

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

**INDIAN RIVER FARMS WATER
CONTROL DISTRICT,**

Petitioner,

v.

**DOAH Case No. 16-6165
SJRWMD F.O.R. No. 2016-17**

**ALL ABOARD FLORIDA OPERATIONS,
LLC, RAM LAND HOLDINGS, LLC,
J. ACQUISITIONS BREVARD, LLC, and
ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,**

Respondents.

_____ /

FINAL ORDER

This case comes to the St. Johns River Water Management District ("District") upon a Recommended Order from Administrative Law Judge, Bram D.E. Canter (ALJ), a copy of that order is attached as Exhibit A. The Recommended Order was submitted on March 30, 2017, following a formal administrative hearing held January 20, 2017.

Pursuant to Section 120.57(1)(k), Florida Statutes (F.S.) and Rule 28-106.217, Florida Administrative Code, (F.A.C.), the parties were allowed fifteen (15) days to file exceptions to the Recommended Order. Petitioner Indian River Farms Water Control District ("Petitioner"), Respondent, All Aboard Florida Operations (AAF or "Applicant") and Respondent, St. Johns River Water Management District, timely filed Exceptions to the Recommended Order. The Applicant and District filed Responses to Petitioner's Exceptions.

The parties previously stipulated that Respondents RAM Land Holdings, LLC and J. Acquisitions Brevard, LLC, both being third-party mitigation providers in this matter, are not necessary parties to the proceeding presumably, because Petitioner did not challenge the adequacy of the proposed mitigation.

The matter is now before the District's Executive Director, for final agency action: entry of a final order. The Recommended Order concluded that Environmental Resource Permit application 135214-2 (ERP) was consistent with the standards and criteria for issuance of an ERP and therefore recommended that the District enter a final order approving AAF's application and issuing the permit subject to the conditions set forth in the August 26, 2016, Technical Staff Report. Upon review of the Recommended Order, the exceptions thereto, the responses to the exceptions, and the record of the proceeding before DOAH, I concur, subject to the minor corrections to Findings of Fact 20 and 22, as explained below.

STANDARD OF REVIEW

The rules regarding an agency's consideration of exceptions to a recommended order are well established. The agency is guided by Sections 120.569(2)(l) and 120.57(1)(l), F.S., in acting upon a recommended order. The ALJ, not the Governing Board, is the fact finder. *Goss v. Dist. Sch. Bd. of St. Johns County*, 601 So.2d 1232, 1234 (Fla. 5th DCA 1992); *Heifetz v. Dep't of Bus. Regulation*, 475 So.2d 1277, 1281-82 (Fla. 1st DCA 1997). A finding of fact may not be rejected or modified unless the agency first determines from a review of the entire record that the finding of fact is not based upon competent substantial evidence or that the proceedings on which the finding of fact was based did not comply with essential requirements of law. Section 120.57(1)(l), F.S.

“Competent substantial evidence” is such evidence as is sufficiently relevant and material that a reasonable mind would accept such evidence as adequate to support the conclusion reached. *Perdue v. TJ Palm Associates, Ltd.*, 755 So. 2d 660 (Fla. 4th DCA 1999). The term “competent substantial evidence” relates not to the quality, character, convincing power, probative value or weight of the evidence, but refers to the existence of some quantity of evidence as to each essential element and as to the legality and admissibility of that evidence. *Scholastic Book Fairs v. Unemployment Appeals Commission*, 671 So. 2d 287, 289 (Fla. 5th DCA 1996); *Nunez v. Nunez*, 29 So. 3d 1191, 1192 (Fla. 5th DCA 2010).

If a finding is supported by any competent substantial evidence from which the finding could be reasonably inferred, the finding cannot be disturbed. *Freeze v. Dep't of Business Regulation*, 556 So.2d 1204, 1205 (Fla. 5th DCA 1990); *Berry v. Dep't of Env'tl. Regulation*, 530 So.2d 1019 (Fla. 4th DCA 1998). The agency may not reweigh evidence admitted in the proceeding, may not resolve conflicts in the evidence, may not judge the credibility of witnesses or otherwise interpret evidence anew. *Goss*, 601 So.2d at 1235; *Heifitz*, 475 So.2d at 1281-82; *Brown v. Criminal Justice Standards & Training Comm'n.*, 667 So.2d 977, 979 (Fla. 4th DCA 1996). The issue is not whether the record contains evidence contrary to the findings of fact in the recommended order, but whether the finding is supported by any competent substantial evidence. *Florida Sugar Cane League v. State Siting Bd.*, 580 So.2d 846, 851 (Fla. 1st DCA 1991). Finally, the agency is precluded from making additional or supplemental findings of fact. *Florida Power & Light Co. v. State of Florida, Siting Board*, 693 So.2d 1025, 1026-27 (Fla. 1st DCA 1997); *Boulton v. Morgan*, 643 So.2d 1103, 1105 (Fla. 4th DCA 1994).

With respect to conclusions of law in the recommended order, the agency may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretations of administrative rules over which it has substantive jurisdiction, provided the reasons for such rejection or modification are stated with particularity and the agency finds that such rejection or modification is as, or more reasonable than, the ALJ's conclusion or interpretation. Section 120.57(1)(l), F.S. In interpreting the term "substantive jurisdiction," the courts have continued to interpret the standard of review as requiring deference to the expertise of an agency in interpreting its own rules and enabling statutes. *See, e.g., State Contracting & Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 610 (Fla. 1st DCA 1998). The "deference rule" recognizes that:

Matters that are susceptible of ordinary methods of proof, such as determining the credibility of witnesses or the weight to accord evidence, are factual matters to be determined by the hearing officer. On the other hand, matters infused with overriding policy considerations are left to agency discretion.

Gross v. Dept. of Health, 819 So. 2d 997, 1002 (Fla. 5th DCA 2002) (citing *Baptist Hosp., Inc. v. Department of Health & Rehabilitative Servs.*, 500 So.2d 620, 623 (Fla. 1st DCA 1986) *McDonald v. Department of Banking & Fin.*, 346 So.2d 569 (Fla. 1st DCA 1977)). Matters infused with overriding policy considerations include instances where an agency must interpret one of its own rules, or where a statute confers broad discretionary authority upon the agency which depends on whether certain criteria are found by the agency to exist. *Id. at 1002.*

The agency lacks subject matter jurisdiction to overturn an ALJ's rulings on procedural and evidentiary issues. *Heifetz v. Dept of Business Regulation*, 475 So 2d 1277, 1281 (Fla 1st DCA 1985); *Gross v. Department of Health*, 819 So2d 997, 1001 (Fla 5th DCA 2002); *Rogers v. Dept of Health*, 920 So2d 27, 30 (Fla 1st DCA 2005); *Lane v. Dep't of Env'tl. Protection*, 29

F.A.L.R. 4063 (DEP 2007). Evidentiary rulings are matters with the ALJ's sound prerogative as the finder of fact and may not be reversed on agency review. *Martuccio v. Dept of Professional Regulation*, 622 So2d 607, 609 (Fla 1st DCA 1993).

The Administrative Procedure Act provides the parties to an administrative hearing with an opportunity to file exceptions to a recommended order. Sections 120.57(1)(b) and (k), F.S. The purpose of exceptions is to identify errors in a recommended order for the agency to consider in issuing its final order. A party filing an exception must specifically alert the agency to any perceived defects in the ALJ's findings, and in so doing the party must cite to specific portions of the record as support for the exception. *John D. Rood and Jamie A. Rood v. Larry Hecht and Department of Environmental Protection*, 21 F.A.L.R. 3979, 3984 (DEP 1999); *Kenneth Walker and R.E. Oswalt d/b/a Walker/Oswalt v. Department of Environmental Protection*, 19 F.A.L.R. 3083, 3086 (DEP 1997); *Worldwide Investment Group, Inc. v. Department of Environmental Protection*, 20 F.A.L.R. 3965, 3969 (DEP 1998).

The agency may accept, reject, or modify the recommended order within certain limitations. When the agency considers a recommended order and exceptions, its role is like that of an appellate court in that it reviews the sufficiency of the evidence to support the ALJ's findings of fact and, in areas where the District has substantive jurisdiction, the correctness of the ALJ's conclusions of law.

In the final order, the agency must expressly rule on each exception, except for exceptions that do not clearly identify the disputed portion of the recommended order by page number or paragraph, that do not identify the legal basis for the exception, or that do not include appropriate and specific citations to the record. Section 120.57(1)(k), F.S. and Rule 28-

106.217(1), F.A.C. Thus, the agency is not required to rule on an omnibus exception in which a party states that its exception to a particular finding of fact is also an exception to any portion of the Recommended Order where the finding of fact is restated or repeated. Similarly, an exception that simply refers to or attempts to incorporate by reference an exception to another finding of fact or conclusion of law fails to comply with the statutory requirements

Citations to page numbers in the transcript of the formal administrative hearing will be made by identifying the page number and lines from the transcript (e.g., [Tr. 253: 15 – 23]). Citations to exhibits admitted by the ALJ will be made by identifying the party that entered the exhibit followed by the exhibit number followed by the page number (e.g., [Pet. Ex. 2: 43]). Citations to the Joint Pre-Hearing Stipulation will be made by referencing the Joint Pre-Hearing Stipulation followed by the section and numbered paragraph (e.g., [J.Stip. E: 5] Citations to the Recommended Order will be designated by “R.O.” followed by the abbreviation “FOF” (Finding of Fact) or “COL” (Conclusion of Law) and paragraph number (e.g., [R.O. FOF:13]). Citations to the Environmental Resource Permit Applicant’s Handbook, Volume II, adopted by reference in Rule 40C-4.091, F.A.C. (effective Oct. 1, 2013) will be designated by the section number, followed by the abbreviation “A.H. Vol. II” (e.g., [3.5 A.H., Vol. II])

EXCEPTIONS

RULINGS ON DISTRICT’S AND APPLICANT’S EXCEPTIONS

1. Both the District and the Applicant list two exceptions to the Recommended Order. Because they are substantially the same, they will be addressed together.

Exception No. 1

2. Both the District and the Applicant take exception to the second sentence of Finding of Fact 20. Finding of Fact 20 states:

Based on the FEMA Flood Insurance Rate Maps used by the Applicant, the 100-year flood elevation at the North Canal bridge is 11.5 feet NAVD88, or 1.6 feet below the low beam elevation of the North Canal Bridge. The 100-year flood elevation at the South Canal Bridge is 9.3 feet NAVD88, or 0.8 feet below the low beam elevation of the North Canal Bridge.

3. Both the District and the Applicant argue that the ALJ erred in two places in the second sentence. The first claimed error was to state that the flood elevation at the South Canal Bridge was *above* (instead of below) the corresponding low beam elevation. The basis for this claim is that the ALJ concluded in Finding of Fact 17, and the parties agreed in their Joint Pre-Hearing Stipulation, that the new proposed bridge at the South Canal would be constructed immediately downstream of the existing bridge at the same low beam elevation of 8.5 feet NAVD88. [R.O. FOF: 17 and 20; J.Stip. E: 23 and E: 25] At 9.3 feet NAVD88, the flood elevation is 0.8 feet *above* the low beam elevation of 8.5 feet NAVD88, therefore the word “above” should replace “below.”

4. The other claimed error in Finding of Fact 20 is a mistaken identification of the South Canal Bridge as the North Canal Bridge. The first sentence compares the flood elevation and low beam elevation of the North Canal Bridge. The parallel comparison in the second sentence compares the elevations at the *South* Canal Bridge. However, a scrivener’s error in the second sentence misidentifies the low beam elevation as from the *North* Canal Bridge.

5. Petitioner filed no response to Exception No. 1 raised by Respondents.

6. These errors are contained in the Findings of Fact. However, the errors appear unintentional and made in the process of drafting rather than adjudicating, are inconsistent with the record, and the effect of the corrections does not change the conclusion. Accordingly, District's and Applicant's Exception No. 1 as to Finding of Fact 20 is accepted and Finding of Fact 20 of the Recommended Order is revised as follows:

Based on the FEMA Flood Insurance Rate Maps used by the Applicant, the 100-year flood elevation at the North Canal bridge is 11.5 feet NAVD88, or 1.6 feet below the low beam elevation of the North Canal Bridge. The 100-year flood elevation at the South Canal Bridge is 9.3 feet NAVD88, or 0.8 feet **above** the low beam elevation of the **South** Canal Bridge.

Exception No. 2

7. Both the District and the Applicant take exception to the first sentence of Finding of Fact 22. Finding of Fact 22 states:

The Petitioner disputes the Applicant's determination that there is a 1.6-foot clearance at the North Canal Bridge and a 0.8-foot clearance at the South Canal Bridge. The petitioner asserts that the FEMA elevations used by the Applicant are not based on the best available data, and the best available data show the 100-year flood elevations are higher.

8. The Applicant's determination, using the FEMA 100-year flood elevation of 9.3 feet NAVD88 and a low beam elevation of 8.5 feet at the South Canal Bridge, was that the flood elevation was above the low beam elevation. [AAF Ex. 14: 5] All parties stipulated to the low beam elevation and a range of 100-year peak flood elevations at the South Canal Bridge before trial. [J.Stip. E: 23 and E: 24] There is no point of the range of FEMA peak flood elevations (9.0 to 10.0 feet NAVD), where there would be a clearance at the bridge. Thus, the District and the Applicant seek a deletion of the phrase "and a 0.8 clearance at the South Canal Bridge."

9. Petitioner filed no response to Exception No. 2 raised by Respondents.

10. There is no competent evidence in the record which supports a finding that the Applicant determined there was a *0.8-foot clearance*. As noted above regarding Exception No. 1, the 100-year flood elevation at the South Canal Bridge is above the low beam elevation of that bridge. Hence, there is no “clearance at the South Canal Bridge. The effect of this correction does not change the conclusion. Accordingly, the District’s and Applicant’s Exception No. 2 to Finding of Fact 22 is accepted and Finding of Fact 22 of the Recommended Order is revised as follows:

The Petitioner disputes the Applicant’s determination that there is a 1.6-foot clearance at the North Canal Bridge. The petitioner asserts that the FEMA elevations used by the Applicant are not based on the best available data, and the best available data show the 100-year flood elevations are higher.

RULINGS ON PETITIONER’S EXCEPTIONS

11. Petitioner filed Exceptions to the Recommended Order with 30 numbered paragraphs followed by 6 unnumbered paragraphs, concluding that the permit should not be issued. The District and the Applicant each filed a Response to Petitioner’s Exceptions to the Recommended Order.

