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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



PETITION FOR WAIVER OF 49 C.F.R. § 1105.7(b)
OF
LEE COUNTY, FLORIDA

Petitioner, Lee County of Florida ("Lee County"), petitions the Surface Transportation Board ("the Board") for the waiver of the Board's regulation in 49 C.F.R. 1005.7(b) relating to the timing of service of the Environmental and Historic Report ("the Report") on certain governmental agencies, and in support thereof Lee County states, as follows:

I.

INTRODUCTION

On May 14, 2004, Lee County served all agencies listed in 49 C.F.R. 1105.7(b)(1)-(10) ("the applicable agencies") with a copy of the Report as prepared by Lee County, and submitted the Report to the Board in accordance with 1152.20(c), on May 18, 2004. When the Report was served on the applicable agencies on May 14th, it included the transmittal letter sent to the Board

and three maps. On May 24, 2004, Lee County re-served the applicable agencies via Federal Express the with the same Report and maps they had received earlier and, in addition, included a transmittal letter that tracked the wording suggested in the Appendix to 49 C.F.R. § 1105.11. See attachment A for a copy of the transmittal letter and shipping label.

II.

WAIVER

Lee County plans to file its Application for Adverse Abandonment ("Application") on June 10, 2004. Lee County last sent a Notice to the Board, the parties to this proceeding, and the persons or agencies listed in § 1152.20(a)(2) on May 11, 2004, and the Notice has been published for three consecutive weeks in *Fort Myers News-Press* commencing May 19, 2004.¹ Therefore, if Lee County files the Application on June 10, 2004, the notice requirements in § 1152.20 will be satisfied since the filing would be not more than 30, or less than 15, days from when the Notice was served.²

As previously stated, the applicable agencies have now received two copies of the Report, one that was mailed on May 14, 2004, and one that was served on them via Federal Express on May 24, 2004. If the Application is filed on June 10th and May 14th is used as the date the applicable agencies were served with the Report, than there will be no problem because

¹ In SGLR's letter to the Board, dated May 20, 2004, there was concern expressed over the publication of notice in the newspaper. As stated in our rebuttal, the newspaper notice is currently being published, and a certificate of publication will be completed at the conclusion of the publication and a copy of that certificate will be included with the Application and Report when they are filed with the Board.

² Note that Florida Department of Transportation, Rail Division ("FDOT"), was not served on May 11, 2004; it was served via facsimile and U.S. mail on May 25, 2004. Therefore, the Application is in compliance with the requirements of 49 C.F.R. § 1152.20(b)(1), since the Application will be filed 15 days after the FDOT received the Notice.

more than 20 would have passed since the applicable agencies were consulted.³ However, if May 24, 2004 is used as the date of service of the Report on the applicable agencies, filing the application on June 10 will mean that only 17 days passed since the applicable agencies were served, in contravention of the 20 day requirement under § 1105.7.

There is good reason to believe that the agencies understood that the report was submitted to them for purposes of consultation. Since all applicable agencies were served on May 14, 2004 with the Report, and the transmittal letter included with the report listed: the docket number, the relevant parties, and the names and addresses of Lee County's counsel, the applicable agencies could have sought clarification if they had any questions as to why they were receiving the document. None of the agencies have contacted counsel about the matter. Additionally, this report is of a kind that these agencies routinely receive and respond to often, so there is little reason to think the May 14th mailing created confusion about whether they should review and comment if appropriate.

Counsel for Lee County sent all the applicable parties a second Report and transmittal letter to ensure that there would be no confusion, and sent them via Federal Express, to ensure the agencies received the Report as quickly as possible. Therefore, the agencies were not adversely affected by any of our actions and will not be harmed if the Application is filed on June 10, 2004.

The requested waiver of 49 C.F.R. § 1105.7(b) would allow seventeen days to pass between the second service of the Report and the filing of the Application on June 10th. If granted, the waiver will not prejudice the applicable agencies because they are on notice that the

³ 49 C.F.R. § 1105.7(b) requires that the applicant must serve copies of the Report on the applicable agencies at least 20 days prior to filing the Application.

filing will occur on June 10th. Denial of the waiver would place form over substance, and would impose the unnecessary delay and expense upon the County of further duplicative notice of this proceeding.

WHEREFORE, petitioner, Lee County, seeks the limited waiver of § 1105.7(b) of the Board's environmental regulations to permit Lee County to file its adverse abandonment application within seventeen days of serving its Report on the applicable agencies.

Respectfully submitted,
Lee County, FL.
By its attorneys,

 MAB

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Assistant County Attorney
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Foley & Lardner, LLP
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Washington, DC 20008
Tel: 202-672-5300

Dated: May 28, 2004

ATTACHMENT A

Sample Transmittal Letter
and shipping label



May 24, 2004

**FOLEY & LARDNER LLP
ATTORNEYS AT LAW**

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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.¹ 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).

¹ 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

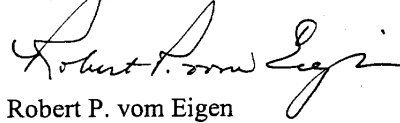
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Florida State Clearinghouse
May 24, 2004
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Because the applicable statutes and regulations impose stringent deadline for processing this action, your written comments to SEA (with a copy to our representative) would be appreciated within 3 weeks².

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)

² 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

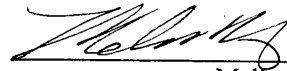
State Historical Preservation Office:

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

FEDERAL EXPRESS POWERSHIP FORM

Business Code Contact Name Company Address City, State Zip		May 24, 2004 Florida State Clearinghouse The Department of Community Affairs Executive Office of the Governor – OPB 2555 Shumard Oak Boulevard Tallahassee, FL 32399		Country USA	Account	Phone:
Service Payment References Dept/Notes Spec Handling Tracking# Carriage Value		NEXT MORNING DELIVERY ROBERT VOM EIGEN CHARGE: 999100/0902		05/24/04 Trk#S48757250249 R# 2 Pmt: 1, PL XXX 8.12 FEXP 1.00 1B  GK		
{DEPARTMENT USE ONLY}						
Packages	Weight	Dec Value				
1.						
2.						
3.						
4.						

A.

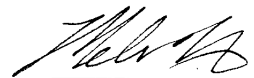
CERTIFICATE OF SERVICE
OF THE
PETITION FOR WAIVER OF LEE COUNTY, FLORIDA

The undersigned hereby certifies that a copy of the PETITION FOR WAIVER OF LEE COUNTY, FLORIDA, in Docket No. AB-400 (Sub. No. 4) was served by overnight courier on the 28th day of May 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

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Fort Myers, FL 33906

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Melissa Burt