

**DOVE POND JOINT PROJECT AGREEMENT**

This Joint Project Agreement ("JPA") is entered into this 30<sup>th</sup> day of October, 2009, by and between Leon County ("COUNTY"), a political subdivision of the State of Florida and CNL Tallahassee I, LLC, a Florida Limited Liability Company ("CNL"). The COUNTY and CNL may be referred to in this JPA as the "Parties."

**RECITALS**

**WHEREAS**, CNL owns approximately 258.86 acres of property ("CNL Property") located within the municipal boundaries of the City of Tallahassee ("City"), which includes the water body known as Dove Pond ("Dove Pond"); and

**WHEREAS**, Dove Pond is located in the Tri-Basin area which is in east central Leon County and is comprised of three closed basins: Dove Pond Closed Basin; Lafayette Closed Basin; and Pedrick Closed Basin; and

**WHEREAS**, during periods of severe rainfall, stormwater flows north to south and has historically resulted in significant flooding downstream of Dove Pond with the most notable events having occurred in the 1970s, 1980s, and 1994; and

**WHEREAS**, in addition to the stormwater received within the Dove Pond Closed Basin, Dove Pond receives stormwater from upstream areas within the COUNTY including the approximately 320 acres north of the CNL Property and Dove Pond; and

**WHEREAS**, during the 1994 event, areas downstream of Dove Pond experienced severe and extended flood conditions, the COUNTY in July of 1994 declared a state of emergency for the Tri-Basin area based on these severe flood conditions, and in an effort to alleviate flood conditions and protect homes in Country Walk, Midyette Plantation, and Lafayette Oaks

subdivisions, the COUNTY constructed a sand bag berm along the north side of Miccosukee Road to impound runoff from Dove Pond; and

**WHEREAS**, this flooding in the Tri-Basin area caused significant damage to homes resulting in uninhabitable conditions for many, the closing of critical roads, and the COUNTY'S later purchase of properties through its flooded properties acquisition program in the Lafayette Oaks Subdivision in an effort to reduce the number of structures threatened by flooding in the Tri-Basin area; and

**WHEREAS**, following these events, the COUNTY commissioned a study which resulted in the production of the *Evaluation of Flood Reduction Alternatives and Recommendations for Flood Reduction Tri-Basin Stormwater Management Study* dated April 1999 ("Tri-Basin Report"), and the primary purpose of the Tri-Basin Report was to provide the COUNTY with studied options to choose from and implement in order to resolve the historical flooding problems within the Tri-Basin area; and

**WHEREAS**, based on the COUNTY'S findings and conclusions included in the Tri-Basin Study, the COUNTY determined that a critical component for resolving these flooding problems was to acquire Dove Pond and the necessary property surrounding Dove Pond in order to construct a regional stormwater facility ("Dove Pond RSF"); and

**WHEREAS**, the Tallahassee-Leon County Comprehensive Plan was amended to include the Welaunee Critical Area Plan ("Welaunee CAP"), and plans for, supports, and authorizes the use of Dove Pond as a regional stormwater facility to serve future development within the "Toe" as defined by the Welaunee CAP, and provide flood protection downstream of Dove Pond within the Tri-Basin area by retaining stormwater from the upstream areas described above; and

**WHEREAS**, the Welaunee CAP and Section 5-125(b) of the City's Land Development Code ("City LDC") require the City's approval of a public sector linear infrastructure variance ("LIV") to authorize the construction of the Dove Pond RSF, which includes the placement of fill within the floodplain and wetlands to construct a necessary earthen berm at the southern end of Dove Pond for the purpose of impounding water; and

**WHEREAS**, CNL is in the process of obtaining comprehensive authorizations and permits from the City and other state and federal agencies to approve and authorize the development (collectively, "Development Authorizations") of approximately 505.45 acres within the "Toe" as more specifically described below ("Development"), which includes the CNL Property and the 246.59 acre property owned by Powerhouse, Inc. to which CNL has a pending contract to purchase (collectively, the "Property"); and

**WHEREAS**, the Development of the Property has been planned consistent with the Welaunee CAP and will include 1,572 residential dwelling units and 162,927 square feet of non-residential, and is more comprehensively described in CNL's revised application for PUD rezoning dated September 2009 ("Canopy Project"); and

**WHEREAS**, the Canopy Project has been planned to include the Dove Pond RSF which has been designed to reduce downstream flooding, and include stormwater from: upstream, the post-development Canopy Project, and pre-development within the remainder of the Toe, consistent with the Tri-Basin Report and Welaunee CAP; and as noted above, will require an approved LIV from the City, amongst other necessary Development Authorizations; and

**WHEREAS**, the City's LDC does not authorize non-governmental bodies, such as CNL, to apply for a LIV, but does authorize the COUNTY to file and obtain an LIV; and,

**WHEREAS**, the Welaunee CAP provided that public funding would pay for the pro rata share of the capital costs based on the off-site stormwater runoff to be stored in the Dove Pond RSF during flood events; and,

**WHEREAS**, the total capacity planned for the Dove Pond RSF is approximately 820 acre feet. The amount of capacity allocated to retain unincorporated off-site area stormwater from runoff to prevent flooding downstream in unincorporated areas is approximately 270 acre feet, and therefore approximately one-third of the total capital costs would have been funded by the COUNTY; and,

**WHEREAS**, the Tri-Basin Study had previously anticipated the COUNTY having to also acquire Dove Pond in order to implement the Dove Pond RSF, and the Welaunee CAP anticipated that with the public funding, the landowner would provide use of Dove Pond for the construction of the Dove Pond RSF; and,

**WHEREAS**, the COUNTY has determined that the construction of the Dove Pond RSF will provide significant benefits to the public health, safety and welfare of the citizens of the COUNTY; and,

**WHEREAS**, in consideration for CNL's agreement to provide these benefits without funding from the COUNTY, the COUNTY agrees to execute the LIV application to effectuate the improvements;

**NOW, THEREFORE**, the Parties, in consideration of the mutual promises and considerations set forth herein, to hereby agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated into the JPA.

