

June 7, 2017

David Navecky
Office of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Jay C. Johnson

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jcjohnson@venable.com

Re: Docket No. FD 35852, Canaveral Port Authority—Construction and Operation
Exemption—Rail Line Extension to Port Canaveral, Fla.; Response to Information
Request No. 4

Dear Mr. Navecky:

I am writing on behalf of the Canaveral Port Authority (CPA) in response to your office's Information Request No. 4, dated February 12, 2016. In addition, since receiving that request, information collected during and after the scoping process has led CPA to change its proposed action. CPA is now proposing to construct and operate a rail line through the Cape Canaveral Air Force Station (CCAFS).

New Proposed Action

As part of the scoping process for this project, the Office of Environmental Analysis (OEA) held public meetings and accepted public comments on the proposed rail line in late 2014. Many comments, both at public meetings and in writing, opposed the originally proposed Banana River-Merritt Island alignment. In addition, many attendees at public CPA Board of Commissioners meetings—both during and after OEA's public scoping period—spoke against construction of the Banana River-Merritt Island alignment.

As elected officials, CPA's Commissioners carefully weighed this public input. In September 2015, the Board of Commissioners passed a resolution that led to further exploration of a rail route through CCAFS. Working with its consultants and CCAFS personnel, CPA has now assessed the feasibility of a route through CCAFS. Based on that detailed analysis, documented in the study that was transmitted to OEA in January 2017, CPA is now not only convinced that such a route is feasible, CPA has identified the CCAFS route as its proposed action. This decision reflects CPA's careful consideration of feasibility, traffic projections, potential environmental effects, and the clearly expressed concerns of community.

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On June 2, CPA received a transmission from the Air Force noting that CPA's feasibility study does attempt to mitigate previously identified constraints, and indicating that study and evaluation in an EIS could demonstrate that the route is "workable."

Unreasonableness of Banana River and SR-528 Alignments

CPA has also continued to evaluate the other two routes originally identified for possible inclusion in OEA's environmental review—a corridor across the Banana River and north on Merritt Island, and a corridor that parallels SR-528. New information indicates that these routes are not reasonable alternatives.

Banana River-Merritt Island Alignment

The Banana River-Merritt Island route requires a rail trestle over the Banana River, which is part of the larger Indian River Lagoon system. Despite its inclusion in the EPA-administered National Estuary Program,¹ the Indian River Lagoon system has experienced an increasing number of algae blooms and fish kills in recent years. In November 2016, voters overwhelmingly approved a half-cent sales tax increase dedicated to lagoon cleanup projects. Using that new revenue, the Brevard County Commission has now authorized 42 cleanup projects at a cost of over \$68 million. The Brevard County and Port Canaveral communities have consistently expressed their serious concern that building a new a rail trestle across the Banana River would not be in keeping with these important cleanup efforts. Because the CPA Board of Commissioners is an elected body that has a unique responsibility to the community, it views these routes as unreasonable, and has specifically requested that the Banana River-Merritt Island route be excluded from detailed consideration in the environmental review.

In addition, as explained in the December 19, 2014 scoping letter from the U.S. Army Corps of Engineers Jacksonville District, the Corps cannot permit any new rail construction under Section 404 of the Clean Water Act unless the identified route qualifies as the least environmentally damaging practicable alternative (LEDPA) for the project. CPA cannot see how the Banana River-Merritt Island alignment would meet those criteria. Not only would that alignment affect the sensitive Indian River Lagoon system, it would have approximately three times more impact on jurisdictional waters than the proposed route through CCAFS.² Under these circumstances, the Banana River-

¹ See <http://www.irlcouncil.com/>.

² Cf. Figure 1, supplied in response to Information Request 4-1 (estimating 38 acres of impacts to jurisdictional waters) *with* CCAFS Feasibility Study (Dec. 2016) at 17 & Appx. D, Fig. 1 (estimating 10-15 acres of jurisdictional wetland impacts).

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Merritt Island alignment could be treated as an unreasonable alternative that was considered but eliminated from detailed study³ based on its potential for significant impacts to sensitive aquatic and wetland resources within the Indian River Lagoon and on Merritt Island.

SR-528 Alignment

When CPA submitted its initial evaluation of a potential rail alignment paralleling SR-528 in early 2015, it understood that the Florida Department of Transportation (FDOT) was receptive to that alignment, and considered it consistent with the Department's long-range plan.⁴ More recently, however, FDOT has informed CPA that a rail alignment along SR-528 "would not be feasible and would interfere with future FDOT projects along this roadway." As further explained in the accompanying May 4, 2017 letter from FDOT, SR-528 "will be widened" in a manner that precludes construction of freight rail within the existing right-of-way. That explanation is consistent with the attached roadway section designs for the reconstruction of SR-528, which do not leave enough room for freight rail within the right-of-way. In a letter dated May 26, 2017, also attached, the Space Coast Transportation Planning Organization concurred with FDOT's assessment that "a freight rail alignment along SR 528 would not be feasible."

