

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WWALS Watershed Coalition, Inc.,

Petitioner,

vs.

DOAH Case No.: 15-4975

OGC Case No.: 15-0468

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

Respondents.

NOTICE OF FILING PROPOSED RECOMMENDED ORDER

Respondent, Sabal Trail Transmission, LLC, ("Sabal Trail"), by and through undersigned counsel, hereby notifies all parties of the filing of its Proposed Recommended Order on this 16th day of November, 2015.

HOPPING, GREEN & SAMS, P.A.

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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing was provided by electronic mail to the following on the 16th day of November, 2015:

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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WWALS WATERSHED COALITION, INC,

Petitioner,

vs.

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

DOAH Case No. 15-4975

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Respondents.

RESPONDENT SABAL TRAIL TRANSMISSION, LLC'S
PROPOSED RECOMMENDED ORDER

The final hearing on this matter was held on October 19-22, 2015 at the Hamilton County Courthouse, Board of Commissioners Meeting Room, 207 Northeast First Street, Jasper, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

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STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Sabal Trail Transmission, LLC ("Sabal Trail") is entitled to an individual environmental resource permit under chapter 373, Florida Statutes (2015), and an easement to use sovereign submerged lands under chapter 253, Florida Statutes (collectively the "Permit"), from the Department of Environmental Protection ("Department") for construction of an interstate natural gas transmission pipeline.

PRELIMINARY STATEMENT

On July 10, 2015, the Department published its Consolidated Notice of Intent to Issue Environmental Resource Permit and Easement to Use Sovereign Submerged Lands with regard to Permit No. 0328333-001 for the Sabal Trail Natural Gas Pipeline (the "Project").

Petitioner WWALS Watershed Coalition, Inc. ("WWALS") filed a Petition for Administrative Hearing ("Petition") on August 7, 2015, challenging the Department's proposed issuance of Permit No. 0328333-001 to Sabal Trail for the Project. On August 14,

2015, the Department issued an Order Dismissing Petition with Leave to Amend because the Petition's allegations did not demonstrate standing and were otherwise insufficient.

On August 28, 2015, WWALS filed a second Petition for Administrative Hearing ("Amended Petition") again challenging the Department's proposed issuance of a Permit to Sabal Trail. The Department entered an order striking portions of the Amended Petition that were irrelevant or immaterial to this proceeding, and referred the Amended Petition to DOAH on September 3, 2015, to conduct an evidentiary hearing.

On September 21, 2015, Sabal Trail filed a Motion for Summary Hearing Pursuant to section 403.973(14)(b), Fla. Stat. (2014), which was granted by Order dated September 28, 2015. On September 23, 2015, Sabal Trail also filed with DOAH a Motion in Limine and Motion to Strike additional elements of the Amended Petition that it argued were irrelevant or beyond the scope of this proceeding. On October 2, 2015, the Administrative Law Judge granted Sabal Trail's motion, and subsequently on October 7, 2015 issued an order granting WWALS leave to file a second amended petition.

On October 9, 2015, WWALS timely filed a second amended petition ("Second Amended Petition"), and on October 12, 2015, Sabal Trail again filed a Motion to Strike portions of the

Second Amended Petition it argued were irrelevant and immaterial. This motion was granted in part on October 15, 2015.

At hearing, WWALS presented the testimony of: Dennis Price, an expert in geology; Dr. Donald M. Thieme, an expert in geomorphology; David Shields, WWALS member; Joe McClung, WWALS member; Thomas Edwards, WWALS member and landowner;¹ Deanna Mericle, WWALS member; Christopher Mericle, WWALS member; Donna Ellison, WWALS member and landowner; Wayne Ellison, WWALS member and landowner; Merrilee Malwitz-Jipson, WWALS member; Dana Stevens, WWALS member and landowner; Debra Johnson, WWALS member; Richard Gamble, Suwannee County Commissioner; Willard Randall, WWALS member; Lori McCraney, WWALS member; Carlos Herd, Director of the Water Supply Division for the Suwannee River Water Management District; Dale Jenkins, Bureau Chief for the Bureau of Project Management with the Saint Johns River Water Management District; Guy Means, Florida Geological Survey; Lisa Prather, environmental consultant for Department of Environmental Protection Central District. Petitioner's Exhibits 1 through 12 were admitted into evidence.

Sabal Trail presented the testimony of: Jim Abrosino, PhD, an expert in archeology; David Dickson, senior consultant for Cardno, Inc. and part of the Permit team responsible for putting

¹ Mr. Edwards testified that he is the principal member of TSE Plantation, LLC, which owns the property near the Suwannee River. [Edwards, V2, p. 171-73.] Both Mr. Edwards and TSE Plantation, LLC, are members of WWALS. [Id.]

together the application; David Shammo, corporate representative of Sabal Trail Transmission, LLC, and Spectra Energy Corp; Marty Bass, an expert in pipeline construction management; Gregg Jones, an expert in geology and hydrogeology; and Alan K. Lambeth, P.E., an expert in natural gas pipeline design and operations. Sabal Trail's Exhibits ("ST Exhibits") 1 through 55 were admitted into evidence.

