

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

WWALS WATERSHED COALITION, INC.,

Petitioners,

vs.

OGC CASE NO. 15-0468

**SABAL TRAIL TRANSMISSION, LLC, and
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,**

Respondents.

ORDER DISMISSING PETITION WITH LEAVE TO AMEND

On August 7, 2015, the Petitioner, WWALS Watershed Coalition, Inc. (WWALS), filed its petition for administrative hearing (Petition) regarding the Department of Environmental Protection's (Department) Consolidated Notice of Intent to Issue Environmental Resource Permit and Easement to Use Sovereign Submerged Lands¹ (Notice of Intent) issued to the Respondent Sabal Trail Transmission, LLC. (Sabal Trail). Sabal Trail proposes to construct and operate a natural gas transmission pipeline and related structures (File No. 0328333-001). The Petition was filed in response to the Department's July 28, Order Denying Request for Extension of Time to File Petition for Hearing and Dismissing Petition for Administrative Hearing (Order). As

¹ Subsection 253.002(1), Florida Statutes provides that "[t]he Department of Environmental Protection shall perform all staff duties and functions related to the acquisition, administration, and disposition of state lands, title to which is or will be vested in the Board of Trustees of the Internal Improvement Trust Fund. . . . Unless expressly prohibited by law, the board of trustees may delegate to the department any statutory duty or obligation relating to the acquisition, administration, or disposition of lands, title to which is or will be vested in the board of trustees."

discussed below, the Department must dismiss the Petition because the allegations do not demonstrate standing and are insufficient.

Lack of standing

The Petition's allegations do not demonstrate statutory standing under subsection 403.412(6), Florida Statutes, or associational standing under applicable case law. The allegations in the Petition cannot demonstrate statutory standing under subsection 403.412(6), which only applies to Florida nonprofit corporations. The Petition alleges that WWALS is a Georgia nonprofit corporation. See § 403.412(6), Fla. Stat. (2015).

In addition, WWALS must meet the test for standing of an environmental association set forth in Friends of the Everglades Inc., v. Board of Trustees of the Internal Improvement Trust Fund, 595 So. 2d 186 (Fla. 1st DCA 1992). In Friends of the Everglades, the Court held that an environmental organization must meet both the two-pronged test for standing of Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. den., 415 So. 2d 1359 (Fla. 1982), and the test for standing of associations under Florida Home Builders Association v. Department of Labor and Employment Security, 412 So. 2d 351 (Fla. 1982).

For associational standing, WWALS must show (1) that a substantial number of its members ... are substantially affected by the challenged agency action, (2) that the agency action it seeks to challenge is within the association's general scope of interest and activity, and (3) that the relief it requests is of the type appropriate for such an association to receive on behalf of its members. See Fla. Home Builders Ass'n v. Dep't of Labor and Employment Sec., 412 So. 2d 351, 353-54 (Fla. 1982); St. Johns Riverkeeper, Inc. v. St. Johns River Water Mgmt. Dist., 54 So.

3d 1051, 1054 (Fla. 5th DCA 2011). The Petition failed to quantify the number of WWALS members that use the lands or waters that might be affected by the proposed activities described in the Department's Notice of Intent. The Petition names a single member, "a property owner along the Suwannee River" and alleges that he "will be directly affected by the [Horizontal Directional Drill] drilling and pipeline installation." However, a single member is not a "substantial number" of members in the context of an environmental organization's total membership. See Conservation Alliance of St. Lucie Cty., Inc. v. Ft. Pierce Utilities Authority, Case No. 09-1588 at ¶ 100 (Fla. DOAH May 24, 2013; Fla. DEP July 8, 2013).

In order to be "substantially affected" WWALS must also demonstrate that its members (1) will suffer injury in fact which is of sufficient immediacy to entitle them to a hearing under sections 120.569 and 120.57, Florida Statutes, and Rule 28-106.201, Florida Administrative Code, and (2) the injury is of a type or nature which the administrative proceeding is designed to protect. See Agrico Chem. Co. v. Dep't of Env'tl. Reg. 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The Petition's allegations do not establish that members of WWALS use the lands or waters in the immediate vicinity of the natural gas pipeline construction and operation. See e.g., Conservation Alliance of St. Lucie Cty., Inc., et al. v. Allied Universal Corp., Case No. 10-3807 (Fla. DOAH May 24, 2013; Fla. DEP Aug. 21, 2013). Because the Petition does not contain the requisite allegations, it must be dismissed. See Agrico Chem. Co., 406 So. 2d at 482; Village Park v. Dep't of Bus. Reg., 506 So. 2d 426, 433 (Fla. 1st DCA 1987) (reflecting that the petition's allegations failed to demonstrate actual injury-in-fact or a real and immediate threat of direct injury); see also South Broward Hospital Dist. v. Agency for Health Care Admin., 141 So. 3d 678 (Fla. 1st DCA 2014).

Further, the Petition's allegations do not demonstrate standing to challenge the Department's intent to grant an easement to use sovereign submerged lands. WWALS makes conclusory allegations that the proposed activity will affect "the riparian rights of adjacent property owners," and that the "HDD [o]perations through karst limestone at river crossings have . . . potentially catastrophic [consequences]." However, the Petition does not contain any allegations that either WWALS, or a substantial number of its members, are upland riparian property owners, adjacent to the sovereign submerged lands easement where river crossings are proposed. See Fla. Admin. Code R. 18-21.004(3)(c); see also Bd. of Comm'ns of Jupiter Inlet Dist. v. Thibadeau, 956 So. 2d 529 (Fla. 4th DCA 2007); Menorah Manor, Inc. v. Agency for Health Care Admin. 908 So. 2d 1100, 1104 (Fla. 1st DCA 2005) (conclusory allegations of speculative future harm are insufficient to demonstrate that a party's substantial interest will be affected).