CPA's May 22, 2015 supplemental response to Information Request No. 2 further indicates that the feasibility of an SR-528 alignment is "subject to the potential for funding opportunities." The SR-528 alignment is too expensive for CPA to construct without such funding opportunities, and none have arisen during the past two years. Faced with an inability to pay the high cost of constructing the SR-528 alignment, and FDOT's conclusion that a rail alignment in the SR-528 right-of-way would not be feasible, the SR-528 alignment is no longer a viable alternative.

³ See 40 C.F.R. § 1502.14(a) (stating that an EIS should, "for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated").

⁴ Cf. 40 C.F.R. §§ 1502.16(c) (requiring consideration of "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local . . . land use plans, policies, and controls for the area concerned"); 1506.2(d) (mandating discussion of "any inconsistency of a proposed action with approved State or local plan and laws (whether or not federally sanctioned) . . .").

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Conclusion

The Surface Transportation Board, as lead federal agency, with input from cooperating agencies, will decide which route alternatives can be “eliminated from detailed study” and which qualify as “reasonable alternatives” that must be explored and objectively evaluated as part of the Board’s environmental review.⁵ But especially “where a federal agency is not the sponsor of a project, the Federal government’s consideration of alternatives may accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.”⁶ Federal decisionmakers accordingly must weigh the project sponsor’s siting preferences as it decides which alternatives are reasonable.

In a letter dated January 10, 2017, CPA requested that OEA carry forward just one build alternative—the CCAFS route—for detailed environmental review.⁷ In this regard, CPA notes that “NEPA does not impose any minimum number of alternatives that must be evaluated.”⁸ Courts accordingly have upheld EIS documents that studied only one action alternative. This is because, under a “plain reading of the [Council on Environmental Quality] regulations,” an agency may limit its detailed environmental review to a single action alternative “[s]o long as ‘all reasonable alternatives’ have been considered and an appropriate explanation is provided as to why an alternative was eliminated.”⁹ For all of the reasons discussed above, the Banana River-Merritt Island route and the SR-528 route are not reasonable alternatives.

Sincerely,



Jay C. Johnson

⁵ See 40 C.F.R. § 1502.14(a).

⁶ *City of Grapevine, Tex. v. Dep’t of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994) (citation and internal quotation marks omitted).

⁷ An environmental review would also include the requisite no action alternative.

⁸ *Citizens for Smart Growth v. Sec’y of Dep’t of Transp.*, 669 F.3d 1203, 1212 (11th Cir. 2012).

⁹ *Native Ecosystem Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1246 (9th Cir. 2005) (quoting 40 C.F.R. § 1502.13(a)).



Florida Department of Transportation

RICK SCOTT
GOVERNOR

719 South Woodland Boulevard
DeLand, Florida 32720-6834

RACHEL D. CONE
INTERIM SECRETARY

May 4, 2017

Mr. James Dubea
Deputy Executive Director
Government and Strategic Partnerships
Canaveral Port Authority
445 Challenger Rd, Suite 301
Cape Canaveral, FL 32920

RE: FDOT Letter Dated June 16, 2015, State Road 528 Freight Rail Alignment

Mr. Dubea:

After further discussion and review of the proposed Port Canaveral Freight Rail alignment along State Road 528, Florida Department of Transportation (FDOT) concludes that a freight rail alignment along this major roadway would not be feasible and would interfere with future FDOT projects along this roadway.

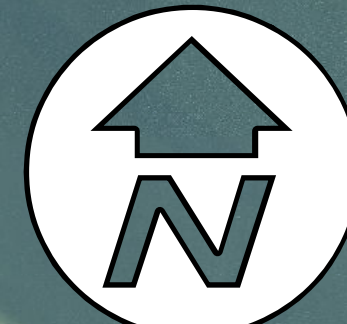
Both State Roads 528 and 401 have recently been evaluated for lane expansion and possible replacement of bridge structures in the near future. SR 528 will be widened and may have a pedestrian walkway along the Northern shoulder of the roadway, which will require land for proper separation. SR 401 is currently being evaluated for possible lane expansion as well as bridge replacement. Although alternatives are still being evaluated, it has become evident that a freight rail alignment along either of these roadways west of Port Canaveral would not reasonably fit within FDOT right of way while providing for existing and planned use. FDOT currently has no plans to expand the right of way corridors along these two roadways.

FDOT looks forward to our continued partnership with Canaveral Port Authority and any future coordination needed on this project.

