



AGENDA REQUEST FOR GOVERNING BOARD MEETING March 12, 2024

MEMORANDUM

TO: Governing Board

FROM: Karen Ferguson, Senior Assistant General Counsel
Office of General Counsel

SUBJECT: Revised: Bear Warriors United, Inc., The Sweetwater Coalition of Volusia County, Inc., Derek Lamontagne, an Individual, and Byron White, an Individual v. Florida Department of Transportation and St. Johns River Water Management District; DOAH Case No. 23-1512. SJRWMD F.O.R. No. 2023-06.

RECOMMENDATION

Revised: Consideration of an Order in Bear Warriors United, Inc., The Sweetwater Coalition of Volusia County, Inc., Derek Lamontagne, an Individual, and Byron White, an Individual v. Florida Department of Transportation and St. Johns River Water Management District; DOAH Case No. 23-1512, SJRWMD F.O.R. No. 2023-06.

BACKGROUND

The Florida Department of Transportation (FDOT) submitted Environmental Resource Permit (ERP) application number 103479-2 (the Permit) to the District to construct and operate, including a stormwater management system, a 74.13-acre project know as Pioneer Trail / I-95 Interchange in Volusia County. On February 28, 2023, the District issued its proposed agency action for the Permit to FDOT. Bear Warriors United, Inc.; the Sweetwater Coalition of Volusia County, Inc.; Derek LaMontagne, and Bryon White (collectively, the Petitioners) challenged the Permit, and a formal administrative hearing was held in the case on October 23-27, 2023. The Administrative Law Judge (ALJ) issued a Recommended Order of permit denial on January 30, 2024, followed by an Amended Recommended Order (Amended as to permitting agency in Recommendation) that same day. To comply with the time requirements of section 120.60, Florida Statutes (F.S.), a Final Order must be issued by the District on or before March 14, 2024.

When a proposed Final Order drafted by the Governing Board advisors recommends the permit be denied, the Final Order will be presented to the Governing Board for final action. Otherwise, in this case, the Assistant Executive Director is delegated the authority to take final action on the ALJ's Recommended Order and must enter an Order within the timeframes set forth in section 120.60, F.S. (i.e., March 14, 2024). This procedure and delegation is consistent with the mandatory delegation in section 373.079(4), F.S., the District's Statement of Agency Organization and Operation, and District Policy 120(8)(c).

In this case, the Governing Board advisors are recommending issuance of the permit. However, due to the heightened public interest in this case and the policy considerations associated with the rulings related to the District's evaluation of the public interest test, this matter is being brought to the Governing Board for consideration pursuant to Policy 120(1)(b), which provides that the "[Assistant] Executive Director may refer any matter to the Governing Board for resolution when a matter that is the subject of a delegation either is controversial or

has garnered significant public interest, or when resolution of a matter necessarily requires policy formation.”

If after consideration of the proposed Final Order, the Governing Board finds that the public policy considerations weigh in favor of denial of the permit, the Governing Board would be required to take such action denying the permit. Otherwise, the Assistant Executive Director will be required to issue the permit consistent with the mandatory delegation.

The documents associated with this agenda item are available at <http://www.sjrwmd.com/support-documents>.