

August 5<sup>th</sup>, 2022

Via Email

Florida Department of Environmental Protection

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Re: I-95/Pioneer Trail Interchange Objection Comments

Permit Application No. 416255-001-SFI

Dear Ms. Lowenstein and FDEP,

These comments are submitted on behalf of the undersigned organizations and individuals, and complement comments already sent to the FDEP over previous months and years.

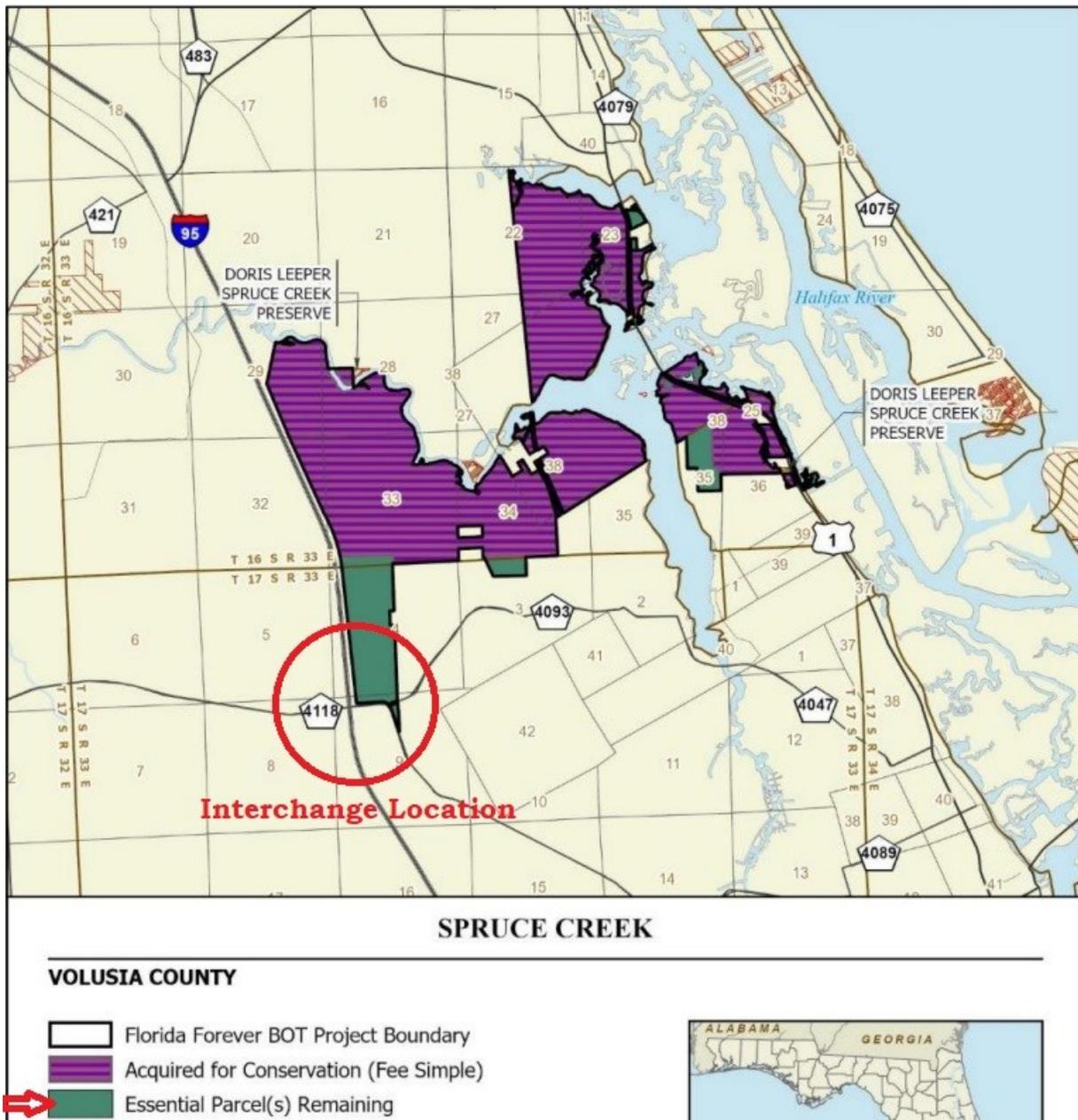
We believe that the proposed highway interchange at Interstate-95 and Pioneer Trail in New Smyrna Beach is **not in the public's best interest**, and that the "No Build" alternative is the one that should be implemented. We strongly recommend **denial** of Permit Application No. 416255-001-SFI.

