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August 9, 2004
PUBLIC VERSIONS VIA: electronic filing
HIGHLY CONFIDENTIAL VIA: UPS overnight

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

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

Dear Secretary Williams:

Enclosed for filing in the above referenced proceeding is the Protest of Seminole Gulf Railway, together with three appendices. The electronic filing includes only the Public Version of Appendix A.

The original and 10 copies of the Highly Confidential version of Appendix A is being sent by overnight delivery for filing under seal in accordance with the protective order set forth in the Board's decision served on August 4, 2004.

Please time stamp the extra copy of this letter to indicate receipt of the Highly Confidential filing, and return it to me in the stamped, self-addressed envelope provided for your convenience.

Respectfully,



ERIC M. HOCKY

cc: Robert P. vom Eigen (by email and overnight courier)
Peter Shudtz (by email)
Keith Borman (by email)

GOLLATZ, GRIFFIN & EWING, P.C.

WEST CHESTER

PHILADELPHIA

WILMINGTON

Before the
SURFACE TRANSPORTATION BOARD

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

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

PROTEST OF SEMINOLE GULF RAILWAY, L.P.

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Attorneys for Seminole Gulf
Railway, L.P.

Dated: August 9, 2004

Before the
SURFACE TRANSPORTATION BOARD

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

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

PROTEST OF SEMINOLE GULF RAILWAY, L.P.

On June 16, 2004, Lee County, Florida (“Lee County” or “County”) filed an application for adverse abandonment seeking to force Seminole Gulf Railway, L.P. (“SGLR”) to abandon an active line of railroad approximately 4,400 feet long¹ in order that the County can proceed with a road widening project without the necessity of installing a new enlarged crossing. SGLR believes that Lee County has not satisfied its burden to demonstrate that the public convenience and necessity require or permit the abandonment of the line, and therefore is filing this protest pursuant to 49 C.F.R. §1152.25(a) to oppose the adverse abandonment request. As this filing will demonstrate: (1) the line will continue to make a positive financial contribution to SGLR, (2) abandonment of the line will have an adverse impact on a current shipper, and (3) SGLR has and will continue to actively market the line for future business, and there are reasonable prospects for continued use of the line. Further, the abandonment of this line is not required for

¹ The exact length of the proposed abandonment is not clear from the application. the County has generally referenced highway engineering stations (Alico Road station 79+00) that correlate to the Alico Road construction project. While the County’s estimate is that the portion of the line along the northern side of Alico Road is 4,260 feet, it does not give the distance through the angled crossing to the western end of the proposed abandonment which is variously described as engineering station 36+35 ±, and as 100 feet to the south and west of the Alico Road Crossing, and as approximately one mile east of U.S. 41. See Application at 1, and Application, Exhibit A.

the County to complete its highway project, and the alleged financial impact on the Lee County of leaving the line and the crossing in place is overstated and does not justify forcing SGLR to abandon this line.

REQUIRED INFORMATION

Pursuant to the requirements of 49 C.F.R. §1152.25(a), SGLR states as follows:

- (i) Protestant is Seminole Gulf Railway, L.P., a Class III carrier subject to the jurisdiction of the Board, whose address is 4110 Centerpointe Drive, Suite 207, Fort Myers, FL 33916.
- (ii) SGLR is the operator of the line which Lee County seeks to have abandoned. SGLR owns the track, rail facilities and improvements comprising the line, and leases the right-of way (in this case an easement) from CSX Transportation, Inc. ("CSXT"). Under its lease with CSXT, SGLR is entitled to all income from the line, including property income.
- (iii) The specific reasons why SGLR opposes the application for adverse abandonment are set forth in detail in the Rebuttal which follows.

The following Appendices are being filed together with this Protest as a part thereof:

Appendix A [Public and Highly Confidential versions]²

Verified Statement of Gordon H. Fay

Verified Statement of Michael E. Curley

Appendix B

Verified Statement of G. Bruce Fay

Verified Statement of Harry E. Neeves

Verified Statement of Jerry D. Haberle

² In accordance with the protective order issued by the Board in a decision dated August 4, 2004, SGLR has redacted certain highly confidential information from the Verified Statements of Gordon H. Fay and Michael E. Curley. The redacted information in the Public Version is indicated by double brackets ("[[]]"). The Highly Confidential version of Appendix A is being filed separately under seal with the Board, and will be served on those parties that properly execute the required Highly Confidential Undertaking.

Verified Statement of J. William Misiura
Verified Statement of Dwight Brennan

Appendix C

Lee County Answers to Interrogatories (without attachments)
Selected Documents Produced by Lee County

REBUTTAL

I. Background³

The line which the County seeks to have abandoned is part of SGLR's Baker Spur. The Baker Spur currently is approximately 1.75 miles long and runs from a point on SGLR's Fort Myers-Naples main line approximately 10 miles south of Fort Myers to engineering station 79+95 ±, east of Haitian Road. Originally, when the Baker Spur was built in 1973 it extended an additional 3.55 miles to serve a limestone quarry operated by Florida Rock. The original railroad easements were granted by Alico, Inc., a large real estate holding company originally created by the Atlantic Coast Line Railroad. The Baker Spur runs generally parallel to Alico Road, although they cross each other several times.

Between 1973 and the early 1990s, the area along the Baker Spur changed from rural to heavy industrial use. In 1987, SGLR purchased the track, rail facilities and improvements comprising the Baker Spur (together with another 110 miles of rail lines), and leased the right-of way, from CSXT. During this period, Alico, Inc. sold off various parcels along the rail line. One of the parcels was acquired by Miller Brands to serve as a beer distribution warehouse. A railroad siding (the "Miller Siding") was constructed to serve the warehouse. Eventually, the

³ The background set forth herein is based on the Verified Statement of SGLR's President Gordon H. Fay, except as otherwise noted. Appendix A, G. Fay V.S., at A-1 et seq.

warehouse was taken over by JJ Taylor, one of Miller Brands' distributors. Another parcel was ultimately acquired by Florida Power & Light ("FPL") for use as an electrical distribution substation. FPL entered into a private road crossing agreement with the railroad that provides access from the facility across the right-of-way and track of the railroad to Alico Road. Most of the properties along the Baker Spur are now zoned industrial, utility (for FPL), open storage, or commercial.

Rail traffic with Florida Rock ended in 1992. Soon thereafter, some neighboring landowners (the "Freeman" parties) filed an action in Florida state court claiming title to a portion of the land underlying the Baker Spur. The action was settled and SGLR agreed to abandon the eastern 3.55 miles of the Baker Spur (ICC Docket Nos. AB-400 (Sub-Nos. 1 and 2)) from engineering station 79+95 ± to the end of the line, and the abandonment was finalized in 1995.

In 1997, Lee County began considering the expansion of Alico Road from a two lane road to a six lane divided highway. Appendix C, Answers to Interrogatories, No. 2, at C-4. Its initial approach to SGLR in April 2000 was a demand that SGLR immediately remove the crossing at issue in this case.⁴ Appendix C, at C-37. After the railroad refused on the grounds that there was no STB authorization to do so, the County evidently confirmed that indeed it did not have the power unilaterally to order SGLR to remove its tracks. Appendix C, Answers to Interrogatories, No. 6, at C-6.

Adjoining landowners evidently did not learn that lesson. In 2002, SGLR was sued by an

⁴ As noted above, the Baker Spur and Alico Road cross each other several times. The crossing at issue in this case is known as "Alico #3."

entity known as Joe & Bruce, LLC who contended that a billboard constructed by Lamar Outdoor Advertising under an agreement with SGLR was improperly placed on property controlled by Joe & Bruce. However, SGLR contends that the billboard is located within the right of way retained after the 1995 abandonment. In this lawsuit, Joe & Bruce disputed where the location of the end point (79+95 ± as authorized by the ICC) was physically located. After Joe & Bruce was unable to have the billboard immediately removed, the action has been largely inactive, and SGLR has not heard from Joe & Bruce until it surfaced in this proceeding to give a verified statement.

In order to protect its right of way to the end of track authorized by the ICC, SGLR laid some skeletal track across Haitian Road (a private road) to a point east of the road.⁵ SGLR entered into a private crossing agreement with Alico Lakeside, LLC which claimed to be the underlying landowner at Haitian Road. In 2004, however, Alico Lakeside brought suit against SGLR claiming that the end point of the abandonment was not the point ordered by the ICC, but rather should be at a point further to the west. Alico Lakeside claimed that SGLR had no right to occupy the right of way through Haitian Road. This case is still pending in Florida state court. Not surprisingly, Alico Lakeside is represented by the same attorney as Joe & Bruce.

Lee County finally got its Alico Road widening project started in April 2003 when it entered into a contract with Phoenix Construction Services. Appendix C, Answers to Interrogatories, No. 4, at C-4, 5. Thereafter, the County in October and November, 2003 advised SGLR that Alico Road was being improved and widened in accordance with the 1988 crossing agreement between the parties, and asking SGLR for its estimates of the costs of the crossing

⁵ Based on a new survey, SGLR now believes the proper end of track is another 100 feet further to the east. Appendix A, G. Fay V.S., at A-4, 20, 21.

improvements. Appendix C, at C-38, 39. After meeting with the County, SGLR provided the County with a proposal that covered the installation of the new heavy duty crossing at Alico Road, related improvements at Alico Center Road and the FPL access road (at either end of the Alico Road crossing transition tracks), new signals at the Alico Road crossing, moving the existing signals to Alico Center Road, and an unrelated drainage culvert at the Miller Siding. The proposal was good until March, 2004. SGLR heard nothing further from the County until April, when the County told SGLR that it wanted SGLR to abandon the portion of the Baker Spur through Alico Road. Lee County now says that it only determined to pursue the abandonment of this line after it learned that JJ Taylor, the largest shipper on the line decided to move off of the line, and that the property would be sold. Appendix C, Answers to Interrogatories, No. 6, at C-6. However, the County knew since June 2002 that JJ Taylor was looking to move, and that its lease scheduled to terminate in November 2003. Appendix C, Answers to Interrogatories, No. 14, at C-10. Yet, the County still went forward with notifying SGLR that it was planning to install the crossing and asking SGLR for its estimates. It was not until after the County was informed about the Alico Lakeside litigation, and the land speculators led by Mr. Youngquist began to seek to restrict the use of the JJ Taylor property, that the County appears to have changed its strategy - seeking the adverse abandonment of the line that the private landowners had been unable to do. *Id.* See also Appendix C, at C-48 (notes of engineering meeting indicating litigation - but not JJ Taylor move - was raised).

At a meeting with the County attorney on April 13, 2004, where SGLR was advised of the County's new position, the County attorney was accompanied by the attorney for Alico Lakeside (and Joe & Bruce). A confirming letter from the County attorney of April 28, 2004,

which included a financial offer, gave SGLR ten days to accept before the County would file for an adverse abandonment. Lee County filed with the Board its initial notice of intent to file an adverse abandonment filings just five days later on May 3, 2004, before SGLR had the opportunity to reply.

Lee County filed its formal application for adverse abandonment with the Board on June 16, 2004. It filed three additional supporting verified statements on July 23, 2004. By decision served July 30, 2004, the Board extended the due date for protests until August 9, 2004.

II. Discussion

A. Abandonment Standards

Under 49 U.S.C. §10903(e), the standard governing all applications for abandonment of a line of railroad is whether the public convenience and necessity require or permit the proposed abandonment. In adverse abandonment cases such as this one where a noncarrier applicant seeks abandonment of a rail line over the objections of the operating railroad, the noncarrier applicant has the burden of showing that the statutory standard has been met. *Salt Lake City Corporation - Adverse Abandonment - In Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) (served March 6, 2002), 2002 STB LEXIS 150 at *11 (“*Salt Lake City*”); *Chelsea Property Owners - Abandonment - Consolidated Rail Corporation*, 8 ICC 2d 773, 778 (1992) (“*Chelsea*”).⁶

⁶ Even when the Board determines that the public convenience and necessity require or permit abandonment, that does not require the carrier to abandon the line. Rather, it removes the exclusive and plenary jurisdiction of the Board over the line, and allows the parties to take whatever legal steps might be necessary under state law to compel the carrier to leave the line and allow the property to be used for other public purposes. *See Salt Lake City*, 2002 STB LEXIS 150, at *11; *Modern Handcraft, Inc. - Abandonment*, 363 ICC 969 (1981). In this case, Lee County would still need to take the necessary steps under state law to condemn the railroad’s

In making this determination, the Board cannot just accept the claims of Lee County that the public would benefit from the adverse abandonment. Rather the position of the County is just one of the factors that the Board should consider. The Board must balance at least four interests: “(1) the railroad; (2) the owner and/or the public; (3) the shippers; and (4) interstate commerce and the rail system in general.” *New York Cross Harbor Railroad v. STB*, No. 03-1269 (decided July 13, 2004), 2004 U.S. App. LEXIS 14304, at *17 (“*NYCH*”). In evaluating a claim of cost savings by a public agency, the Board does “not simply weigh the dollars to be expended in building an overpass against the dollars of revenue (present or future) lost by [the railroad], or the increased costs experienced by shippers who lose rail service.” *Wisconsin Department of Transportation - Abandonment Exemption*, ICC Finance Docket No. 31303 (served November 23, 1988), 1988 ICC LEXIS 359, at *13 (“*Wisconsin DOT*”)(denying a requested abandonment that would have saved DOT from constructing a \$2.5 million overpass, but eliminated service to one current shipper).⁷ In balancing the various factors, the Board must keep in mind that it has “a statutory duty to preserve and promote continued rail service where the carrier has expressed a desire to continue operations and has taken reasonable steps to acquire traffic.” *Salt Lake City*, 2002 STB LEXIS 150, at *12. *See also Chelsea*, 8 ICC 2d at 779 (“The impediments to State and local government projects, although entitled to some weight, are nonetheless required to give way to our statutory duty to preserve and promote continued rail service, where the carrier has expressed a desire to continue operations and has taken reasonable

interests.

⁷ Although *Wisconsin DOT* was decided in the context of an exemption request, the ICC noted that its analysis would apply equally to an abandonment application under 49 U.S.C. §10903. 1988 ICC LEXIS 359, at *16.

steps to acquire traffic.”). Except in the recent case of the New York Cross Harbor Railroad which is currently on remand from the D.C. Circuit, neither the Board nor the ICC has ever granted an adverse abandonment (over the objection of the railroad) when the railroad was actively operating over the line. *NYCH*, 2004 U.S. App. LEXIS 14304, at *12; *Salt Lake City*, 2002 STB LEXIS 150, at *16. When a railroad expresses confidence in the possibility of future traffic, and submits evidence in support of that confidence, the Board should be reluctant to substitute its judgment for that of the railroad. *Wisconsin DOT*, 1988 ICC LEXIS 359, at *11-12. In sum, the County needs to establish not just that the public might save some money, but why it is in the public interest to prevent SGLR from providing continuing rail service over the line and continuing to benefit from the line.