12. Throughout Petitioner’s Exceptions to Recommended Order, Petitioner does not comply with the requirements of section 120.57(1)(k), F.S., and rule 28-106.217(1), F.A.C., to clearly identify the disputed portion of the recommended order by page number or paragraph, identify the legal basis for the exception, and include appropriate and specific citations to the record. Although the District is not required to include an explicit ruling on exceptions that do not comply with section 120.57(1)(k), F.S., the District has endeavored to ascertain what Petitioner’s

exceptions are and, where possible, rule on each, notwithstanding Petitioner's failure to comply with the statutory requirements.

13. In **Paragraph 1**, Petitioner appears to take exception to the last sentence of paragraph 18 of the Recommended Order which states:

The Petitioner did not claim or present evidence to show that the new bridges would increase the probability that floating debris would be trapped, over and above the current probability for such an event.

Petitioner provided no citation to the record to refute the finding by the ALJ. Petitioner gave no legal basis for challenging the finding of fact. Without an asserted legal basis for challenging the finding of fact and without any citations to the record that refute the finding of fact, this Agency need not rule on this exception. Competent substantial evidence presented at trial supports the ALJ's Finding of Fact 18. [J.Stip. E:17, 19, 23 and 25; AAF Ex. 2: 11, 13; AAF Ex. 12: 4 - 5; AAF Ex. 14: 5 - 8; Tr. 57: 20 – Tr. 58: 6; Tr. 119: 19 – Tr. 120: 1] Accordingly, the exception discussed in Paragraph 1 is denied.

14. Petitioner asserts in **Paragraph 2**, that the Applicant failed to provide reasonable assurance that the project will not cause flooding or impair water conveyance because the presumption contained in the Applicant's Handbook was not applicable to this project due to a design defect described in AFF Exhibit 23. Petitioner does not argue that there is no competent substantial evidence in the record to support the ALJ's finding of fact. Rather, Petitioner requests the District make additional findings of fact that the presumption applies only to nominal obstructions, and that the proposed bridges are defectively designed so as to cause adverse conveyance obstruction and flooding. As explained in the Standard of Review, *supra*, the District is without authority to make supplemental findings of fact or to reweigh the evidence that was

considered by the ALJ. Competent substantial evidence presented at trial supports the ALJ's Finding of Fact that the bridges met the presumptive criteria for traversing works. [AAF Ex. 2, 12 and 14; Tr. 137:17 – 138: 25; Tr. 113 – 118; Tr. 152: 1 – 153: 14] Petitioner did not dispute the accuracy of Applicant's modeling calculations and did not conduct any independent modeling. [Tr. 57: 20 – Tr. 58: 1] Accordingly, the exception discussed in Paragraph 2 is denied.

15. In **Paragraphs 3 and 5**, Petitioner asserts the erroneous application of a presumption related to the District's design standards for flood protection resulted in the ALJ failing to analyze the application for compliance with requirements of Rule 62-330.301(1)(b) and (c), F.A.C. Petitioner concludes this error requires remand in accordance with *Metro. Dade County v. Coscan*, 609 So. 2d 644 (Fla. 3d DCA 1992). Petitioner's argument is without merit. In *Metro. Dade*, the Court held that the hearing officer improperly deferred to a future date, the determination of whether reasonable assurance had been provided. In the present case, the ALJ made findings of fact that the Applicant had provided reasonable assurance that the requirements of Rule 62-330.301(1)(b) and (c), F.A.C., had been met through the Applicant's showing the presumptive criteria in section 3.3.2(b), A.H., Vol.II, for traversing works had been met. [R.O. FOF: 33, 34 and 35]

16. In Finding of Fact 33, the ALJ identified the applicable standard and the presumption criteria established by District rule, (3.3.2 A.H., Vol. II). In Finding of Fact 34, the ALJ made findings regarding the extent of increase of the 100-year flood elevation caused by the bridges. In Finding of Fact 35 the ALJ found that reasonable assurance had been provided that the Project would not cause adverse flooding or adversely impact the storage and conveyance capabilities of the canals. Competent substantial evidence presented at trial supports the ALJ's Finding of Fact

that the bridges met the presumptive criteria for traversing works. [AAF Ex. 2: 12 and 14; Tr. 137: 17 – Tr. 138: 25; Tr. 113 – Tr. 118; Tr. 152: 1 – Tr. 153: 8] Accordingly, the exceptions discussed in Paragraphs 3 and 5 are denied.

17. In **Paragraph 4**, Petitioner asserts the presumptive criteria for traversing works included in the Applicant's Handbook is inadequate in that it fails to address the consequences of low clearance of the bridge and the potential of accumulated debris obstructing downstream flows and causing upstream flooding. An agency is required to follow its rules as written, not as a permit challenger would like them to be modified. *See, Boca Raton Artificial Kidney Center, Inc. v. Dep't of Health & Rehab. Serv.*, 493 So. 2d 1055, 1057 (Fla. 1st DCA 1986); *Vantage Healthcare Corp. v. Agency for Health Care Admin.*, 687 So. 2d 306, 308 (Fla. 1st DCA 1997); *Collier Cnty. Bd. Of Cnty. Comm'rs v. Fish & Wildlife Conserv. Comm'n*, 993 So. 2d 69, 72-73 (Fla. 2d DCA 2008). In this case, the agency rule in question clearly and unambiguously applies to all "structures elevated on pilings" and "traversing works" [3.3.2(b) A.H., Vol. II], the latter of which is defined as "any artificial structure or construction that is placed in or across a stream, or other watercourse. . . ." [2.1 (v) A.H., Vol. II] There is competent substantial evidence in the record to support the ALJ's conclusion of law that the project complies with the design standards for flood protection in the Applicant's Handbook. [AAF Ex. 2, 12 & 14; J.Stip. E: 31] Accordingly, the exception discussed in Paragraph 4 is denied.

18. In **Paragraph 6**, Petitioner takes exception to the Finding of Fact 16 of the Recommended Order where the ALJ quoted and summarized a portion of testimony of one of Petitioner's witnesses. Petitioner fails to provide a legal basis for a finding this is in error. There is competent substantial evidence in the record to support the ALJ's finding of fact that the

witness testified as quoted [Tr. 69: 20 – 21] and as summarized [Tr. 84: 21 - 24]. Accordingly, the exception discussed in Paragraph 6 is denied.

19. In **Paragraph 7**, Petitioner takes exception to the ALJ's application of the presumption provided in section 3.3.2(b) A.H., Vol. II. Petitioner asserts there was substantial testimony presented to support a contrary conclusion. Petitioner's exception requests the District to improperly reweigh the evidence. As explained in the Standard of Review, *supra*, evidentiary related matters are within the province of the ALJ as the "fact-finder" in administrative proceedings and where there is competent substantial evidence to support a finding of fact, the District may not disturb it. There is competent substantial evidence in the record to support the ALJ's finding of fact that the design standards for flood protection in section 3.3.2(b), A. H. Vol. II, are applicable to this project. [AAF Ex. 2, 12 and 14; Tr. 136: 21 – Tr. 138: 21; Tr. 151: 23 – Tr. 152: 11] Accordingly, the exception discussed in Paragraph 7 is denied.

20. In **Paragraph 8**, Petitioner asserts that Section 3.3.2(b) A.H. Vol. II, does not apply to the bridge proposed in the application in this case. Petitioner cites no legal authority for limiting the application of the rule. Competent substantial evidence in the record supports the ALJ's application of section 3.3.2(b), A. H. Vol. II, to this project. [AAF Ex. 2, 12 and 14; Tr. 136: 21 – Tr. 138: 21; Tr. 151: 23 – Tr. 152:11] Accordingly, the exception discussed in Paragraph 8 is denied.

21. In **Paragraph 9**, Petitioner takes exception to Finding of Fact 35 and asserts it reflects the same error as in *Metro. Dade*. For the reasons set forth above addressing Petitioner's exceptions in Paragraphs 3 and 5, Petitioner's assertion is without merit. In addition, Petitioner makes an omnibus exception to Findings of Fact 28 through 34, but fails to state the nature of the

errors in those findings or provide record support for the exception. Accordingly, the exception discussed in Paragraph 9 is denied.

22. In **Paragraph 10**, Petitioner asserts the plans submitted by the Applicant do not provide reasonable assurance against the risks of flood and adverse impacts. Petitioner's exception requests the District to reweigh the evidence. As explained in the Standard of Review, *supra*, the District is without authority to reweigh the evidence that was considered by the ALJ. Competent substantial evidence in the record supports the ALJ's Finding of Fact 35. [AAF Ex. 2, 12 and 14; Tr. 136: 21 – Tr. 138: 21; Tr. 151: 23 – 152: 11] Accordingly, the exception discussed in Paragraph 10 is denied.

23. In **Paragraph 11**, Petitioner takes exception to the ALJ's reliance on the HEC-RAS model in Finding of Fact 21. Petitioner asserts the absence of a particular component in the HEC-RAS model to address debris is significant. Petitioner provides no legal basis for the assertion that the absence of such a component is significant, nor does Petitioner cite to evidence in the record that such a component is required. Finding of Fact 21 is supported by competent substantial evidence. [Tr. 113: 4 – Tr. 114: 19; Tr. 116: 11 – Tr. 118: 2; Tr. 126: 2 – Tr. 128: 17; Tr. 138: 9 – 25; AAF Ex. 12 and 14] Furthermore, there is competent substantial evidence in the record that the HEC-RAS model is the "industry standard" [Tr. 114: 10-11] and that the HEC-RAS model is the kind of software that engineers use to make hydraulic analysis [Tr. 125: 19 – Tr. 127: 13]. Petitioner is requesting the District make additional findings of fact to support its position that the HEC-RAS model is in some way legally deficient. The District is without authority to make supplemental findings of fact. Accordingly, the exception discussed in Paragraph 11 is denied.

24. In **Paragraphs 12 and 13**, Petitioner asserts the ALJ declined to require reasonable assurances because “the duplication of new bridges for old bridges renders the standard meaningless.” Petitioner provides no record citation to support the assertion that this is the basis for the ALJ’s Recommended Order. Findings of Fact 33, 34, and 35 refute Petitioner’s assertion. In Finding of Fact 33, the ALJ set out the applicable design standards. In Finding of Fact 34, the ALJ concluded the Applicant provided competent substantial evidence that the design standards were met. In Finding of Fact 35, the ALJ concluded that the presumption provided by Section 3.3.2(b), A.H., Vol. II, had been met. These three findings of fact are clearly supported by competent substantial evidence in the record. [AAF Ex. 12 and 14; Tr. 137: 11 – Tr. 138: 25; Tr. 117: 21 – Tr. 118: 2]. Accordingly, the exception discussed in Paragraphs 12 and 13 is denied.

25. In **Paragraphs 14 and 15**, Petitioner appears to assert that the ALJ’s acceptance of the HEC-RAS model as competent substantial evidence is error because the HEC-RAS model did not address the “critical element of the impact of debris build up.” Petitioner cites to no record support or legal authority that the impact of debris build up is a critical element that must be included in hydraulic analysis modeling. There is competent substantial evidence in the record that the HEC-RAS model is the “industry standard” [Tr. 114: 10-11] and that the HES-RAC model is the kind of software that engineers use to make hydraulic analysis [Tr. 125:19 – Tr. 127:13]. The decision to accept the testimony of one expert witness over that of another expert is solely the province of the ALJ and cannot be altered by a reviewing agency absent a complete lack of competent substantial evidence of record supporting the decision. *See, Peace River/Manasota Regional Water Supply Authority v. IMC Phosphates Co.*, 18 So.3d 1079, 1088 (Fla. 2d DCA 2009), *Fla. Chapter of Sierra Club v. Orlando Utils. Commission*, 436 So.2d

383,389 (Fla. 5th DCA 1983). In Paragraph 15, Petitioner also takes exception to the inference in the last sentence of Finding of Fact 25 that the District “would likely” use water level data from its own gages in addition to FEMA flood level data. This inference is supported by the plain language of Section 3.3.4 of the Applicants Handbook Vol. II. Accordingly, the exception discussed in Paragraphs 14 and 15 is denied.

26. In **Paragraph 16**, Petitioner takes exception to two findings of fact in the Recommended Order where the ALJ found there was no evidence presented on two particular issues. In Finding of Fact 27, the ALJ stated “None of the parties presented evidence” regarding a protocol for choosing between conflicting data. [R.O. FOF: 27] In Finding of Fact 36 the ALJ stated “Petitioner did not offer into evidence these ‘basic design standards’ or prove their industry-wide acceptance.” [R.O. FOF: 36] Petitioner asserts that the hearing transcript pages 34, 36 and 37 refutes these findings of fact. The record citations provided by Petitioner do not address Finding of Fact 27 but do support Finding of Fact 36, that the Petitioner did not offer into evidence these “basic design standards” or prove their industry wide acceptance. A review of the transcript reveals that at no time did Petitioner attempt to offer into evidence the Florida Department of Transportation (FDOT) bridge design standards. Second, in the exception itself, Petitioner acknowledged that it only “attempted to present to the Court [sic] information from the Department of Transportation of the State of Florida relative to that Agency’s requirements for minimum clearance between bridges and water surface.” Applicant objected on the grounds of relevance. [Tr. 34: 22] After allowing Petitioner to respond to the objection, [Tr. 34: 23 – 24] the ALJ sustained the objection excluding the testimony [Tr. 37: 7].

27. Section 120.569(2)(g), F. S., provides that irrelevant, immaterial or unduly repetitious evidence shall be excluded from administrative proceedings. Whether the Petitioner laid a proper foundation establishing the relevance of the line of questions Petitioner wanted to ask, is an evidentiary ruling properly before the ALJ. Section 120.57(1)(l), F.S. Such evidentiary matters, susceptible to ordinary methods of proof are not infused with agency policy considerations and are not considered matters over which the agency has “substantive jurisdiction”. *McDonald v. Dept. of Banking and Finance*, 346 So. 2d 569 (Fla 1st DCA 1977). Agencies do not have jurisdiction to modify or reject rulings on the admissibility of evidence. *Barfield v. Department of Health*, 805 So. 2d 1008 (Fla. 1st DCA 2001); *G.E.L.Corp. v. Dept. of Environmental Protection*, 875 So. 2d 1257 (Fla 5th DCA 2004); *Heifetz v. Dept. of Business Regulation*, 475 So 2d 1277, 1281 (Fla 1st DCA 1985); *Gross v. Department of Health*, 819 So. 2d 997, 1001 (Fla 5th DCA 2002); *Rogers v. Dept. of Health*, 920 So. 2d 27, 30 (Fla 1st DCA 2005). Accordingly, the exception discussed in Paragraph 16 is denied.

