

BEFORE THE  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

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MARTIN COUNTY, FLORIDA,  
and ST. LUCIE COUNTY, FLORIDA,

Petitioners,

vs.

SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT,

Respondent,

and

ALL ABOARD FLORIDA, LLC,

Applicant.

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SOUTH FLORIDA  
WATER MANAGEMENT DISTRICT

Case No.: 2016-055 DAO ERP  
SFWMD Application No: 150922-3

**MARTIN COUNTY, FLORIDA'S AND ST. LUCIE COUNTY, FLORIDA'S  
PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS  
PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES**

Petitioners, Martin County, Florida (Martin County), and St. Lucie County, Florida (St. Lucie County) (collectively, the "Petitioners" or the "Counties") respectfully request a formal administrative proceeding under sections 120.569 and 120.57(1), Florida Statutes (Fla. Stat.), and rules 28-106.111 and 28-106.201, Florida Administrative Code (F.A.C.), concerning the proposed agency action of the South Florida Water Management District ("SFWMD" or "District") to issue a modification of Environmental Resource Permit 13-05321-P ("ERP" or "Permit" or "Proposed Agency Action") to All Aboard Florida Operations, L.L.C., ("AAF" or "All Aboard") on August 19, 2016, to build the All Aboard Florida Project, a proposed inter-city high-speed rail line between Miami and Orlando, Florida (the Project). In support of this petition, Martin County and St. Lucie County state:

## **THE PARTIES**

1. Petitioner, Martin County, is a political subdivision of the State of Florida whose address and telephone number are 2401 S.E. Monterey Road, Stuart, Florida 34996, telephone (772) 288-5400.

2. Petitioner, St. Lucie County, is a political subdivision of the State of Florida, whose address and telephone number are 2300 Virginia Avenue, Fort Pierce, Florida 34982, (772) 462-1100.

3. For the purposes of this proceeding, all legal papers and correspondence shall be directed to the undersigned counsel, appearing on behalf of both Petitioners, at the address listed below.

4. Respondent, the agency affected by this Petition, is the South Florida Water Management District, whose address and telephone number are: 3301 Gun Club Road, West Palm Beach, Florida 33406, telephone: (561) 686-8800. The District has proposed to issue the ERP to AAF. The relevant documents pertaining to this petition and the AAF application to the District are set forth in the attached Appendix Nos. 1-95.

5. The applicant for the ERP that is the subject of this petition is All Aboard Florida, LLC, whose address is 2855 Le Jeune Road, 4th Floor, Coral Gables, Florida 33134.

6. The filing of this Petition renders the District's issuance of the Permit merely proposed agency action, subject to de novo review in this proceeding.

## **FACTUAL BACKGROUND**

7. The Project would establish a new intercity high-speed rail service. The new high-speed rail would share tracks with the existing freight rail service between Orlando and Miami, Florida. AAF proposes in Phase I of the Project to construct three new rail stations (in West Palm

Beach, Fort Lauderdale, and Miami), purchase five train sets, add a second track along an existing 66.5-mile corridor of the Florida East Coast Railroad (FECR), and add 16 round-trip (32 one-way) trips on the West Palm Beach to Miami corridor section of the FECR corridor. Phase II of the Project involves, in substantial part, construction of additional new tracks extending the new high-speed rail service from West Palm Beach north to Orlando and construction of a new rail station at Orlando International Airport.

8. The Project will significantly increase the number and speed of trains passing through nearly 350 at-grade road crossings along the FECR corridor, 28 of which are located in Martin County and 23 of which are located in St. Lucie County. As a result, the Project will cause increased traffic congestion at road crossings throughout the Counties. The Counties anticipate that the Project will cause traffic delays of at least one minute (and in some cases more than four minutes) twice an hour (or more) every day. Moreover, those at-grade road crossings create what have been euphemistically called “opportunities for conflict” but what would be more accurately described as “opportunities for catastrophic and fatal collisions between trains and cars and trains and people.”

9. The increase in trains commuting through Martin and St. Lucie Counties will also adversely impact emergency response times. Emergency responders must cross these railroad tracks thousands of times a year when responding to emergencies or transporting people to area hospitals. Based on the estimated increase in trains, there will be substantially more delays if AAF’s Project proceeds as planned. These delays are expected to significantly impact service levels adopted by the Counties to respond to emergencies in the community, and to in turn jeopardize the health and lives of the Counties’ citizens.

10. As a result of increased rail traffic caused by the Project, it will be difficult for the Counties to evacuate properties east of the track. For example, the Counties both must have plans to rapidly evacuate residents in the Emergency Planning zone if a plant emergency occurs at the nearby St. Lucie Nuclear Power Plant. Due to population density east of the current coastal railway, evacuation times for local emergencies would be greatly increased with railroad crossings being closed, with increased frequency. All evacuation routes from the affected areas are crossed by an existing railroad; an impediment that will be compounded by AAF's Project and directly harm public health and safety in Martin County and St. Lucie County.

11. The Project will also adversely impact maritime traffic. For example, the Project will significantly increase closures of the St. Lucie River Bridge in Martin County, which will harm Martin County's economy and adversely impact the safety of County residents. The St. Lucie Bridge, built circa 1938, must raise itself to allow maritime traffic and close preventing that traffic to allow vessel passage. Hundreds of vessels per day transit through the bridge opening on peak days, varying between large and small recreational vessels and tugs with commercial barges. The increased train traffic that will be caused by the Project will significantly increase wait times for maritime traffic, an issue that is compounded by limited space for the passage of vessels that does not easily or safely allow for simultaneously two-way traffic. Many vessels will be forced to loiter for significantly more time waiting for the bridge to reopen, burning fuel, increasing air emissions, wasting time, and increasing the risk of vessels colliding with each other, running aground or being set upon the bridge by local tidal currents.

12. The Project will also have a significant adverse effect on the Counties' economic development plans, including but not limited to their efforts to improve conditions in their Community Redevelopment Areas ("CRAs"). Under Florida law (chapter 163, Part III), local

governments are able to designate areas as CRAs when certain conditions exist, such as the presence of substandard or inadequate structures; a shortage of affordable housing; inadequate infrastructure; insufficient roadways; and inadequate parking. The Project bisects several CRAs. The increased railroad traffic, noise, and vibration from the Project will make the redevelopment process for the affected CRAs more burdensome for County officials. If property values adjacent to the rail corridor decline, the funding available for redevelopment will be reduced or eliminated, adversely impacting the redevelopment of communities in Martin County and St. Lucie County and reducing property values within the buffer areas. The impacts on the CRAs from the Project will be especially harmful to poorer residents of the Counties.

13. The ERP proposes to authorize the construction and operation of surface water management facilities for certain rail facilities within the West Palm Beach to St. Lucie County-Indian River County line segment (referred to as Segment D09), allegedly totaling portions of 254.69 acres. The construction and operation authorization is for the installation of additional tracks including stormwater treatment, construction and operation authorization for culvert extensions/modifications required at existing culverts, and authorizations for bridge modifications. In areas where the existing stormwater management configuration is maintained or replaced with an equivalent system, and in areas where there used to be a second track in existence, the District is not requiring stormwater management system modifications. The proposed Project includes work that will allegedly occur in, on, or over a total of only 1.17 acres of wetlands or other surface waters, and includes adverse wetlands impacts that are proposed to be mitigated off-site.

14. AAF has asserted that its anticipated work within roadway crossings qualifies for an exemption under rule 62-330.051(4)(c), Florida Administrative Code, and the proposed ERP

does not authorize AAF to perform any work within roadway crossings. The District has excluded these roadway crossings from its analysis of the permitted ERP areas although AAF included them in the ERP application. The result is that the District analyzed impacts in discrete segments of the project between railroad crossings, rather than analyzing the impacts from the Project from start to end.

15. The Project will have multiple public health, safety, welfare, economic and environmental adverse effects on Martin and St. Lucie Counties and their residents, including but not limited to adverse effects on traffic congestion, marine vessel traffic congestion, noise, air quality, public safety (including rail safety, pedestrian safety, and traffic safety), emergency response and hurricane evacuation, the County's economic development plans, and historic and cultural resources within the Counties, as well as on the Counties' parks, wildlife, ecology, wild and scenic rivers, Outstanding Florida Waters, Aquatic Preserves, sensitive environmental areas, threatened and endangered species, property values, economic vitality and quality-of-life. The Project will have little or no countervailing public benefit to the Counties.

*The AAF Environmental Resource Permit Application*

16. In September of 2015, AAF applied to the District for issuance of an ERP modification authorizing works and environmental impacts related to the establishment of a for-profit intercity high-speed rail service sharing tracks with the existing freight rail service between Orlando and Miami, Florida.

17. The District issued Requests for Additional Information directed to AAF on April 15, 2016, and April 22, 2016. See Appdx 22 and 18, attached.

18. On August 17, 2015, December 16, 2015, February 8, 2016, February 13, 2016, February 22, 2016, March 8, 2016, April 14, 2016, April 21, 2016, and May 16, 2016, Petitioners

Martin County and St. Lucie County submitted to the District extensive written comments and concerns regarding the environmental impacts to the Counties and their residents from the proposed Project. See Appdx 94, 56, 41, 40, 39, 37, 27, 20, and 17, attached.