Based on the evidence presented by Lee County in its application and the Rebuttal presented in this Protest, it is clear that the County has not met the statutory standard, and that the application must be denied.

B. Necessity for the Abandonment

Initially, it is important to note that this is not a case where Lee County needs the abandonment of the line in order to complete its highway expansion project. The County already has a crossing in place, and under the existing crossing agreement which has been in place since 1988, the County has the right to improve the crossing. The project has been in the planning stages for at least seven years, and to the best of SGLR’s knowledge all of the plans have included the installation of a new expanded rail/highway crossing.⁸ Indeed, the letters from Lee

⁸ The County acknowledges that it has not even gotten a price from its highway contractor for construction without the crossing. See Appendix C, Answer to Interrogatories, No. 5, at C-___.

County to SGLR dated October 15 and November 24, 2003, requesting estimates for improvements to the crossing, specifically state that the County will be improving the crossing in accordance with the 1988 agreement. *See* Appendix C, at C-38, 39. Part of the purpose of this proceeding appears to be Lee County seeking to avoid its clear contractual obligations with respect to the crossing.

Additionally, Lee County does not contend that it needs the land underlying the rest of the line to be abandoned for some public purpose or project. It does not own the land comprising the rest of the right-of-way, and if the adverse abandonment were to be granted and SGLR removed from the property, it is unclear who owns the reversionary interests.⁹

C. Adverse Impacts of Abandonment

Essential to Lee County's argument for the adverse abandonment are its assertions that the abandonment will not affect the service to FPL, that there are no landowners along the line that want rail service from the line, and that SGLR will not be able to develop business on the line. These last two factors, according to Lee County, make it inevitable that the line will be abandoned by SGLR in the near future. However, the true facts are that service to FPL will be severely impacted, and that there are realistic business opportunities for use of the line.

1. The adverse abandonment would have a negative effect on service to FPL.

Where there will be harm to existing shippers, adverse abandonments are almost always denied. Lee County seems to acknowledge this. In its answers to interrogatories, it states that it did not consider filing this adverse abandonment proceeding until after it learned that JJ Taylor

⁹ SGLR believes it could be the original owner of the surrounding property Alico, Inc., that it is not necessarily the owners of the adjoining parcels, and certainly that it is not the County (unless the County may claim to have done takings without notice to SGLR or CSXT).

would be moving off of the line. Appendix C, Answers to Interrogatories, No. 6, at C-6.

Further, in its correspondence seeking support from FPL, the County advised FPL that it would not proceed with the adverse abandonment if service to FPL would be adversely affected. (In fact, Lee County changed the end point of the proposed abandonment in an attempt to make continuing service to FPL possible.) Appendix C, at C-23, 24, 29. The verified statement of J. Timothy Corson of FPL is specifically predicated on the assurances that it received from Lee County that its service would not be adversely affected by the abandonment. *Corson V.S.*, ¶4.¹⁰

Rail service is essential for the high and wide loads that FPL receives at the facility along the rail line. The facility does not have direct highway access - its only access is currently over a private road between Alico Road, across SGLR's right of way and tracks, and into the facility. It is often difficult to handle the transformers by truck over standard highways because of the size of the loads and the slow speeds that would be required. Further, other roadway improvements in the area (US 41/Alico/Metro Parkway interchange and the I-75/Alico Road interchange) will restrict clearances and make it difficult for the transformers to be brought in by truck. FPL believes that if rail service from the Baker Spur were not available, the alternative would be to use sidings in Fort Myers or in Bonita Beach (either of which is 25 miles away), and that because of clearance and permitting issues, the route can be up to 100 miles. The additional cost to FPL would be at least \$5,000 for each move. *See* Appendix C, at C-30, 31.

Lee County asserts that the adverse abandonment will not adversely affect service to FPL. However, in its responses to discovery, Lee County acknowledges that it did not discuss with

¹⁰ The County in its responses to discovery states that it relied on FPL to determine whether service would be affected. Appendix C, Answers to Interrogatories, No. 12, at C-9.

SGLR whether SGLR would still be able to provide the same service. Appendix C, Answers to Interrogatories, No. 13, at C-9, 10. FPL also did not discuss the issue with SGLR before it gave its verified statement. SGLR believes that several significant factors were overlooked by both Lee County and FPL.

SGLR currently delivers high and wide transformer shipments to FPL several times a year. It unloads the transformers at a location just west of Alico Center Road in the 40 foot right of way between the tracks and the edge of Alico Road. FPL's riggers are able to unload the transformers and use a private paved road that runs from the unloading spot to Alico Center Road. Appendix B, *Haberle V.S.*, at B-35, 36.

The car is delivered by SGLR using two locomotives, one on each end of the car. The car is pulled to the "Miller Siding" on the north side of Alico Road; the lead locomotive is run into that siding; the second locomotive pushes the car past the siding; the lead locomotive pulls out of the siding; and the car is pulled back to the unloading spot. This method releases both locomotives to return to Fort Myers for use in other service while waiting for the car to be unloaded by FPL. *Id.*

Once the FPL rigger unloads the car, it moves the transformer down the private road to Alico Center Road, where it moves north onto, west, and across the now undivided two-lane Alico Road, to FPL's private road that crosses SGLR's track and the right of way into FPL's facility. *Id.*

If the adverse abandonment is granted, then service to FPL will certainly be more expensive and less efficient, and more dangerous - even it even remains possible to continue the service. With the stub-ended track as proposed by Lee County, the lead locomotive will have to

pull to the end of the track where it will be trapped until the transformer is unloaded. (It would not be safe to use only a trailing locomotive to shove the transformer to the unloading spot.) The added cost of taking the locomotive out of service will be added to the rate for the move. Given the length of the locomotive, the car will not be able to be placed adjacent to the current unloading site as the County contends. Further, because of the new sidewalk that the County is installing along the expanded Alico Road, the current 40 foot width of the right of way will be reduced, making it harder for the riggers to maneuver. Thus, it is not clear whether unloading will be able to continue at the current location, and even if it is, the unloading process will be more difficult and expensive.¹¹ *Id.*

Assuming that the riggers can unload the car under this new configuration, they will then have to move the transformer from Alico Center Road onto the now divided six-lane Alico Road west to FPL's facility. To reach the facility, the transformer will now have to be moved across all six lanes of traffic.¹² At that point, the transformer would be moved over FPL's private road into its facility. However, SGLR is the party that entered into the private roadway and crossing

¹¹ If SGLR is forced to continue to service FPL over a shortened stub track, there will need to be certain facility changes where the Baker Spur comes off of SGLR's main. These changes will need to be made in an area where Florida Department of Transportation ("FDOT") has an ongoing highway project related to improvements for the US 41/Metro Parkway/Alico Road interchange. Appendix B, *Haberle V.S.*, at B-35, 36. SGLR has estimated that the additional cost to FDOT of the needed changes will be \$200,000 to \$500,000 depending on the roadway plans.

¹² The original plans submitted by Lee County to SGLR did not show any cuts in the median at that point. In the correspondence produced between Lee County and FPL, the County appears now to be promising FPL that a median will be installed. Appendix C, at C-28. However, it is not clear at what cost, who will pay for the additional costs, or what traffic flow and safety considerations, if any, were considered.

agreement with FPL, and if SGLR is evicted from the right-of-way, FPL's rights to the private roadway will end. FPL will have no way to access its facility unless it is able to determine who the residuary owner is and obtain replacement rights from that owner. Even if available, the rights will cost FPL more than the free crossing rights it has from SGLR. Appendix A, *G. Fay V.S.* at A-7, 8.

On the other hand, if the adverse abandonment were denied, SGLR would be able to make the FPL service safer (for FPL and the public) and more efficient. SGLR had contemplated that in conjunction with its work installing the new crossing, it would also create a new unloading site on the eastern side of the crossing, between its tracks and FPL's facility. At that location SGLR's right of way is 50 feet wide on that side of the tracks - 10 feet wider than is currently available. As can be seen in Photo No. 2 to the *Curley V.S.*, most of the work to prepare for unloading transformers at the new site is already done. Appendix A, *Curley V.S.* The car would be spotted similar to way it is currently, and the lead locomotive would not be trapped.¹³ Appendix B, *Haberle V.S.* at B-35. Additionally, the move after unloading would be considerably shorter than now, and the transformer would never have to be moved by the riggers over or across any highways.

After JJ Taylor moves off of the line, FPL will be the sole remaining current shipper. However, even when service to only one shipper will be adversely affected the Board has protected the rail service by denying the abandonment. *See Wisconsin DOT*. The Board should

¹³ Under the "Miller Siding" agreement, SGLR has the right to use the siding for other purposes. Appendix A, *G. Fay V.S.* at A-27. However, if the "Miller Siding" were removed, SGLR would use the existing switch and tracks and create a run-around at the same location along the line. This could be done at a minimal cost. *Id.* at A-9.

be particularly cognizant of harm where, as here, the shipper is a public utility like FPL since higher costs of service, or worse no service at all, will impact the public consumers of FPL. On the other hand, denial of the adverse abandonment would mean more efficient, safer service for FPL which will in turn benefit the public. Further, the Board should hold Lee County to its promise to FPL that it would not pursue the adverse abandonment if it would adversely affect the service to FPL.

2. SGLR is actively seeking new business for the line.

Shortlines are in business because they are able to take low density lines from Class I railroads and develop traffic with their lower cost structure, and knowledge of the local area. The Board has recognized the important role that shortlines play as part of the national rail transportation system. *See CSX Corp., et al. - Control and Operating Leases/Agreements - Conrail*, STB Finance Docket No. 33388, Decision No. 89 (served July 23, 1998), at p. 76. In adopting the class exemption that allowed many shortlines to acquire these light density lines found:

Transfer of a line to a new carrier that can operate the line more economically or more effectively than the existing carrier serves shipper and community interests by continuing rail service ...

Finally we note that shortlines are dependent on local traffic for their survival, and thus have a greater incentive than class I carriers to provide local shippers with service tailored to their needs. ... No evidence was submitted to refute the tentative conclusions in the NPR at page 4 that: "The transfer of abandoned or underused rail property for more efficient use by a railroad can be beneficial to the shippers on the line, to the community that the line runs through, and to the selling railroad. When a transfer occurs, shippers receive continued, if not enhanced service, ..."

Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901, 1 ICC

2d 810, 813. The situation with SGLR is no different. Its president and vice president of sales have over 70 years of combined experience in railroad marketing. They have been able to develop new business opportunities at various locations along the rail lines of SGLR (and its sister company Bay Colony Railroad in Massachusetts); they are growing the base business by five to eight percent annually, and have a new customer beginning in September that should increase business by another one-third. They have won marketing awards, and have demonstrated that they can take sites abandoned by one customer and turn it into a more successful operation with a new customer. Appendix A, *G. Fay V.S.*, at A-1, 3.

SGLR believes that there are many opportunities to develop rail business for this line. All of the properties along the northern side of the line are zoned industrial or commercial, one of the few areas in Lee County where this is the case. Many of the properties are currently being advertised for heavy industrial uses. Traditionally, rail service options to the properties would make them more valuable.¹⁴ Over the years, SGLR has showed a number of prospective shippers properties along the line, and even though many of them were interested, the current owners of the properties have so far discouraged rail users. Appendix A, *Curley V.S.*; Appendix B, *Brennan V.S.*

Almost all of the landowners that gave statements in support of the abandonment have been involved in recent litigation with SGLR.¹⁵ One of SGLR's main protagonists, Harvey

¹⁴ In the initial planning stages in February 1988, Miller Brands noted the importance of preserving rail access to its property. Appendix C, at C-36.

¹⁵ An exception is Duane Swanson of Alico Industries, LLC. Mr. Swanson also has an interest in other commercial entities, including one of SGLR's largest shippers. However, when Alico Industries bought a piece of the Miller Brands property currently occupied by JJ Taylor, the current ownership group which includes some of the SGLR litigants, restricted the

Youngquist has interests in at least some of the supporting parties - DBT, and possibly Joe & Bruce and Alico Industries.¹⁶ They are actively pushing the County to push for the adverse abandonment for their perceived private benefit. One supporter, West Coast Roofing (related to Joe & Bruce), is not even located on the line. Of the other four landowners who claim no interest in future rail services, at least three of them (Airport Industrial Holdings, DTB Properties, Joe & Bruce) acknowledge that they only own the properties for development purposes - they are not currently operating commercial enterprises there, and several of the properties continue to be actively advertised for sale. Appendix A, Curley V.S., at A-46 and Photo nos. 9, 10, 13-15. New owners may not feel the same way about the availability of rail service. SGLR believes (or at least harbors the hope) that if the Board denies the adverse abandonment, they may give up their quest to get rid of the railroad, and instead be willing to take advantage of the added value that rail service brings to their industrial properties.¹⁷ Indeed, SGLR interests are willing to purchase some of the land for existing rail oriented business development. Appendix A, G. Fay V.S., at A-2.

Given that the supporting landowners are not commercial users of the properties along the line, and given that none of the uses, permitted or actual, along the line are inconsistent with use

right to use rail service over the existing spur. However, that restriction only lasts for five years. (Interestingly, the agreement restricting service only appears to restrict Alico Industries and not DTB Properties from using the siding. Appendix C, at C-18.)

¹⁶ He also has an interest in Alico Lakeside. Neither Mr. Youngquist nor Alico Lakeside has provided the County with a supporting statement.

¹⁷ SGLR's experience over the years is that landowners abutting a rail line are entitled to compensation when a public project results in the inability of the landowner to continue to be directly served by the railroad.

by future rail customers, these supporting statements should be given little weight by the Board.

Whether or not these owners change their minds, SGLR has been working on developing other rail business for the line. When JJ Taylor moves off of the line, and SGLR's daily service to that customer ends, the line will be freed up for opportunities that might otherwise have interfered with that service. Since SGLR has only recently learned that JJ Taylor was moving, it has not had the full opportunity to explore all of these options.

Ringling Bros. has already indicated that the line would make an ideal location to park its active train while it performs at a nearby arena in Estero, Florida. SGLR has handled the circus train in the past, and expects that the associated train moves, storage and other services, even for a one week show, could generate \$30,000 in revenues. Ringling has indicated that if the shows are successful, it may consider the location as a regular winter "vacation" stop, meaning a 20- to 30-day stay each year. SGLR has hosted such winter business in past years. This means not only business for the railroad, but also for the local Lee County retail and restaurant operations that serve the circus performers and employees, and for the Estero arena (Germaine Arena). The circus also means substantial additional revenues for the County from the taxes on ticket and concession sales that come from the performances. Appendix B, Misiura V.S.; Appendix A, G. Fay V.S., at A-9; Appendix B, Haberle V.S. at b-36, 38..

SGLR could shift its ballast moves to the new unloading site. Currently SGLR trucks the ballast from quarries on Alico Road to railroad locations elsewhere on its system. Without the need to clear the line for the JJ Taylor business, SGLR could load up to 300 carloads of ballast per year for its own use. SGLR estimates that shifting the ballast loading to the new unloading site on the line would save the railroad approximately \$30,000 in costs per year. Appendix A, G.

