

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 20, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Hampson, Guffey) *JGH*
Office of the General Counsel (Trierweiler) *JSC*

RE: Docket No. 20200164-EU – Joint petition for approval of amendment to territorial agreement in Lee County, by Florida Power & Light Company and Lee County Electric Cooperative.

AGENDA: 09/01/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On June 4, 2020, Florida Power & Light Company (FPL) and Lee County Electric Cooperative (LCEC), collectively the joint petitioners, filed a petition seeking Commission approval to amend their existing territorial agreement in Lee County. The proposed amendment (2020 Amendment) seeks to modify the territorial boundaries of their existing territorial agreement to allow both utilities to more efficiently serve a planned private development and to avoid the uneconomic duplication of facilities. On June 10, 2020, the joint petitioners filed an amendment to the petition to correct a typographical error in the 2020 Amendment.¹

¹ Document No. 03022-2020

In 1965, the Commission approved the joint petitioners' original territorial agreement by Order No. 3799.² In 1993, the Commission approved a new territorial agreement relating to the service areas in Charlotte, Collier, Hendry, and Lee Counties.³ In 1997, the Commission approved a minor modification to the boundary line between FPL and LCEC in Lee County to reflect development in the area.⁴ In 2015, the Commission approved an amendment to reflect service by FPL and LCEC to the Babcock Ranch Community Independent Special District.⁵

The 2020 Amendment, legal descriptions and sketches of the parcels to be exchanged are provided in Attachment A of this recommendation. The Florida Department of Transportation General Highway County map and two more detailed maps depicting the proposed boundary lines are provided in Attachment B of this recommendation. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

² Order No. 3799, issued April 28, 1965, in Docket No. 7421-EU.

³ Order No. PSC-93-0705-FOF-EU, issued May 10, 1993, in Docket No. 930092-EU, *In re: Joint application for approval of territorial agreement between Florida Power & Light Company and Lee County Electric Cooperative, Inc.*

⁴ Order No. PSC-97-0527-FOF-EU, issued May 7, 1997, in Docket No. 970105-EU, *In re: Petition for approval of change in territorial boundary under territorial agreement with Lee County Electric Cooperative, Inc., by Florida Power & Light Company.*

⁵ Order No. PSC-15-0021-PAA-EU, issued January 5, 2015, in Docket No. 20140210-EU, *In re: Joint petition for approval of amendment to territorial agreement in Charlotte, Lee, and Collier counties, by Florida Power & Light Company and Lee County Electric Cooperative.*

Discussion of Issues

Issue 1: Should the Commission approve the proposed 2020 Amendment to the territorial agreement between FPL and LCEC?

Recommendation: Yes, the Commission should approve the proposed 2020 Amendment to the territorial agreement between FPL and LCEC, dated June 3, 2020. The 2020 Amendment is in the public interest and will avoid uneconomic duplication of facilities. (Hampson, Guffey)

Staff Analysis: Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440, Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.⁶

Amendment of Territorial Boundaries

The joint petitioners have proposed an exchange of two parcels, known as Exchange Parcel A and Exchange Parcel B, in order to achieve additional operational efficiencies and to avoid the uneconomic duplication of facilities. The joint petitioners have proposed this exchange as a result of a planned private development in Lee County. Both Exchange Parcels are currently undeveloped, with no existing customers or electric facilities. As such, there are no customers to notify regarding changes in service. Additionally, in Paragraph 14 of the petition, the joint petitioners state that approval of the 2020 Amendment will not cause a decrease in electric service reliability to existing or future customers of either utility.

Exchange Parcel A is approximately 160 acres large and will be transferred from LCEC to FPL, if approved by the Commission. Exchange Parcel A includes an area planned for 132 residential lots, which will be located in the aforementioned planned development. Exchange Parcel B is approximately 30 acres large and will be transferred from FPL to LCEC. Within Exchange Parcel B is approximately 26 acres of commercial land that is to be utilized for the planned development's amenity center. Legal descriptions and sketches of the Exchange Parcels are included in Attachment A of this recommendation.

Conclusion

After review of the joint petition and amendment filed on June 10, 2020, staff believes that the 2020 Amendment to the territorial agreement will enable FPL and LCEC to avoid an unnecessary duplication of facilities and to serve their current and future customers in an efficient manner. As such, staff recommends that the Commission should approve the proposed 2020 Amendment to the territorial agreement between FPL and LCEC, dated June 3, 2020. The effective date of the 2020 Amendment will be the date on which the Commission's final order granting approval of the amendment in its entirety is no longer subject to judicial review.

