



**FILING FEE WAIVED**

June 16, 2004

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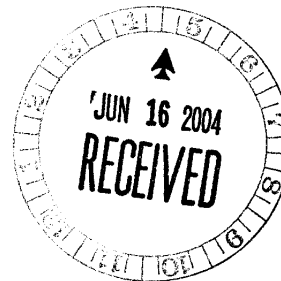
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CLIENT/MATTER NUMBER  
037724-0101

**HAND DELIVERED**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Mercury Building, #711  
1925 K Street, N.W.  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
JUN 17 2004  
Part of  
Public Record



Re: Docket No. AB-400 (Sub-No. 4)  
Application for Adverse Abandonment of Lee County, Florida  
regarding  
Seminole Gulf Railway, L.P. Adverse Abandonment  
in Lee County, Florida

211 360

Dear Secretary Williams:

Please find the attached the Application for Adverse Abandonment of Lee County, Florida ("Application") in the above referenced proceeding.

We have included an original and ten (10) copies of the Application and a copy of the Application has been served on all parties designated in the attached Certificate of Service. Additionally, please time stamp the extra copy of this letter and the Application to indicate receipt, and return it to me via courier.

Very truly yours,

Robert P. vom Eigen

cc: Joe Dettmar, Office of Proceedings  
Enclosures: Application, diskette

BRUSSELS  
CHICAGO  
DENVER

DETROIT  
JACKSONVILLE  
LOS ANGELES  
MADISON

MILWAUKEE  
ORLANDO  
SACRAMENTO  
SAN DIEGO

SAN DIEGO/DEL MAR  
SAN FRANCISCO  
SILICON VALLEY  
TALLAHASSEE

TAMPA  
TOKYO  
WASHINGTON, D.C.  
WEST PALM BEACH

002.1217304.1

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

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ENTERED  
Office of Proceedings  
JUN 17 2004  
Part of  
Public Record

STB Docket No. AB-400 (Sub- No. 4)

SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL



APPLICATION FOR ADVERSE ABANDONMENT  
OF LEE COUNTY, FLORIDA

FILING FILE

John Turner  
Assistant County Attorney  
Lee County  
P.O. Box 398  
Fort Myers, FL 33902-0398

Tel: 239-335-2236

Dated: June 16, 2004

Robert P. vom Eigen  
Melissa A. Burt  
Foley & Lardner, LLP  
Suite 500  
3000 K Street, NW  
Washington, DC 20008  
Tel: 202-672-5300

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

STB Docket No. AB-400 (Sub- No. 4)

SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL



APPLICATION FOR ADVERSE ABANDONMENT  
OF LEE COUNTY, FLORIDA

Applicant, Lee County, Florida ("Lee County"), pursuant to 49 U.S.C. 10903 and 49 C.F.R § 1152.1, *et seq.*, asks the Surface Transportation Board ("the Board") to find that the public convenience and necessity require or permit the abandonment of a portion of the Baker Spur line. The western terminus of the portion of the line in question begins at engineering station 36+35 +/-, which is approximately 100 feet to the west and south of where the line crosses Alico Road, directly west of Alico Center Road, approximately one mile east of U.S. 41, and parallel to Alico Road station 79+00<sup>1</sup>, continuing across Alico Road and then running parallel to and north of Alico Road for approximately 4,260 feet to the eastern terminus of the line at engineering station 79+95 ("the Subject line").<sup>2</sup>

<sup>1</sup> Originally the proposed abandonment began approximately 300 feet to the west of Alico Road station 79+00 at Alico Road station 76+00, but to accommodate Florida Power and Light's use of the Baker Spur, Lee County has moved the western terminus of the abandonment to Alico Road station 79+00. See Verified Statement of Donald DeBerry ("DeBerry V.S.") at ¶8. This change to reduce the scope of the abandonment does not prejudice any of the parties to this proceeding or other persons or government entities.

<sup>2</sup> There has been some confusion over where engineering station 79+95 is physically located because the engineering stations are not clearly marked on the Baker Spur line. See DeBerry V.S. at ¶10. Lee County was provided a map by SGLR in February of 2003, and that map showed station 79+95 to be east of Haitian Road, and

In support thereof, Lee County states, as follows:

A. General [49 C.F.R. § 1152.22(a)]

(1.) The exact name of the applicant is Lee County, Florida. The County seat is located in Fort Myers, Florida. Lee County is a political subdivision of the State of Florida.

(2.) Lee County is not a railroad subject to the provisions of Subtitle IV of Title 49 of the United States Code. However, the Subject railroad line and Seminole Gulf Railroad, L.P. ("SGLR") are regulated by the Board.

(3.) Lee County seeks the abandonment of the Subject line, which is described above.

(4.) Two schematic maps and one aerial photograph are attached to this Application as Exhibit A.

(5.) Upon review of the Board's documents maintained by the Office of Secretary and upon inquiry with the Florida State Department of Transportation, Lee County is unable to locate a system diagram map filed by SGLR. Therefore, a system diagram map cannot be referenced in this application. Additionally, it should be noted that Lee County requested and

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Haitian Road to be 177.6 feet east of a billboard labeled engineering station 76+46. Engineers for the County determined that Haitian road is 67 feet to the east of the billboard sign, and if the painted label on the billboard is to be believed, 79+95 is 349 feet east of the billboard, even though the 'end of track' sign posted by SGLR is 356 feet east of the billboard. Therefore, even assuming that SGLR's maps and markings accurately reflect the location of engineering stations, there is inconsistency concerning the location of engineering station 79+95. For the purposes of this proceeding only, Lee County will use SGLR's 'end of track' sign, which corresponds approximately to Alico Road station 122+60, to delineate the eastern terminus of the Subject line. Since Lee County is seeking the abandonment of the line up to the point of the previous abandonment, this ambiguity does not need to be resolved at this time by the Board. The Board can simply grant abandonment up to the point of the previous abandonment, engineering station 79+95, and if necessary, any resulting disputes can be handled appropriately in state court among the relevant parties.

received a waiver of this requirement. Lee-2<sup>3</sup>, at page 6 and Board Decision served June 8, 2004 ("Decision") at page 3.

(6.) Statement of Reasons for Application.

Alico Road is a heavily traveled thoroughfare that connects Interstate 75 and U.S. 41 and handles industrial, commercial, and residential traffic. Alico Road is currently a congested two-lane road, but Lee County is in the process of widening Alico Road to six lanes.

This Application is necessary to avoid the needless expenditure by Lee County of public funds to construct and remove an expensive grade crossing protection system across the expanded Alico Road. Prior to learning of the departure of the last remaining shipper on the Subject line and the potential for seeking an adverse abandonment of it, Lee County planned the expansion of Alico Road to six lanes with installation of a new grade crossing and protection devices where the Subject line crosses Alico Road. The cost of installing such grade crossing equipment would exceed \$1 million dollars according to the statement provided to the County by SGLR. See Exhibit B, Verified Statement of Donald DeBerry ("DeBerry V.S.") at ¶4 and the attachment at Tab 1.

Lee County seeks to avoid the expenditure of public funds to construct this crossing because the only shipper on the Subject line will depart prior to the end of 2004, and the owner of the facility, Alico Industries, LLC ("Alico LLC"), intends to pursue uses of its property that do not require rail service. See Verified Statement of Jose Rivera, J.J. Taylor Distributors

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<sup>3</sup> Lee County did not assign numbers to the documents previously filed with the Board but are doing so now for ease of reference. The documents filed by Lee County, and the corresponding numbers, are: Notice (Lee-1), Petition for Waiver (Lee-2), Revised Notice (Lee-3), Revised Petition for Waiver (Lee-4), Draft Environmental and Historical Report (Lee-5), Petition for Waiver of 1104.13(c) (Lee-6), Rebuttal (Lee-7), Petition for Waiver of 1105.7(b) (Lee-8), Revised Notice No. 2 (Lee-9), Application (Lee-10).

Fort Myers-Naples, Inc. ("J.J. Taylor") as Exhibit C, and Verified Statement of Duane R.

Swanson on behalf of Alico LLC as Exhibit D. In the words of Mr. Swanson:

"The current tenant has a lease which provides for extensions through January 9, 2005, and as such when the tenant vacates the premises, the need for rail service will be completely discontinued. Therefore, Alico Industries, LLC supports Lee County's application for abandonment of the Subject Rail Line." Id. at ¶3.

All other parties with property located adjacent to the Subject line either support Lee County's Application or express no opposition to it. See Verified Statements of Timothy Corson on behalf of Florida Power and Light ("FP&L") ("Corson V.S.") and Franz J. Rosinus on behalf of Airport Industrial Holdings, LLC ("Airport Holdings") as Exhibits C and F, respectively.

Therefore, once J.J. Taylor relocates, there will be no active shippers on the Subject line and no prospect or need for future rail service. If a new grade crossing were installed, it will eventually need to be removed, since the Subject line inevitably will be abandoned. Upon that abandonment, the County would then have the additional expenditure of removing the grade crossing, at a cost of approximately \$300,000. See DeBerry V.S. at ¶4.

The abandonment of the Subject line will not adversely impact SGLR. As noted, there are no other active shippers. Upon abandonment of the Subject line, SGLR will be able to realize the net salvage value of their line, and will save on any maintenance costs associated with the Subject line. It is true that SGLR may be required to forego revenue from the billboard located adjacent to the right of way.<sup>4</sup> Those foregone revenues, if any, are *de minimus* and

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<sup>4</sup> The billboard is located on the right of way leased by SGLR from CSX. The easement held by CSX and the leasehold interest held by SGLR will terminate upon discontinuance of rail service on the line. See DeBerry, V.S. at ¶9. Assuming the billboard is located adjacent to a portion of the line subject to this application, and further assuming (without conceding the fact) that it is a permissible use under the CSX easement, grant of the application will cause a loss of any revenue associate with the billboard. One side of the billboard displays an advertisement for SGLR's dinner/mystery train, and it is not clear to Lee County what revenues may be generated by the billboard.

should not affect the public interest served in granting this application, particularly in light of the \$1.3 million Lee County taxpayers will have to pay should the inevitable abandonment of the Subject line be delayed.

Nor will the abandonment of the Subject line affect the transportation needs of FP&L. See Corson V.S. ¶3 and 4. FP&L uses an adjacent portion of the Baker Spur line to the west of the western terminus of the Subject line, and Lee County, after discussions with FP&L representatives, has modified the scope of the proposed abandonment to insure that FP&L's use of that portion of the Baker Spur will continue without disruptions. See DeBerry, V.S., at ¶8 and Corson V.S. at ¶3 and 4. FP&L uses this portion of the Spur, which is to the south and west of where the line crosses Alico Road, to transload generators and other heavy equipment several times each year for its facility located on the northern side of the road and for facilities located elsewhere. With the change agreed to by Lee County, SGLR will be able to transload FP&L's equipment to a paved section of the service road to the south of the Baker Spur line. Lee County understands that FP&L will have no objection to Lee County's Application to abandon the Subject line.

Additionally, Lee County requests that the Board should grant an exemption from the Public Use provisions of 49 U.S.C. § 10905 in order to expedite the post-abandonment transfer of the right-of-way.<sup>5</sup> Lee County will incur penalties of \$1,500 a day from its contractor if delays on the road widening project are caused by such post abandonment proceedings, particularly where there is no prospect for trail use of the right of way. See DeBerry, V.S. at ¶4 and 6. There is no prospect for trail use because a sidewalk and a bike lane are already

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<sup>5</sup> Lee County sought and was granted an exemption and waiver of the Offer of Financial Assistance requirements. Lee-4 at page 7 and Decision at page 5. However, the Board reserved judgment on Lee County's request for waiver and exemption from the Public Use procedures. Decision at page 5.

incorporated into the Alico Road widening project, so any further trails would be redundant, unnecessary, and infeasible. The road widening project began on April 21, 2003 and the contractor is currently awaiting the authorization to work on this portion of the project. According to Phoenix Construction Services, Inc. the latest possible date work can begin on the section of Alico Road where the Baker Spur crosses is November 19<sup>th</sup>, 2004 without the county incurring additional costs of, at a minimum, \$1,500.00 per day. Lee County is under the impression that construction will be delayed beyond that date if SGLR seeks to pursue a trail use for the right of way as a means to delay the effective date of the abandonment. This will cause needless expense to Lee County taxpayers, an expense that can be avoided if the Board acts to exempt the Subject line from Public Use provisions and grant an abandonment on an expedited basis.

(7.) The name, title, and address of Lee County's representative to whom correspondence should be addressed is: Robert P. vom Eigen, Foley & Lardner, 3000 K Street, N.W., Suite 500, Washington, D.C. 20008. His telephone number is (202) 672-5300.

(8.) The line proposed for abandonment traverses United States Postal ZIP Codes 33912 and 33913.