28. In **Paragraph 17**, Petitioner seeks to reargue before this agency its response to the sustained objection to FDOT information by providing a proffer as to the relevance of the excluded testimony. However, the proffer made in Petitioner’s exceptions to the Recommended Order, was not presented to the ALJ at the hearing. [Tr. 34: 22 – Tr. 37: 7] The agency is not authorized to accept new evidence, reweigh the evidence presented, judge the credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion. *Bridlewood Group Home v. Agency for Persons with Disabilities*, 136 So. 3d 652 (Fla 2nd DCA 2013) Evidentiary rulings are matters with the ALJ’s sound prerogative as the finder of fact and may not be reversed on agency review. *Martuccio v. Dept. of Professional Regulation*, 622 So. 2d

607, 609 (Fla 1st DCA 1993) An agency has no authority to make independent or supplemental findings of fact. *Florida Power and Light Co. v. State*, 693 So. 2d 1025, 1026, 1027 (Fla 1st DCA 1997); 73 So. 3d 285, 294 (Fla. 5th DCA 2011); *Yerks v. School Board of Broward County*, 4D15-4449, 2017 WL 1929703, at *4 (Fla. 4th DCA May 10, 2017) (Fla. 4th DCA, May 10, 2017). Accordingly, the exception discussed in Paragraph 17 is denied.

29. In **Paragraph 18**, Petitioner states that it has already presented an argument about models and the data used by the Applicant. Petitioner does not include an explanation of how this restatement provides a legal basis for review. Nor does Petitioner provide any indication of what part of the Recommended Order this paragraph challenges. The purpose of the requirements for exceptions in section 120.57(1)(k), F. S., is to enable meaningful review of a recommended order. Most of Petitioner's paragraphs do not fully comply with the statute, but Paragraph 18 lacks even a reference to a specific paragraph or page number of the Recommended Order, and is, as a result, completely unreviewable as an exception.

30. In **Paragraph 19**, Petitioner takes exception to the characterization of the source of testimony. Although citing both Finding of Fact 28 and 29, there are no references to specific testimony in Finding of Fact 28. In Finding of Fact 29, the ALJ found that the Petitioner made an admission. The form of an admission is not limited to a complete statement from a witness' mouth. As in answers to requests for admissions, admissions may take the form of an assent to a question. Similarly, the form of the question may appropriately be leading. Including the assents on pages 51 and 52 of the Trial Transcript, there is additional competent substantial evidence supporting the ALJ's finding. [Tr. 25: 7 - 13; Tr. 50: 24 – Tr. 52: 7; Tr. 78: 18 – Tr. 79: 5] Accordingly, the exception discussed in Paragraph 19 is denied.

31. In **Paragraph 20**, Petitioner takes exception to the ALJ requiring that Petitioner shoulder the burden of presenting evidence that the low clearance of the bridges was due to “age, use, lack of maintenance, frugality or causes other than design.” In the Joint Pre-Hearing Stipulation, section I., 1. A. the parties stipulated that the presentation of evidence in the proceeding would be governed by section 120.569(2)(p) F.S., which provides that following a prima facie case presented by the Applicant and the District, the Petitioner has the burden of ultimate persuasion and of going forward to prove the case in opposition to the permit. [J.Stip. I. 1. a.] In the second sentence of Finding of Fact 30, the ALJ found that Petitioner did not present any supporting evidence to support its claim and in Paragraph 20, Petitioner fails to cite to any evidence that the ALJ missed and in fact admits that it did not produce any. Accordingly, the exception discussed in Paragraph 20 is denied.

32. In **Paragraph 21**, Petitioner again cites to *Metro. Dade*, without specifically identifying an exception to a portion of the Recommended Order, identifying the legal basis for the exception, or including appropriate and specific citations to the record. For the reasons set forth above addressing Petitioner’s exceptions discussed in Paragraphs 3 and 5, the exception in Paragraph 21 is denied.

33. In **Paragraph 22**, Petitioner asserts the Applicant is obliged to follow the guidelines published by the Florida DOT or other government agencies which design bridges. Petitioner does not cite to any legal authority supporting this obligation. In the Joint Pre-Hearing Stipulation, the parties stipulated that the only disputed conditions for issuance for the proposed permit were:

. . . whether All Aboard Florida has provided reasonable assurance that the construction, operation and maintenance of the proposed bridges over the North,

Main, and South canal: will not cause adverse water quantity impacts to receiving waters and adjacent lands pursuant to 62-330.301(1)(a), F.A.C; will not cause adverse flooding to on-site or off-site property pursuant to 62-330.301(1)(b), F.A.C, and; will not cause adverse impacts to existing surface water storage and conveyance capabilities pursuant to 62-330.301(1)(c), F.A.C. [J.Stip. A]

Attaching a document not introduced into evidence before the ALJ as an Exhibit to Exceptions to Recommended Order does not make it a part of the evidentiary record.

34. The excerpts from the FDOT Drainage Manual dated January 2009 and the FDOT Plans Preparation Manual dated January 2017 attached as an Exhibit to Petitioner's Exceptions to Recommended Order, were not listed on Petitioner's Exhibit List [J.Stip. E: 1], nor were these documents offered as exhibits at the hearing. To the extent that Petitioner argues that the FDOT design guidelines should apply, Petitioner failed to show that the requirements for the design of FDOT projects enjoyed industry wide acceptance in environmental permitting. In fact, for bridges within the water control district, Petitioner's own clearance criteria was not consistent with the FDOT design guidelines. [Tr. 33: 7 – 12] The District's expert witnesses testified that debris was a maintenance issue, not a design issue for the construction of the new bridges. [Tr. 141: 19 – 24; Tr. 155: 14 - 19] An agency is required to follow its own rules. *Collier Cnty. Bd. of Cnty. Comm'rs v. Fish & Wildlife Conserv. Comm'n*, 993 So. 2d 69, 72 (Fla 2d DCA 2008). Paragraph 22 fails to identify a particular finding of fact or conclusion of law to which exception is taken, nor does it provide a legal basis or record citation for the exception. Accordingly, the exception in Paragraph 22 is denied.

35. In **Paragraph 23**, Petitioner takes exception to the ALJ's finding in Finding of Fact 37 regarding a statement made by a particular witness. That finding is supported by the testimony

found in the Transcript. [Tr. 141: 19 - Tr. 142: 4] To the extent that Petitioner is objecting to Finding of Fact 37 as being contrary to an ERP rule or statute, Petitioner has failed to identify the legal authority for such exception as required by section 120.57(1)(k), F.S. Accordingly, the exception in Paragraph 23 is denied.

36. In **Paragraph 24**, Petitioner discusses the text of Findings of Fact 38 and 39 of the Recommended Order and states the ALJ mischaracterized the relief sought by Petitioner. Petitioner does not dispute the accuracy of the ALJ's Findings of Fact in those paragraphs or deny that they are supported by substantial competent evidence in the record. Competent substantial evidence supports each of the four supporting findings in Findings of Fact 38 and 39. [Tr. 72: 8 - 14; Tr. 82: 8 - 14; Tr. 83: 2 - 16; Tr. 104: 14 - Tr. 116: 11]. To the extent that Petitioner is objecting to Findings of Fact 38 and 39 as being contrary to an ERP rule or statute, Petitioner has failed to identify the legal authority for such exception as required by section 120.57(1)(k), F.S. Accordingly, the exception in Paragraph 24 is denied.

37. In **Paragraph 25**, Petitioner asserts Applicant's design, duplicating the elevation of the existing bridges, does not provide reasonable assurance of flood protection and preserving water conveyance. Petitioner fails to identify a specific paragraph or page number of the Recommended Order to which exception is taken, nor does Petitioner provide a legal basis for the exception as required by section 120.57(1)(k), F.S. Accordingly, the exception in Paragraph 25 is denied.

38. In **Paragraph 26**, Petitioner again complains that the ALJ mischaracterized the relief sought by Petitioner. Petitioner fails to identify a specific paragraph or page number to which

exception is taken, nor does Petitioner provide a legal basis for the exception. Accordingly, the exception, to the extent one is presented in Paragraph 26, is denied.

39. In **Paragraph 27**, Petitioner takes exception to Finding of Fact 43 that the North Canal takes a turn to the northeast under the North Canal Bridge, asserting the record evidence establishes the turn occurs under the Old Dixie Highway bridge. Competent substantial evidence in the form of aerials provided at pages 9 and 10 of Applicant's Exhibit 12 support the ALJ's finding of fact. [AAF Ex. 12: 9 & 10] Accordingly, the exception presented in Paragraph 27 is denied.

40. In **Paragraph 28**, Petitioner takes exception to the Finding of Fact 44 asserting the ALJ ignored the testimony of the Water Control District's Administrator. However, Petitioner fails to articulate why that constitutes error. Furthermore, the testimony cited by Petitioner in the exception, "Transcript, page 83-90 at line 24", did not include testimony to distinguish between different causative factors of shoaling and erosion, or include testimony of a witness with "special knowledge of the science of hydraulics", or of any study done by Petitioner's witness to confirm his theory of the cause of the particular sandbars. To the extent that Petitioner is disputing the ALJ's ruling that Petitioner's witness was not qualified to render an expert opinion on that topic, a reviewing agency may not reweigh the evidence presented, judge the credibility of witnesses, or make new findings of fact. *Rogers v. Dept. of Health*, 920 So. 2d 27, 30 (Fla 1st DCA 2005) The ALJ's finding is supported competent substantial evidence [Tr. 57: 20 – Tr. 58: 06; Tr. 66: 3 – 18] Accordingly, the exception in Paragraph 28 is denied.

41. In **Paragraph 29**, Petitioner takes exception to the ALJ failing to include in Finding of Fact 46 and 47 recognition of Petitioner's lack of authority to control pilings installed within the

railroad right-of-way. However, Petitioner fails to provide a legal basis for why the missing statements should or must be included. In Finding of Fact 11, the ALJ found the North Canal and South Canal were owned and maintained by Petitioner. In Finding of Fact 48, the ALJ acknowledged that "Petitioner claims the railroad authority denied Petitioner access to the right-of-way when it sought permission in the past to remove the sandbar at the North Canal Bridge." Therefore, it appears the ALJ recognized Petitioner's purported lack of authority in the Recommended Order. Petitioner does not allege any inaccuracy or error of the findings stated in Finding of Fact 46 and 47. Accordingly, the exception in Paragraph 29 is denied.

42. In **Paragraph 30**, Petitioner claims Finding of Fact 48 is not relevant to Petitioner's general summary of its argument. The ALJ's statement did have bearing on the sentence that preceded it and Petitioner fails to state the legal basis why the statement must do more than that. Accordingly, the exception in Paragraph 30 is denied.

43. Following the numbered paragraphs, Petitioner includes seven unnumbered paragraphs in its Exceptions to Recommended Order rearguing the positions it presented to the ALJ. This Agency may not reweigh the evidence, make independent or supplemental findings of fact or modify or reject findings of fact that are supported by any competent substantial evidence of record. Upon review of the Recommended Order, the Petitioners exceptions thereto, the responses to Petitioner's exceptions, and the record of the proceeding before DOAH, it is determined that the Recommended Order is based on competent substantial evidence and the Petitioner's exceptions are therefore, rejected.

FINAL ORDER

Pursuant to section 373.079(4), Florida Statutes, the Governing Board of the District has delegated all of its authority to take final action approving permit applications under part IV chapter 373, Florida Statutes to specific staff, including the District's Executive Director. Because both the ALJ and counsel for the Governing Board of the District recommend approval of the permit, this matter now comes before me as the District's Executive Director for final agency action.

ACCORDINGLY, IT IS HEREBY ORDERED:

The Recommended Order dated March 30, 2017, attached hereto as Exhibit A, is adopted in its entirety except as modified by the final action of the St. Johns River Water Management District in the rulings on Respondents' Exceptions 1 and 2 as follows:

Finding of Fact 20 of the Recommended Order is modified to read:

Based on the FEMA Flood Insurance Rate Maps used by the Applicant, the 100-year flood elevation at the North Canal bridge is 11.5 feet NAVD88, or 1.6 feet below the low beam elevation of the North Canal Bridge. The 100-year flood elevation at the South Canal Bridge is 9.3 feet NAVD88, or 0.8 feet above the low beam elevation of the South Canal Bridge.

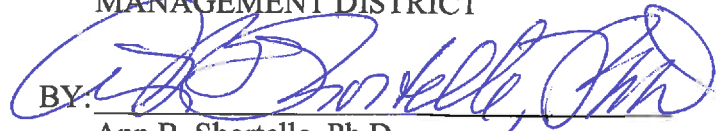
Finding of Fact 22 of the Recommended Order is modified to read:

The Petitioner disputes the Applicant's determination that there is a 1.6-foot clearance at the North Canal Bridge. The petitioner asserts that the FEMA elevations used by the Applicant are not based on the best available data, and the best available data show the 100-year flood elevations are higher.

The application of All Aboard Florida – Operations LLC, for ERP No. IND-009-135214-2, is hereby issued under the terms and conditions contained in the Technical Staff Report dated August 26, 2016, attached hereto as Exhibit B.

DONE AND ORDERED this 27th day of June 2017, in Palatka, Florida.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

BY: 
Ann B. Shortelle, Ph.D.
Executive Director

RENDERED this 27th day of June 2017.

BY: Sandra H. Bertram
Sandra Bertram
District Clerk

NOTICE OF RIGHTS

Pursuant to section 120.569, Florida Statutes, the purpose of this notice is to inform each party's attorney of record that judicial review of the Final Order in this case is available under Section 120.68, Florida Statutes.

Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by the Final Order may seek review in the appellate district where the District maintains its headquarters or where a party resides or as otherwise provided by law by filing a notice of appeal or petition for review in accordance with the Florida Rules of Appellate Procedure within 30 days of the rendering of the Final Order. The District's headquarters are in Palatka, Florida, and in this case, the Final Order was rendered on June 27th, 2017.

Failure to observe the relevant time frames for filing a petition for judicial review will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order and Notice of Rights was sent by email and Certified Mail to Michael O'Haire, Esq. (moh@oqc-law.com), 3111 Cardinal Drive, Vero Beach, FL 32963, Myles L. Tobin, Esq. (myles@allaboardflorida.com), 2855 Le Jeune Road, 4th Floor, Coral Gables, FL 33134, Jeffrey A. Collier, Esq. (jcollier@stearnsweaver.com), Highpoint Center, 106 E. College Avenue, Suite 700, Tallahassee, FL 32301, and Eugene Stearns, Esq. (estearns@stearnsweaver.com), and Matthew W. Buttrick, Esq. (mbuttrick@stearnsweaver.com), Museum Tower, 150 W. Flagler Street, Suite 2200, Miami, FL 33130, James F. Johnston (jjohnston@shutts.com) and Scott A. Glass (sglass@shutts.com), Shutts and Bowen, LLP, Post Office Box 4956, Orlando, FL 32801, and by Certified Mail only to Joe Galletti, RAM Land Holdings, LLC, P.O. Box 533327, Orlando, FL 32853-3327, and by hand delivery to Kealey West (kwest@sjrwmd.com) and Erin Preston (epreston@sjrwmd.com), 4049 Reid Street, Palatka, Florida on this 27th day of June, 2017.