19. In the Counties' February 8, 2016, letter to the District on the AAF ERP application, the Counties stated:

As we mentioned during the meeting, Martin and St. Lucie Counties have concerns as to whether the above-referenced project meets permitting criteria for both the 2013 de minimis exemption permit and for the pending permit application. The Counties' concerns include, but are not limited to, the inadequate delineation of wetlands and characterization of habitat, including habitat for listed species, and insufficiently detailed storm-water management plans, including plans for storm-water treatment, discharge, and storage, to comply with water quality standards and to prevent adverse impacts on adjacent properties.

\* \* \*

Even where project plans are detailed, we explained that the application does not provide necessary information to evaluate it and to conclude that reasonable assurance on environmental and engineering standards required under the permitting criteria are provided. For example, we advised that the application fails to reflect wetlands that are visible on available aeriels and habitat that is known to exist through site visits and other existing wetlands and habitat inventories. We also explained that the storm-water plans that have been offered as part of the application indicate an intent to grade offsite flows to neighboring roadways where there is limited drainage and additional flows may cause adverse impacts to adjacent properties. There are locations where the application indicates that water quality will be addressed through attenuation, but where available data reflects that the area has a high water table attenuation may not be appropriate to address water quality concerns.

\* \* \*

We noted at the meeting that areas that were previously determined by the District to qualify for de minimis exemptions are the same areas that are the subject of the pending ERP application. It is highly irregular and would appear contrary to law to segment the

project in this fashion and to thereby avoid the mandated cumulative impact review of the statutes and the District's regulations. At a minimum, the cumulative impact analysis must include all work done within the project area whether the District improvidently initially assessed those de minimis exemptions. This concern is heightened by the apparent inaccuracies of jurisdictional determinations which are present in the permit application.

\* \* \*

A careful review of the Requests for Additional Information provided by the District in the pending permit application will lead to the conclusion that all of the timely requested information has not [been] provided. We urge you to direct your staff, after consideration of our discussion and the information we will continue to share with you, to conclude that the application remains incomplete and that the errors and omissions which will be readily apparent must be corrected and provided.

20. In the Counties' February 22, 2016, letter to the District on the AAF ERP application, the Counties stated:

In addition to missing information on wetlands jurisdiction and impacts, the counties identified numerous technical issues with the application. Our review of the application reveals that the application is incomplete and fails to provide the District with the reasonable assurances necessary to issue the permit. As you know, the counties identified several primary areas of concern, including, but not limited to the following:

- The applicant has failed to delineate primary impacts to both jurisdictional wetlands and to endangered and threatened species, including impacts to habitat.
- The applicant has failed to consider secondary and cumulative impacts to both jurisdictional wetlands and to endangered and threatened species, including impacts to habitat.
- The applicant has failed to articulate how the project is not contrary to the public interest.
- The project has been improperly segmented by the applicant. For example, while the AAF project is a linear high-speed rail project, that runs from Miami to Orlando,



the application does not include necessary crossings, such as the Loxahatchee crossing, creating in essence a “railroad to nowhere.”

- The failure to recognize and appreciate the qualitative and quantitative difference between traditional and historical rail and the high-speed rail project as proposed when considering impacts to endangered and threatened species.

These deficiencies in the permit application have not only rendered the application incomplete, but do not provide the District with reasonable assurances for permit issuance.

21. In the Counties' April 14, 2016, letter to the District on the AAF ERP application, the Counties stated:

Our review of the application reveals that the application remains incomplete and fails to provide the District with the reasonable assurances necessary to issue the permit. In fact, the March 16 materials appear to be merely cosmetic changes to the incomplete documents previously submitted.

Specifically, in reviewing the submittal of March 16, 2016, the Counties continue to have several primary areas of concern, including, but not limited to the following:

- The applicant has failed to delineate primary impacts to both jurisdictional wetlands and to endangered and threatened species, including impacts to habitat.
- The applicant has failed to consider secondary and cumulative impacts to both jurisdictional wetlands and to endangered and threatened species, including impacts to habitat.
- The applicant has failed to articulate how the project is not contrary to the public interest.
- The project has been improperly segmented by the applicant. For example, while the AAF project is a linear high-speed rail project, that runs from Miami to Orlando, the application does not include necessary crossings, such as the Loxahatchee crossing, creating in essence a “railroad to nowhere.”

- The failure to recognize and appreciate the qualitative and quantitative difference between traditional and historical rail and the high-speed rail project as proposed when considering impacts to endangered and threatened species.

These deficiencies in the permit application remain and have not only rendered the application incomplete, but do not provide the District with reasonable assurances for permit issuance. We continue to be very concerned about the processing of this application, and the March 16th submittal only deepens that concern. What follows is not meant to be comprehensive, but rather illustrative of the problems with completeness.

The applicant's land use maps and wetland impact maps remain incomplete and the project plans do not accurately depict the extent of potential impact to natural resources.

The applicant has not provided reasonable assurance that the proposed activities meet the conditions for issuance referenced in rules 62-330.060, F.A.C., the additional conditions for issuance in Rule 62-330.302 F.A.C., and the Applicant's Handbook. Specifically, revised land use mapping has reduced the number of depicted land use codes, but fails to accurately describe the existing condition within and adjacent to the railroad right of way. FLUCFCS maps do not provide reasonable assurances that existing conditions are accurately depicted and that impacts to wetlands and other surface waters are being avoided or minimized.

22. The Counties also provided guidance and suggestions to the District in their April 14, 2016, letter on the minimum information needed to fully process the pending AAF application:

To ensure that the District processes the application in accordance with all applicable standards, the following additional information should be requested of the applicant, at a minimum, specifically:

1. Clarify how the revised limits of land use were identified and delineated.
2. Provide ground-truthing data and documentation and revise the land use maps to accurately reflect current conditions within and 25 foot adjacent to the FECR right-of-way.

3. Clearly define land use boundaries on the aerial overlays and remove the shading which makes interpretation of underlying habitat signatures difficult to verify.
4. Add station numbers and mile posts to the land use maps so they can be referenced to the proposed activity depicted on the construction plans.
5. Clarify the wetland mapping discrepancies that exist between the land use maps and wetland impact maps.
6. Identify the surface water and wetland identification numbers on the land use maps.
7. Provide an aerial with project boundaries and all wetland boundaries.
8. Clarify if there are areas of wetland vegetation not specifically identified in the project plans as indicated by Note 5 on Sheet c200 of the Erosion and Sediment Control and Wetland Impact Plans.
9. Clarify what is meant by “exempt track work” in Note 11 on Sheet c200 of the Erosion and Sediment Control and Wetland Impact Plans.
10. Clarify if the wetland jurisdictional determination was conducted within the limits of construction or right-of-way limits. If right-of-way limits please clarify how these limits were identified in the field.
11. Describe the seasonal high water levels for all work in wetlands.
12. Clarify if any impacts to wetlands will result from silt fence installation.
13. Clarify the elevation datum on the project plans.
14. Clarify all of the existing drainage areas served by all of the existing culverts.
15. Provide the missing detailing of the new work proposed on the culvert extensions and how the existing drainage capacity is not impacted.

16. Complete the sediment and erosion control plans to add all of the best management practices necessary to accommodate and match all the work shown in the construction plans and to demonstrate and provide assurances that all water quality levels will be achieved.

17. Provide the missing Operation Phase Pollution Prevention Plan.

18. Correct the plans and drainage calculations to show the required water quality volume is retained in accordance with district rules.

19. Provide evidence that no flood plain encroachments occur including calculations and plans showing the calculated volumes.

A review of the application materials for this project indicates that the applicant has failed to accurately identify, quantify and characterize wetlands located within and adjacent to areas proposed for impacts utilizing the acceptable scientific source data and field practices as required by the Applicant's Handbook and Chapters 62-340 and 62-345, F.A.C.

Once the existing potentially affected resources have been accurately identified by an assessment meeting the District rule requirements, direct impacts and proposed mitigation to offset those impacts must be properly addressed based upon the current condition and relative value of functions provided by the resources.

In addition to the questions above, and in addition to demonstrating that proposed mitigation will offset any unavoidable direct impacts, the following matters should also be addressed utilizing accurate information being requested in Questions 1 – 19 above, as required by rule:

20. What reasonable assurances are provided that unmitigated impacts to wildlife utilization of existing wetlands will not occur? Where are these specifically located in the application materials?

21. What reasonable assurance are provided that the project will not cause adverse secondary impacts to the water resources? Where are the specific submittals in the application materials and how does that information support the conclusion?

22. What reasonable assurances are provided that the project will not cause unacceptable cumulative impacts upon wetlands and other surface waters? Where are the specific submittals in the application materials and how does that information support the conclusion?

23. What specific information was relied upon in support of the applicant's assertion that the proposed activities are not contrary to the public interest? How does the application address the seven criteria required to be addressed in the public interest test?

23. The District, in response to the Counties' April 14, 2016, letter, sent AAF a written request for additional information seeking a response to six additional questions, with subparts.

24. In the Counties' April 21, 2016, letter to the District on the AAF ERP application, the Counties provided an additional 16 questions for the District to ask AAF on its application:

To ensure that the District processes the application in accordance with all applicable standards, the following additional information should be requested of the applicant, at a minimum, specifically:

1. Provide clarification on the drainage calculations and the plans, and how the proposed swale feature will function as designed, based upon acceptable calculation standards / standard engineering calculations, to provide the water quality indicated within Table E-1 in the revised drainage report. As an example, the trackside swale between stations 12964+00 to 12973+00 will provide roughly 1/3 of the storage indicated. The swale between stations 12973+00 and 12979+00 will not provide any storage. There were other areas found that will provide no storage due to the corresponding top of bank elevations.

