



Walton County  
Board of County Commissioners  
**AGENDA ITEM REPORT**

**21-1072**

**Meeting:** Board of County Commissioners - Jul 13 2021  
**Department:** County Attorney's Office  
**Submitted by:**  
**Staff Contact:** Clay Adkinson, County Attorney

☐ **Consent Agenda**      ☒ **Regular Agenda**      ☐ **Public Hearing**

**TITLE/REQUESTED ACTION:**

Settlement in Gulf Power v. Walton County

**ATTACHMENTS:**

[8753235\\_1](#)

[Exhibit B - Depiction of Proposed Project \(2\)](#)

[Exhibit C - Development Boundary v2](#)

[SAMPLING LOCATIONS](#)

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is entered into by and between Gulf Power Company (“Gulf Power”) and Walton County, Florida (“County”). Gulf Power and the County shall collectively be referred to as the “Parties” and each separately as a “Party.”

### **RECITALS**

A. The Parties are involved in pending litigation styled Gulf Power Company v. Walton County, Walton County Case No. 2021-CA-66 (“Writ Action”). The Writ Action relates to the County’s denial of Gulf Power’s request for development of a solar farm (“the Chautauqua Solar Energy Center” or “Project”) in Walton County.

B. The Parties desire to implement a process for review and possible approval of the Project which, if approved, would render the Writ Action moot.

C. The County recognizes that a future intent exists for the creation of additional solar farms or similar facilities for Gulf Power, and as part of a resolution to this matter and to avoid future issues between the Parties on the contemplated Future Projects (as hereinafter defined), the Parties desire to agree to a process to address such Future Projects.

In consideration of the full and timely performance by each Party hereto of each of the terms and conditions of this Agreement in the manner prescribed herein, and in full and final settlement of the Writ Action, as described above, the Parties agree as follows:

### **TERMS AND CONDITIONS**

1. (a) Consideration of Amended Project Application. Gulf Power shall propose an Amended Application (“Amended Project Application”) for the Project that (1) reduces the footprint of the solar array within the larger property from approximately four hundred sixty-five (465) acres to approximately three hundred ninety-eight (398) acres; (2) expands the use of a one hundred and fifty (150) foot setback in certain areas adjacent to current or potential future residential structures; (3) includes an additional approximately eight thousand seven hundred and sixty-five (8,765) linear feet of vegetative landscape buffer relative to the Project proposal presented to the County in December 2020; (4) includes the use of farm fencing in lieu of chain-link fencing along the Project site perimeter; (5) implements water quality monitoring as outlined in the Water Quality Testing Protocol attached hereto as Exhibit A; (6) upon completion of construction of the Project, dedicates \$25,000 to Walton County to aid in future fire response, and surveys for a legal description and dedicates an area along County Road 2, reflected as “Parcel for Fire Station” in Exhibit B, to Walton County; and (7) upon completion of construction, provides for certain open space elements to be used for agricultural or similar education and skill-building, subject to terms to be determined in a future agreement. For informational purposes only, a general depiction and layout of the proposed Project is attached hereto as Exhibit B. As outlined by Walton County Land Development Code (“LDC”) Section 1.13.10, County staff shall process the Amended Project Application as a minor development plan and shall approve the Amended Project Application if it satisfies the criteria in this Agreement and applicable standards. Approval of this

Agreement by the Board of County Commissioners does not constitute approval (nor does it guarantee future approval) of any development application.