Gail L. Hankinson
Florida Bar No. 0284084
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St. Johns River Water Management District
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(386) 329-4391

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INDIAN RIVER FARMS WATER CONTROL
DISTRICT,

Petitioner,

vs.

Case No. 16-6165

ALL ABOARD FLORIDA - OPERATIONS,
LLC; RAM LAND HOLDINGS, LLC;
J. ACQUISITIONS BREVARD, LLC;
AND ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,

Respondents.

_____/

RECOMMENDED ORDER

The final hearing in this case was held on January 20, 2017, by video teleconference at sites in Sebastian and Tallahassee, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner Indian River Farms Water Control District:

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For Respondent All Aboard Florida - Operations, LLC:

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RAM Land Holdings, LLC
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For Respondent St. Johns River Water Management District:

Kealey A. West, Esquire
Erin H. Preston, Esquire
St. Johns River Water Management District
4049 Reid Street
Palatka, Florida 32177

STATEMENT OF THE ISSUE

The issue to be determined in this case is whether All Aboard Florida - Operations, LLC ("the Applicant"); Ram Land Holdings, LLC ("RLH"); and J. Acquisitions Brevard, LLC ("JAB"),

are entitled to the Environmental Resource Permit ("ERP") issued by the St. Johns River Water Management District ("SJRWMD") for construction and operation of certain railway facilities within the portion of the Florida East Coast Railway corridor known as Segment D08 (the "Project").

PRELIMINARY STATEMENT

On August 26, 2016, SJRWMD gave notice of its intent to issue ERP No. 135214-2 to the Applicant, RLH, and JAB, pursuant to chapter 373, Florida Statutes (2016). The Applicant is developing an express passenger rail service between Miami and Orlando, known as the All Aboard Florida Project. RLH and JAB own conservation parcels, which will be used for mitigation of wetland and surface water impacts associated with the Project.

On or about August 29, 2016, the Petitioner, Indian River Farms Water Control District, filed a petition challenging the ERP, because the proposed new bridges for the Project had not been approved by Indian River Farms' engineer. SJRWMD dismissed the petition and, on September 26, 2016, the Petitioner filed an amended petition.

SJRWMD referred the amended petition to DOAH and filed a motion to dismiss, in which the Applicant joined. The motion argued that the amended petition raised issues that were not cognizable in this proceeding. The motion to dismiss was granted, but leave was granted to file an amended petition

containing relevant factual allegations and citations to relevant statutes and rules.

On November 3, 2016, the Petitioner filed a second amended petition, which the Applicant and SJRWMD again moved to dismiss. An Order was entered striking all claims in the second amended petition arising under chapter 298, but otherwise denying the motion. The Order limited the issues in the case to Petitioner's claims that (1) the lowest horizontal beams of the proposed bridges would be constructed below flood elevations, which would cause flooding, and (2) the proposed bridges would cause sand bars to form in the Petitioner's canals, which would interfere with canal functions.

Official recognition was taken of Florida Administrative Code Chapters 40C-4 and 62-330, as well as the ERP Applicant's Handbook Volume I ("A.H., Vol. I"), and the SJRWMD Permit Information Manual ("A.H., Vol. II").

At the final hearing, the Applicant presented the testimony of its Executive Vice President of Rail Infrastructure, Adrian Share, P.E.; Matthew Neddeff, P.E., who was accepted as an expert in hydrologic and hydraulic engineering and modeling; and Jeffrey PeQueen, P.E., who was accepted as an expert in hydrologic and hydraulic engineering and modeling. The Applicant's Exhibits 1-25 were admitted into evidence.

The Petitioner presented the testimony of its Superintendent, Secretary, and Treasurer, David E. Gunter; and George A. Simons, P.E., who was accepted as an expert in civil engineering. The Petitioner's Exhibit 2 was admitted into evidence.

SJRWMD presented the testimony of its Supervising Professional Engineer, Fariborz Zanganeh, P.E., who was accepted as an expert in water resource engineering; and its Chief Engineer for the Environmental Resource Regulation Program, Cameron Dewey, P.E., who was accepted as an expert in water resource engineering. SJRWMD's Exhibit 23 was admitted into evidence.

The one-volume Transcript of the final hearing was filed with DOAH. The Petitioner, the Applicant, and SJRWMD each submitted proposed recommended orders which were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. The Petitioner is a water control district organized under chapters 189 and 298, Florida Statutes. It owns and maintains the North, Main, and South Canals in Indian River County.

2. The Petitioner manages drainage works for approximately 55,000 acres within Indian River County situated west of the

Indian River Lagoon between U.S. 1 and I-95, including portions of the City of Vero Beach.

3. The Applicant, All Aboard Florida - Operations, LLC, is a Delaware limited liability company headquartered in Miami, Florida, formed for the principal purpose of developing and operating express passenger rail service connecting the four largest urban population centers in Southern and Central Florida--Miami, Fort Lauderdale, West Palm Beach, and Orlando. This project is known as the All Aboard Florida Project.

4. Respondents, RAM Land Holdings, LLC, and J. Acquisitions Brevard, LLC, are third-party mitigation providers. The parties stipulated that RLH and JAB are not necessary parties to this proceeding.

5. SJRWMD is an independent special district created by chapter 373, charged with the duty to prevent harm to the water resources of the District and to administer and enforce chapter 373 and the rules promulgated thereunder. The proposed project is within the boundaries of the District.

The Proposed Project

6. Most of the Applicant's passenger service route, including the portion which will pass through Indian River County, will use an existing railroad right-of-way established in the late 1800s by Henry Flagler, the founder of the Florida East Coast Railway ("FECR").

7. The FECR rail corridor runs along Florida's east coast from Miami to Jacksonville. It was designed to support passenger and freight operations on shared double mainline tracks and was in use from 1895 to 1968. The passenger service was then terminated and portions of the double track and certain bridge structures were removed. The freight service continued and remains in operation today.

8. The Project would restore the passenger service that once existed on the FECR rail corridor. The passenger service route will utilize the FECR right-of-way from Miami to Cocoa Beach and then continue along a new segment to be constructed along a limited-access highway system which runs inland from Cocoa Beach to Orlando.

9. The Applicant is proposing to upgrade the portion of the FECR right-of-way between Miami and Cocoa Beach by, among other things, replacing existing railroad ties and tracks and reinstalling double tracks.

10. This proceeding involves only Segment D08 of the proposed Project. Segment D08 runs from the southern edge of Indian River County to Cocoa Beach in Brevard County.

11. In Segment D08, the existing FECR railway includes bridges which cross the North Canal, Main Canal, and South Canal owned and maintained by the Petitioner. The bridges are referred to as the North Canal Bridge, the Main Canal Bridge,

and the South Canal Bridge. Each bridge supports a single track.

12. The Project calls for adding new bridges alongside the three existing bridges over the canals so that the crossings will again accommodate two tracks.

13. The Petitioner's objections to the proposed permit are confined to the proposed bridges at the North Canal and South Canal.

14. The new bridge at the North Canal would be constructed along the west side of the existing bridge. The new bridge at the South Canal would be constructed along the east side of the existing bridge.

Obstruction of Water Flow

15. The Petitioner's main objection to the proposed project is that the proposed new bridges over the North Canal and South Canal are too low to allow clearance during a 100-year storm event, which would cause water flow to be obstructed. The Petitioner believes floating debris is likely to be blocked and accumulate at the bridges, causing water to back up and flood lands upstream of the bridges.

16. The Petitioner's Superintendent, David Gunter, testified that there were "a couple of events where debris backed up either at a bridge or a culvert." However, he said

none of the Petitioner's ratepayers ever had a flooding event that was attributable to the FECR bridges.

17. The new bridges would be constructed with the same low chord/beam elevations (lowest part of the bridge) as the existing bridges that would remain. For the existing bridge and the proposed new bridge over the North Canal, the low beam elevation is 13.1 feet NAVD88 (North American Vertical Datum 1988). For the existing bridge and the proposed new bridge at the South Canal, the low beam elevation is 8.5 feet NAVD88.

18. Because the proposed new bridges would be at the same height above the canals as the existing bridges, the potential problem the Petitioner is concerned about--floating debris being trapped by the bridges--is already a potential problem. The Petitioner did not claim or present evidence to show that the new bridges would increase the probability that floating debris would be trapped, over and above the current probability for such an event.

19. The Petitioner argued that "two wrongs don't make a right," and the new bridges should not be approved even though they are at the same height as the existing bridges. Obviously, the Petitioner wants the existing bridges raised, too.

20. Based on the FEMA Flood Insurance Rate Maps used by the Applicant, the 100-year flood elevation at the North Canal bridge is 11.5 feet NAVD88, or 1.6 feet below the low beam

elevation of the North Canal Bridge. The 100-year flood elevation at the South Canal Bridge is 9.3 feet NAVD88, or 0.8 feet below the low beam elevation of the North Canal Bridge.^{1/}

21. The Applicant's consultants performed hydrologic and hydraulic analyses for the proposed new bridges using a HEC-RAS model which was adapted to local site-specific conditions and incorporated FEMA flood level data. They determined that in a 100-year storm event, the new bridge at the North Canal would cause no more than a 0.04-foot (0.48 inches) increase in water levels immediately upstream (within 500 feet) of the bridge, and the new bridge at the South Canal would result in no more than a 0.07-foot (0.84 inches) increase in water levels immediately upstream. These were considered insignificant impacts that would not cause flooding to upstream properties.

22. The Petitioner disputes the Applicant's determination that there is a 1.6-foot clearance at the North Canal Bridge and a 0.8-foot clearance at the South Canal Bridge. The Petitioner asserts that the FEMA elevations used by the Applicant are not based on the best available data, and the best available data show the 100-year flood elevations are higher.

23. The Petitioner calculated higher 100-year flood elevations using SJRWMD flood stage gages in the canal near the North bridge and the Petitioner's own hydrologic model. The Petitioner determined that the low beam at the North Canal

bridge is 0.6 feet below the 100-year flood level, and the low beam at the South Canal bridge is 1.5 feet below the 100-year flood level.^{2/} In other words, the Petitioner contends there is no clearance.

24. The Petitioner's witness, Simons, testified about why he thought FEMA did not use the Petitioner's water level data and analysis in determining 100-year flood elevations for the FEMA flood maps, but the testimony was largely hearsay.

25. SJRWMD's Applicant's Handbook refers to the use of FEMA flood level data for these kinds of analyses, but it also refers to the use of "detailed information" possessed by SJRWMD. See Section 3.3.4, A.H., Vol II. Information possessed by SJRWMD would likely include data from their own water level gages.

26. The Petitioner did not present sufficient evidence to prove their data and modeling was more accurate or reliable than FEMA data and the Applicant's modeling. FEMA flood insurance rate maps are a standard reference in the industry. The HEC-RAS model is a generally accepted tool used by engineers for this kind of analysis.

27. None of the parties presented evidence to make clear what is the usual or industry protocol for choosing between conflicting data of this kind in the permitting process.

28. The Petitioner has the burden of proof on disputed issues of fact and failed to carry its burden on this disputed issue. It is found, therefore, that the Applicant's use of FEMA data and the HEC-RAS model was reasonable.

29. The Petitioner admitted that the 100-year flood elevation in the canals has been increasing over time because of the conversion of land uses in the area from agricultural to urban. Because the Petitioner regulates discharges to its canals, it has some responsibility for the rising water levels in its canals.

30. The Petitioner claimed that reduced clearance was due in part to the bridges from "age, use, lack of maintenance, frugality or causes other than design." However, the Petitioner presented no supporting evidence for this allegation in the record.

31. In its regulatory role, the Petitioner requires a minimum clearance of one foot between a bridge's lowest horizontal beam and the 100-year flood elevation to avoid obstruction of water flow through the canals.

32. SJRWMD rules do not specify that bridges be designed to have a minimum clearance above the 100-year flood elevation.

33. The applicable design standards for flood protection in the Applicant's Handbook are set forth in Section 3.3.2(b), A.H., Vol. II, which provides in pertinent part as follows:

Floodways and floodplains, and levels of flood flows or velocities of adjacent streams, impoundments or other water courses must not be altered so as to adversely impact the off-site storage and conveyance capabilities of the water resource. It is presumed a system will meet this criterion if the following are met:

* * *

(b) A system may not cause a net reduction in the flood conveyance capabilities provided by a floodway except for structures elevated on pilings or traversing works. Such works, or other structures shall cause no more than a one-foot increase in the 100-year flood elevation immediately upstream and no more than one tenth of a foot increase in the 100-year flood elevation 500 feet upstream.

34. The bridges would not cause more than a one-foot increase in the 100-year flood elevation immediately upstream or more than one tenth of a foot increase in the 100-year flood elevation 500 feet upstream.

35. Therefore, the Applicant is presumed to have provided reasonable assurance that the Project would not cause adverse flooding to on-site or off-site property, or adversely impact the existing surface water storage and conveyance capabilities of the North Canal or South Canal.

36. The Petitioner argues that the SJRWMD criteria fail to account for floating debris. The Petitioner claims that bridge designers are obliged to follow basic design guidelines published by FDOT and other government agencies and provide

clearance for floating debris, but Petitioner did not offer into evidence these "basic design standards" or prove their industry-wide acceptance.^{3/}

37. SJRWMD's engineer, Fariborz Zanganeh, stated that the potential for floating debris to be blocked by a bridge or any other traversing work is considered by SJRWMD to be an operation and maintenance issue, not a design issue.

38. The Petitioner referred to some road bridges in the area that, upon reconstruction, were raised by county, state, or federal governments to comply with the Petitioner's clearance requirement. First, it is noted that the Applicant does not propose to reconstruct the existing North Canal Bridge and South Canal Bridge. Second, there is a substantial difference between the effort and cost of raising a road and raising a railroad track.

39. Raising the proposed bridges would require elevating the railroad bed for a considerable distance in each direction so that slopes comply with railway safety criteria.

40. The Petitioner failed to prove the Project does not comply with SJRWMD flood control criteria.

The Sand Bar

41. The Petitioner also objects to the proposed bridge at the North Canal because the Petitioner contends the existing bridge pilings have caused a sand bar to form, and shoaling and

erosion would likely increase with construction of additional pilings. The Petitioner believes the problem is caused by the fact that the existing and proposed pilings, which would have the same alignment, are not parallel to water flow in the canal.