Sincerely,

Richard B. Morrow, PE
Director Transportation Development
District Five

RBM:n



1 inch = 800 feet



Wetlands

2015 Seagrass Survey (SJRWMD)

Radar Stations / Avoidance Site

Radar Avoidance Areas

Communication Lines

Wading Bird Colonies

FWC Bald Eagle Nest (Aug. 2014)

FWC Bald Eagle Nest 660' Zone

KSC Bald Eagle Nest (Jul. 2015)

KSC Bald Eagle Nest 660' Zone

FSJ Habitat Zones 2010

Required for Long-Term Preservation

Not Required for Long-Term Preservation

Scrub-jay Potential Habitat

Cat 1: Required for CCP Goals

Cat 2: Required for CCP Goals

Cat 3: Compensation may be required

Cat 4: Habitat loss will not impact species recovery

Revised Merritt Island Alignment

Proposed Rail Alignment

100' Rail Corridor

Seagrass (2.65 ac.±)

Deepwater (23.94 ac.±)

Wetland (14.44 ac.±)

Scrub-jay Potential Habitat Impact

Cat 1: Required for CCP Goals (2.64 ac.±)

Cat 2: Required for CCP Goals (16.44 ac.±)

Cat 3: Compensation may be required (63.53 ac.±)

Cat 4: Habitat loss will not impact species recovery (9.81 ac.±)



SUSERS
\$DATES
\$TIMES \$FILES\$



IF THIS DRAWING IS LESS THAN 22" X 34" IT IS A REDUCED SIZE DRAWING



4500 SALISBURY ROAD
SUITE 440
JACKSONVILLE, FL 32216
904-245-6500
904-245-6510

CONSULTANTS:

PORT CANAVERAL RAIL ACCESS

CAPE CANAVERAL, FLORIDA



REVISIONS:	MARK	DATE	DESCRIPTION

PROJ NO: P304120075
SCALE: 1" = 600'
DATE: \$DATES
DESIGNED BY: PKC
DRAWN BY: PKC
CHECKED BY: FRF

SHEET TITLE:
PLAN

SHEET NO.
SHEET OF

Docket No. FD 35852
Canaveral Port Authority Response to Information Request No. 4

The cover letter to these responses explains that CPA's proposed action is now to construct and operate a new rail line through the Cape Canaveral Air Force Station (CCAFS). Further, CPA does not consider the Banana River-Merritt Island alignment or the SR 528 alignment to be reasonable alternatives. To the extent these information requests address those unreasonable alignments, CPA's responses are subject to those qualifications.

1. The enclosed map depicts CPA's proposed rail alignment through Merritt Island (including Options A and B for a potential Banana River crossing) and avoidance zones associated with the Range Safety Radar, Range Safety Radar Boresight Antenna, Tel-IV Telemetry Site, and Multiple Object Tracking Radar (MOTR). As depicted on the map, the CPA-proposed rail alignment encroaches on the larger avoidance zone for the Tel-IV Telemetry Site (i.e., a zone defined by a 5,000-foot radius of the telemetry site from 0 degrees north to 90 degrees east). Please identify an adjustment to CPA's proposed rail alignment that would avoid the Tel-IV Telemetry Site's avoidance zone. Any adjustment should be designed to a level equivalent to approximately 15 percent engineering design. Please provide OEA with shape files or files in a KMZ format and design drawings and diagrams that include the items listed below, as applicable:
 - a. Rail alignment plan and profile;
 - b. Daylight lines for cut and fill or grading limit lines;
 - c. Typical cross-section for the full right-of-way and the rail bed including potential access roads, transmission lines, and other ancillary facilities that would be located in the right-of-way; and
 - d. If a different trestle design would be used for the crossing of the Banana River other than the one depicted in the rail alignment sheets provided by CPA on October 17, 2014, please provide a typical cross section for the trestle crossing and design drawing of the bascule bridge.

Response: CPA does not consider any version of the Banana River-Merritt Island alignment to be a reasonable alternative. Figure 1 (attached) shows a modified alignment of the Banana River-Merritt Island alignment that would place the new track construction outside the avoidance zone for the Tel-IV Telemetry site and the Range Safety Boresight Antenna. As the previous alignment was designed to minimize wetland fill and other environmental effects, this modified alignment would increase environmental effects.

Specifically, the modified alignment will impact 23.94 acres of open water in the Banana River with the pile supported rail road trestle and bascule drawbridge. The trestle will also impact approximately 2.65 acres of seagrass along the western side of the Banana River. The modified alignment will also impact approximately 14.44 acres of forested and herbaceous wetlands that are jurisdictional to the State of Florida and the U.S. Army

Corps of Engineers. With respect to the Florida Scrub-jay, the modified alignment of the Banana River-Merritt Island route will impact approximately 2.64 acres of Category 1 Scrub-jay habitat, 16.44 acres of Category 2 habitat, 63.53 acres of Category 3 habitat, and 9.81 acres of Category 4 Scrub-jay habitat. Finally, it is notable that the modified alignment will encroach into the 660-foot bald eagle nest buffer zone of southern most eagle nest (although a 2015 survey did not find an eagle nest at this location).