Fay V.S., at A-9.

Transload traffic could be shifted by SGLR's affiliate GFARS to the line if the new unloading site is developed for FPL as discussed above. GFARS is currently handling some traffic that is delivered by SGLR to other locations and then is trucked to customers locations near the line. Appendix A, G. Fay V.S., at A-9. Further, there appear to be a number of other opportunities for traffic that can be pursued after JJ Taylor moves off of the line. Appendix A, G. Fay, V.S. at A-9, 10.

Other traffic could be shifted from SGLR's Fort Myers transload facilities if the proposed FDOT new highway alignment through downtown Fort Myers progresses. If SGLR is forced by FDOT to move out of downtown to allow for the new highway (between Metro Parkway and Alico Road), sites along the line would be ideal. SGLR, or its affiliates, would be interested in purchasing approximately five to 20 acres along the rail line for a new facility, but even if none were made available, SGLR could pave and expand the new FPL unloading site to accommodate some of the traffic that would need to be moved. Appendix A, G. Fay V.S., at A-9,10.

It is clear from the Verified Statement of Gordon Fay that the line, if left in place, will make a positive contribution to SGLR's financial status even without the JJ Taylor traffic. Revenues from the billboards that SGLR currently enjoys are sufficient to cover the costs of holding the line. Additionally, SGLR would continue to receive the revenues that the FPL traffic provides.¹⁸ Together with the additional traffic it appears that SGLR will be able to develop, and

¹⁸ This is not a situation like that faced by the ICC in *Modern Handcraft* where the sole revenue was from non-railroad sources such as parking lots and billboards. Rather, in this case the billboard and other license fees will supplement the remaining freight revenue from the FPL traffic while additional railroad revenues are being developed.

the cost savings it would enjoy by shifting its ballast moves to the line, SGLR can afford to hold and maintain the line indefinitely while it continues to explore new business opportunities.¹⁹

Appendix A, G. Fay V.S., at A-10, 11. Thus, there is no incentive for SGLR to abandon the line voluntarily contrary to Lee County's contentions. Indeed, SGLR is willing to commit to Lee County and to the Board that, if this adverse abandonment is denied, it will not seek abandonment of the line during the ten year period after the installation of the new crossing.

D. The public benefit of the adverse abandonment is overstated.

The only claimed benefit to the public that Lee County can point to is that it will save the cost of installing a new railroad, highway crossing. The County's claim of public benefit is only one of the factors the Board is to consider. As noted above, in considering the County's claims, the Board should not simply weigh the dollars the County claims will be saved. *See Wisconsin DOT, supra*. While SGLR believes that the County's claimed benefit should give way to SGLR's desire to continue railroad operations, it is important to note that the public would not benefit nearly as much as the County claims.

To back up its claim for what it will save, Lee County attaches the proposal that SGLR provided to the County, at the County's request, based on the facts and service known to the parties at the time. At that time there was no indication that JJ Taylor would be moving, the crossing improvements were designed for the current and projected levels of traffic (including heavy truck traffic flows), and included all new expanded signals. The project involved

¹⁹ In contrast, if SGLR were forced to abandon and salvage the line, it would cost SGLR approximately \$65,000. Appendix B, B. Fay V.S. In addition, the billboard owners and the utilities with licenses to use the property will incur costs to remove and/or relocate their facilities.

improving two other private grade crossings, the installation of a new drainage culvert, and moving the current signals and re-installing them at Alico Center Road which currently is without signals. Appendix B, B. Fay V.S., at B-1, 2.

Under the existing crossing agreement between Lee County and SGLR, Lee County is required to pay for all changes and improvements to the crossing. Appendix B, Neeves V.S., at B-27. According to Lee County, the savings to the public of not installing a new crossing would be approximately \$1,500,000: \$1,200,000 under SGLR's proposal, and \$300,000 for tearing out the crossing and repaving the roadway when, the County claims, SGLR will shortly abandon the line. However, in claiming these public savings, Lee County has overstated the costs that it will incur, and failed to consider the other public costs that would be incurred if the adverse abandonment were granted.

Initially, as noted in Section C.3 above, it is unlikely that SGLR will abandon the line in the foreseeable future, and has agreed that it will not seek abandonment authority for at least 10 years. Thus, this potential cost should not be considered.

Additionally, the cost of the drainage culvert which was included in SGLR's initial proposal, is not related to the work at the crossing, and should not be considered in any possible cost savings. Further, SGLR believes that based on its examination of the existing drainage after recent heavy rains, either no additional work, or minimal additional work is necessary at that location. Appendix B, B. Fay V.S., at B-3. This reduces the claimed costs by \$108,207.²⁰ Moreover if Alico Industries, LLC and DBT Properties cancel the siding agreement to their

²⁰ The County would also save an additional \$130,000 of its highway contractor's costs if it decides not to proceed with the new culvert. Appendix B, B. Fay V.S. at B-3.

properties, the construction would be unnecessary.

Further, the County would not save the full amount that it would have paid SGLR under the SGLR's proposal. If the crossing is not installed, then the existing crossing will need to be removed, and the County's contractor will need to prepare the additional base and pave the area that would have been occupied by the crossing. Lee County acknowledges that it has not gotten a price from its contractor for this extra work. However, using the County administrator's calculations, the cost will be approximately \$300,000 (the cost he estimated for later removal and repaving and construction of the crossing area - the same amount of paving would be required, and the cost of the crossing tear-out should not be substantially different). Appendix B, B. Fay V.S., at B-2; Appendix C, at C-53. Further, the County has not considered the costs of work that would need to be done to tear out and pave at the other four crossings that would be removed if the line is abandoned - Alico Center Road, FPL access road, Gator Road and Haitian Road. These costs could be another \$70,000. Appendix C, Answers to Interrogatories, Nos. 8 and 9, at C-7, 8.

The County has also not deducted from its savings the amount that it will need to pay SGLR and CSXT for the forced taking of their easement and leasehold interests if the abandonment is authorized. Nor does the County take into account the penalties to the contractor that will be incurred if the roadway project is not completed by November 19, 2004. If the line and crossing are maintained, the work can be done in time to avoid any penalties; as proposed, the abandonment can't take place until at least January 5, 2005 when JJ Taylor's lease runs out, and there will then be additional time to take the property under state law. Thus, the County can expect to incur delay penalties of at least \$90,000 (\$1,500 per day for 60 days), and that does not

include any further delays because of appeals. Appendix B, B. Fay V.S., at B-2,3.

There are other associated monetary benefits that Lee County and the public will lose if the adverse abandonment is granted including: (1) lost unitary ad valorem tax revenue paid by SGLR, (2) lost sales taxes if Ringling Bros. is unable to perform in the area, and (3) additional costs for public utility service by FPL. Additionally, some of the costs the County will avoid will merely be shifted to FDOT, as FDOT will need to do additional work for SGLR at its nearby US 41 interchange project to accommodate the way SGLR will need to operate if the abandonment is granted. Appendix B, Haverle V.S., at B-35. All of these factors reduce the monetary benefits that Lee County claims will inure to the public.

If the County merely wants to save some money there are other ways that this could be done without requiring the line to be abandoned. SGLR has continually suggested to the County that it seek federal highway grade crossing safety funds for the signal upgrades. However, although such funds are available, the County has always claimed that it didn't have enough time to apply. SGLR has helped obtain such funds for other governmental bodies, and has always been willing to help the County as well. Appendix B, H. Neeves V.S., at B-7, 9, 10.

More simply, the County could change the scope of the work that it requested from SGLR. If the County had chosen to discuss its concerns with SGLR instead of rushing into this proceeding, possible cost savings for the County could have been discussed. SGLR's Vice President of Engineering and Construction, G. Bruce Fay and Vice President Engineering and Real Estate Harry Neeves, have outlined the various ways that costs could be saved while still installing a safe crossing. Appendix B, B. Fay V.S.; Neeves V.S. These savings are possible because the short term level of rail traffic will go down with the loss of the JJ Taylor traffic, and

because of a new product that has become available since SGLR's initial proposal was made. These savings include: upgrading the existing signals instead of replacing them with new ones, eliminating the shifting of the existing signals to Alico Center Road, using a different surface for the crossing, changing the base material for the crossing (which would have added some additional life), eliminating the improvements to the Alico Center Road and FPL access road crossings, and eliminating the drainage culvert. The revised cost of the crossing (\$405,309) and signals (\$128,481) would be \$533,789 - a savings of over \$450,000 from the original proposal.²¹ If the County were to decide to accept this proposal by September 1, it could still be installed by the November 19, 2004 deadline and the penalties to the contractor could be avoided.²² Appendix B, B. Fay V.S., at B-2, 3; Appendix B, H. Neeves, at B-10.

Taking all of these considerations into account it is clear that the monetary benefits that the County claims the public would enjoy has a result of the abandonment of the line are overstated. Further, through cooperation with SGLR, rather than confrontation, any reduced costs the County would incur going forward with the crossing project would be offset by the costs it would save otherwise and the additional revenues it will enjoy as a result of the railroad continuing to develop business on the line.

²¹ This compares to the \$460,000 in roadway construction costs the County will incur if the line is abandoned and removed (tear out and install Alico Road crossing - \$300,000; work at other crossings - \$70,000; penalties - \$90,000).

²² If rail traffic increases, or it is otherwise determined later that a signal upgrade is required, then the County as discussed above should be able to obtain federal funds for the upgrade. Appendix B, Neeves V.S., at B-10.

CONCLUSION

This proceeding involves an active line of railroad. There are two shippers currently being served by the line, one of which will require service into the foreseeable future. The abandonment if granted would have a severe adverse affect on service to the current shipper that will remain on the line. Even when one of the shippers moves from the line, holding the line will benefit SGLR, earning income and reducing costs. Further, SGLR has demonstrated that it has and will continue to take reasonable steps to attract rail business to the line, and that the development of such business is practical. Finally, Lee County has not demonstrated any substantial public benefit that will result from the forced abandonment.

For all of the foregoing reasons, SGLR requests that the Board find that Lee County has not met its burden of demonstrating that the public convenience and necessity either requires of permits the adverse abandonment of the line, and that Lee County's application be denied.

Respectfully submitted,



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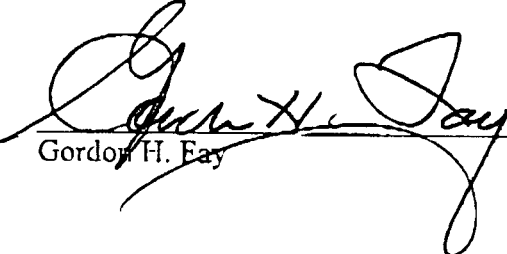
Attorneys for Seminole Gulf
Railway, L.P.

Dated: August 9, 2004

VERIFICATION

I, Gordon H. Fay, President of Seminole Gulf Railway, Inc. as general partner of Seminole Gulf Railway, L.P., verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified Protest in Seminole Gulf Railway, L.P. – Adverse Abandonment – In Lee County, FL, STB Docket No. AB-400 (Sub-No. 4).

Executed on August 9, 2004.



Gordon H. Fay

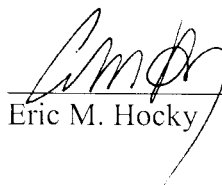
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served on the following person by electronic delivery and by overnight delivery:

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Eric M. Hocky

Dated: August 9, 2004

PUBLIC VERSION

Before the
SURFACE TRANSPORTATION BOARD

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

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

PROTEST OF SEMINOLE GULF RAILWAY, L.P.

APPENDIX A

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Dated: August 9, 2004

PUBLIC VERSION

Verified Statement Of Gordon H. Fay

My name is Gordon H. Fay. I am President and a founding principal owner of Seminole Gulf Railway Inc., the controlling General Partner of Seminole Gulf Railway LP (“SGLR”), a common carrier by rail. In 1987 SGLR purchased from CSXT about 115 miles of rail lines in southwest Florida and leased from CSXT the underlying real property. The transaction included the “Baker Spur”, a portion of which is the subject of this proceeding.

I am also Chairman & CEO of Bay Colony Railroad Corporation (“Bay Colony”), a rail common carrier serving southeastern Massachusetts since 1982. Bay Colony has twice won “Golden Freight Car” awards for traffic growth achievements related to dormant or low volume line segments. Its rail business has growth from only 1,300 carloads in 1982 to over 8,000 carloads in 2003. During 2004 Bay Colony will move about 9,000 carloads. Much of this growth has occurred at locations with rail access and appropriate zoning, but no active or interested customers during much of the 1980’s. Bay Colony marketing has brought jobs, improved tax base and enhanced real estate value for the property owners. In January 2004 Bay Colony acquired an additional small line segment from CSXT. Bay Colony’s rebuild investments in the line are already gaining new traffic from existing customers. Also, a new industrial siding for a new customer is about to be built on the line. Ironically, the new line segment just purchased includes the siding to the original J.J. Taylor beer distribution facility in North Dartmouth, MA. (J.J. Taylor’s move off of the Baker Spur to a new location is one of Lee County’s principal reasons for its adverse filing.) J.J. Taylor sold and moved out of its North Dartmouth facility several years ago to concentrate their business in Florida. However, under new ownership the Massachusetts beer distribution warehouse is now active once again as a rail served facility.

I am also President of Florida Freezer, Inc., General Partner of Florida Freezer LP (“Florida Freezer”). Florida Freezer is a rail served 1.7 million cubic foot frozen, cold and dry storage warehouse located in Bayshore Industrial Park in North Fort Myers, FL. Florida Freezer is the only public warehouse facility in southwest Florida. It serves customers located in a six county region. Its location next to regional interstate I-75 makes it a multi-modal facility with a diverse customer and commodity business base. Commercial business growth along the Baker Spur is as important to Florida Freezer as it is to SGLR. Limiting such activity in Lee County as proposed by the County in its adverse abandonment application is a negative message from government to businesses seeking locations in the area.

I am also President of GFA Rail Services, Inc. (“GFARS”). GFARS provides in one of its operating units trucking services principally within southwest Florida. The majority of

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this business involves transloading and beyond rail goods distribution and temperature controlled trailer services. This business is also concerned with the orderly and diverse economic growth of the region. Off rail customer opportunities in the Alico Road area make establishing a rail carload transloading operation very attractive. If the land owners adjacent to the adverse abandonment section of the rail line ultimately decide to be true to their “land for sale” signs on a non-discriminatory basis, we would be interested in acquiring 5 to 20 acres of the industrial land for the establishment of an additional transload/distribution facility.

My past forty years of experience also includes management of other railroads and rail related businesses, regional and state economic planning especially related rail service retention and growth issues in most of the northeastern states and in other areas such as Oklahoma, Arkansas, Alaska, and Oregon. I have also been qualified as an expert traffic, operating and policy witness in several rail merger cases, contested rail abandonment cases, and in other matters including rail rates and divisions arrangements in an anti-trust case.