2. LIV. Attached as Exhibit "1" is the LIV application with exhibits and figures ("LIV Application"), and attached as Exhibit "2" is October 14, 2009 *Summary of Benefits of the Dove Pond Regional Stormwater Facility* ("Benefits Summary"). The LIV Application and Benefits Summary are further supported by the *Downstream Benefit Analysis and Report*, dated October 2009 (1 Volume)("Benefits Report"), and the *Stormwater Facilities Master Plan for the Canopy Mixed Use Development*, dated September 2009 (3 Volumes) ("SFMP"). CNL through its consultants has prepared and submitted to the County the LIV Application, Benefits Summary, Benefits Report, and SFMP (collectively, "LIV Documents"). The COUNTY accepts the LIV Documents and will execute and file the LIV Application with the City within three (3) business days from the Effective Date of this JPA.

CNL, through its consultants, shall be responsible for processing the LIV Application with the City on behalf of the COUNTY. The COUNTY shall cooperate and assist CNL in processing and obtaining the City's approval of the LIV Application, including the execution of any additional documents required by the City to which the Parties mutually agree are appropriate and reasonable. If, after the LIV Application is filed, the City requests additional information to support the LIV Application, including designs, plans, studies, or reports, CNL shall be responsible for preparing all documents in an accurate and professionally acceptable manner. CNL, within its discretion, after consulting with the COUNTY, may elect not to submit additional information if CNL determines any request by the City to be unreasonable or unsupported.

Prior to submitting any additional information to the City regarding the LIV Application, CNL shall provide a copy to the County Engineer, or designee, for review, the receipt to be confirmed by date-stamped copy. The COUNTY agrees to expeditiously review this information

and provide CNL with any comments. If CNL does not receive any comments within three (3) business days of delivery to the COUNTY Engineer, or designee, CNL may proceed to file the additional information with the City. If the COUNTY Engineer, or designee, provides comments, CNL may proceed to file the additional information consistent with the comments. Alternatively, the Parties agree to work cooperatively together to resolve any issues that may arise during this process to facilitate CNL's expeditious filing of the requested additional information subject to the COUNTY's consent. Within three (3) business days following the filing of the LIV Application, CNL will provide the COUNTY an Environmental Impact Assessment ("EIA"), and the Parties will follow the procedures outlined above prior to filing the EIA with the City

The COUNTY will provide CNL with any information it intends to communicate with the City related to the LIV Application prior to communicating or filing with the City, and allow CNL three (3) business days to provide the COUNTY with comments. The Parties agree that since CNL is not the LIV applicant but is the owner of the CNL Property, CNL, in its discretion, may accept or reject any proposed and/or final LIV decision and/or conditions from the City. The County may accept or reject any proposed and/or final LIV decision and/or conditions from the City which are inconsistent with the terms and conditions of this JPA.

3. **The COUNTY's Non-Participation in the Costs of the LIV Application and Dove Pond RSF Construction.** Through this JPA, the Parties have agreed to an approach for implementing the Dove Pond RSF which will result in no costs paid by the COUNTY for the LIV Application, and the construction of the Dove Pond RSF. As a result, greater public benefits are achieved through this JPA and the Dove Pond RSF since the COUNTY will not be required to pay costs associated with the Dove Pond RSF which will result in significant benefits

to the public. The Parties agree that the terms and conditions of this JPA satisfy the requirements or obligations referred to in Policy LU 13.1.5(3)(c) of the CAP as they may be applied to the COUNTY, and that no future cost sharing with respect to the Dove Pond RSF shall be required of the County.

4. **Totality of the Parties' Obligations and Consideration.** CNL will pay any costs it directly incurs (e.g., CNL consultants and counsel, application fee) associated with processing the LIV Application and obtaining a final LIV from the City on behalf of the COUNTY. The Dove Pond RSF has been designed and will be constructed to achieve the objective of discharging no stormwater in a 1994 Historical Storm event, or a 100-year, 24 hour storm event, as described in the Benefits Summary. The Parties acknowledge that the Development Authorizations, including the LIV, will require the construction of the Dove Pond RSF as a condition precedent to the discharge of stormwater from constructed Development within the Dove Pond Basin of the Canopy Project. The Parties agree and understand that the construction of the proposed Dove Pond RSF is subject to both the issuance of the Development Authorizations, including the LIV and actual construction of Development within the Dove Pond Basin of the Canopy Project. The construction of the proposed Dove Pond RSF will be undertaken in conjunction with the construction of any Development within the Dove Pond Basin of the Canopy Project.

The COUNTY hereby grants CNL the authority to construct the Dove Pond RSF consistent with the LIV, and CNL agrees to pay for the construction of the Dove Pond RSF. CNL agrees to notify the COUNTY in writing upon commencement and completion of construction of the Dove Pond RSF. In consideration for the COUNTY not having to pay for the LIV costs and the future costs to construct the Dove Pond RSF as stated above, the COUNTY

agrees: (a) to, in good faith, seek to obtain the LIV from the City as outlined above; (b) to not object to the Development of the Canopy Project and the Development Authorizations; and (c) that no further commitment of any form, including mitigation, arising out of the Development of the Canopy Project and any of the Development Authorizations, is required by the COUNTY.

If, after the LIV is approved, the Dove Pond RSF design or plans need to be revised or adjusted which would require the LIV to be modified, the COUNTY agrees to execute, and the Parties agree to process a LIV modification under the same terms described in this JPA as the initial LIV Application. This JPA shall not affect CNL's right and sole-discretion, which the COUNTY acknowledges, to approve, disapprove, or condition the use of the Dove Pond RSF by other land owners or developers within the Toe, provided that any use by other parties is not in conflict with the provision of the agreed-upon storage capacity to be provided to the COUNTY pursuant to this JPA.