The Department presented the testimony of: Lisa Prather, environmental consultant for the Department on submerged lands and environmental resource permitting.

Joint Exhibits 1 through 12 were admitted into evidence.

The Transcript of the final hearing was filed with DOAH on November 6, 2015. The parties submitted proposed recommended orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. Petitioner WWALS Watershed Coalition, Inc. ("WWALS") is a Georgia nonprofit corporation and a federal 501(c)(3) educational not for profit organization. WWALS is registered with the Florida Department of State as a Foreign Not For Profit Corporation as authorized on August 26, 2015.

2. Four witnesses testified that they were member of WWALS and that the pipeline would directly affect their

property. [Edwards, V2, p. 119; D. Ellison, V4, p. 379; W. Ellison, V4, p. 383; Stevens, V6, p. 609-610.] Joe Britt McClung testified that he is a member of WWALS and formerly had a deadhead logging business on the Withlacoochee and Suwannee rivers. [McClung, V2, p. 176-177, 181.] Merrillee Malwitz-Jipson, Christopher Mericle, Lorelie McCraney, Debra Jonson, Deanna Mericle testified that they have an interest in the use and enjoyment of the Suwannee River and surrounding area. [Malwitz-Jipson, V3, p. 241-244; C. Mericle, V3, p. 258; McCraney, V6, p. 616-617; Johnson, V6, p. 618; D. Mericle, V6, p. 620.] Their testimony, however, did not identify how the construction or operation of the pipeline will result in an injury they would sustain, except Ms. Malwitz-Jipson's claim that she would suffer a "stigma." [Malwitz-Jipson, V3, p. 241-244.] David Shields testified that he has a farm that he believes would be affected by air pollution from a proposed compressor station proposed to be built near Hildreth. [Shields, V3, p. 282-286].

3. WWALS has at least 26 members in Hamilton and Suwanee counties. [WWALS Exhibit 11.] At the hearing, Deanna Mericle testified that 14 additional people are also members of WWALS and reside in Suwannee and Hamilton Counties. [D. Mericle, V6, p. 622-625.] Thomas Edwards testified that his company, TSE Plantation, LLC, was also a member of WWALS. [Edwards, V2, p.

171.] Dennis Price testified that he is a member of WWALS. [Price, V4, p. 387]. Mr. Price said he hikes, canoes, and kayaks on the Suwannee, Withlacoochee, Ichetucknee, and Alapaha Rivers. [Id.] So WWALS has demonstrated that it has at least 42 members residing or recreating on or near the Suwannee River in Suwannee or Hamilton Counties.

4. Only the 4 members who own property that will be directly affected by the pipeline demonstrated that they would be substantially affected by the proposed project. [Edwards, V2, p. 119; D. Ellison, V4, p. 379; W. Ellison, V4, p. 383; Stevens, V6, p. 609-610.] Those members represent less than 10 percent of WWALS members in the area potentially affected by the project. Three of these members became WWALS' members the week before the hearing and long after the initiation of this litigation. [D. Ellison, V4, p. 381; L. Ellison, V4, p. 385; Stevens, V6, p. 613.] WWALS did not establish its total membership.

5. Sabal Trail Transmission, LLC is a Delaware limited liability company registered to do business in the State of Florida since May 2013.

6. The Department of Environmental Protection is the state agency charged by statute with the responsibility to regulate construction activities in waters of the state. The Department has also been delegated authority from the Board of

Trustees of the Internal Improvement Trust Fund ("Board of Trustees") to process applications for submerged land easements for structures and activities that will preempt the use of sovereign submerged lands.

The Proposed Project

7. Sabal Trail proposes to construct a new interstate natural gas transmission pipeline subject to certification by the Federal Energy Regulatory Commission (Docket No. CP15-17-000). Sabal Trail, which is a joint venture of Spectra Energy Corp, NextEra Energy, and Duke Energy Florida, will be responsible for construction and operation of the pipeline. [Shammo, V1, p. 39-42; Joint Exhibit 12, p. 33-34.]

8. The portion of the proposed pipeline located in Florida commences at the Florida-Georgia line in Hamilton County and crosses over Suwanee, Gilchrist, Alachua, Levy, Citrus, Marion, Sumter, Lake, Polk, Orange, and Osceola Counties. [Joint Exhibit 10, p. 2.] Once constructed, the Project will include 232.75 miles of 36-inch diameter pipeline for the Mainline Route, 13.1 miles of 36-inch diameter pipeline for the Hunters Creek Line, and 21.5 miles of 24-inch diameter pipeline for the Citrus County Line, as well as three compressor stations and three meter and regulation ("M&R") stations in Florida. [Joint Exhibit 10, p. 1.] The overall pipeline project starts in the vicinity of Transcontinental Gas Pipeline Company's Station 85

in Alabama and extends to the Central Florida Hub in Osceola County, Florida. [Shammo, V1, p. 24; Joint Exhibit 12, p. 34.]

