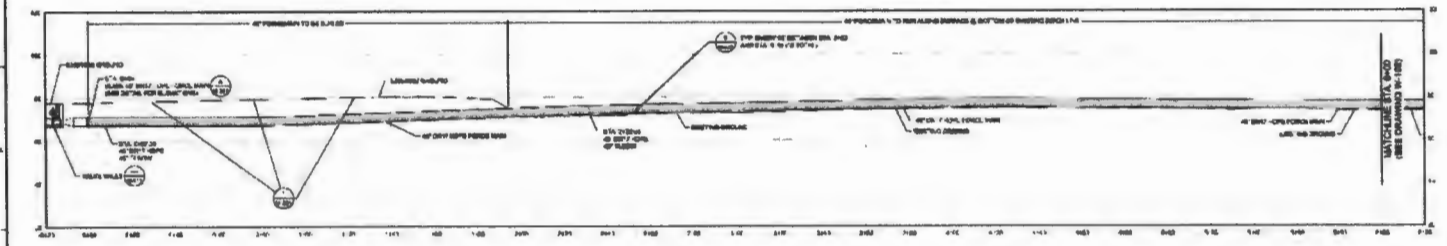
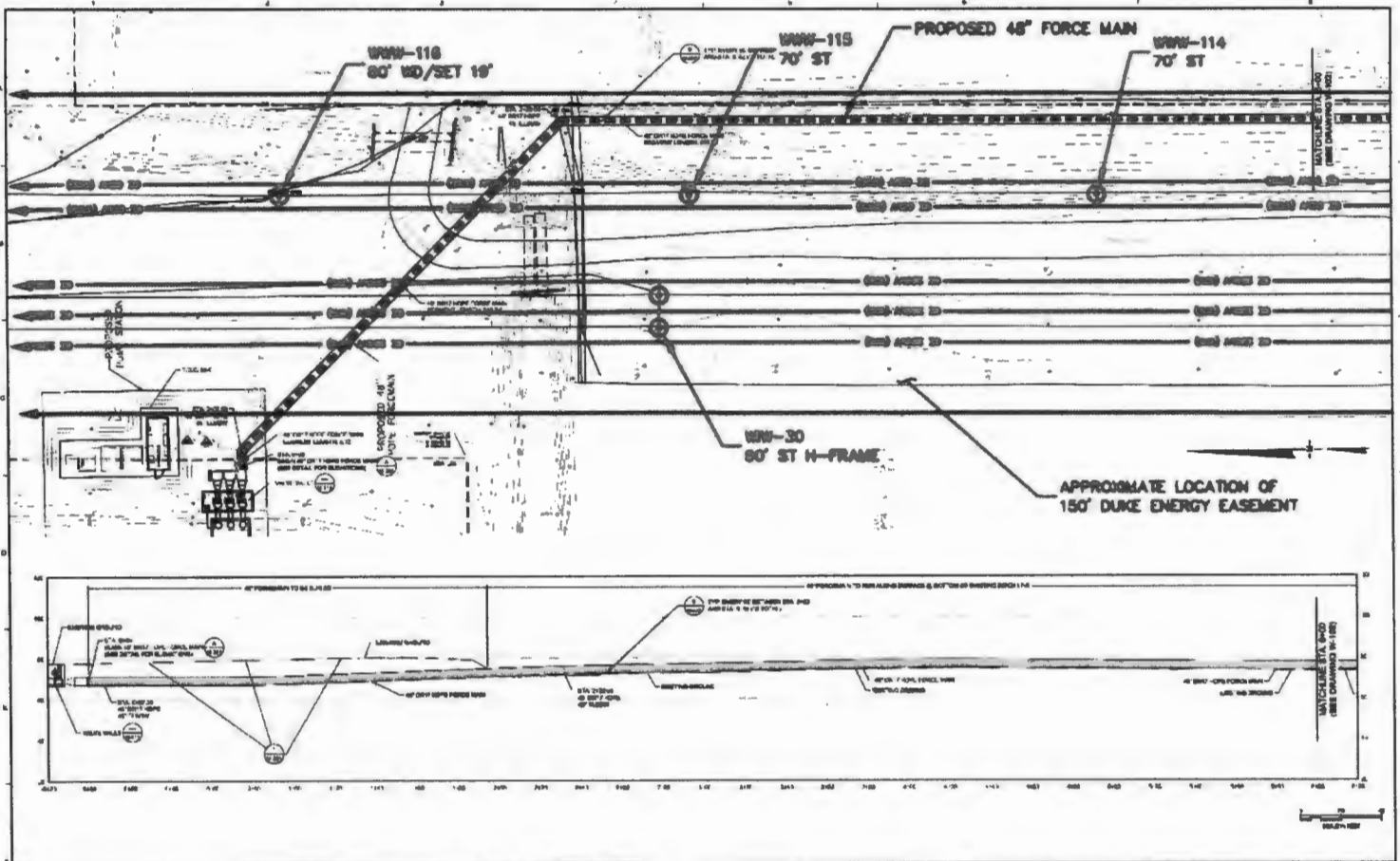
- LEGEND**
- 2' --- EXISTING GRADE (EACH CONTOUR BY)
 - 4' --- EXISTING GRADE (EACH CONTOUR BY)
 - --- FRONT OF LOT LINE
 - --- LOT LINE
 - --- CENTERLINE
 - 2' --- PROPOSED CHANGING GRADE CONTOUR (BY)
 - --- PROPOSED CHANGING GRADE CONTOUR (BY)
 - --- PROPOSED CHANGING LIST
 - --- PROPOSED CHANGING PROPOSED/CHANGING
 - --- PROPOSED CHANGING PAVEMENT
 - --- NEW EXISTING LOT/PROP. CHANGING