5. **Assignment, Assumption, and Release.** The Parties agree that any future assignment, assumption, and release of any of the rights or obligations of this JPA by either of the Parties is subject to the prior written consent of the Parties, except the Parties agree that CNL may: (a) assign any of its rights and obligations under this JPA to the Dove Pond Community Development District ("Dove Pond CDD"); (b) that the Dove Pond CDD may assume these rights and obligations of the JPA; and (c) upon the Dove Pond CDD's assumption CNL is released from any and all obligations under this JPA (collectively, "Dove Pond CDD Assignment"). CNL shall provide a copy of the proposed Dove Pond CDD Assignment to the County for approval, and the County's approval shall not be unreasonably withheld. This JPA shall be binding upon the Parties' successors and assigns.

6. **Indemnification.** CNL agrees to indemnify, defend and hold harmless the COUNTY, its officials, officers, agents, employees, and representatives from and against any and all claims, damages, demands, liabilities, losses, delays, fines, penalties, settlements, injuries and expenses of any kind or nature including court costs and reasonable attorneys' fees, which in any way arise out of, result from or relate to the Parties' participation in this JPA, the LIV Application, or the construction of the Dove Pond RSF, provided that such claim is caused by an act, or omission, or negligence of CNL, its subcontractors and employees. The COUNTY agrees to pay CNL the sum of Ten Dollars (\$10.00) for this indemnification provision, the receipt and sufficiency of which is hereby accepted and acknowledge by both parties. This clause is not to be construed as a waiver of sovereign immunity, and does not increase or otherwise modify the limits of the COUNTY'S liability in tort actions as established in Section 768.28, Florida Statutes .

7. **Enforcement.** If either party fails to comply with any terms and conditions set forth in this JPA, and fails to correct such defaults or non-compliance after being notified in writing by the other party, the non-defaulting party may bring an action in law or equity to require the other party to comply with this JPA.

8. **Waiver.** Unless otherwise specifically provided by this JPA, no delay or failure to exercise a right under this JPA shall impair such right, or be construed as a waiver thereof. The failure of the COUNTY or CNL at any time to require performance by the other party of any term in this JPA shall in no way affect the right of the COUNTY or CNL thereafter to enforce same; nor shall waiver by the COUNTY or CNL of any breach of any term of this JPA be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the party granting such waiver.

Any such waiver shall be limited to the particular right so waived and shall not be deemed to be a waiver of any other right under this JPA.

9. **Severability.** If any of the provisions of this JPA should be declared illegal, void, or unenforceable, the other provisions shall not be affected thereby but shall remain in full force and effect.

10. **Ambiguity.** This JPA has been negotiated by CNL and the COUNTY upon the advice of counsel and, in the event of any ambiguity herein, such ambiguity shall not be construed against either party.

11. **Modification.** This JPA shall not be extended, changed or modified, except in writing duly executed by the Parties.

12. **Effective Date.** The JPA's "Effective Date" is upon the execution of the JPA by the Parties.

13. **Notices.** All notices, demands, requests, or replies provided for or permitted by this JPA, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt or delivery confirmation required. Notice shall be effective upon receipt. The addresses and telephone numbers of the Parties are as follows:

**LEON COUNTY:**

Parwez Alam  
County Administrator  
Leon County Courthouse  
301 South Monroe Street  
Tallahassee, FL 32301  
Fax: (850) 606-5301

**With a copy to:**

Herb Thiele  
County Attorney  
Leon County Courthouse, Suite 202  
301 S. Monroe Street  
Tallahassee FL 32301  
Fax: (850) 606-2501

**TO CNL TALLAHASSEE I, LLC:**

Timothy D. Edmond  
President  
CNL Tallahassee I, LLC  
525 N. Calhoun St.  
Tallahassee, FL 32301  
Fax: (850) 893-9950

**With a copy to:**

Reginald L. Bouthillier, Jr.  
Greenberg Traurig, P.A.  
101 East College Avenue  
Tallahassee, FL 32301  
Fax: (850) 681-0207

14. **Counterparts.** This JPA may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

15. **Recording.** Within fifteen (15) days of the Effective Date, this JPA shall be recorded in the Public Records for Leon County, Florida.

IN WITNESS WHEREOF, the Parties have executed this JPA by their duly authorized representatives effective the days and year written below.

CNL TALLAHASSEE I, LLC, a Florida limited liability company  
By: CNL TLH Manager I, LLC, its Sole Member

By: [Signature]  
Timothy D. Edmond, President

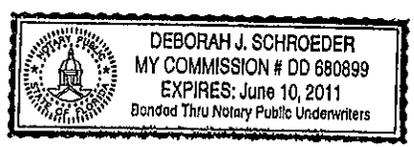
STATE OF FLORIDA

COUNTY OF LEON

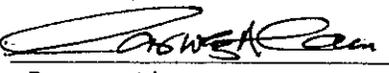
Sworn to and subscribed before me this 28<sup>th</sup> day of October, in the year 2009 by Timothy D. Edmond, President of CNL TLH Manager, I, LLC, Sole Member of CNL Tallahassee I, LLC. He is personally known to me or ~~has produced~~ \_\_\_\_\_ as identification.