42. There are sand bars upstream of the bridge which cannot have been caused by the bridge pilings.

43. The North Canal, which runs downstream almost due east makes a turn to the northeast under the North Canal Bridge. The record evidence, as well as generally known facts of which the Administrative Law Judge may take official recognition, establish that a change in the direction of water flow in a channel creates non-uniform flow, which can cause erosion and shoaling.

44. The Petitioner did not present evidence to distinguish between shoaling and erosion that could be caused by the pilings and shoaling and erosion that could be caused by the turn in the canal. The Petitioner did not call a witness for this subject who had special knowledge of the science of hydraulics and no study was done by the Petitioner to confirm its theory of the cause.

45. The Petitioner has the burden of proof on disputed issues of fact and failed to carry its burden on this disputed issue.

46. The Applicant asserts that the conditions of the proposed permit provide for maintenance that would include "the removal of any buildup of siltation that might occur over time and potentially cause the North Canal Bridge structure to cease operating as designed." However, whether the bridge is operating as designed would not address whether the canal is operating as designed because of shoaling.

47. There is no condition in the proposed permit that imposes on the Applicant the duty to remove built-up sediment beneath the North Canal Bridge. It is unlikely that such a requirement can be imposed on the Applicant because it does not own or control the canal.

48. The Petitioner claims the railroad authority denied the Petitioner access to the right-of-way when it sought permission in the past to remove the sandbar at the North Canal Bridge. Unfortunately, a permit condition that requires the Applicant to cooperate with the Indian River Water Control District in performing canal maintenance at the bridges is probably not enforceable.

CONCLUSIONS OF LAW

Jurisdiction

49. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. See §§ 120.569 and 120.57, Fla. Stat.

Standing

50. For a petitioner to have standing, it must show that it has a substantial interest that would be affected by the proposed agency action. See § 120.52(13)(b), Fla. Stat.

51. The Petitioner presented evidence demonstrating that its interest could be affected, which is sufficient to establish standing in this proceeding. See St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So. 3d 1051, 1054 (Fla. 5th DCA 2011).

Burden and Standard of Proof

52. The ERP was issued under chapter 373. After the applicant for a chapter 373 permit has presented its prima facie case for entitlement to the permit by entering into evidence the application, relevant materials supporting the application, and the agency staff report or notice of intent to issue the permit, the challenger has the burden of ultimate persuasion to show the applicant is not entitled to the permit. See § 120.569(2)(p), Fla. Stat. The Applicant and SJRWMD presented a prima facie case for entitlement to the ERP. Therefore, the burden of ultimate persuasion was on the Petitioner to prove their case in opposition to the permit.

53. The standard of proof is preponderance of the evidence. See § 120.57(1)(j), Fla. Stat.

54. Issuance of an ERP requires a demonstration of reasonable assurance from the applicant that the activities authorized will meet the applicable criteria contained in Florida Administrative Code Rules 62-330.301 and 62-330.302, and related provisions in the Applicant's Handbook, Vol. I and II.

55. The term "reasonable assurance" means a demonstration that there is a substantial likelihood of compliance with standards. See Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992). It does not mean absolute guarantees.

Applicable Laws and Rules

56. The parties stipulated that the Project complies with the conditions for issuance in rules 62-330.301(1)(a), (d), (e), (f), (g), (h), (i), (j), and (k) and 62-330.302. Based on the parties' stipulation, what remains at issue is whether the Applicant has provided reasonable assurance that the construction, operation, and maintenance of the North Canal Bridge and South Canal Bridge meet the conditions for issuance in rule 62-330.301(1)(b) and (c).

57. This is not a rule challenge proceeding. Therefore, whether these rules should be amended to better accomplish the regulatory objectives are not questions which can be considered.

58. Rule 62-330.301 provides in relevant part:

To obtain an individual or conceptual approval permit an applicant must provide reasonable assurance that the construction, alteration, operation, and maintenance removal, or abandonment of the projects regulated under this chapter:

* * *

(b) Will not cause adverse flooding to on-site or off-site property;

(c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities;

59. The Petitioner argues that the Project violates rule 62-330.301(1)(b) and (c) because the Project would cause adverse flooding to offsite properties and adverse impacts to existing surface water storage and conveyance capacities. The Petitioner failed to prove that the Project would violate these rules.

60. The Project complies with the design standards for flood protection in the Applicant's Handbook. The only hydraulic analyses offered into evidence show the addition of the proposed new bridges would have no impacts on upstream and downstream properties and only de minimis impacts on the conveyance capacity of the canals.

61. The Petitioner argues that the bridge designs show defects "on their face" because of the lack of adequate clearance between the low beam of the bridges and the water elevation in the canals during a 100-year flood event. By this

argument, the Petitioner is suggesting that its own one-foot clearance requirement should be an inferred design criterion and must be imposed by SJRWMD. That argument is inconsistent with the prohibition against non-rule policy. See § 120.56(4), Fla. Stat. There is no SJRWMD rule like the Petitioner's rule that imposes a minimum clearance.

62. Furthermore, the Petitioner did not demonstrate that the new bridges would cause flooding that would not already occur during a 100-year storm because of the height of the existing bridges.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the St. Johns River Water Management District enter a final order approving the issuance of Environmental Resource Permit No. 135214-2, with the conditions set forth in the Technical Staff Report dated August 26, 2016.

DONE AND ENTERED this 30th day of March, 2017, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of March, 2017.

ENDNOTES

^{1/} In its proposed recommended order, the Applicant describes the FEMA 100-year flood elevations as "11.5 to 12.0 ft. NAVD88" (North Canal bridge) and "9.0 to 10.0 ft. NAVD88" (South Canal bridge), but there was no explanation why the elevations would be expressed in ranges, rather than as single points. The application documents show single numbers, 11.5 feet and 9.3 feet, respectively. See AAF Ex. 12, p. 4, and AAF Ex. 14, p. 5.

^{2/} Petitioner did not challenge the proposed new bridge over the Main Canal, presumably because there is a clearance of 4.1 feet between the lowest horizontal beam and the FEMA 100-year flood elevation.

^{3/} Because the Petitioner contends there is no clearance when the water in the canals is at the 100-year flood elevation, it is unclear why floating debris was Petitioner's focus at the final hearing, rather than the obstruction of flow caused by the bridges themselves.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

INDIVIDUAL ENVIRONMENTAL RESOURCE PERMIT TECHNICAL STAFF REPORT
26-Aug-2016
APPLICATION #: 135214-2

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Consultant: Ricardo Cintron
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Project Name: All Aboard Florida North South Rail Corridor Segment D08 (FEC Railroad from MP 166.9 to MP 233.4)

Acres Owned: 680.0

Project Acreage: 680.0

County: Indian River; Brevard

STR:

Section(s):	Township(s):	Range(s):
31,36	23S	35E
31	23S	36E

6,7,17,18,20,21,28,33	24S	36E
4,9,10,14,15,23,26,35,36	25S	36E
1,12,13	26S	36E
18,19,30,31,32	26S	37E
5,8,9,16,21,27,28,34	27S	37E
2,3,11,13,14,24,25	28S	37E
30,34	28S	38E
5,6,8,16,17,21,28,33	29S	38E
3,9,11,14	30S	38E
6,7,8,17,20,21,28,29,33	31S	39E
3,4,10,15,22,23,26,35	32S	39E
1,2,12,13,24	33S	39E
19,30,31	33S	40E

Receiving Water Body:

Name	Class
Indian River Lagoon	III Marine, IW
Indian River	II, OFW, AP, IW

Authority: 62-330.020 (2)(d), 62-330.020 (2)(a)
Disturbed Land(7400), Mixed Wetland Hardwoods(6170), Streams and Waterways(5100), Railroads(8120), Mixed Hardwoods(4380), Willow and Elderberry(6180), Roads and Highways(8140), Utilities(8300), Exotic Wetland Hardwoods(6190)

Existing Land Use:

Mitigation Drainage Basin: Central Indian River Lagoon, Northern Indian River Lagoon

Special Regulatory Basin:

Final O&M Entity: All Aboard Florida - Operations, LLC

ERP Conservation Easements/Restrictions Yes

:

Interested Parties: Yes

Objectors: Yes

Authorization Statement:

This permit authorizes 3.70-acres of wetland impacts, 11.12-acres of surface water impacts and an associated off-site mitigation plan and construction of a stormwater management system with stormwater treatment for All Aboard Florida North South Rail Corridor Segment D08 (FEC Railroad from MP 166.9 to MP 233.4), a 680.0-acre project to be constructed as per plans received by the District on June 10, 2016, and as amended by plans received by the District on August 5, 2016.

Recommendation: Approval

Reviewers: Fariborz Zanganeh; Eric Muldowney

Project Applicant and Sufficient Real Property Interest: *Under rule 62-330.060, Florida Administrative Code (F.A.C.), and subsection 4.2.3(d), Environmental Resource Permit Applicant's Handbook Volume I (A.H. Vol. I), a permit applicant must certify that it has sufficient real property interest over the land upon which the activities subject to the application will be conducted.*

Florida East Coast Railway, LLC (FECR) is the fee simple owner of the existing right-of-way (ROW) and All Aboard Florida has an easement for construction, operation and maintenance of the proposed project.

Project Location and Brief Description

The proposed project includes the installation of a second track throughout the corridor, installation of a third track at some locations, curve reductions and replacement of existing railroad bridges over the surface waters of Horse Creek and Goat Creek in Brevard County and North Canal, Main Canal and South Canal in Indian River County. All the work will be implemented within the limits of the existing FECR corridor/right-of-way. The majority of the project area consists of an existing typical elevated rock railroad bed, ties and rails. The toe of slope of the existing rail bed often contains a swale or a ditch that captures and/or conveys the stormwater runoff to the existing cross drains.

The project is located within an existing 67-mile segment of the FECR right-of-way from Cocoa, in Brevard County to the border of the St. Lucie County and Indian River County line. The project corridor contains one to two rail lines on an elevated gravel rock railroad bed and multiple bridge crossings. The project corridor traverses through urban, industrial, commercial, residential, rural and undeveloped land uses as well as wetlands, ditches, canals and rivers.

Proposed Stormwater Management System

The proposed stormwater management system consists of the use of an existing collection and conveyance system serving the existing track(s) which was constructed before the District's permitting requirements, and a new stormwater management system that includes a linear swale with check dams. This new swale will operate as a dry retention system to store the stormwater runoff generated from the new track(s) area. Compensating treatment volume has been provided where the stormwater runoff from new track could not be captured and treated directly.

Permitting History

The existing rail line facility was constructed before a permit was required under Part IV, Chapter 373, F.S. On October 28, 2015, the District issued a 62-330.453, F.A.C., General Permit for Installation, Maintenance, Repair and Removal of Underground Utility Lines under permit number GEN-009-144190-1 for the installation of a fiber optic cable within the project corridor.

Conditions for Issuance

Rule 62-330.301(1), F.A.C., states that an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter:

- (a) Will not cause adverse water quantity impacts to receiving water and adjacent lands;
- (b) Will not cause adverse flooding to on-site or off-site property;

(c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities;

Water Quantity

Pursuant to 3.1, Applicant's Handbook, Volume II (A.H. Vol II), it is presumed that the conditions for issuance (a) through (c) above are met if the systems are designed to meet the standards in subsections 3.2.1, 3.3.1, 3.3.2, 3.4.1, 3.5.1, and 3.5.2, A.H., Vol II.

The applicant has demonstrated that the post-development peak rate of discharge from the project area does not exceed the pre-development peak rate of discharge for the mean annual 24-hour storm event and the 25-year, 24-hour storm event. No portions of the project discharge to a land-locked waterbody. This project does not propose any changes to the boundaries of the off-site drainage contributing areas and/or placement of impervious surface outside of the project area.

Drainage conveyance within the existing swale(s) will be reconfigured and maintained in the post-developed condition. The project complies with the water quantity requirements set forth above and per the design standards for flood protection established in A.H. Vol. II.

(e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the anti-degradation 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;

Water Quality

A system that complies with the applicable rule provisions creates a rebuttable presumption that the applicant has provided reasonable assurance that the proposed project meets the requirements of 62-330.301(1)(e), F.A.C., above.

The retention swale areas along the new track provide adequate volume to meet the District's presumptive criteria for discharge to a Class III waterbody, and also for those areas with a direct discharge to the Indian River Lagoon where the Lagoon is designated as a Class II and/or Outstanding Florida Waters (OFW). Additionally, where the Lagoon is designated impaired for nutrients, the applicant also demonstrated that the post-development nutrient load discharged from the project to the Lagoon is less than that of the pre-development condition nutrient loading. Recovery of the swale treatment volume is via infiltration and occurs within 72 hours. The system provides the required water quality treatment in accordance with 62-330.301(1)(e), F.A.C., and per the design and performance criteria established in the SJRWMD ERP Applicant's Handbook Volume II.

(k) Will comply with any applicable special basin or geographic area criteria.

There is no special basin or geographic area criteria applicable to the proposed project.

(d) Will not adversely impact the value of functions provided to fish and wildlife and listed species:

Functions to Fish and Wildlife

In evaluating this criterion, District staff considered Section 10.2.2, A.H. Vol. I, which states that an applicant must provide reasonable assurances that a regulated activity will not impact the values of wetland and other surface water functions so as to cause adverse impacts to: (a) the abundance and diversity of fish, wildlife, listed species and the bald eagle (*Haliaeetus leucocephalus*); and (b) the habitat of fish, wildlife, and listed species.

District staff conducted field visits to assess the wetlands and other surface waters and the functions they provide. The project site is the existing FECR railroad line that is currently in operation between Mile Post (MP) 163.1 through MP233.4 within both the Northern Indian River Lagoon Hydrologic Basin 21 and the Central Indian River Lagoon Hydrologic Basin 22. The existing railroad line varies from one to two tracks throughout the 67-mile segment. There is at least one active track throughout the project corridor. The existing second track may or may not be under operation depending on the location. The proposed project includes double track installation throughout the corridor, installation of a third track at some locations, curve reductions and replacement of existing railroad bridges over the surface waters of Horse Creek and Goat Creek in Brevard County and North Canal, Main Canal and South Canal in Indian River County. The proposed project does not include the replacement of existing bridges over the surface waters of Crane Creek, Turkey Creek, Eau Gallie River and Sebastian River, although the replacement of these bridges are intended under a future phase.

The majority of the project area consists of an existing typical elevated rock railroad bed, ties and rails. The toe of slope of the existing rail bed often contains surface water drainage ditches excavated from uplands. Due to the thick overgrowth of primarily nuisance and exotic vegetation over the upland cut ditches within the project corridor, these surface waters were not considered to provide suitable foraging habitat (SFH) for woodstork, a listed species.