2. Provide information on how impacts to the public safety from the increase in the magnitude and frequency of public roadway flooding outside the project's boundaries will be assessed and mitigated due to the substantial addition of impervious areas which remain unaddressed from the proposed addition of track in close proximity to existing County roadways.

3. Provide information on the existing condition of identified cross drains, their serviceable life span, and operational sufficiency, to determine whether these cross drains are in danger

of failure resulting in adverse impacts to the natural resources, and the public health, safety and welfare.

4. Provide spread calculations for a proper evaluation and verification demonstrating that stormwater runoff will not be directly contributed into the existing systems. Representative (not exclusive) locations where such spread calculations are required include:

- a. Milton Road – Station 12554+40
- b. Chamberlin Blvd – Station 12588+50
- c. Saint Lucie Lane – Station 12616+40

5. Provide information to demonstrate that the cumulative impact of the project is not significant and will result in a reduced level of service, nuisance ponding, and other negative impacts to the adjacent County roadways resulting in unacceptable adverse impacts to the natural resources, public health, safety and welfare, but is sufficiently minimal to qualify as exempted, based upon standard engineering methodology / reasonable professional engineering judgement and assumptions.

6. In order to support a de [minimis] determination, provide information to demonstrate that the flood control methodologies properly considered changes in land use or land cover and any other changes in topographic and hydrologic characteristics in areas where the second track will be installed, and was determined to historically exist, including the at-grade road crossings in such areas.

7. Provide documentation on how the runoff recovery criteria for the proposed swales indicates a soil infiltration rate of 1/4 inch per hour, and what conditions were considered, including, but not limited to, numerous areas near to the FEC rights of way with high groundwater table elevations, perched water tables, limited drainage or poorly draining soils. A representative example would be Station 12563+00; 12576+00

8. Provide information documenting that trackside swales have been adequately provided, especially at at-grade railroad crossings, to capture the additional resulting runoff that can be reasonably anticipated from by the proposed increase of impervious areas.

9. Provide information documenting that the proposed plan to direct all runoff from the railroad to adjacent roadways will not tax the limited drainage system capacity of the public rights of way,

resulting in unacceptable impacts to natural resources and the public health, safety and welfare. Representative (not exclusive) examples include:

- a. Milton Road – Station 12554+40
- b. Chamberlin Blvd – Station 12588+50
- c. Saint Lucie Lane – Station 12616+40

10. Provide information documenting existing elevation information to that existing drainage patterns, and therefore, the adequacy of the design may be determined to protect the natural resources and the public health, safety and welfare.

11. Provide information to allow for an appropriate assessment of potential adverse impacts to surface water or other environmentally sensitive areas such as wetlands. Representative (not exclusive) examples of inconsistencies, errors, or omissions include:

a. Station 13411+00 to 13416+00 indicates wetlands on both sides of the tracks based on the Erosion and Sediment Control Plans (ECP). The limits of construction as shown on the ECP sheets do not appear to take into account the proposed 10' access road detailed on the cross sections for these stations that would adversely impact the wetlands.

b. The typical section (sheet TR-70) does not show the proposed access road location or geometry and therefore does not address the avoidance, reduction or mitigation for reasonably anticipated potential adverse impacts.

c. In general, the limits of construction as shown on the ECP plans are inadequate and do not accurately reflect the work proposed to be performed and cannot therefore be relied upon to assess potential adverse impacts. Correlation to the information contained on sheet TR-80 for the emergency access road is a representative example of this consistent error.

d. The cross sections for station 12592+00 to 12601+00 show an access way, but these stations are not indicated on the TR-80 sheet, and the information does not match on the corresponding impacts to surface waters detailed on ECP plan sheet C520.

e. Sheet XS-52 & C521 differ completely on proposed vs. actual location of the constructed elements for the project.

f. The project indicates several areas where retaining wall or other structures will be installed below grade adjacent to the ROW. There is no indication on how the project will contain all work within the ROW and maintain compliance with OSHA trench safety standards.

12. The submitted drainage calculations show additional retention which is required for discharge into “Outstanding Florida Waters” or waters that have been determined to be impaired by the Department of Environmental Protection. Identify all discharges to the impaired water bodies within the proposed project.

13. Provide additional protective measures that will be incorporated into the design and operation to provide reasonable assurance that the proposed discharge will not cause or contribute to violations of State water quality standards. These include (but are not exclusive):

a. Identify the potential sources of pollution that shall be reasonably be expected to affect the quality of stormwater discharge associated with the construction activity.

b. Provide plans for surface water management system operation, nutrient and pesticide management and solid waste management.

c. Provide site-specific information to demonstrate through the use of a site-specific water quality evaluation that the discharges of the parameter or parameters which have caused the impairment do not have the potential to cause or contribute to water quality violations in the basin. Note, since there are multiple discharge points, each point may have a different water quality standard to be met. As such, provide the required site specific water quality evaluation for each different water quality standard.

14. Provide documentation that adjacent drainage patterns for the areas adjacent to all of the culverts which haven’t been located will not result in adverse impacts to adjacent properties.

15. Provide documentation demonstrating that the proposed activities will not degrade the receiving waters, including information that the design of the drainage swales conform with the District’s Handbook, the Florida Administrative Code and State Statutes.

16. Provide documentation on the calculations of the extent of those areas which are within the 100 year floodplain, the volume of the encroachment, and the necessary modifications to the plans demonstrating that all encroachments will provide the necessary



compensating storage, to avoid adverse effects on the rights of others.

25. In the District's April 22, 2016, letter to AAF, the District requested AAF provide responses to three additional questions, including subparts.

26. In the Counties' May 16, 2016, letter to the District on the AAF ERP application, the Counties stated:

Our review of the application reveals that the application remains incomplete and fails to provide the District with the reasonable assurances necessary to issue the permit. Previous concerns raised by the Counties appear to have been only partially addressed, re-classified as exempt activities, or completely ignored. In fact, the April 14, 2016, submittal by AAF is wholly insufficient and can only lead the District to deny the permit application.

As previously identified in correspondence and meetings with the District, the water quality calculations for the proposed project still do not provide the required assurances for permittable discharges to an Outstanding Water Body required by Rule 40E-4.091, Fla. Admin. Code, and Appendix E of the ERP Applicant's Handbook, Vol II.

Specifically, the submittal from AAF on April 14, 2016, is insufficient and incomplete, as follows:

1. As stated in the District's Request for Additional Information ("RAI") letter dated April 15, 2016, there are numerous deficiencies and discrepancies in the application. Given this request and the subsequent submittal that will be made by AAF, Appendix E of the Drainage Design Report, submitted by AAF in its April 14, 2016 submittal, will be obsolete based on new data to be submitted as a result of the RAI response to the April 15 RAI.

2. As reported in the District's April 15, 2016, letter in Section 2, "...submitted plans and figures, and provided on subsequent submitted updated or revised project plans and figures, does not match the different plans and figures." We contend that until these modifications and corrections are provided, the Revised Construction Plan Volume 2 Track Grading Cross Sections may not be accurate or appropriately graded in accordance with the District's request and will need further modification to comply

with the District's April 15 RAI. It is critically important that all of the plans and figures in the application are consistent with each other to avoid ambiguities.

3. Should AAF update the environmental and land use classification information, as requested by the District, the update may invalidate some of the areas and swale section modifications contained in Volume 1 and Volume 2 of the Track Construction Plans submitted by AAF on April 14, 2016. As such, the District should suspend its review of the Track Construction Plans until the updated environmental and land use classification information is provided.

Additionally, with respect to the District's RAI dated April 22, 2016, we submit that until AAF responds to the RAI, the submittal of April 14, 2016, is invalid and incomplete for the following reasons:

1. As described in the District's Comment 1, "Please provide documentation that the applicant has sufficient real property over the land upon which activities subject to the application will be conducted." Given this request, the District will not be able to conduct valid reviews of the Drainage Report or the proposed cross sections described and provided in AAF's response submitted on April 14, 2016, because the limits of construction may change as a result of modifications of the "real property" limits. As such, the April 14 AAF response would be invalid if the limits of construction were to change.

2. As described in the District's Comment 2. b., water quality calculations may be modified. If so, then Appendix E will be updated yet again, thus making the Appendix E update of April 14, 2016, obsolete and inaccurate. The District's review of the Drainage Design Report will be pointless, as the modifications will assuredly impact the cross sections and computations submitted by AAF.

3. Additionally, the District's Comment 3 requests AAF to "Please clarify the submitted floodplain compensation (Appendix D) relative to the revised Water Quality and Quantity calculations (Appendix E)." The AAF submittal of April 14, 2016, indicates an "updated" Appendix E is provided. As such, Appendix E will be further modified as a result of the April 22, 2016, RAI. Therefore, Appendix E, as submitted on April 14, 2016, should not be reviewed by the District.

In sum, it now appears that multiple updates will be provided by AAF to the District in response to the District's April 15 and 22 RAIs. Consequently, some of the information previously submitted by AAF is outdated and obsolete. The District should wait for the AAF responses and then ensure that the information provided is uniform and internally consistent so that meaningful review may be accomplished.

It is clear that the required reasonable assurances have not been provided by the applicant in their submittal of April 14. Please note that once minimally adequate information is submitted to the District as requested in the RAI questions above, such information must then be re-assessed by the District. We do not have confidence that the applicant will take these matters seriously or provide the District with a complete and adequate response to allow for permit issuance. In such event, we rely upon and expect the District to follow its own statutes, rules and permitting handbook to deny the application.