NOTARY SEAL

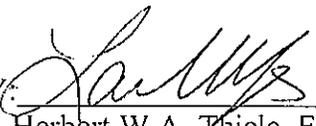
Notary: [Signature]  
Print Name: Deborah J. Schroeder  
Notary Public, State of Florida  
My commission expires: June 10, 2011



Leon County, Florida

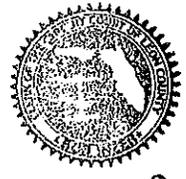
By   
Parwez Alam  
County Administrator

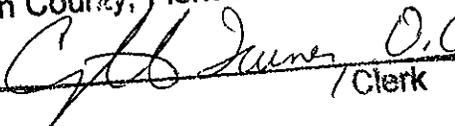
APPROVED AS TO FORM:  
COUNTY ATTORNEY'S OFFICE  
LEON COUNTY, FLORIDA

BY  FOR  
Herbert W.A. Thiele, Esq.  
County Attorney

TAL 451,532,076v1 10-28-09

ATTEST:  
Bob Inzer  
Clerk of Circuit Court  
Leon County, Florida



By  Clerk

**EXHIBIT "1"**

# LIV

# Dove Pond

October 2009

Updated 10.23.09



## **LINEAR INFRASTRUCTURE VARIANCE – DOVE POND**

**October 2009**

Updated 10.23.09

### **Table of Contents**

Application for Public Sector Linear Infrastructure Variance

#### **Exhibits**

- Exhibit 1.0 – Photo of Gas Line Easement
- Exhibit 2.0 – Photo of Electric Transmission Line Easement
- Exhibit 3.0 – Letter, dated October 14, 2009, entitled “Summary of Benefits of the Dove Pond Regional Stormwater Facility”

#### **Figures**

- Figure 1 – Existing Conditions Map
- Figure 2 – Proposed Concept Plan and Dove Pond Dam
- Figure 3 – Dove Pond Conceptual Mitigation Plan



**GROWTH MANAGEMENT DEPARTMENT**

**APPLICATION FOR PUBLIC SECTOR LINEAR INFRASTRUCTURE VARIANCE**

Updated October 23, 2009

**I. Amount of Development Activity:**

Less than or equal to 2 acres

More than 2 acres

**II. Describe the Request and the Need for the Variance:**

Leon County (County) is submitting this public sector linear infrastructure variance (LIV) request (LIV Request) pursuant to Section 5-126(b) of the *City of Tallahassee Land Development Code* (LDC). The primary purpose and justification for the County's LIV Request is to provide flood protection downstream of Dove Pond to the Tri-Basin area through the construction of the Dove Pond Regional Stormwater Facility (Dove Pond RSF). The area subject to this application is located north of Miccosukee Road and the Miccosukee Canopy Road Greenway and includes Dove Pond and the immediate surrounding area. The activity requiring this LIV Request, and which the County is requesting the City approve, is the construction of an earthen dam at the southern end of Dove Pond for the purpose of impounding stormwater as shown on Figure 1. Construction of the earthen dam will impact approximately 3.33 acres of wetlands/floodplain.

By way of background, the Tri-Basin area is located in east central Leon County and is comprised of three closed basins: Dove Pond Closed Basin; Lafayette Closed Basin; and Pedrick Closed Basin. During periods of severe rainfall, stormwater flows north to south and has historically resulted in significant flooding downstream of Dove Pond. The most notable events occurred in the 1970s, 1980, and in 1994. During the 1994 event, areas downstream of Dove Pond experienced severe and extended flood conditions. In July of 1994, the County declared a state of emergency for the Tri-Basin area based on these severe flood conditions. In an effort to alleviate flood conditions and protect homes in Country Walk, Midyette Plantation, and Lafayette Oaks subdivisions, the County constructed a sand bag along the north side of Miccosukee Road to impound runoff from Dove Pond. Even with this effort, flooding occurred within all three closed basins comprising the Tri-Basin area. This flooding in the Tri-Basin area caused damage to homes and many of the damaged homes resulted in uninhabitable conditions. Several critical roads within the Tri-Basin area were also flooded.

Following these events, the County commissioned an investigation which resulted in the production of the *Evaluation of Flood Reduction Alternatives and Recommendations for Flood Reduction Tri-Basin Stormwater Management Study* dated April 1999 (Tri-Basin Report). The purpose of the Tri-Basin Report was to document all the relevant data and information, make recommendations to the County on the options, and develop an action plan for the implementation of the selected options which would result in preventing flooding downstream of the Dove Pond Basin into the Tri-Basin Area. The Dove Pond RSF, as a selected option, is critical to the County for achieving the objectives of the Tri-Basin Report and the significant reduction of flooding downstream of Dove Pond.

Dove Pond RSF is also supported by the Welaunee Critical Area Plan (Welaunee CAP). Policies 13.1.5 and 13.1.7(1) provide the CAP criteria, foundation, and authority for the use of Dove Pond as a Regional Stormwater Facility. Policy 13.1.5(4) provides that the Dove Pond RSF will be implemented to provide flood protection to downstream off-site property owners in the "Tri-Basin Study Area."

The County's LIV Request is consistent with the Welaunee CAP and Tri-Basin Report. The implementation of the Dove Pond RSF will provide significant public benefits as a critical component to reducing flooding downstream within the Tri-Basin area. A certified letter, dated October 14, 2009, entitled *Summary of Benefits of the Dove Pond Regional Stormwater Facility*, prepared by Moore Bass Consulting, Inc. is provided by the County as an attachment supporting this LIV Request. This letter outlines the downstream benefits provided by the proposed construction of the Dove Pond RSF.

This significant public benefit is further bolstered by the fact that the County will not be required to pay for the land or improvement costs as originally noted in the Tri-Basin Report and Welaunee CAP.

The Dove Pond RSF will also provide storage for treated stormwater runoff from CNL of Tallahassee I, LLC's (CNL) proposed Canopy Planned Unit Development project as specifically described in the pending *Canopy Mixed Use PUD* application package and *Stormwater Facilities Master Plan* dated September 2009 (Canopy Project). The Canopy Project is also being implemented pursuant to the CAP. Dove Pond is owned by CNL and is contained within the Canopy Project area. The Canopy Project will be a positive addition to the surrounding areas within the County and City, and is supported by the County. The Canopy Project as planned will serve as a model in this community for traditional neighborhood developments, which was the one of the primary objectives of the Welaunee CAP. The successful implementation of the Canopy Project is also critical to the future implementation of the Dove Pond RSF. It is this factor that will allow the County to avoid paying CNL for the land and the costs associated with implementing the Dove Pond RSF. Prior to construction activities occurring within the Dove Pond Basin area of the Canopy Project, the Dove Pond RSF will be constructed. Dove Pond is also physically located within the Dove Pond Community Development District ("Dove Pond CDD"). As anticipated by the Welaunee CAP and planned for by the Dove Pond CDD and CNL, the Dove Pond CDD may finance, construct, operate and maintain the future Dove Pond RSF.