(b) Process For Future Projects. Gulf Power shall utilize the Minor Development Plan process in Section 1.13.10 of the LDC for the review of the Future Projects contemplated herein. Specifically, Gulf Power has represented an intent, but is not bound by said intent, to develop additional solar facilities, each to be permitted separately through appropriate regulatory entities, of equal or lesser size in terms of total electrical generation capacity, in the same general geographic area of the site referenced in the Amended Project Application (collectively, the “Future Projects”). This geographic area of the Future Projects (“Development Boundary”) shall be the area substantially depicted in Exhibit C. Gulf Power commits that the total acreage for development of the Project and Future Projects within the Development Boundary, shall not exceed 4,500 acres, excluding any acreage needed for high-voltage electric transmission lines, unless expressly approved by the Board of County Commissioners. This acreage limitation shall not apply to projects commenced in areas of the County outside of the Development Boundary, or projects commenced within the Development Boundary greater than fifteen (15) years from the date of the first approval under this Agreement. Gulf Power further commits that the total open space for the Project and Future Projects shall not average less than seventy percent (70%) across the Project and Future Projects. Calculation of open space for purposes of this Agreement shall include the area between the rows of solar modules, wetlands, surface water bodies, setbacks and/or buffer areas, areas dedicated to Walton County pursuant to Section 1 of this Agreement, and any other areas within the Project boundary not utilized for Project and Future Project features. Gulf Power commits that during the minor development plan review process for the Future Projects, it shall submit documentation to County staff to demonstrate consistency with the acreage and open space requirements of this paragraph.

2. Applicable LDC Provisions. The Parties agree that “Renewable Energy Uses” are “Primary Uses” under LDC Table 2.04.01 to which the Special Development Standards in Sections 2.02.01 and 2.02.02 do not apply. The Parties further agree that solar farms are expressly included in the definition of “Renewable Energy Uses” in LDC Section 2.03.00 and that the Project, Future Projects and similar large-scale solar farms meet this definition.

3. Stay of Writ Action. The Parties agree to informally stay the Writ Action while the County processes the Amended Application. If the circuit court in the Writ Action takes action that would prevent the Parties from informally staying the proceedings, the Parties shall jointly file a formal request for stay with the circuit court. Subject to a court order providing otherwise, the informal or formal stay of proceedings in the Writ Action shall remain in effect until the Amended Application is considered and voted upon by the County Board of County Commissioners.

4. Standard of Review. The Parties agree that the Amended Project Application and applications for the Future Projects satisfy the requirements to be reviewed, and shall be reviewed by the County following the procedures and standards provided for minor development plans in Section 1.13.10 of the LDC.

5. Dismissal with Prejudice of Writ Action. If the County approves a final development order authorizing the Project and the development order becomes non-appealable, Gulf Power and the County shall stipulate for the dismissal of the Writ Action with prejudice with each Party to bear its own attorney's fees and costs. Nothing herein shall affect the County's discretion with respect to its approval or denial of development orders.

6. Warranty of Authorized Signatories. The signatories hereto each represent and warrant to the other that he or she is competent and authorized to enter into this Agreement.

7. Compromise. This Agreement is the result of a compromise of a disputed claim or claims, and with the exception of the right to seek enforcement of this Agreement, shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of either Party hereto, nor shall the payment of any sum of money in consideration for the execution of the Agreement constitute or be construed as an admission of any liability whatsoever by either Party, both of which continue to deny such liability and to disclaim such responsibility.

8. Notice of Breach. Prior to either Party initiating legal proceedings to enforce what it perceives to be a breach of this Agreement, notice shall be provided to the Party alleged to have breached the Agreement by written notification delivered by certified U.S. mail explaining the purported breach and provided the offending Party fifteen (15) days from receipt of notice to cure the purported violation. In the event the breach is not cured within the fifteen (15) day period, the Party providing notice may initiate proceedings to enforce the terms of this Agreement. Failure to bring such an action at the end of the notice period described herein shall not serve as a waiver of the right to seek enforcement. Notice under this section shall be provided to:

For Gulf Power;

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the County:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Attorney's Fees. The prevailing Party in any proceedings to enforce or interpret the terms of this Agreement or otherwise arising out of or related to this Agreement shall be entitled to recover from the other its reasonable attorney's fees and costs, in addition to all other relief to which that Party may be entitled.

10. Construction of Agreement. This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. Accordingly, the Parties hereto acknowledge and agree that the Agreement shall not be deemed prepared or drafted by either Party, or the attorneys for either Party, and the Agreement shall be construed accordingly.