- NOTES**
1. ALL DIMENSIONS UNLESS OTHERWISE NOTED ARE IN FEET AND INCHES.
 2. ALL DIMENSIONS SHALL BE TO CENTERLINE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED.



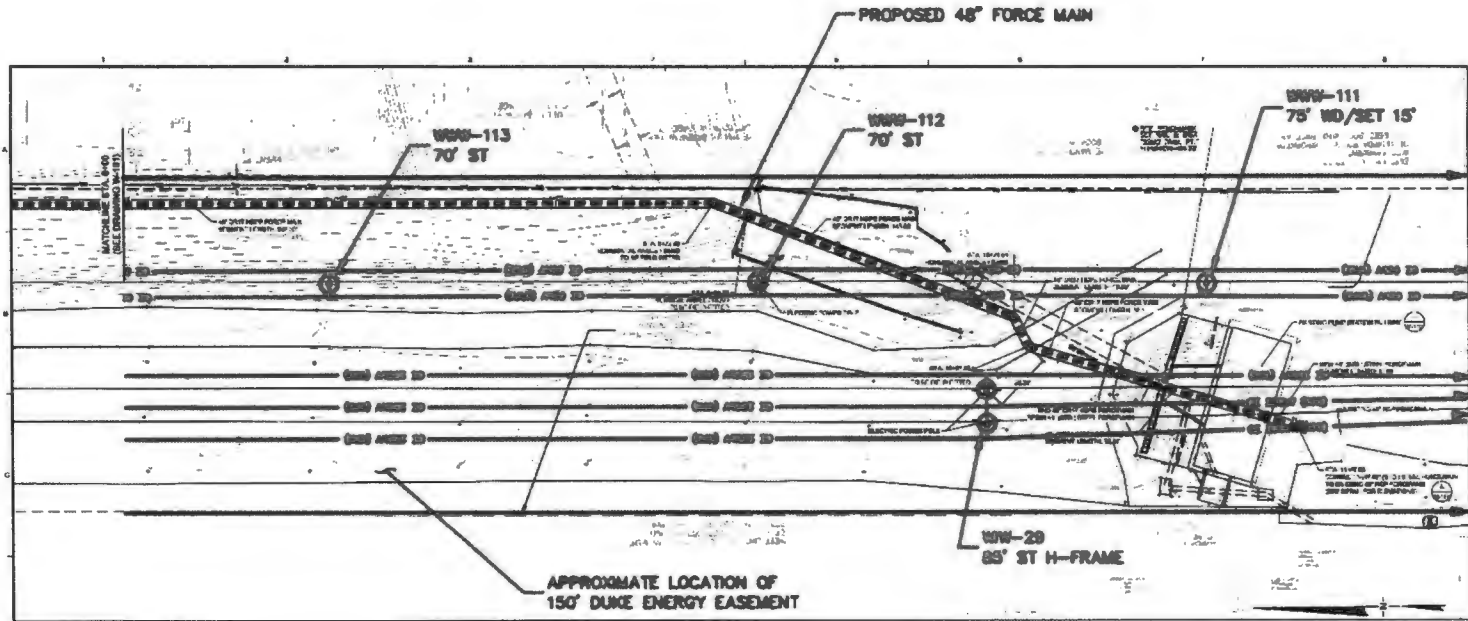
<p>APPROVED FOR THE CITY OF ORLANDO</p> <p><i>[Signature]</i></p> <p>DATE: 05/05/2020</p>		<p>PROJECT NO: 2019-001</p> <p>DATE: 05/05/2020</p> <p>SCALE: AS SHOWN</p>	<p>PROPOSED GRADING AND DRAINAGE PLAN</p> <p>ORLO VISTA FLOOD MITIGATION PROJECT</p> <p>ORANGE COUNTY, ORLANDO FLORIDA</p>	<p>ORANGE COUNTY GOVERNMENT</p> <p>FLORIDA</p>	<p>Geosyntec</p> <p>CONSULTANTS</p> <p>1000 WEST LINDEN AVENUE SUITE 200</p> <p>ORLANDO, FLORIDA 32803</p> <p>PHONE: 407.261.1000</p> <p>WWW.GEOSYNTEC.COM</p>	