I am a graduate of Brown University with an AB degree in Economics. I am also a graduate of Yale University Graduate School with a Certificate in Transportation. I am a member of the Association for Transportation Law, Logistics & Policy.

Issues

There are several principal issues raised by the adverse abandonment application of Lee County which this verified statement addresses. These are as follows:

- Does the closure of one customer next to an active railroad track vacate the carrier’s need for that track?
- Should statements and self-serving agreements by land owners who are not active commercially that their land does not require rail service carry weight over the carrier’s interest in retaining rail line capacity to operationally serve others?
- Must a rail carrier suffer the economic burden of a forced abandonment for the sole short-term benefit of other private interests?
- Before considering Lee County’s gross “savings” in a narrowly focused road project budget as a reason for forced rail line abandonment should the County be required to explore alternatives with the carrier, other sources of funding, off-sets of tax losses and other mitigating factors such as the cost to build the road areas otherwise to be built by the carrier in its proposal?

Background

When SGLR made its 1987 purchase of rail lines, including the Baker Spur, from CSXT, they were typical of the low density spin offs that Class I’s were doing at the time. SGLR has been able to stabilize the business, and in the last several years, the base traffic has increased by five to eight percent per year. Additionally, SGLR has just finished

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construction for a new fly ash customer that is expected to increase traffic by another third.

Most of the Baker Spur was constructed by the Seaboard Coast Line in 1973 from a point off its Fort Myers-Naples, FL main line approximately ten miles south of downtown Fort Myers. Attached for reference is a series of overhead photographs depicting the Baker Spur which has been marked to help illustrate the discussions set forth herein.

The 5.3 mile Baker Spur was built to serve a new limestone quarry of Florida Rock. In 1973 the area around Alico Road was very rural. Alico Road had only recently been paved. The underlying right of way to the Seaboard Coast Line easement was all owned by Alico, Inc., a large real estate holding company originally created by the Atlantic Coast Line Railroad (A(Atlantic Coast)li(Line)co) which for many years has been an independent public company. Subsequently, some of the land adjacent to the railroad line was sold by Alico, Inc. to others. In some cases the land under the railroad easement was also sold to these new abutters. At no time to our knowledge was the land under the railroad easement offered for sale to the railroad. These patch work sales have lead to some of the past and current land issue problems on this line.

Since the opening of I-75 in the 1980's and the dynamic growth of Southwest Florida over the past decade, the Alico Road area has shifted in character from rural to heavy industrial use, especially in very recent times. It is the only area in Lee County where large vacant acreage remains available for heavy industry (see Mr. Curley's Verified Statement for specifics). Alico Road has become a major thoroughfare connecting US 41 and I-75 with new sub-regional roads and entrances to locations such as an expanding international airport now under construction and also to a new state university. The important and critical nature of Alico Road's expansion has been long recognized by SGLR and we have encouraged the County's efforts to expand Alico Road. To enhance the road widening SGLR has provided the County without charge land areas along Alico Road needed by the County for the road's expansion. We have worked with the County engineering staff on a number of road design and property issues over the past several years. In the interest of timely roadway completion we have repeatedly urged the County to proceed with authorizing the Alico #3 rail grade crossing work so that the current time "crisis" perceived by the County would not arise.

From 1987 to early 1992 SGLR handled large volumes of limestone from the Florida Rock quarry at the end of the Baker Spur destined for use as fill for a major expansion of the Orlando airport. When the construction was completed in 1992, rail traffic with Florida Rock ceased. Soon thereafter legal action was commenced by certain landowners referred to as the Freeman parties represented by the same attorney who now represents Alico Lakeside, LLC. These parties claimed interest in a portion of the line's underlying real estate. The action resulted in a settlement agreement under which SGLR applied for abandonment of 3.55 miles of the outer end of the line (AB-400, Sub 1 and 2). Florida Rock tried to acquire the line in the OFA phase, but ultimately withdrew in a settlement with the land interests. The ICC granted final abandonment in 1995, SGLR removed the track and the land under the abandoned segment reverted to the parties of record.

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In 2002 SGLR was sued by an entity known as Joe and Bruce LLC who contended that a billboard recently permitted by Lee County to be constructed by Lamar Outdoor Advertising under an agreement with SGLR through Viacom was improperly placed by SGLR on property controlled by them. However, this billboard is located within the railroad easement near the east end of the Baker Spur near Haitian Road. This billboard is one of the two affected by the potential adverse abandonment.

In 2003 Lee County commenced construction of its Alico Road expansion project. Most of the early work involved major drainage improvements. During this phase contractors for the County removed without notice about three hundred feet of SGLR's track grading at the easterly end of the line and subsequently closed and removed Haitian Road across the SGLR right of way. Lee County's contractor subsequently filled the road area in with dirt and started construction of a widened Haitian-Alico intersection on SGLR's property without agreement or permission. Neither of these land segments had any track in place at the time. Subsequently SGLR reinstalled track through Haitian Road.

Because SGLR believes this Haitian Road area right of way is part of its active system, i.e. not abandoned in 1995, it elected to construct a skeleton track through the dirt road area at Haitian. This was done after alleged underlying property owners, Alico Lakeside LLC, signed at no cost to them, a crossing agreement with SGLR. In that agreement Alico Lakeside LLC represents itself to be the underlying land owner. Subsequently, Alico Lakeside LLC brought suit against SGLR claiming that the easterly engineering station of 79+95 ordered as end of track in AB-400 Sub 2 was not the proper point of abandonment and that SGLR had no right to install the track or to occupy the right of way. They claimed the abandonment "cut point" should be to the west at a point not different in result than Lee County is seeking in this sequentially filed adverse abandonment action. Alico Lakeside LLC ownership contains interests which are the same as the Freeman interests which forced the prior abandonment. Their counsel is the same individual. This case is still pending in the Lee County Court.

New information recently received by SGLR from Lee County now indicates that Lee County may have taken by eminent domain the land underlying some or all of the Haitian Road area including land underlying SGLR's right of way. If so, this was done without notice to CSXT, the easement holder, or SGLR, the leaseholder. It appears that the land may have been acquired by Lee County from Alico Lakeside LLC interests long before they brought suit against SGLR, a suit in which they contend to the Court that they own the same property.

Recently SGLR has had the line surveyed by Jeffrey C. Cooner and Associates, Inc., an experienced licensed professional land surveyor. See the attached affidavit of Mr. Cooner. He has confirmed that SGLR's end of line at engineering station 79+95 is about 100 feet east of the point previously marked with an end of track sign. His survey confirms the location of the end of line related to the prior abandonment and confirms SGLR's line extends through Haitian Road. He further confirms that a professional surveyor can (and should) measure the line using railroad engineering stations. The

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County's adverse abandonment application data and end point furnished FPL is based on adjacent, but not parallel, highway engineering stations. As a result dependence upon them in this case will only result in further controversy.

The County attorney called SGLR to a meeting on April 13, 2004. The County invited on their side of the table the Alico Lakeside LLC interests that had previously commenced litigation (the litigation is still pending) against SGLR trying to get a local court to force abandonment of a portion of the line segment at issue in this case. At that meeting SGLR was presented by the County with an ultimatum to abandon and remove the Baker Spur immediately. (I was also presented with a similar demand by Alico Lakeside LLC litigants at a meeting at their attorney's office March 8, 2004. Their attorney told me that he would make my life miserable if I didn't abandon the line.) The County told me if SGLR did not file for abandonment immediately, the County would file for an adverse abandonment soon. The County sent written notice to SGLR via local counsel on April 28, 2004 of its adverse abandonment intent. It also made a financial offer good for ten days to SGLR to induce it to abandon the line. The County filed with the STB several days after sending the letter before SGLR had an opportunity to respond.

While this summary historical recitation maybe difficult to follow and appear to have little to do with the instant case, it does have a lot to do with the case and is instructive as to the probable motivation of the plaintiffs in the lawsuits and applicant, Lee County. The Alico Lakes LLC interests also claim to own the land underlying additional portions of the railroad right of way including the active private crossing known as either Kelly Road or Gator Road. This private railroad crossing lies immediately adjacent to Alico Road. The County's design for Alico Road requires this crossing to be widened. Because this is a high volume heavy truck road, safe intersection design is important. The County's often repeated position is that it will not spend public funds on private roads. None of the parties who access Alico Road via Gator Road wanted to hear of financial obligations for the expansion which would be theirs under the long existing private crossing agreement with SGLR. The parties included J.J. Taylor, interests and businesses associated with Alico Lakes LLC, the new owner of the Miller Brands warehouse being vacated by J.J. Taylor, and the land interests who sponsor and support the County's adverse abandonment. By claiming no need for rail service, these parties hope the railroad will be removed and the grade crossing costs avoided.

Meanwhile, Lee County has recently announced to SGLR that they want to build under private Gator Road a new culvert structure similar to the one the County does not want to fund under the nearby rail siding (see verified statement of G. Bruce Fay for details). In order to do this improvement for the private interests SGLR has been asked by the County to cooperate and permit the opening of Haitian Road without rail tracks through it. Haitian Road would be used as a traffic detour route while Gator Road was closed for construction (the two roads connect via a private cross street within the adjacent industrial park. I have informed the County that SGLR will cooperate with them as to Haitian Road as long as the County provides proof of underlying land ownership of the road area and enters into a crossing agreement that restores the railroad after construction is completed. We await the County's response.

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As Mr. Curley in his verified statement testifies, most of the land owners along the adverse abandonment railroad line segment have “for sale” signs up advertising industrial sites available. Alico Industries LLC, the owner of the Miller Brands/J.J. Taylor warehouse and the rail siding states that the building was bought for investment purposes at a good price. Alico Industries LLC does not claim any business use for the building. The owners of Alico Industries LLC are capable and wise businessmen in the area (elsewhere they own another business which is one of SGLR’s larger rail customers). We doubt they would foreclose rail volume business opportunities if that produced the best value for them, unless something else externally is influencing that decision.

Attached hereto is the “Railroad Siding Agreement” between DTB Properties, LLC (Dan Miller) and Alico Industries, LLC. This was obtained by SGLR in discovery. This is the agreement upon which the County and two of the County’s “no rail service wanted” witnesses rely. It was furnished to Lee County by Dan Miller; four days later, Lee County’s response was a gleeful “Thank you !”.

The “Railroad Siding Agreement” would appear to be sponsored by the Dan Miller interests as “Alico joins in this Agreement as part of the consideration for Parcel B” (Parcel B is the warehouse now owned by Alico Industries, LLC; Dan Miller has Parcel A.) While the terms of the agreement provide for a “mutual intent to terminate rail service in the Railroad Right of Way”, the agreement provides only that, upon termination of J.J. Taylor’s lease, “Alico shall not permit use of the Railroad Right-of-way by any occupant of Parcel B.” Thus, only Parcel B is restricted from using the siding. Further, and most importantly, the agreement terminates after five years. (As discussed elsewhere, SGLR can afford to hold the Baker Spur for at least 10 years while seeking to develop additional business opportunities.

It is true that Dan Miller, representing parcel A says he does not want rail service. This is probably true as he is a real estate agent and land speculator making no commercial use of the property himself. However, despite his representation that Parcel A is deed restricted, this does not appear to be the case. Mr. Miller is currently advertising Parcel A for sale (see Photo Nos. 9 and 10 attached to the Verified Statement of Michael E. Curley), so it is unknown how the next owner of the property will feel about rail service.

On September 5, 1989 SGLR and Miller Brands of the Gulf Coast, Inc. (which at the time owned both Parcel A and Parcel B) entered into a rather typical “Agreement for Industry Track” private side track agreement covering the “Railroad Right of Way” as defined in “Railroad Siding Agreement” referenced above. A copy of the sidetrack agreement (without exhibits) is attached hereto. The sidetrack agreement covers the use of the track and relationship of the parties related to the rail siding including certain permitted uses by SGLR. Moreover, the agreement provides that “Industry shall not assign this contract or any rights thereunder without the written consent of the Railroad”. Under the sidetrack agreement, SGLR can use the track for other railroad uses including service to other customers, so long as service to Miller Brands is not affected. The “Railroad Siding Agreement” applies only to the relationship of its parties as to their use

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of the sidetrack. It does not, and cannot affect the right of SGLR to use the sidetrack under its agreement with their predecessor in title, nor does it affect the right of SGLR to use the adjacent Baker Spur which is the subject of the adverse abandonment.

Two other “we don’t want rail service” verified statements have also been submitted by the County. One is from a land owner Joe and Bruce LLC (a party that has previously sued SGLR) and the other is from West Coast Roofing Company, a roofing company whose principals are the same as those owning Joe and Bruce LLC. The roofing company is not located next to the Baker rail line and is not in a line of business which typically generates rail traffic directly. SGLR does handle roofing materials into the Fort Myers market at the wholesale level to vendors from whom West Coast Roofing may buy. As a result neither statement has any probative value as to future rail traffic.

Economic Impact on SGLR

The forced abandonment of over 4,000 feet of the Baker Spur will have an on-going negative financial effect upon SGLR after the departure of the current most direct rail user J.J. Taylor. SGLR has other on-going revenue streams it earns on the 4,000 feet which it will lose should it be required to abandon the property. This annual bottom line net cash loss in 2004 dollars is \$5,600 per year. Revenue from the sources detailed below will grow substantially in future years as described. Off-setting costs are low due to good track conditions and a clean, well maintained right of way (see photos with Mr. Curley’s Verified Statement). Property taxes paid on the line are not an avoidable cost after abandonment due to the State of Florida’s unitary tax system also described below.

In addition to the continuing negative effects upon SGLR, there are significant up front costs to SGLR to accomplish the forced abandonment. While the rail line is in good condition its removal costs exceed any salvage value resulting in a net cost of about \$65,000. This amount assumes that Lee County will honor the terms of its September 14, 1988 agreement as to the removal costs at Alico #3 and that the private crossing and sidetrack parties will honor their contractual commitments to cover road removal and replacement expenses. Collection of these expenses by SGLR is doubtful without further litigation based on the past history with these parties.

Lost future revenue opportunities after a forced abandonment include pipe, wire line and other property use revenues. There are currently several such agreements in place on the line. Depending on the party involved, some use fees are collected up front, others as on-going lease or license fees with CPI additives. After abandonment it is unclear how those with occupancy rights will fare dealing with the reversionary interest land owners. The disposition of the existing agreements is a potentially serious unknown negative flowing from a forced abandonment.

Economic Impact on FPL

As described elsewhere Florida Power and Light (“FPL”) will suffer under Lee County’s plan significant unloading difficulties and additional costs. Also, they may have no legal

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access to their transformer facility on the north side of Alico Road. Today they reach that facility under a private crossing agreement with SGLR. The authority for this agreement flows from the CSXT line easement agreement and SGLR's assumption from CSXT of the FPL agreement in 1987. Due to the reversionary nature of the CSXT easement, the underlying land owners are expecting to be the beneficiaries of the reversionary interest and all the economic benefits that brings. The reversion as set forth in the easement does not require the underlying land owners to assume any railroad agreements or honor any terms of existing agreements. This leaves SGLR's good customer with risks as to access it now enjoys for free. Clearly Lee County cannot change this result and help FPL since Lee County is not the underlying land owner.