11. Governing Law. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of Florida. Exclusive jurisdiction and venue for any litigation brought pursuant to this agreement shall be in the Circuit Court of the First Judicial

Circuit, in and for Walton County, Florida, and the Parties hereby waive any other jurisdiction and venue.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parents, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons or entities connected with each of them, including, without limitation, their insurers, sureties, attorneys, consultants and experts.

13. Effective Date. The Parties hereto deem the Agreement to be immediately effective as of the last day on which the last Party executes the Agreement.

14. Counterparts. This Agreement may be executed in counterparts and so executed shall constitute one agreement which shall be binding upon the Parties, notwithstanding that the signatures of the Parties' designated representatives do not appear on the same page.

15. Entire Agreement. The Agreement contains the entire understanding among the Parties to the Agreement regarding the matters herein set forth and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the Parties hereto relating to this Agreement which are not fully expressed herein.

WALTON COUNTY

Dated:\_\_\_\_\_

\_\_\_\_\_

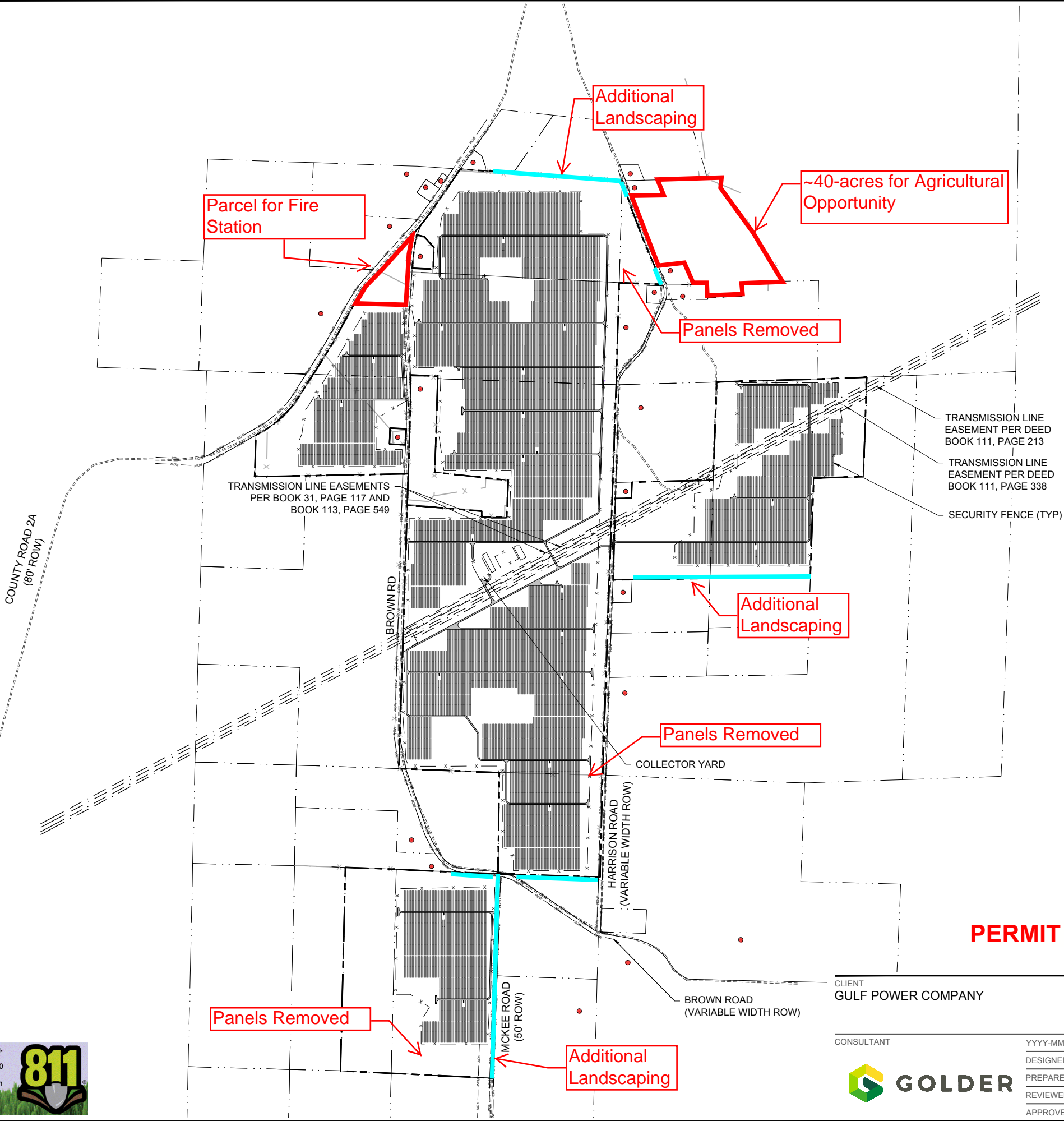
GULF POWER COMPANY

Dated:\_\_\_\_\_

\_\_\_\_\_

Path: \\golder.com\projects\19133308 FFL Chautauqua SEC\Active Drawings\19133308-A003-2.dwg | File Name: 19133308-A003-2.dwg

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PERMIT PLANS

SITE COVERAGE TABLE			
DESCRIPTION	SQ. FT.	ACREAGE	% OF SITE
PROPOSED ACCESS PATHS	757,854	17.40	2.00
COLLECTOR YARD	39,171.5	0.90	0.10
LAYDOWN AREA/BATTERY STORAGE AREA	43,996	1.01	0.12
INVERTER PADS	5,791	0.13	0.02
TOTAL IMPERVIOUS	763,645	17.53	2.02
PROJECT AREA (FENCED)	25,763,103	591.44	68.15
TOTAL AREA	37,804,853	867.88	100.00

**GULF POWER COMPANY**  
CHAUTAUQUA SOLAR ENERGY CENTER  
WALTON COUNTY, FLORIDA  
**OWNER**  
GULF POWER COMPANY

**SECURITY FENCING**  
COLLECTOR YARD FENCE SHALL BE 7'-0" CHAINLINK WITH 3 STRANDS OF BARBED WIRE ON "V" EXTENSION ARMS TO MAKE AN OVERALL HEIGHT OF 8'-0". PERIMETER FENCE SHALL BE WOVEN WIRE FARM FENCE WITH AN OVERALL HEIGHT OF 4'-0" OR 6'-0".

LEGEND	
	PROPERTY BOUNDARY
	PROPOSED FENCE
	PARCEL BOUNDARY
	PV MODULE
	INVERTER PAD
	ACCESS PATHWAY
	RIGHT-OF-WAY
	TRANSMISSION LINE EASEMENT
	RESIDENTIAL STRUCTURE

- NOTE(S)**
- BOUNDARY SURVEY DATA TAKEN FROM DOUGLAS W. NUNAMAKER, DATED DECEMBER 12, 2019.
  - ADDITIONAL PARCEL BOUNDARY DATA TAKEN FROM WALTON COUNTY PROPERTY APPRAISER.

