

August 5th, 2022

Via Email

Florida Department of Environmental Protection

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Cc: Alicia Lowenstein

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Re: I-95/Pioneer Trail Interchange Objection Comments

Permit Application No. 416255-001-SFI

Dear Ms. Lowenstein and FDEP,

These comments are submitted on behalf of the undersigned organizations and individuals, and complement comments already sent to the FDEP over previous months and years.

We believe that the proposed highway interchange at Interstate-95 and Pioneer Trail in New Smyrna Beach is **not in the public's best interest**, and that the "No Build" alternative is the one that should be implemented. We strongly recommend **denial** of Permit Application No. 416255-001-SFI.

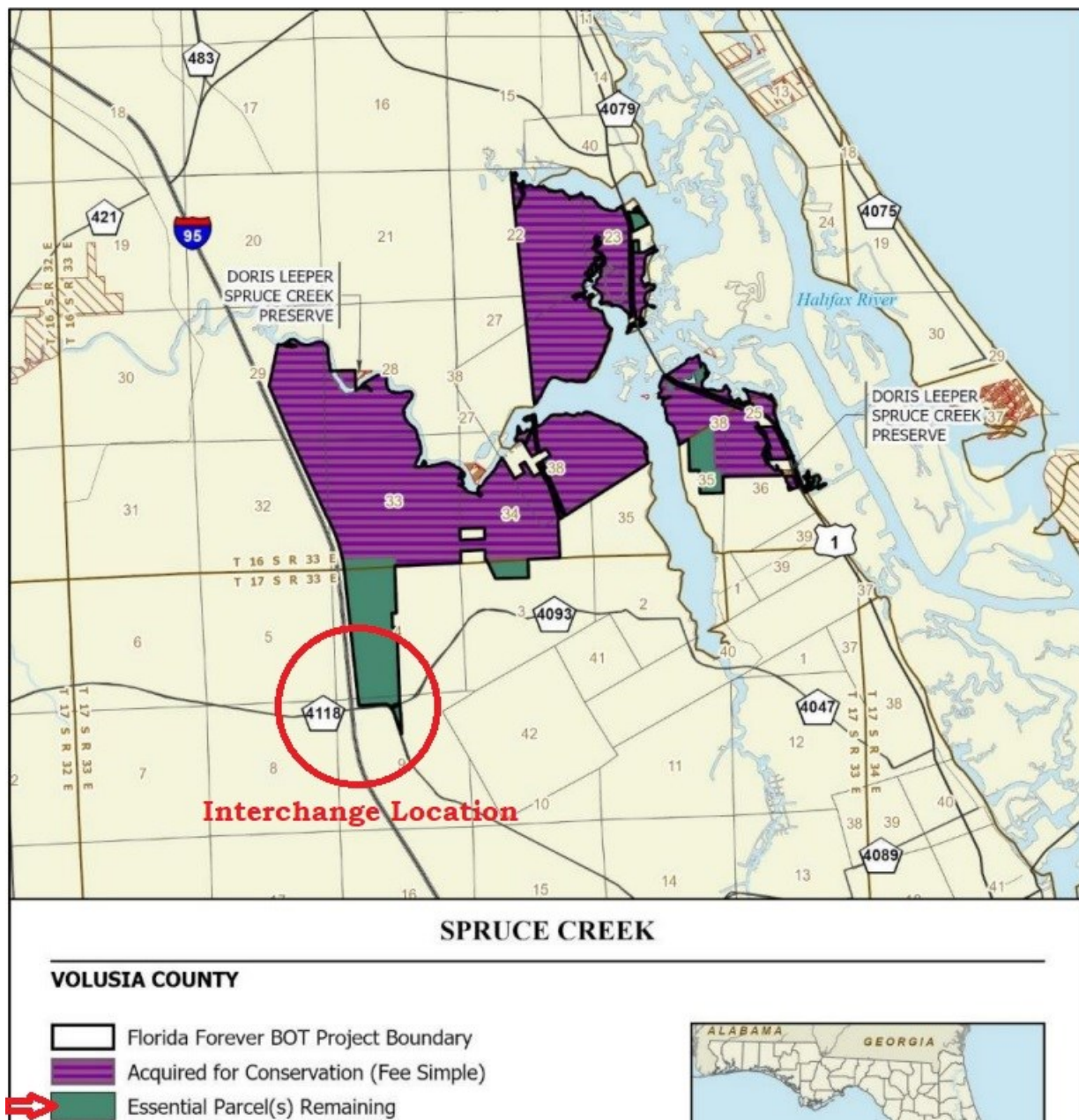
Our concerns stem mainly from cost, reduction in quality of life, worsening of traffic, increased flood risk, and most importantly, negative impacts to the environment that such a development would bring. During the most recent public comment period, the FDOT received *at least* **375 comments in opposition to only 49 in favor**, but yet the FDOT proceeded anyway, contrary to the public's wishes. It is unclear why.

The area on which the interchange is being proposed is land that is critical to the health and well-being of the Doris Leeper Spruce Creek Preserve (DLSCP, the Preserve) and Spruce Creek itself, an Outstanding Florida Waterbody (OFW). Leaving land undeveloped allows for more plant and animal species, including endangered and/or threatened species like the scrub jay and gopher tortoise, to have habitat to survive. Wetlands and forests themselves serve important ecological functions that are of benefit to people and nature alike, cleaning our air, water, and soil. Manatees also reside in Spruce Creek, so any negative affects to the area nearby could drastically hurt this imperiled species.

Part of the land where this construction is potentially slated to occur is on land that has been (and still is) desired to be purchased for conservation by state and/or local government agencies [see: https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_BOT_SpruceCreek.pdf]. The 2021 Florida Forever Five-Year Plan for Spruce Creek calls that piece an “**essential parcel**,” and places a cost of the remaining 366 acres at just ~\$6 million, which is less than 10% of the total Interchange budget of \$80+ million.



2021 Florida Forever Five-Year Plan || Spruce Creek



That northeast parcel (relative to the interchange project) is therefore rated very high in terms of land acquisition value, both for the need to preserve filtration lands within the Spruce Creek waterbasin (as not much remains in an undeveloped state), and for the need and desire to expand the boundaries of the DLSCP. Any nature conservation area becomes more effective in its ability to maintain a healthy and sustainable ecosystem the larger it is, and for many conservation areas, the entire purchase and/or reservation occurs stepwise over many years. It is clear that the public has always desired to add more land into the DLSCP (as additional land purchases over the years have shown), but this process is nowhere near done, and this critical land where the interchange is planned **should not be built on** in order to allow the public to amass the funds and time necessary to add it to the Preserve, with special acknowledgement to the recently passed Volusia Forever ballot initiative in 2020 which could do just that.

Also, in 2014, Florida voters overwhelmingly passed a Constitutional Amendment which demanded more acquisition of conservation areas to protect our land and water. However, this desire of the public has been delayed or denied by improper (or lack) of implementation of the Amendment. As of 2022, legal challenges exist to try to force the state to fulfill the voters' wishes and set aside more money for land acquisitions; and after many years, the state is finally beginning to address nature corridors, allocating millions of dollars to that idea in this year's budget. But in order for those funds or the current challenges to have a chance at success, there needs to be land still available for purchase, so prematurely building an interchange on such land that would/should eventually be protected as conservation in the future renders the will of the people moot.

Additionally, we feel that the Florida Department of Environmental Protection has failed in its duties to protect Spruce Creek, as mandated by state and federal laws (like the Clean Water Act). OFWs like Spruce Creek necessitate special protections under Florida law that are generally not being followed due to the continued agnosticism of the state towards its study and protection. Specifically, we feel the FDEP (and jointly, water management district) is in **violation of its duties** by not creating or even trying to create a **Basin Management Action Plan (BMAP) for Spruce Creek**. In 2008, when a Total Maximum Daily Load (TMDL) study was concluded for Spruce Creek, several nutrient impairments were found. That TMDL report requested that a BMAP be implemented within the following year, but that was never done. Since then, no additional funding has been provided to conduct new TMDL studies, and **Spruce Creek remains impaired**.

BMAPs exist for the purpose of healing and protecting impaired waterways, and often implement rules such as limits on construction in the basin and land purchases in critical watershed areas. **Since a BMAP does not exist for the Spruce Creek waterbasin, it is our view that *any* development in the area is reckless and improvident** until such time as one is established. Otherwise, the BMAPs potential recommendations to save this land will be rendered useless.

Land cannot be protected once it is destroyed by construction.

Additionally, whether or not this interchange is built, we request that significant consideration be given to the installation of a **Nature Overpass** (or underpass) at or near this location. As mentioned previously, the DLSCP houses creatures which need adequate space to roam and forage. Providing an animal crossing bridge over I-95 which connects the Preserve with other undeveloped land to the south and west will go a long way in maintaining the biodiversity which the Preserve seeks to support. A couple animal corridor connection alternatives also exist, including saving a larger strip of land along Pioneer Trail or I-95, or possibly having an “underpass tunnel” instead, as has been implemented in other parts of Florida. Yet no serious consideration was given to these ideas in any of the “build” alternatives as presented.

The key is that without proper consideration of design, **this interchange could destroy the last nature corridor connecting Doris Leeper Spruce Creek Preserve with the rest of the state**. It would mean a slow death to the Preserve, and we don’t wish to see that happen. Please make sure a “nature corridor” is maintained, either through land purchasing, conservation easements, bridges, elevated roads, or other mechanisms to protect this sensitive area.

We disagree with the arguments of proponents of the interchange which state that this will benefit the public economically. With a \$80,000,000+ price tag, the public is already in the hole if it is built. Can you please clarify why these estimates are so high, and why the right-of-way purchasing is over \$30 million? In any case, no amount of economic benefit for a select few can counter the environmental damage that would be permanent to all. Quality of health and life for local people will be damaged by more traffic, noise, flooding, and pollution.

We are also strongly opposed to the “DRIs” mentioned as reasons for the interchange, as they also reduce our quality of life, and disagree that somehow local governments want this project. How was this assessed, and when was it last evaluated? What proof is there that current officials support this? Most elected leaders or candidates we speak to also oppose this terrible project, as noted by a

recent press release by Volusia County Chair Jeff Brower, who is **calling for an investigation** into FDOT's inappropriate use of a "Categorical Exclusion."

<https://www.wesh.com/article/volusia-county-environmental-impact-i-95-interchange/40734175>

<https://www.news-journalonline.com/story/business/real-estate/2022/07/27/brower-demands-probe-of-proposed-pioneer-trail-interchange-project/10166954002/>

A massive project such as this can in no reasonable sense be considered to have no impact on the environment, and therefore NEPA and other federal rules must apply. A comprehensive **Environmental Impact Statement** must be done.

Looking at the bigger picture, we worry that land near to the interchange project will face additional, secondary development pressures as a result of this interchange. These areas are not suitable for human habitation, are low-lying, are distant from any city center, and requires excessive drainage and fill to build on. There is a reason they have not been built on already, despite being discussed (and denied) for over 30 years. Additionally, the major reason for the economic recession from over a decade ago was exactly what the proposed "benefit" of this project would be, namely, more speculative home building, spurred on by improper governmental incentives and lax regulation.