27. Notwithstanding all of the detailed and precise critical comments, as well as the guidance and suggestions in the form of proposed written requests for additional information to be sent by the District to the applicant, as outlined above, the information in the application and submittals by AAF failed to provide the District with responses needed to have a complete permit application and failed to provide reasonable assurance that all standards set forth in applicable statutes and rules were met.

**NOTICE OF POINT OF ENTRY, PROPOSED AGENCY ACTION  
AND NOTICE OF RIGHTS**

28. Regarding AAF's ERP application #150922-3, on January 14, 2016, the undersigned counsel for Petitioners requested ". . . written notice of proposed agency action and actual written notice for a point of entry in which to file a petition for formal administrative proceedings, as may be appropriate, to seek review of proposed agency action that affects [the County's] substantial interests. This request for a point of entry is made regardless of whether the proposed agency action is characterized as permit issuance, determination of exemption,

determination of general or other permit by rule, or denial of any of the above." See Appdx 48, attached.

29. The District proposes to issue the ERP under Part IV, chapter 373, Florida Statutes, and chapter 62-330, Florida Administrative Code. See Appdx 3, attached. On August 19, 2016, the District issued a Notice of Final Agency Action issuing the approved individual Environmental Resource Permit Modification (number: 13-05321-P).

30. Martin and St. Lucie County learned of the proposed agency action on the AAF ERP when its undersigned counsel reviewed the District's online "ePermitting" website on August 19, 2016, and found that the District had issued the permit. According to the Notice of Rights included with the Proposed Agency Action, substantially affected persons who received actual notice had twenty-one (21) days to file a petition for administrative hearing from the date of receipt of the Notice of Rights, making the deadline to file a petition Thursday, September 9, 2016.

31. On Wednesday, September 7, 2016, Martin and St. Lucie County timely filed a Motion for Extension of Time requesting a six day extension of time to file a petition challenging the Permit. On Thursday, September 8, 2016, the motion was granted extending the time to file a petition to challenge the ERP until Thursday, September 15, 2016. See Appdx 1, attached.

32. This petition is timely filed on Wednesday, September 14, 2016.

#### **PETITIONER MARTIN COUNTY'S SUBSTANTIAL INTERESTS**

33. The activities authorized under the proposed ERP are located in Martin County, Florida. For the reasons discussed further below — in this section and in the Ultimate Facts Alleged — Martin County's substantial interests are affected by, and it has standing to challenge, the ERP.

34. Martin County has over 151,000 residents, and is responsible for the protection of the public health, safety, and welfare of its citizens under chapter 125, Florida Statutes. By requiring substantial construction to accommodate increased rail traffic, the Project's construction would disrupt normal business activities in the County and impact personal activities of its residents. At full operations, the Project will result in 32 high-speed trains, pulled by diesel locomotives, passing through the County daily at speeds of over 100 miles per hour. This disruption will result in traffic tie-ups near railroad crossings, safety concerns, noise, harm to County parks, and damage to neighborhoods and environmental resources in the County. Not only will regular freight crossings of local roads continue, but the Project will add 32 local road crossings by high-speed trains per day. According to the Final Environmental Impact Statement, 30 of these high-speed trains will traverse the County, including heavily populated and high-traffic areas between 7:00 a.m. and 10:00 p.m., with the other 2 trains crossing during the remaining hours.

35. Martin County lies along the central eastern coast of the State. It is bounded on the north by St. Lucie County, on the east by the Atlantic Ocean, on the south by Palm Beach County and on the west by Okeechobee County and Lake Okeechobee. Martin County has three major physiographic regions: the Atlantic Coastal Ridge in the east, the Eastern Flatlands through the central and western portions, and the Everglades in southwestern Martin County.

36. The Atlantic Coastal Ridge marks the position of the former coastline when sea levels were higher than today. The ridge itself consists of the Jensen Beach and Jonathan Dickinson sandhills, which are separated by the St. Lucie River estuary. The sandhills of Jonathan Dickinson State Park reach an altitude of 86 feet above mean sea level, the highest altitude in Martin County. The Indian River Lagoon runs east from this ridge, and the barrier

islands (Hutchinson Island and Jupiter Island) are divided by the St. Lucie Inlet. The soils of the Atlantic Coastal Ridge are generally well-drained sands. The vegetation in this area is primarily scrub and coastal strand communities. The Savannas, lying in St. Lucie and northern Martin County, is a freshwater marsh system that has formed behind the ridge. The greatest urban development in the County has occurred along the Atlantic Coastal Ridge.

37. The Eastern Flatlands comprise the area westward from the Atlantic Coastal Ridge to Lake Okeechobee, except for a small part of the Everglades in the southwestern corner of the County. The Eastern Flatlands are generally lower than the Atlantic Coastal Ridge, with elevations ranging from 20 to 30 feet above mean sea level. There are two minor ridges in the Eastern Flatlands, the Orlando Ridge and the Green Ridge. The Orlando Ridge is more westerly, higher and better defined than the Green Ridge. The plant communities in this region are generally referred to as flatwoods. The dominant vegetation in drier areas is a mixture of slash pine and saw palmetto. In wetter areas there are grasslike (graminoid) marshes, cypress or hammocks.

38. Population density in the Eastern Flatlands is lower than along the Atlantic Coastal Ridge, and the area is used primarily for agriculture. There is a small strip of Everglades along the shores of Lake Okeechobee in southwestern Martin County. The region has a maximum width of about 1.5 miles in this area. The boundary between the Everglades and the Eastern Flatlands is sharply defined, with vegetation in the Everglades primarily in sawgrass communities. Much of this area of organic soils has been intensely developed for agriculture.

39. Martin County has specific areas considered environmentally sensitive. They include the ocean system, estuary system, flood zones, sandhills and upland hammocks. These

systems are linked in unique and special ways. Small or insignificant alterations will lead to substantial system failure, resulting in losses throughout the system

40. Martin County has substantial interest in the use and enjoyment of the land, water, wetlands, air and other natural resources, which is cognizable under the statutes and rules implicated by the ERP. If the ERP is approved, Martin County's substantial interests will be immediately adversely impacted by the construction, operation and maintenance activities authorized by the Proposed Agency Action which would violate District statutes and rules.

41. Through the process of comprehensive planning, the Legislature intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services; and conserve, develop, utilize, and protect natural resources within their jurisdictions. § 163.3161, Fla. Stat. Counties are charged by the Legislature with adequately protecting and conserving natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays, estuarine systems, and other significant natural systems. § 163.3177, Fla. Stat. The various Legislatively mandated statutory duties and responsibilities with respect to planning for water management and conservation are sufficient to give the Counties an interest to support standing to challenge any activity of the state or of the agencies of the state as may appear to affect those duties and responsibilities. *See Osceola County v. St. Johns River Water Management District*, 486 So. 2d 616, 617 (Fla. 5th DCA 1986).

42. As part of its comprehensive planning functions, and to provide for the health, safety, and welfare of the residents of and visitors to Martin County in the public interest, the County has established the following:

- A Coastal Management Element in its comprehensive growth management plan for the protection of natural resources, planning for water-related and water-dependent uses and adequate protection of the health of natural systems, including the Indian River Lagoon, Intracoastal Waterway, St. Lucie River (both north and south forks), Manatee Pocket and Loxahatchee River (north and northwest forks) and more than 135 miles of shoreline. The Coastal Management Element includes provisions related to drainage systems, surface and stormwater management and runoff, protection of estuaries, shoreline protection, impacts to wetlands, restrictions on infrastructure or service expansions, hurricane and emergency evacuation.
- A Conservation and Open Space Element in its comprehensive growth management plan to effectively manage, conserve and preserve the natural resources of Martin County - air, water, soils, habitat, fisheries and wildlife, and especially the St. Lucie Estuary and the Indian River Lagoon. The Conservation and Open Space Element includes provisions related to the protection and preservation of upland habitat, protection of wetlands, preservation of open spaces, air quality, road improvements, site stabilization, native vegetation, groundwater protection and enhancement, surface water quality, soil erosion, land clearing, erosion control, floodplain protection, protection of natural systems, buffer zones, and wildlife habitat protection and preservation.



- A Drainage and Natural Groundwater Aquifer Recharge Element in its comprehensive growth management plan related to stormwater management, surface water quality and groundwater aquifer quality, supply and recharge.
- Wetlands and Shoreline Protection land development regulations to promote ecological stability, improve water quality, prevent flooding and protect property and environmental resources.
- Uplands Protection land development regulations to promote ecological stability and integrity by preventing the loss of native upland habitat, the maintenance of air and water quality, the control of erosion, the reduction of stormwater runoff, conservation of water resources, preservation of adequate aquifer recharge throughout the spatial extent of the aquifer, the promotion of biological diversity and the preservation of native upland habitat for various forms of plants and wildlife, including species which are endangered, threatened or of special concern.
- Mangrove Protection land development regulations to protect mangroves and their vital role in the economy and ecology of the County by establishing a procedure for evaluating and minimizing the impacts of proposed mangrove alteration, while allowing waterfront property owners to selectively trim mangroves in order to increase enjoyment of the benefits of riparian ownership.
- Wellfield Protection land development regulations to protect the health and welfare of the residents and visitors of the County by providing criteria for regulating deleterious substances and contaminants, and by regulating the design, location and operation of development and activities which may impair existing and future public potable water supply wells.

