

**EXHIBIT 1**



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Tiffany McClurkin, Information Specialist Freedom of Information Act (FOIA) Coordinator  
U.S. Fish & Wildlife Service; Southeast Region (Region 4)  
1875 Century Blvd.: Suite 214  
Atlanta, GA 30345 (E)  
Phone: (404) 679-4104; Fax: (404) 679-4183

**RE: FREEDOM OF INFORMATION ACT REQUEST; FOIA FWS-2017-00970;  
Pertaining to the Section 106 Review for the Etna Turpentine Camp and Suncoast  
Parkway 2 Permit by FDOT and FTE; Citrus County, Florida.**

Dear Ms. McClurkin:

I am submitting this request under the Freedom of Information Act, 5 U.S.C. §552, on behalf of the Friends Of Etna Turpentine Camp, Inc. ("Friends of Etna"), Robert F. Roscow, President, with the mailing address of 10857 Running Deer Point, Inverness, Florida 34452-9270. Friends of Etna is a non-profit corporation organized under the laws of the State of Florida.

**REQUESTED DOCUMENTS**

Friends of Etna is requesting the following documents regarding the proposed Suncoast Parkway 2 project:

- 1) Any and all papers, documents, maps, studies, reports, information, data, emails or other materials that the U.S. Fish & Wildlife Service (FWS) has in its possession regarding any review of the Suncoast Parkway 2 (SC 2) project and any of its alternatives. This request only includes materials arising from any past, present and future determinations, reviews, considerations and communications with any and all persons, companies or agencies dated from the year 1994 when the first FDOT Planning Development and Environmental Study (PD&E Study) signed off on by Ely in 1998 began and until the date of this request inclusive of the second PD&E Study begun in 2002.
- 2) All correspondence of any kind and any studies, minutes of meetings, or reports between Kevin Chapman and any other members of FWS and the Florida Division of Historic Resources, Florida Department of Environmental Protection (DEP), Southwest Florida Water Management District (SWFWMD) , Florida

Division of Forestry, Florida Department of Transportation (FDOT), Florida Turnpike Enterprise (FTE), Janus Research and any other consultant, interested parties, and the public in regard to the Section 106 Review of the Etna Turpentine Camp (106 Review) that will be impacted by the SC 2 project.

- 3) Copies of all notices to the public as to meetings regarding the 106 Review and advertisements to the public for comments to the permit as noticed in the Federal Register and its advertisement to the public.
- 4) Copies of all comments submitted for the SC 2 FWS Permit TE97201B-0 as advertised in the Federal Register.
- 5) Copy of the biological assessment by FWS biologists referenced in Kevin Chapman's May 03, 2016 to Timothy Parsons, PhD. and director of DHR. On page 3 of the attached letter Mr. Chapman stated, "Furthermore, USFWS biologists were not in favor of the Avoidance/Minimization Alignment due to the potential to cause additional impacts to federally listed species."
- 6) Any biological assessment performed, reviewed and/or approved by FWS supporting FWS Permit TE97201B-0.
- 7) Also provide any documentation that would have led FWS biologists to believe that unpaved trails between informational kiosks in the interpretative park proposed by Friends of Etna at one of the Section 106 meetings in Homosassa would be more detrimental to federally or state listed species or for that matter any flora or fauna at the Etna site than FTE's plans to destroy over 700 acres of habitat used by federally or state listed species by constructing a four-lane paved toll road that would extend 13.5 miles and have a ROW width of 350 feet. The SWFWMD had also permitted this road to actually be eight lanes wide.
- 8) Copy of any response to Dr. Parsons' of DHR letter dated May 26, 2016 that is attached by Mr. Chapman or anyone else with decision making authority at FWS in regard to the 106 Review. In particular Dr. Parsons stated on page one of his letter under remark number 2, "The ARC consultation is not part of the section 106 process nor has impact on determination of effects."
- 9) Copy of any response by Kevin Chapman or any other person in authority at FWS to Martin Horwitz, Environmental Administrator & Permit Coordinator for FDOT dated March 8, 2016 letter regarding Section 106 Documentation and Determination of Effects attached. Note that a key argument for recommending the "Current Alignment" is noted on page 3 as being the decision by ARC at their February 19, 2016 meeting to not approve the proposed alternate alignment developed by FDOT called the "Avoidance/Minimization Alignment". Obviously this is contrary to the letter sent by Dr. parsons of DHR to Mr. Chapman on May 26, 2016 in which he advised that the ARC decision could not be used for a determination of effects.