We believe it is inappropriate for the FDOT to claim a "[Categorical Exclusion](#)" from federal environmental rules for a project which is slated to directly destroy dozens of acres of pristine wetlands. From our understanding of the permitting process, regulations promulgated under the National Environmental Policy Act (NEPA) provide that the permitting agency shall consider all effects, both direct and indirect. 40 C.F.R. 1508.8. All cumulative impacts shall also be considered. 40 C.F.R. 1508.7. In the permit applications, it does not appear that an analysis of all direct/indirect effects and cumulative impacts of this project was done. These include, but are not limited to:

- Fragmentation of the landscape
- Impacts to floodplain
- Increases in human population
- Impacts to the demand for municipal services
- Impacts to wildlife, including federally listed species
- Increased demand for water
- Creation of sprawl
- Impacts to water quality and aquifer recharge

On the state level, according to St. Johns River Water Management District Policy:

2.0 Criteria for Evaluation – Reasonable Assurance Revised 6/1/18

Except as provided in section 1.2.3 of this Volume, an applicant for an individual permit must provide reasonable assurance that the proposed activities will meet the criteria in rules 62-330.301 and 62-330.302, F.A.C. More specifically, under 62-330.301, F.A.C., an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal or abandonment of a project within SJRWMD:

- (a) Will not cause adverse water quantity impacts to receiving waters and adjacent lands (62-330.301(1)(a), F.A.C.);
- (b) Will not cause adverse flooding to on-site or off-site property (62-330.301(1)(b), F.A.C.);
- (c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities (62-330.301(1)(c), F.A.C.);
- (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters (62-330.301(1)(d), F.A.C.);
- (e) Will not adversely affect the quality of receiving waters such that the water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., (incorporated by reference in 40C-4.091(1)(c)) including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated (62-330.301(1)(e), F.A.C.);
- (f) Will not cause adverse secondary impacts to the water resources (62-330.301(1)(f), F.A.C.);
- (g) Will not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to section 373.042, F.S., (62-330.301(1)(g), F.A.C.);
- (h) Will not cause adverse impacts to a Work of the District established pursuant to Section 373.086, F.S. (62-330.301(1)(h), F.A.C.);

(i) Will be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed (62- 330.301(1)(i), F.A.C.);

(j) Will be conducted by a person with the financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued (62- 330.301(1)(j), F.A.C.); and

(k) Will comply with the applicable special basin or geographic area criteria in Chapter 40C-41, F.A.C. (62-330.301(1)(k), F.A.C.);

We believe **several of the items above are being violated**, especially since a federal “exclusion” from NEPA and other rules has been erroneously applied. When dozens of wetlands are directly impacted, and hundreds more indirectly, it seems wrong to bypass laws whose purpose is to protect our most vulnerable areas.

We therefore request that you **put an immediate halt to the interchange project**. In addition, we wish to be notified of any discussion, meeting, application, or approval of permits for this project on any level, including federal, and including any supplemental modifications. We are happy to work with you to review the environmental impacts of the project designs, and would like to assist in whatever way needed. For all of the reasons mentioned in this letter, we would like to **request a public meeting** to discuss further.

Finally, if it is determined that an interchange must be done, we request that you choose the design that impacts the fewest wetlands and forests, **especially in the northeast quadrant where the Preserve is located**. Current plans appear to show the FDOT building developer’s roads for them, as well as a new roundabout, which not only is unrelated to the interchange project and was never presented to the public or federal agencies, but goes against goals of minimization of impacts. Please note that by its establishment, the Community Development District in that area is **responsible for constructing its own infrastructure**, not the general tax-payers. This requirement should prevent the FDOT from including any non-interchange-related addendums to the project.

As a final supplement, we are herein attaching our **Application Response Rebuttal** which covers many of the items listed in FDEP’s State 404 Program Public Notice for this Project (No. 416255-001-SFI) on a point by point basis.

Thank you for your consideration of these comments and we look forward to hearing from you soon.

Regards,

The Save Don't Pave Spruce Creek Coalition

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Florida Defenders of the Environment

Jim Gross, PG CPG, Executive Director

<https://fladefenders.org>

NSB Residents' Coalition, Inc.

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**Jeff Brower, Chairman
Volusia County Council**

July 27, 2022

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Re: Request for Investigation into Improper use of Categorical Exclusion for the I-95
Pioneer Trail Interchange—Volusia County, Florida

Gentlemen:

In my capacity as Chair of the Volusia County Council, I hereby request a formal inquiry into the Categorical Exclusion issued on January 27, 2021, by the Florida Department of Transportation (“FDOT”) for the I-95 Pioneer Trail Interchange (“Interchange”). (This Categorical Exclusion is attached.) This Categorical Exclusion was issued pursuant to the December 14, 2016 “Memorandum of Understanding Between Federal Highway Administration (“FHWA”) and FDOT” (“MOU”). (The MOU is attached.)

Pursuant to the MOU, to the Florida Division of the FHWA is empowered to investigate FDOT’s assumption of FHWA’s obligations under the National Environmental Policy Act of 1969, 42 U.S.C. §4321, et seq. (“NEPA”). FHWA NEPA regulation 23 CFR § 771.117(g) also provides for FHWA review of FDOT use of a Categorical Exclusion. I ask for review and investigation into the issuance of this Categorical Exclusion.

As my letter demonstrates, the I-95 Pioneer Trail Interchange Categorical Exclusion was improperly issued by FDOT in violation of NEPA and FHWA’s implementing NEPA regulations. Significantly, I note that the Categorical Exclusion was issued in direct violation of an opinion issued by District Court Judge Paul Byron of the Middle District of Florida (Orlando Division): in RB Jai Alai, LLC v. Secretary of Florida Department of Transportation, et al., 112 F.Supp.3d (MD Fla. 2015). (The ruling is attached.) In his ruling, Judge Byron held that the construction of a highway interchange cannot avoid full environmental review under NEPA through designation as a Categorical Exclusion. I have to assume FDOT is aware of this case, since FDOT was the defendant. At any rate, this federal court ruling is binding authority upon FDOT in the Middle District of Florida, which includes Volusia County.

Nearly all constituents I speak with oppose the construction of this interchange, which will facilitate intense development into an area of Volusia County now recognized as part of the Florida Wildlife Corridor. The Florida Wildlife Corridor Act, section 259.1055, Florida Statutes was adopted *unanimously by the Florida Legislature in 2021*. The act recognizes that Florida is being paved over at such a fast rate that our state’s ecological diversity is facing obliteration:

(2) LEGISLATIVE FINDINGS.—The Legislature finds that this state’s population is growing rapidly and that lands and waters that provide this state’s green infrastructure and vital habitat for wide-ranging wildlife, such as the Florida panther, need to be preserved and

protected. The Legislature further finds that the Florida wildlife corridor is an existing physical, geographically defined area consisting of more than 18 million acres of land, 10 million of which are conservation lands.

A stated FDOT purpose for building the I-95 Pioneer Trail Interchange is to provide access for the development of those very lands designated by the Florida Wildlife Corridor as “Opportunity Areas” needing permanent protection in order to achieve permanent biodiversity connectivity throughout the state:

“Opportunity area” means those lands and waters within the Florida wildlife corridor which are not conserved lands and the green spaces within the Florida wildlife corridor which lack conservation status, are contiguous to or between conserved lands, and provide an opportunity to develop the Florida wildlife corridor into a statewide conservation network.

Section 259.1055(4)(e), Florida Statutes. (The statute is attached hereto.)

It is axiomatic in Florida that development follows road construction. There are ambitious, politically connected developers who seek the construction of this interchange in order to enable development. These developers *need* the Interchange because, if FDOT builds it, development will rush in, like the tide. The Categorical Exclusion itself makes this obvious at page 3 of 130:

The project also aims to support economic development associated with existing and approved developments, including three Developments of Regional Impact (Farmton, Restoration, and Pavilion at Port Orange).

Both Farmton and Restoration are “opportunity areas” designated as Zone 1-critical linkage priority within the Florida Wildlife Corridor by the Florida Department of Environmental Protection. This critical fact *has not been considered or mentioned by FDOT in its decision to categorically exclude the I-95 Pioneer Trail Interchange from federal environmental review.*

I am on record opposing the misuse of taxpayer funds (federal, state, county and municipal) to fund new infrastructure projects in undeveloped areas that enable developers to inject their sprawl into our remaining undeveloped/agricultural and wetlands, as well as critical watersheds. The I-95 Pioneer Trail Interchange constitutes just such a misuse of taxpayer funds. The property rights of every Volusia County resident, indeed the rights of

every Floridian, must be considered before the destruction of the Indian River Lagoon, St. Johns River Water Management District, our common aquifer, and the fin fish population of our offshore fishing areas continues. We are all the stewards of our unique ecosystems.

Please be aware that the I-95 Pioneer Trail Interchange is very unpopular among my constituents. Volusia County residents see the I-95 Pioneer Trail Interchange as an example of prioritizing politically connected developers over residents. This Interchange will also be seen as an example of “privatizing the profits and socializing the costs” at the expense of taxpayers. It will further degrade our already destroyed water quality and quantity. It will intentionally inject unwanted sprawl, congestion and pollution into lands designated for Florida Wildlife Corridor protection. It will further degrade the quality of life of Volusia County residents. The I-95 Pioneer Trail Interchange Project illustrates an abuse and misuse of government funds for the purpose of facilitating politically connected developer profit seeking at the expense of the public good. I am staunchly opposed to this project and am confident that I speak for a majority of Volusia voters.

Description of the Pioneer Trail Interchange Project

This proposal is for a new cloverleaf interchange on I-95 to access a completely undeveloped area in Volusia County that is the subject of intense developer desire. FDOT states that the immediate project area comprises 296.63 acres. According to the Clean Water Act dredge and fill application, the construction of the interchange will destroy 64.86 jurisdictional acres of wetlands and surface waters. As we all know, wetlands that are deemed a “jurisdictional wetland” merely comprise a small, legally construed sliver of the actual wetland landscape. “Jurisdictional wetlands” is a constrained legal construct subject to political and court battles. It does not fully reflect the scope of hydrological impacts to the greater landscape, water quality and quantity.

Environmental Impacts Resulting from the Pioneer Trail Interchange Project

The purpose of this letter is not to itemize the myriad harmful, degrading direct, indirect, and cumulative impacts that will result to the Florida Wildlife Corridor, Spruce Creek, the Doris Leeper Preserve, the Indian River Lagoon, the aquifer, etc..... not to mention the quality of life of my constituents and future generations. Suffice it to say, the FDOT documents I reviewed relating to “environmental review” gives the impression that in 2016 the FDOT was a bureaucracy that did not care about Florida’s ecological health. I know for a fact this is not the case with you Governor DeSantis, nor is it the feeling or intent of Secretary Jarod Purdue.