- Stormwater Management land development regulations to ensure that development activity enhances the water quality of downstream water bodies; does not impede or negatively alter the historic flow of stormwater runoff; and does not create additional stormwater runoff, and to promote the public health, safety and general welfare. Preventing the degradation of water quality, the disruption of freshwater flows to estuaries, and the loss of habitat is recognized as essential to maintaining a sustainable environmental system. The intent of the regulations is to set standards and design criteria for development activity, which will maintain water quality and historic flows of stormwater runoff.
- Flood Protection land development regulations to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in Special Flood Hazard Areas.
- Historic Preservation land development regulations to establish procedures for organizing a Historic Preservation Board, for designating landmarks, sites, historic districts and archaeological sites, and for processing applications for Certificates of Appropriateness and Certificates to Dig.

43. Martin County owns or has an interest in a substantial amount of property located adjacent to the railway, which will be affected by the ERP. Within 500 feet of the railway, Martin County owns more than 800 acres of property, more than 200 acres of right-of-ways, more than 100 acres of utility easements, more than 25 acres of drainage easements, as well as sidewalk easements, access easements, other miscellaneous easements, and conservation lands. Martin County also has an interest in the preservation areas that individual land owners are

required to maintain in a preserved state under development orders issued by the County under its Comprehensive Growth Management Plan and Land Development Regulations. Martin County's substantial interests will be affected by impacts to these properties from the ERP.

44. Martin County's substantial interests are affected by the District's improper processing of the ERP application. The project has been improperly segmented to exclude certain portions of the project from consideration, including railroad crossings. As a result, the District failed to properly assess the direct, secondary and cumulative impacts from the Project.

45. Martin County's substantial interests will be affected by stormwater impacts from the project. The project lacks reasonable assurance that inadequately treated stormwater from the project will not adversely impact sensitive water bodies, Outstanding Florida Waters and Aquatic Preserves within the County, such as the St. Lucie River and Savannas State Reserve. In addition, the project has been improperly segmented to exclude certain portions of the project, including railroad crossings. As a result, there is not reasonable assurance that the project is designed to avoid adverse stormwater impacts at these improperly segmented portions of the project. Flooding impacts at these locations would adversely affect the County, area surface waters and fisheries, and the public health, safety and welfare of the County's residents.

46. Martin County's substantial interests are affected by adverse impacts to threatened and endangered species from the project. Martin County's substantial interests are also affected because the District lacks reasonable assurance for issuing the ERP based upon several problems with the listed species assessment relied upon by the District, including, but not limited to, the following:

- The failure to recognize and appreciate the qualitative and quantitative difference between traditional and historical rail and the high-speed rail project as proposed

when considering impacts to endangered and threatened species.

- Impacts to threatened and endangered species were misanalysed and underestimated due to improper segmentation of the project.
- Threatened and endangered species were omitted from the analysis.
- Secondary and cumulative impacts to endangered and threatened species and their habitats were not properly considered.
- A full alternatives analysis and additional study was warranted for the alternative corridors located west of the FEC.
- The assessment relied upon by the District precluded meaningful alternatives comparison of impacts to wetlands and wildlife in alternative corridors.
- The alternatives analysis performed did not adequately discuss impacts in proportion to their significance.
- Habitat fragmentation and barriers as experienced along high-speed, high traffic transportation corridors are a significant environmental impact to wildlife.
- The assessment relied upon by the District did not adequately characterize the threatened and endangered species within the alternative corridors and the potential direct and indirect impacts to wetlands and listed species, and does not adequately address listed plant and animal species in the analysis.
- The analysis of impacts to habitat and wildlife relied upon by the District is lacking.
- The limited listed species surveys that were provided, including scrub jay surveys, were not conducted in accordance with survey guidelines

47. Under Martin County's Comprehensive Growth Management Plan and Land Development Regulations, all wetlands in unincorporated Martin County shall be protected.

Martin County's substantial interests will be affected by the ERP, which will result in adverse impacts to, rather than the protection of, wetlands within Martin County. Martin County's substantial interests will also be affected because the District lacks reasonable assurance that the conditions for issuance of the ERP related to wetlands have been met, including, but not limited to, the following:

- Inadequate analysis of the project due to improper segmentation of the project during permitting.
- Inadequate delineation of wetlands.
- Inconsistent mapping of wetlands and the project.
- The failure to accurately describe the existing conditions in the project area.
- The failure to assess, or improper assessment, of wetland impacts from the project.
- Failure to consider secondary and cumulative impacts to jurisdictional wetlands.
- Ambiguities in permit drawings.
- Inadequate information to allow for an appropriate assessment of potential adverse impacts to surface water or other environmentally sensitive areas such as wetlands.
- Failure to ground-truth wetland limits.

48. Martin County's substantial interests will be affected as the Project will have adverse effects on significant historical and archaeological resources within the County. Martin County's substantial interests will also be affected because the District lacks reasonable assurance that the conditions for issuance of the ERP related to historical and archaeological resources have been met, including, but not limited to, the following:

- Inadequate and incomplete area of potential effect.

- Assessments of historical and archaeological impacts were inadequate, incomplete and insufficient to consider all direct and indirect impacts from the Project, particularly to historic structures and districts.
- Assessments of historical and archaeological impacts omitted significant cultural resources.
- Inadequate Archaeological Monitoring Plans for the Project.

#### **PETITIONER ST. LUCIE COUNTY'S SUBSTANTIAL INTERESTS**

49. The activities authorized under the proposed ERP are located in St. Lucie County, Florida. For the reasons discussed further below — in this section and in the Ultimate Facts Alleged — St. Lucie County's substantial interests are affected by, and it has standing to challenge, the ERP.

50. St. Lucie County has over 277,000 residents, and is responsible for the protection of the public health, safety, and welfare of its citizens under chapter 125, Florida Statutes. By requiring substantial construction to accommodate increased rail traffic, the Project's construction would disrupt normal business activities in the County and impact personal activities of its residents. At full operations, the Project will result in 32 high-speed trains, pulled by diesel locomotives, passing through the County daily at speeds of over 100 miles per hour. This disruption will result in traffic tie-ups near railroad crossings, safety concerns, noise, harm to County parks, and damage to neighborhoods and environmental resources in the County. Not only will regular freight crossings of local roads continue, but the Project will add 32 local road crossings by high-speed trains per day. According to the Final Environmental Impact Statement, 30 of these high-speed trains will traverse the County, including heavily populated

and high-traffic areas between 7:00 a.m. and 10:00 p.m., with the other 2 trains crossing during the remaining hours.

51. St. Lucie County is located along Florida's southeast coast, in the upper reaches of South Florida. The County comprises approximately 600 square miles, of which approximately 440 square miles are unincorporated area and subject to the land use and regulatory authority of the St. Lucie County Board of County Commissioners. The balance of the County consists of territory located within the incorporated municipalities of Fort Pierce, Port St. Lucie, and St. Lucie Village.

52. The County is divided into three primary regions: the Atlantic Coastal Ridge (including the barrier islands), the Eastern Valley and the Osceola Plain. The dominating physiographic region of the east/central portion of the County is known as the Eastern Valley. The Valley extends from the Atlantic Coastal Ridge to the central part of the County. Elevations in this area range from 15 to 30 feet above sea level. The land within this area falls generally to the southeast.

53. The vast citrus and ranching areas of central and western St. Lucie County are contained within the physiographic areas known as the Sebastian/St. Lucie Flats, Allapattah Flats and the Osceola Flats. Except where drained for agricultural activities, these areas are characteristically pocketed with surface wetlands and have limited natural drainage. Elevations in this area are in the range of 30 to 60 feet, with the general fall of the land being from the northwest to the southeast.

54. The Atlantic Coastal Ridge forms the eastern border of the County and includes the coastal barrier island, locally known as Hutchinson Island, the Indian River Lagoon and the ridge which lies east of the North and South Savannas and parallels Indian River Drive.

Elevations range from sea level to about 15 feet on the barrier islands to as much as 50 feet along the western shorelines of the Indian River Lagoon. The western terminus of the Atlantic Coastal Ridge lies approximately along the eastern edge of the Savannas, both north and south of Fort Pierce. In general, U.S. Highway 1 and the Florida East Coast Railway run along the Atlantic coastal ridge.

55. Located within the Eastern Valley is the single principal freshwater estuary in St. Lucie County, the North Fork of the St. Lucie River. Secondary water courses include the North Fork's two primary tributaries, Five Mile and Ten Mile Creeks. An unconnected freshwater marsh network, known as the Savannas, is located immediately to the west of the Atlantic Coastal Ridge. The Savannas represent a vanishing natural feature that was once found along the entire length of the Indian River Lagoon, from Volusia County to Northern Palm Beach County. Through the continued effort of the State of Florida's Florida Forever acquisition program, approximately 90% of the privately held properties within this area have been acquired for perpetual public preservation.

56. Lying between the western edges of the Atlantic Coastal Ridge and the barrier island is the Indian River Lagoon. This saltwater estuary is part of a larger ecosystem which extends 156 miles from Volusia County to Northern Palm Beach County. More detailed discussions on the function and vitality of the Indian River Lagoon system can be found in the Conservation and Coastal Management Elements of the St. Lucie County Comprehensive Plan.