<p>DATE: MAY 2020</p> <p>PROJECT NO: 2019-001</p> <p>FILE: 2019-001</p> <p>PROJECT: FLOOD MITIGATION</p> <p>DATE: 05/05/2020</p> <p>SCALE: C15</p>
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TO: W-31 TO: W-117

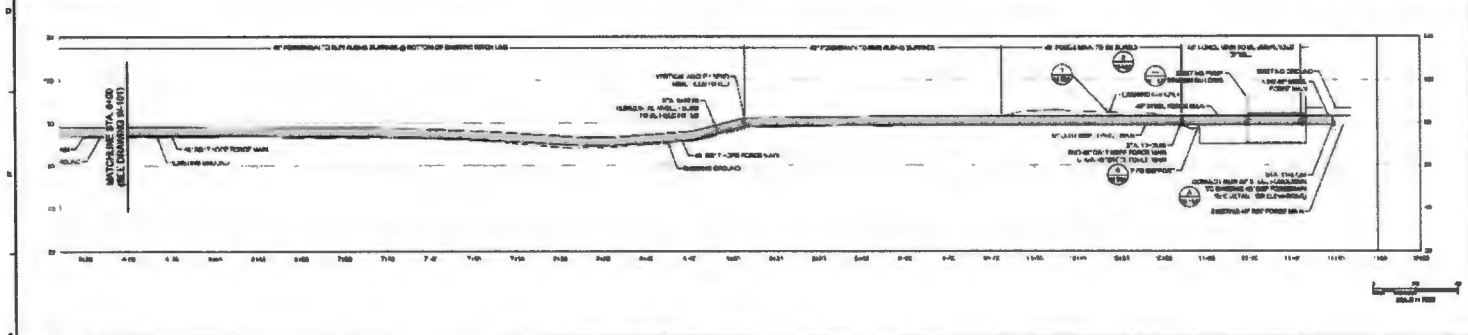


		SHEET NO. 101 OF 101	48" RICH FORCE MAIN PLAN AND PROFILE - SHEET ORLO VISIA FLOOD MITIGATION DESIGN ORANGE COUNTY, ORLANDO, FLORIDA		Geosyntec CONSULTANTS 10000 WINDY HILL ROAD SUITE 100 ORLANDO, FLORIDA 32837	DATE: 04/20/20 DRAWN BY: JMM CHECKED BY: JMM PROJECT NO.: 19-00000000000000000000 SHEET NO.: 101 OF 101 PROJECT NAME: ORLO VISIA FLOOD MITIGATION DESIGN
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W-101