Under SGLR's Alico Road construction proposal SGLR was planning to construct the Alico Road-FPL crossing interface as part of the larger crossing project. Construction at this crossing is an appropriate part of the railroad project because the transitional track run-outs from the new Alico Road would flow through the FPL crossing area. Without SGLR FPL will now have to undertake the cost to interface with the new Alico Road, assuming they solve the property issues discussed above. If the County provides the improvement to FPL at no cost, such action will be in direct conflict with the County policy of not making public improvements to private roads.

Economic Impact on Alico Industrial Park

On the south side of Alico Road next to the Alico Road-railroad crossing #3 there is another private road-railroad crossing known as Alico Center Road. Like FPL the Alico Center Road interests (no relation to other similarly named Alico groups previously discussed) gain legal access between Alico Road to industrial park (where a number of businesses are located) via their agreement with SGLR to cross its right of way. This segment of rail line is within the adverse abandonment area proposed by Lee County. SGLR had also planned to rebuild this crossing and its interface with new Alico Road as part of the larger project. In addition SGLR planned to relocate the existing Alico Road flashers and gates to this road as an overall safety improvement for the area. If the abandonment is ultimately required, the Alico Center Road interests, like FPL, will be faced with unknown costs of land acquisition and road construction expense.

Use of Rail Line after Departure of J.J. Taylor

After the departure of J.J. Taylor, SGLR plans to continue to use the line to handle freight traffic and earn revenues which substantially exceed costs. As explained in the Verified Statement of Mr. Haberle, SGLR's Manager of Operations, use of the J.J. Taylor siding within SGLR's ownership will continue in order to provide FPL with the same service it now receives. With the widening of Alico Road from two to six lanes, SGLR had planned as part of the widening to create an unloading pad on the north side of Alico next to the FPL facility which would allow total private access without FPL trying to cross six lanes of traffic with large high and wide transformers. Indeed, Lee County itself recognizes the problem as it apparently has offered FPL special median cuts in the road to attempt to gain FPL's support.

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Until such time as new customers locate on the north side of Alico Road that would otherwise interfere, SGLR can use the track capacity to hold freight cars for outbound loading by other customers (SGLR is now constrained by lack of track space on its system). SGLR will also use the line to load track ballast into its own rail cars for distribution throughout its lines. Currently, SGLR trucks the ballast from Florida Rock's mine located on Alico Road to Tice, about 15 miles north. Setting up a loading operation on the line will reduce SGLR's trucking expense as compared to its current rail loading site. SGLR's volume shipping off the Baker line will be at least 100 to 300 carloads annually, saving SGLR at least \$10,000 to \$30,000 per year in trucking costs. With J.J. Taylor gone and the Miller siding out of use due to owner's choice, SGLR will have the flexibility to construct a run-around track and loading area on its fifty-foot wide right of way. Should the adverse abandonment be ordered, the remaining forty foot right of way and road crossing layout makes similar use difficult, if not impossible.

Additionally, Ringling Brothers has inquired about SGLR's capacity for its circus train to return for winter engagements at a nearby arena. SGLR has handled Ringling's train many times, but not for the past several years. New customers and track changes elsewhere have reduced SGLR's capacity to receive and store Ringling's train. The departure of J.J. Taylor provides both Ringling and SGLR a unique opportunity to restore Ringling circus performances to the area.

As Mr. Curley discusses in his Verified Statement, a number of his new business inquiries involve multi-car and unit train volumes. The track length of the Baker Spur is a major asset critical to such sales even if the customer does not locate on the line segment subject to this abandonment.

Mr. Curley in his Verified Statement has focused on new business leads that have come to SGLR with an expressed interest in the Alico Road area. There are other rail business opportunities open to near term development with the departure of J.J. Taylor and the expressed desire of the new owners of the building and adjacent land owners not to receive rail service. SGLR can now use the line as a public delivery team track. Upon receipt of a notice of cancellation of the "Miller" side track from those new owners, SGLR will realign its track and install one additional switch to create a "run-around" track thereby permitting flexible switching near the end of track. This will also help the FPL car handling situation discussed elsewhere. SGLR's area will be further enhanced with appropriate truck access via SGLR property to connect to adjacent Alico Road. Commodities of immediate opportunity include inbound and outbound stone and other aggregates (as noted elsewhere herein SGLR plans to establish its own outbound ballast loading facility on the line); steel (especially for the about to begin expansion to six lanes of 20 to 25 miles of I-75 and other FDOT nearby bridge projects); environmental commodities such as shredded tires from a nearby existing facility who has been looking for a rail loading site, used petroleum products (several inquiries), construction demolition debris (collector located on Alico Road-fast growing rail haul commodity); landscape mulch products (there are two nearby Alico Road area super regional producers; there is one current inquiry to ship outbound bulk mulch to Midwest markets);

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covered hopper bulk plastics (one current local candidate with in and out potential as its business grows); and a number of building industry related commodities of target interest. As long as J.J. Taylor remains and this adverse abandonment action is pending little can be done to close on these opportunities.

Adding to the pressure for SGLR/GFARS to establish an Alico Road area terminal are the on-going discussions with FDOT concerning FDOT's need for SGLR to relocate its downtown Fort Myers public delivery facility. Moving this facility is essential if the northern end of Metro Parkway (the southern end terminates at Alico Road/US 41) is to be built. FDOT has completed final plans for this downtown segment and has completed much of its land taking. Moving some of SGLR's current customer base to a new Alico Road facility is now possible. This will help reduce FDOT's relocation costs and help move the project forward.

SGLR has a positive cash flow on the adverse abandonment segment while it puts in place the many new business and use opportunities. As a result, Lee County's assumption that SGLR will ultimately abandon the line anyway simply is not true. Lee County is apparently unaware that it recently granted SGLR two billboard locations on the Baker Spur in the proposed abandonment area. (Its application states that only one is located on the line and its status is unknown by the County.) SGLR currently earns [[]] annually from each board. This amount will grow to at least [[]] annually for each sign in the near future as the Alico Road traffic count grows. The County in its application states that SGLR uses one side of one of the boards for its own advertising. This is true. SGLR pays Lamar Outdoor Advertising for the space. SGLR pays Lamar a reduced rate and has agreed that it will not increase its lease of the sign face at this time. If SGLR ends its advertising, Lamar will still own the same base rent. SGLR also buys billboard space at other non-SGLR locations at going rates. Lamar and others have numerous billboard locations elsewhere on SGLR.

Under the terms of the 1988 Lee County-SGLR agreement related to Alico Road #3, SGLR received, as of the December, 2003 annual billing, [[]]. This amount receivable changes annually by the CPI adjustment. The abandonment would result in a taking of this agreement by Lee County resulting in a loss of income to SGLR.

Ongoing costs to SGLR would include track and line maintenance of the 4,000 feet, signal inspections and maintenance at new Alico #3, and advertising commissions paid to obtain the billboard revenue. SGLR pays property taxes on the line to Lee County. Because of Florida's unitary tax system regarding railroads, SGLR's tax bill will not decrease as a result of the abandonment. However, because of the mileage prorate system, Lee County will lose revenue as SGLR's payments will flow to other counties. Moreover, Lee County will also lose personal property tax revenues from private freight car owners as these payments also flow to the County on a mileage prorate system.

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Revenue/Cost analysis after J.J. Taylor departs:

	<u>Current</u>	<u>Pro Forma Annual (2005)</u>
Revenue*		
Two Billboards	[[	]]
Lee County	[[	]]
Total	[[	]]
Expenses		
Advertising Commissions	[[	]]
Track & Property Maintenance	[[	]]
Signal Maintenance	[[	]]
Total	[[	]]
Net Income to SGLR before New Business	\$ 4,900	\$ 11,600

Revenue does not include:

- FPL moves which yield a gross revenue of about [[]] per year.
- Ringling Train Opportunity Value: [[]] to [[]]
- SGLR Ballast Transportation Savings: [[]] to [[]]
- Public delivery facility opportunity revenues: [[]] to [[]] per year

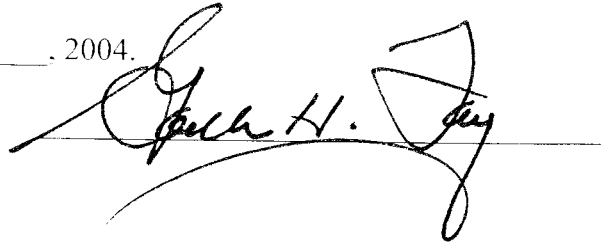
The departure of J.J. Taylor to a new location off the Baker line segment subject to the adverse abandonment is viewed by SGLR as a rare opportunity to put the line to a higher and better use. While J.J. Taylor car load volume will be missed, the shorter haul beer such as the Miller brand product is traditionally a lower rated commodity with marginal bottom line results. CSXT and SGLR have had to hold down rate increases on the Miller Brands portion of the traffic in order to retain some volume. Each of SGLR's new opportunities discussed can be accomplished on its own line without use of adjoining properties. All, or any combination of the opportunities, will produce better earning results for SGLR than those realized with the J.J. Taylor account. The lack of desire of the real estate speculators to have rail served customers on their properties is a plus for SGLR in the implementation of new business opportunities.

VERIFICATION

I, Gordon H. Fay, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement in Seminole Gulf Railway, L.P. – Adverse Abandonment – In Lee County, FL, STB Docket No. AB-400 (Sub-No. 4).

Executed on August 6, 2004.

Gordon H. Fay

A handwritten signature in black ink, appearing to read "Gordon H. Fay", written over a horizontal line.

Location of new F.D.O.T. interchange
between Albro Road, US 41, and new
Metro Parkway (SRT39)

ALICO ROAD

Railroad Main Line

Albro #2 Crossing

Albro #1 Crossing

Railroad Main Line

Baker Spur





ARCEL "A"

OR SIDING

Hanhan Road

ALICO RD

PHLOX DR

End of SGLR Right of Way

Station 73+95

Abandoned Railroad right of way, A/E400 Sub 2

0 Step 2

Access route to International Airport and New University





I-75 INTERCHANGE

AFFIDAVIT OF JEFFREY C. COONER

STATE OF FLORIDA)
)
COUNTY OF LEE)

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared Jeffrey C. Cooner, who after first being duly sworn, deposes and says:

1. My name is Jeffrey C. Cooner. I am over eighteen years of age.
2. I am the principal owner of the surveying firm of Jeffrey C. Cooner and Associates, Inc., located at 3900 Colonial Boulevard, Suite 4, Fort Myers, Florida 33912.
3. I am a 1981 graduate of the University of Florida College of Civil Engineering with a Bachelor of Land Surveying degree. I am a member of the Florida Surveying & Mapping Society, the University of Florida Surveying & Mapping Advisory Committee and the former President of the Collier-Lee Chapter of the Florida Surveying & Mapping Society (1993).
4. I have been licensed by the State of Florida as a Professional Land Surveyor since 1984.
5. My land surveying practice has often involved the surveying of railroad rights-of-way and lands adjacent to railroad rights-of-way. Also, a significant portion of my experience has been surveying in Lee County, Florida.
6. I have reviewed and am familiar with the Fort Myers Southern Railroad Right-of-way maps, sheet No. 6 of V18 Fla for Survey Station 525+65.6 to Survey Station 631+25.6.
7. I have reviewed and am familiar with the Fort Myers Southern Railroad Right-of-way maps for the Baker Spur Line, sheet No. S-6 of V-18 Fla for Station 0+00 to Station

266+51.52.

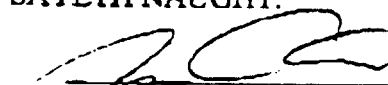
8. I have caused a resurvey of the Baker Spur Line pursuant to number 7 above to be executed under my direct supervision.

9. I have personally inspected the Baker Spur Line from the main railroad track line as defined in 6 above to Station 79+95 as defined on number 7 above.

10. Based on my surveys and inspection I have determined the following:

- A. Station 79+95 on the Baker Spur Line as defined and surveyed lies within an area that appears to be a retention area for Alico Road now under construction.
- B. An existing Seminole Gulf Railroad "end of tracks" sign is at approximate Station 78+95, said Baker Spur Line.
- C. The physical end of railroad tracks is at approximate Station 76+52, said Baker Spur Line.
- D. The intersection of the centerline of the pavement for Haitian Road is located at approximate Station 76+01, said Baker Spur Line.
- E. An existing billboard sign is at approximate Station 75+34 (the sign has Station 76+46 painted on it), said Baker Spur Line.
- F. The intersection of the centerline of the pavement for Gator Road is located at approximate Station 54+75 (the Station per the Baker Spur Line Railroad Map is 55+65), said Baker Spur Line.

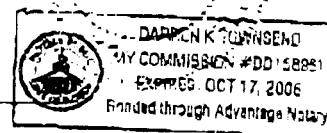
FURTHER AFFIANT SAYETH NAUGHT.


Jeffrey C. Cooner

The foregoing instrument was sworn to and subscribed before me this 23rd day of July,
2004, by Jeffrey C. Cooner who is [☒] personally known to me or who produced [] a
_____ driver's license or [] _____ as identification.


NOTARY PUBLIC
State of Florida

Print Name of Notary Above
My commission expires: _____



4030

A 1.

Donald DeBerry - Re: Rail Road Agreement

From: Donald DeBerry
To: Miller, Dan
Date: 3/12/2004 11:22 AM
Subject: Re: Rail Road
CC: Kelly, Wayne

Thank you!

Don DeBerry
Design Program Manager
LC DOT
(941) 479-8503
fax (941) 479-8520
ddeberry@leegov.com

>>> "Dan Miller" <danmiller@remaxswfl.com> 03/12/04 09:49AM >>>

Attached is the agreement affecting the Miller parcels.

Please call with any questions.

Thank you,

Dan

Donald DeBerry - Rail Road Agreement

From: "Dan Miller"
To: "Don DeBerry" <ddeberry@leegov.com>
Date: 3/12/2004 9:52 AM
Subject: Rail Road Agreement
CC: "Wayne Kelly" <wkelly51@hotmail.com>

Attached is the agreement affecting the Miller parcels.

Please call with any questions.

Thank you,

Dan

THIS INSTRUMENT PREPARED BY:
AND SHOULD BE RETURNED TO:

TERRY V. BROUGHTON, ESQ.
1705-D2 COLONIAL BOULEVARD
FORT MYERS, FL 33907

_____[space above this line for recording data]_____

RAILROAD SIDING AGREEMENT

THIS AGREEMENT is between DTB Properties, LLC, a Florida limited liability company ("DTB"), and Alico Industries, LLC, a Florida limited liability company ("Alico").