CLIENT  
GULF POWER COMPANY

CONSULTANT



YYYY-MM-DD	2021-07-07
DESIGNED	BTH/HH
PREPARED	BCL/RS
REVIEWED	BTH
APPROVED	DJM

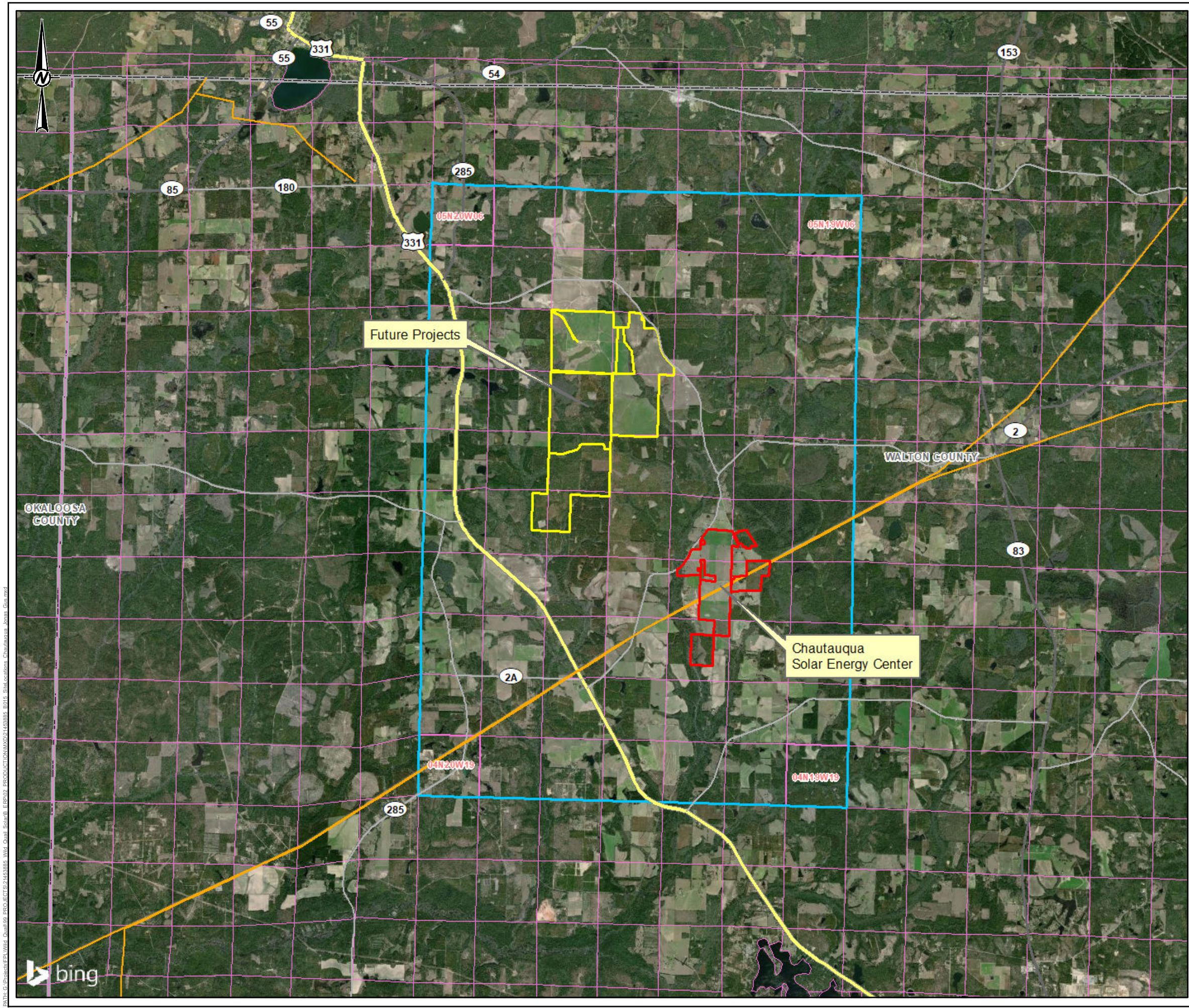
PROJECT  
CHAUTAUQUA SOLAR ENERGY CENTER  
WALTON COUNTY, FLORIDA

TITLE  
SITE PLAN

PROJECT NO. 19-133308	Control No. 19133308-A003-2	REV. 1	SHEET 3
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IF THIS MEASUREMENT DOES NOT MATCH WHAT IS SHOWN, THE SHEET SIZE HAS BEEN MODIFIED FROM: ANSI B