The documents do not provide an accurate, honest, much less comprehensive analysis of anything, other than building the Interchange will result in little to no degrading

impacts. For an understanding of the genuine degrading impacts that will result from the construction of the Interchange, I am attaching for your review an eloquent, compelling letter in opposition to the Interchange written by my constituent Derek LaMontagne, PhD, co-President of the Sweetwater Coalition of Volusia County, Inc. Of particular importance, Dr. LaMontagne states:

*We believe that the proposed highway interchange at Interstate-95 and Pioneer Trail in New Smyrna Beach is **not in the public's best interest**, and that the "No Build" alternative is the one that should be implemented. Our concerns stem mainly from cost, reduction in quality of life, worsening of traffic, increased flood risk, and most importantly, negative impacts to the environment that such a development would bring. During the most recent public comment period, the FDOT received at least **375 comments in opposition to only 49 in favor**, but yet the FDOT proceeded anyway, contrary to the public's wishes. It is unclear why.*

The area on which the interchange is being proposed is land that is critical to the health and well-being of the Doris Leeper Spruce Creek Preserve (DLSCP, the Preserve) and Spruce Creek itself, an Outstanding Florida Waterbody (OFW). Leaving land undeveloped allows for more plant and animal species, including endangered and/or threatened species like the scrub jay and gopher tortoise, to have habitat to survive. Wetlands and forests themselves serve important ecological functions that are of benefit to people and nature alike, cleaning our air, water, and soil. Manatees also reside in Spruce Creek, so any negative affects to the area nearby could drastically hurt this imperiled species.

Part of the land where this construction is potentially slated to occur is on land that has been (and still is) desired to be purchased for conservation by state and/or local government agencies [see:

*https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_BOT_SpruceCreek.pdf]. The 2021 Florida Forever Five-Year Plan for Spruce Creek calls that piece an "**essential parcel**," and places a cost of the remaining 366 acres at just ~\$6 million, which is less*

than 10% of the total Interchange budget of \$80+ million.

Improper Application of Categorical Exclusion to the I-95 Pioneer Trail Interchange

After receiving many negative comments from Volusia County citizens regarding the I-95 Pioneer Trail Interchange Project, I reviewed its Federal Register Notice, “Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida” 86 Fed. Reg. 11822 (February 26, 2021). This Notice declares that the Project is subject to a Type 2 Categorical Exclusion that was issued January 27, 2021. Accordingly, no NEPA review was conducted.

In RB Jai Alai, LLC v. Secretary of Florida Department of Transportation, et al., Federal District Court Judge Byron of the Middle District of Florida eloquently addressed the importance of proper NEPA review in government decision making:

A. NEPA: Our National Charter for Protecting the Environment

Following nearly a century of rapid economic expansion, population growth, industrialization, and urbanization, it had become clear by the late 1960s that American progress had an environmental cost. *See* 42 U.S.C. § 4331(a); 115 Cong. Rec. 26,571 (1969) (remarks of Rep. John Dingell). A congressional investigation into the matter yielded myriad evidence indicating a gross mismanagement of the country’s environment and resources, most notably at the hands of the federal government. S.Rep. No. 296, 91st Cong., 1st Sess. 8 (1969); Thomas O. McGarity, *The Courts, the Agencies, and NEPA Threshold Issues*, 55 Tex. L.Rev. 801, 805 (1977) (noting “a remarkable consensus of opinion” that the federal agencies contributed substantially to the country’s degraded environmental state). As a result, lawmakers and the general public alike called for an urgent and sweeping policy of environmental protection. Congress answered these calls by enacting the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4370h, which has now served for forty-five years as “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). With NEPA, Congress mandated that federal agencies take a “hard look” at the environmental consequences of their actions and to engage all practicable measures to prevent environmental harm when engaging in agency action. *Kleppe v. Sierra Club*, 427 U.S. 390, 409, 410 n. 21, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976) (citing 42 U.S.C. § 4331(b)). Furthermore, to remedy the widespread mistrust of the federal agencies,

Congress incorporated within NEPA “action-forcing” provisions which require agencies to follow specific procedures in order to accomplish any federal project. *Id.* at 409 & n. 18, 96 S.Ct. 2718. The cornerstone action-forcing provision within NEPA is the environmental impact statement (“EIS”). As an agency plans a major federal action, it is required to consider the environmental impacts of that action. 40 C.F.R. § 1500.1. Projects that are generally known by the agency through its experience to significantly affect the quality of the human environment necessitate the preparation of an EIS, which describes in detail both the positive and negative environmental impacts of the action and analyzes other alternatives that might provide the same benefits at a lower environmental cost. *See id.* §§ 1502.1–1502.25. Conversely, projects that are known by the agency through its experience to not significantly affect the human environment (either individually or cumulatively) can be classified as categorical exclusions (“CEs”), relieving the agency of the EIS requirement. *Id.* § 1508.4; *see also id.* § 1501.4(a). Finally, where an agency’s regulations do not classify a major federal action as a CE or as one requiring an EIS, or where an agency is unsure of how a particular project should proceed, the agency will prepare an environmental assessment (“EA”) to briefly and concisely determine whether an EIS is necessary. *Id.* §§ 1501.4(b), 1508.9. An EA will result in the agency either deciding to prepare a full EIS or filing a “finding of no significant impact,” which, like a CE, dispenses with the EIS requirement. *Id.* § 1508.13.

112 F.Supp. 3rd at 1307-1308.

As set forth in NEPA implementing regulation 40 CFR § 108.1(d), a Categorical Exclusion is defined as:

Categorical exclusion means a category of actions that the agency has determined, in its agency NEPA procedures (§ 1507.3 of this chapter), normally do not have a significant effect on the human environment.

Like all federal agencies, FHWA must comply with its statutory obligations under NEPA through application of its own in-house NEPA regulations. FHWA NEPA regulation 23 CFR §771.117 sets forth the use of the Categorical Exclusion in FHWA projects.

In its Administrative Action dated January 27, 2021, FDOT published that the I-95 Pioneer Trail Interchange is a “Type 2 Categorical Exclusion.” FDOT’s June 14, 2017 “Project Development and Environment Manual Type 2 Categorical Exclusions,” establishes that Type 2 Categorical Exclusions are governed by 23 CFR §771.117(a), which provides in relevant part:

(a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FHWA’s past experience with similar actions, do not involve significant environmental impacts. They are actions that: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

The I-95 Pioneer Interchange clearly does not meet the categorical exclusion criteria set forth in 23 CFR §771.117(a). My cursory review of FDOT’s documents produced to justify and rationalize the Categorical Exclusion for the I-95 Pioneer Trail Interchange admit that this Interchange will have “significant impacts to planned growth or land use for the area” as well as other significant impacts. I now set forth a short, admittedly incomplete list of FDOT’s own statements taken from FDOT’s own documents relating to this project. See:

<https://www.cflroads.com/project/436292-1>

These FDOT documents relating to the I-95 Pioneer Trail Interchange illustrate the undeniable error of invoking the Categorical Exclusion for this proposed Interchange. For example:

*a deliberate goal of the Interchange is to “induce significant impacts to planned growth.” The FDOT 2020 “Indirect and Cumulative Effects Evaluation Technical Memorandum” for the I-95 Pioneer Trail Interchange makes it crystal clear that “The project also aims to support economic development associated with existing and approved developments, including several Developments of Regional Impact (Farmton, Restoration and Pavilion at Port Orange) as shown on Figure 1-2.” (page 3)

*FDOT’s own Indirect and Cumulative Impacts Memorandum provides this statement with respect to impacts to wetlands:

2.3.3.2 Indirect Effects on Wetlands A total of 20 individual wetlands and 11 other surface waters (OSW) were located within the direct impacts project study area. Seventeen wetlands and eight OSWs would be directly

affected by the recommended alternative evaluated in the study. A UMAM analysis of each wetland impacted by the preferred alternatives results in an estimated functional loss of 27.53 UMAM units associated with the project. Additionally, development associated with induced growth could potentially affect wetlands and surface waters in the indirect effects study area. These potential indirect effects to wetlands include placement of fill that could produce degradation/ changes in wetland functions. The total estimated wetlands in the indirect effects study area as shown on Figure 2-11 is approximately 7,500 acres (25.5%). The wetlands within the potential growth parcels within the Indirect Effects Study Area shown on Figure 2-12 is approximately 3,700 acres (30.3%). The amount of wetlands within the Induced Growth Area (Figure 2-13) is approximately 1,000 acres (25%). Of these, approximately 600 acres (30%) are within the boundaries of the No Build planned future development growth areas (those areas with planned developments at the current time unrelated to this project) as shown on Figure 2-14. Wetlands in the induced development parcels identified in the Build forecasted growth area (Figure 2-15) include approximately 200 acres (22.2%).

And yet this Memorandum blithely goes on to say not to worry, just keep building--there will not be many negative impacts.

*The October 2020 “Natural Resource Update Report” for the I-95 Pioneer Trail Interchange issued October 2020 makes this statement in connection with water quality impacts:

2.3-A Water Resources

Comments from the FDOT’s Efficient Transportation Decision Making (ETDM) screening were received from the SJRWMD, Florida Department of Environmental Protection (FDEP), and the U.S. Environmental Protection Agency (EPA) regarding water quality and quantity. SJRWMD and the FDEP assigned a degree of effect of “none”, while the EPA assigned a “moderate” degree of effect for the project.

The EPA noted that the project is located within a 500’ buffer of a principal aquifer, surficial aquifer system, and recharge area. In addition, the EPA noted that the project is approximately five miles south of Spruce Creek, an Outstanding Florida Water (OFW).

The project is actually less than two miles from Spruce Creek at its closest point, without even considering tributaries. The project is also adjacent to and has the potential to involve wetland areas that are directly connected to Spruce Creek.

I take exception to these claims finding the I-95 Pioneer Interchange has no significant impacts and thus categorically excluded from NEPA review when absolutely no honest investigation was made?

Pursuant to the December 14, 2016, the MOU entered between FHWA and FDOT, FHWA transferred and assigned NEPA compliance to the Florida DOT. This MOU is referenced as authority for the issuance of the Pioneer Trail Interchange Categorical Exclusion. In relevant part for the purposes of this letter, the MOU provides:

3.2.2. This provision shall not be interpreted to abrogate FDOT's responsibilities to comply with the requirements of any federal environmental laws that apply directly to FDOT independent of FHWA's involvement (through federal assistance or approval).

Honest, transparent application of 23 CFR §771.117 to the Pioneer Trail Interchange demonstrates that a Categorical Exclusion is completely inappropriate and unlawful. As the facts demonstrate, the Interchange:

*has "[s]ignificant environmental impacts..." (§771.117(b)(1)) including, but not limited to: facilitating sprawl into areas designated as lying within the Florida Wildlife Corridor; admitted destruction of 64.86 acres of jurisdictional wetlands; degradation of Spruce Creek Preserve and the Indian River Lagoon; harmful impacts to the Doris Leeper Preserve.

* "Substantial controversy on environmental grounds..." (§771.117(b)(2)) as demonstrated by the turnout at public hearings on the Project; the comments and conversations I have with constituents regarding their fear of how the Interchange will be the proverbial nail in the coffin for Spruce Creek and surrounding rural lands; the citizen opposition to the Project that is ignored and stymied by FDOT and other involved agencies. I am happy to provide more evidence of this opposition and urge review of all letters of objection.