9. The proposed Project includes an application for a public easement over state-owned submerged lands containing 176,018 square feet, which requires payment of \$129,851.35 representing \$6.7011 per linear foot (based on a minimum width of ten feet) as one-time fee. [Joint Exhibit 10, p. 2.]

10. The primary purpose of the pipeline is to support electric generation needs in the state of Florida with opportunities to serve markets in Alabama and Georgia. [Shammo, V1, p. 24.] In 2009, the Florida Public Service Commission established the need for additional pipeline transportation capacity into the state of Florida to meet the growing electric generation need within the state. [Shammo, v1, p. 27; Joint Exhibit 12, p. 34.] Sabal Trail has entered into long-term contracts to provide transportation services for two Florida utilities—Duke Energy Florida and Florida Power and Light Company. [Shammo, V1, p. 25; Joint Exhibit 12, p. 34.] The Sabal Trail pipeline will improve natural gas supply diversity and reliability, or the ability of end user consumers to access natural gas from multiple points of supply, whether from onshore or Gulf of Mexico sources. [Shammo, V1, p. 25-26; Joint Exhibit 12, p. 34.]

11. If the pipeline was not completed, Florida would not have the benefit of the increased reliability and deliverability of natural gas from a third pipeline servicing peninsular Florida, and would not realize the benefit of increased competition and the benefits of interconnecting with other existing natural gas pipelines already in Florida. [Shammo, V1, p. 34-35.]

12. The pipeline will require a 50-foot permanent right of way with an additional 50-foot temporary right of way during construction. [Bass, V6, p. 698-99; Joint Exhibit 3, p. 65-66.] The temporary ROW is reduced by 25 feet when crossing wetland areas. [Id.]

13. The pipeline route was selected by evaluating environmental and cultural resource factors, availability of co-locating in existing utility ROWs, as well as attempting to reduce impacts to parks. [Bass, V6, p. 701.] Sabal Trail specifically had environmental scientists and archeologists review the route to identify wetland impacts, which were field verified. [Bass, V6, p. 701; Prather, V2, p. 209-10; Ambrosino, V2, p. 189-93.]

14. The route was originally developed in 2013 and has been modified many times to address environmental factors, reducing impacts to wetlands, archeological sites, landowner requests, and avoidance of future development areas. [Bass, V6,

p. 702; Prather, V3, p. 320-21.] There have been at least between 175 and 200 adjustments in Florida. [Bass, V6, p. 704.] Two reroutes are particularly relevant to this proceeding. First, is the Withlacoochee River reroute. [ST Exhibit 11.] Based on stakeholder concerns and geotechnical investigations, the originally proposed Withlacoochee River crossing was abandoned in favor of the currently proposed crossing location on the Suwannee River. [Bass, V6, p. 702-03; Jones, V6. p. 663.] The second major reroute was to avoid the Ichetucknee River based on stakeholder concerns. [Bass, V6, p. 703; ST Exhibit 12.] So Sabal Trail decided to reroute the pipeline paralleling an existing Florida Gas Transmission system where two pipelines were previously installed at the currently proposed Santa Fe River crossing. [Bass, V6, p. 703.]

Karst Geology

15. Sabal Trail conducted a detailed karst characterization and risk analysis. [Joint Exhibit 3, p. 3093-124 (ST Exhibit 17).²] The area in Hamilton and Suwannee Counties is defined by a large number of small, sediment-filled, inactive sinkholes. [Jones, V6, p. 648.] The Suwannee River is the base of the water flow system in this area. [Jones V6, p. 648; ST Exhibit 19; Joint Exhibit 5, p. 19.] Stormwater seeps through

² Citations to a Joint Exhibit followed by "(ST Exhibit #)" denote that the ST Exhibit is available in the witness binders used at the hearing and is taken directly from a Joint Exhibit.

the soil, into the limestone, and is entrained in the groundwater flow system. [Jones, v6, p. 649; ST Exhibit 16.] Groundwater flows to the river and is discharged either concentrated in a spring or as diffused flow along the entire river. [Jones, V6, p. 649; Joint Exhibit 5, p. 2312-18.] The further away from the river, the smaller, less developed is the karst conduit system. [Jones, V6, p. 649-50]. The conduits get larger closer to springs, and conduit flow is more dominant at the spring itself. [Jones, V6, p. 650.] The pipeline crosses major springsheds away from the spring vent where the conduit flow gets thinned out and thus poses less of a risk to the spring itself. [Jones, V6, p. 658.] The closest approach to a major spring is the Madison Blue Spring, which is 1.7 miles from the pipeline.³ [Jones, V6, p. 677; ST Exhibit 22.]