B. Condition of Properties, Service Provided, Revenue and Cost Data [49 C.F.R. § 1152.22(b)-(d)]

Lee County previously sought and was granted a waiver of 49 C.F.R. § 1152.22(b)-(d). See Lee-2 and Lee-4 at page 7 and Decision at page 4. Nevertheless, Lee County can represent based upon verified statements presented in support of this Application that by no later than the end of this year, there will be no active shippers on the Subject line and no resulting revenues or costs associated with rail operations from that time forward.

C. Rural and Community Impact [49 C.F.R. § 1152.22(e)]

The Subject line has no stations and is in an unincorporated area of Lee County, Florida. Currently, the sole shipper on this portion on the line is J.J. Taylor, a distributor of beer, who, as discussed above, will relocate his operations to a different facility located off of the Subject line prior to the end of 2004. When J.J. Taylor moves out of its Alico Road facility, there will be no active shippers on the Subject line. Lee County requests that the Board set an effective date for its abandonment decision to coincide with the date following the cessation of J.J. Taylor's distribution activities at its current facility adjacent to the Subject line. Therefore, since there will be no active shippers on the effective date of the Board's order, the abandonment will not change the nature of the traffic or the volume of traffic tendered for railroad transportation or received by the shippers.

The Subject line is parallel to Alico Road. Alico Road is a major thoroughfare linking I-75 and U.S. 41, two major highways that connect cities such as Miami, Fort Myers, and Tampa. Therefore, there are alternate sources of transportation in the area of the Subject line.

The Subject line has no value for any public use other than the Alico Road widening project. As explained by Mr. DeBerry, the Subject line is not be suitable for any recreational trail purposes. The portion in question is under a mile long, crosses three roads (including a six-lane highway) and is adjacent to an industrial area. The portion of right-away in question would, if converted to trail use, be a short and isolated trail. When the eastern 3.5 miles of the Baker Spur was abandoned, the underlying land was not converted trail use and it reverted back to the adjacent property owners. Additionally, the Alico Road project already includes bike and walking paths. A trail running parallel and in close proximity to Alico Road would be a redundant and inefficient use of resources. See DeBerry V.S. at ¶6.

As noted earlier, there are restrictions on the title to the property underlying the Subject line. See, *supra* n.4. SGLR does not own the underlying land, it leases the easement from CSX. CSX has an easement with a reversionary interest to the adjoining property owners upon cessation of rail operations. Therefore, the adjoining property owners have a reversionary interest in the land occupied by the Subject line.

D. Environmental Impact [49 C.F.R. § 1152.22(f)]

Lee County also requested a waiver of the Environmental and Historic Report requirements and this was denied as unnecessary since Lee County voluntarily produced a Report. See Lee-2 and Lee-4, pages 8-9, Decision at page 3. Nevertheless, since SGLR objected to Lee County's request, Lee County produced a Report in order to expedite the abandonment application process and avoid delay. The Report is included here as Exhibit C. As certified below, all agencies listed in 49 C.F.R. § 1105.7(b) were served copies of the Report and invited to comment on the impacts of the proposed abandonment. As of the date of this filing, Lee County has received only one response from the Fish and Wildlife Service of the U.S. Department of the Interior, which is attached to the Report as required by 49 C.F.R. § 1105.7(d).

E. Passenger Service [49 C.F.R. § 1152.22(g)]

There is no passenger service on the Subject line.

F. Draft Federal Register Notice [49 C.F.R. § 1152.22(i)]

A Draft Federal Register Notice is attached as Exhibit E. A copy of the Federal Register Notice is included on a disk with this Application.

G. Conditions

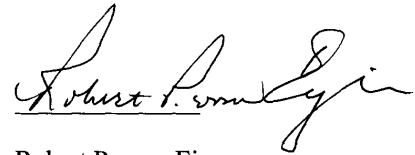
Lee County has requested that the Board grant certain waivers and exemptions of the financial assistance provisions, 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27, public use

provisions, 49 U.S.C. § 10905 and 49 C.F.R. § 1152.28, and recreational uses under the National Trails System Act, pursuant to 49 C.F.R. § 1152.29. See Lee-2 and Lee-4, pages 7-8. The Board has decline to act on these requests and will address them, if necessary, in the future. Decision at page 5. Lee County still considers these requests to be appropriate.

### **Conclusion**

For the reasons set forth in this Application, Lee County asserts, and requests the Board to find, that the public interest justifies the grant of an adverse abandonment of the Subject line effective on the day following the cessation of J.J. Taylor's distribution activities at its current facility adjacent to the Subject line.

Respectfully submitted,



Robert P. vom Eigen  
Melissa A. Burt  
Foley & Lardner, LLP  
Suite 500  
3000 K Street, NW  
Washington, DC 20008  
Tel: 202-672-5300

John Turner  
Assistant County Attorney  
Lee County  
P.O. Box 398  
Fort Myers, FL 33902-0398

Tel: 239-335-2236

Dated: June 16, 2004

Lee-10

## VERIFICATION

State of Florida

Lee County

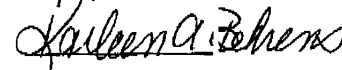
I, Don DeBerry, a professional engineer registered in the state of Florida, and employed by Lee County, the applicant herein; have been authorized by the applicant to verify and file with the Surface Transportation Board the foregoing application in ST AB-400 (Sub-No. 4); I have carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; and I have knowledge of the facts and matters relied upon in the application; and all representations set forth herein are true and correct to the best of my knowledge, information, and belief.

Dated at Lee County, Florida, this 16<sup>th</sup> Day of June, 2004.



Donald DeBerry, P.E.  
#36778  
1500 Monroe St.  
Fort Myers, Florida 33901  
(239) 479-8503

Subscribed and sworn to before me Karleen A. Behrens for the State and County  
above named, this 16<sup>th</sup> day of June, 2004. My Commission expires 4/19/07.

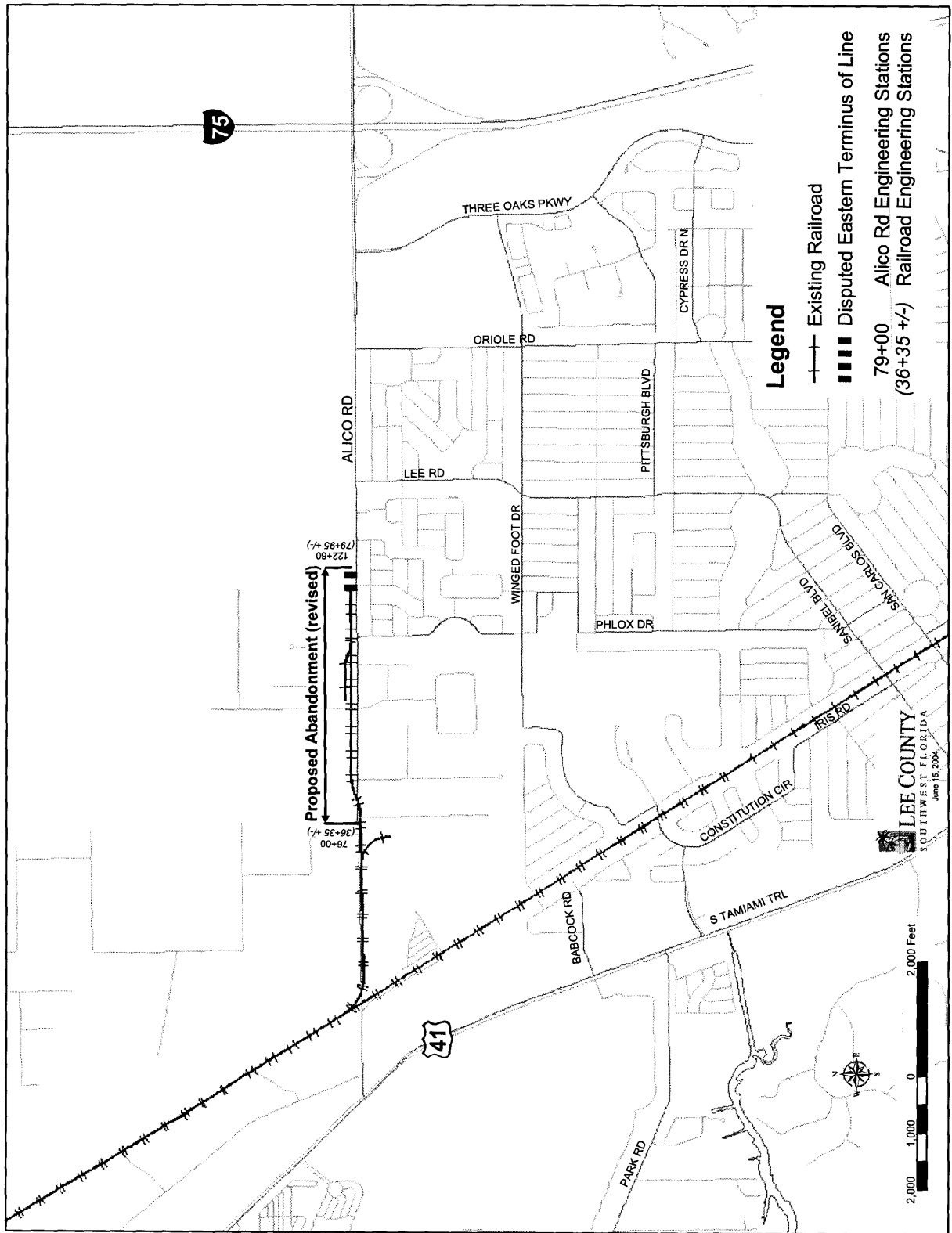


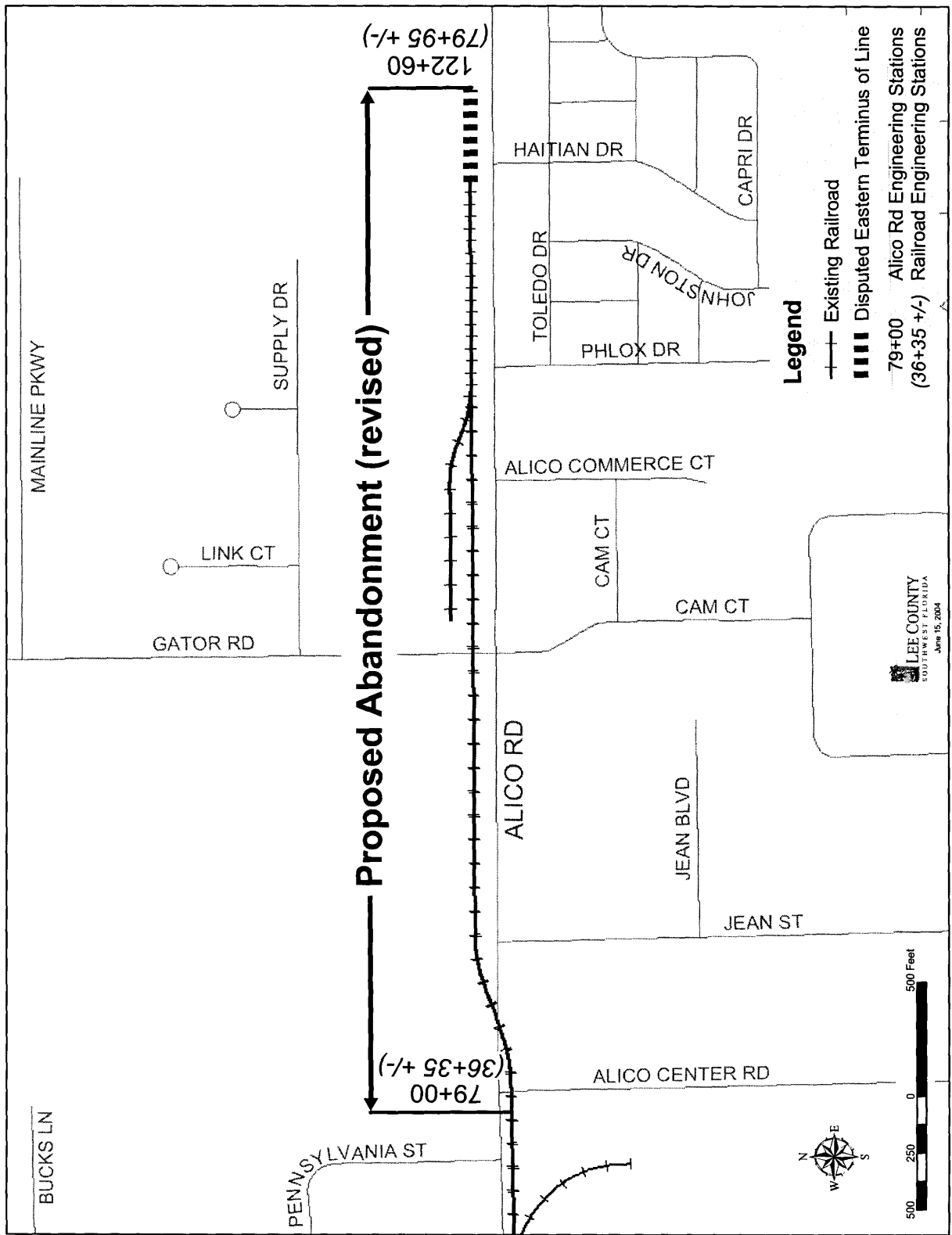
Karleen A. Behrens  
My Commission D1161883  
Expires April 19, 2007