PREMISES

- A. DTB is the owner of Parcel A, described in the attached Exhibit "A".
- B. Alico is the owner of Parcel B, as described in the attached Exhibit "B".
- C. As of the date of this Agreement, a Railroad Siding exists which runs through both Parcels A and B branching from a spur ("Railroad Right-of-Way") located along the south boundary of Parcels A and B and terminating in Parcel B.
- D. As of the date of this Agreement, Parcel B is occupied by tenant, J.J. Taylor Distributing Ft. Myers-Naples, Inc., a Florida corporation ("J.J. Taylor").
- E. Immediately prior to the date of this Agreement, Parcel A and B were in common ownership.
- F. A principal of DTB has caused Parcel B to be conveyed to Alico. Alico joins in this Agreement as part of the consideration for Parcel B.

AGREEMENT

In consideration of the premises and the mutual benefits obtained, the parties agree as follows:

- 1. The parties acknowledge a mutual intent to terminate rail service in the Railroad Right-of-Way.
- 2. Upon the termination of the J.J. Taylor lease which is to expire July 9, 2004, subject to the tenant's option to renew for six consecutive renewal periods of one month each, or if J.J. Taylor ceases to occupy Parcel B, then, as soon as practical thereafter, Alico join in such reasonable documentation as may be requested by DTB from time to time, but without expense to Alico, for the purpose of giving notice to the Railroad Operator and to State and Federal Authorities to indicate an intent to have the Railroad spur removed. After expiration of the J. J. Taylor lease, Alico shall not permit use of the Railroad Right-of-way by any occupant of Parcel B.
- 3. This agreement is subject to specific performance. This agreement shall be of no further effect after the fifth anniversary of recording this agreement.

4. In the event of any litigation or other dispute arising out of this Agreement, the prevailing party shall be entitled to receive reasonable costs of enforcing the provisions of this Agreement, including, without limitation, reasonable fees of attorneys, paralegals, or anyone else reasonably engaged by the prevailing party in connection with enforcement of the obligations of the Agreement.

WITNESSES to DTB:

DTB Properties, LLC,
a Florida limited liability company

Printed Name: A Deaghts Grace In

By: [Signature]
Daniel E. Miller, as managing member

Printed Name: TERRY V. BROUGHTON

STATE OF FLORIDA)
COUNTY OF LEE)

THE FOREGOING instrument was acknowledged before me this 1 day of MARCH ~~February~~, 2004, by Daniel E. Miller. He is personally known to me or has produced THE HONORABLE MEMBER OF THE PROKATES REC as identification.

[Seal]

OFFICIAL NOTARY
TERRY V BRODCHUR
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. 123456
MY EXPIRATION DATE 12/31/2010

Library Public

WITNESSES to DTB:

Alico Industries, LLC,
a Florida limited liability company

By its authorized member,
D.R.S., LLC,
a Florida limited liability company

Printed Name: A. Douglas Grace Jr

By: Duane R. Swanson
Duane R. Swanson, as manager

Printed Name: FERRY V. BROUGHTON

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING instrument was acknowledged before me this 1 day of MARCH, 2004, by DUANE R. SWANSON. He is personally known to me or has produced Driver's License as identification. AS MANAGER OF D.R.S., LLC, AUTHORIZED MEMBER OF ALKO INDUSTRIES, LLC

[Seal]

OFFICIAL NOTARY SEAL
TERRY V BROUGHTON
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. 123456789
MY COMMISSION EXPIRES 12/31/2024

Notary Public

SLR 0050

AGREEMENT FOR INDUSTRY TRACK

THIS AGREEMENT, made this 5 day of September
 19 89, by and between SEMINOLE GULF RAILWAY L.P., a limited
 partnership organized and existing under the laws of the State of
 Delaware ("Railroad"), and MILLER BRANDS OF THE GULF COAST, INC.

(the "Industry").

WITNESSETH:

WHEREAS, Industry desires track facilities (the "Sidetrack"),
 for the conduct of its business, at or near Gator Road, Town of
 Fort Myers County of Lee, State of Florida, described as follows:

Approximately 1000± foot spur extending northerly via main
 line switch at approximate mile post M.P.1.2 on the Baker
 Spur Track.

PS Loc 1230' s/o & GATOR RD

& GATOR Loc 5565' s/o PS ML

∴ PS MILLER = BL 1.29

in accordance with Site Construction Plans of Miller Brands, of the
 Gulf Coast Inc., Sheets 1 through 7 dated August 21, 1989, attached
 hereto and made a part hereof.

NOW, THEREFORE, in consideration of the covenants and
 agreements herein contained and other good and valuable

consideration, and intending to be legally bound, it is agreed as follows:

1. Right of Way.

Industry shall provide, without cost to Railroad, all necessary right of way outside of the right of way of Railroad, required for the proper construction and operation of the Sidetrack, said right of way to be satisfactory to Railroad.

The cost and expense of complying with any law, ordinance or order and of procuring and complying with the requirements of any permit or consent whatsoever required by municipal, state or other lawfully constituted authorities, for the construction, maintenance, operation, replacement, renewal, removal and use of the Sidetrack shall be borne by Industry. Industry agrees to erect and thereafter maintain, repair and operate at its own cost and expense such warning signs, fences, guards, and other protective devices, including crossing protection devices, as may be reasonably required by Railroad or required by any law, ordinance or order of any lawfully constituted public authority.

Railroad shall have the right to enter upon the property of Industry for the purpose of constructing, inspecting, maintaining, replacing, renewing, removing and operating the Sidetrack; provided, however, that Railroad shall have no duty to engage in said activities except as otherwise specified in this Agreement.

2. Construction.

The construction of the Sidetrack, including track, switches

roadbed, trestles, bridges and all other appurtenances in connection therewith, shall be performed at the sole cost and expense of Industry. The Railroad will perform all construction work (station 63+96 to station 52+80). The cost of this work as outlined in the Proposal dated May 22, 1989 will be \$97,903.49. Prior to the commencement of construction, the industry shall remit to the Railroad the amount \$97,903.49. Specifically, \$19,000 of this total amount has been received on June 8, 1989, for an advance material purchase, leaving a balance due upon execution of this agreement of \$78,903.49.

The railroad will repay to the Industry the cost of improvements to the railroad property which are \$35,561.29 (see copy of the estimate entitled exhibit "A" attached hereto and made apart hereof). This will be accomplished by paying \$25.00 per revenue car load handled on the siding for a period not to exceed five (5) years from completion of construction or until the ceiling of \$35,561.29 is reached, whichever comes first.

3. Maintenance.

(a) The Sidetrack and underlying right of way shall be repaired and maintained (including removal of weeds, bushes, trees, debris of all kinds, obstructions to vision or movement, oil, industrial supplies or waste, or any slippery substance) and, when necessary, replaced, renewed, or removed to the satisfaction of Railroad, by and at the sole cost and expense of Industry. To the extent that any maintenance, the expense of which Industry is responsible for pursuant to this Section 3, is actually performed

by Railroad at the request of Industry, Industry shall, within thirty (30) days of receipt of a bill for such maintenance services, remit to Railroad the amount of such bill.

(b) Industry agrees to maintain the portion of the Sidetrack owned by or leased to it to the standard and degree of care required to provide Railroad and its employees a safe place to work while serving Industry thereupon and, furthermore, to comply with all laws, rules and regulations of any governmental agency having jurisdiction, as same may apply to the Sidetrack and Railroad's operations.

4. Ownership.

The title and ownership of the Sidetrack shall be vested as follows:

Miller Brands of The Gulf Coast inc., shall own the side track complete with all materials which lies on its property (approximate station 61+85 to station 52+80). SGLR right of way at this point is 50' wide (25' from each side of main track centerline).

5. Use.

Neither party hereto shall permit or authorize the use of the Sidetrack by or for the benefit of any other person, firm or corporation not one of the parties hereto without the written consent of the other party. Industry shall not assign this contract or any rights thereunder without the written consent of Railroad. Railroad retains its right to construct and use additional switch connection with that portion of the Sidetrack owned by Railroad when additional sidetracks outside the provisions

of this Agreement may be necessary in the conduct of its business.

6. Changes or Enlargement.

If any change, rearrangement, relocation, extension or enlargement of the Sidetrack, or its structures and appurtenances shall at any time be necessary by reason of any change in Railroad's track or tracks, or because of any changes in the operating practice of Railroad or to comply with the regulations or orders of any governmental agency or court, Industry shall bear any expense resulting therefrom. Any changes shall be deemed a part of the Sidetrack. Drawings showing such additions, extensions, alterations, enlargements, rearrangements, or relocations shall be attached hereto and made part hereof.

7. Clearances and Regulations.

Industry shall not permit any obstruction over the Sidetrack less than 22 feet above top of rail, or alongside of the Sidetrack less than 13 feet from center of track, with the necessary additional clearances on curves.

The minimum clearances herein specified may be changed by Railroad to meet changes in operating requirements and conditions or legal requirements, and Industry shall, at its sole cost and expense, upon written notice by Railroad, make such changes in tracks, structures and facilities as may be necessary.

Industry shall observe and comply with (a) all applicable Federal, state, local and railroad rules, regulations, orders, and laws pertaining to shipments originating or terminating on the Sidetrack and (b) Railroad's Standards for Construction and

Operation of Private or Railroad's facilities involved in the Storage, Loading or Unloading of Hazardous Materials in Tank Cars.

8. Liability in Connection With Sidetracks.

(a) Industry shall be responsible for damage or injury suffered by or inflicted on any person, firm or corporation (including Industry) when caused by fire or explosion on that portion of the Sidetrack owned by Industry, EXCEPT when caused solely by fault or negligence on the part of Railroad and except further that this paragraph shall have no application to loss, damage or injury to (1) the property or employees of Railroad, (2) rolling stock belonging to third parties and not located on Industry's premises, or (3) shipments then in the common carrier custody of Railroad.

(b) Except as otherwise provided in subsection 8(a), in respect of all lost or damage to property and injury to or death of persons caused by or in connection with the construction, operation, maintenance, use, presence or removal of the Sidetrack, as between the parties hereto:

(i) Industry shall assume responsibility for and hold Railroad harmless and defend Railroad from all losses (including claims for injuries to employees of Industry or of Railroad), expenses, attorneys' fees, damages, claims and judgments arising from or growing out of the actionable acts or omissions of Industry, its agents or employees, solely or in conjunction with a third person. Unless otherwise

specially agreed in writing by the parties thereto, the acts or omission of any tenant, licensee, or grantee of Industry occurring on the property of Industry served by the Sidetrack shall, for the purposes of this Section 8, be deemed the acts or omission of Industry.

(ii) The parties hereto shall equally bear all losses (including claims for injuries to employees of Industry or of Railroad), expenses, attorneys' fees, damages, claims and judgments arising from or growing out of joint or concurring actionable acts or omissions of both parties hereto, their respective agents or employees.

(iii) Notwithstanding anything contained in this Section 8(b), and irrespective of any joint or concurring negligence of Railroad, Industry assumes sole responsibility for and agrees to indemnify, save harmless and defend Railroad from and against all claims, actions or legal proceedings arising, in whole or in part, from failure of Industry to comply with requirements of Section 3(f) and with the clearance requirements of Section 4 hereof. Knowledge on part of Railroad of a violation of requirements of Section 3(f) or clearance requirements of Section 4, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve Industry of its obligation to indemnify Railroad for losses and claims resulting from any such violation.

(iv) Railroad shall assume responsibility for and hold Industry harmless and defend Industry from all losses

(including claims for injuries to employees of Industry or of Railroad), expenses, attorneys' fees, damages, claims and judgments arising from or growing out of the actionable acts or omissions of Railroad, its agents or employees, solely or in conjunction with a third person.

(v) Notwithstanding the foregoing, in the event Railroad is subjected to any claim, action or liability under the Federal Employer's Liability Act (or any amendments thereto) predicated on the allegation or finding that Railroad failed, in respect to the portion of the Sidetrack owned by Industry, to provide a safe place to work or failed to correct or guard against an unsafe condition, Industry shall be responsible for such injury EXCEPT where it is established by Industry that the injury which gave rise to the claim or action was caused by the willful or wanton actions of Railroad's employees with no concurring fault or negligence on the part of Industry or its employees. Failure by Railroad to make complaint to Industry with respect to unsafe working conditions or with respect to Industry's failure to carry out its obligations under this Agreement or knowledge on the part of Railroad of such unsafe working conditions or place to work or of such failures by Industry to carry out its obligations under this Agreement shall not constitute acquiescence therein by Railroad or actionable negligence on the part of Railroad.

(C) Industry agrees promptly after execution of this Agreement to take steps (including notification of its insurance

carriers) to assure that the indemnities and waivers of recovery provided for in this Section 8 shall not invalidate, or preclude recovery under, any applicable policies of insurance Industry may have; and, upon request, Industry shall furnish Railroad certificates from its insurance carriers to such effect.

9. Hazardous Materials.

Notwithstanding any other provisions herein contained, Industry shall and does hereby expressly agree that :

(a) In the event the Sidetrack shall be used for the inbound or outbound movement of tank or other cars containing dangerous or hazardous materials of commodities, whether explosive, combustible, flammable, poisonous or otherwise, Industry hereby assumes and agrees to defend, indemnify, and hold harmless from and against all loss, damage, costs, expenses (including attorneys' fees), claims, suits and judgments, whatsoever, arising from or growing out of any injuries (including death), loss or damage which may be caused or contributed to by the presence on the Sidetrack of such cars and the hazardous nature of the commodities for which such cars are used, and whether such injuries, loss or damage result from fire, explosion, spillage, leaking, collapse or any other cause, including Railroad's joint or concurring negligence. Railroad shall remain responsible for intentional or willful tortious acts of its employees.

(b) In the event of leakage or spillage, Industry, at its own expense, shall promptly clean and neutralize the right of way to the satisfaction of Railroad and any public authority having

jurisdiction over said leakage or spillage. Industry shall promptly (within 48 hours) notify Railroad and such public authority(ies) (including designated Response Center) of such spill or leak. Should the leakage or spillage result in a fine, penalty, cost or charge being incurred by Railroad, Industry shall promptly and fully reimburse and indemnify Railroad on account thereof.

(c) Industry shall fully comply with all governmental regulations pertaining to the handling of any dangerous or hazardous commodity contained in railroad cars moved over the Sidetrack and shall be solely liable for any damages, penalties, costs or charges incurred by Railroad for Industry's failure to so comply.

10. Discontinuance.

Any and all loss or damage sustained by Industry in consequence of any temporary or permanent elimination of the Sidetrack, or service to the Sidetrack, due to circumstances beyond the reasonable control of Railroad shall be assumed by Industry. Without limiting the generality of the foregoing, it is agreed that Railroad may, at its option, suspend rail service in the event Industry shall fail to observe any of the covenants in this Agreement. Such suspension of service may be continued until the breach is remedied.

11. Severability.

If any part of this Agreement other than Section 13 is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or

enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

12. Choice of Law.

This Agreement shall be governed by the laws of the State of Florida.