The drainage ditches along the rail line that were historically excavated from wetlands have been assessed and quantified as wetlands under this application. The project boundaries do not extend to the full width of the existing FECR right-of-way, particularly at the location of wetlands. The forested wetlands proposed for impact are primarily dominated by nuisance and exotic vegetation, such as Carolina willow and Brazilian pepper, which are typical in areas of disturbance. Although some wetland systems adjacent to the project area may be of moderate or high quality in rural or undeveloped areas, only the low quality fringes of these wetlands within the FECR right-of-way are proposed and authorized for impact.

The project includes reconstruction of bridge crossings over several surface waters that contain Sovereign Submerged Lands (SSL) within the existing FECR right-of-way. No proprietary authorization is needed for the proposed bridge improvements per correspondence from the Division of State Lands on October 18, 2012 concerning the proposed project. The replacement of pile supported bridge crossings within the FECR right-of-way are not anticipated to have a substantially different effect on surface water habitat functions than the existing structures in use. Therefore, mitigation is not required for surface water impacts associated with the replacement of existing bridge crossings.

The project includes work in other surface waters potentially accessible to manatee, a listed species, at the location of the bridges. The Fish and Wildlife Conservation

Commission Imperiled Species Management Section provided comments on July 5, 2016 regarding potential impacts to the West Indian Manatee as a result of the project. The Commission recommended the District add several conditions to the permit to ensure that potential adverse impacts to manatee are minimized. These conditions include the 2011 Standard Manatee Conditions For In-Water Work, a condition for pile driving methodologies, a condition concerning grating to prevent entrapment and a prohibition on blasting. These issues were discussed with the applicant and appropriate conditions relating to protection of manatees are included as part of this permit.

Impacts

The project will result in 3.70 acres of impacts to wetlands and 11.12 acres of impacts to other surface waters. Of the 3.70 acre total wetland impact, 1.46 acres of wetland impacts will occur within the Northern Indian River Lagoon Hydrologic Basin 21 and 2.24 acres of wetland impacts will occur within the Central Indian River Lagoon Hydrologic Basin 22. Of the 11.12 acres of total surface water impacts, 2.0 acres of surface water impacts will occur within the Northern Indian River Lagoon Hydrologic Basin 21 and 9.12 acres of surface water impacts will occur within the Central Indian River Lagoon Hydrologic Basin 22.

Mitigation is not required for 11.12 acres of surface water impacts associated with the reconstruction of existing bridges (0.20 ac) and alterations to upland-cut ditches (10.92 ac) that meet the provisions of 10.2.2.2 A.H. Vol I since they were excavated from uplands and do not provide significant habitat for listed species. The previously mentioned 0.20 acre surface water impacts related to the bridges include direct impacts associated with piling replacements and bank stabilization as well as shading impacts due to the widening of a existing bridges. Of the 3.70 acre of wetland impacts resulting from the proposed activities, mitigation is not required for 0.11 acre of wetland impacts to three isolated wetlands less than 0.5 acre in size that meet the provisions of subsection 10.2.2.1 A.H. Vol I, since they are not utilized by listed species, not located within an area of critical state concern, not connected to via standing or flowing surface waters to other wetlands and are not of more than minimal value to fish and wildlife. However, mitigation is required for 3.59 acres of wetland dredge and fill impacts. These impacts will occur to 0.01 acre of freshwater marshes and 1.38 acres of forested wetlands within Basin 21 and 0.01 acre of exotic dominated mangrove wetlands and 2.19 acre of forested wetlands within Basin 22.

Impacts to freshwater marshes within the 67-mile project corridor is limited to a 0.01 acre portion of shoreline wetlands near an existing bridge traversing Horse Creek in Brevard County. Horse Creek is located in Melbourne, between Eau Gallie Boulevard and County Road 404. The Horse Creek shoreline under the bridge consists of open bare areas with scattered leather fern, sedges, primrose willow, fern, saltbush, and smartweed. The area of Horse Creek within the project boundaries is surrounded by residential subdivision development. The herbaceous wetlands proposed for impact at Horse Creek are of moderate to low quality.

Impacts to mangroves within the 67-mile project corridor is limited to a 0.01 acre area at Goat Creek. The wetland at the Goat Creek bridge crossing consists of Brazilian pepper, pond apple, coin vine, cat tail, primrose willow and a single white mangrove. The one white mangrove within the project boundaries is located beneath the existing Goat Creek bridge. The project will result in the widening Goat Creek bridge over the

location of the existing single mangrove. The wetlands within the FECR right-of-way in this area provide limited wetland habitat functions and are of low quality.

Impacts to forested wetlands that require mitigation within the 67-mile project corridor is limited to 3.59 acres. There are a variety of forested wetlands adjacent to the project corridor including hydric pine flatwoods, exotic wetland hardwoods, mixed wetland hardwood. These wetland communities are located in areas that range from public preservation lands to subdivisions to industrial parks. However, the portions of these many wetland communities that extend within the project limits adjacent to the existing railroad tracks are clearly dominated by exotic vegetation, primarily Brazilian pepper. Nuisance vegetation such as Carolina willow and primrose willow are also prevalent. The forested wetland impact areas within the FECR right-of-way dominated by exotic and nuisance vegetation typical of disturbance areas and provide limited wetland habitat functions

Elimination and Reduction

The location of the proposed rail project is dictated by the location of the existing FECR right-of-way. Within the limitations of FECR right-of-way, the applicant has designed the project to minimize impacts to wetlands and other surface waters to the greatest extent practicable while still obtaining the intent of a dual line rail system that meets industry standards. In addition, all wetlands proposed for impact are located within the existing right-of-way and are of low quality. The applicant was not required to implement practicable design modifications to reduce or eliminate impacts to upland-cut ditches that meet the provisions of 10.2.2.2 A.H. Vol I., or isolated wetlands that meet the provisions of 10.2.2.1 A.H. Vol I.

Mitigation

The project will result in 3.70 acres of adverse impacts to wetlands and 11.12 acres of adverse impacts to surface waters. Of the 3.70 acre of wetland impacts resulting from the proposed works, mitigation is not required for 0.11 acre of wetland impacts to isolated wetlands less than 0.5 acres in size that meet the provisions of subsection 10.2.2.1 A.H. Vol I. Mitigation is not required for 11.02 acres of surface water impacts associated with the reconstruction of existing bridges and alterations to upland-cut ditches that meet the provisions of 10.2.2.2 A.H. Vol I. Mitigation is required for impacts to 3.59 acres of wetlands resulting from the proposed activities. Of the 3.59 acres of impacts to wetlands that require mitigation, 1.39 acre of wetland impacts will occur within the Northern Indian River Lagoon Hydrologic Basin 21 and 2.2 acre of wetland impact will occur the Central Indian River Lagoon Hydrologic Basin 22.

The applicant proposes to offset 1.39 acres of adverse impact to low quality wetlands within the Northern Indian River Lagoon Hydrologic Basin 21 through the preservation of four (4) parcels cumulatively consisting of 1.82 acres of wetlands and 6.04 acres of uplands under a conservation easement consistent with section 704.06 of the Florida Statutes dedicated to the District. The applicant has completed acquisition of the four Basin 21 mitigation parcels. All of the Basin 21 mitigation parcels are located on the east side of Interstate 95 (I-95). Two are located both on the north and south side of West Halifax Avenue within the Cape Atlantic Estates (CAE) area in Volusia County and two parcels are located just south of CAE within Brevard County.

CAE is a subdivision in southern Volusia County that was platted and sold during the 1960s-1970s, but never built. It contains a large network of individually platted parcels,

of which, many are landlocked with limited legal access. Many parcels located within the CAE are preserved under a conservation easement associated with other District permits, FDOT mitigation activities or acquired by Volusia County through tax defaults or by the county parcel acquisition program. Due to current platting and limited legal access, it is unlikely that the CAE parcels will be developed. However, the current Volusia County zoning of Resource Corridor within the area of proposed mitigation allows for single-family dwelling units, silviculture and pasture conversion. Without parcel preservation through a conservation easement, the area is more likely to be subject to future development and land disturbances. The proposed mitigation parcels within the boundaries of the CAE include the preservation of 1.55 acres of mixed wetland hardwoods containing red maple, slash pine, sweetbay and laurel oak and 1.77 acres of upland pine flatwoods dominated by slash pine with an understory of saw palmetto, wax myrtle and gallberry. These parcels are located on the west side of, and provide supporting habitat to, the large cypress slough that runs north/south through the central portion of CAE.

The proposed Brevard County Basin 21 mitigation parcels are located in a primarily undeveloped landscape that contains a mixture of wetland and upland communities nearly identical to that of the CAE parcels but are subject to a higher threat of development due to greater accessibility and fewer county development restrictions. The parcels contain 4.27 acres of cabbage palm forested uplands with scattered live oak, 0.11 acre of cypress-pine-cabbage palm forested wetlands and 0.16 acre of freshwater marsh. The parcels-proposed for preservation show evidence of fire in recent years which is essential for maintaining appropriate native vegetative communities. The live oak trees that have survived recent fire events are mature and very large. The deeper interior portions of onsite marshes that have longer hydroperiods are dominated by sawgrass while the outer edges with a shorter hydroperiod are dominated by St. Johns wort. These mosaics of upland and wetland vegetative communities support more types of wildlife than are anticipated to utilize the rail project corridor. The western edge of one parcel is located on the basin boundary of St. Johns River (Canaveral Marshes to Wekiva) Hydrologic Basin 18 but the majority of the parcel is located within Basin 21 and the preservation of the parcel as a whole as mitigation for impacts within Basin 21 is not anticipated to result in unacceptable cumulative impacts to Basin 21.

The applicant proposes to offset 2.2 acres of adverse impacts to low quality wetlands within the Central Indian River Lagoon Hydrologic Basin 22 by the purchase of mitigation bank credits and the preservation 6 parcels containing 3.75 acres of forested uplands and 4.49 acres of forested and herbaceous wetlands under a conservation easement consistent with section 704.06 of the Florida Statutes dedicated to the District, and fee simple land donation to Brevard County's Environmentally Endangered Lands Program (EELs) program for long term management.

The 6 separate Basin 22 mitigation parcels range between 1.2 and 1.4 acres in size and cumulatively contain an estimated 3.75 acres of upland pine flatwoods, 1.33 acres of cypress, 1.53 acres of mixed forested wetlands, 1.12 acre of cypress-pine-cabbage palm wetlands, 0.12 acre of hydric pine flatwoods and 0.39 acre of wet prairie. The mitigation parcels are located within an area of platted residential lots and road right-of-way between Babcock Street and US 1 and Valkaria Road and Micco Road in southern Brevard County. The mitigation area contains large expanses of palmetto prairie, pine flatwoods, hydric pine flatwoods, cypress swamps, mixed shrub wetlands and wet prairie. These vegetative communities support more types of wildlife than are anticipated

to utilize the rail project corridor. The mitigation area already contains a patchwork of parcels that have been preserved under conservation easements in association with other District or Department approved mitigation plans and all of the proposed mitigation parcels about other existing conservation easement parcels.

The Basin 22 mitigation parcels are located within the Brevard Coastal Scrub Ecosystem Florida Forever Project Area. The acquisition of additional parcels under conservation easements contribute to Brevard County's conservation goals in this region. As Brevard County EELs continues to acquire larger and larger contiguous blocks of conservation land, they increase their ability to conduct more active land management practices currently occurring in the adjacent Grant Flatwoods Sanctuary. The applicant has provided documentation demonstrating Brevard County EELs is willing to accept the fee simple donation of all of the proposed Basin 22 mitigation parcels.

The remaining Basin 22 wetland impacts not offset by preservation and fee simple land donation described above are offset by the purchase of 0.25 credits at the Basin 22 Mitigation Bank. The preservation and enhancement of wetlands and uplands within the Basin 22 mitigation bank will provide greater ecological value than the low quality wetlands within the FECR right-of-way proposed for impact. The Basin 22 Mitigation Bank Phase 1 is a 2,160.2 acre area consisting of a mixture of forested and herbaceous communities, including pine flatwoods, temperate hardwoods, hardwood conifer mixed, mixed wetland hardwoods, willow, hydric pine flatwoods, freshwater marsh, and wet prairie. A significant amount of wildlife currently utilizes the mitigation bank, including threatened and endangered species. Species observed on-site include scrub jay, American alligator, Florida mottled duck, sandhill crane, Florida turkey, gopher tortoise, southeastern American kestrel, little blue heron, snowy egret, tricolored heron, white ibis, white tail deer, wood duck, and wood stork. The District has received a letter from the representatives of the Basin 22 Mitigation Bank indicating that 0.25 credits have been purchased for this project.

The proposed adverse impacts and mitigation were assessed in accordance with Chapter 62-345, F.A.C., Uniform Mitigation Assessment Method (UMAM) and it was determined that the preservation of the proposed off-site mitigation parcels in combination with the purchase of mitigation bank credits fully offsets the loss of wetland functions resulting from the proposed project.

(f) Will not cause adverse secondary impacts to the water resources

Secondary Impacts

In evaluating this criterion, District staff considered Section 10.2.7, A.H. Vol. I. This section contains a four part criterion which addresses additional impacts that may be caused by a proposed activity: (a) impacts to wetland functions that may result from the intended use of a project; (b) impacts to the upland nesting or denning habitat of listed species that are aquatic or wetland dependent and bald eagles (c) impacts to significant historical and archaeological resources that are closely linked to dredging or filling of wetlands or other surface waters; and (d) wetland impacts that may be caused by future phases of the project or activities that are closely linked and causally related to the proposed activity.

(a) Subsection 10.2.7(a) A.H. Vol I. is intended to address additional impacts to remaining on-site and off-site wetland habitat functions from changes in adjacent

and uses as a result of a permitted activity. The FECR right-of-way has been an active rail line corridor for decades and is categorized by the Florida Land Use, Cover and Forms Classification System (FLUCFCS) under the 800 Transportation, Communication and Utilities land use as subsection code 812 Railroads. The proposed project boundaries of this linear project are narrower than the full extent of the existing FECR right-of-way and adjacent wetland and other surface waters have been subject to light, noise, vibration and other disturbances associated with heavy freight rail and passenger service for decades. The proposed modifications to the existing rail corridor will not result in a change to the existing 812 Railroads land use category or substantially increase adverse secondary impacts to adjacent wetland and surface water habitat functions.