16. The Cody Scarp is an area of particular interest since the pipeline HDD crossing of the Suwannee River is in the middle of the Cody Scarp. [Jones, V6, p. 653; ST Exhibit 18.] As rivers flow from the northeast to the south and approach the Cody Scarp, the confinement over the aquifer gets thinner, and every river, with the exception of the Suwannee and the Withlacoochee, goes underground for some distance before it pops out at the unconfined portion of the aquifer. [Jones, V6, p. 653-54]. The

³ The pipeline will not be located within Madison Blue Spring's springshed area. [ST Exhibit 22.]

area of the Cody Scarp is defined by many sinkholes and active sinkhole development. [Jones, V6, p. 654; ST Exhibit 18.]

17. LiDAR data was used to evaluate karst features along the entire route from the Georgia border to Sumter County. [Jones, V6, p. 646.] It was a screening tool to determine the elevations along the approaches of the HDD sites and to determine whether there were significant sinkhole features in the vicinity of the crossing. [Jones, V6, p. 646.]

18. The pipeline crosses above the Falmouth Cave system. [Jones V6, p. 659.] The pipeline, however, will be buried at a depth of 4 to 6 feet, and will not be in the limestone and thus will not impact the cave system, which is more than 100 feet below the ground. [Jones V6, p. 659.]

19. The HDD crossing of the Suwanee River will not likely affect nearby springs or the river itself. [Jones, V6, p. 672-76, 678-80.] The pipeline will be 42 feet below the river. [Joint Exhibit 5, p. 1590 (ST Exhibit 42); Price, V4, p. 424.] Only one small, fourth magnitude spring is actually located downgradient and near the crossing approximately 1,100 feet away. [Jones, V6, p. 659, 664; ST Exhibit 19; Joint Exhibit 5, p. 26.] The crossing is not an area of concentrated groundwater discharge, and thus, there is not likely a well-developed conduit system there. [Jones V6, p. 662.] The remainder of the springs, including the Stevenson Spring, is over three-quarters

of a mile away, up-gradient in the flow system, and upriver of the proposed crossing. [Jones V6, p. 664-65; ST Exhibit 19.] The magnitudes of the springs along the prospective route were considered in the movement of the route. [Jones, V6. p. 663.] Unlike the originally proposed crossing of the Withlacoochee River, the Suwannee River crossing does not have any active karst features, sinkholes, karst windows, or other features that clearly convey water. [Jones, V6, p. 666.]

20. Similarly, the HDD crossing of the Santa Fe River is not likely to affect nearby springs or the river itself. The pipeline will be 43 feet below the river. [Joint Exhibit 5, p. 1588 (ST Exhibit 43).] This HDD crossing is near five third and fourth magnitude springs, the closest of which is 2,000 feet up-gradient of the crossing, and the crossing site is not an area of concentrated spring flow. [Jones, V6, p. 664; ST Exhibit 20; Joint Exhibit 5, p. 27.]

The Proposed Activities/Environmental Impact

21. In addition to the pipeline, the project includes the construction and operation of three compressor stations and three meter and regulation (M&R) stations in Florida. [Joint Exhibit 10, p. 2.] The project also includes access roads, pig launcher and receiver stations, mainline valves (MLVs), and pipe storage/work areas. [Id.]

22. A majority of the proposed pipeline will be constructed with conventional cut and cover techniques, which means a trench is excavated, the pipe is placed and connected to the previous section, and the trench is backfilled with material excavated from the trench. [Joint Exhibit 5, p. 1770 (ST Exhibit 21, p. 3).] Several water bodies, including the Suwannee and Santa Fe Rivers, will be crossed using HDD. [Joint Exhibit 3, p. 71.] The HDD method involves boring a pilot hole beneath the waterbody and then enlarging the hole with one or more passes of a reamer until the hole is the necessary diameter. [Joint Exhibit 3, p. 71; Joint Exhibit 5, p. 1513 (ST Exhibit 23, p. 3); ST Exhibit 27.] A prefabricated pipe segment is then pulled through the hole to complete the crossing. [Id.]

23. During HDD operations, drilling fluids or "mud" are used to lubricate the drill head, and remove cuttings from the hole. [Joint Exhibit 5, p. 1514 (ST Exhibit 23, p. 4); Means, V5, p. 563.] Drilling mud is a non-toxic, naturally occurring, bentonite clay, and is commonly used for drilling wells. [Joint Exhibit 5, p. 1514 (ST Exhibit 23, p. 4); Means, V5, p. 563; Jones V6, p. 670.]

24. Due to the potential of an inadvertent release of drilling fluids, Sabal Trail developed a Best Drilling Practice Plan. [Joint Exhibit 3, p. 71; Joint Exhibit 5, p. 1511-49 (ST Exhibit 23).] The intent of the plan is to minimize or quickly

resolve possible inadvertent effects by identifying appropriate corrective actions for various potential scenarios that may be encountered during HDD operations. [Joint Exhibit 5, p. 1513 (ST Exhibit 23, p. 3).]