*No 4(f) analysis was conducted despite proximity to the Doris Leeper Preserve and the fact that part of the project area for the Interchange is slated for public acquisition and addition to the Preserve! (§771.117(b)(3))

The Pioneer Trail Interchange Project Must Be Rejected as a Categorical Exclusion under *RB Jai Alai, LLC v. Secretary of Florida Department of Transportation, et al.*, 112 F.Supp.3d (M.D. Fla. 2015)

Review and reconsideration of the Categorical Exclusion of the I-95 Pioneer Trail Interchange is further mandated because it is completely contrary to Judge Paul Byron's ruling in *RB Jai Alai, LLC v. Secretary of Florida Department of Transportation, et al.*, 112 F.Supp.3d (MD Fla. 2015). Judge Byron ruled that a Florida DOT elevated highway overpass called the "Flyover Project" in Casselberry, was improperly classified as a

Categorical Exclusion. Review of the I-95 Pioneer Trail Interchange establishes it is much, much more environmentally significant than the Flyover Project and is not the type of construction appropriate for application of a Categorical Exclusion. As Judge Byron ruled in RB Jai Alai:

Specifically, upon review of the Administrative Record and the applicable law, the Court concluded that the Flyover Project is not the type of project that may be categorically excluded under NEPA and [FHWA]. 112 F.Supp.3d at 1310.

Conclusion

I hope this letter provides you with sufficient documentation and binding legal authority to revisit and reconsider the Categorical Exclusion issued by FDOT for the I-95 Pioneer Trail Interchange. At a minimum, compliance with NEPA requires the preparation of a comprehensive Environmental Impact Study (“EIS”). The best course is to end consideration of this project.

Beyond that, FDOT and all state, local and federal agencies, including but not limited to the Florida Governor and cabinet, state water management districts, the Florida Department of Agriculture, the Florida Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, the U.S. Environmental Protection Agency, the U.S. Department of Interior, the U.S. Fish & Wildlife Service, the US Army Corps of Engineers, FHWA, the Federal Emergency Management Agency, county and municipal governments, and any other government actors that guide and control land and water use, must coordinate and incorporate the Florida Wildlife Corridor into their rules, policies and decision making. The Florida Wildlife Corridor Act is not a self-executing statute. Creative, deliberate, long-term commitment to the Corridor must be codified into binding law at every level of government in order to ensure the Corridor is a reality for future generations.

I look forward to discussing this with you further. Please do not hesitate to contact me.

Sincerely yours,

Jeff Brower
Volusia County Chair

Attachments

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FDEP Application Response Rebuttal

Permit Application No. 416255-001-SFI

PROJECT PURPOSE:

“The proposed I-95 interchange at Pioneer Trail is intended to reduce traffic congestion, enhance regional mobility, and provide a viable alternative for emergency evacuations for this area in southern Volusia County.”

Response: In a recent [news story](#), Volusia County Chair Jeff Brower commented that “If anybody thinks that putting this exchange here will take more cars off of 44 going to the beach or pioneer trail or airport road, it's going to put more,” and he is right. “Induced demand” is the concept of creating more traffic due to opening of a new facility which spurs on secondary factors like development. The concept is explained more thoroughly by *Smart Growth America* in the following article:

<https://smartgrowthamerica.org/induced-demand-calculator/>

which mentions that the “unreliable models that agencies depend upon have a poor track record of success” and this should not be overlooked. But even taking the FDOT’s own numbers, as outlined in a letter to FDOT by engineer Joe Dlubac, there won’t be much improvement:

“The state’s own predictions show that, by 2048, the interchange at Pioneer Trail is expected to result in a nominal 13% decrease in traffic at Dunlawton Ave. and a nominal 5% decrease at SR-44. Now 2048 is 25 to 30 years from now. I am an engineer/mathematician/statistician and am aware that predictions beyond 5 years are a reach; predictions 25 to 30 years into the future which result in only a nominal 5- 10% change is statistically insignificant; the data is meaningless.”

Similarly, according to *The Fourth Regional Plan*, “The only way to address congestion effectively is to manage traffic.” See:

<http://fourthplan.org/action/highway-congestion>

One way to manage traffic is to remove bottlenecks, but this project only will create a new one on Pioneer Trail due to the addition several new stoplights in under a mile and the fact that the road narrows and becomes two lanes. The website above provides a concrete example from New Jersey, stating: “One particularly striking example is the exit for I-80 off of I-287, a major interchange in New Jersey, where westbound traffic has dramatically increased since the interchange was built. Long queues extend back into the travel lanes and create a safety hazard.”

According to a [2020 Traffic Analysis Letter](#) by *Professional Planners and Engineers, Inc.*:

“Constructing new federal interchanges as a means of alleviating local LOS failures has never been a successful solution. In fact, a new interchange at Pioneer Trail has the potential of transferring, or at the very least, duplicating the problems at Dunlawton Blvd/Taylor Road”

A so-called “regional mobility” enhancement also fails to clearly define which “regions” are helped. In this case, if FDOT is planning to help locals get to the next town, they should note that the purpose of the interstate system is provide long distance travel, not local travel.

Furthermore, any argument on “safety” or “emergency services” needs to be reconciled with the dangers that such a new project and its secondary impacts would pose, including facts like:

- This rural area is far from any existing infrastructure, including police and fire services.

- Emergency evacuations could be accomplished currently by several other local roads.

- With more traffic to the area, there subsequently will be more accidents.

- Paving a floodplain area raises the risk of flooding to local homes and businesses.

- Habitat corridor loss to the Spruce Creek Preserve will degrade the biodiversity of the Preserve.

- Increased traffic to Pioneer Trail will increase air and noise pollution, which has public health consequences.

- Removal of wetlands and trees increases the risks posed by the climate crisis, many of which are felt significantly in Florida.

- Using tens of millions of dollars on this project prevents other, more needed projects from being built, several of which will do a lot more to improve mobility.

PROPOSED WORK:

“The applicant seeks authorization to impact 64.86 acres of wetland and surface water communities. . . . Facility improvements will include the widening of the Pioneer Trail overpass through reconstruction, construction of entry and exit ramps, construction of stormwater management facilities, and improvements to Pioneer Trail to the east and west of the interchange. . . . The 64.86 acres of impacts include 48.80 acres direct wetland impacts (45.80 acres forested and 3.00 acres herbaceous), 5.94 acres of surface water impacts, and 10.12 acres of secondary/indirect impacts (10.01 acres forested and 0.11 acres herbaceous). The wetland impacts occur in four (4) different vegetative communities. . . . A functional assessment of the federally jurisdictional wetlands . . . concluded that the direct and secondary impacts will incur a total functional loss of 35.62 UMAM units or 35.58 WRAP units to the onsite wetlands. The functional loss [will] be offset by the purchase of federal mitigation credits.”

Response: It should not have to be stated as it is obvious, but the loss of 64+ acres of wetland and surface water communities is a significant environmental loss for an area already suffering from environmental degradation. According to two different [Total Maximum Daily Load](#) reports from the FDEP for [Spruce Creek from 2008](#), it was found that Spruce Creek is **impaired**:

“The creek was verified as impaired for fecal coliform” and “The creek was verified as impaired for both DO [dissolved O₂] and nutrients.”

Concluding that: “A fecal coliform reduction of 53% is required” and “A TP [total phosphorous] reduction of 27% and a 25% reduction in BOD [biological oxygen demand] are required.”

After those 2008 studies were finished, FDEP failed to implement a BMAP (Basin Management Action Plan) for Spruce Creek, although required under Florida law. At this time, a BMAP protection is more than 10 years overdue, so it does not make sense for FDEP to approve projects in this watershed *until such time as a BMAP is created*, in order to ensure the creek is protected.

A [2020 Report from Coastal Risk Consulting](#) lists many issues that this project could have:

“1B. Impact of proposed project

- If permits are granted for pending development projects sought in the Preserve, there would be a significant adverse impact to plant and animal life in the area.

- A multitude of natural communities, including some that are imperiled, populate the preserve, including salt marsh, maritime hammock, scrubby flatwoods, bottomland forest, scrub and wet flatwoods. ([Spruce Creek Management Plan](#))

- These many natural communities provide habitat for a great variety of plant and animal species, many of which are listed species, and include: Cooper's Hawk, Tricolored Heron, Giant Leather Fern, Florida Manatee, Florida Beargrass, Florida Scrub Jay and Roseate Spoonbill. ([Spruce Creek Management Plan](#))

- Creating a wildlife corridor across I-95 using an undeveloped land adjacent to Spruce Creek will connect the isolated eastern coastal park with protected lands in the center of the State.

- Wildlife corridors are a practice in habitat conservation, allowing connections or reconnections between habitats, combating habitat fragmentation to facilitate animal/species connectivity.

- Connectivity is a key component of conserving biodiversity for several reasons. Connected populations generally have a higher likelihood of surviving. Connectivity between populations also provide greater flexibility for a species to respond to changing environmental conditions, such as climate change, compared to isolated populations in habitat patches. (["Safe Passages" book](#)).

- Wildlife crossing structures (underpass and overpass) improve traffic safety across roads. They assist in avoiding collisions between vehicles and animals, which in addition to killing or injuring wildlife may cause injury to humans and property damage. ([Handbook of road ecology](#)).

- The connectivity between wildlife populations on opposite sides of the road allows animals to access resources and mates and facilitates gene flow, thereby improving the viability of wildlife populations. ([Handbook of road ecology](#)).

- Wetlands aid in wildlife habitat, flood control, and water quality. Wetlands also allow species possibly facing extinction an environment in which to flourish."

Another important point to make is regarding the "*improvements to Pioneer Trail to the east and west of the interchange*" which were never presented at a public meeting, having only been added seemingly in secret sometime in 2021 *after* all public meetings had concluded. These so-called "improvements" have nothing to do with the interchange and should not be funded as part of the same

project. They only serve to further damage the wetlands (adding roughly 5 additional acres of impact) and open the door to further development in a very sensitive area.

As a matter of fact, public funds *cannot* be spent on such infrastructure due to a case from 2005/2006 in which the applicant for the “Pioneer Community Development District” (PCDD) promised the state it would [pay for its own infrastructure](#). This promise is what granted the PCDD its existence and all the benefits that come with it, so it is a betrayal of the public trust if state agencies will not recognize that agreement.

The PCDD was established by rule following review by ALJ Johnston on September 21, 2005, with the requirement that the establishment not impede the state’s acquisition of the 450 acres of the Spruce Creek Preserve located within the proposed PCDD boundary and formally approved for establishment by the Florida Cabinet during the May 31, 2006, FLWAC meeting [[FLWAC Ex., p. 91](#)]. According to ALJ Johnston’s conclusion, “Based on the record evidence, . . . there appears to be no compelling reason not to grant the Petition, as supplemented and corrected, and establish the proposed Pioneer Community Development District by rule, unless establishment would be at odds with State plans to purchase the 450 acres east of I-95.” [[FLWAC Ex., p. 38](#)]

That last line is key, as only half of that 450 acres has been acquired, and this proposed interchange project is now “at odds” with further acquisition of this [essential parcel for Spruce Creek Preserve](#). The FDOT acknowledges that part of the stated reason for the interchange is because of pressure from development in that area, which taken together is contradictory, as the State has already “promised” that the PCDD’s establishment will not harm acquisition, but clearly inducing an interchange that will be placed on that essential parcel does exactly that.