### **NOTICE TO PAY FEES**

Friends of Etna agrees to pay all fees associated with this FOIA if a Fee Waiver is not granted. We do not want to delay the FOIA while a FEE Waiver determination is being made. We are stating below though our reasons for asking for a Fee Waiver.

### **FEE WAIVER REQUEST**

Friends of Etna further requests that any fees associated with this request be waived because disclosure of the records is “likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.” 5 U.S.C. §552(a)(4)(A)(iii) and 43 C.F.R. Part 2. The basis for the fee waiver request is set out below. If you determine that a fee waiver is not appropriate, please contact me to discuss the approximate cost of obtaining the requested documents.

**1. Released information concerns the operations or activities of the government.** The Friends of Etna is seeking information pertaining to the SC 2 project and the decisions, operations and activities of the FDOT, FTE, Fish and Wildlife Service (“FWS”) and Citrus County pertaining to this project. This information is central to an understanding of the FWS’s, DHR’s, and the FDOT’s/FTE’s decision making process and the basis for its decisions pertaining to the review and approval of this project. Decisions regarding the approval of transportation projects through state conservation lands are highly controversial public issues in the community, particularly with FWS and DHR approval procedures that permit encroachment on and destruction of listed species habitats and destruction of a site listed on the National Register of Historical Places. In particular this issue has already been argued in the Florida courts in *Roscow v Abreu* as related to the violation of the state’s Sunshine Law Violation. Judge Ferris agreed with the plaintiffs that the Environmental Resource and Regulatory Group (ERRAG) composed of state and federal agencies did have a right to attend these meetings even if they were not allowed to participate. She stated in her opinion:

At the hearing on these motions, counsel for the Defendant expressed concern that if ERRAG meetings were open to the public, members would not be free to express their candid opinions about matters before them. In selecting possible routes for this major roadway, the ERRAG will of necessity consider private property acquisition, the presence of environmentally sensitive lands, evaluation of landowners’ property values, and other compelling issues. The need for such views to be expressed publicly is essential, and fundamental to the purpose of the Sunshine Law.

**2. Disclosure of the requested documents will serve the public interest** as it is “likely to contribute significantly to the public’s understanding of the operations or activities of the [FDOT/FTE, FWS, DHR, and Citrus County].” 5 U.S.C. §552(a)(4)(A)(iii). The public has an expressed interest in the FDOT/FTE, FWS and the DHR complying with the Endangered Species Act (“ESA”), NEPA, the FDOT PD&E Manual, the Division of Forestry’s 10-Year Management Plan for the Withlacoochee State Forest approved by ARC in 2015 and Section 106 of the National Historic Preservation Act (NHPA), which exists, among other reasons, to ensure that federal agencies protect endangered species habitat and historic and archaeological resources of national interest. Friends of Etna is seeking to promote and protect this public interest through the requested documents. The public interest in the disclosure of these documents is significant, because they may reflect potentially significant policy changes on the part of the FDOT/FTE, FWS, and DHR that could affect regionally-important wildlife lands and nationally important historic and archeological resources, as well as the survivability of endangered species.

Information that could “support oversight of [an agency’s] operations” is precisely the type of information that Congress considered to have a “high potential for contribution to public understanding.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987). “Watchdog” public advocacy groups -such as Friends of Etna, which actively monitor and challenge agency actions and policies- help provide this oversight function in our system of government.