Lee-10

**EXHIBIT A**

**MAPS**







**EXHIBIT B**

**VERIFIED STATEMENT OF DONALD DEBERRY**

**SUBMITTED IN SUPPORT OF  
THE APPLICATION FOR ADVERSE ABANDONMENT  
OF LEE COUNTY, FLORIDA**

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

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STB Docket No. AB-400 (Sub- No. 4)

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SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL

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APPLICATION FOR ADVERSE ABANDONMENT  
OF LEE COUNTY, FLORIDA

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VERIFIED STATEMENT  
OF  
DONALD DEBERRY

1. My name is Donald DeBerry. I am a professional engineer licensed in the state of Florida, employed by the Department of Transportation for Lee County, Florida ("Lee County"). My business address is 1500 Monroe St., Ft. Myers, Florida 33901. I have been employed by Lee County since March 2001, and have served in my present position since March 2001. As the County official with principal responsibility for design of the Alico Road widening project, I am able to testify about the following matters concerning that project and the other public interest factors which support the County's Application for Adverse Abandonment of a portion of Seminole Gulf Railroad, L.P.'s ("SGLR's") Baker Spur line ("Subject line").
2. Alico Road is presently a congested, two lane thoroughfare between Interstate 75 and U.S. 41 that services industrial, commercial, and residential traffic. For example, it handles approximately 20,000 vehicles per day on average, which exceeds its designed capacity. The

resulting congestion causes unnecessary driver delay, reduces fuel efficiency and increases air pollution.

3. Lee County is currently in the process of widening Alico Road to six lanes, at which point it will be capable of handling more than 65,000 vehicles a day. This expansion is consistent with the County's long range transportation plan which was adopted in 1999.

4. Without the abandonment of rail operations on the Subject line, the expansion of Alico Road to six lanes will require a new grade crossing to be built where the railroad line crosses Alico Road. The cost of installing the required grade crossing equipment will exceed \$1 million dollars according to the estimate SGLR provided to Lee County. See SGLR's estimate, attached to this statement as Tab 1. Additionally, if the line were to later be abandoned, the grade crossing would have to be removed, at a cost of approximately \$300,000 based on my previous experience with such projects.

5. The Alico Road widening project began in 2003. The County has executed a contract with the highway construction firm Phoenix Construction Services, Inc. that provides for liquidated damages of \$1,500.00 per day for delays beyond the contract completion date scheduled for 660 days from April 21, 2003.

6. As part of the Alico Road widening project, a 6' sidewalk is provided on the south side of the job as well as 4' of pavement on each side of the road for use by cyclists.

7. As part of the road widening project, a median will be placed to divide the new six lane road. Median cuts will be placed in appropriate locations to provide access to cross streets and other facilities. Additionally, traffic signals will be placed at locations meeting warrants described in the Manual on Uniform Traffic Control Devices, current edition.

8. We are aware of the suggestion by SGLR that the abandonment of the Subject line and the placement of medians as part of the Alico Road widening project might cause problems for Florida Power and Light ("FP&L"). I have talked to Dennis Merchant at FP&L, who is responsible for FP&L's purchase of transportation services from SGLR, and he assured me that the placement of medians will not cause FP&L a problem. However, Mr. Merchant explained that FP&L's present use of the Baker Spur to transload heavy equipment on a portion of the Baker Spur to the south and west of where the line crosses Alico Road, requires that the transloading occur on the paved portion of the access road that runs parallel to Alico Road and the Baker Spur. As a result, Lee County has agreed to move the western terminus of the abandonment approximately 300 feet to the east to ensure that FP&L's use of the Baker Spur is not affected by the abandonment.

9. SGLR leases the right of way underneath its tracks from CSX. CSX has an easement for rail use on the property with a reversionary interest to the adjoining property owners. Therefore, once rail service is discontinued on this line, the interest SGLR and CSX have in the property underlying the Subject line will terminate.

10. SGLR provided Lee County with a map drawn by SGLR in February 2003 of the Subject line, nearby landmarks, and relevant engineering stations. Lee County asked Johnson Engineering to review SGLR's map to determine which Alico Road stations coordinate with the Baker Spur's engineering stations. A copy of a letter dated July 22, 2003 summarizes Johnson Engineering's conclusions is attached to this statement as Tab 2. Johnson determined that SGLR's map was inconsistent with SGLR's own signs and landmarks. According to SGLR's map, the distance from the billboard on the right of way to Haitian Road is 177.6 feet, but the engineers measured the actual distance to be 67 feet, and if the SGLR sign delineating station

76+46 is correct, then engineering station 79+95 would be 349 feet from that sign, but SGLR's sign stating "end of tracks" is actually 356 feet from the 76+46 sign. Additionally, since the engineering station markers were likely placed by SGLR, there was no way to independently verify the location of railroad engineering stations on the Subject line. Therefore, the County is unable to state with certainty the exact physical location of engineering station 79+95.

11. Lee County maintains that the public convenience and necessity is promoted by the abandonment of the Subject line which, with the departure of the one existing shipper, serves no further transportation purpose. The abandonment will save the County needless expenditures on grade crossing protection and removal of same when the inevitable abandonment otherwise occurs.

Lee-10

VERIFICATION

State of Florida

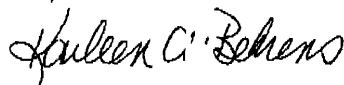
Lee County

I, Donald DeBerry, a professional engineer registered in the state of Florida, and employed by Lee County, the applicant herein; declare that I am qualified and able to verify and file with the Surface Transportation Board the foregoing statement in STB AB-400 (Sub-No. 4); I have carefully examined the foregoing Verified Statement and as well as the exhibit attached thereto and made a part thereof; and I have knowledge of the facts and matters relied upon in the statement; and all representations set forth herein are true and correct to the best of my knowledge, information, and belief.

Dated at Lee County, Florida, this 16th Day of June, 2004.

  
Donald DeBerry, P.E.  
#36778  
1500 Monroe St.  
Fort Myers, Florida 33901  
(239) 479-8503

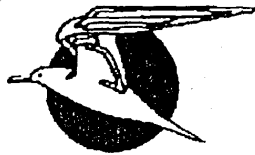
Subscribed and sworn to before me Karleen A. Behrens and for the State and County above named, this 16<sup>th</sup> day of June, 2004. My Commission expires 4/19/07.





Karleen A. Behrens  
My Commission DD181883  
Expires April 19, 2007

**TAB 1**  
**SGLR'S ESTIMATE**  
**FOR CONSTRUCTING A GRADE CROSSING**  
**OVER ALICO ROAD**



## Seminole Gulf Railway LP

4110 Centerpointe Drive, Suite 207

Fort Myers, FL 33916

Phone: 239-275-6060 Fax: 239-275-0581

# Proposal and Quote FOR LEE COUNTY GOVERNMENT

## ALICO ROAD WIDENING PROJECT

REHABILITATION AND WIDENING OF ALICO ROAD CROSSING # 3 (BL 0.8). REHABILITATION OF ALICO CENTER ROAD CROSSING (BL 0.75) AND F.P. & L. CROSSING (BL 0.85)

INSTALLATION OF HIGHWAY GRADE CROSSING SURFACE AND SUB-STRUCTURE FOR ALICO # 3 CROSSING, ALICO CENTER ROAD CROSSING, AND F.P.&L. CROSSING.

INSTALLATION OF HIGHWAY GRADE CROSSING PROTECTION, AND AUTOMATIC WARNING DEVICES FOR ALICO # 3 CROSSING.

RELOCATION OF EXISTING HIGHWAY GRADE CROSSING WARNING PROTECTION FROM ALICO # 3 CROSSING TO ALICO CENTER ROAD CROSSING

REMOVAL AND REPLACEMENT OF NECESSARY TRACK AND ROADBED TO FACILITATE INSTALLATION OF 2 BOX CULVERTS

UNDER THE TERMS OF THIS PROPOSAL, SEMINOLE GULF RAILWAY SHALL FURNISH ALL RAIL RELATED MATERIAL, LABOR, AND EQUIPMENT FOR THE ABOVE-MENTIONED PORTIONS OF THE ALICO ROAD WIDENING PROJECT. SEMINOLE GULF RAILWAY SHALL ALSO FURNISH ALL RAIL RELATED SIGNAL, HIGHWAY GRADE CROSSING, AND TRACK SURFACE, ENGINEERING AND DESIGN. LEE COUNTY SHALL FURNISH AND INSTALL ALL PIPELINE AND DRAINAGE MATERIAL, M.O.T. AND ROADWAY SURFACE INSTALLATION TO SGLR AND AREMA SPECIFICATIONS ON RAILROAD PROPERTY. THE COUNTY SHALL ALSO FURNISH ALL OTHER ROADWAY RELATED CONSTRUCTION, DRAINAGE AND APPURTANCES.

# PROPOSAL AND QUOTE

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## LEE COUNTY ALICO ROAD WIDENING PROJECT

### TERMS OF PROPOSAL:

Seminole Gulf Railway shall provide all Rail related Labor, Equipment, Material, Engineering and Design for the following:

### PHASE 1:

Open sidetrack at Schwab Switch for storage of Railroad surfacing machines and equipment. Stage Railroad construction material and equipment near the construction site at or near Alico road Crossing # 3.

Commence construction on one half of new Alico Road Crossing on North side of existing roadway. Install sub-surface, align, surface track, and install new highway grade crossing surface. Surface and align track to the north and east through the existing F.P.& L. Crossing to facilitate the transition into the new Alico # 3 Crossing. This will require the removal, replacement and resurfacing of the existing F.P.& L. Crossing.

Removal and replacement of the track, Railroad road bed and switch at the J.J. Taylor siding to allow Lee County's contractor to install 2 box culverts at that location.

### END OF PHASE 1.

### PHASE 2:

After Lee County closes the existing Alico Road, Railroad will commence construction of the new Alico Road Crossing on south side. The existing roadway through the railroad crossing will be removed. Railroad will install subsurface, install new track and Highway Grade Crossing surface, and surface and align track to the south and west through the existing Alico Center Road Crossing to facilitate the transition into the new Alico # 3 Crossing. This will require the removal, replacement and resurfacing of the existing Alico Center Road Crossing.

Railroad will remove existing highway grade Crossing warning devices at Alico # 3 Crossing and relocate them to Alico Center Road Crossing. Railroad will install new Highway Grade Crossing Warning Devices at the new Alico # 3 Crossing. All Signals will be tested and placed in service.

## END OF PHASE 2.

The installation of the box culvert as mentioned above (see phase 1) shall be governed by the terms of this proposal.

The installation widening and construction of Alico # 3 Highway Grade Crossing as provided for in this proposal shall be governed by the terms of the Agreement dated September 14, 1988 where applicable.

The County's responsibilities within the right-of-way of the Railroad, during phase 1 and phase 2 as mentioned above shall include, but are not limited to: all maintenance of traffic, road closures and openings, poured concrete Crossing surface interfacing as required, road paving, marking, berms, medians, curbs, gutters, sidewalks, curb cuts, etc. County shall also provide all drainage and landscaping outside of the Railroad Crossing area as needed. The County shall supply labor, equipment and materials including necessary fill material for the installation of the two culverts under the J. J. Taylor siding. The County shall furnish a certified Law Enforcement Officer to protect Railroad employees while road closures are in effect.

The Railroad's responsibilities include supervision and inspection of all work performed within the Railroad right-of-way, and is limited to Railroad related construction with the exception of actual Highway Grade Crossing surface installations. The Railroad shall also be responsible for the removal and replacement of the track structure, switch and Railroad roadbed to allow for the County's contractor to install the two culverts under the J. J. Taylor siding.

All work performed within the right-of-way of the Railroad shall be performed under the direct supervision of a qualified Railroad Inspector. All methods and materials of construction for any work performed within the right-of-way of the Railroad shall be approved by the Seminole Gulf Railway Vice President of Construction and Maintenance and meet "Association of American Railroads" standards and shall comply with "American Railway Engineering and Maintenance-of-Way Association" (AREMA) standards. Work performed by others such as paving and poured concrete crossing interface installation shall meet or exceed manufacturer's specifications for its intended purpose.