Furthermore, the fact that “overpass” improvements are incorporated without including a “nature” over/underpass misses a vital need for the area, namely connecting the Doris Leeper Spruce Creek Preserve to the northeast with habitat to the south and/or west. This poor design not only was uncreative, but failed to listen to the 300+ commenters who requested exactly such a nature corridor be included in the design.

Lastly, preliminary analysis by local experts have concluded that UMAM and other functional wetland loss are being unvalued and undermitigated with the current proposal. Clearly, ~35 credits for ~65 acres is not a 100% valuation, which

is strange considering that at least part of the project area is “A-rated” for land acquisition by public agencies.

EXISTING CONDITIONS:

“The project location site currently supports ten (10) land use types and or vegetative communities. . . The project corridor is primarily a mixture of undeveloped forested uplands and wetlands with smaller components including road right of way, and pasture. . . . The study’s area of influence (AOI) extends approximately seven miles along I-95, from the SR 44 interchange to the south and to the SR 421 interchange to the north. . . The right of way (ROW) within the project area contains 48.80 acres of wetlands and 5.94 acres of surface waters. Wetlands consist of hydric pine flatwoods, mixed forested wetlands, wet prairie, and marsh. Surface waters in the project area include channelized waterways (ditches) and stormwater ponds. . . The I-95 at Pioneer Trail interchange has a long history of being identified as a regional transportation need. It was included in the 2025 Cost Feasible Roadway projects and the 2035 Needs Plan of the Volusia County Long Range Transportation Plan (LRTP). The proposed interchange was also identified in the 2040 River-to-Sea LRTP SIS Cost Feasible Plan. Several previously conducted studies demonstrated the importance and need for the Pioneer Trail interchange.

- *The “Pioneer Trail Feasibility Study” conducted in 2005 as part of the I-95 Systems Operational Analysis Report study concluded that the proposed interchange at Pioneer Trail would serve the regional trips and would not have adverse impacts on mainline operations. The new interchange would alleviate traffic on the adjacent interchanges.*

- *The “SR 421/I-95 Interchange Analysis” study conducted by the City of Port Orange in 2009 studied the Pioneer Trail interchange as part of an alternate corridor evaluation and concluded that the Pioneer Trail interchange would provide relief to the critical SR 421 interchange.*

- *The April 2017 “I-95 at Pioneer Trail Interchange Justification Report” determined that not only would the interchange reduce congestion through the SR 421 interchange area, it would also support the economic vitality and approved future development of the area.”*

Response: It is misleading to say that this project “has a long history of being identified as a regional transportation need,” because indeed the opposite is

actually true. According to a [2020 Traffic Analysis Letter](#) by *Professional Planners and Engineers, Inc.*:

“To date, there have been no fewer than five previous studies performed between 2005 and 2020 on the “need” for an interchange at I-95 and Pioneer Trail. Three of those studies found that the new interchange will not have any significant effects on relieving congestion”

That letter goes on to point out the controversy and harm such a forced interchange could cause. It should also be pointed out that “economic vitality” for some at the expense of others is not in the public’s interest, especially when the potential beneficiaries are not current residents, but instead future, hypothetical ones. In any case, a price tag of \$80+ million puts the tax-payer in the hole from the beginning, and seems to be a form of corporate welfare for the potential businesses and developer that are speculating in that area.

The cost also seems to be extremely high for Right-of-Way acquisition (over \$30 million for roughly 60 acres is half a million per acre!), and no appraisals appear to have been presented to the public. This needs to be addressed before the project can continue.

A “[2016 Demand Letter](#)” from several environmental groups points out some more issues:

“the Interchange Justification Report for the new interchange relies on “a significant amount of development plans” and states that the interchange will enhance the potential for local economic development. In other words, the interchange makes sense only in the context of the Volusia County Development Projects and aims to facilitate that development. The Florida Department of Transportation recently received comments from the Federal Highway Administration indicating that a NEPA review is necessary before this process may proceed.”

To date, no agency or government official has responded to that letter or the many concerns it raised.

AVOIDANCE AND MINIMIZATION INFORMATION:

“Based on information provided by the applicant, the proposed design was selected because it minimized impacts to the environment including wetlands, and wildlife habitat while still achieving the project’s purpose and need. Wetlands and

surface waters are located immediately adjacent to the existing roadways so complete avoidance of wetland impacts is not possible or practicable. The avoidance and minimization of wetland impacts was considered throughout the PD&E Study and have been evaluated through design. The PD&E study included an alternatives evaluation matrix along with public and stakeholder input formed the basis of selection for the preferred Build alternative. Based on the engineering and environmental factors and public and agency input, the preferred alternative is the design alternative being permitted as it provides the best balance between improved transportation service and minimization of the social, physical, and natural impacts associated with the proposed roadway improvements while gaining the most public support. This alternative provided very similar impacts to wetlands and no difference in impacts to listed wildlife.”

Response: Clearly, adding additional road stub-outs towards potential development to the north is not “reducing” the impact, but maximizing it. Those additions have nothing to do with the function of an interchange, and must not be included if this project is to achieve true reduction of environmental impacts. Additionally, alternatives including raised pilings and other elevated structures over wetlands, waterflow areas, and habitat corridors never seemed to seriously be considered, countering the argument that avoidance is “not possible.”

Furthermore, the original assessment of environmental impacts was done in an area that did not include those stub-outs, making this a case of “bait and switch.” How can the agency claim that adding ~5 acres of additional wetland impact is “not significant” enough to warrant public input?

As outlined by a letter written by Volusia County Chair Jeff Brower, an investigation is needed into the FDOT’s inappropriate use of a “[Type 2 Categorical Exclusion](#)” which appears to have been ignorantly, lazily, or fraudulently sought to avoid full environmental review and access federal funds (including CARES Act funds) inappropriately.

COMPENSATORY MITIGATION:

“To fully offset the greatest functional loss of 35.58 units incurred to the on-site wetland communities associated with the Pioneer Trail Interchange project, 31.03 palustrine forested and 1.45 palustrine herbaceous Federal WRAP mitigation credits, as well as 3.19 State & Federal freshwater/palustrine forested credits were purchased from the regionally significant and accredited Farmton Mitigation

Bank (USACOE Permit No.: SAJ-1998-01836) and Lake Swamp Mitigation Bank (SJRWMD Permit No.: 4-035-1044334 & USACOE Permit No.: SAJ-2006-2586-TLH) respectively.”

Response: Farnton Mitigation Bank is an inadequate source of mitigation protection at this time due to the bank’s controversial plan to “build a city” within its borders instead of protecting the land for perpetuity as originally designed. Any credits purchased in that distant area also do little to no good for Spruce Creek, which is the waterbody most threatened by the project. As stated earlier, anything less than 1:1 mitigation is a travesty, as ~65 acres of critical wetlands simply are not “offset” by ~35 credits so far away, especially when the state has already previously acknowledged their high value.

CULTURAL RESOURCES:

“A CRAS survey was conducted in May of 2019 and concluded that no artifacts were recovered and no archaeological sites or occurrences were identified within the project area and no further work is recommended.”

Response: A survey from 2019 is outdated since the project has expanded in scope since then. A few additional digs would not be enough sufficient, a full review of the entire secondary impact area is needed, as it is known that there are shell middens and other archaeological sites at Doris Leeper Spruce Creek Preserve, which adjacent to the project area.

FEDERALLY AND STATE-LISTED SPECIES:

Response: There are many more species than the ones that are listed that could be impacted, including some that have not been identified. Additionally, relocating gopher tortoises is traumatic, and often wherever they are moved to is over-crowded. We therefore demand further analysis, especially with regard to aquatic species (like the manatee), the scrub jay population which uses the nearby Preserve, and all plant species that are threatened/endangered.



Professional Planners & Engineers®
Planning Transportation for a Lifetime

20 November 2020

The Public Trust Environmental Legal Institute of Florida, Inc.
Mr. John November, Esq.
Mr. Derek LaMontagne

SUBJECT: Comments on FDOT's Preliminary Engineering Report – [I-95 at Pioneer Trail Interchange][Financial Management Number: 436292-1-22-01] [ETDM Number: 14193]

Professional Planners and Engineers, (PP&E) offer the following comments, concerns, and recommendations on the FDOT's Preliminary Engineering Report – [I-95 at Pioneer Trail Interchange] referenced above, and currently under consideration for funding for the design phase.

Our position is:

1. The stated “need” for the I-95 interchange at Pioneer Trail is to relieve congestion at the two interchanges immediately north and south of Pioneer Trail. Empirical data on the “need” for interstate interchanges have historically been to provide “access” to facilities or communities that were previously inaccessible or difficult to reach. That is not a need or a limitation for either of the communities affected by this project.
2. To date, there have been no fewer than five previous studies performed between 2005 and 2020 on the “need” for an interchange at I-95 and Pioneer Trail. Three of those studies found that the new interchange will not have any significant effects on relieving congestion (*which is not a criterion to meet to support interchanges*) at either of the interchanges north and south of Pioneer Trail. The fact that different studies performed at different times, have reached different conclusions, indicate that other alternatives should be seriously considered before a major project such as this is finalized.

3. This project is actually the final “phase” of another controversial, piecemealed segment of one much longer road project that was completed years ago, namely the extensions of Williamson Blvd. down to Pioneer Trail. The planning, design, construction, and *actual* use of Williamson Blvd. from SR 40 in Ormond Beach to Pioneer Trail in Port Orange/New Smyrna Beach are typical of a traffic congestion reliever road for I-95. Its planning, design, construction, and current use is, and will always be that of a local development road, servicing the planned residential and commercial developments it traverses. Constructing this interchange will not provide additional capacity for any of the “failing” facilities north or south of Pioneer Trail. Adding an interchange at Pioneer Trail will actually “attract” trips currently using Williamson Blvd. to the interstate, which in essence defeats to the overall purpose for Williamson Blvd.

The purpose of this comment letter is to provide you with supporting information, documentation, and analysis. This will be done by presenting the following;

1. An objective thesis on interchanges in general, and the proposed Pioneer Trail interchange, in particular.
2. A brief history of the Williamson Blvd./East Coast Beltline project and its original and final purpose of relieving traffic on I-95, as well as to attract development along its route;
3. A chronology of the various developments that require Williamson Blvd for its survival, such as the Pioneer CDD, the Ocean Gate Commerce Center, the Hammock Creek Green (Restoration DRI), and the Farmton Local Plan developments. And finally,
4. The identification and analysis of practicable alternatives to the proposed interchange project.