57. All of St. Lucie County drains into the St. Lucie Estuary or the Indian River Lagoon, both water bodies for which TMDLs are established within an adopted Basin Management Action Plan (BMAP). Section 258.39(8), (9) and (12), Florida Statutes, provides for the official designation of the Indian River Lagoon and portions of the North Fork of the St.



Lucie River as Aquatic Preserves. The Florida Department of Environmental Protection, charged with administration and supervision of these preserves, has adopted specific management plans for both areas, conducting both research and enforcement actions within them.

58. In addition to its inland estuary and isolated wetland network, St. Lucie County has 21 miles of Atlantic Ocean shoreline, much of which is currently undeveloped. Through the efforts of the residents of St. Lucie County and the State of Florida, approximately seven miles of this unincorporated oceanfront are under public ownership. Another two miles of oceanfront property are in private ownership, to be maintained in their present natural state

59. St. Lucie County has substantial interest in the use and enjoyment of the land, water, wetlands, air and other natural resources, which is cognizable under the statutes and rules implicated by the Proposed Agency Action. If the Proposed Agency Action is approved, St. Lucie County's substantial interests will be immediately adversely impacted by the construction, operation and maintenance activities authorized by the Proposed Agency Action which would violate District statutes and rules.

60. Through the process of comprehensive planning, the Legislature intended that units of local government can preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other requirements and services, and conserve, develop, utilize, and protect natural resources within their jurisdictions. § 163.3161, Fla. Stat. Counties are charged by the Legislature with adequately protecting and conserving natural resources, such as wetlands, floodplains, native vegetation, environmentally sensitive areas, natural groundwater aquifer recharge areas, lakes, rivers, shorelines, beaches, bays,

estuarine systems, and other significant natural systems. § 163.3177, Fla. Stat. The various Legislatively mandated statutory duties and responsibilities with respect to planning for water management and conservation are sufficient to give the Counties an interest to support standing to challenge any activity of the state or of the agencies of the state as may appear to affect those duties and responsibilities. *See, Osceola County v. St. Johns River Water Management District*, 486 So. 2d 616, 617 (Fla. 5th DCA 1986).

61. As part of its comprehensive planning functions, and to provide for the health, safety, and welfare of the residents of and visitors to St. Lucie County in the public interest, the County has established the following:

- A Coastal Management Element in its comprehensive growth management plan for the protection of natural resources, planning for water-related and water-dependent uses and adequate protection of the health of natural systems, including the Indian River Lagoon, Intracoastal Waterway, St. Lucie River (both north and south forks), Manatee Pocket and Loxahatchee River (north and northwest forks) and more than 135 miles of shoreline. The Coastal Management Element includes provisions related to drainage systems, surface and stormwater management and runoff, protection of estuaries, shoreline protection, impacts to wetlands, restrictions on infrastructure or service expansions, hurricane and emergency evacuation.
- A Conservation and Open Space Element in its comprehensive growth management plan to effectively manage, conserve and preserve the natural resources of Martin County - air, water, soils, habitat, fisheries and wildlife, and especially the St. Lucie Estuary and the Indian River Lagoon. The Conservation and Open Space Element includes provisions related to the protection and preservation of upland habitat,

protection of wetlands, preservation of open spaces, air quality, road improvements, site stabilization, native vegetation, groundwater protection and enhancement, surface water quality, soil erosion, land clearing, erosion control, floodplain protection, protection of natural systems, buffer zones, and wildlife habitat protection and preservation.

- A Drainage and Natural Groundwater Aquifer Recharge Element in its comprehensive growth management plan related to stormwater management, surface water quality and groundwater aquifer quality, supply and recharge.
- Vegetation Protection and Preservation standards to encourage preservation of native habitat, long-term sustainability of the urban forest, beneficial land and forest management practices, and minimization of the unnecessary removal of valuable existing vegetation.
- Coastal Area Protection Standards were enacted in recognition of the unique and environmentally sensitive characteristics of the coastal area, to protect the economy and ecology of the coastal area, to minimize the impacts of development within the coastal area on environmentally sensitive resources and habitats, to facilitate the recharging of groundwater and protect the quality of groundwater and surface water resources, and to protect threatened and endangered species.
- Riverine Shoreline Protection Standards were adopted to protect the function and value of shorelines and adjacent upland areas along water bodies such as the Indian River Lagoon, St. Lucie River and its tributaries — shorelines and associated uplands provide riparian and aquatic habitat, aesthetic value, filter pollutants from storm water, prevent erosion and protect water quality.

- Wetlands Protection Standards were put in place with a goal to protect the wetlands of St. Lucie County from net loss, because of wetlands function in floodwater storage, aquifer recharge, stormwater filtering, and habitat for fish and wildlife. The use of motorized vehicles is regulated in environmentally sensitive areas, including wetlands, shorelines, the Savannas State Reserve, and the Atlantic Coastal Ridge.
- Stormwater Management Requirements have been adopted by the County to protect the surface water, groundwater and other natural resources to ensure that stormwater is managed to minimize the adverse impacts of erosion, sedimentation, flooding and water pollution.
- To protect and safeguard the health, safety, and welfare of the residents of and visitors to St. Lucie County, the design, location and operation of development, land uses and activities which may impair existing and future public water supply wells is regulated.
- Habitat of threatened or endangered species is also protected by the County.
- Flooding impacts from development are also closely regulated by St. Lucie County to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions.

62. St. Lucie County owns or has an interest in a substantial amount of property located within 500 feet of the railway. St. Lucie County's substantial interests will be affected by impacts to these properties from the ERP.

63. St. Lucie County's substantial interests are affected by the District's improper processing of the ERP application. The project has been improperly segmented to exclude

certain portions of the project from consideration, including railroad crossings. As a result, the District failed to properly assess the direct, secondary and cumulative impacts from the Project.

64. St. Lucie County's substantial interests will be affected by stormwater impacts from the project. The project lacks reasonable assurance that inadequately treated stormwater from the project will not adversely impact sensitive water bodies, Outstanding Florida Waters and Aquatic Preserves within the County, such as the St. Lucie River and Estuary, the Indian River and Lagoon, and the Savannas State Reserve. Direct discharge of untreated stormwater runoff into environmentally sensitive areas within the County, such as Savannas State Preserve, was found within the plan set. In addition, the project has been improperly segmented to exclude certain portions of the project, including railroad crossings. As a result, there is not reasonable assurance that the project is designed to avoid adverse stormwater impacts at these improperly segmented portions of the project. Flooding impacts at these locations would adversely affect the County, area surface waters and fisheries, and the public health, safety and welfare of the County's residents.

65. St. Lucie County's substantial interests are affected by adverse impacts to threatened and endangered species from the project. St. Lucie County's substantial interests are also affected because the District lacks reasonable assurance for issuing the ERP based upon several problems with the listed species assessment relied upon by the District, including, but not limited to, the following:

- The failure to recognize and appreciate the qualitative and quantitative difference between traditional and historical rail and the high-speed rail project as proposed when considering impacts to endangered and threatened species.

- Impacts to threatened and endangered species were misanalysed and underestimated due to improper segmentation of the project.
- Threatened and endangered species were omitted from the analysis.
- Secondary and cumulative impacts to endangered and threatened species and their habitats were not properly considered.
- A full alternatives analysis and additional study was warranted for the alternative corridors located west of the FEC.
- The assessment relied upon by the District precluded meaningful alternatives comparison of impacts to wetlands and wildlife in alternative corridors.
- The alternatives analysis performed did not adequately discuss impacts in proportion to their significance.
- Habitat fragmentation and barriers as experienced along high-speed, high traffic transportation corridors are a significant environmental impact to wildlife.
- The assessment relied upon by the District did not adequately characterize the threatened and endangered species within the alternative corridors and the potential direct and indirect impacts to wetlands and listed species, and does not adequately address listed plant and animal species in the analysis.
- The analysis of impacts to habitat and wildlife relied upon by the District is lacking.
- The limited listed species surveys that were provided, including scrub jay surveys, were not conducted in accordance with survey guidelines.

66. St. Lucie County's substantial interests will also be affected by adverse impacts to wetlands from the Project. St. Lucie County's substantial interests will also be affected because

the District lacks reasonable assurance that the conditions for issuance of the ERP related to wetlands have been met, including, but not limited to, the following:

- Inadequate analysis of the project due to improper segmentation of the project during permitting.
- Inadequate delineation of wetlands.
- Inconsistent mapping of wetlands and the project.
- The failure to accurately describe the existing conditions in the project area.
- The failure to assess, or improper assessment, of wetland impacts from the project.
- Failure to consider secondary and cumulative impacts to jurisdictional wetlands.
- Ambiguities in permit drawings.
- Inadequate information to allow for an appropriate assessment of potential adverse impacts to surface water or other environmentally sensitive areas such as wetlands.
- Failure to ground-truth wetland limits.

67. St. Lucie County's substantial interests will be affected as the Project will have adverse effects on significant historical and archaeological resources within the County. St. Lucie County's substantial interests will also be affected because the District lacks reasonable assurance that the conditions for issuance of the ERP related to historical and archaeological resources have been met, including, but not limited to, the following:

- Inadequate and incomplete area of potential effect.
- Assessments of historical and archaeological impacts were inadequate, incomplete and insufficient to consider all direct and indirect impacts from the Project, particularly to historic structures and districts.

- Assessments of historical and archaeological impacts omitted significant cultural resources.
- Inadequate Archaeological Monitoring Plans for the Project.