25. Additionally, Sabal Trail developed a Karst Mitigation Plan. [Joint Exhibit 5, p. 1768-801 (ST Exhibit 21).] Although avoidance was used as the primary mitigation measure during the planning and selection of the proposed pipeline route, where avoidance was not feasible, the karst features identified were further evaluated and remediation measures developed. [Joint Exhibit 5, p. 1770 (ST Exhibit 21, p. 3).] Mitigation will be conducted to assess and minimize karst related issues that may arise during construction and operation of the project. [Id.]

26. The pipeline was designed with karst terrain in mind. [Lambeth, V6, p. 719.] Thousands of miles of natural gas pipeline have been laid in karst terrain throughout the United States. [Lambeth, V6, p. 725; ST Exhibit 32.] The pipeline itself is made from modern, high-strength ductile carbon steel pipe. [Lambeth, V6, p. 720.] Sabal Trail has an extensive specification requirement for selection of the pipe used for this project. [Lambeth, V6, p. 720-21.] The design guidelines for the strength of the pipe provide that a sinkhole would not pose a threat to the pipe's integrity. [Lambeth, V6, p. 727.] The pipe in the HDD crossing also have a triple-layer coating on

top that is especially designed to protect the pipe. [Lambeth, V6, p. 729.] An impressed current will be used to provide cathodic protection from corrosion. [Lambeth V6, p. 729-30; Joint Exhibit 12, p. 373.]

27. While no such discharge is proposed, a potential environmental impact could be the inadvertent discharge of the drilling mud used during the HDD river crossings. [Joint Exhibit 5, p. 1772-73 (ST Exhibit 21, p. 5-6).] The HDD crossings are at the bottom of the flow system and thus if any mud is inadvertently discharged, it would not migrate far, even if forced out of the borehole under pressure. Instead, because it is heavier than water, any inadvertently released mud would settle out rapidly. [Jones V6, p. 669; Joint Exhibit 5, p. 22-25.] If released, drilling mud would not migrate up-gradient against the flow of water. [Id.] If released, the drilling mud would not likely impact water supply wells. [Jones V6, p. 672].

28. The Department relied upon the Florida Geological Survey (FGS) to provide input as to whether the construction of the pipeline would have adverse impacts as a result of being located in karst terrain. [Prather, V2, p. 233.] FGS recognized that any construction activity over karst terrain carries inherent risks, but that does not mean that no construction activity should ever take place. [Means, V5, p. 554.] The FGS provided comments to Sabal Trail and requested additional

information, which Sabal Trail subsequently provided. [Dickson, V1, p. 80; Means, V5, p. 552-53] And based on that additional information, Sabal Trail provided assurances that FGS' concerns were addressed. [Means, V5, p. 552-53; Joint Exhibit 11, p. 774-75.] Specifically, after numerous interactions with the geologists working for Sabal Trail, a karst mitigation plan was developed that took into account all of FGS' concerns. [Means, V5, p. 556, 561.] Mr. Means testified that he was not aware of any negative impacts associated with other natural gas pipelines in Florida, including ones that were installed in karst terrain using the HDD method. [Means, V5, p. 557.]

29. The construction of the pipeline, both trenching and HDD, would not likely affect the flows of the Suwannee and Santa Fe rivers or adversely affect regional groundwater flows. [Jones V6, p. 672-74.] Any effects of potential sinkhole collapse or triggering of a sinkhole during construction would be localized in the immediate vicinity of the pipeline. [Jones V6, p. 674-75.]

30. Petitioner contends that the project will adversely impact the sensitive karst geology and the Suwannee and Santa Fe Rivers. [Price, V4, p. 405-406.] Mr. Price identified several depressional features on the surface along the HDD route within the Suwannee River State Park, which may have been sinkholes and

ancient abandoned meanders of the Suwannee River.⁴ [Price, V4, p. 393-99, 407-10; Petitioner's Exhibits 7 and 8.] Mr. Price did not conduct any geotechnical or geophysical investigations to determine the depth of the subsurface expression of those features. [Price, V4, p. 419-420.] The pipeline will be over 60 feet underground at this location. [Joint Exhibit 5, p. 1590 (ST Exhibit 42); Price, V4, p. 424-25.] Mr. Price has no experience drilling horizontally. [Price, V4, p. 405.] On this record, the evidence is insufficient to show that the construction or operation of the project would change the character of the karst terrain in Hamilton and Suwannee Counties, or either of the rivers.

31. The Petitioner failed to prove that there would be significant direct, secondary, or cumulative impacts associated with the HDD crossing of the Suwannee River, which includes drilling under the Suwannee River State Park.