⁶ *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of the Consummating Order. (Trierweiler)

Staff Analysis: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of the Consummating Order.

**AMENDMENT TO TERRITORIAL AGREEMENT
BETWEEN
FLORIDA POWER AND LIGHT COMPANY
AND
LEE COUNTY ELECTRIC COOPERATIVE**

This Amendment to the Territorial Agreement, dated June 3, 2020, ("2020 Amendment") is entered into by Florida Power & Light Company ("FPL") and Lee County Electric Cooperative (collectively, the "Parties"), each of which is a corporation organized and existing under the laws of the State of Florida and an electric utility as defined in Section 366.02(2), Florida Statutes.

W I T N E S S E T H

WHEREAS, the Parties have an existing Territorial Agreement relating to their respective retail service areas in Charlotte, Collier, Hendry and Lee Counties, Florida, which was approved by the Florida Public Service Commission (the "PSC") by Order No. PSC-93-0705-FOF-EU, and which was amended in 1997 and approved by the PSC by Order No. PSC-97-0527-FOF-EU, and which was further amended in 2014 and approved by the PSC by Order No. PSC-15-0021-PAA-EU (such agreement and amendments are collectively referred to as the "Territorial Agreement"); and

WHEREAS, the Parties now desire to amend the territorial boundary in the existing Territorial Agreement as it relates to a specified area where a private development is planned in Lee County, Florida; and

WHEREAS, amending the territorial boundary in the existing Territorial Agreement will avoid uneconomic duplication of services and provide for the cost effective provision of service to utility customers;

NOW THEREFORE, in consideration of the following mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree to amend the Territorial Agreement as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.

2. **Territorial Exchange.** In order to avoid unnecessary duplication of facilities and to serve anticipated development, the Parties agree to amend the boundaries in the Territorial Agreement in order to exchange two undeveloped parcels within their respective retail service territories where both utilities currently have minimal infrastructure in place.

- a) The first parcel is within the territory boundary of LCEC and includes an area planned for 132 residential lots that are located on the southwestern part of the planned development (“Exchange Parcel A”). A legal description and sketch of Exchange Parcel A is attached as Exhibit "A". Upon approval of this 2020 Amendment by the PSC, Exchange Parcel A will be transferred from LCEC to FPL.
- b) The second parcel is within the territory boundary of FPL on the northwestern part of the planned development and includes approximately 26 acres of commercial land that is to be utilized for the development’s Amenity Center (“Exchange Parcel B”). A legal description and sketch of Exchange Parcel B is attached as Exhibit "B". Upon approval of this 2020

Amendment by the PSC, Exchange Parcel B will be transferred from FPL to LCEC.

3. **Transition.** There are currently no existing customers or electric facilities within Exchange Parcel A or Exchange Parcel B. Thus, no transition of electric service is required.


4. **Condition Precedent and Effective Date.** The approval of this 2020 Amendment by the PSC without modification, shall be an absolute condition precedent to the validity, enforceability and applicability hereof. The effective date of this 2020 Amendment shall be the date on which the final order of the PSC granting approval of this amendment in its entirety becomes no longer subject to judicial review.

5. **Existing Territorial Agreement.** All other parts of the Territorial Agreement shall remain in effect.

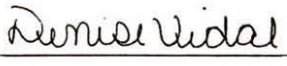
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IN WITNESS WHEREOF, this 2020 Amendment has been caused to be executed by FPL in its name by its Senior Vice President, and by LCEC in its name by its Chief Executive Officer, on the day and year first written above.

FLORIDA POWER & LIGHT COMPANY

By: 
Date: 6/3/20
Name: Manuel B. Miranda
Title: Senior Vice President, Power Delivery

LEE COUNTY ELECTRIC COOPERATIVE

By: 
Date: 6-2-20
Name: Denise Vidal
Title: Chief Executive Officer

**LEGAL DESCRIPTION
 OF A PARCEL LYING IN
 SECTION 31, TOWNSHIP 46 SOUTH, RANGE 27 EAST,
 LEE COUNTY, FLORIDA**


PARCEL "A"

A PARCEL OF LAND BEING ALL THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 46 SOUTH, RANGE 27 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 31; THENCE S.00°50'31"E. ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31 FOR A DISTANCE OF 2635.19 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 31; THENCE S.86°01'18"W. ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31 FOR A DISTANCE OF 2636.16 FEET TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 31; THENCE N.00°55'01"W., ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31 FOR A DISTANCE OF 2639.49 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 31; THENCE N.89°06'55"E. ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 31 FOR A DISTANCE OF 2639.61 FEET TO THE NORTHEAST CORNER OF SAID SECTION 31, AND POINT OF BEGINNING.