Without the City's approval of this LIV Request, flood storage capacity will not be provided to benefit the off-site downstream areas from the Canopy Project, and these Tri-Basin areas will continue to receive the pass-thru stormwater from upstream areas including the 320 acres north of the Canopy Project. As a result, these Tri-Basin areas downstream of Dove Pond will continue to be subject to flooding and the risk of similar negative emergency flooding conditions experienced in 1994.

### **III. Describe the Impacts to Environmental Features:**

The proposed impact to environmental features is associated with the fill required for the construction of the earthen dam. The County's proposal avoids and minimizes impacts to environmental features. Prior evaluated proposals which resulted in greater impacts were modified, and evolved to this final proposal which reflects the maximum avoidance and minimization practical without compromising the project's purpose. The earthwork activities for the earthen dam includes fill in the floodplain and wetlands which will displace 20 acre feet of existing floodplain storage. The earthen dam as currently proposed, will permanently impact 3.33 acres of wetlands. Another 1.02 acres of wetlands will be impacted temporarily to facilitate construction access adjacent to the dam.

Avoidance and minimization measures and the proposed mitigation (which is summarized below) will offset all environmental impacts associated with the project and result in a net environmental benefit. The Natural Features Inventory (NFI) for the Canopy Project was approved on August 28, 2007. Portions of Dove Pond in the NFI are identified as wetlands and floodplains. Although the area proposed for impact from the earthen berm was identified as unaltered wetlands and floodplain because the City determined it does not meet the strict "unaltered" definition in Chapter 5 of the City's *Code*, it has, in fact, been altered by past activities. The most notable activity was the installation of an underground 24 inch diameter natural gas transmission line which transects Dove Pond. See Figure 1 and Figure 3. This gas line has been continually maintained within a 30-foot wide easement since its installation. See picture in Exhibit 1 which depicts typical mowing activities (photo date 2007).

Historically, cows have grazed the surrounding pasture lands and watered in Dove Pond. A pump was installed at the south end of Dove Pond and irrigation water has been historically withdrawn for agricultural purposes. Fill dirt was deposited over sections of the irrigation piping and sections of the abandoned irrigation system remain in-place to this day.

Most recently the City Electric Department installed an underground electric transmission line in a 40 foot wide easement along the south end of Dove Pond, on CNL's property disturbing wetland areas associated with this LIV Request. The easement now appears to be at a slightly higher grade and has not completely revegetated with the native wetland plants that originally occurred there. See Figure 1, Figure 3 and Exhibit 2. A series of LIVs were approved by the City of Tallahassee for

segments of the electric transmission line which impacted preservation areas along a route through the Canopy Property. One of these approved LIV segments included the encroachment into the Dove Pond wetlands along the same alignment as those wetlands subject to this LIV Request.

#### **IV. Alternatives Analysis:**

The permanent wetland impact proposed for fill to construct the earth dam is 3.33 acres. The proposed impact percentage is 7.7 percent. Pursuant to Section 5-126(b)(3)(a), the County conducted a comprehensive evaluation to assess other potential alternatives to the construction of the Dove Pond RSF. This alternatives analysis is embodied within, and supported by, the Tri-Basin Report and the Welaunee CAP, as modified by the County's proposal within this LIV Request. There is no available, practical, and cost feasible alternative to the proposed construction of the Dove Pond RSF that will achieve same degree of public benefits, including the degree of flood protection.

#### **V. Describe the Mitigation Proposed:**

The following mitigation is proposed which provides a net environmental benefit:

##### **Downstream Flood Reduction:**

Construction of the Dove Pond RSF will achieve a significant public and environmental benefit of flood reduction in downstream areas. The volume of stormwater discharged downstream is significantly reduced in post development conditions. The total storage capacity provided by the proposed Dove Pond RSF is approximately 820 acre-feet. Flood reduction will provide better water quality downstream which will include the reduction of septic and urban pollution to Alford Arm, an impaired water body. It will also reduce ponding in urban areas resulting in a reduction of mosquito breeding opportunities and a reduction in decomposition of upland vegetation.

##### **Wetland mitigation:**

Wetland creation will be provided totaling 12.7 acres along the lake's western edge creating new herbaceous wetlands. The majority of the wetland mitigation area will be created by excavating the area along the west bank of Dove Pond down to approximately elevation 88.0 landward of the wetlands around Dove Pond. The creation areas will be revegetated wetland herbaceous wetland plant species by using native wetland topsoil from the impacted area and planting as necessary. Wetland plantings will be selected based on plant hardiness, aesthetics and historic presence within regional wetland floodplains of similar community types. Proposed plantings will be similar to existing Dove Pond vegetation including floating aquatic plants such as water lotus, water lily, cow lily and water shield with a grassy herbaceous fringe. The

wetland creation area will be designed to compliment or expand the function of the existing Dove Pond and to maximize utilization of wading birds and seasonal waterfowl.

**Flood Plain mitigation:**

Includes the development of 820 acre-feet of flood plain storage capacity which far exceed the proposed 20 acre feet of flood plain impact. As noted above, environmental benefits will result by improving water quality.

**Wildlife Enhancement:**

Measures to enhance wildlife will be implemented within and adjacent to Dove Pond. These measures will include the installation of nest boxes for wood ducks, purple martins and other bird species, the installation for snag trees for wading and predator bird roosts and the planting of wetland and upland "edge" species that are utilized by wildlife for food and cover.