## PROPOSAL PRICING

### ALICO ROAD WIDENING PROJECT

*Please note that the fixed pricing presented in this proposal is valid until  
March 9, 2004*

*Lee County Purchase Order must be received on or before the above-  
mentioned date for this Proposal and Quote to remain valid*

|                                       |                              |                                                                                                                                                                          |
|---------------------------------------|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CULVERT<br>INSTALLATION WORK          | \$ 108,207.00<br>Fixed Price | Railroad to remove and replace track and<br>roadbed to facilitate Culvert installation                                                                                   |
| CROSSING SURFACE<br>WORK              | \$ 795,970.00<br>Fixed Price | Installation of Highway Grade Crossing<br>Surface, Subsurface, and Rail Elements. At<br>Alico # 3, Alico Center Road and F.P.&L.<br>Crossings (384 Ft. Crossing Surface) |
| SIGNAL INSTALLATION<br>AND RELOCATION | \$ 201,307.00<br>Fixed Price | Installation of Signals on Alico # 3 and<br>Relocation of existing Signals to Alico Center<br>Road                                                                       |

PHONE: 239-275-6060 FAX: 239-0581

**PROJECT MANAGER:** G. Bruce Fay, V.P. Construction & Maintenance

**CONTACT PERSON:** Harry E. Neeves, V.P. Engineering and Real Estate

**PAYMENT SCHEDULE**

**Culvert Installation Work:**

**Total: \$ 108,207.00**

50% (\$ 54,103.50) Due upon issuance of purchase order by Lee County  
25% (\$ 27,051.75) Due upon commencement of culvert work  
25% (\$ 27,051.75) Due upon completion of culvert work

**Crossing Surface Installation Work:**

**Total: \$ 795,970.00**

50% (\$ 397,985.00) Due upon issuance of purchase order by Lee County  
25% (\$ 198,992.50) Due upon commencement of Crossing surface work  
25% (\$ 198,992.50) Due upon completion of Crossing surface work

**Signal Installation and Relocation Work:**

**Total: \$ 201,307.00**

50% (\$ 100,653.50) Due upon issuance of purchase order by Lee County  
25% (\$ 50,326.75) Due upon commencement of Crossing signal work  
25% (\$ 50,326.75) Due upon completion of Crossing signal work

**TOTAL PROJECT COST: \$1,105,484.00**

**PROJECT COMMENCEMENT SCHEDULE**

RAILROAD WORK SHALL COMMENCE UPON ARRIVAL OF TRACK RELATED MATERIAL, AND IN SUCH A WAY AS TO INTERFACE WITH LEE COUNTY'S CONSTRUCTION SCHEDULE. NORMAL LEAD TIME FOR SUCH MATERIAL IS 90 DAYS.

ALL RAIL RELATED MATERIAL AND SIGNAL MATERIAL SHALL BE ORDERED UPON RECEIPT OF PURCHASE ORDER AND INITIAL PAYMENT AS STATED ABOVE. (See: "PAYMENT SCHEDULE")

Proposal & Quote

Accepted By: \_\_\_\_\_  
For Lee County

Date: \_\_\_\_\_ 20\_\_\_\_

  
For: Seminole Gulf Railway LP

**TAB 2**

**LETTER FROM  
JOHNSON ENGINEERING**

SUMMARIZING THEIR CONCLUSIONS  
AS TO THE LOCATIONS OF  
RAILROAD ENGINEERING STATIONS  
ON THE BAKER SPUR LINE



July 22, 2003

Nicole Maxey  
Lee County DOT  
1500 Monroe Street  
Fort Myers, FL 33901

**Re: Rail Road ROW**

Dear Nicole:

Per our conversation this morning we attempted to field verify the locations shown on the Railroad sketch. We found the following:

1. None of these stations match. According to the drawing, the center line of Haitian Road is supposed to be 48.6 feet east of the end of tracks and 177.6 feet from the Lemar sign (billboard). We dug up the north track and it extends at least up to the Haitian EOP (and possibly further). ~~The actual distance from the Lemar sign to Haitian is 67 feet, not 177.6 feet.~~
2. The Lemar sign (station 76+46) has a painted label which reads "S.G.L.R. ENG. Sta 76+46". This is consistent with the drawing. The Eastern Terminus Abandonment, according to the drawing, is at station 79+95. This is 349 feet east of the Lemar sign.
3. The Alico Roadway station at the sign is station 119+04. This puts the Eastern Terminus Abandonment at Roadway station 122+53
4. The sign marking the "end of tracks" is actually 356' east of the Lemar sign (R.R. Station 76+46, Alico station 122+60). Therefore, the "end of tracks" sign is within 7' of the supposed Eastern Terminus Abandonment station.

If the Lemar sign station is correct and accepted by the Railroad as correct and the Eastern Terminus Abandonment is correct then we are set. However, due to other obvious discrepancies you may wish to verify with Harry that these stations are correct.

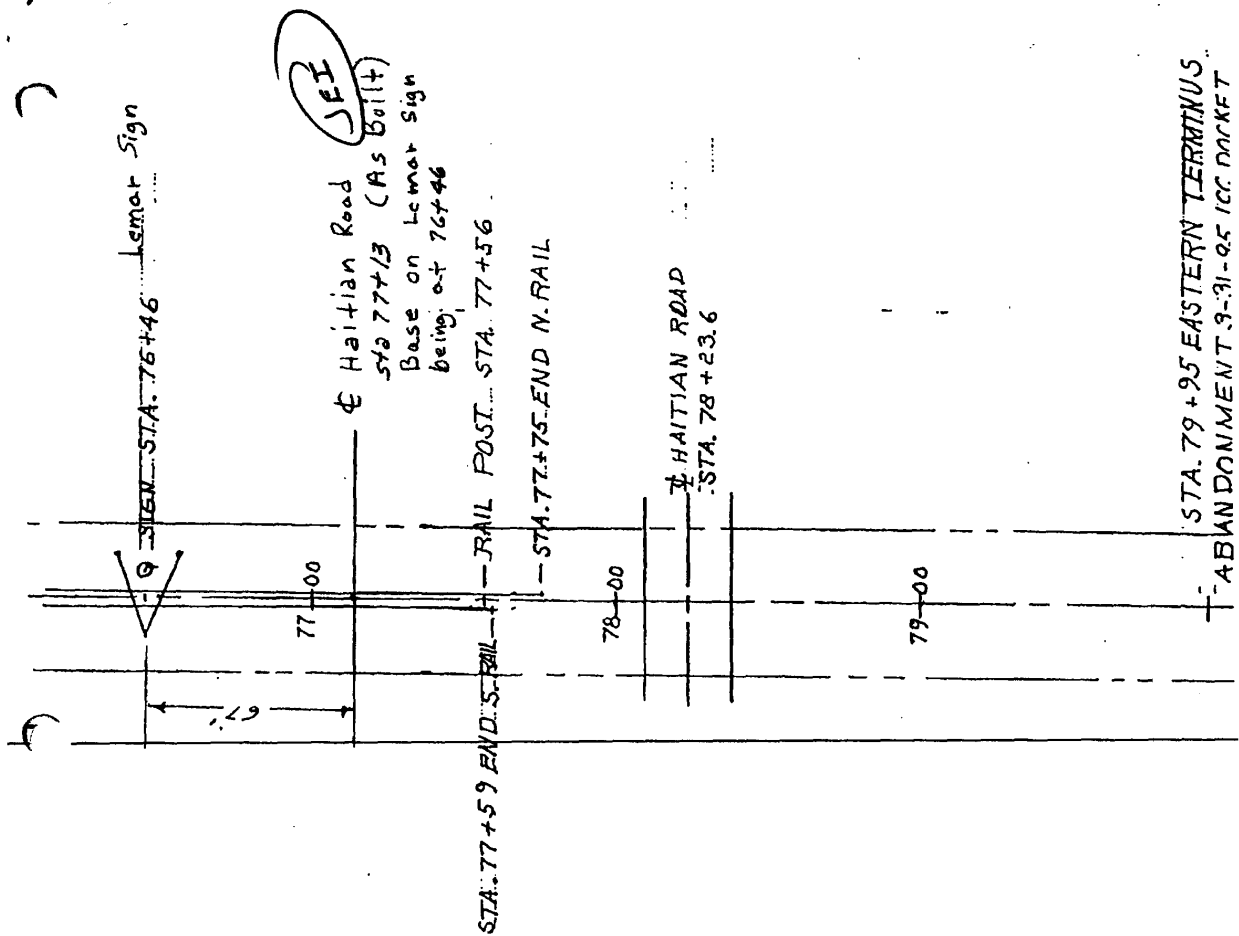
If you have any questions or comments please call.

Very truly yours,  
JOHNSON ENGINEERING, INC.

  
Dan W. Dickey  
Construction Manager

RKB:sjr  
Cc: Walt Gilcher

17100 Lee Road ■ Fort Myers, Florida 33912  
(239) 482-6875 ■ Fax (239) 482-8369



SEMINOLE GULF RAILWAY L.P.  
 END OF BAKER SPUR

DRAWN BY: RHP DATE: 2-3-03  
 SCALE: 1" = 50' STA. 55+65-79+95



**EXHIBIT C**

**VERIFIED STATEMENT OF  
TIMOTHY CORSEN, ON BEHALF OF FLORIDA POWER AND LIGHT**

**SUBMITTED IN SUPPORT OF  
THE APPLICATION FOR ADVERSE ABANDONMENT  
OF LEE COUNTY, FLORIDA**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

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**STB Docket No. AB-400 (Sub- No. 4)**

---

**SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL**

---

**VERIFIED STATEMENT  
OF  
J. TIMOTHY CORSON**

---

**IN SUPPORT OF APPLICATION  
FOR ADVERSE ABANDONMENT  
BY LEE COUNTY, FL**

---

1. My name is J. Timothy Corson, and I am the West Area Corporate Real Estate Manager for Florida Power & Light Company located at 1177 N. Lime Avenue, Sarasota, FL.
2. FP&L owns property located in Section 5, Township 46s, Range 25e in Lee County, FL., the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used as an Electrical Distribution Substation, known as the San Carlos Substation.
3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur between approximately railroad engineering stations 33+35+/- and 79+95 ("Subject Rail Line"), which correspond approximately to Alico road stations 76+00 and 122+60, respectively. We are now using a portion of the Baker Spur line west of Alico road station 79+00 to transload

generators for our Alico Road facility and other nearby facilities. FP&L brings generators and other heavy equipment via rail to the portion of the Baker Spur to the south and west of the Subject Line, where the items are loaded onto trucks and transported to their final destination. Use of the Baker Spur to the west of 79+00 to transload generators and other heavy equipment is very important to FP&L.

4. In light of the foregoing, we have received assurances from Lee County that its application for adverse abandonment will not interfere with FP&L's current use of the Baker Spur line. Lee County has assured FP&L that its Application will request that the western terminus of the abandonment be at Alico Road station 79+00, which is parallel to railroad engineering station 36+35 +/-, west of Alico Center Road, and 300 feet east of the original abandonment as proposed in Lee County's previous notices. This will allow FP&L continued use of the Baker Spur Line. Based upon this commitment by Lee County, FP&L does not oppose Lee County's application for abandonment of the Baker Spur east of Alico Road station 79+00.

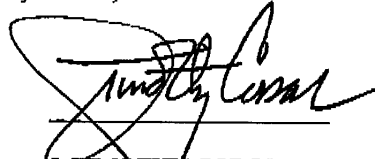
### VERIFICATION

State of Florida

Sarasota County

I, J. Timothy Corson, West Area Corporate Real Estate Manager of Florida Power & Light ("FP&L"); declare that: (a) I have been authorized by FP&L to verify and file with the Surface Transportation Board the foregoing statement in STB AB-400 (Sub-No. 4); (b) I have carefully examined the foregoing Verified Statement; (c) I have knowledge of the facts and matters relied upon in the statement; and (d) All representations set forth herein are true and correct to the best of my knowledge, information, and belief.

Dated at Lee County, Florida, this 16<sup>th</sup> Day of June, 2004.



J. TIMOTHY CORSON

Subscribed and sworn to before me J. Timothy Corson  
Mark L. Byers in and for the State and County  
above named, this 16<sup>th</sup> day of June, 2004. My Commission expires Nov. 2, 2004



Mark L. Byers  
Commission # CC 979229  
Expires Nov. 2, 2004  
Bonded Thru  
Atlantic Bonding Co., Inc.