**LEGEND**

- Existing Transmission Lines
- Chautauqua Solar Energy Center
- Future Projects
- Development Boundary
- Florida Counties
- PLSS (TRS)

0 4,000 8,000 16,000  
Feet

**REFERENCE(S)**

COORDINATE SYSTEM: NAD 1983 STATEPLANE FLORIDA NORTH FIPS 0903 FEET  
PROJECTION: LAMBERT CONFORMAL CONIC  
DATUM: NORTH AMERICAN 1983  
SERVICE LAYER CREDITS: © 2021 MICROSOFT CORPORATION EARTHSTAR GEOGRAPHICS SIO

**CLIENT**

GULF POWER

**PROJECT**

FUTURE PROJECTS, AND CHAUTAUQUA SOLAR ENERGY CENTER

**TITLE**

DEVELOPMENT AREA FOR CHAUTAUQUA SOLAR ENERGY CENTER, AND FUTURE PROJECTS

CONSULTANT	YYYY-MM-DD	2021-07-08
DESIGNED	JGW	
PREPARED	JGW	
REVIEWED	KAB	
APPROVED	KAB	

PROJECT NO.  
21453885

CONTROL  
B015

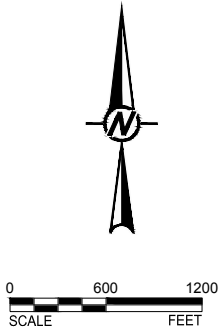
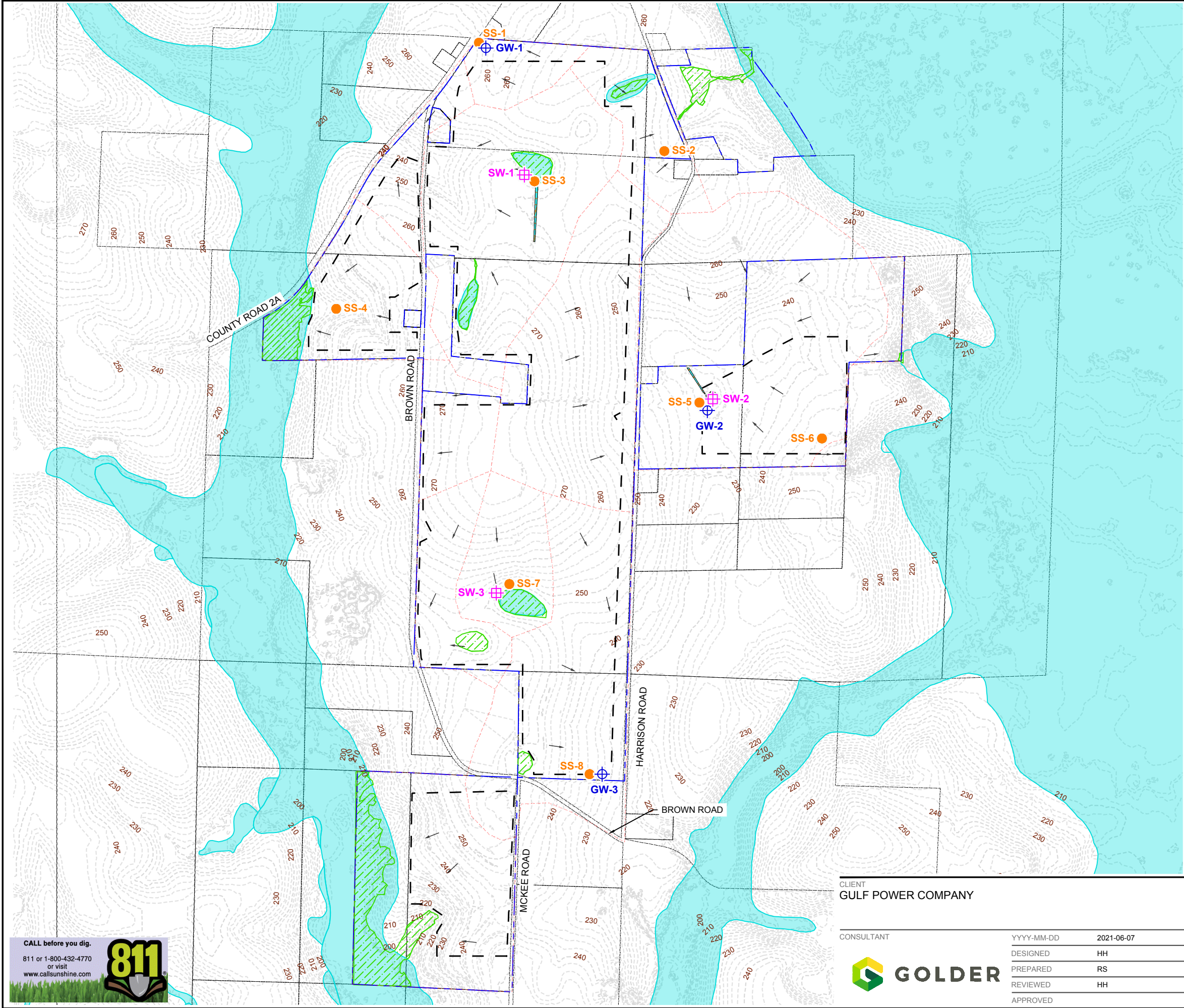
REV.  
0