**Enhanced Water Quality:**

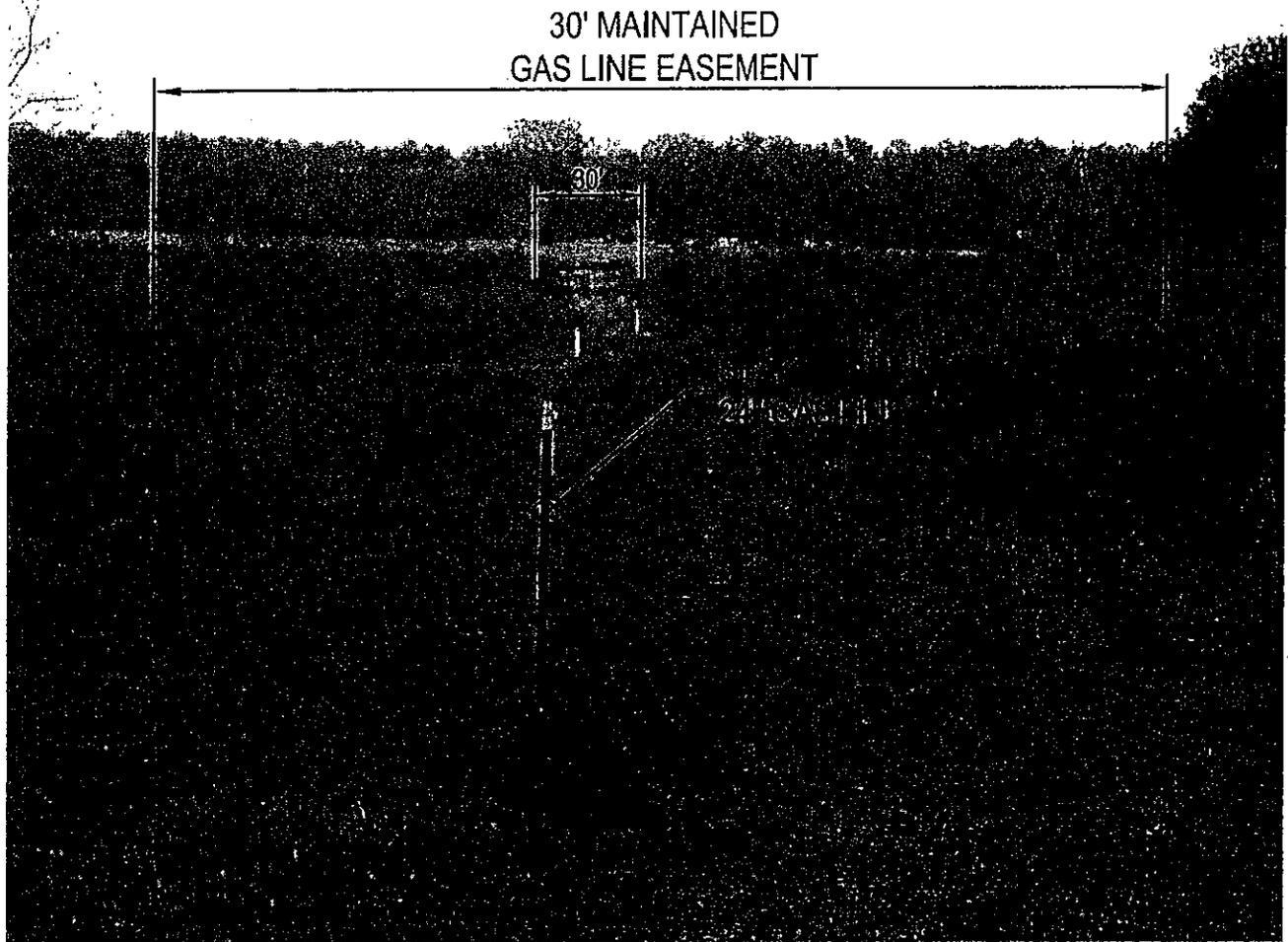
The Dove Pond RSF will provide enhanced water quality benefits via the retention of runoff from contributing offsite watershed.

**Exotic Species Removal:**

To contribute to preserving the wildlife values and function of Dove Pond so that it is a biological asset to the region, an aggressive plan to remove exotic species in adjacent uplands and wetlands in Dove Pond is proposed. An on-going maintenance plan is proposed that will keep these areas free of undesirable plants and supplement the wetlands with beneficial plants.

**Attachments:**

- Exhibit 1: Photo of Gas Line Easement
- Exhibit 2: Photo of Electric Transmission Line Installation
- Exhibit 3: Letter, dated October 14, 2009, entitled "Summary of Benefits of the Dove Pond Regional Stormwater Facility"
- Figure 1: Map of Subject LIV Area
- Figure 2: Canopy Project Development Plan
- Figure 3: Mitigation Area