### **STATEMENT OF DISPUTED ISSUES OF FACT**

Petitioners' statement of disputed issues of material fact is set forth below. Petitioners reserve the right to amend and supplement these disputed issues of material fact, as necessary:

1. Whether the application for the modified Environmental Resource Permit, as proposed, should be denied.
2. Whether the applicant has provided reasonable assurance of compliance with all applicable Florida statutes and District rules.
3. Whether the activities permitted will adversely affect the public health, safety or welfare, including properties of others, including, but not limited to, Martin County, Florida and St. Lucie County, Florida.
4. Whether the increased flooding from changes to road crossings, including, but not limited to, filling in areas, and removal of stormwater service, occurring at the crossings and off-site from the crossings will negatively impact the public health, safety and welfare, in violation of AH Vol. I, section 10.1.1 and rule 62-330.302, Florida Administrative Code, and AH Vol. II, sections 3.2 and 3.8.
5. Whether the applicant has provided adequate information on the elevations of proposed permitted work in the Project plans, in violation of AH Vol. II, section 3.2.
6. Whether negative impacts to navigational waters adjacent to bridge crossings resulting from the Project will occur, and if so, whether they have been mitigated by the Permit.



7. Whether the negative impacts to navigational waters adjacent to bridge crossings should be considered by the District in the Permit.

8. Whether the negative impacts to navigational waters adjacent to bridge crossings will negatively impact the public health, safety and welfare such that the Project is contrary to the public interest.

9. Whether the applicant provided the District with adequate identification and delineation of wetlands impacted by the Project.

10. Whether the applicant failed to provide reasonable assurance that wetland mitigation would be sufficient under chapter 62-345, Florida Administrative Code, by failing to ground-truth wetland delineations or quality assessments.

11. Whether the applicant failed to adequately offset adverse impacts as a result of its failure to accurately evaluate and quantify impacted wetlands.

12. Whether the Permit should be denied because the District proposes to allow impacts not fully offset by appropriate mitigation and insufficient to achieve the programmatic goal and project permitting goal of no net loss in functions, in contravention of A.H. Vol. I, sections 10.1 and 10.3.3.1(a).

13. Whether the District failed to satisfy the staff evaluation requirements of AH Vol. I, sections 5.5.4.1 and 10.3.2.

14. Whether the applicant provided the District with the identification and characterization of all wetland resources impacted by the Project.

15. Whether the applicant has failed to accurately identify, quantify and characterize wetlands located within and adjacent to areas proposed for impacts using the acceptable

scientific source data and field practices as required by the Applicant's Handbook and chapters 62-340 and 62-345, Florida Administrative Code.

16. Whether the applicant's use and reliance on Florida Land Use Cover and Forms Classification Systems ("FLUCCS") maps to identify and characterize wetland and habitat areas provides the District with reasonable assurance for permit issuance.

17. Whether the application contains wetlands land use maps that are inconsistent with and do not match the wetland boundaries depicted on the Project plans provided to the District.

18. Whether the application contains surface water drainage and retainage information, tables and exhibits that do not match the Project plans provided to the District.

19. Whether the Project will cause impacts to threatened or listed species in contravention of applicable statutes and rules.

20. Whether the applicant's failure to properly characterize wetland and habitat areas results in a failure to provide reasonable assurances that secondary or cumulative impacts meet applicable statutes and rules.

21. Whether the factual bases for the claimed exemptions are accurate and sufficiently support the cumulative impact analysis and the conclusions reached by the District.

22. Whether the factual bases for the claimed general permit are accurate and sufficiently support the cumulative impact analysis and the conclusions reached by the District.

23. Whether reasonable assurances were provided the District for the application for a general permit to install fiber optic cable (Permit No. 56-03442-P; Application No. 151002-23) where insufficient or inadequate wetland identification or assessment was provided to the District.

24. Whether the District's grant of a general permit to install fiber optic cable (Permit No. 56-03442-P; Application No. 151002-23) authorized the installation of cable in wetlands, artificial water and residential canals, without any prior identification and location of wetland or habitat resource impacts.

25. Whether the applicant failed to provide the District with adequate identification of wetland impacts.

26. Whether impacts to wetlands will occur due to the Project that are not described in the permit application.

27. Whether impacts to surface waters will occur due to the Project that are not described in the permit application.

28. Whether the jurisdictional wetland boundaries were adequately identified by the applicant and considered by the District in the processing of the application.

29. Whether adverse impacts to wetlands off-site and outside of the limits of construction due to the Project have been adequately identified and considered by the District in the processing of the application as required by AH Vol. I, section 10.2.7(d)(2).

30. Whether the applicant has provided the District with reasonable assurances for permit issuance regarding adverse impacts to wetlands off-site and outside of the limits of construction due to the Project as required by AH Vol. I, section 10.2.7(d)(2).

31. Whether the District has considered future projects or activities that would not occur but for the proposed activity, including where the proposed activity would be considered a waste of resource should the future project or activities not be permitted, as required by AH Vol. I, section 10.2.7(d).

32. Whether the applicant failed to provide the District with adequate identification of surface water impacts, including impacts to water quality and water quantity.

33. Whether the applicant's failure to accurately describe existing conditions within the right-of-way ("ROW") not only affects the accurate characterization of impacts to wetlands and endangered species, but prevents the accurate assessment of surface water impacts.

34. Whether the issuance to AAF of general permits and exemptions, the challenged Permit modification, and activities excluded from review from the Permit modification, including bridge crossings, road crossings, and other areas, have all been coordinated and accomplished so as to provide the District with piecemeal and segregated information to avoid a comprehensive review by the District of direct impacts, secondary impacts and cumulative impacts to wetlands, wildlife habitat, surface waters, and endangered and threatened species in contravention of chapters 62-330 and 62-345, Florida Administrative Code.

35. Whether the application failed to address secondary impacts to sovereign submerged lands and sensitive estuarine environments (bridge crossings) upon which the regulated activity wholly depends.

36. Whether the application adequately describes or depicts impacts to wetlands or other surface waters within and adjacent to proposed construction activities.

37. Whether the figures provided in the application are inconsistent with each other and create ambiguities related to regulated impacts from the Project.

38. Whether the applicant failed to consider and provide the District with information and analyses on secondary impacts to jurisdictional wetlands.

39. Whether the applicant failed to consider and provide the District with information and analyses on cumulative impacts to jurisdictional wetlands.

40. Whether the cumulative impact analysis provided by the applicant failed to account for protection and preservation rules and existing preserve areas as required by AH Vol. I, section 10.2.8(b).

41. Whether the cumulative impact analysis provided by the applicant failed to consider local comprehensive plans and applicable land use restrictions and regulations of Martin County as required by AH Vol. I, section 10.2.8(b).

42. Whether the cumulative impact analysis provided by the applicant failed to consider local comprehensive plans and applicable land use restrictions and regulations of St. Lucie County as required by AH Vol. I, section 10.2.8(b).

43. Whether the cumulative impact analysis provided by the applicant provided inaccurate identifications of at-risk and existing conservation areas as required by AH Vol. I, section 10.2.8(b).

44. Whether the District evaluated direct, secondary and cumulative impacts to wildlife, including endangered and threatened species, from the proposed increased intensity of use of high-speed passenger rail coupled with existing low-speed freight rail.

45. Whether the applicant's analysis for listed species in Exhibit 3.11 of the application fails to address the impacts from the Project on applicable species referenced in AH Vol. I, Table 10.2.7-1.

46. Whether the applicant has failed to avoid impacts to listed marine species through an alternate project location or route as required in an appropriate reduction/elimination evaluation and demonstration.

47. Whether the applicant has failed to demonstrate that the Project is not contrary to the public interest regarding unmitigated adverse effects to fishing, recreational values, or marine productivity in the vicinity of the Project.

48. Whether the applicant failed to consider and provide the District with information and analyses on secondary impacts to endangered and threatened species, including impacts to habitat for listed wildlife species that are wetland dependent and use upland habitats for nesting or denning such as the gopher frog, alligator or Florida sandhill crane.

49. Whether the applicant failed to consider and provide the District with information and analyses on cumulative impacts to endangered and threatened species, including impacts to habitat for listed wildlife species that are wetland dependent and use upland habitats for nesting or denning such as the gopher frog, alligator or Florida sandhill crane.

50. Whether the applicant has failed to provide the District with reasonable assurances that unmitigated impacts to wildlife use of existing wetlands will not occur.

51. Whether reasonable assurance has been provided that the Project will not cause adverse secondary impacts to water resources.

52. Whether reasonable assurance has been provided that the Project satisfies antidegradation requirements for surface waters under chapters 373 and 403, Florida Statutes, and rule 62-302.300, Florida Administrative Code.

53. Whether reasonable assurance has been provided that the Project satisfies antidegradation requirements for Outstanding Florida Waters under chapters 373 and 403, Florida Statutes, and rule 62-4.242, Florida Administrative Code.

54. Whether reasonable assurance has been provided that the Project satisfies narrative and numeric nutrient criteria applicable to adjacent surface waters.

55. Whether the District has failed to take into account the qualitative and quantitative difference between traditional and historic rail and the high-speed rail project as proposed when considering impacts to endangered and threatened species.

56. Whether the existing use of the ROW is being expanded and changed from a lower-speed freight train activity on one set of tracks to a dual-use lower-speed freight train and high-speed passenger train on two separate tracks by the proposed Project.

57. Whether the frequency of train traffic will increase as a result of the Project.

58. Whether new impacts will occur due to construction activities, and once complete, operational activities, off-site and outside of the ROW.