Friends of Etna is requesting the information as a “watchdog” organization dedicated to providing the public information about government activities, or lack thereof, to protect a historic site of national significance that is listed on the National Register Of Historic Places (NHRP). Congress has recognized the important institutional service “watchdog” groups provide, and expanded FOIA’s fee waiver provision specifically to facilitate access to agency records by citizen “watchdog” organizations, which utilize FOIA to monitor and mount challenges to governmental activities. See *Better Gov’t Ass’n v. Department of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (fee waiver intended to benefit public interest “watchdogs”).

Fee waivers are essential to such groups which:

rely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities – publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions....

The waiver provision was added to FOIA “in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,” in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups.

*Better Gov’t Ass’n*, 780 F.2d at 93-94.

**3. Disclosure of the requested documents will result in a better understanding of FDOT/FTE, FWS, DEP, Citrus County Florida as well as the Fish and Wildlife Service’s policies by the general public.** Disclosure of the requested records will contribute to the understanding of the public at large, as opposed to the understanding only of Friends of Etna or a narrow segment of interested persons. Friends of Etna disseminates information that it receives from government agencies to its members and members of the public through newsletters and social media. It also sends out press releases on issues of public concern. Furthermore, Friends of Etna sometimes challenges decisions of public agencies through administrative and legal actions, which serves to widely disseminate the information and provides an important oversight role specifically envisioned in the passage of FOIA.

**4. The public benefit of releasing these documents is significant.** Information that could “support oversight of [an agency’s] operations” is precisely the type of information that Congress considered to have a “high potential for contribution to public understanding.”

*McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987). The material requested in the above-referenced FOIA request should offer important insight into the actions and decision-making process of the FDOT/FTE, DHR, FDF and FWS regarding any subsequent approval of the SC 2 project. The legislative history of FOIA includes the following:

A requester is likely to contribute significantly to public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Representatives English and Kindness). *Better Government Associations* arrived at a comparable conclusion. 780 F.2d at 94. This current request clearly meets this standard.

**5. Friends of Etna has no commercial interest in the requested information.** This request is not primarily in the commercial interest of Friends of Etna, as it has no commercial interest in these materials. Friends of Etna is a non-profit corporation organized under the laws of the State of Florida and is seeking recognition by the Internal Revenue Service as a 501(c)(3) organization dedicated to public education about the conservation of historic and archaeological resources in Citrus County County, Florida. Friends of Etna has a long-standing interest in the conservation of historic and archaeological resources and its mission is to promote active historic education, scientific, and policy advocacy programs toward this end.

In sum, application of 5 U.S.C. §552(a)(4) to this request strongly supports a fee waiver. Please waive processing and copying fees pursuant to 5 U.S.C. §552(a)(4). This request for a fee waiver should not be construed as an extension of time in which to reply to this FOIA request.

## CONCLUSION

If you determine that portions of any records covered by this request are exempt from disclosure, please separate the exempt portions from the nonexempt portions and provide us with copies of the nonexempt portions. For any records that you determine to be exempt from release, please provide us with a specific description of the record or portion of the record along with a particularized description of the legal basis for withholding it as is required. See *Vaughn v. Rosen*, 484 F.2d 820, 827(D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

If any of the documents for which copies are requested of by Friends of Etna are available electronically, you may send them to me at robert@hartsell-law.com, or you may send them on a CD or DVD. If there are not electronic versions available, please send paper copies to me at the address contained in this request.

If you anticipate any delay for valid legal reasons in processing this request or if you foresee any problem relating to our request for a fee waiver, please notify me as soon as possible at (954) 778-1052. Thank you for your time and consideration in this matter.

Sincerely,

*/s/ Robert Hartsell*

Robert Hartsell  
Robert N. Hartsell, P.A.

Cc: Friends of Etna, Robert F. Roscow, President  
Ralf Brookes, Esq.