The Interstate Highway System

The original interstate system was envisioned and designed for “Inter-**STATE**” travel (*including between regions and cities*), which has morphed into what is now, as in this project, “Inter-**DEVELOPMENT**” travel. Ideally, the purpose to plan, design, and eventually, build an interchange is to provide access *to the interstate* for anticipated

vehicular traffic from intersecting facilities at some point in the foreseeable future. Inherent to that purpose should be empirical data that supports and verifies that traffic from the crossroad facility has no other means or options available (i.e., alternative interchanges) to use in order to access the interstate.

The act creating the interstate system was passed by the U.S. Congress back in 1956, with the “**Interstate Defense Highway Act**”. The agency responsible for providing and controlling access to the interstate is the Federal Highway Administration (FHwA). The FHwA is **not** responsible for providing and controlling access to property owners adjacent to the Interstate, that responsibility lies with County and local government.

The land use characteristics, present and future, of the area adjoining the interchange and the crossroad are the third variable in the capacity- traffic balance. While the inter-relationships of traffic and land use are only imperfectly understood, it is clear that the number of vehicular movements at a given point bears a direct relationship to the use made of the land and the approach. The highway agency, however, has little if any control over the changes in land use which occur after the facility is constructed. While this subsequent change in land use can destroy the usefulness of an interchange, direct public control over land use change lies primarily with agencies other than the highway agency. While some indirect controls are exercised on the state level, the regulation of land use is almost exclusively a function of county and municipal governments. (Covey, Summer 1961)

With few exceptions, the location of interchanges has added to the effectiveness and efficiency of the interstate system. In those instances where the interchanges have not been effective, the common traits identified have been the choice of land-uses that are surrounding and/or abutting the interchange, as well as the distance to or the location of the closest cross-street intersections. Locally, some of the successful interchanges on I-95, along with the distance to their closest signalized intersection are:

- **U.S. 1 (.20th of a mile)**
- **S.R. 40 (Granada Blvd.)(.25th of a mile)**
- **LPGA (.46th of a mile)**
- **U.S. 92(ISB) (.30th of a mile)**
- **Beville Road/I-4 (.40th of a mile)**
- **S.R. 44(.44th of a mile) and**

- **S.R. 442(Indian River Blvd.)(.83th of a mile)**

In fact, this list represents the entirety of the interchanges along I-95 in Volusia County, with the exception of S.R. 421 (Dunlawton Blvd.). The distance to the closest signalized intersection on Dunlawton is less than a .10th of a mile in either direction. That will continue to be the case, with or without the Pioneer Trail interchange. In other words, unless and until a major re-configuration at the Dunlawton/Taylor Road and Williamson Blvd., which is the intersection immediately west of the I-95 ramps, the level of service within that area will continue to fail.

Constructing new federal interchanges as a means of alleviating local LOS failures has never been a successful solution. In fact, a new interchange at Pioneer Trail has the potential of transferring, or at the very least, duplicating the problems at Dunlawton Blvd/Taylor Road. Additionally, if the goal of the interchange is to provide access to potential future development there are other, less intrusive and more effective solutions or alternatives available. Those alternative solutions will be discussed later in this letter.

Historically, when interchanges are proposed, there are clear and indisputable data in existence that shows existing travel patterns along the crossroad facility leading to the closest interchange. Those patterns supposedly indicate that a substantial amount of trips on the intersecting facility are now being distributed along parallel routes heading to the next available interchange. That “need indicator” was not present or identified in any of the several studies performed for this project. In other words, there are no data or traffic counts available to show trips along Dunlawton Blvd. in Port Orange or SR 44 in New Smyrna Beach, having as their point of destination any development, current or planned, along Pioneer Trail.

History and Transformation of Williamson Blvd. – from “the East Coast Beltline” to a Development Road.

What started off as simple lines on a map morphed into one of *the* most controversial road projects in Volusia County. Williamson Boulevard, referred to as the East coast

Beltline, was originally conceived as a reliever route to I-95 on the east side of Volusia County. The project can trace its infancy as far back as the late 1960s when it was listed in the County's transportation plans. At that time, the '*need*' for the project was based wholly on the limitations of U.S. 1 and its distance from I-95.

Proponents of the Beltline argued that traffic on U.S. 1 would continue to increase in future years and that local motorists would eventually turn to I-95 as a way to get between cities in the Greater Halifax Area. They compared this eventuality to something similar to the changes to I-4 in downtown Orlando, which was a result that neither the federal, state, or local governments foresaw or desired.

However, detractors noted that in addition to U.S. 1 and I-95, other north-south routes existed in SR 5A (Nova Road) and Clyde Morris Blvd., each of which could be widened to accommodate any increases in traffic more economically than a brand new alignment.

The "need" for the project had always been a point of contention, as was the funding and the actual alignment of the route. As far back as 1978, which is the earliest documented attempt to fund at least a portion of the project; the County set aside road building funds to the tune of \$1.3 million dollars. At that time the route kept the same alignment as it appears today, with one exception, it did not cross I-95. In fact, back in the late 1970's and all of the 1980's the route had the alignment crossing Clyde Morris Blvd just north of Dunlawton Blvd. heading southeast and just before Dunlawton taking a southwesterly turn ending at Taylor Road. (*See Map A*).

By early 1990, not only had the alignment and terminus been modified, but so had an earlier stipulation concerning prohibition of quid pro quo on right-of-way acquisition. According to County records, 200 feet of right-of-way between Beville Road in Daytona Beach and Taylor Road in Port Orange was acquired in a deal with DSC Enterprises. The contract required DSC to lend the county at least \$5.53 million to build the beltline segment between those two points. About \$1.7 million was provided up front, with the remaining portion coming from the purchase of bonds by DSC Enterprises.

According to this agreement, and **as built today**, the beltline, beginning at Beville Road, would stay east of I-95, continue south to Willow Run Blvd. From there it would cross

over I-95 via an overpass and run southeast to Taylor Road at the intersection of Airport Road on the west. [At this point in its history, the terminus was projected to extend further south to SR 442 (Indian River Blvd) in Edgewater. The route at that time used the Airport Road alignment all the way south of Pioneer Trail and crossed back over I-95 just north of SR 44 where it took a southeasterly bend to SR 442 in Edgewater.

In short, what began over twenty years earlier as an east-side reliever route for I-95 has changed to include being a facility for the various developments west of I-95, as far south as to Brevard County. Additionally, at no time was there an agreement, plan, or stipulation to end the project at Pioneer Trail. In fact, the Ocean Gate Commerce Center, the Restoration DRI, and the Farmton Local Plan developments show this road project continuing as far south as the SR 5A and I-95 interchange in Brevard County. (*See Maps B, C & D*). A discussion on those projects follows.

Chronology of Developments:

- **Pioneer CDD**
- **Ocean Gate Commerce Center**
- **Hammock Creek Green (Restoration DRI), and**
- **Farmton Local Plan developments.**

The Pioneer CDD (aka, Stanaki PUD)

- Pioneer CDD and its precursor, Stanaki PUD, (1200 acres, 1300 residential units and 25 acres of commercial) date back to 1997.
- In 2005, the PUD was purchased by its current owner, ICI Homes. With that purchase the owner (Pioneer CDD) was granted State authorization to issue over \$52 million in tax-exempt bonds to be used to build the necessary infrastructure within the development.
- In early 2008, subsequent to a shift in the road alignment and commercial node location within the Pioneer CDD development due to environmental issues, a request was made to modify the Volusia Transportation Planning Organization's (TPO) 2025 Cost Feasible Plan by adding an interchange at Pioneer Trail and I-95.
- In 2008, the TPO voted against that amendment.

- In 2009, during the 2035 update to the plan (***adopted in Sept. 2010***), the Pioneer Trail interchange was once again modeled, but failed to make it onto the final adopted Financially Feasible list. In fact, it did not even make it onto the unfunded Needs Plan; which has a much-lower threshold.
- In April of 2013, Volusia County, on behalf of the Pioneer CDD, requested an amendment to Volusia TPO's 2035 Long Range Transportation Plan (LRTP) to include an interchange at I-95 and Pioneer Trail. The rationale cited in defense of the project was the impending traffic generated by the Woodhaven development.
- In August of 2013 the TPO voted to amend the 2035 plan to include the interchange, even though the update to *that* plan was just getting underway that fall. TPO members voting in favor of the project did so, according to their statements, **to provide the Pioneer CDD access to the interstate.**

It's ironic that the proponents of the Williamson Blvd project claimed that the project was necessary to relieve traffic ***'off'*** of the interstate, while simultaneously requesting a new interchange that would ***'add'*** traffic to the interstate.

OCEAN GATE COMMERCE CENTER

The Ocean Gate Commerce Center (OGCC) development is located within the City of New Smyrna Beach, in the southwest quadrant of SR 44 and I-95. (***See Map B***). The OGCC development will consist of 975,000 square feet of commercial and industrial development. This approved PUD sits on 188 acres.¹ The OGCC development plays an important part in the Williamson Blvd. extension, it is the beginning of the middle section of the project that has not been designed or programmed for construction. However, this section *will not* connect with the Restoration DRI section in the City of Edgewater²

Another important fact is that no agency, at this point has indicated whether this alignment will line up with the Williamson Blvd alignment across the street on the north side of SR 44. The County has not indicated exactly where the 'northern' alignment (Pioneer Trail to SR 44) will begin and end. The only section that has been designed and

¹ City of New Smyrna Beach, ***Development Activity Report***, September 2013, Page 13.

² City of New Smyrna Beach, ***Interoffice Memorandum - Gail Henikson to Pam Brangaccio***, 23 April 2013, Page 3.

programmed, and constructed is the Pioneer CDD alignment (Airport Rd. to Pioneer Trail). Only two of the remaining three sections, namely; the 'middle' section (SR 44 to SR 442) and the 'southern' section (SR 442 to SR 5A in Brevard County) are, for the most part, listed as developer-funded roads. What this means is that the County could end up with Williamson Blvd. terminating at Pioneer Trail, and picking up again at SR 44 down to the end of the OGCC development, and picking up yet again at the beginning of the Restoration DRI. What is missing is the 'northern' piece and that section between the OGCC development and Restoration. If Williamson Blvd. is to be a *true* reliever route to I-95, it must by definition, be continuous like I-95, it is not.

HAMMOCK CREEK GREEN DRI

The Hammock Creek Green DRI (HCGDRI) development is located within the City of Edgewater in the northwest quadrant of SR 442 and I-95. The site encompasses approximately 5,181 acres. The RDRI project, at build out (2023), will consist of 8,500 residential units (3,825 single-family residential units and 4,675 multi-family residential units) together with no more than 3,300,000 (1,904,443 square feet of office and 1,395,557 20 square feet of retail) square feet of non-residential uses.³

The HCGDRI is proposing to build the majority of the 'middle' section of Williamson Blvd. It will begin at SR 442 and run north to the City limits of Edgewater (*see Map D*). As was pointed out earlier, there are no plans to connect the HCGDRI segment with the OGCC segment, leaving a missing link between the two sections.⁴

FARMTON MASTER DEVELOPMENT PLAN (MDP)

The Farmton MDP (FMDP) development is located within unincorporated Volusia County and the City of Edgewater, in the southwest quadrant of SR 442 and I-95. The FMDP project, at build out (2060), will consist of 23,100 residential units and 4.7 million square feet of non-residential development on 47,000 acres within Volusia County, with 32,000 acres designated as GreenKey areas, and 15,000 as Sustainable Development Areas

³ Restoration DRI, *Amended and Restated Development Order for Restoration DRI*, 23 Feb. 2010, Page 11.