Our concerns stem mainly from cost, reduction in quality of life, worsening of traffic, increased flood risk, and most importantly, negative impacts to the environment that such a development would bring. During the most recent public comment period, the FDOT received *at least* **375 comments in opposition to only 49 in favor**, but yet the FDOT proceeded anyway, contrary to the public's wishes. It is unclear why.

The area on which the interchange is being proposed is land that is critical to the health and well-being of the Doris Leeper Spruce Creek Preserve (DLSCP, the Preserve) and Spruce Creek itself, an Outstanding Florida Waterbody (OFW). Leaving land undeveloped allows for more plant and animal species, including endangered and/or threatened species like the scrub jay and gopher tortoise, to have habitat to survive. Wetlands and forests themselves serve important ecological functions that are of benefit to people and nature alike, cleaning our air, water, and soil. Manatees also reside in Spruce Creek, so any negative affects to the area nearby could drastically hurt this imperiled species.

Part of the land where this construction is potentially slated to occur is on land that has been (and still is) desired to be purchased for conservation by state and/or local government agencies [see: [https://floridadep.gov/sites/default/files/FLDEP\\_DSL\\_OES\\_FF\\_BOT\\_SpruceCreek.pdf](https://floridadep.gov/sites/default/files/FLDEP_DSL_OES_FF_BOT_SpruceCreek.pdf)]. The 2021 Florida Forever Five-Year Plan for Spruce Creek calls that piece an “**essential parcel**,” and places a cost of the remaining 366 acres at just ~\$6 million, which is less than 10% of the total Interchange budget of \$80+ million.

 2021 Florida Forever Five-Year Plan || Spruce Creek



That northeast parcel (relative to the interchange project) is therefore rated very high in terms of land acquisition value, both for the need to preserve filtration lands within the Spruce Creek waterbasin (as not much remains in an undeveloped state), and for the need and desire to expand the boundaries of the DLSCP. Any nature conservation area becomes more effective in its ability to maintain a healthy and sustainable ecosystem the larger it is, and for many conservation areas, the entire purchase and/or reservation occurs stepwise over many years. It is clear that the public has always desired to add more land into the DLSCP (as additional land purchases over the years have shown), but this process is nowhere near done, and this critical land where the interchange is planned **should not be built on** in order to allow the public to amass the funds and time necessary to add it to the Preserve, with special acknowledgement to the recently passed Volusia Forever ballot initiative in 2020 which could do just that.

Also, in 2014, Florida voters overwhelmingly passed a Constitutional Amendment which demanded more acquisition of conservation areas to protect our land and water. However, this desire of the public has been delayed or denied by improper (or lack) of implementation of the Amendment. As of 2022, legal challenges exist to try to force the state to fulfill the voters' wishes and set aside more money for land acquisitions; and after many years, the state is finally beginning to address nature corridors, allocating millions of dollars to that idea in this year's budget. But in order for those funds or the current challenges to have a chance at success, there needs to be land still available for purchase, so prematurely building an interchange on such land that would/should eventually be protected as conservation in the future renders the will of the people moot.