CPA will provide a shape file that shows this alignment.

2. Rail alignment sheets, which were provided by CPA in the October 14, 2014 Submittal, depict a rail siding constructed over the Banana River as part of the design. Please confirm whether a rail siding is proposed for this location over the Banana River. If a rail siding would be constructed over the river, does the presence of a rail siding on the trestle require more or larger piers or pilings than those depicted in the design drawings provided by CPA in the October 17, 2014 Submittal?

Response: CPA does not consider any version of the Banana River-Merritt Island alignment to be a reasonable alternative. In 2013, when the preliminary design of the Banana River crossing was developed, the rail designer included a second track across the River based on the presumed potential for rail car storage and possible use as a runaround track for the emergency movement of a responding locomotive if a train broke down while crossing the Banana River. But even before the developments discussed above led CPA to conclude that this alignment is not reasonable, it had determined that there would be no need for train storage on the water crossing, and that there would be available locomotives on either side of the Banana River capable of responding if a train were to break down on the trestle crossing. Therefore, CPA was only planning a single track, and no additional support would be required in the trestle design.

3. In CPA's March 26, 2015 response to OEA Information Request No. 2, question 13, CPA indicated that the Jay-Jay and Wilson rail yards would likely be used and would require reconfiguration or modification. Please describe the anticipated modification or reconfiguration anticipated for these rail yards. Would either yard be expanded beyond its present footprint or fence line?

Response: Since the preliminary design of the Banana River-Merritt Island alignment in 2013, CPA has developed a plan for the construction of a rail storage and marshaling yard on CPA property immediately north of existing SR 401 and the Port's North Cargo Area, as shown in attached Figure 2. This rail yard will service the rail car storage and train building needs of the Port's North Cargo Area. This rail yard is visible on maps that were included in CPA's submissions regarding the CCAFS-KSC alignment. Taking this proposed rail yard into consideration, CPA has determined that the current configuration and condition of the Jay-Jay Yard is more than sufficient for CPA's rail service needs. CPA accordingly does not envision any modification, reconfiguration, or other changes to either the Wilson or the Jay-Jay rail yards in connection with this project.

4. In CPA's May 22, 2015, supplemental response to OEA's Information Request No. 2, question 2, CPA provided information and maps for two alignments along SR-528 that CPA identified as equally feasible. Please examine these potential alignments in more detail and develop a more refined rail alignment option or options. For example, CPA may examine the previously provided SR-528 alignments in more detail and determine that only one rail alignment option would be feasible, both would be feasible, or some combination of both would be feasible. Any refined rail alignment(s) should be designed to a level equivalent to approximately 15 percent engineering design. For any refined alignment(s), provide OEA with shape files or files in a KMZ format and updated design drawings and diagrams that include the items listed below as applicable:
 - a. Rail alignment plan and profile;
 - b. Daylight lines for cut and fill or grading limit lines;
 - c. Typical cross-section for the full right-of-way and the rail bed including potential access roads, transmission lines, and other ancillary facilities that would be located in the right-of-way;
 - d. Typical cross-section for trestle over the Banana and Indian rivers; and
 - e. Typical bascule bridge.

Response: It has been approximately two years since CPA's letter indicating that the State Route 528 alignments were viewed as feasible alternatives for the project. Since then, as discussed above, the Florida Department of Transportation has materially changed its plans with respect to State Route 528, such that the Department now believes that it is not feasible to construct freight rail within the State Route 528 right-of-way. Based on the letter it recently received from the Department of Transportation and the available drawings of the proposed reconstruction of State Route 528, on top of the high estimated costs of the alignment, CPA believes that this alternative should be excluded from detailed consideration in the environmental review.

5. According to CPA's May 22, 2015, supplemental response to OEA's Information Request No. 2, question 2, CPA is considering a runaround track that could be constructed to move locomotives from the north to the south end of the train in order to pull the train onto Florida East Coast Railway's southbound mainline. Please provide the potential location(s) of the runaround track.

Response: CPA does not now consider any version of the SR 528 alignment to be a reasonable alternative. When CPA submitted its May 22, 2015 supplemental response providing information about the SR 528 alignment, the alignment had two variations, one in which a majority of the new rail was in the center median and a second in which a majority of the new rail was on the north shoulder of State Route 528. The response also described three possible means of connecting the new rail with the Florida East Coast (FEC) mainline. One of those three connections would move the train from the new track that paralleled SR 528 via a merging section to a north-south oriented siding that was parallel and adjacent to the FEC mainline. Included in the conceptual design was a

runaround track to move the locomotive from the north end of the train to the south end if it were a southbound train. CPA has not developed a precise location for that runaround track.