**EXHIBIT D**

**VERIFIED STATEMENT OF  
JOSE RIVERA, ON BEHALF OF J.J. TAYLOR**

**SUBMITTED IN SUPPORT OF  
THE APPLICATION FOR ADVERSE ABANDONMENT  
OF LEE COUNTY, FLORIDA**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

---

**STB Docket No. AB-400 (Sub- No. 4)**

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**SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL**

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**VERIFIED STATEMENT OF  
JOSE E. RIVERA**

---

**IN SUPPORT OF APPLICATION  
FOR ADVERSE ABANDONMENT  
BY LEE COUNTY, FL**

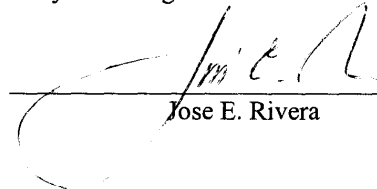
1. My name is Jose E. Rivera. I am Vice President Operations for J. J. Taylor Distributing Florida, Inc. ("J. J. Taylor"). My business address is 16911 Gator Road, Ft. Myers, Florida 33912. I have been employed by J. J. Taylor since June 28, 1998, and have served in my present position since July 7, 2001. As an officer of the company, I am authorized to testify about the following matters concerning the transportation needs of J. J. Taylor at its Ft. Myers warehouse.
2. J. J. Taylor is a beer distributor, which operates two warehouses in Florida, one in Tampa and the other in Ft. Myers. Our Ft. Myers facility is approximately 72,000 square feet and is located along Alico Road. That facility is served by the Seminole Gulf Railway, L.P. ("SGLR") via its Baker Spur line that runs parallel to and crosses Alico Road just to the west of our facility. J. J. Taylor receives approximately 40 rail boxcar loads per month carrying beer from various brewers' production plants. Each year, we receive about 2.6 million cases of beer via rail and approximately 2.9 million cases of in bound beer via motor carrier delivery. J. J. Taylor distributes the beer received at this facility via truck to retail establishments throughout

Southwest Florida. Our franchised territory includes Highlands, Desoto, Charlotte, Glades, Lee, Hendry and Collier counties and that part of Sarasota County South of State Road 72 and East of Beneva Road to the point it intersects US Highway 41 (not inclusive of accounts on State Road 72).

3. The lease on our Ft. Myers warehouse expires on January 5, 2005. The owner, Alico Industries, LLC has informed us, recently, that the lease will not be renewed or extended. Therefore, we have been planning the relocation of our Ft. Myers operations and we expect to be able to complete the new facility and relocate prior to the end of this year. In addition, we have expanded our Tampa operation to serve as a central distribution location for territory covered under our franchise, and convert the new Ft. Myers facility into a satellite warehouse.

4. With the expansion of our Tampa facility and the completion of the new facility in Fort Myers late in 2004, J. J. Taylor will no longer require rail service from SGLR at its existing Ft. Myers warehouse along Alico Road. Therefore, J. J. Taylor does not oppose the abandonment of the portion of the Seminole Gulf Railway's Baker spur that serves this warehouse.

The foregoing is true and correct to the best of my knowledge and belief.



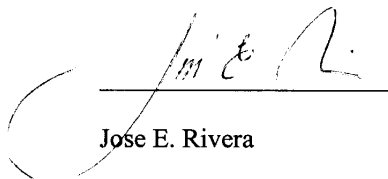
---

Jose E. Rivera

## VERIFICATION

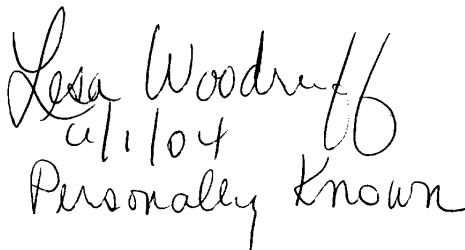
I, Jose E. Rivera, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of J. J. Taylor Distributing Florida, Inc. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$20,000 or imprisonment up to five years for each offense.

Dated at Fr. Myers, FL, this 12<sup>th</sup> day of June, 2004.

  
Jose E. Rivera



Lesa Woodruff  
Commission #DD230738  
Expires: Jul 09, 2007  
Bonded Thru  
Atlantic Bonding Co., Inc.

  
at 1/04  
Personally Known

**EXHIBIT E**

**VERIFIED STATEMENT OF  
DUANE R. SWANSON, ON BEHALF OF ALICO INDUSTRIES**

**SUBMITTED IN SUPPORT OF  
THE APPLICATION FOR ADVERSE ABANDONMENT  
OF LEE COUNTY, FLORIDA**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

**STB Docket No. AB-400(Sub-No.4)**

**SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FLORIDA**

**VERIFIED STATEMENT  
OF  
DUANE R. SWANSON**

**IN SUPPORT OF APPLICATION  
FOR ADVERSE ABANDONMENT  
BY LEE COUNTY, FLORIDA**

1. My name is Duane R. Swanson, and I am the manager of Alico Industries, LLC located at 7751 Bayshore Road, N. Fort Myers, FL 33917. My current responsibilities include the management of Alico Industries, LLC. As manager, I am qualified to testify on behalf of Alico Industries, LLC.
2. Alico Industries, LLC owns property described on Exhibit "A" attached hereto, and is known as 16911 Gator Road, Fort Myers, FL 33912, the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used by Alico Industries, LLC's tenant, J.J. Taylor Distributing for a beer distribution business.
3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur

between approximately roadway engineering posts 33+35 and 79+95 ("Subject Rail Line").

Alico Industries, LLC is not now a customer of SGR, and we plan no use of our property that would benefit from continued rail service after January 9, 2005. The current tenant has a lease which provides for extensions through January 9, 2005, and as such when the tenant vacates the premises, the need for rail service will be completely discontinued. Therefore, Alico Industries, LLC supports Lee County's application for abandonment of the Subject Rail Line.

#### VERIFICATION

I, Duane R. Swanson, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Alico Industries, LLC. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000.00 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$20,000.00 or imprisonment up to five years for each offense.

Dated this 8 day of June, 2004.



Duane R. Swanson  
Manager, Alico Industries, LLC

06/10/2004 THU 10:15 FAX 239 335 2118  
Jun 09 04 02:48P

COUNTY ATTORNEY  
A DOUGLAS GRACE JR P A (941) 334-8173

P. 008

EXHIBIT "A"  
Page 1 of 2

**METRON**  
SURVEYING & MAPPING, LLC  
LAND SURVEYORS • PLANNERS

—DESCRIPTION OF A PARCEL OF LAND LYING IN—  
SECTION 5, TOWNSHIP 46 SOUTH, RANGE 25 EAST,  
LEE COUNTY, FLORIDA  
(PARCEL "B")  
(REVISED 2-19-2004)

A PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN THE SOUTHEAST  
QUARTER (SE 1/4) OF SECTION 5, TOWNSHIP 46 SOUTH, RANGE 25 EAST, BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

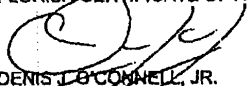
COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 5; THENCE N.00°16'32"W., ALONG THE  
EAST LINE OF SAID SECTION 5 A DISTANCE OF 150.00 FEET; THENCE S.89°47'03"W., A DISTANCE OF  
275.37 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S.89°47'03"W., A DISTANCE OF 741.64  
FEET; THENCE N.00°16'03"W., ALONG THE EAST LINE OF GATOR ROAD A DISTANCE OF 689.99 FEET;  
THENCE N.89°47'03"E., A DISTANCE OF 742.26 FEET; THENCE S.00°12'57"E., A DISTANCE OF 689.89 FEET  
TO THE POINT OF BEGINNING.

CONTAINING 11.75 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND  
UNRECORDED, WRITTEN AND UNWRITTEN)

BEARINGS ARE BASED ON THE EAST LINE OF THE OF SECTION 5 BEING S.00°16'32"E.

METRON SURVEYING & MAPPING, LLC  
FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071

  
DENIS J. MCCONNELL, JR.  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. 5430

LDC

FEB 23 2004

APPROVED

5245 RAMSEY WAY, SUITE #2 • FORT MYERS, FLORIDA 33907 • PHONE (239) 275-8575 • FAX (239) 275-8457  
www.meltronfl.com

06/10/2004 THU 10:15  
Jun 09 04 02:49p

GATOR ROAD

EXHIBIT "A"  
Page 2 of 2

\*SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION\*

REVISÉ: 2-19-2004

POINT OF COMMENCEMENT—  
SOUTHEAST CORNER SECTION 5,  
TOWNSHIP 46 SOUTH, RANGE 23 EAST

S. 89° 47' 03" W. 741.54'

S. 89° 47' 03" W. 275.37

POINT OF BEGINNING -

PARCEL "B"

PARCEL "A"

\$5,001,832.66

5,001,257.31 688.88

**SUPPLY DRIVE-**

N. 89° 47' 05" E 274.10°

N. 89° 47' 03" E.  
742.26'

SKETCH TO ACCOMPANY DESCRIPTION



LDC

FEB 23 2004

APPROVED

**\* THIS IS NOT A SURVEY \***

BY: DENIS J. O'CONNELL, JR.  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. LS# 5430

DATE SIGNED: 2/19/04

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A  
FLORIDA LICENSED SURVEYOR AND MAPPER.

PARCEL "B"

**SKETCH OF DESCRIPTION**

**METRON**  
VEYTING & MAPPING LLC

[www.metrofl.com](http://www.metrofl.com)

[illegible]

10-10-79

242

**EXHIBIT F**

**VERIFIED STATEMENT OF  
FRANZ J. ROSINUS, ON BEHALF OF AIRPORT HOLDINGS**

**SUBMITTED IN SUPPORT OF  
THE APPLICATION FOR ADVERSE ABANDONMENT  
OF LEE COUNTY, FLORIDA**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

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**STB DOCKET NO. AB-400 (SUB-NO. 4)**

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**SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FLORIDA**

---

**VERIFIED STATEMENT  
OF  
FRANZ J. ROSINUS**

---

**IN SUPPORT OF APPLICATION  
FOR ADVERSE ABANDONMENT  
BY LEE COUNTY, FLORIDA**

---

1. My name is Franz J. Rosinus, and I am the Managing Member of Airport Industrial Holdings, LLC, a Florida limited liability company located at 26811 South Bay Drive, Suite 240, Bonita Springs, FL 34134. My current responsibilities include all management duties of the limited liability company. As Managing Member, I am qualified to testify on behalf of Airport Industrial Holdings, LLC, a Florida limited liability company.

2. Our Company owns property located at Fort Myers, FL 33912 (Strap #04-46-25-00-00001.0040 and #04-46-25-00-00001.0090), the southern boundary of which is adjacent to the Seminole Gulf Railroad, L.P.'s ("SGR") right of way. The property is currently used for development purposes.

3. We are aware that Lee County seeks the abandonment of the portion of the Baker Spur between approximately roadway engineering posts 33 + 35 and 79 + 95 ("Subject Rail Line"). We are not now customers of SGR, and we plan no use of our property that would benefit from continued rail service. Our Company supports Lee County's application for abandonment of the Subject Rail Line.

### VERIFICIATION

I, Franz J. Rosinus, declare under perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of Airport Industrial Holdings, LLC, a Florida limited liability company. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000.00 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$20,000.00 or imprisonment up to five years for each offense.

Dated this 7<sup>th</sup> day of May, 2004.



Franz J. Rosinus, Managing Member  
Airport Industrial Holdings, LLC, a Florida  
limited liability company

**EXHIBIT G**

**ENVIRONMENTAL AND HISTORIC REPORT  
OF LEE COUNTY, FLORIDA**

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

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STB Docket No. AB-400 (Sub- No. 4)

---

SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL

---

COMBINED HISTORICAL AND ENVIRONMENTAL REPORT  
OF  
LEE COUNTY, FLORIDA

---

John Turner  
Assistant County Attorney  
Lee County  
P.O. Box 398  
Fort Myers, FL 33902-0398

Tel: 239-335-2236

Robert P. vom Eigen  
Melissa A. Burt  
Foley & Lardner, LLP  
Suite 500  
3000 K Street, NW  
Washington, DC 20008

Tel: 202-672-5300

Dated: May 14, 2004

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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

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STB Docket No. AB-400 (Sub- No. 4)

---

SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL

---

COMBINED ENVIRONMENTAL AND HISTORICAL REPORT  
OF  
LEE COUNTY, FLORIDA

---

Lee County, Florida ("the County") submits a Combined Environmental and Historic Report pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, with respect to the proposed abandonment of a portion of the Baker Spur line in Lee County, Florida. The portion of line that is the subject of this application is more fully described in the Notice of Adverse Abandonment ("Abandonment Notice"), which was filed at the Surface Transportation Board ("STB") on May 3, 2004.<sup>1</sup> The line is located within United States Postal Service ZIP Codes 33912 and 33913, all in an unincorporated area of Lee County, Florida.

Lee County gave notice in its Abandonment Notice that on or about June 1, 2004 it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for adverse abandonment of a portion of the Baker Spur line. A map of the rail line that will be

---

<sup>1</sup> Refer to 5/11/04 errata notice, which corrected the original notice to accurately reflect the eastern terminus of the line to be abandoned as engineering station 79+95.

the subject of the abandonment is attached as Attachment No. 1. A copy of the County's letters notifying Federal, State, and local government agencies of the proposed abandonment and requested comments from them are attached as Attachment No. 2. Responses will be forwarded to the STB as they are received.