Additionally, we feel that the Florida Department of Environmental Protection has failed in its duties to protect Spruce Creek, as mandated by state and federal laws (like the Clean Water Act). OFWs like Spruce Creek necessitate special protections under Florida law that are generally not being followed due to the continued agnosticism of the state towards its study and protection. Specifically, we feel the FDEP (and jointly, water management district) is in **violation of its duties** by not creating or even trying to create a **Basin Management Action Plan (BMAP) for Spruce Creek**. In 2008, when a Total Maximum Daily Load (TMDL) study was concluded for Spruce Creek, several nutrient impairments were found. That TMDL report requested that a BMAP be implemented within the following year, but that was never done. Since then, no additional funding has been provided to conduct new TMDL studies, and **Spruce Creek remains impaired**.

BMAPs exist for the purpose of healing and protecting impaired waterways, and often implement rules such as limits on construction in the basin and land purchases in critical watershed areas. **Since a BMAP does not exist for the Spruce Creek waterbasin, it is our view that *any* development in the area is reckless and improvident** until such time as one is established. Otherwise, the BMAPs potential recommendations to save this land will be rendered useless.

Land cannot be protected once it is destroyed by construction.

Additionally, whether or not this interchange is built, we request that significant consideration be given to the installation of a **Nature Overpass** (or underpass) at or near this location. As mentioned previously, the DLSCP houses creatures which need adequate space to roam and forage. Providing an animal crossing bridge over I-95 which connects the Preserve with other undeveloped land to the south and west will go a long way in maintaining the biodiversity which the Preserve seeks to support. A couple animal corridor connection alternatives also exist, including saving a larger strip of land along Pioneer Trail or I-95, or possibly having an “underpass tunnel” instead, as has been implemented in other parts of Florida. Yet no serious consideration was given to these ideas in any of the “build” alternatives as presented.

The key is that without proper consideration of design, **this interchange could destroy the last nature corridor connecting Doris Leeper Spruce Creek Preserve with the rest of the state**. It would mean a slow death to the Preserve, and we don't wish to see that happen. Please make sure a “nature corridor” is maintained, either through land purchasing, conservation easements, bridges, elevated roads, or other mechanisms to protect this sensitive area.

We disagree with the arguments of proponents of the interchange which state that this will benefit the public economically. With a \$80,000,000+ price tag, the public is already in the hole if it is built. Can you please clarify why these estimates are so high, and why the right-of-way purchasing is over \$30 million? In any case, no amount of economic benefit for a select few can counter the environmental damage that would be permanent to all. Quality of health and life for local people will be damaged by more traffic, noise, flooding, and pollution.

We are also strongly opposed to the “DRIs” mentioned as reasons for the interchange, as they also reduce our quality of life, and disagree that somehow local governments want this project. How was this assessed, and when was it last evaluated? What proof is there that current officials support this? Most elected leaders or candidates we speak to also oppose this terrible project, as noted by a

recent press release by Volusia County Chair Jeff Brower, who is **calling for an investigation** into FDOT's inappropriate use of a "Categorical Exclusion."

<https://www.wesh.com/article/volusia-county-environmental-impact-i-95-interchange/40734175>

<https://www.news-journalonline.com/story/business/real-estate/2022/07/27/brower-demands-probe-of-proposed-pioneer-trail-interchange-project/10166954002/>

A massive project such as this can in no reasonable sense be considered to have no impact on the environment, and therefore NEPA and other federal rules must apply. A comprehensive **Environmental Impact Statement** must be done.

Looking at the bigger picture, we worry that land near to the interchange project will face additional, secondary development pressures as a result of this interchange. These areas are not suitable for human habitation, are low-lying, are distant from any city center, and requires excessive drainage and fill to build on. There is a reason they have not been built on already, despite being discussed (and denied) for over 30 years. Additionally, the major reason for the economic recession from over a decade ago was exactly what the proposed "benefit" of this project would be, namely, more speculative home building, spurred on by improper governmental incentives and lax regulation.