13. Cancellation, termination and Removal.

(a) This Agreement shall be terminable upon thirty (30) days' written notice from either party to the other.

(b) Upon termination of this Agreement: (i) each party hereto, at its expense, shall remove that portion of the Sidetrack owned by it and which is on property of the other party(ies); (ii) Industry shall reimburse Railroad for the expense of removing any switch and/or turnout, and regrading and restoring Railroad's right of way to a condition satisfactory to Railroad; and (iii) Railroad shall not be liable to account in any way to anyone for any monies paid or expended for any part of the Sidetrack covered by this Agreement or for any damages resulting from such removal. Any such property not removed within thirty (30) days after termination of this Agreement shall become the property of the party owning or controlling the property upon which said track(s) is/are placed.

Until terminated as hereinbefore provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year above written.

ATTEST:

SEMINOLE GULF RAILWAY L.P.

Susan Jane Fay

BY:

[Signature]

ATTEST OR WITNESS

MILLER BRANDS OF THE GULF COAST INC.

William A. Hry

BY:

[Signature]

NOTE: Execution by Industry--In the event Industry is an individual, have such individual sign his name in full and affix thereto his seal; if the Industry is a corporation, insert the full name of the name of the corporation and have Agreement signed by the President, attested by its Secretary, and affix the corporate seal.

PUBLIC VERSION

Verified Statement Of Michael E. Curley

My name is Michael E. Curley and I am Vice-President, Florida Sales, Seminole Gulf Railway. My railroad sales and marketing experience spans a 27- year career. My railroad in-service date is July 1970. Seminole Gulf Railway has been my employer since April 12, 1999. During my 27- year career in railroad sales and marketing, I have developed and successfully implemented many industrial development and freight carriage programs involving both traditional carload and intermodal freight handling concepts. My career has taken me from New York City (Head Rate Clerk – Southern Railway System) to Pittsburgh, PA, (Chief Clerk – Southern Railway System) to Baltimore, MD, (Sales Representative – Southern Railway System) to Philadelphia, PA, (Sales Representative – Norfolk Southern Corporation and Regional Marketing Manager – Triple Crown Services, a wholly-owned subsidiary of Norfolk Southern Corporation) to Fort Myers, FL (Vice-President / Florida Sales, Seminole Gulf Railway). I have marketed rail service to Fortune 100 companies, third party logistics companies, and rail users having limited experience in use of rail service.

My service at Seminole Gulf Railway (SGLR) involves both the maintenance and growth of present accounts, as well as solicitations of freight traffic from new rail users. As part of those efforts, there has been and continues to be an on-going effort at the identification and qualification of industrial sites suitable for rail-type freight customers. These efforts entail extensive review of customer needs, focusing on capital constraints relative to various industrial sites. Rail access or the ability to create rail access if that access is not available at a site, is always a paramount concern for current and/or potential rail customers. These efforts are arduous and extremely time-consuming, and traditionally have long lead times to either fruition or a “no-go” decision on the part of the client. Land ownership issues, zoning issues, water retention regulations, construction lead times, costs to build rail access, highway access, labor pool, permits, and associated costs to close on major, rail served industrial customer are just some of the items that result in the aforementioned long-lead times to secure rail patrons. These opportunities present themselves in several ways. Often times our Class One railroad partner, CSXT, or other railroad companies guide prospects to SGLR. In other cases, potential clients contact us via phone or e-mail. We scan business and transportation related professional trade magazines as an additional source of leads, proactively contacting parties to qualify those prospects as potential Seminole Gulf patrons.

With that said, the workings of a shortline railroad like Seminole Gulf, entail the constant contact with a variety of people involved in the industrial development process. Available land in large tracts that would be suitable for the kind and type of industry that would be of such size to desire rail service is a prime focus of the activities undertaken to locate new rail served customers. More, not less land, and more, not less railroad trackage is what Southwest Florida needs to bring industry and the related jobs that those

PUBLIC VERSION

industries create, into this area. Once a rail line is abandoned or sold, that rail line and the adjacent land are gone and lost forever as a viable and valuable piece of the industrial development pie. That fact is exactly why Seminole Gulf Railway exists today! As a shortline, SGLR, similar to virtually all shortlines operating in the United States, took the risk of holding on to, and breathing life into, rail properties that were to be abandoned and allowed to go fallow by the major railroads of this country. Entrepreneurs saw the value to not only themselves as business people, but also the benefit of smaller communities and the smaller community work force and residents, to preserve and maintain rail service as a competitive advantage to the local community. Thus, not only is a tax-paying entity retained for the community, the economy is also positively impacted through lower and more stable prices for goods and services due to competition between transportation modes. In addition, the fact that rails take thousands of heavy trucks off congested roadways, reduces the need for highway expansion and upkeep, provides a much safer environment to move hazardous goods safely, reduces pollution, and saves lives of the motoring public.

In the immediate case of the Alico Road corridor, this corridor meets and exceeds all the aforementioned tests for viability as a current and future forward rail-centric lane. The Lee County area has and is experiencing extraordinary, double-digit growth in several key areas of the economy. To wit: year over year single-family home sales showed at 55.7% growth rate. This was matched by an increased valuation rate of 49.8%. Unemployment decreased by 17.4%, and the gross taxable sales rate climbed 15.1%. My marketing records indicate a constant level of activity and inquiry relative to this piece of rail line. The rail opportunities that have not come to fruition on the Alico Road corridor were not as a result of any negatives on the part of SGLR. All were and are viable today because of, not in spite of, rail service provided by Seminole Gulf Railway. Many of the prospects viewed the Alico Road-Baker Spur line, and were directed to consider the Alico Road-Baker Spur line, specifically for the unique operating characteristics of that line that were not and are not able to be duplicated anywhere else on the entire 65 mile Seminole Gulf Railway system lines.

For example, several of the prospects desired and required the ability to move large, 60 to 80 car unit trains to and from the Alico Road area. These type trains are nearly a mile long in length. In order to safely, successfully and efficiently operate this type of train on Seminole Gulf Railway, the Baker Spur is unique in the ability of SGLR to handle such a large unit train. Specific examples involved two, separate aggregate shippers, Prospective Customer A. and Prospective Customer B. These firms wished to move unit trains of stone from nearby Alico Road quarries northbound in unit train volumes. Another prospect, Prospective Customer C, explored inbound unit trains to handle 25,000 tons a week of coal field spoils. The spoils would be combined with asphalt to produce a “super-pave” road surface that would meet new FDOT road building standards.

Seminole Gulf, along with several interested parties, among them Prospective Customer D and Prospective Customer E, continue to progress talks about inbound unit trains of fuel oils for the booming southwest Florida market. Volumes appear to be at

PUBLIC VERSION

least 100 cars per week moving in unit trains. One of the target markets for this train is aviation fuel for the newly expanded Southwest Florida International Airport. The new entrance for the airport is off Alico Road about two miles from the end of Seminole Gulf's current trackage on the Baker Spur.

A construction waste entrepreneur, Prospective Customer F, contacted Seminole Gulf about moving multi-car trains of construction debris from the Alico Road area northbound to landfills. Currently, large volumes of this material move to a site near Alico Road that is easily accessible via the "adverse abandonment" trackage.

There is current interest in the Alico Road area by a metal scrap processor looking for the proper zoning, land price, highway access, and "industry friendly" sites offered by the Baker Spur. A consultant, Dwight Brennan, represents this metal scrap consortium. Mr. Brennan has provided a Verified Statement in support of Seminole Gulf's position to retain the full portion of the Baker Spur.

These prospects have not closed to date, but the need and volumes are still present and feasible for multi-car and unit train operation, and we continue to show sites along the line, as the landowners along the line continue to advertise their properties for heavy industrial use. See attached Youngquist-Kelly advertisement from the July 26, 2004 The News-Press, and Photos nine, ten and thirteen through fifteen.

Attached as part of this statement are a series of photos taken the end of July, beginning of August 2004. The purpose of displaying these photos is to provide a visual, relevant reference offering the reader of this text a perspective on the areas in question on the Baker Spur.

Photo one details the south side of the Baker Spur, looking west on Alico Road. This area is where FP&L currently unloads transformers on the Baker Spur. It is also where, if the adverse abandonment were granted, Seminole Gulf's trackage on the Baker Spur would terminate. The area in question, if adverse abandonment is granted, would shrink in size due to road construction plans and, in Seminole Gulf's opinion, not be suitable for use by FP&L to offload transformers.

Photo two details the proposed new FP&L unloading site. This location looks east on Alico road towards I-75. It lies on the north side of north of Alico Road, across Alico Road from the FP&L site shown in photo one. Due to the width of the Seminole Gulf right-of-way in this area of the Baker Spur, this location is more suitable for FP&L and their rigging contractors. This site is also envisioned as a prime area, due to location, for a general transload facility, serving other, non-rail served Seminole Gulf customers in the fast growing, south Lee County, and Alico Road area.

Photo three details the FP&L crossing looking west towards U.S. Route 41. In the forefront is the proposed FP&L, Seminole Gulf unloading site. This area is on the north side of Alico Road.

PUBLIC VERSION

Photo four depicts the FP&L crossing looking north.

Photo five shows truck traffic at Gator Road. This shot looks east towards I-75 and is on the north side of Alico Road, in the proposed adverse abandonment area. The J.J. Taylor Distributing building, with rail cars at the siding, is shown in the upper left hand portion of this photo.

Photo six is again at the Gator Road crossing, and confirms the information in the text relating to the truck transportation of construction debris to a non-rail served business just a short distance away from the Baker Spur. This is one of the target companies SGLR is hoping to work within in the transloading and subsequent rail movement of bulk construction waste.

Photos seven and eight illustrates both a westerly and easterly view of the ongoing operation of J.J. Taylor Distributing. This is a four-car siding serving the Taylor facility. SGLR handled over 350 railcars for account of Taylor in 2003.

Photos nine and ten detail the approach to the Taylor siding from the east. Note the real estate sign offering the availability of property next to Seminole Gulf. Photo ten also depicts the flow of water from the north in a westerly direction to the culvert passing under SGLR's tracks.

Photos eleven and twelve depict water flow from the north in photo eleven, traveling under the SGLR tracks and through a culvert, exiting the culvert to the south in photo twelve, then flowing west towards Gator Road.

Photos thirteen and fourteen are distant views of the large industrial parcel on the north side of Alico Road near the end of Seminole Gulf's tracks in the adverse abandonment area. This is referred to as the Haitian Road intersection. While the track section shown in photo fourteen ends, in fact, the Seminole Gulf easement is 100 feet or more to the east of the trackage shown. This area of reference is detailed in photo sixteen.

Photo fifteen graphically illustrates the large industrial parcels are for sale adjacent to the Seminole Gulf tracks on Alico Road. This Baker Spur location is on the north side of Alico Road and lies in the adverse abandonment area. This photo confirms text statements concerning recent industrial site prospects wishing to locate businesses on Seminole Gulf in the Baker Spur area.

Photo sixteen details the end of track for SGLR on the Baker Spur. Interstate I-75 is shown in the distance at the upper right-hand corner of the photo. This kind of Interstate access, coupled with industrial site zoning, and a growing transportation and business corridor, is prime territory for new and existing rail clients.

Interstate commerce is the backbone of the nations economy and growth. Many folks today are aware of the trucking marketing slogan placed on highway truck bumpers; "if you got it, a truck brought it." What people do not realize is the impact railroads have

PUBLIC VERSION

in bringing to market raw, heavy, bulk materials that go into the products that end up on trucks that end up in the retail marketplace. Those types of major industries rely on the railroads to move heavy loads long distances at very cost-effective and competitive prices. With the current drastic, upward trend in fuel prices, coupled with new “hours of service” laws relating to motor carrier drivers, now more than ever, shippers and consignees are focusing on the positive benefits of rail transportation. There is a right and positive place in the economy of Lee County and in particular the Alico Road-Baker Spur area for Seminole Gulf rail service. We suggest current Seminole Gulf customers are elated with how SGLR positively impacts their business. They are pleased that Seminole Gulf is there for them day-in and day-out, providing local, quality rail service to keep them competitive and keep prices down to consumers. They would be dismayed about having the ability to receive and ship their goods only by truck. They would fear having limited options to expand their business without the benefit of rail service or access to areas on Seminole Gulf where rail service is available. We feel our patrons would offer a resounding affirmation that Seminole Gulf gets the job done for them. They would expound that rail service and rail service options should be enhanced, not delineated through government action that favors narrow, private interests, rather than the greater good for the greater number of Lee County residents, area industry, and transportation users. The requested abandonment should be denied so that Seminole Gulf and its customers and prospective customers can take advantage of the rail service opportunities offered by the Baker Spur.

PUBLIC VERSION

Identification of Prospects Customers Contained in Verified Statement Of Michael E. Curley

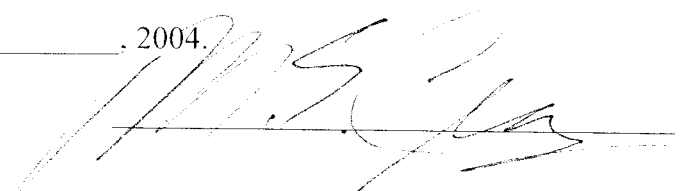
<u>Prospective Customer</u>	<u>Identification of Prospective Customer</u>
Prospective Customer A	[[]]
Prospective Customer B	[[]]
Prospective Customer C	[[]]
Prospective Customer D	[[]]
Prospective Customer E	[[]]
Prospective Customer F	[[]]

VERIFICATION

I, Michael E. Curley, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement in Seminole Gulf Railway, L.P. – Adverse Abandonment – In Lee County, FL, STB Docket No. AB-400 (Sub-No. 4).

Executed on 8/5, 2004.

Michael E. Curley



PC3227

COMMERCIAL PROPERTIES

D'Alessandro & Woodyard INC.

COMMERCIAL REALTORS

PROPERTIES FOR LEASE



Office / Warehouse - 11,000± Sq. Ft. office / warehouse with open floorplan, two overhead doors, ample parking and a great location just off US 41 near Page Field.
\$3.50 PSF + CAM

Contact: Tim Colen or Steve Wood



Office / Warehouse - 2,000± Sq. Ft., 12' x 16' overhead door, three-phase electric, air conditioned warehouse, located in Metro Commerce Center.

\$1,475. / Mo.

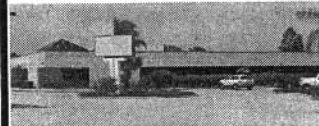
Contact: John Kremski, CCIM



Office Condominium - 2,840± Sq. Ft. office condo for sublease, beautifully appointed, covered parking spaces, convenient location between US 41 & I-75 in Naples.

Call For Rate

Contact: Todd Holman or Tim Colen



Office Units - 2,500 to 6,600± Sq. Ft. professional / administrative offices, great build out, access via frontage road to Summerlin Rd, ample parking, great visibility.