## **ENVIRONMENTAL REPORT**

49 C.F.R. § 1105.7(c)

### **(1) Proposed action and alternatives.**

**Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.**

#### **Response:**

The proposed action involves the abandonment of a portion of the line on which the only shipper is J.J. Taylor Distributors Fort Myers/Naples, Inc. ("J.J. Taylor"), a distributor of beer. J.J. Taylor's lease on its facility ends January 5, 2005 and it is in the process of relocating to a different facility. Once the relocation occurs, they will no longer be in need of rail service on this line. The owner of the leased property and the other adjacent landowners support the abandonment of this line and no longer wish to have rail service to their properties. A map showing the location of the line to be abandoned is attached as Attachment No. 1. The proposed abandonment will allow Alico Road, a heavily traveled road that the spur crosses, to be widened without the County expending close to \$1.5 million on installing and later removing a grade crossing for a line that will, in the near future, have no shippers on it. The County does not wish

to deprive the shipper on the Baker Spur line of service, and so the abandonment application will request that the abandonment authority become effective only after J.J. Taylor has either converted its operations so as to be no longer in need of rail service or has departed its Alico Road facility. Therefore, the proposed abandonment will have no effect on rail service or maintenance on the Baker Spur line since there will be no shippers on the line after J.J. Taylor leaves, regardless of whether the line is abandoned or not.

If the line is not abandoned, the County would be required to spend approximately \$1 million dollars to construct a rail crossing over the new six lanes of Alico Road. However, since the crossing would be for a rail line with no shippers on it, eventually the line would be abandoned and the County would be forced to expend an additional \$500,000 to remove the unnecessary grade crossing, at a total taxpayer cost of close to \$1.5 million dollars.

Therefore, once abandonment is complete, the State of Florida and Lee County will be able to continue with their plans for the widening of Alico Road without the expenses associated with an otherwise unnecessary grade crossing. *See* response to item 3(i), below.

**(2) Transportation system.**

**Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.**

**Response:**

There will be no significant effect on the regional or local transportation system caused by this abandonment. The sole shipper on the line will relocate and intends to rely more on heavy trucks instead of rail for the transportation of their goods. While this relocation will have

some impact on the use of motor carriers, the relocation is not a result of the abandonment and will occur regardless of any action by taken by the County or the STB.

**(3) Land use.**

**(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.**

**(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.**

**(iii) If the action effects land or water used within a designated costal zone, include the costal zone information required by § 1105.9.**

**(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. §10906 and explain why.**

**Response:**

(i) The abandonment will not affect local and existing land use plans. Since Alico Road will be widened and eventually the applicable rail line will be abandoned, this application will effects only the costs associated with the ongoing project to widen Alico Road. The portion of the line in question is the end of the Baker Spur, and the County is seeking the abandonment of the portion that begins just to the South and West of Alico Road, crosses Alico Road, and then runs parallel to Alico Road for approximately 4,200 feet, ending at the terminus of the line. Alico Road is a heavily traveled thoroughfare between Interstate 75 and U.S. 41 that services industrial, commercial, and residential traffic. It is presently a congested two-lane road that handles approximately 20,000 vehicles per day on average. Lee County is in the process widening Alico Road to six lanes, at which point it will be capable of handling more than 65,000

vehicles a day. Currently, the expansion of Alico Road to six lanes will require a new grade crossing to be built where the affected railroad lines cross Alico Road. The cost of installing this required grade crossing equipment would be approximately \$1 million dollars. Additionally, it is inevitable that the applicable line will eventually be abandoned since, in the future, there will be no shippers on the spur, therefore it is likely that the new grade crossing will eventually have to be removed at an additional cost of \$500,000 to Lee County taxpayers. Lee County seeks this abandonment in an effort to save \$1.5 million dollars of taxpayer money while widening a badly congested and heavily used thoroughfare.

(ii) There are no effects on prime farmland.

(iii) The location of the line is not located within a designated costal zone.

(iv) This land is not suitable for other public purposes. It is not suitable for trail use because the trail would be in an industrial area, under a mile, and cross three roads, including a six-lane highway. Additionally, the Alico Road widening project includes bike and pedestrian facilities, so an additional bike path paralleling Alico Road is unnecessary.

**(4) Energy.**

**(i) Describe the effect of the proposed action on transportation of energy resources.**

**(ii) Describe the effect of the proposed action on recyclable commodities.**

**(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.**

**(iv) If the proposed action will cause diversions from rail to motor carriage of more than:**

**(A) 1,000 rail carloads a year; or**

**(B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.**

**Response:**

(i) The proposed action is not expected to affect the transportation of energy resources. Certain power generators are delivered to FP&L at a trans-loading location on the Baker Spur adjacent to the segment of line subject to this abandonment application. This rail service will not be affected by the abandonment.

(ii) The proposed action is not expected to affect transportation of recyclable commodities.

(iii) The proposed action will not result in an increase or decrease in overall energy efficiency because the sole shipper on the line, J.J. Taylor, is relocating and relying more heavily on motor carriers regardless of this abandonment. *See* the response to 1, above.

(iv) (A)(B) There should be no diversion from rail to motor carrier as a result of this abandonment since J.J. Taylor is relocating their facility and adjusting their operations independently of this abandonment proceeding, and no adjacent land owner wishes to continue access to rail service on the subject line.

**(5) Air.**

**(i) If the proposed action will result in either:**

**(A) An increase in rail traffic of at least 100% (measure in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal; or**

(B) an increase in rail yard activity of at least 100% (measured by carload activity); or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. § 10901 (or § 10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight-train-a-day-provision in (5)(i)(A) will apply.

(ii) If the proposed action affects a class 1 or non-attainment area under the Clean Air Act, and will result in either:

(A) an increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line); or

(B) an increase in rail yard activity of at least 20% (measured by carload activity); or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 40 U.S.C. § 10901 (or 49 U.S.C. § 10505), or a case involving the reinstitution of service over a previously abandoned line, only the three-train-a-day-threshold in this item shall apply.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and Freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with

**accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.**

**Response:**

(i) The proposed action is not expected to result in increased rail or truck traffic activity that meets or surpasses thresholds cited in (i)(A)(B) or (C). After J.J. Taylor, the sole shipper on the line, relocates its facility, there will be no traffic on the subject line. Therefore the abandonment will not result in an increase in rail or truck traffic activity.

(ii) The line subject to this abandonment is not located in a class 2 or non-attainment area under the Clean Air Act.

(iii) There will be no transportation of ozone depleting materials.

**(6) Noise.**

**If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:**

**(i) An incremental increase in noise levels of three decibels Ldn or more; or**

**(ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.**

**Response:**

(i) and (ii) The proposed action is not expected to meet or surpass the thresholds identified in (5)(i) since there will be no service on the subject line. Therefore, no incremental increases in noise levels are expected.

**(7) Safety.**

**(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).**

**(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.**

**(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.**

**Response:**

(i) There are no anticipated adverse effects on public health and safety, and the abandonment, by removing a grade crossing over a six lane road, should improve public health and safety by removing the delay and dangers associated with such grade crossing.

(ii) To the best of our knowledge, this line has not been used for the transportation of hazardous materials and since, in the future, there will be no service on this line, no adverse effects are expected from the transportation of hazardous materials. Additionally, this is an adverse application for abandonment and therefore we do not know Seminole Gulf's safety record or their contingency plans for dealing with accidental spills.

(iii) We are not aware of any hazardous waste sites in the vicinity or hazardous materials spills on the right-of-way.

**(8) Biological resources.**

**(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.**

**(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.**

**Response:**

**(i) There are no adverse effects on endangered or threatened species, or areas designated as critical habitat anticipated by this action.**

**(ii) There are no adverse effects on wildlife sanctuaries or national or state parks or forests anticipated by this action.**

**(9) Water.**

**(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.**

**(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.**

**(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)**

**Response:**

(i) There are no anticipated adverse effects on water quality.

(ii) and (iii) No permits under section 402 or 404 of the Clean Water Act are required by the abandonment action, nor will any designated wetlands be affected. In the future, before taking action with respect to the applicable railroad line and the underlying land, the necessary permits required by the Corps of Engineers and federal and state environmental protection agencies will be pursued.

The applicable line is not located in a 100-year flood plain.

**(10) Proposed Mitigation.**

**Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.**

**Response:**

Not applicable.

## HISTORIC REPORT

49 C.F.R. § 1105.8(d)

**(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action;**

**Response:**

Attachment No. 1 is a map and aerial photograph of the applicable line, but since the line was constructed subsequent to 1954, there are no railroad structures 50 years old or older.

**(2) A written description of the right-of-way (including approximate widths to the extent known), and the topography and urban and/or rural characteristics of the surrounding area;**

**Response:**

It is a 50-ft wide easement, the length of which is approximately 4,600 foot in total length. The western portion begins on the south side of Alico Road approximately 400 feet from where the line crosses Alico Road, approximately .9 of a mile east of U.S. 41, continuing across Alico Road and then running parallel to and north of Alico Road, crossing Gator Road and Haitian Drive before reaching the eastern terminus of the line. The applicable line is in a developing industrial area; both Haitian Drive and Gator Road serve existing industrial facilities, including a Florida Power and Light facility and a rock quarry.

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**(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area.**

**Response:**

There are no railroad structures older than 50 years on the applicable railroad line.

**(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations to the extent, such information is known;**

**Response:**

The County believes that the line was constructed in the early 1970s, and the only alterations it is aware of is a renovation to the road crossing in 1988.

**(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;**

**Response:**

The line was originally built to service the Florida Rock quarry and in approximately 1987 the line began to service the J.J. Taylor facility. The County is not aware of any other significant and regular carrier service on this line.

**(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;**

**Response:**

Not applicable.

**(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archeological**

**resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);**

**Response:**

There is no reason for Lee County to believe that the applicable railroad line meets the criteria for the National Register of Historic Places and we know of no historical or archeological structures in the immediate vicinity of the line to be abandoned.

**(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.**

**Response:**

Lee County knows of no condition of the applicable railroad line's subsurface that would affect the archeological recovery of resources.

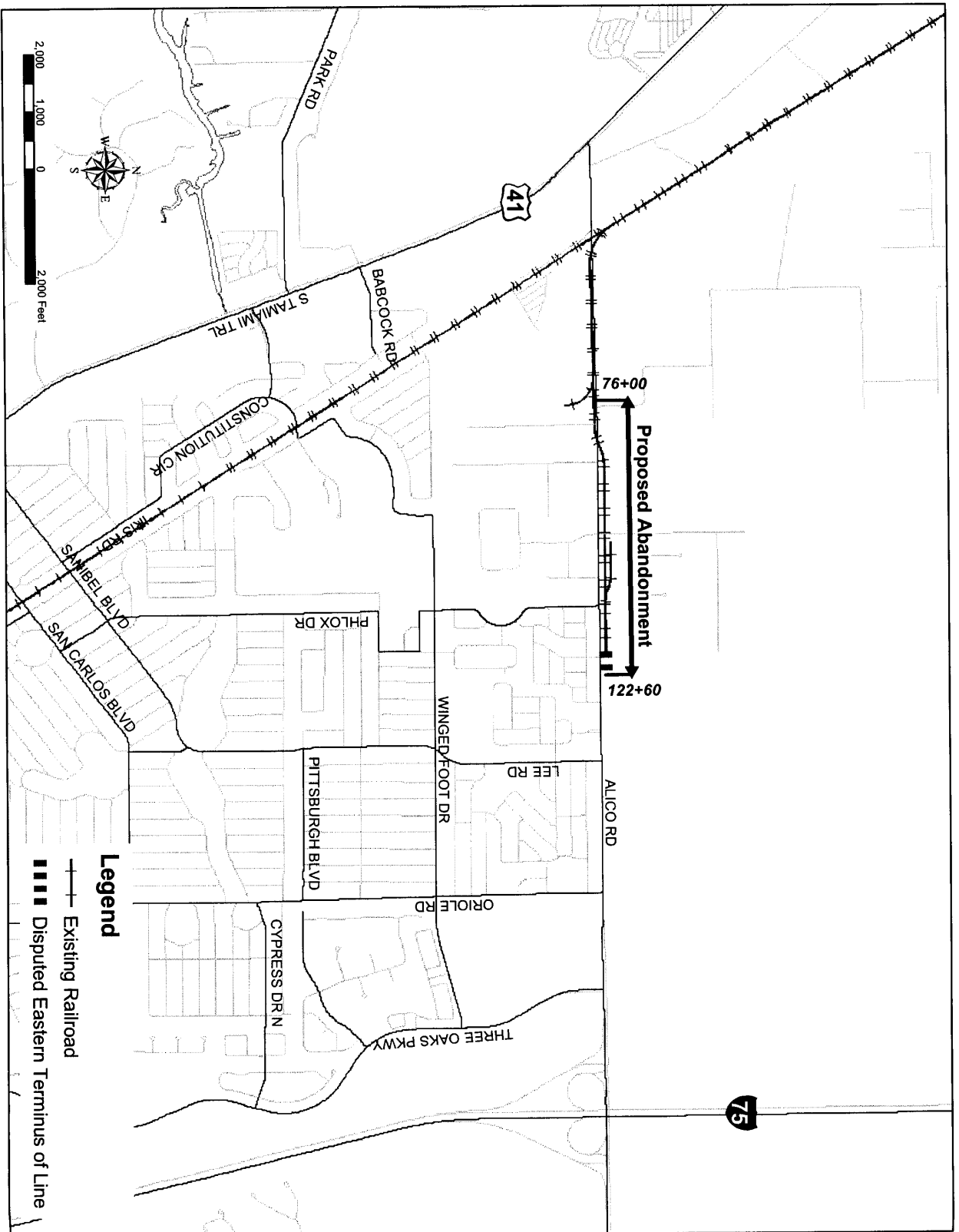
**(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad owned properties or groups of properties immediately adjacent to the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the locations and type of the site (*i.e.*, prehistoric or native American).**