59. Whether the existing single track will be re-aligned and moved from areas with curves to compensate for required higher speeds needed for the new high-speed passenger train.

60. Whether the Permit may be issued where all environmental and water impacts from the Project have not been reviewed and considered by the District under the Applicant's Handbook.

61. Whether, based upon the multiple inaccuracies within the application materials and permit exhibits, including the complete omission of linear project segments upon which the purpose of the regulated activity is wholly dependent, including a review of water quality discharges, safety and welfare impacts, environmental impacts, secondary impacts, and cumulative impacts proposed in such project segments, the applicant has failed to demonstrate that the activities proposed are not contrary to the public interest, as required by AH Vol. II., Appendix E; AH Vol. II, sections 3.2, 3.8, 4.2.1(a), and 5.1(a); AH Vol. I, section 10.1.1; and rule 62-330.302, Florida Administrative Code.

62. Whether the water quality calculations contained in the application take into account the additional required measures for discharges to an Outstanding Water Body, the St. Lucie River Estuary and the Indian River Lagoon, as required by rule 40E-4.091, Florida Administrative Code.

63. Whether the applicant has provided reasonable assurances that stormwater discharges inside and outside of the ROW at roadway crossings and lands adjacent to such crossings, including roadside and trackside swales, will meet standards in AH Vol. II, sections 3.2 and 3.8.

64. Whether all proposed trackside swales identified in the applicant's drainage report are reflected in Project construction plans as required by AH Vol. II, sections 5.1, 5.2 and 5.3.

65. Whether any trackside swales for the Project are required by AH Vol. II, sections 5.1, 5.2 and 5.3, but are not included in the application nor the Project plans.

66. Whether any trackside swales required by AH Vol. II, sections 5.1, 5.2 and 5.3, but not included in the application nor the Project plans have the potential to discharge untreated stormwater into wetlands and/or the Savannas Preserve State Park.

67. Whether proposed trackside swales fail to contain a stormwater inlet and discharge structure as required by AH Vol. II, section 5.1(a).

68. Whether the swales proposed for the Project meet the design standards required by AH Vol. II, rule 62-25.025, Florida Administrative Code, and section 403.803(14), Florida Statutes.

69. Whether the proposed permit adequately provides the required water quality certifications under 33 U.S.C. section 1341.



70. Whether the applicant failed to acquire a required NPDES permit for dredging and filling activities.

71. Whether the new, second railroad track, should be subject to a comprehensive review by the District in the Permit of all standards set forth in the AH Vols. I and II, and all applicable District statutes and rules.

72. Whether the new, second railroad track will be located in different locations than any pre-existing locations, will involve a new higher intensity high-speed passenger train compared to any previous use at that location, and will involve a combined freight train on one track and a new high-speed passenger train with more frequent use whereas the previous use involved only slower-speed freight trains.

73. Whether the new, second railroad track is an activity qualifying as routine custodial maintenance set forth in AH Vol. I, sections 3.0 and 3.1, or rule 62-330.020(1), Florida Administrative Code.

74. Whether the new, second railroad track qualifies as a grandfathered activity under sections 373.4131(4) or 373.414(11), (12)(a), (13), (14), (15) or (16), Florida Statutes.

75. Whether the Final Environmental Impact Statement ("FEIS") or its predecessor, the Draft Environmental Impact Statement ("DEIS"), issued by the U.S. Department of Transportation, Federal Railroad Administration, upon which the District (and/or the applicant) relies (in part or in whole) in the issuance of the permit is inadequate, inaccurate, incomplete, and contains insufficient information to demonstrate reasonable assurances for permit issuance.

76. Whether the FEIS or the DEIS fails to analyze whether adverse impacts will occur to any benthic resources, including Johnson's Seagrass, due to the Project.

77. Whether the FEIS or the DEIS fails to provide a full alternatives analysis and precludes a thorough comparison of impacts to wetlands and wildlife.

78. Whether the FEIS or the DEIS is not supported by data and analysis to appropriately analyze the Project's potential impacts to significant wetland and threatened and endangered species.

79. Whether the FEIS or the DEIS fails to consider habitat fragmentation and barriers experienced along the Project's high-speed, high traffic transportation corridor.

80. Whether habitat fragmentation and barriers experienced along the Project's high-speed, high traffic transportation corridor are a significant environmental impact to wildlife due to the Project.

81. Whether the FEIS or the DEIS includes inadequate safety analysis for crossings, and thereby allow safety risks by not requiring VPD technology, lack of storage space at crossings, school bus safety, and RHM technology.

82. Whether the FEIS or the DEIS fails to consider impacts of crossing signal malfunctions.

83. Whether the FEIS or the DEIS includes faulty assumptions and calculations regarding crossing closures.

84. Whether the noise impact conclusions contained in the FEIS or the DEIS are not supported.

85. Whether the FEIS or the DEIS contains inadequate traffic impact analysis resulting from the Project.

86. Whether the FEIS or the DEIS contains inadequate cultural resource and archeological assessments.

87. Whether the District failed to consider impacts to low-income and minority populations in Martin and St. Lucie Counties due to impacts caused by the Project.

88. Whether the District failed to analyze and assess impacts due to the Project on low-income and minority populations in Martin and St. Lucie Counties.

89. Whether the impacts from the Project, including vibration, noise, crossing blockages, safety, environmental and ecological impacts and lower property values, on low-income and minority populations in Martin and St. Lucie Counties, will negatively impact the public health, safety and welfare such that the Project is contrary to the public interest.

90. Whether the District addressed the likely higher incidence of exotic species introduction resulting from the Project.

91. Whether the District addressed the likely reduction in wildlife support functions resulting from the Project.

92. Whether the higher incidence of exotic species resulting from the Project will result in increased management costs for the Petitioners and private landowners.

93. Whether the likely reduction in wildlife support functions resulting from the Project will result in increased management costs for the Petitioners and private landowners.

94. Whether proposed, permitted, exempted, and omitted safety and welfare impacts, environmental impacts, secondary impacts, and cumulative impacts of the proposed Project could be avoided by utilizing an alternative route.

95. Whether the applicant failed to identify existing protected wetlands that will be negatively impacted by the Project.

96. Whether the applicant failed to identify conservation lands supporting multiple wetland-dependent endangered or threatened species within secondary or cumulative impacts analyses.

97. Whether the applicant or the District failed to consider practicable design modifications to reduce or eliminate adverse impacts under AH Vol. I.

98. Whether the applicant or the District failed to consider alignment alternatives for the proposed linear system that could eliminate or reduce impacts under AH Vol. I.

99. Whether practicable alignment alternatives exist that are preferable to the Project's current alignment.

100. Whether the applicant or the District conducted site specific analyses of wetlands to be impacted by the Proposed Project using the factors under AH Vol. I section 10.2.2.3.

101. Whether the current Project location and route will result in more negative impacts to listed species than alignment alternatives due to the scrub and estuarine habitats in the chosen location and route.

102. Whether Martin County will be negatively impacted by the proposed ERP.

103. Whether St. Lucie County will be negatively impacted by the proposed ERP.

#### **STATEMENT OF ULTIMATE FACTS**

Petitioners' statement of ultimate facts that warrant reversal is set forth below. Petitioners reserve the right to amend and supplement this statement of ultimate facts, as necessary:

104. The application for the environmental resource permit is incomplete and the applicant has failed to adequately respond to timely requests for additional information.

105. The application for the environmental resource permit, as proposed, should be denied.

106. The applicant has not provided reasonable assurance of compliance with the applicable statutes and District rules.

107. Martin County and St. Lucie County will be negatively impacted by the proposed ERP.

### **APPLICABLE RULES AND STATUTES**

Petitioners' list of applicable statutes and rules that the Petitioners contend warrant reversal are set forth below. Petitioners reserve the right to amend and supplement this list, as necessary.

108. The applicable statutes and rules are as follows:

- a. Chapter 120, Florida Statutes.
- b. Chapter 373, Part IV, Florida Statutes.
- c. Chapter 403, Florida Statutes.
- d. Chapter 62-4, Florida Administrative Code.
- e. Chapter 62-302, Florida Administrative Code.
- f. Chapter 62-330, Florida Administrative Code.
- g. The Environmental Resource Permit Applicant's Handbook, Vols. I and II, incorporated by reference in rule 62-330.010(4), Florida Administrative Code.
- h. Section 401 of the Clean Water Act, 33 U.S. Code 1341.
- i. The statutes and rules referenced elsewhere in this petition.

### **DEMAND FOR RELIEF**

Petitioners, Martin County and St. Lucie County, respectfully request the following regarding the Proposed Agency Action:

- a. This Petition be referred to the Division of Administrative Hearings for assignment of an independent Administrative Law Judge to conduct a formal administrative hearing under sections 120.569 and 120.57(1), Florida Statutes, and chapter 28-106, F.A.C., on the issues raised herein;
- b. That following a formal administrative hearing, the Administrative Law Judge enter a Recommended Order recommending the denial of AAF's ERP application, and that the District enter a Final Order denying AAF's ERP application; and
- c. Any such other relief as is just and proper, including attorney's fees, costs and expenses.

Respectfully submitted this 14th day of September, 2016.

/s/ Segundo J. Fernandez  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that the foregoing has been furnished on this 14th day of September, 2016, to: Agency Clerk, South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida 33406, at [clerk@sfwmd.com](mailto:clerk@sfwmd.com); and a copy has been furnished to:

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