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April 2, 2015

BY EMAIL ONLY (Barry.Dragon@uscg.mil)

Barry Dragon, Commander  
USCG Seventh District  
Brickell Plaza Federal Building  
909 SE 1st Avenue  
Miami, FL 33131-3050

Re: Navigation Obstruction Issues  
Loxahatchee River Railroad Bridge

Dear Commander Dragon:

I am attorney for the Jupiter Inlet District. The Jupiter Inlet District is an independent special district in northern Palm Beach County, Florida, created by the Florida Legislature in 1921 to maintain navigation in the Loxahatchee River.

The Board of Commissioners of the District has asked me to correspond with you to draw your attention to applicable law regarding the scope of the Coast Guard's power to require remedies for obstructions to navigation in the river, together with several key pieces of evidence regarding the Florida East Coast Railway bridge across the Loxahatchee River in Palm Beach County, Florida (282.6 Jupiter Bridge), suggesting alteration of the bridge should be required before All Aboard Florida begins operations.

THE USCG HAS THE LEGAL POWER TO COMPEL BRIDGE ALTERATION

Railroad traffic does not take priority over vessels in navigable waters of the United States. The right to erect or maintain a bridge across any navigable waters of the United States or to build anything in such waters, has always been "subject to the paramount right of navigation." Union Bridge Co. v. United States, 204 U.S. 364, 398, 27 S.Ct. 367, 379, 51 L.Ed. 523 (1907). (See also 33 U.S.C. 511 et seq.) Under 33 U.S.C. §494, a bridge may not "unreasonably obstruct the free

navigation of the waters over which it is constructed." Where unreasonable obstruction of navigation is found, the Secretary of Homeland Security (the Commandant of the Coast Guard, by delegation) has the authority to investigate, and, after hearing, to issue Orders of Alteration, requiring the owner to alter or modify the bridge to relieve the obstruction "...as to render navigation through or under it reasonably free, easy, and unobstructed." 33 U.S.C. §494; 33 U.S.C. §§ 511-524; Union Pacific Railroad Company v. Kirby Inland Marine, Inc. of Mississippi, 296 F.3d 671 (2002).

THE INCREASED FREQUENCY OF BRIDGE CLOSINGS WITH ALL ABOARD FLORIDA RAIL TRAFFIC WILL UNREASONABLY OBSTRUCT NAVIGATION IN THE RIVER

A year-long vessel traffic study by Taylor Engineering, on behalf of the Jupiter Inlet District, has concluded that more than 224 vessels per day, on average, pass through the draw span of the Loxahatchee River Railroad Bridge. (See Taylor Engineering, Inc., "Assessment of the Florida Each Coast Railroad Bridge Crossing on the Loxahatchee River, Jupiter, Florida," February 2015 <http://jupiterinletdistrict.org>). When considering weekends only, the daily average increases to 430 vessels per day. The peak single day in 2014 fell on Memorial Day when 1,022 vessels passed through the draw span.

With the bridge down for a passing train, only vessels with an air draft less than 4 feet (skiffs, canoes and kayaks), can pass. Approximately 50% of all vessels cannot pass, and face an average wait-time of 3.23 minutes per vessel, per bridge closing cycle. (This is the mean wait-time for all vessels, including those that pass through the draw with no wait at all. Half the vessels experience longer wait-times.) (See Taylor Engineering Study Report). Vessels queuing up to await the opening of the bridge in an area of known swift currents near the bridge are already challenged to preserve safety, courtesy, and order. Longer wait times will make it worse. The width of the draw (less than 40 feet) and existing conditions, make passage of even two vessels at a time a dangerous situation.

All Aboard Florida claims to be able to renovate or redesign the bridge to shorten the opening-closing cycle to 12 minutes. Assuming this to be achievable (though it may be too ambitious), the addition of the proposed 32 All Aboard Florida ("AAF") trains per day, plus anticipated freight traffic of 20 trains per day by 2016 (Treasure Coast Regional Planning Council, "Review of All Aboard Florida Draft Environmental Impact Statement, November 21, 2014), would result in 10.4 hours per day of bridge closure time, more than double the existing total. When the AAF passenger service begins, the obstruction of navigational traffic will be beyond unreasonable; it will be oppressive. Any increase in freight traffic over the bridge will make it still worse.

A POTENTIAL SOLUTION

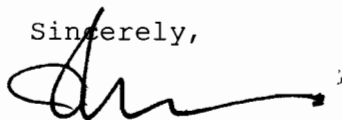
Reconstruction of a section of the railroad bridge with a simple trestle-type superstructure would permit the clearance under the bridge at mean high water to be increased from its current 4 feet to 8 feet. A conceptual drawing illustrating this alteration is attached. (Figures 1 through 5) According to the Taylor Engineering study, installation of such a trestle section will permit the passage of 89.2% of all vessels normally passing, whether the bridge is open or closed. Without it, more than half will be subjected to onerous wait-times. (See attached graph [Fig. 6] from Taylor report.)