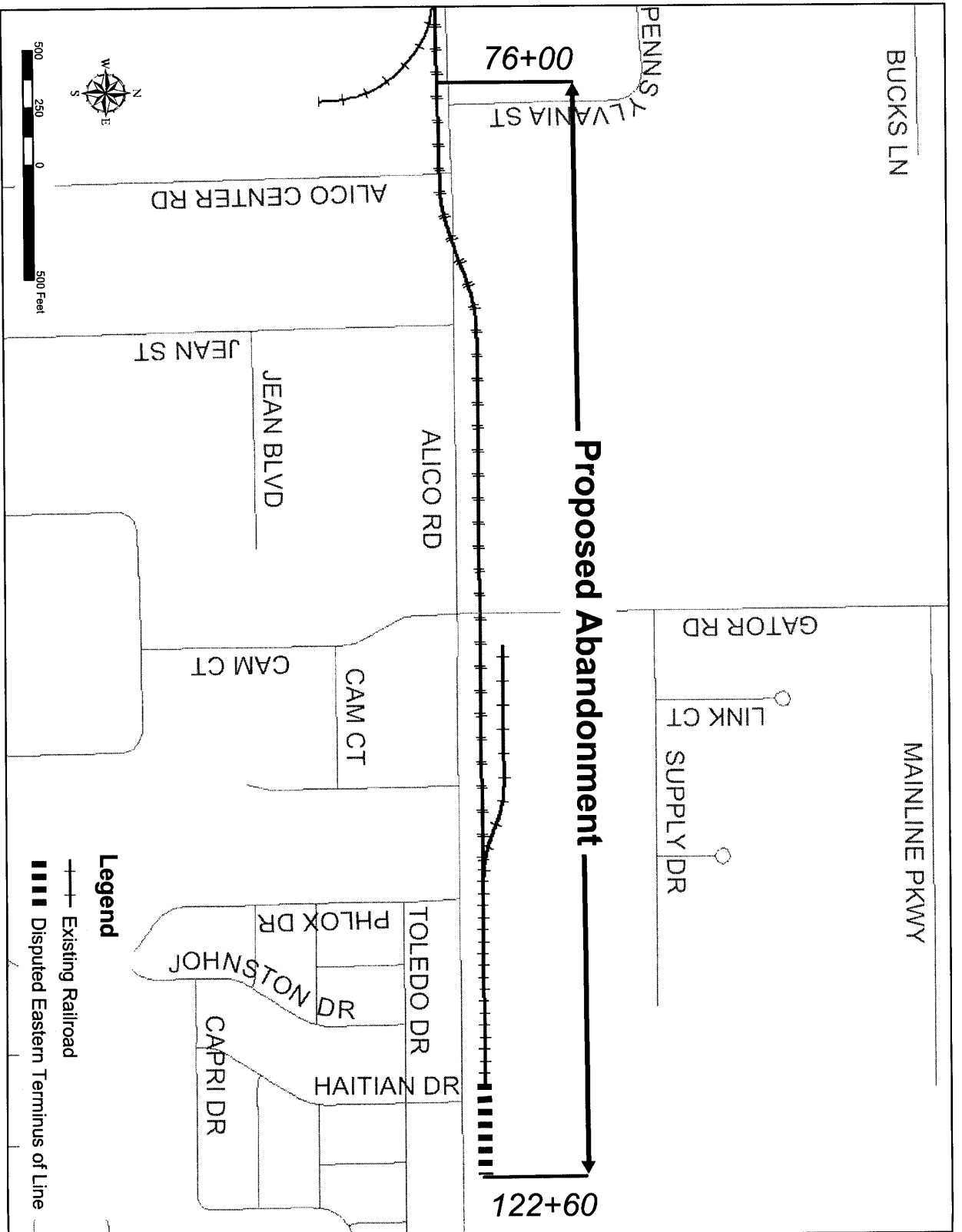
**Response:**

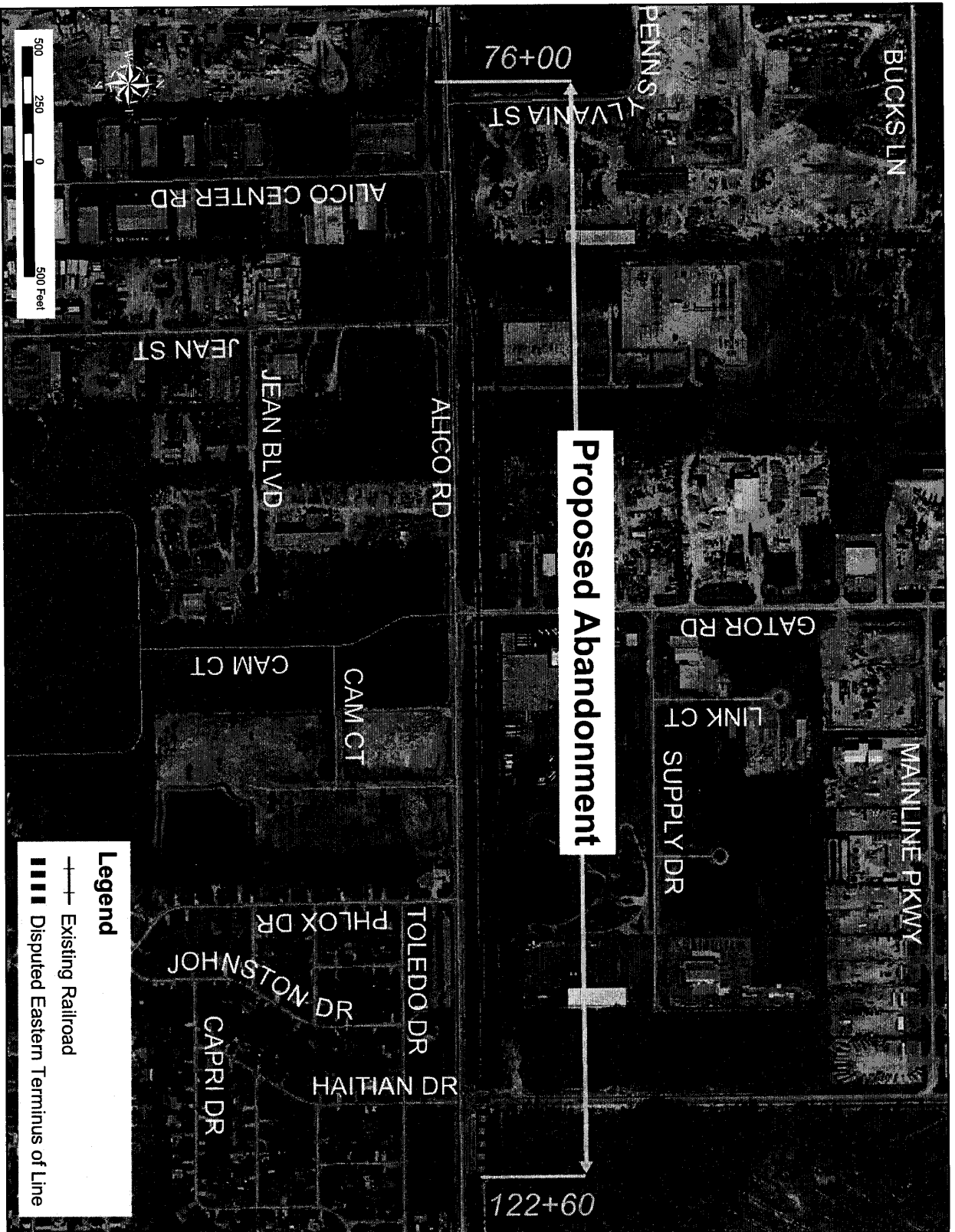
Not applicable.

**ATTACHMENT  
No. 1**

**[Photo & Map]**







**ATTACHMENT**

**No. 2**

**[Letter to Agencies]**



May 24, 2004

FOLEY & LARDNER LLP  
ATTORNEYS AT LAW  
WASHINGTON HARBOUR  
3000 K STREET, N.W., SUITE 500  
WASHINGTON, D.C. 20007-5143  
202.672.5300 TEL  
202.672.5399 FAX  
www.foley.com

WRITER'S DIRECT LINE  
202.672.5367  
rvomeigen@foley.com EMAIL

CLIENT/MATTER NUMBER  
037724-0101

Florida State Clearinghouse  
The Department of Community Affairs  
Executive Office of the Governor - OPB  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Docket No. AB-400 (Sub. No. 4)  
Application for Adverse Abandonment of the Baker Spur,  
Environmental and Historic Report

Dear Sir/Madam:

On May 14, 2004, your organization was served, via first class mail, with the attached Environmental and Historic Report supporting the application for adverse abandonment of Lee County, Florida. Included with that Report was a copy of the transmittal letter from Lee County to the Surface Transportation Board (STB). However, we inadvertently did not include a formal transmittal letter as contemplated by 49 C.F.R. § 1105.11. In order to eliminate any confusion, we are sending you this formal transmittal letter containing the wording contemplated by the appendix to 49 C.F.R. § 1105.11 along with another copy of Lee County's Environmental and Historic Report that is identical to the one previously received by your organization.

On or about June 10, 2004, we are filing with the STB an application seeking authority to abandon a portion of Seminole Gulf Railroad's Baker Spur located in Lee County, Florida, between engineering posts 79+95 and 33+35 +/-, which corresponds to parallel Alico Road mile markers 122+60 and 76+00, respectively.<sup>1</sup> Attached is an Environmental and Historic Report describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

We are providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Section of Environmental Analysis (SEA), Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423, telephone (202) 565-1592 and refer to the above Docket No. AB-400 (Sub. No. 4).

<sup>1</sup> Note that there is some confusion about where engineering station 79+95 is located. But, 79+95 is the western terminus of a previous abandonment and Lee County seeks the abandonment of the Baker Spur up to that point.

BRUSSELS  
CHICAGO  
DETROIT  
JACKSONVILLE

LOS ANGELES  
MADISON  
MILWAUKEE

ORLANDO  
SACRAMENTO  
SAN DIEGO  
SAN DIEGO/DEL MAR

SAN FRANCISCO  
SILICON VALLEY  
TALLAHASSEE

TAMPA  
TOKYO  
WASHINGTON, D.C.  
WEST PALM BEACH

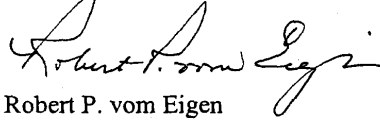
002.1204545.1

Florida State Clearinghouse  
May 24, 2004  
Page 2

Because the applicable statutes and regulations impose stringent deadline for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks<sup>2</sup>.

Your comments will be considered by the Board in evaluating the environmental or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact our representative directly. Our representative in this matter is the undersigned, who may be contacted by telephone at 202-672-5300 or by mail at Foley & Lardner, 3000 K Street, N.W., Washington, DC 20007.

Very truly yours,



Robert P. vom Eigen

Enclosures (1)

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<sup>2</sup> Note that since the Report has not been changed and the first transmittal letter included all relevant information (party names, addresses, and the STB Docket Number), a response would be appreciated within three weeks of the date of which you received the first Environmental and Historic Report.