FIGURE  
**1**

PATH: G:\Projects\FPI\W141\_0009\_PROJECTS\21453885\_W141\_0009\_Solar\B. EPP02 PRODUCTION\MOXD\21453885\_B015\_SiteLocations\_Chautauqua\_Jones\_Gis.mxd

IF THIS MEASUREMENT DOES NOT MATCH WHAT IS SHOWN, THE SHEET SIZE HAS BEEN MODIFIED FROM: ANSI B





- LEGEND**
- PROPERTY BOUNDARY
  - SITE BOUNDARY
  - PARCEL BOUNDARY
  - DRAINAGE BASIN
  - SHEET FLOW DIRECTION
  - EXISTING CONTOURS
  - WETLAND
  - FEMA FLOODZONE A
  - SURFACE WATER
  - SS SOIL SAMPLE LOCATION
  - SW STORMWATER SAMPLE LOCATION
  - GW GROUNDWATER SAMPLE LOCATION

- NOTE(S)**
1. TOPOGRAPHIC CONTOUR DATA WITHIN PROJECT BOUNDARY TAKEN FROM SURVEYING AND MAPPING, LLC (SAM) DATED DECEMBER 18, 2019.
  2. TOPOGRAPHIC CONTOUR DATA OUTSIDE PROJECT BOUNDARY TAKEN FROM USGS-NED LIDAR DATA, DATED JULY 2009.
  3. ELEVATIONS SHOWN ON THE PLANS ARE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88). NAVD88 = NGVD29 - 0.226 FT.
  4. BOUNDARY SURVEY DATA TAKEN FROM DOUGLAS W. NUNAMAKER, DATED DECEMBER 12, 2019.
  5. ADDITIONAL PARCEL BOUNDARY DATA TAKEN FROM WALTON COUNTY PROPERTY APPRAISER.
  6. FLOODPLAIN DATA FROM FEMA FIRM PANEL Nos 12131C0065G & 12131C0155G, EFFECTIVE DATE: 09/29/2010.
  7. THE SITE LIES WITHIN THE PENSACOLA BAY WATERSHED.

**DRAFT**

CLIENT  
GULF POWER COMPANY

PROJECT  
CHAUTAUQUA SOLAR ENERGY CENTER  
WALTON COUNTY, FLORIDA

CONSULTANT



YYYY-MM-DD	2021-06-07
DESIGNED	HH
PREPARED	RS
REVIEWED	HH
APPROVED	

TITLE  
**PROPOSED SAMPLING LOCATIONS**

PROJECT NO. 19-133308	Control No. 19133308-A013	REV. 0	SHEET 1
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