32. The Petitioner also failed to present any competent substantial evidence tending to prove that the Project could result in violating applicable state water quality standards.

⁴ Mr. Price testified that active sinkholes have "very distinctive features" including the lack of vegetation growing on the exposed sides of a sinkhole. [Price, V4, p. 425.] The photo of the depression contained in Petitioner's Exhibit 8 clearly shows green vegetation growing on multiple sides of the feature. [Petitioner's Exhibit 8, p. 4.]

Public Interest/Environmental Resource Permit

33. For projects located in, on, or over wetlands or other surface waters, an applicant must provide reasonable assurance that the project will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the criteria set forth in Fla. Admin. Code R. 62-330.302(1)(a), and as set forth in sections 10.2.3 through 10.2.3.7 of the Applicant's Handbook. Both Fla. Admin. Code R. 62-330.302 and section 373.414, Fla. Stat. (2014), list the following seven public interest balancing factors to be considered:

1. Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
2. Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;

4. Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
5. Whether the activity will be of a temporary or permanent nature;
6. Whether the activity will adversely affect or will enhance significant historical and archaeological resources under the provisions of s. 267.061; and
7. The current condition and relative value of functions being performed by areas affected by the proposed activity.

34. After reviewing the completed application, the Department concluded that, for the areas that were not Outstanding Florida Waters, the project was not contrary to the public interest; and for the small area that was within an Outstanding Florida Water, the Department found that the project was clearly in the public interest. [Prather, V2, p. 221; Joint Exhibit 10, p. 4.]

35. Reasonable assurances were provided that Sabal Trail's activities would not adversely affect the public health, safety, or welfare or the property of others. The Department determined that there would be no such adverse impacts. [Prather, V2, p. 230.] The Petitioner failed to present any competent

substantial evidence tending to prove that the Project could result in adverse impacts on public health, safety, or welfare. The Project could have temporary impacts on the property of others limited to the time of construction and dispersed throughout the Project area. [Joint Exhibit 12, p. 211.] Landowners would be compensated for loss of use of their land. [Joint Exhibit 12, p. 212.] Following construction, land uses will be restored and activities will be allowed to resume. [Joint Exhibit 10, p. 3; Joint Exhibit 12, p. 211.]

36. Reasonable assurances were provided that the proposed activities would not adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats. The Department relied upon the recommendations from the Florida Fish and Wildlife Conservation Commission, and that, with mitigation, Sabal Trail had addressed any adverse impacts. [Prather, V2 p. 226, 230.] The Petitioner did not present any competent substantial evidence tending to prove that the Project could result in adverse impacts on the conservation of fish and wildlife.

37. Reasonable assurances were provided that the proposed activities would not adversely affect navigation or the flow of water or cause harmful erosion or shoaling. The Department determined that there would not be any impacts because the pipeline would be buried. [Prather, V2, p. 230-31.] The

Petitioner did not present any competent substantial evidence to refute the Department's determination.

38. Reasonable assurances were provided that the proposed activities would not adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity. The Department testified that there would be no adverse impacts. [Prather, V2, p. 231.] The Petitioner failed to present any competent substantial evidence tending to prove that the Project could result in adverse impacts on fishing or recreational values or marine productivity.

39. Reasonable assurances were provided that the proposed activities would be primarily temporary. The limited permanent conversion of some forested wetlands into herbaceous wetlands will be mitigated; and under the proposed mitigation plan, there will be no uncompensated permanent wetland impacts. [Prather, V2, p. 231.] The Petitioner did not present any competent substantial evidence that the Project would result in uncompensated permanent wetland impacts.

40. Reasonable assurances were provided that the proposed activities would not adversely affect significant historical and archaeological resources. The Department relied upon information from the Department of State. [Prather, V2, p. 231.] The Department of State concurred with Sabal Trail's conclusions that that the Project will have no adverse effect on any

significant archaeological sites or historic resources. [Ambrosino, V2, p. 193; ST Exhibit 9.] The Petitioner failed to present any competent substantial evidence tending to refute the Department of State's conclusions.

41. Reasonable assurances were provided that the current condition and relative value of functions being performed by areas affected by the proposed activities would not be diminished. The Department evaluated the ecological functions of each wetland and the mitigation plan. [Prather, V2, p. 232.] The Petitioner did not present any competent substantial evidence related to the current condition and relative value of functions.

42. Sabal Trail's proposed project is not contrary to the public interest, and is clearly in the public interest for the small portion of the project where that standard applies.

Mitigation

43. Under section 373.414(1)(b), Fla. Stat. (2014), if an applicant cannot eliminate potential adverse impacts, the Department must consider measures proposed by or acceptable to the applicant to mitigate the adverse effects. The applicant sought to reduce and eliminate impacts to wetlands and waterbodies through the route selection process and the use of HDD under major river crossings. [Bass, V6, p. 701.]