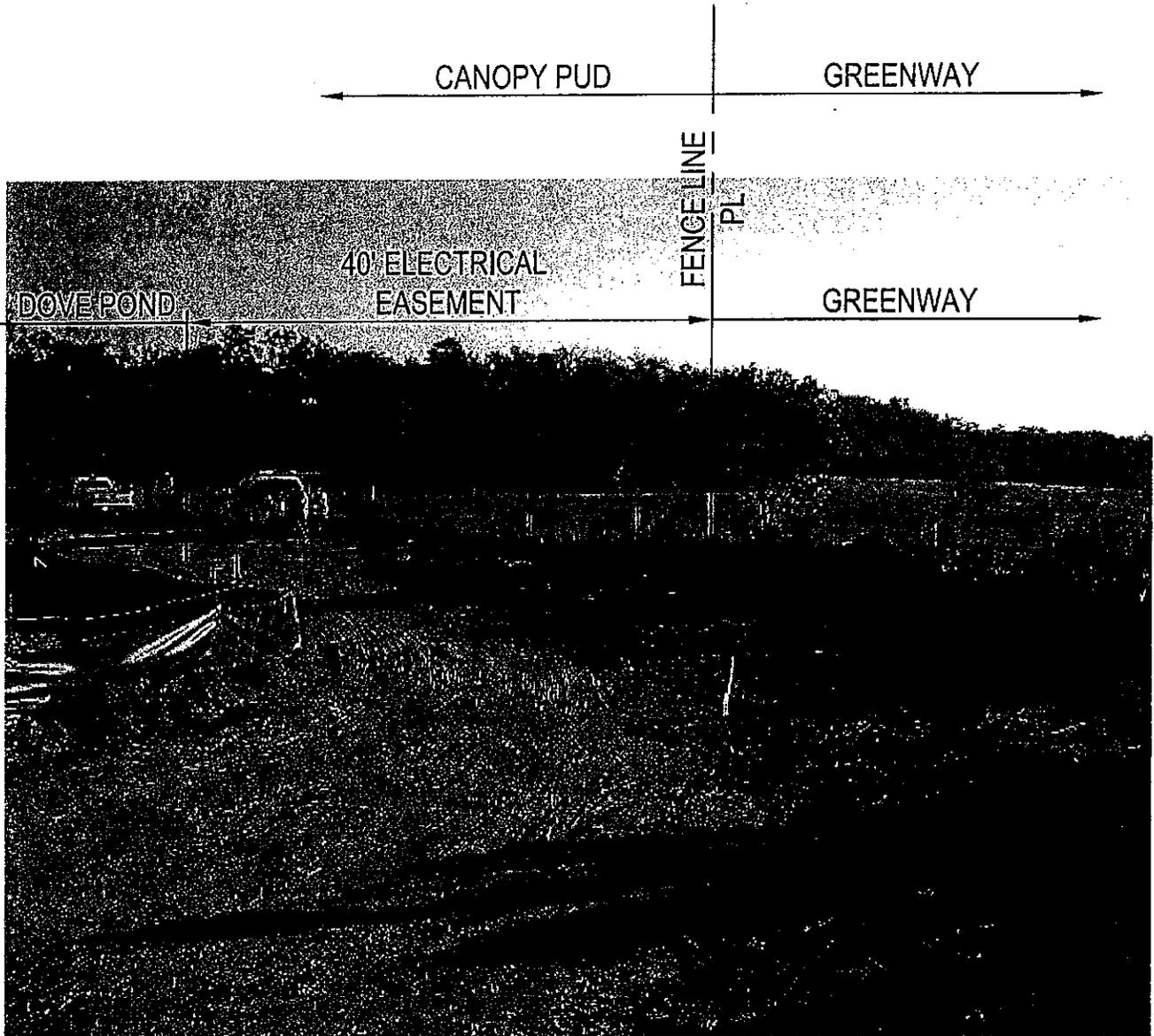
## 30' WIDE GAS LINE EASEMENT THROUGH DOVE POND

AT WEST END OF DOVE POND LOOKING EAST

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FILE #	E79004-DOVE-LIV-ESMNT.dwg		
CONTRACT #	E79.004	ARCHIVE	
DATE	10/08/09	DRAWN BY	
CLIENT NAME	CNL	PROJECT NAME	WELAUNEE TOE WEST
		SHEET TITLE	GAS LINE EASEMENT
			EXHIBIT 1.0



**40' WIDE ELEC. TRANSMISSION LINE EASEMENT INSTALLATION**  
 AT SOUTHWEST END OF DOVE POND LOOKING EAST

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	CONTRACT #	E79.004	ARCHIVE
	DATE	10/08/09	DRAWN BY
CLIENT NAME	PROJECT NAME	SHEET TITLE	EXHIBIT
CNL	WELAUNEE TOE WEST	ELEC. TRANSMISSION LINE EASEMENT	2.0







**EXHIBIT "2"**



Land Use Planning • Engineering Design • Environmental Permitting • Landscape Architecture • Surveying

October 14, 2009

Mr. Joe Brown, P.E.  
Leon County Public Works  
2280 Miccosukee Road  
Tallahassee, FL 32308

RE: Summary of Benefits of the Dove Pond Regional Stormwater Facility

Dear Joe:

This letter constitutes our opinion regarding flood reduction benefits resulting from the proposed construction of a berm to retain stormwater runoff on the CNL Tallahassee I, LLC Property and in Dove Pond. The berm construction consists of elevating land on CNL property adjacent to the Greenway Park to retain runoff to an elevation of 100.0.

Installation of the berm is the critical component for creating the proposed Dove Pond Regional Facility. This facility is designed to provide runoff storage volume totaling 820 acre-feet below elevation 100.0.

The purpose of this opinion letter is to outline the specific benefits that will result in both flood elevation and volume reduction downstream of Miccosukee Road in the Tri Basin Study Area.

The concept for constructing a dam and using Dove Pond as a regional stormwater management facility was first proposed as an alternative in the Tri Basin Stormwater Management Study – Evaluation of Flood Reduction Alternatives report (TBS-EFRA) completed for Leon County in April 1999. This concept is also consistent with stated objectives in the Welaunee Critical Area Plan to reduce downstream flooding by creating a regional stormwater management facility at Dove Pond. The Canopy PUD Dove Pond Regional Stormwater Facility proposal complies with that recommendation.

The Pre vs. Post comparisons shown below have been provided in the same format, for the same locations, and for the same storm events that are outlined in the TBS-EFRA.

Installation of a berm creating a Dove Pond Regional Facility is the predominant feature recommended as Option 1 in Section 6.3, Structural Options, and page 16 of the TBS-EFRA.