⁴ IBID. 3, p. 3.

(SDAs).⁵ The development begins at the southwest quadrant of SR 442 and I-95, and covers most of what is west and south of that location. The development will also extend into northwest Brevard County as well.

The FMDP is proposing to build the largest section of the Williamson Blvd. extension. (*See MAP D*). This section will be approximately 16 miles in length. It will connect to the section that is to be built by the Restoration DRI to the north (*previously discussed*). A special note is warranted here, a new interchange at Maytown Road has found its way into the River-to-Sea Transportation Planning Organization's Transportation Improvement Plan (TIP). This is another project that is being totally spearheaded by a private developer, and not because of or for a greater community-wide need.

The identification and analysis of practicable alternatives to the Pioneer Trail Interchange project.

- ***Williamson Blvd. and Its Extension***

According to Volusia County, building the Williamson Blvd. extension would provide a north-south reliever for I-95 and other north-south facilities.⁶

We compared 2009 traffic counts⁷ on I-95 and Williamson Blvd. to their 2019 traffic counts to determine if building the Williamson Blvd extension has actually served its intended purpose. If the road accomplished what was its originally intended purpose, there should be a noticeable reduction in traffic on I-95 and an increase in traffic on Williamson Blvd. What we found is that Williamson Blvd. is in fact, accomplishing its intended purpose. With few exceptions, traffic on I-95 actually decreased at every interchange in Volusia County

As was indicated, there were a few instances where there were increases (*5 of the 10 interchanges in the County*), but even in those instances, the largest increase was less than 4%. Additionally, those increases were due to trips traveling from one municipality to

⁵ Volusia County Gov't, **County Council Agenda Item 31**, 22 August 2013, Page 31-33.

⁶ "North-South Beltline Dusted Off, Debated", Daytona News Journal, 13 November 1980. Local Section.

⁷ Vol. County Traffic Engineering Dept., 2019 Volusia County Traffic Counts, Volusia Co. Gov't., 2020

another, which is the intended purpose for the interstate system, i.e., inter-City, not inter-Development.

Williamson Blvd. had increases in every segment, the largest showing a 20% average annual growth rate. Ironically, the segment showing the smallest increase (3%), between Airport Rd. and Pioneer Trail, would logically indicate that there is no great desire for residents in Port Orange to travel to points along Pioneer Trail. Even if the desire to travel south to Pioneer Trail is somehow increased, there is currently sufficient enough capacity to handle that increase.

It should be noted that if there is a desire to travel further south passed the current terminus on Williamson Blvd. there are two options available, namely; Airport Road and Pioneer Trail, because both facilities parallel I-95. Additionally, discussions on extending Williamson Blvd. further south have been included as a needed facility in each of the four developments chronicled in the previous section.

- ***Induced Traffic Demand***

Induced Traffic Demand is the increase in travel demand that is generated by increases in road capacity, as in the case of a new interchange at Pioneer Trail. Induced traffic is similar to climate change in that it has both supporters as well as skeptics/deniers. In essence, people respond to increases in road capacity — supply and demand. As the cost (in this case travel time) goes down, demand increases. A 30-minute reduction in commute time will greatly influence peoples' choice of residence; homeowners feel comfortable living further from work, school, shopping, etc.

Research shows that in just 5 years after building or expanding a road, induced traffic will take up about 75% of the new capacity. After 10 years it increases to about 90%. Induced demand is not being captured in the transportation planning/engineering process. It's totally outside industry models because of its unpredictability. According to the Federal Highway Administration, industry standard models are not performing well in terms of prediction.

Conversely, it's rare that the question, "*what if we accept congestion?*" is ever asked during the traditional planning process. If the question becomes a part of the process, data indicates that initially the response is less than positive. Afterwards, once the initial sting has been absorbed, collateral positive impacts emerge.

Rather than lead to catastrophic failure, congestion leads to behavior change. People live in town or at least closer. Redevelopment through rehabilitation of existing houses, in place of moving to bigger houses further from town begin to be commonplace. Older neighborhoods get fixed up; real-estate values increase; in-town schools are retained and maintained; public transit is developed. Health improves (people's physical & emotional health; and society's economic and ecological health as well.) Conventional wisdom indicating dire predictions rarely happens, because overtime, people get used to traffic congestion. Accommodation for motor vehicular traffic will always be necessary, but it should not be the only factor in our planning for the future.


In conclusion, the public is now being told that the interchange system is in place to provide access to the development community's properties, and to relieve congestion on local facilities caused by poor land-use decisions, while ignoring safety and the smooth flow of traffic between cities and regions that the system was originally designed for.

We contend that **FDOT's Preliminary Engineering Report - [I-95 at Pioneer Trail Interchange]** is deficient in several instances. The data and analysis that was provided in support of the project was limited, inaccurate, and in most cases, not complete. The stated purpose of the project is inaccurate, to say the least. In fact, the actual purpose of the project is to increase the value of property owned by three entities. There is no *greater good* involved with this project. The vast majority of the development that's identified in the study is residential, not commercial. Hence, very few jobs will actually be created. Building an interchange at Pioneer Trail will ultimately lead to more congestion on SR 44, which is the ultimate destination point utilized currently by development traffic on that facility.

And finally, by having a project that's led by a group of landowners defies all logic given the history of Williamson Blvd. and its original (and according to traffic data, current) purpose. Additionally, previous studies have verified that Williamson Blvd., south of Airport Road is needed as a reliever route for I-95, as well as an economic boost for each of the communities and developments it traverses.

We appreciate the opportunity to comment on this project and look forward to your response.

Sincerely,
Professional Planners & Engineers, Inc.



A. Shawn Collins, PTP, AICP
Principal
www.ppandeinc.com



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Planning Transportation for a Lifetime