(b) The project was assessed pursuant to the criterion of Section 10.2.7(b), A.H. Vol I. The closest known active bald eagle nest to the project corridor is nest BE056 in Brevard County which is located over 1,400 feet from the project boundaries. Per the Florida Fish and Wildlife Conservation Commission's (FWC) Bald Eagle Management Plan, activities greater than 660 feet from an active nest tree are not subject to restrictions. The proposed project is sufficiently distant from all known active bald eagle nests that, based on United States Fish and Wildlife Service (USFWS) guidance, adverse impacts to bald eagles are not anticipated. No wetland dependent listed species are expected to utilize this site for upland nesting habitat.

(c) The project boundaries contain and are in close proximity to multiple documented historic and archaeological resources. The more significant historic resources are located in the southern half of the project site within Indian River County. The Florida Department of State Division of Historical Resources (DHR) has reviewed the proposed project. According to correspondence received by the District on June 22, 2016 from DHR, the project applicant has agreed to a series of mitigation and avoidance measures that include the documentation and reconstruction of historic bridges and archaeological monitoring by a professional independent archaeologist. These activities are anticipated to limit the effect of the project on historic resources. Special conditions concerning historic and archaeological resources were not requested by DHR. The permit will contain the District's standard condition concerning historic and archeologic resources. In addition, this permit contains special conditions relating to the draft programmatic agreement on historic resources, received by the District on July 11, 2016.

(d) The project is known to include future phases. The proposed 67-mile project is part of a larger rail line expansion project connecting Orlando to Miami. Within this 67-mile project corridor, future phases include the replacement of existing rail bridges over the surface waters and shoreline wetlands of Crane Creek, Turkey Creek, Eau Gallie River and Sebastian River. The applicant has provided conceptual plans for these future phases that address water quality and quantify future wetland and surface water impacts. The applicant has also provided a conceptual in-basin mitigation plan consisting of the purchase of mitigation bank

credits. Therefore, future phases that are causally related to the proposed project are not anticipated to result in violations of water quality or unacceptable impacts wetland and other surface waters.

(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.

Surface waters are not proposed to be diverted or obstructed as part of this application. Drainage patterns will be maintained as previously described. The activities proposed in this application are not anticipated to impact the maintenance of surface or ground water levels or surface water flows established pursuant to Section 373.042, F.S.

(h) Will not cause adverse impacts to a Work of the District established pursuant to Section 373.086, F.S.;

No works of the District are within the permit area.

(i) Will be capable, based on generally accepted engineering and scientific principles, of performing and functioning as proposed;

Registered professional engineers have designed the project. All supporting materials provided by the registered professionals demonstrate that the project will be capable of performing and functioning as proposed based on accepted engineering and scientific principles.

(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.

All Aboard Florida is a registered active company with the state of Florida with the financial capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit. The applicant will operate and maintain the proposed system in accordance with section 12.3.2, A.H., Vol. I.

Additional Conditions for Issuance

Rule 62 -330.302(1) states that in addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project:

(a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activity significantly degrades or is within an Outstanding Florida Water (OFW), that the activity be clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7, A.H., Volume I:

Public Interest Test

The project includes the replacement of several bridges over surface waters that outfall to the Indian River Lagoon to the east. Although portions of the Indian River Lagoon are designated as an Outstanding Florida Waters (OFW), no surface waters within the project boundaries are designated as an OFW and no impacts to OFWs are proposed.

therefore, the applicant need only demonstrate that regulated activities in, on, or over wetlands or other surface waters are not contrary to the public interest. In determining whether the proposed activities are not contrary to the public interest, the District shall consider and balance the following criteria:

1. Whether the activities will adversely affect the public health, safety, or welfare or the property of others;

In reviewing and balancing this criterion, the District will evaluate whether the activity located in, on, or over wetlands or other surface waters will cause:

(a) An environmental hazard to public health, safety, or improvement to public safety with respect to environmental conditions;

(b) Impacts to areas classified by the Department of Agriculture and Consumer Services as approved, conditionally approved, restricted or conditionally restricted for shellfish harvesting;

(c) Flooding or alleviate existing flooding on the property of others; and

(d) Environmental impacts to property of others.

The proposed works in wetlands and surface waters, including the removal and replacement of bridge structures, is not anticipated to adversely affect public health, safety, welfare or off-site properties. The project meets the District's water quality standards. With the exception of Goat Creek, all in-water work associated with this phase of development will occur in Class III waters. Goat Creek is classified as Class II waters and work within this surface water is limited to the replacement of an existing bridge. Surface waters proposed for impacts are either unclassified as shellfish waters or classified as prohibited for shellfishing. The project includes the construction of new culverts and the maintenance and extension of existing culverts under the existing rail line and is not anticipated to result in flooding to off-site properties. Wetland and surface water impacts to are limited to wetlands and other surface waters located within the existing FECR right of way. Therefore, on balance this is a neutral factor.

2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;

The proposed works in wetlands and surface waters and associated mitigation plan is not anticipated to adversely affect the conservation of fish and wildlife, including endangered and threatened species or their habitat. The project was reviewed the by the Florida Fish and Wildlife Conservation Commission (FWC) and assessed for potential impacts to listed species. As recommended by correspondence from FWC received by the District on June 5, 2016, permit conditions to minimize potential impacts to manatee, a listed species, have been incorporated into the conditions of this permit. Therefore, this a neutral factor.

3. Whether the activities will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

In reviewing and balancing this criteria, the District will evaluate whether the activity located in, on, or over wetlands or there surface waters will:

(a) Significantly impede navigability. The District will consider the current navigational use of surface waters and will not speculate on uses that may occur in the future.

(b) Cause or alleviate harmful erosion or shoaling.

(c) Significantly impact or enhance water flow.

The proposed activities in wetlands and surface waters, including the removal and replacement of bridge structures, is not anticipated to adversely affect navigation or the flow of water or result in harmful erosion or shoaling. The proposed bridge replacements will not be lower in height than the existing bridges and should not impede navigation any more than the existing structures. Sediment and erosion control measures for bridge crossings over Indian River County drainage canals, Goat Creek and Horse Creek have been modified to relocate turbidity curtains to run parallel with the side banks so as not to impede navigation or restrict the flow of water during stormwater discharge events. The width of the waterways will also not be narrowed in the post-development condition. Therefore, on balance this is a neutral factor.

4. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;

In reviewing and balancing this criteria, the District will evaluate whether the activity located in, on, or over wetlands or other surface waters will cause:

- (a) Adverse affects to sport or commercial fisheries or marine productivity.
- (b) Adverse effects or improvements to existing recreational uses of a wetland or other surface waters, which may provided boating, fishing, swimming, waterskiing, hunting and bird watching.

The proposed works in wetlands and surface waters, including the replacement of existing wooden bridge piling with concrete bridge pilings, is not anticipated to adversely affect fishing, recreation or marine productivity. Fishing and recreational activities by the public will likely be precluded during demolition and construction activities but the potential for fishing and recreational activities are anticipated to be equitable to the pre-development condition once construction is completed. Therefore, on balance this is a neutral factor.

5. Whether the activities will be of a temporary or permanent nature;

The regulated activity will have both temporary and permanent impacts to wetlands and other surface waters. The demolishing of existing bridge structures will have temporary surface water impacts while the surface water impacts associated with the construction of new bridges and their associated shading will be of a permanent nature. In addition, the wetland impacts authorized by this permit within the FECR right-of-way to accommodate the rail project are of a permanent nature. However, the mitigation that will fully offset the adverse impacts will be permanent; therefore, this factor is neutral.

6. Whether the activities will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.;

The project will not enhance significant historical or archaeological resources. However, according to correspondence received by the Division of Historical

Resources (DHR) June 22, 2016, adverse affects to historical or archaeological resources should be limited by a series of mitigation and avoidance measures including the documentation and reconstruction of historic bridges and archaeological monitoring by a professional independent archaeologist. These mitigation and avoidance measures are detailed in a Draft Programmatic Agreement On Historic Resources submitted to the District by the applicant on July 11, 2016. Based on the commitment by the applicant to adhere to the mitigation and avoidance measures of the Draft Programmatic Agreement On Historic Resources document, in addition to archaeological monitoring, the proposed project is anticipated to have a neutral effect on significant historical or archaeological resources.

7. The current condition and relative value of functions being performed by areas affected by the proposed activities.

The condition and habitat value of wetland and surface waters within the footprint of the FECR right-of-way is low. Adverse impacts that require mitigation were assessed utilizing UMAM and the applicant has demonstrated that the proposed mitigation plan sufficiently offsets the loss of wetland and surface water habitat functions resulting from the proposed activities; therefore, this factor is neutral.

Staff determined in balancing the above criteria, that overall when considered with the mitigation, the proposed project was neutral and the applicant had provided sufficient reasonable assurance that the project, with mitigation, is not contrary to the public interest.

(b) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters as set forth in sections 10.2.8 through 10.2.8.2 of A.H., Vol. I

Cumulative Impacts

An applicant must provide reasonable assurance that a regulated activity will not cause unacceptable cumulative impacts upon wetlands and other surface waters within the same drainage basin as the regulated activity for which a permit is sought. Pursuant to section 373.414(8)(b) of the Florida Statutes, if an applicant proposes mitigation physically within the same drainage basin as the adverse impacts to be mitigated, and if the mitigation offsets these adverse impacts, the District shall consider the regulated activity to meet the cumulative impact requirement. If an applicant proposes mitigation physically located outside of the drainage basin where the impacts are proposed, an applicant may demonstrate that such mitigation fully offsets the adverse impacts within the impacted drainage basin, based on factors such as connectivity of waters, hydrology, habitat, and water quality.

The proposed mitigation is physically located in the same drainage basin as the adverse impacts, except one Basin 21 preservation parcel is located on a basin boundary line between Basin 21 and Basin 18. The majority of the parcel is located in Basin 21 but the western side of the parcel is in Basin 18. The out-of-basin portion consists of forested uplands that provide habitat support to in-basin wetlands and wildlife utilizing these wetlands on the eastern side of the same parcel. The preservation uplands that are located out-of-basin are anticipated to be utilized by species that have both upland and

wetland habitat requirements in Basin 21 due to such close proximity. The preservation of this parcel to offset low quality wetlands within a railroad right-of-way in combination with all remaining in-basin preservation parcels, is not anticipated to result in unacceptable cumulative impacts to Basin 21. All of the wetland impacts in Basin 22 are offset by mitigation activities located within Basin 22. The project complies with Section 10.2.8 A.H. and no cumulative impacts to Basin 21 or Basin 22 are expected.

(c) Located in, adjacent to or in close proximity to Class II waters or located in Class II waters or Class III waters classified by the Department of Agriculture and Consumer Services as approved, restricted, conditionally approved, or conditionally restricted for shellfish harvesting will comply with the additional criteria in section 10.2.5 of Volume I, as described in subsection 62-330.010(5), F.A.C.

The proposed activities do not occur in shellfish waters.

(d) Involving vertical seawalls in estuaries or lagoons will comply with the additional criteria provided in section 10.2.6 of Volume I.

The proposed activities do not include vertical seawalls.

Conclusion

The project as proposed meets the conditions for issuance of permits specified in rules 62- 330.301 and 62-330.302, F.A.C.

Conditions

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the District staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.
3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation June 2007), and the Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida

Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), which are both incorporated by reference in subparagraph 62-330.050(9)(b)5, F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.

4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the District a fully executed Form 62-330.350(1), "Construction Commencement Notice,"[10-1-13], incorporated by reference herein (<http://www.flrules.org/Gateway/reference.asp?No=Ref-02505>), indicating the expected start and completion dates. A copy of this form may be obtained from the District, as described in subsection 62-330.010(5), F.A.C. If available, an District website that fulfills this notification requirement may be used in lieu of the form.
5. Unless the permit is transferred under Rule 62-330.340, F.A.C., or transferred to an operating entity under Rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms and conditions of the permit for the life of the project or activity.
6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
 - a. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex — "Construction Completion and Inspection Certification for Activities Associated With a Private Single-Family Dwelling Unit" [Form 62-330.310(3)]; or
 - b. For all other activities — "As-Built Certification and Request for Conversion to Operational Phase" [Form 62-330.310(1)].
 - c. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.
7. If the final operation and maintenance entity is a third party:
 - a. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.3 of Volume I) as filed with the Department of State, Division of Corporations and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which the activity is located.
 - b. Within 30 days of submittal of the as- built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation

requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.

8. The permittee shall notify the District in writing of changes required by any other regulatory District that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.
9. This permit does not:
 - a. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in Chapter 62-330, F.A.C.;
 - b. Convey to the permittee or create in the permittee any interest in real property;
 - c. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or
 - d. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.
10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under Chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.
11. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.
12. The permittee shall notify the District in writing:
 - a. Immediately if any previously submitted information is discovered to be inaccurate; and
 - b. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with Rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.
13. Upon reasonable notice to the permittee, District staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.

14. If any prehistoric or historic artifacts, such as pottery or ceramics, stone tools or metal implements, dugout canoes, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time within the project site area, work involving subsurface disturbance in the immediate vicinity of such discoveries shall cease. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section, at (850) 245-6333 or (800) 847-7278, as well as the appropriate permitting agency office. Such subsurface work shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and notification shall be provided in accordance with Section 872.05, F.S.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under Rule 62-330.201, F.A.C., provides otherwise.
16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under Chapter 62-330, F.A.C., or cause violations of state water quality standards.
17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the District will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with Rule 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.
19. This permit for construction will expire five years from the date of issuance.
20. All wetland areas or water bodies that are outside the specific limits of construction authorized by this permit must be protected from erosion, siltation, scouring or excess turbidity, and dewatering.
21. *Prior to the commencement of construction on the project or donation of any mitigation parcels to Brevard County - Environmentally Endangered Lands Program, whichever occurs first, the permittee shall have recorded a conservation easement, in the form approved in writing by the District on July 6, 2016, and shall include the approved legal description and surveyor's sketch.*

Pursuant to section 704.06, Florida Statutes, the conservation easement shall prohibit all construction, including clearing, dredging, or filling, except that which is specifically authorized by this permit, within the mitigation areas delineated on the final plans and/or mitigation proposal approved by the District. The easement must contain the provisions set forth in paragraphs 1(a)-(h) of section 704.06, Florida Statutes, as well as provisions indicating that the easement may be enforced by the District, and may not be amended without written District approval.