The TBS-EFRA outlines the Benefits of Option 1 on page 16; those benefits follow in list format:

1. Availability of natural storage capacity with minimal construction effort.
2. Favorable location for a regional facility.
3. Significantly reduces damage flooding in Lafayette Oaks Closed Basin.
4. Alleviation of potentially hazardous flooding of and across Miccosukee Road.
5. Alleviation of nuisance flooding of homes in Country Walk and Midyette Plantation Subdivisions.
6. Site (regional pond) is a potential Recreation Area and natural storage could be integrated into the park concept.

In addition to the benefits listed above, this proposal directly addresses the potential problem identified in Option 1A, page 17 of the TBS-EFRA, "The potential problem with this option is the high cost to acquire the acreage." With this proposal, the County will be further benefited since the County will not be required to acquire the land or pay for the costs associated with the construction of the Dove Pond Regional Stormwater Facility.

Moore Bass Consulting prepared an ICPR based stormwater model paralleling the work performed by the County for the TBS. The ICPR model was calibrated to observed data including the 1994 historical tri basin flood event.

The basis of our opinion are the results our stormwater modeling effort "Downstream Benefits Analysis and Report dated October 2009" and the "Canopy Stormwater Facilities Master Plan dated September 2009." These analyses are based on ICPR modeling of the recorded rainfall data from 1994 collected from a rainfall Gauge # 613 located within one-half mile of the site. This is the same rainfall data from Gauge # 613 that was utilized in the Tri Basin Stormwater Management Study. In addition the 100 year, 24 hour design storm has been analyzed.

This modeling effort includes an analysis of pre development and post development conditions for the storm events listed above.

The pre development model condition is the same condition identified in TBS-EFRA report entitled "Without County Intervention." The noted exception is that our ICPR model considers FDOT/County Pedrick Pond in place in the pre development condition.

The post development model condition considers/includes the following:

1. Full build-out impervious areas for the Canopy PUD Project.
2. A proposed dam retaining stormwater runoff to a maximum of elevation 100.0.
3. No intercept ditch.
4. Pipe between Lafayette Oaks and Pedrick Pond open.
5. No Weir on Lafayette Oaks Outfall Pipe.
6. Pedrick Pond constructed.

A comparison of model results is presented below. The table summarizes the highwater improvements at various points of analysis for existing and proposed conditions.

Table of Peak Stages for the 1994 Historical Storm		
	Canopy PUD Model	
	Pre	Post
Dove Pond	89.14	96.14
Midyette/ Lafayette Oaks Pond	79.30	72.44

Table of Peak Stages for the 100-year, 24 hour Design Storm		
	Canopy PUD Model	
	Pre	Post
Dove Pond	89.21	91.50
Midyette/ Lafayette Oaks Pond	73.92	68.94

Based on our evaluation, including the modeling, we have made the following conclusions supporting the significant public benefit achieved from reducing the potential for flooding downstream of the proposed Dove Pond Regional Stormwater Facility:

- 1. Dove Pond RSF adds significant retention volume to the Tri Basin Area supporting the system function of interconnected drainage improvements for the Lafayette Oaks and Pedrick Road Basins.**

Installation of the Dove Pond regional facility adds 820 acre-feet of total retention capacity to the Tri Basin "system" and preserves volumetric capacity in Leon County's Pedrick Road retention facility for use by Lafayette Oaks and Leon County.

- 2. Dove Pond RSF is designed for no post development discharge.**  
Dove Pond receives stormwater runoff from 934 acres. The offsite contribution to Dove Pond is 320 acres that is developed north of the project boundary, 96 acres of COT property currently undeveloped, 69 acres of offsite Greenway and 46 acres of Holy Comforter Property currently undeveloped. The remaining 402 acres of onsite land is undeveloped in the existing condition.

The facility is designed such that no stormwater is discharged from Dove Pond in post developed conditions assuming full build out on the 402 acres of onsite property in the 1994 Historical Storm and the 100-year, 24 hour Design Storm models.

Mr. Joe Brown, PE  
Downstream Benefits Analysis and Report  
October 14, 2009  
Page 4

**3. Dove Pond RSF is designed to reduce the volume of runoff discharged across Miccosukee Road.**

Dove Pond regional facility reduces the flooding hazard to Miccosukee Road which is designated a major collector roadway. Stormwater discharged across Miccosukee Road at Edenfield Road is reduced by a minimum of 95% as outlined below.

1994 Historical storm

Pre development discharge across Miccosukee Road is 240 acre-feet.  
Post development discharge across Miccosukee Road is 12 acre-feet.

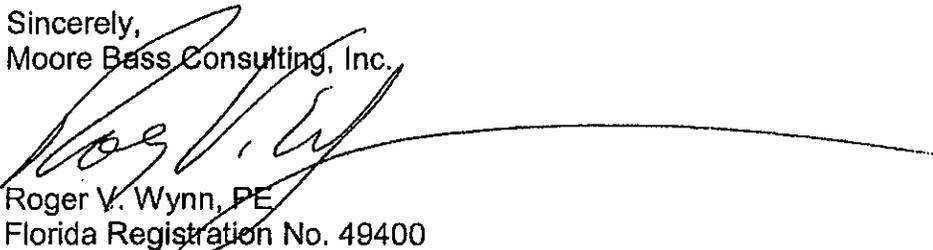
100-year, 24 hour design storm

Pre development discharge across Miccosukee Road is 81 acre-feet.  
Post development discharge across Miccosukee Road is 1 acre-feet.

**4. Dove Pond RSF is designed to reduce peak flood stages in Lafayette Oaks.**  
See comparison of peak flood stages above.

This letter has been prepared in support the approval of a Linear Infrastructure Variance (LIV) for the installation of the Dove Pond dam. Upon approval of the LIV and at such point in time development phases are implemented that drain to Dove Pond, CNL proposes to permit and construct the Dove Pond dam consistent with the approved SFMP and this benefit summary.

Sincerely,  
Moore Bass Consulting, Inc.



Roger V. Wynn, PE  
Florida Registration No. 49400