We believe it is inappropriate for the FDOT to claim a "Categorical Exclusion" from federal environmental rules for a project which is slated to directly destroy dozens of acres of pristine wetlands. From our understanding of the permitting process, regulations promulgated under the National Environmental Policy Act (NEPA) provide that the permitting agency shall consider all effects, both direct and indirect. 40 C.F.R. 1508.8. All cumulative impacts shall also be considered. 40 C.F.R. 1508.7. In the permit applications, it does not appear that an analysis of all direct/indirect effects and cumulative impacts of this project was done. These include, but are not limited to:

- Fragmentation of the landscape
- Impacts to floodplain
- Increases in human population
- Impacts to the demand for municipal services
- Impacts to wildlife, including federally listed species
- Increased demand for water
- Creation of sprawl
- Impacts to water quality and aquifer recharge

On the state level, according to St. Johns River Water Management District Policy:

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## **2.0 Criteria for Evaluation – Reasonable Assurance Revised 6/1/18**

Except as provided in section 1.2.3 of this Volume, an applicant for an individual permit must provide reasonable assurance that the proposed activities will meet the criteria in rules 62-330.301 and 62-330.302, F.A.C. More specifically, under 62-330.301, F.A.C., an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal or abandonment of a project within SJRWMD:

- (a) Will not cause adverse water quantity impacts to receiving waters and adjacent lands (62-330.301(1)(a), F.A.C.);
- (b) Will not cause adverse flooding to on-site or off-site property (62-330.301(1)(b), F.A.C.);
- (c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities (62-330.301(1)(c), F.A.C.);
- (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters (62-330.301(1)(d), F.A.C.);
- (e) Will not adversely affect the quality of receiving waters such that the water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., (incorporated by reference in 40C-4.091(1)(c)) including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated (62-330.301(1)(e), F.A.C.);
- (f) Will not cause adverse secondary impacts to the water resources (62-330.301(1)(f), F.A.C.);
- (g) Will not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to section 373.042, F.S., (62-330.301(1)(g), F.A.C.);
- (h) Will not cause adverse impacts to a Work of the District established pursuant to Section 373.086, F.S. (62-330.301(1)(h), F.A.C.);

(i) Will be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed (62- 330.301(1)(i), F.A.C.);

(j) Will be conducted by a person with the financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued (62- 330.301(1)(j), F.A.C.); and

(k) Will comply with the applicable special basin or geographic area criteria in Chapter 40C-41, F.A.C. (62-330.301(1)(k), F.A.C.);

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We believe **several of the items above are being violated**, especially since a federal “exclusion” from NEPA and other rules has been erroneously applied. When dozens of wetlands are directly impacted, and hundreds more indirectly, it seems wrong to bypass laws whose purpose is to protect our most vulnerable areas.

We therefore request that you **put an immediate halt to the interchange project**. In addition, we wish to be notified of any discussion, meeting, application, or approval of permits for this project on any level, including federal, and including any supplemental modifications. We are happy to work with you to review the environmental impacts of the project designs, and would like to assist in whatever way needed. For all of the reasons mentioned in this letter, we would like to **request a public meeting** to discuss further.

Finally, if it is determined that an interchange must be done, we request that you choose the design that impacts the fewest wetlands and forests, **especially in the northeast quadrant where the Preserve is located**. Current plans appear to show the FDOT building developer’s roads for them, as well as a new roundabout, which not only is unrelated to the interchange project and was never presented to the public or federal agencies, but goes against goals of minimization of impacts. Please note that by its establishment, the Community Development District in that area is **responsible for constructing its own infrastructure**, not the general tax-payers. This requirement should prevent the FDOT from including any non-interchange-related addendums to the project.

As a final supplement, we are herein attaching our **Application Response Rebuttal** which covers many of the items listed in FDEP’s State 404 Program Public Notice for this Project (No. 416255-001-SFI) on a point by point basis.

Thank you for your consideration of these comments and we look forward to hearing from you soon.