**CERTIFICATE OF SERVICE**  
**OF THE**  
**COMBINED ENVIRONMENTAL AND HISTORIC REPORT**

The undersigned hereby certifies that a copy of the COMBINED HISTORICAL AND ENVIRONMENTAL REPORT OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was served by overnight courier, on the 24 day of May 2004, on the following:

State Clearinghouse:

Florida State Clearinghouse  
The Department of Community Affairs  
Executive Office of the Governor – OPB  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399

State Environmental Protection Agency :

Department of Environmental Protection, M.S. 49  
3900 Commonwealth Boulevard  
Tallahassee, FL 32399

State Coastal Zone Management Agency:

Florida Coastal Management Program  
2555 Shumard Oak Boulevard  
Tallahassee, FL 32399-2100

Head of County (Planning):

Paul O'Connor  
1500 Monroe St.  
Fort Myers, FL 33901 or

Environmental Protection Agency (regional office):  
Region 4

United States Environmental Protection Agency  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-3104

U.S. Fish and Wildlife:  
Region 4

U.S. Fish and Wildlife Service  
Century Center  
1875 Century Boulevard  
Atlanta, GA 30345

U.S. Army Corps of Engineers:

U.S. Army Corps of Engineers  
Jacksonville District  
Prudential Building  
701 San Marco Blvd.  
Jacksonville, FL 32207

National Park Service:

U.S. National Park Service  
100 Alabama Street, S.W.  
Atlanta, GA 30303

National Geodetic Survey:

National Oceanic and Atmospheric Administration  
National Geodetic Survey  
1315 East-West Highway  
Silver Spring, MD 20910-3292

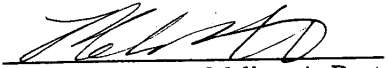
State Historical Preservation Office:

State Historical Preservation Office  
Division of Historical Resources  
500 South Bronough Street, Room 305  
Tallahassee, FL 32399

The undersigned hereby certifies that a copy of the COMBINED HISTORICAL AND ENVIRONMENTAL REPORT OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was served by first class, pre-paid, U.S. mail, on the 24 day of May 2004, on the following:

U.S. Natural Resources Conservation Service:

State National Resource Conservation Service  
USDA Natural Resource Conservation Service  
P. O. Box 14510  
Gainesville, FL 32614

  
Melissa A. Burt



## United States Department of the Interior



### FISH AND WILDLIFE SERVICE

South Florida Ecological Services Office  
1339 20<sup>th</sup> Street  
Vero Beach, Florida 32960

June 9, 2004

Robert vom Eigen  
Foley and Lardner, Attorneys at Law  
3000 K Street Northwest  
Suite 500  
Washington, D.C. 20007-5143

Service Log No.: 4-1-04-TA-7642

Project: Seminole Gulf Railway Abandonment  
County: Lee

Dear Mr. vom Eigen:

Thank you for your letter dated May 14, 2004, in which you request the Fish and Wildlife Service's (Service) technical assistance on your project. This letter provides the Service's comments on the project referenced above.

#### PROJECT DESCRIPTION

The Seminole Gulf Railway proposes to abandon 4,200 feet of existing railroad from just west of Pennsylvania Avenue to just east of Haitian Drive. The project site is located in Lee County, Florida.

#### FISH AND WILDLIFE RESOURCES

The project site contains 4,200 feet of existing railroad that will be abandoned. The information provided indicates that the project site is highly urbanized. Accordingly, we do not believe the project will significantly impact fish and wildlife.

Thank you for cooperation in protecting fish and wildlife resources. If you have any questions, please contact John Wrublik at 772-562-3909, extension 282.

Sincerely yours,

James J. Slack *JWS*  
Field Supervisor  
South Florida Ecological Services Office

TAKE PRIDE<sup>®</sup>  
IN AMERICA

Robert vom Eigen

Page 2

cc:

DEP, Bartow, Florida

EPA, West Palm Beach, Florida

FWC, Punta Gorda, Florida

**EXHIBIT H**  
**CERTIFICATION OF PUBLICATION**

**CERTIFICATION**

Lee County, by its attorneys, certifies that notices of the proposed abandonment were published during three successive weeks in *The Fort Myers News-Press*, a local paper of general circulation, commencing on May 31, 2004 and extending until June 14, 2004 in accordance with 49 C.F.R. § 1152.20(a)(4) and 49 C.F.R. § 1105.7(c).

**NEWS-PRESS**  
Published every morning - Daily and  
Sunday  
Fort Myers, Florida  
**Affidavit of Publication**

STATE OF FLORIDA  
COUNTY OF LEE

Before the undersigned authority, personally appeared

**Kathy Allebach**

who on oath says that he/she is the

**Legal Assistant**

of the News-Press, a daily newspaper, published at Fort Myers, in Lee County, Florida; that the attached copy of advertisement, being a

**Public Notice**

In the matter of

**STB Docket No. AB-400 (Sub-No.4) Seminole Gulf Railway, L.P. Adverse Abandonment**

In the court was published in said newspaper in the issues of

**May 31, June 7, 14, 2004**

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

*Kathy Allebach*

Sworn to and subscribed before me this

14th day of June 2004

by

**Kathy Allebach**

personally known to me or who has produced

as identification, and who did or did not take an oath.

Notary Public

Print Name

My commission Expires:



Janet E. Cobb  
MY COMMISSION # CC980442 EXPIRES  
November 19, 2004  
BONDED THRU TROY FAIR INSURANCE, INC.

**PUBLIC NOTICE  
BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC  
20423  
STB Docket No. AB-400  
(Sub-No. 4)  
SEMINOLE GULF  
RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL  
NOTICE OF ADVERSE  
ABANDONMENT  
OF  
LEE COUNTY, FLORIDA**

Lee County, Florida ("Lee County") gives notice that on or about June 1, 2004, it intends to file with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking the adverse abandonment of approximately 4,600 ft. of Seminole Gulf Railway, L.P.'s (hereinafter "Seminole Gulf") Baker Spur line in an unincorporated area of Lee County, Florida. The applicable line of railroad to be abandoned begins at engineering station 33+35.74 which is which is approximately 400 feet to the west and south of where the line crosses Allico Road, approximately 9 of a mile east of U.S. 41, and passes to Allico Road station 76+00, continuing across Allico Road and then running parallel to and north of Allico Road for approximately 4.760 feet to the eastern terminus of the line at engineering station 79+25, which is parallel to Allico Road station 122+50. The affected railroad line is situated in U.S. Postal Service Zip Codes 33912 and 33913. It traverses no other U.S. Postal Zip Codes and the line includes no stations. The public record of the Board does not contain a system diagram map for Seminole Gulf, and therefore it is not possible for Lee County to determine whether this line of railroad appears on a system diagram map based on information in the possession of the County. The line does not contain federally granted rights-of-way. Any documents relating to this abandonment in the County's possession will be made available promptly to those requesting it. Allico Road is heavily traveled thoroughfare between Interstate 75 and U.S. 41 that services industrial, commercial, and residential traffic. It is presently a congested two-lane road and Lee County is in the process of widening Allico Road to six lanes. The cost of installing the required grade crossing equipment as part of widening Allico Road will cost approximately \$1 million dollars. The only shipper on the applicable portion of this line is J.J. Taylor Distributors, Ft. Myers/Naples, Inc. ("J.J. Taylor"). J.J. Taylor's lease on its facility ends January 5, 2005. It is in the process of relocating to a different facility, and no longer will be in need of rail service on this line. The owner of the leased property supports the abandonment of this line, and no longer wishes to have rail service to its property. This abandonment is necessary to save the County the \$1 million in costs to

build the grade crossing. Accordingly, should this abandonment not be granted, since the only shipper on the applicable line is relocating, service on this line will cease and eventually the line will be abandoned, forcing the County to spend an additional \$500,000 to remove the grade crossing. The interests of Seminole Gulf Railway's employees will be protected in accordance with the conditions of Oregon Short Line R. Co. - Abandonment - GOWAN 350 I.C.C. 91(1979). The application, when filed, can be viewed following its filing on the Board's website, www.stb.dot.gov, or a copy can be secured from Lee County's counsel, whose name and address appears below. The application will include Lee County's entire case for abandonment. Any interested person, after the application is filed on or about June 1, 2004, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings' docket numbers. These things are due 45 days from the date of filing of the application. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business; (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented; (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service; and (4) any rebuttal of material submitted in the application. Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board at 1925 K Street, N.W., Washington, D.C. 20423-0001, together with a certificate of service attesting that copies of the comments or protests have been served on Lee County's counsel in this matter, Robert P. vom Elgen, Foley & Lardner, LLP, Suite 500, 300 K Street, N.W., Washington, D.C. 20007. Except as otherwise set forth in 49 C.F.R. 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party of protestant may participate in the proceeding as its interests may appear.

May 31, June 7, 14, 2004  
25762

## CERTIFICATE OF PUBLICATION

STATE OF FLORIDA  
LEE COUNTY

This is to certify that the undersigned is the President and Publisher of the Robert C. Carlson, a public and English secular newspaper of general circulation, which has been regularly published daily in Lee County, Florida, for at least one year prior to the first publication of the notice hereinafter mentioned, and that a notice of which the annexed is a true printed copy, has been regularly published at least once during each of at least three consecutive weeks in said newspaper three times, the first publication there having been made in the issue of said newspaper, published on May 31, 2004 and the last publication thereof having been made in the issue of said newspaper, published on June 14, 2004 and that the face of the type in which each publication of said notice was made was the same as the body type used in the classified advertising in the issue of said newspaper in which publication was made.

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President and Publisher

Printer's fee:

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Robert C. Carlson  
DIRECTOR

**EXHIBIT I**  
**FEDERAL REGISTER NOTICE**

**FEDERAL REGISTER NOTICE**

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423

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STB Docket No. AB-400 (Sub- No. 4)

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SEMINOLE GULF RAILWAY, L.P.  
ADVERSE ABANDONMENT  
IN LEE COUNTY, FL

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NOTICE OF ADVERSE ABANDONMENT  
OF  
LEE COUNTY, FLORIDA

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Lee County, Florida ("Lee County") gives notice that on June 16, 2004, it filed with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking the adverse abandonment of approximately 4,400 ft. of Seminole Gulf Railway L.P.'s (hereinafter "Seminole Gulf") Baker Spur line in an unincorporated area of Lee County, Florida. The Subject line begins at engineering station 36+35+/-, which is which is approximately 100 feet to the west and south of where the line crosses Alico Road, directly west of Alico Center Rd., approximately one mile east of U.S. 41, and parallel to Alico Road station 79+00, continuing across Alico Road and then running parallel to and north of Alico Road for approximately 4,260 ft. to the eastern terminus of the line at engineering station 79+95, which is parallel, approximately, to Alico Road station 122+60. The affected railroad line is situated in U.S. Postal Service Zip Codes 33912 and 33913, it traverses no other U.S. Postal Zip Codes and the

line includes no stations. The public record of the Board does not contain a system diagram map for Seminole , and therefore it is not possible for Lee County to determine whether this line of railroad appears on a system diagram map. Based on information in the possession of the County, the line does not contain federally granted rights-of-way. Any documentation relating to this abandonment in the County's possession will be made available promptly to those requesting it.

The interests of Seminole Gulf Railway's employees will be protected in accordance with the conditions of Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

The application can be viewed on the Board's webpage, [www.stb.dot.gov](http://www.stb.dot.gov), or a copy can be secured from Lee County's counsel, whose name and address appear below. The applicant's entire case for abandonment was filed with the application.

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed abandonment identifying them by the proceedings' docket numbers. These filings are due 45 days after the application is filed. Persons who may oppose the abandonment, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed abandonment that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed abandonment, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

**CERTIFICATE OF SERVICE  
OF THE  
APPLICATION FOR ADVERSE ABANDONMENT OF LEE COUNTY, FLORIDA**

The undersigned hereby certifies that a copy of the APPLICATION FOR ADVERSE ABANDONMENT OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was served via email and overnight courier on the 16<sup>th</sup> day of June 2004, on the following:

Peter Shudtz  
Vice President - Federal Regulation  
CSX Corporation  
Suite 560  
National Place  
1331 Pennsylvania Avenue, N.W.  
Washington, D. C. 20004

Joseph C. Fuller  
Attorney for Seminole Gulf Railway, L.P.  
PO Box 61407  
Fort Myers, FL 33906

Eric M. Hocky  
Attorneys for Seminole Gulf Railway, L.P.  
Gollatz, Griffin & Ewing, P.C.  
Four Penn Center, Suite 200  
1600 John F. Kennedy Blvd.  
Philadelphia, PA 19103-2808

The undersigned hereby certifies that a copy of the APPLICATION FOR ADVERSE ABANDONMENT OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was served by first class, pre-paid, U.S. mail, on the 16<sup>th</sup> day of June 2004, on the following:

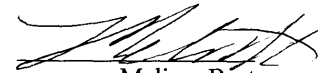
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400 S. Monroe Street,  
The Capital  
Tallahassee, FL 32399-0001

Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Department of Rail  
Florida Department of Transportation  
605 Swanee Street  
Tallahassee FL 32399-0450

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