6. During the April 30, 2015 CPA Community Meeting, CPA officials indicated that a rail route in the SR-528 corridor could also have passenger rail service capabilities. If constructed, does CPA anticipate that a rail alternative in the SR-528 corridor would support passenger service in addition to cargo? If yes, provide more information regarding the passenger rail in the corridor. For example, how many passenger trains would be anticipated and what would be their frequency of service?

Response: As noted above, CPA believes that the State Route 528 alignment is not a reasonable alternative for purposes of environmental review. In any event, CPA does not anticipate the development of passenger rail in this corridor.

7. Does CPA anticipate the need to construct, modify, reconfigure, or expand any rail yards to support the operation of a SR-528 alignment?

Response: As noted above, CPA believes that the State Route 528 alignment is no longer a reasonable alternative for purposes of environmental review. As discussed in response to question 3, CPA anticipates that it will construct a yard to support rail operations at CPA.



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May 26, 2017

Mr. James Dubea
Deputy Executive Director
Canaveral Port Authority
445 Challenger Rd, Suite 301
Cape Canaveral, FL 32940

Re: SCTPO Letter – SR 528 Freight Rail Alignment

Dear Mr. Dubea:

The Space Coast Transportation Planning Organization concurs with the Florida Department of Transportation's conclusion that a freight rail alignment along SR 528 would not be feasible.

We are aware and have been involved in both SR 528 and 401 evaluations for expansion and possible replacement of bridge structures in the future. SR 528 is currently being designed for a future six-laning and a multi-use trail along the northern shoulder of the roadway beginning at US1. Also SR 401 is considered a Strategic Intermodal System connector and is currently being evaluated by FDOT for possible widening and bridge replacement. It does not seem feasible that freight rail alignment along either of these roadways west of Port Canaveral would fit within FDOT right of way while providing for existing and planned use. Therefore, a rail route through the Cape Canaveral AFS appears the most feasible alignment.

The Space Coast TPO has a strong partnership with the Canaveral Port Authority as well as the Florida Department of Transportation and we look forward to future coordination on these very important projects in Brevard County.

Sincerely,

Bob Kamm, Executive Director
Space Coast TPO



FROM EAST OF SR 524 (INDUSTRY ROAD) TO EAST OF SR 3
FROM EAST OF SR 3 TO PORT CANAVERAL INTERCHANGE



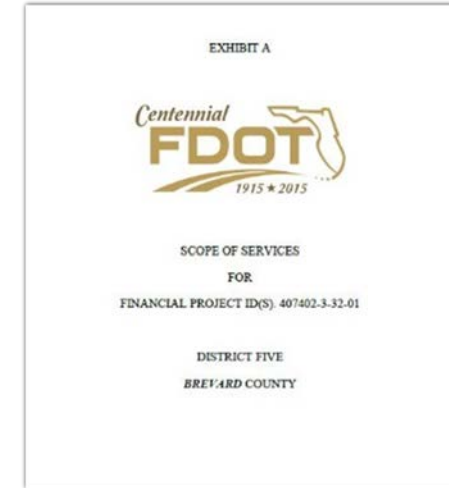
FMNs:

40740233201

40740243201

DESIGN OBJECTIVES

- Add capacity to SR 528 via Express lanes
- Replace all bridges except EB Indian River Bridge
- Correct deficiencies and safety issues
- Establish additional right-of-way (R/W) needs
- Develop R/W maps
- Engineer a permitable Stormwater Management System

