

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

THE INDIAN RIVERKEEPER,)
)
 Plaintiff,)
)
 v.)
)
 FEDERAL HIGHWAY)
 ADMINISTRATION; MARY E.)
 PETERS, in her official capacity as)
 Administrator of the Federal Highway)
 Administration; ROBERT WRIGHT, in)
 his official capacity as Acting Deputy)
 Division Administrator for the Florida)
 Division of the Federal Highway)
 Administration; JOSE ABREU, in his)
 official capacity as Secretary of the)
 Florida Department of Transportation;)
 and ST. LUCIE COUNTY, a political)
 subdivision of the State of Florida,)
)
)
 Defendants.)
)
 _____)

Case No. 05-14005-CIV-MARRA

**PLAINTIFF’S MOTION FOR TEMPORARY RESTRAINING ORDER
(CONDITIONALLY FILED)**

In the event that the Court delays ruling on Plaintiff’s motion for a preliminary injunction, Plaintiff hereby respectfully moves for a temporary restraining order precluding the County from further engaging in activities relating to the road armoring project.

The road project negatively impacts the ecological, recreational, and economic values of the Indian River Lagoon System, and additional work will compound the

destruction of sensitive lagoonal beaches, sea grasses, critical marine habitat, and fisheries.

FHWA's decision to authorize and fund the project without first preparing and environmental impact statement (EIS) or environmental assessment (EA) is in violation of the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. ("NEPA") and the Administrative Procedure Act, 5 U.S.C. § 706 (1) and (2)(A) ("APA"). The agency is proceeding under the false assumption that the project is "categorically excluded" from the NEPA process. The categorical exclusion determination is arbitrary and capricious for several reasons: (1) The project includes few "emergency repairs" eligible for a categorical exclusion; (2) The project poses significant environmental impacts; and (3) the project includes certain "unusual circumstances."

Any further armoring of Indian River Drive at this time, without taking a "hard look" at the environmental consequences, will forever negatively impact the interests of the Plaintiff and the environment. A TRO should issue so that the status quo is preserved while the Court has an opportunity to consider Plaintiff's request for a preliminary injunction.

Respectfully submitted,

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