TO: WWS-28 TO: WWS-110



<p>DATE: 08/11/10 DRAWN BY: [Signature] CHECKED BY: [Signature]</p>	<p>48 INCH FORCE MAIN PLAN AND PROFILE - SHEET 3 ONLD VISTA FLOOD MITIGATION DESIGN ORANGE COUNTY, ORLANDO, FLORIDA</p>		<p>Geosyntec CONSULTANTS</p>
<p>W-102</p>			

Exhibit "B"

S P E C I F I C R E Q U I R E M E N T S

for

Orange County

1. Other than DUKE ENERGY's facilities, no overhead wires, poles, light standards, dumpsters, signs, trees, buildings, structures or obstacles may be located, constructed or installed within the right-of-way easement strip without written approval by DUKE ENERGY.
2. This area contains high voltage power lines. Extreme caution must be used when working within the Utilization Area.
3. A clear, level and easily passable thirty-foot (30') wide maintenance road be provided with no shrubs or trees planted in maintenance roadway.
4. A DUKE ENERGY approved Inspector will be assigned to verify that construction of the improvement(s) within DUKE ENERGY's easement strip is in compliance with the terms and conditions of the Agreement and the approved construction plans, attached to the Encroachment Agreement as **Composite Exhibit "A"**. The Inspector shall be present and on site only during the construction of the force main and culvert pipes which are located within DUKE ENERGY's easement strip. All of the foregoing costs of DUKE ENERGY's Inspector are to be paid by APPLICANT after receipt and review of an appropriate invoice with back-up. DUKE ENERGY's Inspector shall be notified fourteen (14) days prior to the commencement of construction within DUKE ENERGY's right-of-way. The APPLICANT's Construction Manager (or designated representative) will make reports to DUKE ENERGY's Inspector regarding any damages to DUKE ENERGY's property, private property or other public facilities. APPLICANT agrees to pay all reasonable expenses incurred in connection with the repair of such damages in accordance with the terms of the Encroachment Agreement.
5. Prior to any work commencing in the transmission right of way, APPLICANT or APPLICANT's designee, shall attend an on-site safety meeting with DUKE ENERGY's Transmission Line Maintenance Supervisor. It shall be the APPLICANT's responsibility to coordinate with DUKE ENERGY's Asset Protection Specialist with a minimum Fourteen (14) day notice to schedule the safety meeting. Applicant shall be obligated to perform any safety procedure or standard as determined by the Inspector.
6. All excavations for APPLICANT's Utilization shall be a minimum of twenty-five feet (25') from the nearest edge of DUKE ENERGY's transmission structure and a minimum of thirty feet (30') from guying.

7. Any and all piping or culverts (cables) installed by APPLICANT within DUKE ENERGY's right-of-way easement strip shall have sufficient earth cover (minimum of 36") that supports at least 80,000 lbs. to prevent damage due to the operation of DUKE ENERGY's vehicles and heavy equipment within the easement strip.
8. No below ground grade drainage or facilities may be installed by APPLICANT within the right-of-way easement strip without DUKE ENERGY's approval.
9. APPLICANT agrees that no refueling operations take place within the easement area.
10. All parked vehicles within the right-of-way easement strip shall be motor vehicles of an operative and transient nature; mobile homes, office trailers or carriers of explosive materials are prohibited.
11. APPLICANT shall not install cathodic protective devices without first notifying DUKE ENERGY's Material Technology Engineer and prior approval.
12. APPLICANT understands that work must commence within eighteen (18) months from the date of this signed Agreement or the Agreement becomes null and void unless extended by mutual agreement of the parties acting in good faith.