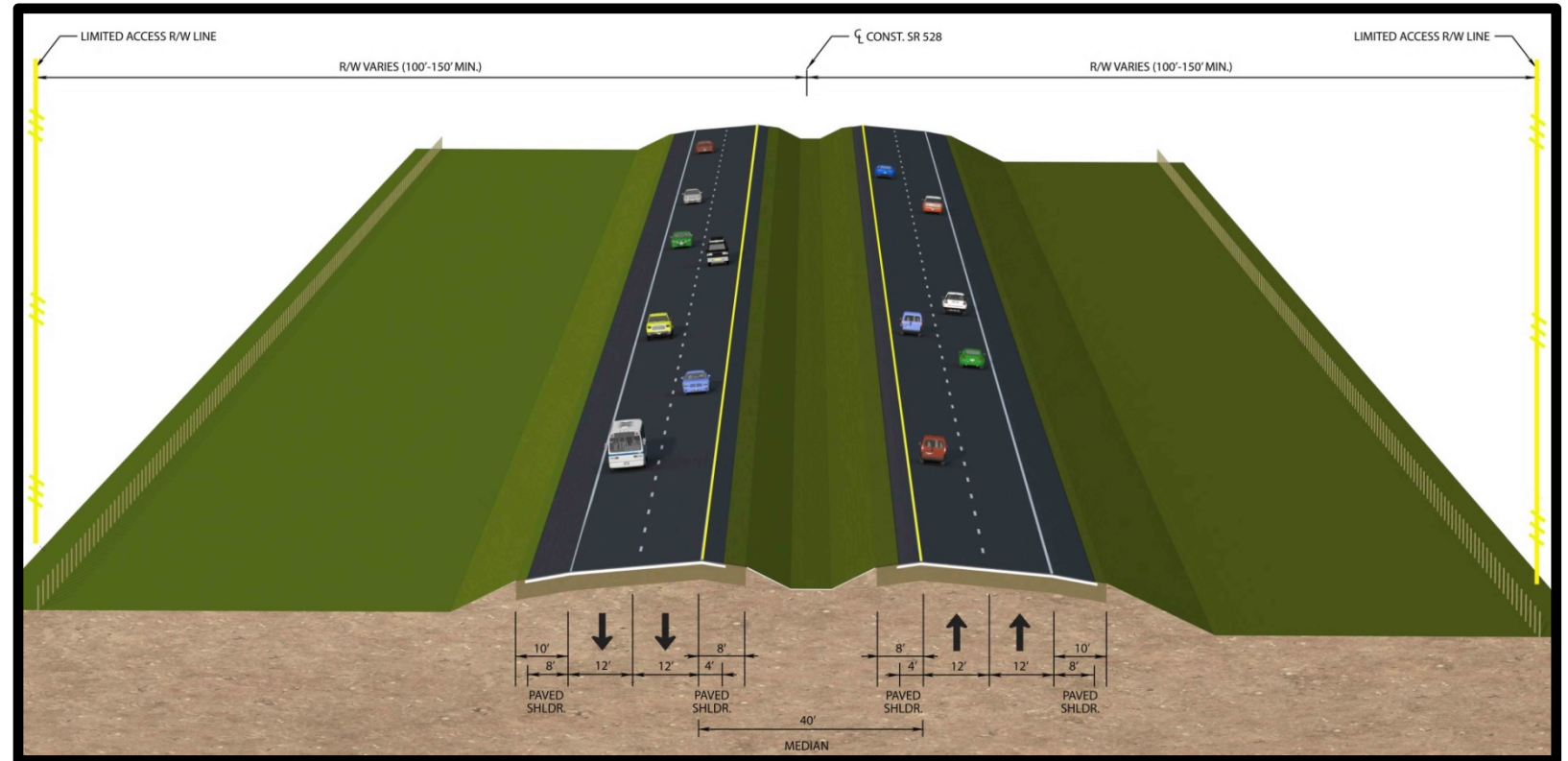


EXISTING TYPICAL SECTION



Existing Typical Section

- > 4 Lane Divided Roadway
- > Urban Principal Arterial - Expressway
- > Posted Speed of 60 mph
- > 40 foot Median
- > Paved Inside and Outside Shoulders