PARCEL CONTAINS 160 ACRES, MORE OR LESS

THIS IS NOT A SURVEY

BY: 
 TIMOTHY LEE MANN
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA CERTIFICATE NO. LS# 5838

DATE SIGNED: 3-9-2020

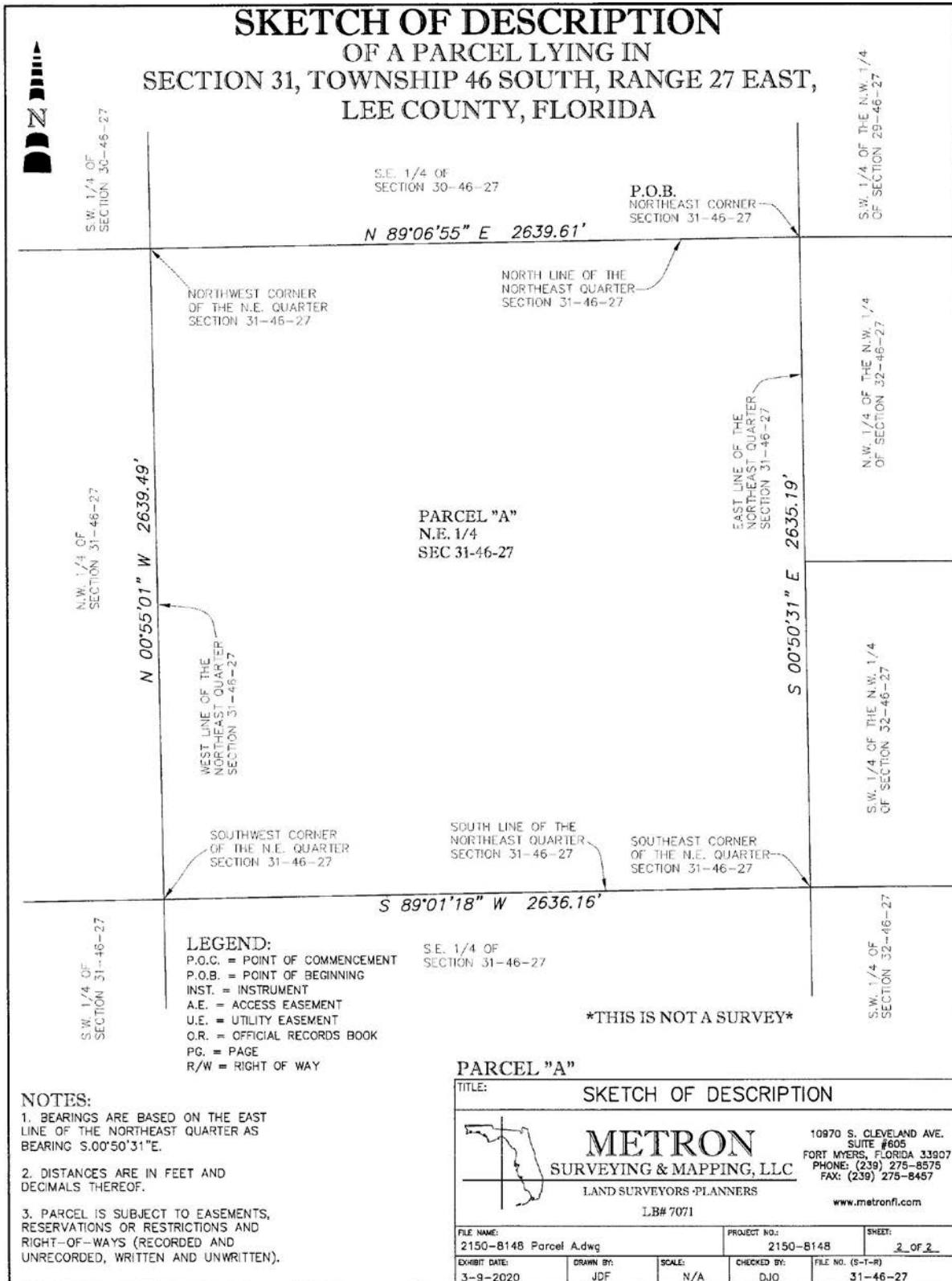
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

NOTES:

1. BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER AS BEARING S.00°50'31"E.
2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