44. The Project will affect 408.45 acres of wetlands and other surface waters; consisting of 403.37 acres of wetlands and 5.08 acres of other surface waters. [Joint Exhibit 6, p. 1-20; Joint Exhibit 10, p. 2.] The Project will temporarily affect approximately 105.71 acres of palustrine emergent wetlands, 6.48 acres of palustrine scrub-shrub wetlands, and 180.95 acres of palustrine forested wetlands. [Joint Exhibit 6, p. 1-20; Joint Exhibit 10, p. 3.] The installation of the pipeline will permanently convert 103.45 acres of forested wetlands to emergent or scrub-shrub wetlands. [Id.] The installation of access roads will permanently impact 0.01 acres of emergent wetlands, 0.18 acres of scrub-shrub wetlands, 0.48 acres of forested wetlands. [Id.] The construction of the compressor stations and M&R stations will temporarily affect approximately 1.01 acres of emergent wetlands, 1.90 acres of scrub-shrub wetlands, and 0.96 acres of forested wetlands. [Id.] The construction of the compressor stations and M&R stations will permanently impact 0.88 acres of emergent wetlands, 0.01 acres of scrub-shrub wetlands and 1.35 acres of forested wetlands. [Id.] Using the Uniform Mitigation Assessment Method (UMAM), the project will result in the loss of 45.4 UMAM credits. [Joint Exhibit 10, p. 3; Joint Exhibit 8, p. 2.]

45. Sabal Trail proposes to mitigate the functional loss by acquiring UMAM credits from state and federally approved

wetland mitigation banks. [Joint Exhibit 8, p. 2.] Sabal Trail is primarily using mitigation banks to offset impacts in the same basin. 16.41 UMAM credits will be purchased to mitigate out-of-basin impacts. [Joint Exhibit 8, p. 3.] However, Sabal Trail has demonstrated that there will not be any cumulative impacts. [Joint Exhibit 8, p. 4-6.]

46. Sabal Trail has provided reasonable assurances that the project will mitigate the adverse effects it will have on wetlands and waterbodies. [Prather, V2, p. 223; Joint Exhibit 10, p.4.]

Public Interest/Sovereignty Submerged Lands

47. Fla. Admin. Code R. 18-21.004(1)(a) requires that activities on sovereignty submerged lands not be contrary to the public interest. Fla. Admin. Code R. 18-21.003(51) defines public interest in this context as:

Demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic cost of the proposed action.

Therefore, to obtain authorization to use sovereignty submerged lands easement, an applicant must create a net public benefit.

48. Sabal Trail has demonstrated that the project creates a net public benefit providing needed additional natural gas transportation capacity into Florida, enhancing natural gas

supply diversity and reliability, increasing competition for natural gas transportation services, and interconnecting with other existing natural gas pipelines already in Florida. [Shammo, V1, p. 25-26; Joint Exhibit 12, p. 34.]

Traditional Recreational Uses

49. Petitioners contend that the proposed project would conflict with Fla. Admin. Code R. 18-21.004(2)(a), which requires that all sovereignty lands "shall be managed in essentially their natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming." Petitioners assert that the HDD crossing under the Suwannee River could somehow affect the river and change its natural condition. [Price, V4, p. 405-406.]

50. Sabal Trail demonstrated that the HDD method was selected specifically to avoid impacting the Suwannee River. [Joint Exhibit 3, p. 71.] The HDD crossing location was chosen because it is not an area of concentrated groundwater discharge, and it is unlikely that there is a well-developed conduit system there [Jones, V6. p. 661-63.] The HDD will be initiated outside the Suwannee River State Park and drill a hole generally 65 feet underground and emerging on the other side of the river. [Joint Exhibit 5, p. 1590 (ST Exhibit 42).] The drilling will be more than 40 feet below the bed of the Suwannee River. [Id.] Sabal Trail also developed and will follow a HDD best drilling

practices protocol, as well as implement a mitigation plan specifically designed for HDD crossings. [Joint Exhibit 5, p. 1768-801 (ST Exhibit 21); Joint Exhibit 5, p. 1511-49 (ST Exhibit 23).]

51. On this record, the evidence is insufficient to show that the construction or operation of the project would change the natural conditions, impact the propagation of fish and wildlife, or diminish traditional recreational uses such as fishing, boating, and swimming of the Suwannee or Santa Fee rivers.

CONCLUSIONS OF LAW

Standing

52. Standing to participate in a section 120.57(1), Fla. Stat. (2014), proceeding is afforded to persons "whose substantial interests will be affected by proposed agency action." See § 120.52(13)(b), Fla. Stat. (2014).

53. For an association to meet the requirements of standing, it must demonstrate that a substantial number of its members would have standing as individuals. Fla. Home Builders Ass'n v. Dep't of Labor & Emp. Sec., 412 So. 2d 351 (Fla. 1982). Accordingly, Petitioner must demonstrate that a substantial number of its members will suffer injury if the proposed permit and easement are issued.