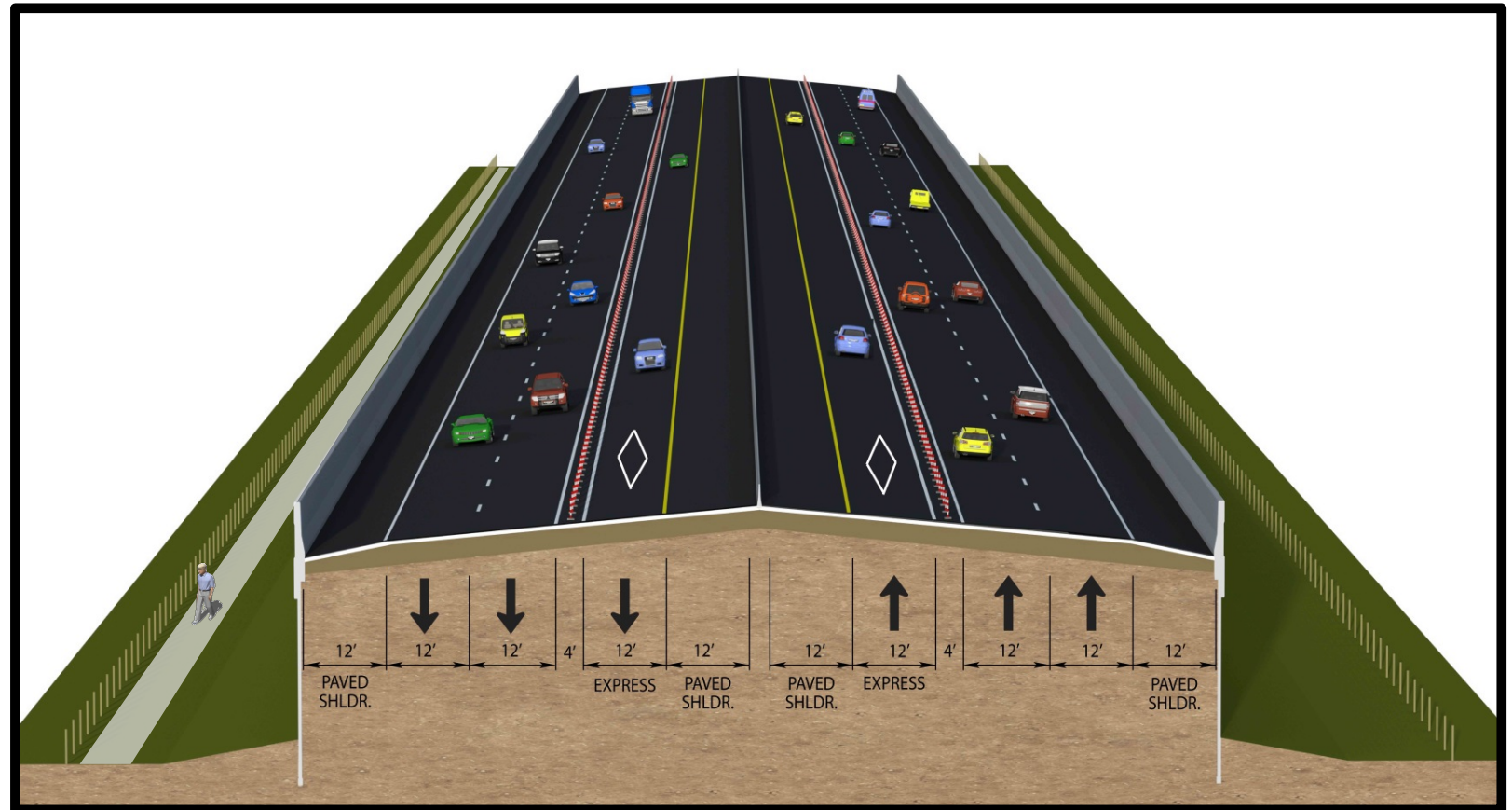
PROPOSED TYPICAL SECTION



⚠ Proposed Typical Section - Reconstruction

- > Median Barrier
- > 12 Foot Inside Shoulder, 12 Foot Express Lane, and 4' Buffer in Each Direction
- > Two 12 Foot General Use Lanes in Each Direction
- > 10 Foot Paved, 12 Foot Total Outside Shoulders

⚠ A Majority of the Project will Require Reconstruction

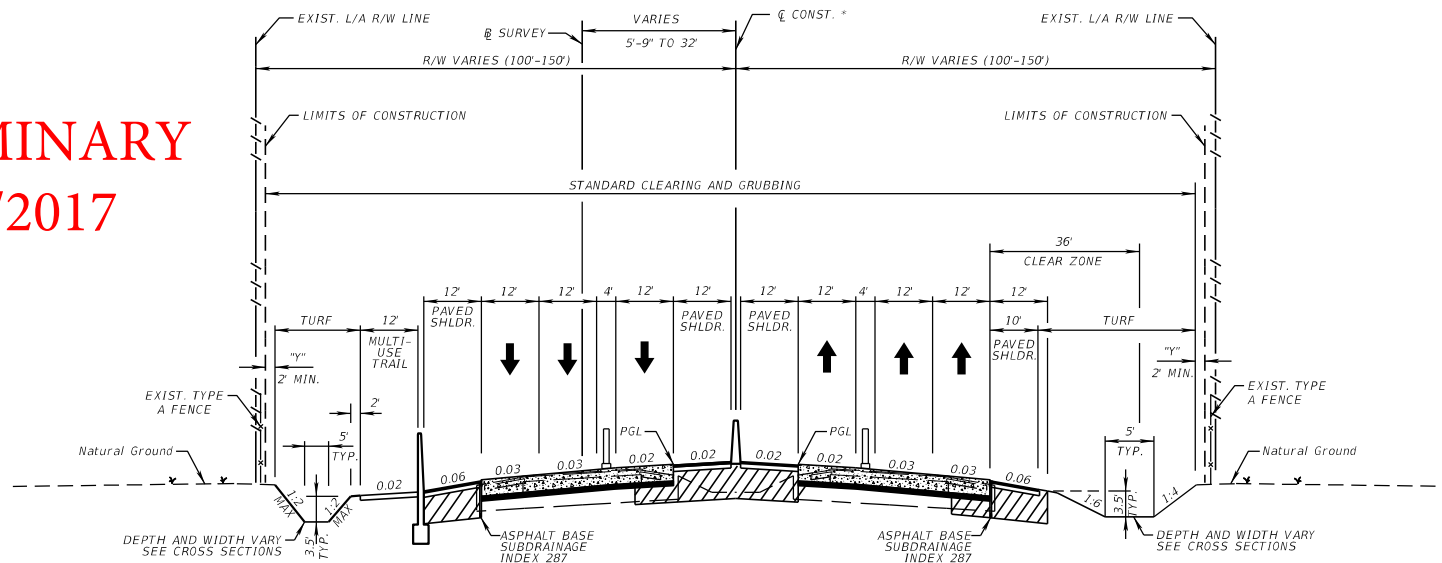


PROJECT IDENTIFICATION

FINANCIAL PROJECT ID	407402-4-52-01	FEDERAL AID PROJECT NO.	407402-4-52-01	COUNTY NAME	BREVARD
SECTION NO.	70070	ROAD DESIGNATION	SR 528	LIMITS/MILEPOST	
PROJECT DESCRIPTION	SR 528 FROM EAST OF SR 3 TO PORT CANAVERAL INTERCHANGE				