PARCEL "A"

| | |
|--|--|
| TITLE: SKETCH OF DESCRIPTION | |
|  | <p>METRON SURVEYING & MAPPING, LLC LAND SURVEYORS-PLANNERS I.B# 7071</p> |
| 10970 S. CLEVELAND AVE. SUITE #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com | |
| FILE NAME: 2150-8148 Parcel A.dwg | PROJECT NO.: 2150-8148 |
| DATE: 3-9-2020 | SHEET: 1 OF 2 |
| DRAWN BY: JDF | CHECKED BY: DJO |
| SCALE: N/A | FILE NO. (S-T-N): 31-46-27 |



LEGAL DESCRIPTION OF A PARCEL LYING IN SECTION 30, TOWNSHIP 46 SOUTH, RANGE 27 EAST, LEE COUNTY, FLORIDA

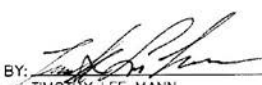
PARCEL "B"

A PARCEL OF LAND BEING PART OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 46 SOUTH, RANGE 27 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 30; THENCE N.00°47'51"W. ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 30 FOR A DISTANCE OF 2647.70 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 30; THENCE N.00°55'29"W. ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30 FOR A DISTANCE OF 964.08 FEET TO THE POINT OF BEGINNING AND THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 312.00 FEET; THENCE ALONG SAID CURVE AND LEAVING SAID EAST LINE THROUGH A CENTRAL ANGLE OF 09°07'21", A CHORD BEARING OF N.87°31'43"W., A CHORD LENGTH OF 49.62 FEET AND AN ARC LENGTH OF 49.68 FEET TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 888.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°29'25", A CHORD BEARING OF S.86°47'15"W., A CHORD LENGTH OF 315.88 FEET AND AN ARC LENGTH OF 317.57 FEET; THENCE S.77°14'38"W. FOR A DISTANCE OF 62.11 FEET; THENCE N.12°03'17"W. FOR A DISTANCE OF 94.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 2443.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 07°30'35", A CHORD BEARING OF N.74°11'25"E., A CHORD LENGTH OF 319.97 FEET AND AN ARC LENGTH OF 320.20 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE LEFT HAVING A RADIUS OF 63.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 71°21'37", A CHORD BEARING OF N.34°45'19"E., A CHORD LENGTH OF 73.49 FEET AND AN ARC LENGTH OF 78.46 FEET; THENCE N.00°55'29"W. FOR A DISTANCE OF 103.26 FEET; THENCE S.89°04'31"W. FOR A DISTANCE OF 139.34 FEET; THENCE N.51°47'35"W. FOR A DISTANCE OF 146.48 FEET; THENCE S.87°13'04"W. FOR A DISTANCE OF 160.70 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 2105.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°07'41", A CHORD BEARING OF S.84°24'17"W., A CHORD LENGTH OF 481.26 FEET AND AN ARC LENGTH OF 482.32 FEET TO THE BEGINNING OF A COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 200.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°35'13", A CHORD BEARING OF N.46°14'16"W., A CHORD LENGTH OF 271.74 FEET AND AN ARC LENGTH OF 298.76 FEET; THENCE N.03°26'39"W. FOR A DISTANCE OF 852.69 FEET; THENCE N.89°30'04"E. FOR A DISTANCE OF 1123.96 FEET; THENCE N.00°55'29"W. FOR A DISTANCE OF 238.25 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY OF CORKSCREW ROAD; THENCE N.89°32'30"E. ALONG SAID RIGHT-OF-WAY FOR A DISTANCE OF 92.00 FEET TO A POINT ON THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30; THENCE S.00°55'29"E. LEAVING SAID RIGHT-OF-WAY AND ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30 FOR A DISTANCE OF 1635.14 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 30.3 ACRES, MORE OR LESS.

THIS IS NOT A SURVEY

BY: 
 TIMOTHY LEE MANN
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA CERTIFICATE NO. LS# 5838


DATE SIGNED: 3-9-2020

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

NOTES:

1. BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 46 SOUTH, RANGE 27 EAST AS BEARING S.00°55'29"E.
2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

PARCEL "B"

| | |
|--|---|
| TITLE: SKETCH OF DESCRIPTION | |
|  | <p>METRON SURVEYING & MAPPING, LLC</p> <p>LAND SURVEYORS-PLANNERS</p> <p>LB# 7071</p> |
| 10970 S. CLEVELAND AVE. SUITE #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfi.com | |
| FILE NAME: 2150-8148 Parcel B.dwg | PROJECT NO.: 2150-8148 |
| EXHIBIT DATE: 3-9-2020 | DRAWN BY: JDF |
| SCALE: N/A | CHECKED BY: DJO |
| FILE NO. (S-T-R) 30-46-27 | SHEET: 1 of 2 |