54. WWALS presented evidence that four WWALS members, only one of whom was a member prior to the initiation of this litigation, are owners of property that will be directly affected by the pipeline. Eight members of WWALS testified that they use and enjoy the Suwannee or Santa Fe Rivers or live in the area, but did not demonstrate how they would suffer a real and immediate, not conjectural or hypothetical, injury cognizable in this proceeding. Village Park Mobile Home Ass'n, Inc. v. State, Dep't of Bus. Reg., Div. of Fla. Land Sales, 506 So. 2d 426, 433 (Fla. 1st DCA 1987). WWALS presented evidence that it has a total of 42 members that live in Suwannee and Hamilton counties, the situs of their concern regarding this project.

55. Four is not a substantial number in the context of an association with a total membership in the area of forty-two. See, e.g., Lambou, et al. v. Department of Environmental Protection, et al., DOAH Case No. 02-4601, 2003 Fla. ENV LEXIS 210 at *66 (DOAH June 24, 2003), DEP Final Order Sept. 22, 2003 (Final Order not reported in LEXIS) ("Four members is not a substantial number of Sierra Club members no matter what base offered by the evidence.... [L]ess than 10 percent of the County membership can hardly be said to be substantial.") Petitioner's associational standing was not established because it was not

shown that a substantial number of its members would be affected by the proposed project.

Environmental Resource Permit

56. Because Petitioner challenges a Permit issued under chapter 373, Florida Statutes (2014), the procedure described in section 120.569(2)(p), Fla. Stat. (2014), is applicable. That section places on the Petitioner the burden of ultimate persuasion.

57. The standard of proof is a preponderance of the evidence. See § 120.57(1)(j), Fla. Stat. (2014).

58. Issuance of a Permit requires reasonable assurance from the applicant that state water quality standards applicable to waters as defined in section 403.031(13), Fla. Stat. (2014), will not be violated by the authorized activities, and that the authorized activities on or over surface waters or wetlands are not contrary to the public interest. See § 373.414(1), Fla. Stat. (2014). Further, activities within an Outstanding Florida Water require reasonable assurance that the authorized activities are clearly in the public interest. Id.

59. Reasonable assurance means a "substantial likelihood that the project will be successfully implemented." See Metro. Dade Cnty. v. Coscan Fla., Inc., 609 So. 2d 644, 648 (Fla. 3d DCA 1992).

60. The Petitioner presented no evidence on the subject of water quality standards and Petitioner's evidence regarding the conditions for issuance of the Permit under Fla. Admin. Code R. 62-330.301(1) was unpersuasive.

The Public Interest

61. In addition to the conditions listed in Fla. Admin. Code R. 62-330.301, under Fla. Admin. Code R. 62-330.302(1)(a), the applicant is required to provide reasonable assurance that the construction, operation, and maintenance of a project located in, on, or over wetlands is not contrary to the public interest. Compliance with this rule is determined by consideration of factors listed in section 10.2.3(a)-(g) and discussed in sections 10.2.3.1 through 10.2.3.7, of the Applicant's Handbook.

62. Considering all of the public interest factors in the rules, Respondents demonstrated that Sabal Trail's proposed project would clearly be in the public interest. The requirement for construction activities in an Outstanding Florida Water to be clearly in the public interest does not mean that the applicant for an environmental resource permit must show the project would have no negative impacts. See 1800 Atl. Developers v. Dep't of Env'tl. Reg., 552 So. 2d 946, 957 (Fla. 1st DCA 1989).

63. Petitioner did not meet its burden of persuasion that Sabal Trail is not entitled to issuance of an environmental resource permit.

Sovereign Submerged Lands Easement

64. The Board of Trustees of the Internal Improvement Fund may sell and convey submerged lands if determined by the board to be in the public interest, upon such prices, terms, and conditions as it sees fit. See § 253.12(2)(a), Fla. Stat. (2014).

65. Pursuant to Fla. Admin. Code R. 18-21.004(1)(a)-(b), all activities on sovereignty lands must not be contrary to the public interest, and all easements for sovereignty land activities must contain such terms, conditions, or restrictions as deemed necessary to protect and manage those sovereignty lands. Sabal Trail's proposed project meets these requirements.

66. Petitioner did not meet its burden of persuasion that Sabal Trail is not entitled to a sovereign submerged land easement.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that:

1. The Department of Environmental Protection issue a Final Order approving the issuance of Environmental Resource Permit No. 0328333-001 to Sabal Trail Transmission, LLC; and

2. The Department of Environmental Protection grant an easement to Sabal Trail Transmission, LLC, to use sovereign submerged lands in connection with the Sabal Trail Natural Gas Pipeline.

DONE AND ENTERED this _____ day of _____, 2015, in Tallahassee, Leon County, Florida.

BRAM D.E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this _____ day of _____, 2015.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.