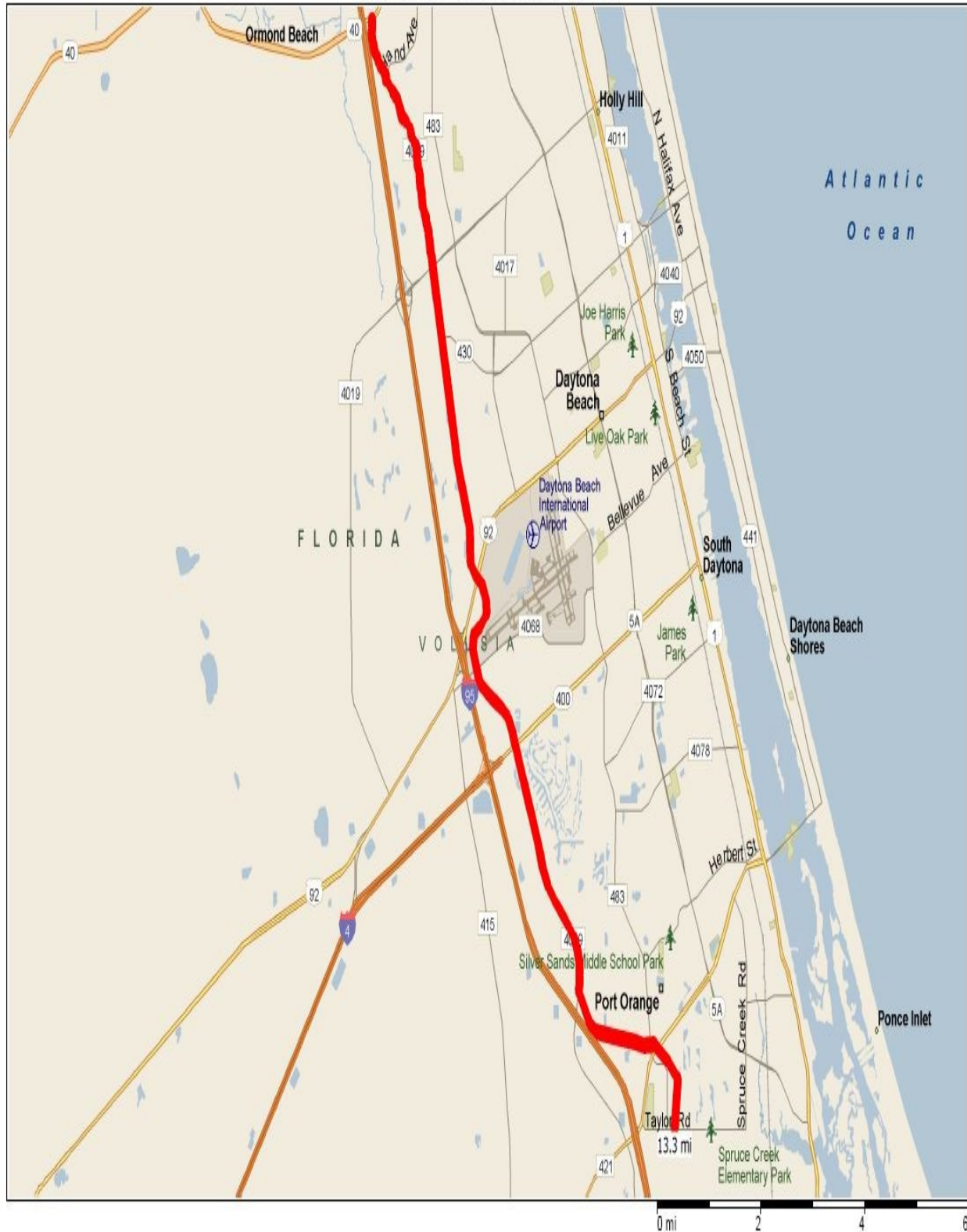
MAPS & REFERENCES



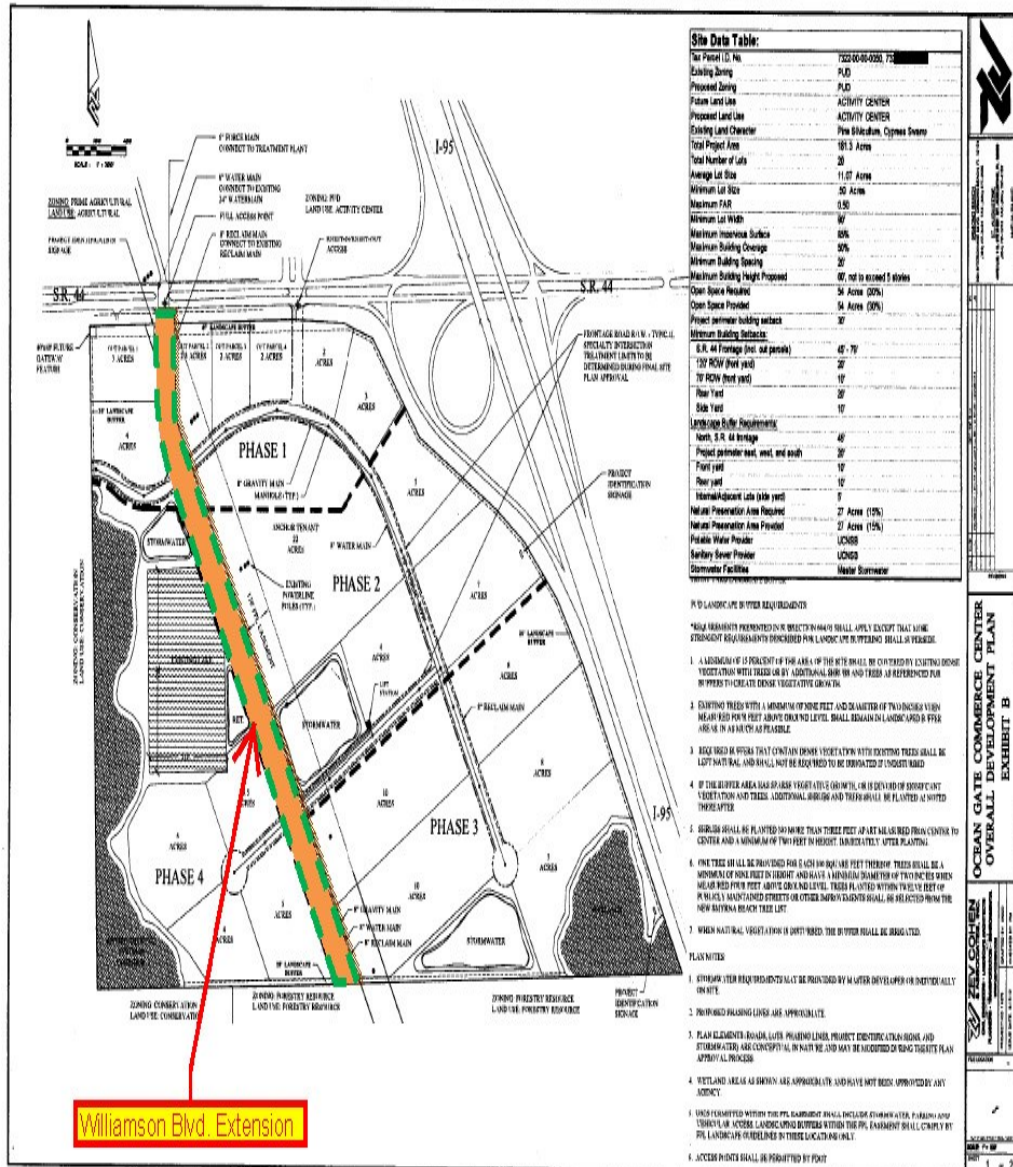
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MAP A

Williamson Blvd Alignment [1980]



MAP B Williamson Blvd. Ext. (Into the Ocean Gate Commerce Center)



MAP C

Williamson Blvd. extension [Through the Restoration DRI]

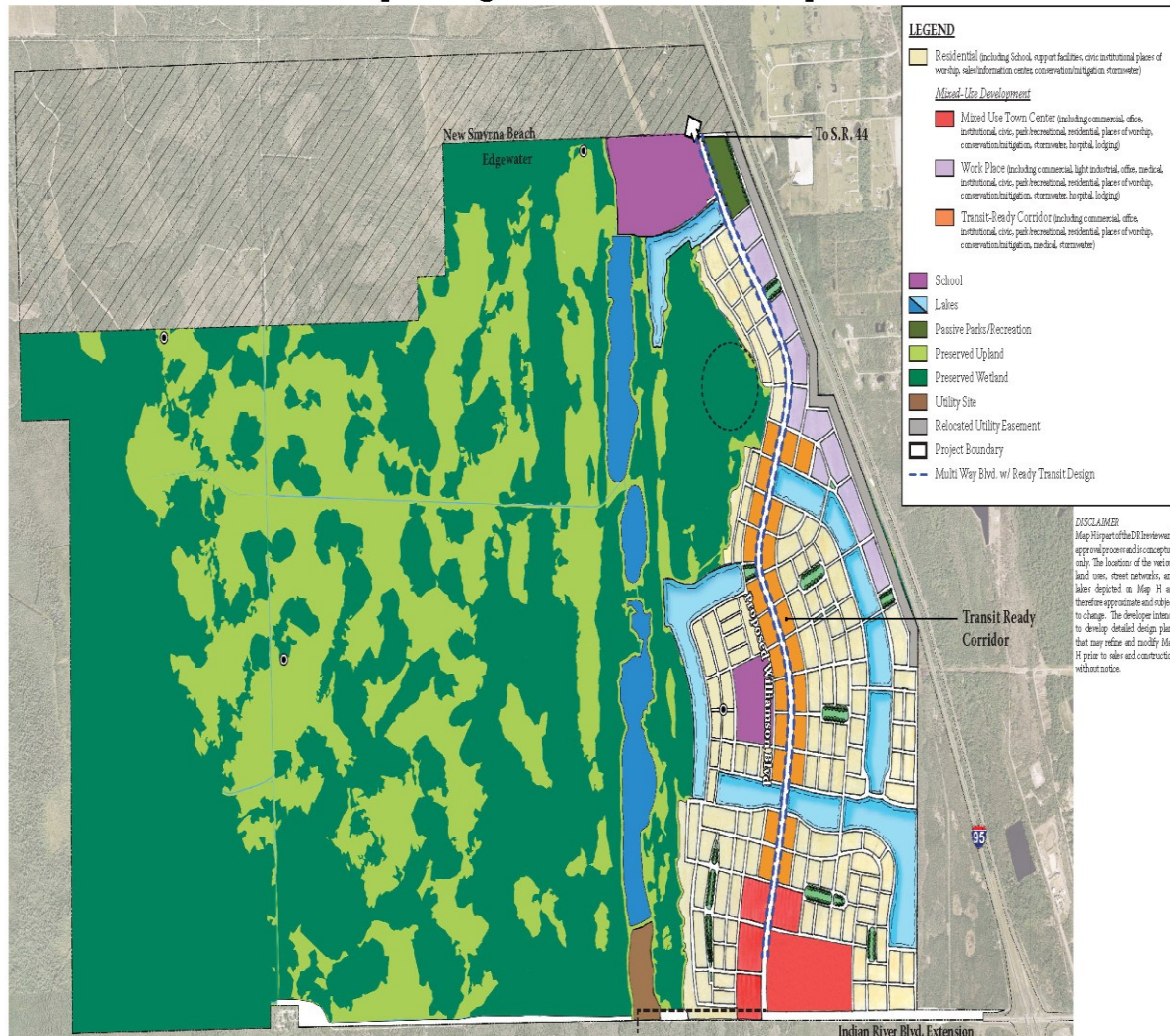




EXHIBIT B: Map H (Revised)
 Master Development Plan
 Edgewater, Florida

Hammond Creek Green, LLC
Owner/Applicant

Catin Associates, Inc.
Planning & Landscape Architecture

Donald W. McIntosh Associates, Inc.
Civil Engineer

Brownlow, Dennis & Associates, Inc.
Environmental Scientist

Kimley-Horn & Associates, Inc.
Transportation

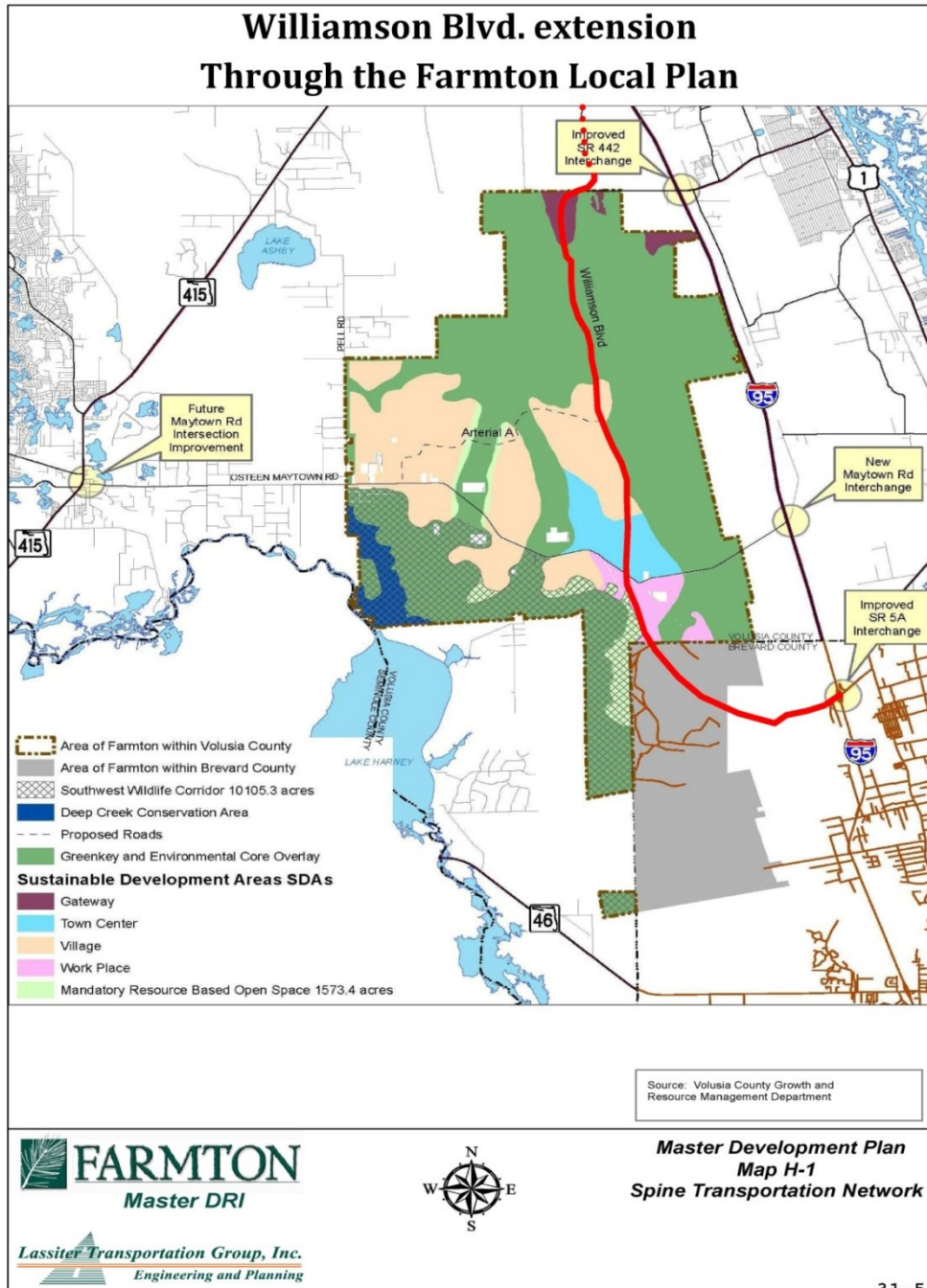
Fishkind & Associates, Inc.
Economics

Baker & Hostetler, LLP
Legal

Holland & Knight, LLP
Legal



MAP D



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