\$11.95 PSF + CAM

Contact: Todd Holman



Office Condominium - 1,530± SF second floor professional office with elevator access in Arielle Medical Center on Metro Parkway, near Gulf Coast Hospital.

\$14.50 PSF NNN

Contact: Tim Colen



Office / Warehouse - 6,250± SF office with 1,250± Sq. Ft. warehouse, great floorplan, ample parking, located on one of Fort Myers busiest industrial corridors.

Starting at \$6.00 PSF + CAM

Contact: Todd Holman



Office Building - 5,000± Sq. Ft., two kitchens, file rooms, excellent location in South Commercial Park, off US 41.

For Sale: \$690,000.

or For Lease: \$4,500. / Mo.

Contact: John Kremski, CCIM



Retail / Office Sublease - 850± Sq. Ft. unit, excellent location in the Pewett Center at corner of McGregor Blvd & College Pkwy.

Garden Offices in College Parkway Business District



McGregor Lakes Center

- 1,900 sf to 6,400 sf
- Turnkey packages
- Immediate occupancy
- Lakeside campus
- Rent incentives

466-7737

David Erickson



MEL-RE
ASSOCIATES, INC.

DEVELOPMENT • BROKERAGE • MANAGEMENT

YOUNGQUIST-KELLY INC. REAL ESTATE

Heavy Industrial Acreage for Sale.

129-320 Acres.

N. side of Alico Rd.

Close to I-75.

Harvey Youngquist,
239-980-1900



www.DandCRealty.com

239-277-7707

Paul Carr x202 - Jim Boback x203 - Tammy Elmore x205

Office Buildings For Lease

- Daniels & US41 area - 1,000 SF, Brand New - lease \$15 + CAM
- College & McGregor area, Office Build Out, 2,800 SF, Lease \$13 + CAM
- Summerlin & Boycout area, 1,400 SF, \$15 + CAM

Warehouse/Flex For Sale/Lease

- Lehigh - Westgate Air Park, Brand New Off/Whse, 5,500 SF, \$6.50 SF + CAM
- Treeline Rd., New Off/Whse, 1,700-15,000 SF, Zoned IL, Lease from \$8.50 SF + CAM
- Alico area - Off/Whse, 7,840 SF, Lease \$5.50 monthly gross
- Lehigh - Westgate Air Park, Off/Whse, 4,500-9,000 SF, Lease from \$6.50 SF + CAM
- Hanson area - Southside Industrial, Off/Whse/Storage, 1,500-3,000 SF, \$1.650 Moly
- Lehigh - Westgate Air Park, Brand New Off/Whse, 2,000-6,000 SF, \$5.75 SF + CAM

Retail For Lease/Sale

- Daniels & Plantation, Orion Centre, 1,600-9,000 SF, Lease \$19.50 SF + CAM
- Multi-Tenant Plaza, Port Charlotte - \$433,923 NOI, 29,132 SF Building, \$5.5 million, Fully Leased

Land For Sale

- Alico Area, 1-14 Acres, Zoned IPD, From \$3.50 SF
- Corkscrew Road, 66 Acres w/House, From \$350,000
- Daniels Road - Airport Area, 1.2-3 Acres, From \$4.50 SF
- Lehigh - Westgate Air Park, 1.8 Acres, \$4.50 SF

* FEATURED PROPERTY *

METAL FABRICATION AND WELDING SHOP

Entrepreneur Needed to take this Enterprise to The Next Level. Manufactures and Markets a Better Mouse Trap. Well Established Business With Excellent Client Base. Call for Details.

VACANT LAND - CAPE CORAL

Approximately 1/2 Acre Corner Lots
Pine Island Corridor - Corridor Zoning

AUTO BODY SHOP - CAPE CORAL

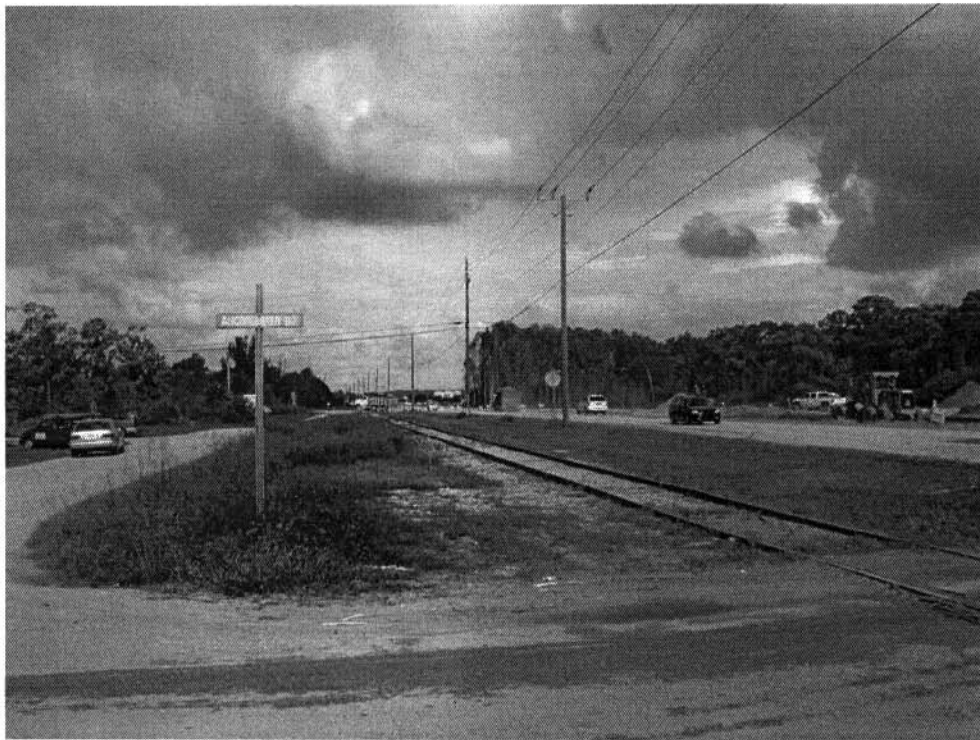
State of the Art Equipment, Owner Financing
Call for Confidentiality Agreement

DELI / SANDWICH SHOP

Turnkey Sandwich Shop / Possible Owner Financing
Prominent Downtown Area. Loyal year round customer base.

GIFT, CARD AND MAIL SERVICES SHOP

High Growth / High Traffic / Great Plaza.
Established Business with Continuous Growth.



(1) ALICO CENTER RD. CURRENT VIEW OF FPL UNLOADING AREA. Note: Adverse Abandonment to about first utility pole.



(2) PROPOSED FLORIDA POWER & LIGHT UNLOADING AREA



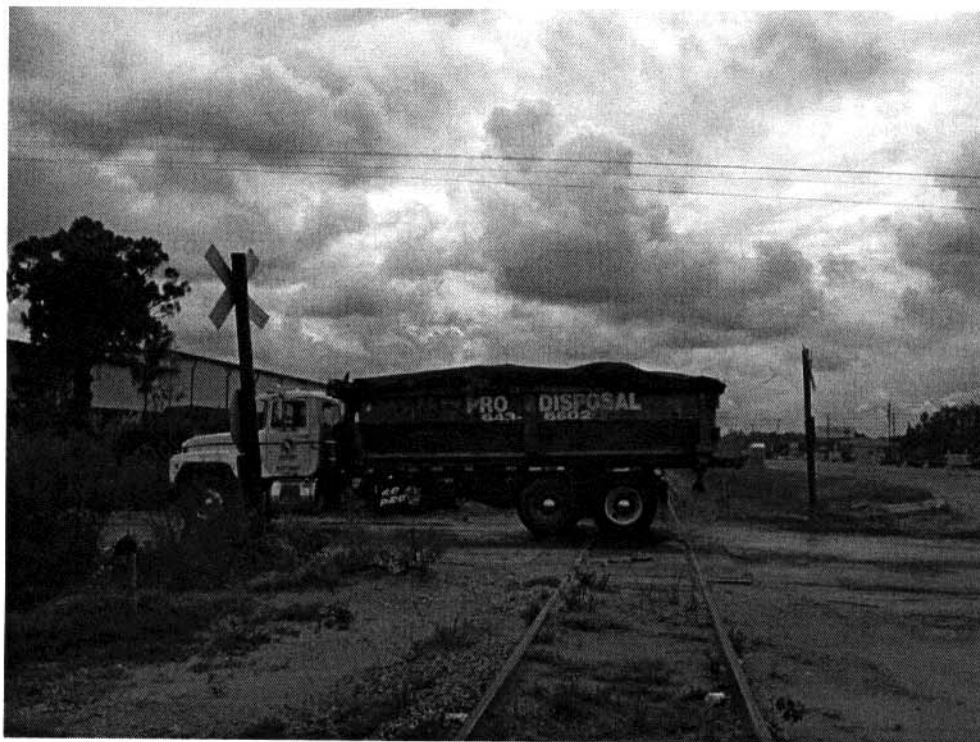
**(3) FLORIDA POWER & LIGHT CROSSING
LOOKING WEST**



**(4) FLORIDA POWER & LIGHT FACILITY
LOOKING NORTH**



**(5) TYPICAL TRUCK TRAFFIC
ON GATOR ROAD**



**(6) TRUCK TRANSPORTING DEMOLITION DEBRIS
OVER GATOR ROAD CROSSING**



**(7) J.J. TAYLOR AT GATOR ROAD
LOOKING WEST**



**(8) J.J. TAYLOR AT GATOR ROAD
LOOKING EAST**



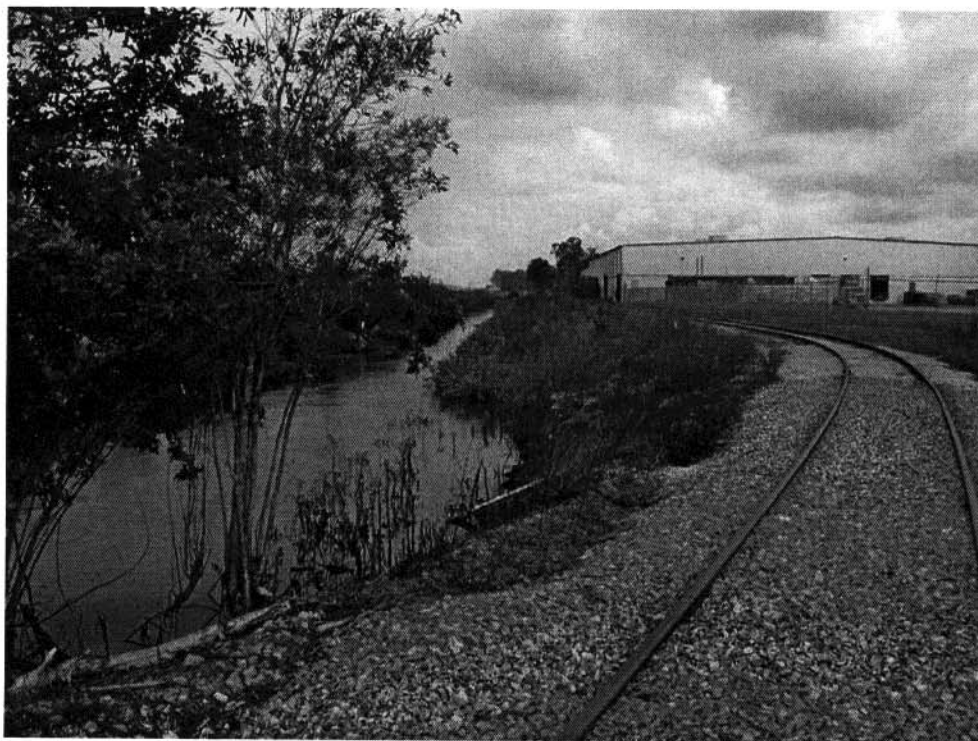
(9) J.J. TAYLOR CLOSER VIEW, LOOKING WEST



(10) J.J. TAYLOR, LOOKING WEST



**(11) DRAINAGE UNDER J.J. TAYLOR SIDING
ENTRY FLOW FROM THE NORTH**



**(12) DRAINAGE UNDER J.J. TAYLOR SIDING
EXIT FLOW TO THE SOUTH**



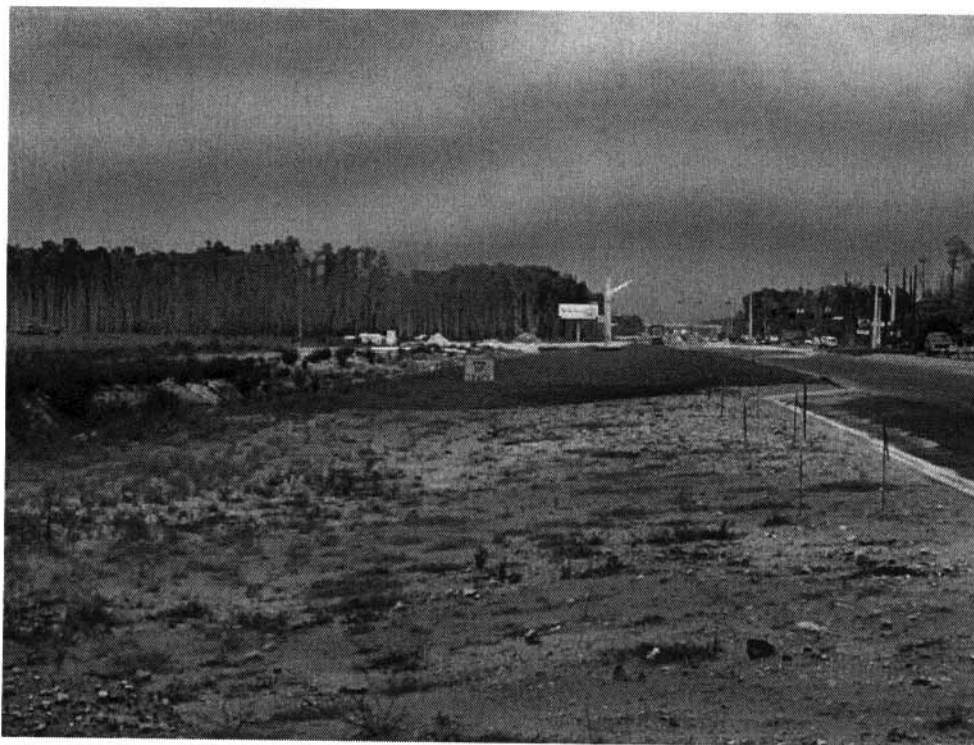
**(13) HAITIAN RD. & ALICO RD. LOOKING NORTH
INDUSTRIAL LAND FOR SALE**



**(14) HAITIAN RD. & ALICO RD. LOOKING NORTH
INDUSTRIAL LAND FOR SALE**



**(15) HAITIAN RD. & ALICO RD. LOOKING NORTH
LAND FOR SALE**



**(16) HAITIAN RD. & ALICO RD. LOOKING EAST
I75 OVERPASS IN THE DISTANCE**