The permittee shall ensure that the conservation easement identifies, and is executed by, the correct grantor, who must hold sufficient record title to the land encumbered by the easement. If the easement's grantor is a partnership, the partnership shall provide to the District a partnership affidavit stating that the person executing the conservation easement has the legal authority to convey an interest in the partnership land. If there exist any mortgages on the land, the permittee shall also have each mortgagee execute a consent and joinder of mortgagee subordinating the mortgage to the conservation easement. The consent and joinder of the mortgagee shall be recorded simultaneously with the conservation easement in the public records of the county where the land is located. Within 30 days of recording, the permittee shall provide the District with: (a) the original recorded easement (including exhibits) showing the date it was recorded and the official records book and page number, (b) a copy of the recorded plat (if applicable), (c) a surveyor's sketch of the easement area plotted on the appropriate USGS topographic map, and (d) the original recorded consent and joinder(s) of mortgagee (if applicable).

Demarcation of Conservation Easement Area. Prior to lot or parcel sales, all changes in direction of the easement area boundaries must be permanently monumented above ground on the project site.

22. Prior to work in wetlands that warrant mitigation, the permittee shall submit evidence to the District demonstrating that all the mitigation parcels, (Brevard County Tax IDs: 2941118, 2957510, 2952752, 2957669, 2942500 and 2952857), have been successfully transferred to the Brevard County Environmentally Endangered Lands Program. The conservation easement must be recorded prior to donation to the county. Should the transfer of ownership of all the Basin 22 off-site mitigation parcels not be successfully completed, the permittee must obtain a permit modification to provide alternative mitigation prior to wetland impacts.
23. Before the start of any construction, the permittee must provide the District with documentation demonstrating that 0.25 forested mitigation credits have been debited from the Basin 22 Mitigation Bank ledger.
24. In the event that the permittee does not successfully complete the transaction to obtain 0.25 forested mitigation credits from Basin 22 Mitigation Bank, the permittee must obtain a permit modification to provide alternative mitigation.
25. For all bridge construction activity that includes in-water work (including but not limited to: equipment, excavators, and turbidity barriers) Horse Creek (MP

187.37), Goat Creek (MP 202.59), North Canal (MP 223.7) Main Canal (MP 226.8), and South Canal (MP 230.03) the Standard Manatee Construction Conditions for In-water Work (2011) must be followed.

26.

STANDARD MANATEE CONDITIONS FOR IN-WATER WORK

2011

The permittee shall comply with the following conditions intended to protect manatees from direct project effects:

- a. All personnel associated with the project shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injury to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
- b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
- c. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment. Barriers must not impede manatee movement.
- d. All on-site project personnel are responsible for observing water-related activities for the presence of manatee(s). All in-water operations, including vessels, must be shutdown if a manatee(s) comes within 50 feet of the operation. Activities will not resume until the manatee(s) has moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the manatee(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.
- e. Any collision with or injury to a manatee shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at ImperiledSpecies@myFWC.com
- f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Temporary signs that have already been

approved for this use by the FWC must be used. One sign which reads *Caution: Boaters* must be posted. A second sign measuring at least 8 ½" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to the email address listed above.

27. For all concrete pile-driving activity related to the bridge construction at Horse Creek (MP 187.37), Goat Creek (MP 202.59), North Canal (MP 223.7) Main Canal (MP 226.8), and South Canal (MP 230.03):

a. At least one dedicated observer shall be present during pile driving activities and shall perform no other duties that may interfere with their ability to observe for protected marine species. Observer(s) must have prior on-the-job experience observing manatees during dredging projects or in-water work where the activities were similar in nature to this project. Observer(s) shall have the authority to cease project operations 1) upon sighting a manatee within 50 feet of the pile driving or vessel activity; and 2) if detection of manatees is not possible due to weather or other conditions.

b. Pile driving activities shall be limited to daylight hours in order to maximize visibility for protected species observers. Monitoring shall occur for 15 minutes prior to, during, and for 15 minutes after pile driving ends.

c. During pile driving, the project will utilize a ramp-up measure. At the start of pile driving activity, pile driving hammers will initially be operated at low levels, then gradually increase to the necessary power required for pile installation.

1. If the activities appear to injure a protected marine species, then work shall cease immediately and not resume until after consultation with the Florida Fish and Wildlife Conservation Commission (ImperiledSpecies@myfwc.com or 850-922-4330). Consultation with FWC will include the identification of additional conservation measures deemed necessary to minimize the risks to protected species.

2. If there is any unusual manatee behavior in the vicinity of the pile driving (such as if manatees are attracted to the activity, or if they appear spooked or otherwise act unnaturally), please report this behavior as soon as practical to the Florida Fish and Wildlife Conservation Commission at ImperiledSpecies@myfwc.com.

28. Blasting is not authorized for this project.

29. To reduce the risk of entrapment and drowning of manatees, manatee exclusion devices (such as grating) shall be installed and maintained over any existing or

proposed pipes or culverts greater than 8 inches, but smaller than 8 feet in diameter that are submerged or partially submerged and reasonably accessible to manatees. If horizontal or vertical bars are used, no more than 8 inch gaps on center shall be allowed. Grates or valves shall be in place at the accessible end(s) during all phases of the construction process and as a final design element to restrict manatee access.

30. Deed of Conservation Easement

This permit requires the recording of a conservation easement over Volusia County parcels 844702052830 and 844702082720 (parcel IDs) and Brevard County parcels 2003960 and 200397921 (tax IDs) in Basin 21 and Brevard County parcels 2941118, 2957510, 2952752, 2957669, 2942500 and 2952857 (tax IDs) in Basin 22. Within 30 days of recording, the permittee shall provide the District with: (a) the original recorded easement (including exhibits) showing the date it was recorded and the official records book and page number, (b) a copy of the recorded plat (if applicable), (c) a surveyor's sketch of the easement area plotted on the appropriate USGS topographic map, and (d) the original recorded consent and joinder(s) of mortgagee (if applicable). Before recording them, the permittee shall ensure that these documents are acceptable to the District as described below.

Recording of Conservation Easement

Before (1) dredging, filling, or clearing any wetland or surface water for which mitigation is required, (2) clearing any upland within a Riparian Habitat Protection Zone for which mitigation is required, (3) the sale of any lot or parcel, (4) the recording of the subdivision plat, or (5) use of the infrastructure for its intended use, whichever occurs first, the permittee shall record a conservation easement in the form approved in writing by the District on July 6, 2016, which shall include restrictions on the real property pursuant to section 704.06, Florida Statutes, and be consistent with section 10.3.8, Applicant's Handbook, Vol I. The conservation easement shall be in the form approved in writing by the District on July 6, 2016 and shall include the approved legal description and surveyor's sketch. The conservation easement shall include restrictions on the real property pursuant to section 704.06, Florida Statutes, and be consistent with section 10.3.8, ERP Applicant's Handbook, Volume I (October 1, 2013) and Fla. Admin. Code R. 62-330.301(6).

Pursuant to section 704.06, Florida Statutes, the conservation easement shall prohibit all construction, including clearing, dredging, or filling, except that which is specifically authorized by this permit, within the mitigation areas delineated on the final plans and/or mitigation proposal approved by the District.

The easement may not be amended without written District approval.

Additional Documents Required

The permittee shall ensure that the conservation easement identifies, and is executed by, the correct grantor, who must hold sufficient record title to the land encumbered by the easement. If the easement's grantor is a partnership, the partnership shall provide to the District a partnership affidavit stating that the

person executing the conservation easement has the legal authority to convey an interest in the partnership land. If there exist any mortgages on the land, the permittee shall also have each mortgagee execute a consent and joinder of mortgagee subordinating the mortgage to the conservation easement. The consent and joinder of the mortgagee shall be recorded simultaneously with the conservation easement in the public records of the county where the land is located. Within 30 days of recording, the permittee shall provide the District with: (a) the original recorded easement (including exhibits) showing the date it was recorded and the official records book and page number, (b) a copy of the recorded plat (if applicable), (c) a surveyor's sketch of the easement area plotted on the appropriate USGS topographic map, and (d) the original recorded consent and joinder(s) of mortgagee (if applicable).

Demarcation of Conservation Easement Area. Prior to lot or parcel sales, all changes in direction of the easement area boundaries must be permanently monumented above ground on the project site.

31. Permittee agrees to implement the Archaeological Monitoring/Unanticipated Discoveries Plan identified in the "Draft Programmatic Agreement" dated July 11, 2016 (DPA) submitted by the Permittee to the District on July 11, 2016. The Plan is applicable to the historic properties identified in the DPA that are subject to monitoring and that involve regulated activities in, on, or over wetlands or other surface waters and are within the project boundary of this permit.
32. The proposed project must be constructed and operated in accordance with the plans received by the District on June 10, 2016 as amended by plans received by the District on August 5, 2016 and August 24, 2016.
33. All Aboard Florida – Operations, LLC shall be responsible for the construction and operation and maintenance of the stormwater management system. Ram Land Holdings, LLC and J Acquisitions Brevard, LLC shall be responsible for the operation and maintenance of the off-site mitigation areas owned by each entity respectively.
34. All Aboard Florida – Operations, LLC shall be responsible for compliance with conditions 1 through 32, Ram Land Holdings, LLC shall be responsible for compliance with condition 21 and 30 relevant to the parcels under its ownership, and J Acquisitions Brevard, LLC shall be responsible for compliance with conditions 21, 22, and 30 relevant to the parcels under its ownership.

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Uniform Mitigation Assessment Method Summary

Site/Project Name		Application Number		Date						
All Aboard Florida North South Rail Corridor Segment D08 (FEC Railroad from MP 166.9 to MP 233.4)		IND-009-135214-2		19-Aug-2016						
Impact Summary										
Assessment Area	Impact Type	Location and Landscape Support		Water Environment		Community Structure		Impact Delta	Acres	Functional Loss
		Current	w/impact	Current	w/impact	Current	w/impact			
Basin 21 Freshwater Shoreline Horse Creek	Wetland Impact	5	0	5	0	6	0	0.5333333	0.01	0.005
Basin 22 Goat Creek	Wetland Impact	6	0	6	0	6	0	0.6	0.01	0.006
MP177.8 Basin 21	Wetland Impact	4	0	4	0	4	0	0.4	0.16	0.064
MP178E Basin 21	Wetland Impact	4	0	4	0	4	0	0.4	0.38	0.152
MP178W Basin 21	Wetland Impact	4	0	4	0	4	0	0.4	0.03	0.012
MP184 Basin 21	Wetland Impact	4	0	4	0	4	0	0.4	0.3	0.12
MP184.5E Basin 21	Wetland Impact	4	0	4	0	4	0	0.4	0.02	0.008
MP184.5W Basin 21	Wetland Impact	4	0	4	0	4	0	0.4	0.25	0.1
MP185 Basin 21	Wetland Impact	4	0	4	0	4	0	0.4	0.01	0.004
MP187.4 Basin 21	Wetland Impact	4	0	4	0	4	0	0.4	0.03	0.012
MP191E Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.24	0.104
MP191W Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.06	0.026
MP195.75 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.06	0.026
MP195.9 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.11	0.048
MP198 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.01	0.004
MP199 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.01	0.004
MP199.2E Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.17	0.074
MP199.5 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.18	0.078
MP203.25 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.13	0.056
MP203.5 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.15	0.065
MP203E Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.01	0.004
MP203W Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.2	0.087
MP209.5 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.05	0.022
MP212.9 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.03	0.013
MP213.1 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.05	0.022
MP213.5E Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.36	0.156
MP213.5W Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.1	0.043
MP213E Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.11	0.048
MP213W Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.09	0.039
MP219 Basin 22	Wetland Impact	5	0	4	0	4	0	0.43333334	0.06	0.026
TOTAL									3.3799992	1.428

Mitigation Summary

Assessment Area	Mitigation Type	Location and Landscape Support		Water Environment		Community Structure		Time Lag	Risk	PAF	RFG	Acres	Functional Gain
		w/o Mit	w/Mit	w/o Mit	w/Mit	w/o Mit	w/Mit						
21 Anderson 411	Upland Preservation	7	8			6	8	1.0	1.0	0.6	0.09	1.25	0.112
21 Durham 411	Upland Preservation	7	8			6	8	1.0	1.0	0.6	0.09	0.52	0.047
21 Durham 630	Wetland Preservation	7	8	9	9	7	8	1.0	1.0	0.5	0.033	1.55	0.051
21 Eiting 428	Upland Preservation	7	8			6	8	1.0	1.0	0.6	0.09	2.16	0.194
21 Eiting 624	Wetland Preservation	7	8	9	9	7	8	1.0	1.0	0.5	0.033	0.11	0.004
21 Moallem 428	Upland Preservation	7	8			6	8	1.0	1.0	0.6	0.09	2.11	0.19
21 Moallem 643	Wetland Preservation	7	8	9	9	7	8	1.0	1.0	0.5	0.033	0.16	0.005

22 Crabtree 411	Upland Preservation	7	8			6	8	1.0	1.0	0.7	0.105	0.96	0.101
22 Crabtree 621	Wetland Preservation	7	8		8	6	8	1.0	1.0	0.7	0.07	0.44	0.031
22 Kelly 624	Wetland Preservation	7	8		8	7	8	1.0	1.0	0.6	0.04	1.12	0.045
22 Kelly 625	Wetland Preservation	7	8		8	7	8	1.0	1.0	0.6	0.04	0.12	0.005
22 McBride 411	Upland Preservation	7	8			4	8	1.0	1.0	0.7	0.175	0.54	0.095
22 McBride 621	Wetland Preservation	7	8		8	6	8	1.0	1.0	0.7	0.07	0.86	0.06
22 Nolte 411	Upland Preservation	7	8			6	8	1.0	1.0	0.7	0.105	1.37	0.144
22 Nolte 621	Wetland Preservation	7	8		8	6	8	1.0	1.0	0.7	0.07	0.03	0.002
22 Oxford 411	Upland Preservation	7	8			6	8	1.0	1.0	0.7	0.105	0.2	0.021
22 Oxford 630	Wetland Preservation	7	8		8	6	8	1.0	1.0	0.6	0.06	0.81	0.049
22 Oxford 643	Wetland Preservation	7	8		8	7	8	1.0	1.0	0.6	0.04	0.39	0.016
22 Roberts 411	Upland Preservation	6	7			3	7	1.0	1.0	0.7	0.175	0.68	0.119
22 Roberts 630	Wetland Preservation	6	7		7	5	7	1.0	1.0	0.6	0.06	0.72	0.043
TOTAL												16.099998	1.334

TOTALS

Impacts	Acres	Mitigation - Upland	Acres	Mitigation -Wetland	Acres
Direct Impacts	3.3799992	Restoration	0.0	Creation/Restoration	0.0
Secondary Impacts	0.0	Enhancement	0.0	Enhancement	0.0
		Preservation	9.79	Preservation	6.3100004
Totals Impacts	3.3799992	Total Upland Mitigation	9.79	Total Wetland Mitigation	6.3100004

Total Functional Loss	1.428
Total Functional Gain	1.334
Excess Mitigation	-0.094