FOR INFORMATIONAL PURPOSES ONLY - NOT PART OF ENCROACHMENT AGREEMENT

FORMERLY: SECURITIES - TRANSMISSION

USE GUIDELINES FOR ENCROACHMENTS INVOLVING TRANSMISSION EASEMENTS

Duke Energy has a property interest called an easement (or sometimes a right-of-way) in land that you own or are considering purchasing. This easement grants Duke Energy the right to use the easement area for purposes described in the easement document that is filed and recorded in the county's recorder office. This property interest stays with the land when it is bought and sold and generally is perpetual in duration. A series of easements often form a corridor in which the transmission facilities are located and access up and down the corridor is part of the reason Duke Energy obtains these rights.

Broadly stated, easements allow Duke Energy to use another person's property to construct, operate, maintain, repair, and replace electrical facilities for the transmission of high voltage power. The landowner may continue to use the easement area so long as the use is not inconsistent with the easement document or Duke Energy's use of the easement. Any incompatible use by the landowner is called an encroachment. Where an encroachment is under construction, Duke Energy will request that it be stopped and removed; where an encroachment is already installed, Duke Energy will request that it be removed. Where a landowner fails to cooperate, Duke Energy will seek legal recourse to remove the encroachment.

Electricity is a public service and subject to state and federal regulations with which Duke Energy must comply. Any use by the landowner that does or could create regulatory issues is an encroachment. Power lines in the transmission easement are uninsulated and electricity is a dangerous instrumentality. Any landowner use that increases the danger to the landowner, the public or Duke Energy in its use of the easement is also an encroachment.

Over years of designing, constructing, operating, repairing, upgrading and maintaining electric facilities in transmission easements, Duke Energy has developed an understanding of the types of uses by landowners that do, or potentially can, interfere with the easement's purposes and Duke Energy's ability to provide safe and reliable service. This guidance, which supersedes all prior versions, provides a brief overview of types of things that do, or can, interfere with Duke Energy's easement rights and thereby create encroachments.

This overview cannot address all possible situations and is intended to provide general guidance. Please contact the Asset Protection Specialist if you have additional questions or concerns about the use of the easements. Please discuss any proposed activity in the transmission easements with Duke Energy to avoid creating an encroachment or interference. The Asset Protection Specialist can assist and help avoid a subsequent need by the landowner to revise plans or remove obstructions from the easements. Engineering plans may be required by Duke Energy to fully understand any proposed use by the landowner.

By providing these guidelines, Duke Energy does not waive any rights it has in its easements or under the law. Duke Energy's concurrence that a proposed use does not constitute an interference with its easement rights does not mean that requirements of local, county, state or federal governments or other agencies with governing authority have been met.

The following are not permitted in Duke Energy's transmission easements as they interfere with Duke Energy's use of the easements for transmission of electricity by, among other things, interfering with full use the easement, interfering with existing facilities, interfering with access to the facilities, interfering with future expansion in the easement, increasing the danger to the public or those who may be required to work in the easement, creating regulatory violations and generally, making the transmission of electricity more dangerous, costly and/or unreliable: Examples include but are not limited to:

- Permanent or temporary structures and buildings, including for example, permanent or manufactured/mobile homes (and home additions and extensions), garages, sheds, satellite systems, intersections, cul-de-sacs, entrances, streets, swimming pools (any associated equipment and decking), playground equipment, graves, billboards, dumpsters, signs, wells, deer stands, retaining walls, septic systems or tanks (whether above or below ground).
- Mounding or stockpiling any material, such as spoils, dirt, logs, construction or building material, wrecked or disabled vehicles, (e.g. may create clearance and access issues and/or increases dangers in using the easement).
- Transformers, telephone/cable pedestals and associated equipment (unless specifically addressed in a joint use agreement), fire hydrants, manholes, water valves, water meters, backflow preventers & irrigation heads, (e.g. may increase the likelihood of safety hazards & access issues).

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