Lack of sufficient allegations regarding disputed issues of material fact

The Petition contains conclusory allegations that are not material facts in this type of proceeding. Brookwood Extended Care Center of Homestead, LLP v. Agency for Healthcare Administration, 870 So. 2d 834 (Fla. 3d DCA 2003), elucidates the requirement of identifying those material facts that are in dispute for persons requesting an administrative hearing. In Brookwood, the court held that, "in a proceeding governed by Rule 28-106.201, the burden is now on the person or entity petitioning for an administrative hearing . . . to identify the facts that are in dispute." Id. at 840.

The Petition alleges that the proposed activity "clearly is not in the public interest of the citizens of Hamilton and Suwannee Counties" However, the facts supporting this allegation

relate to the proposed activity's effect on property values, insurance rates and the economic benefits of eco-tourism. It is not appropriate for the Department to consider non-environmental impacts to the property of others in the public interest analysis. See, e.g., Miller v. Dep't of Env'tl. Reg., 504 So. 2d 1325, 1327 (Fla. 1st DCA 1987); Mid-Chattahoochee River Users v. Fla. Dep't of Env'tl. Prot., 948 So. 2d 794, 797 (Fla. 1st DCA 2006), rev. den., 966 So. 2d 967 (Fla. 2007).

In addition, the Petition contains conclusory assertions questioning reasonable assurances provided by Sabal Trail. However, the conclusory assertions are unsupported by sufficient factual allegations and contain claims of speculative future harm. See Fla. Admin. Code R. 28-106.201(d); Menorah Manor, Inc. v. Agency for Health Care Admin. 908 So. 2d 1100, 1104 (Fla. 1st DCA 2005) (conclusory allegations of speculative future harm are insufficient to demonstrate that a party's substantial interest will be affected).

Lack of allegations that warrant reversal or modification of the Department's decision

WWALS' allegation regarding a conflict of interest under subsection 112.311(5), Florida Statutes, is not material in this proceeding and does not warrant reversal or modification of the Department's decision. Such a claim falls outside the scope of the Department's jurisdiction in this proceeding. See § 112.320, Fla. Stat. (2015).

Also, the Petition contains conclusory allegations regarding public interest, reasonable assurance, and adverse individual, secondary or cumulative impacts, which are not supported by specific facts. See Fla. Admin. Code R. 28-106.201(2)(e); Menorah Manor, Inc. v. Agency for Health Care Admin. 908 So. 2d 1100, 1104 (Fla. 1st DCA 2005) (conclusory allegations of speculative future harm are insufficient to demonstrate that a party's substantial interest will be affected).

In view of the above, the Petition must be dismissed as required by Section 120.569(2)(c), Florida Statutes. See Brookwood Extended Care Center of Homestead, LLP v. Agency for Healthcare Admin., 870 So. 2d 834, 841 (Fla. 3d DCA 2003).

IT IS THEREFORE ORDERED:

A. The Petition is DISMISSED, without prejudice, and the Petitioner is granted leave to file an amended petition providing the additional information listed above. Any amended petition must comply with all the requirements of Rule 28-106.201(2), Florida Administrative Code.

B. Any amended petition must be filed with the Agency Clerk, Agency_Clerk@dep.state.fl.us, Department of Environmental Protection, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within fourteen (14) days after the date set forth in the certificate of service on the last page of this order.

C. This order constitutes final agency action of the Department, unless a timely amended petition is filed in compliance with this order.

Any party to this proceeding has the right to seek judicial review of this order under Section 120.68, Florida Statutes, by filing a notice of appeal under Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fee with the

appropriate district court of appeal. The notice of appeal must be filed within thirty days after the date this order is filed with the clerk of the Department.

DONE AND ORDERED this 14th day of August, 2015, in Tallahassee, Florida.

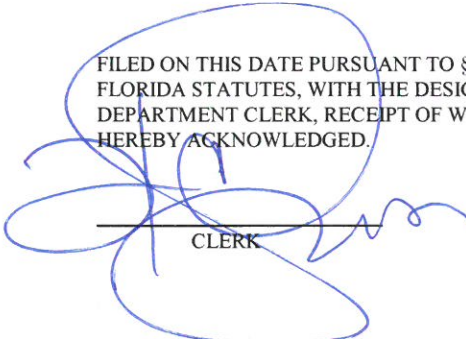
STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.



CLERK

8/14/15
DATE

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was provided by email only to Chris and Deanna Mericle, 7712 SW 32nd Lane, Jasper, Florida 32052, at mericle.deanna@gmail.com and cjmericle@gmail.com; John S. Quarterman, President, WWALS Watershed Coalition, Inc., P.O. Box 88, Hahira, GA 31632, at wwalswatershed@gmail.com; and Sabal Trail Transmission, LLC, c/o Gus McLachlan, 400 Colonial Center Pkwy, Suite 300, Lake Mary, Florida, at gamclachlan@spectraenergy.com on this 14th day of August, 2015.



FRANCINE M. FFOLKES
Administrative Law Counsel