PROPOSED ROADWAY TYPICAL SECTION

PRELIMINARY
1/18/2017



TYPICAL SECTION
SR 528 RECONSTRUCTION

APPROVED BY: STEPHEN W. DICKISON, P.E.

FDOT CONCURRENCE

FHWA CONCURRENCE

Engineer Of Record Signature
and Date

Printed Name
FD0T District Design Engineer

Date _____

Printed Name _____
FHWA Transportation Engineer _____

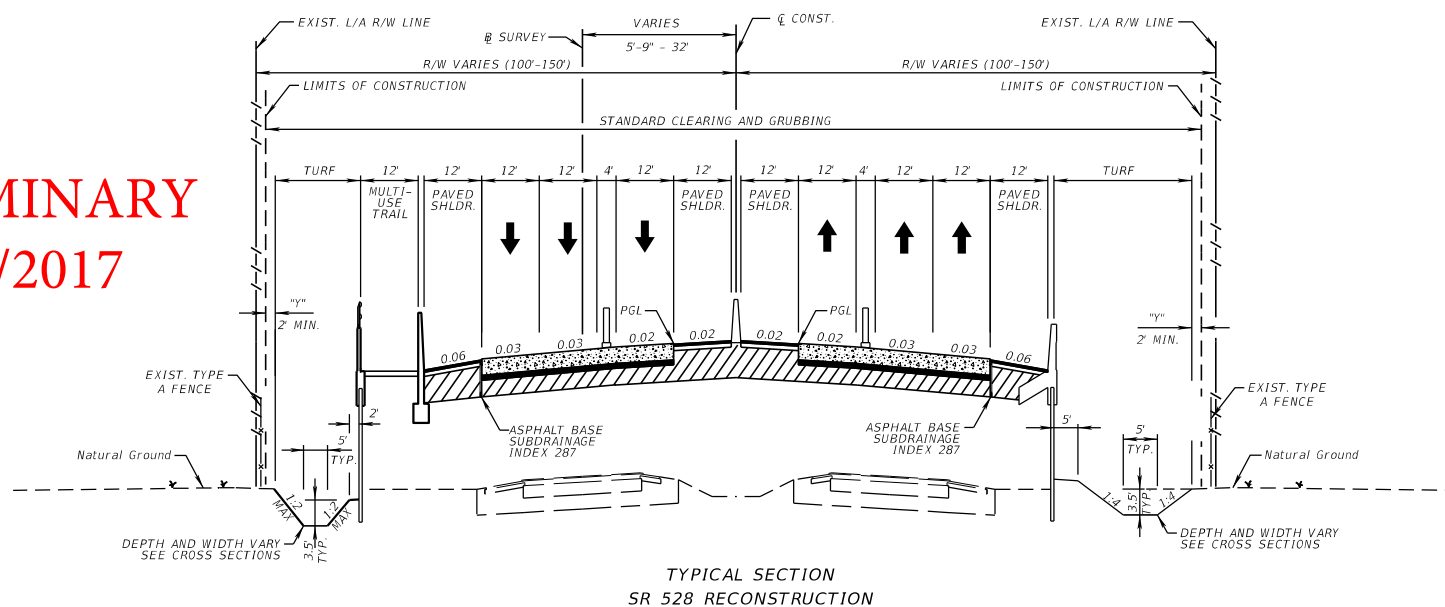
Date _____

PROJECT IDENTIFICATION

FINANCIAL PROJECT ID 407402-4-52-01 FEDERAL AID PROJECT NO. 407402-4-52-01 COUNTY NAME BREVARD
 SECTION NO. 70070 ROAD DESIGNATION SR 528 LIMITS/MILEPOST _____
 PROJECT DESCRIPTION SR 528 FROM EAST OF SR 3 TO PORT CANAVERAL INTERCHANGE

PROPOSED ROADWAY TYPICAL SECTION

PRELIMINARY
1/18/2017



APPROVED BY: STEPHEN W. DICKISON, P.E.

FDOT CONCURRENCE

FHWA CONCURRENCE

Engineer Of Record Signature
and Date

Printed Name
FDOT District Design Engineer

Date

Printed Name
FHWA Transportation Engineer

Date