CONCLUSION

The problem of obstruction of vessels by the Loxahatchee River railroad bridge will suddenly and dramatically increase when the All Aboard Florida trains begin service. As freight trains are added to the schedule as expected, and as the number of boaters in the area of the river grows, the obstruction will grow worse. The time to alter the bridge to alleviate the problem at the least expense and inconvenience is before the AAF service begins.

The Jupiter Inlet District Commission urges you to closely and carefully consider the evidence presented, and order alteration of the bridge. It invites your comments on the evidence presented and suggestions made here, and should you care to hear from the Commission in a public forum, you are invited to attend the next meeting of the Commission, which will include a presentation to the public about the Commission's efforts to address the effects of the new traffic expected on the railroad bridge. That meeting will be held on April 22, 2015, at the Town of Jupiter Council Chambers, 200 Military Trail, Jupiter, FL 33458.

Sincerely,



William R. H. Broome  
Attorney for Jupiter  
Inlet District

WRHB/ch

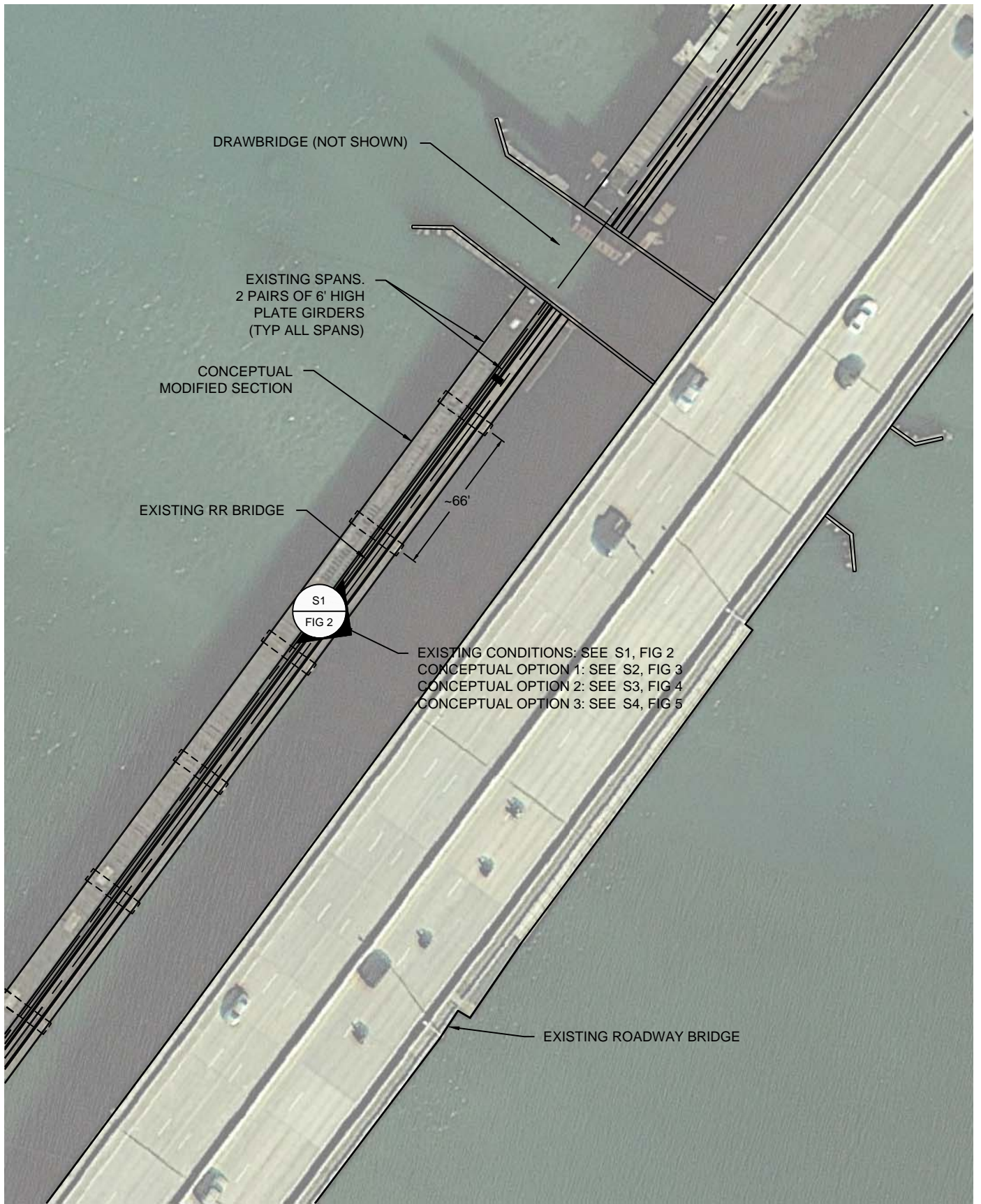
Enclosures

cc: Michael J. Grella  
Executive Director, Jupiter Inlet District

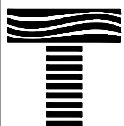
FECI

All Aboard Florida  
2855 Le Jeune Road, Coral Gables, FL 33134

Taylor Engineering, Inc.



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 JACKSONVILLE, FL 32256

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**FIGURE 1**  
**EXISTING FEC RAILROAD BRIDGE**  
**CONCEPTUAL F.E.C. RAILROAD BRIDGE OPTIONS**  
**LOXAHATCHEE RIVER, FLORIDA**

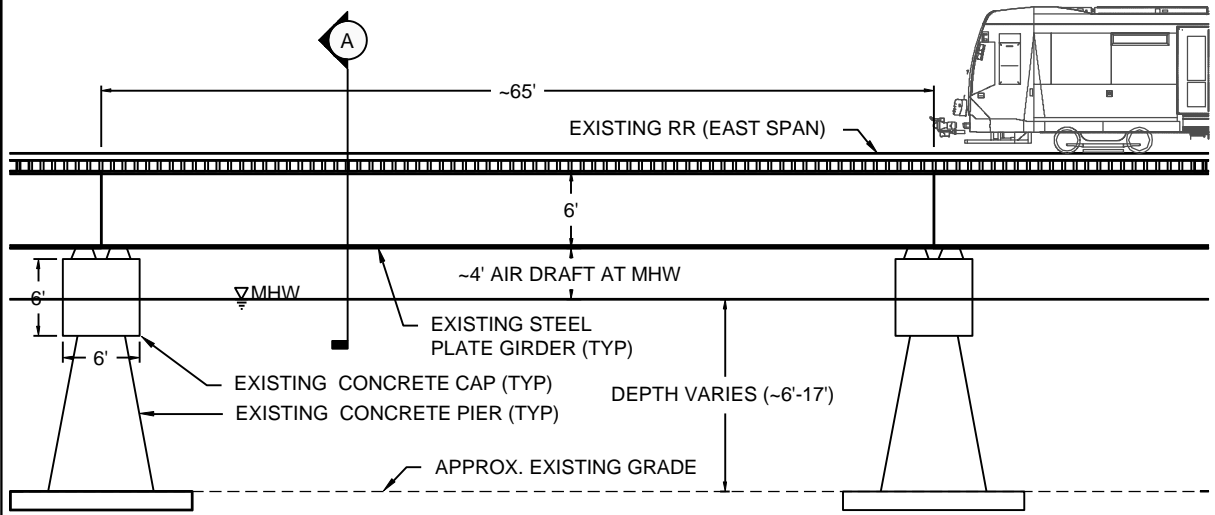
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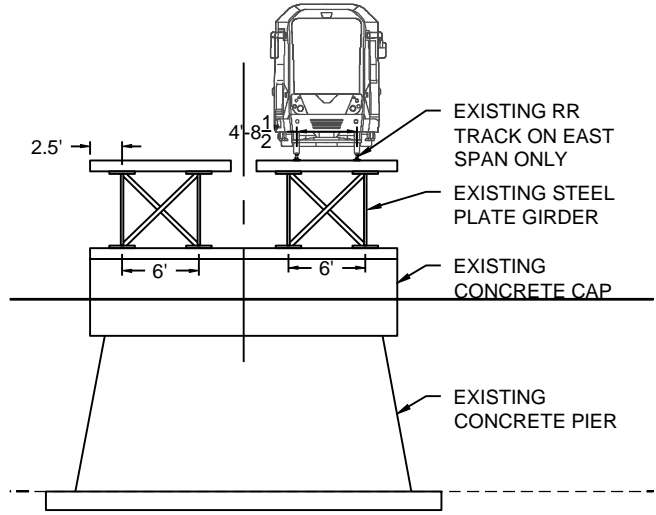
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**S1**  
**FIG 1** **EXISTING PROFILE**  
SCALE: 1" = 15'  
V-SCALE: 1" = 1'



**A** **EXISTING SECTION**  
SCALE: 1" = 15'  
V-SCALE: 1" = 1'



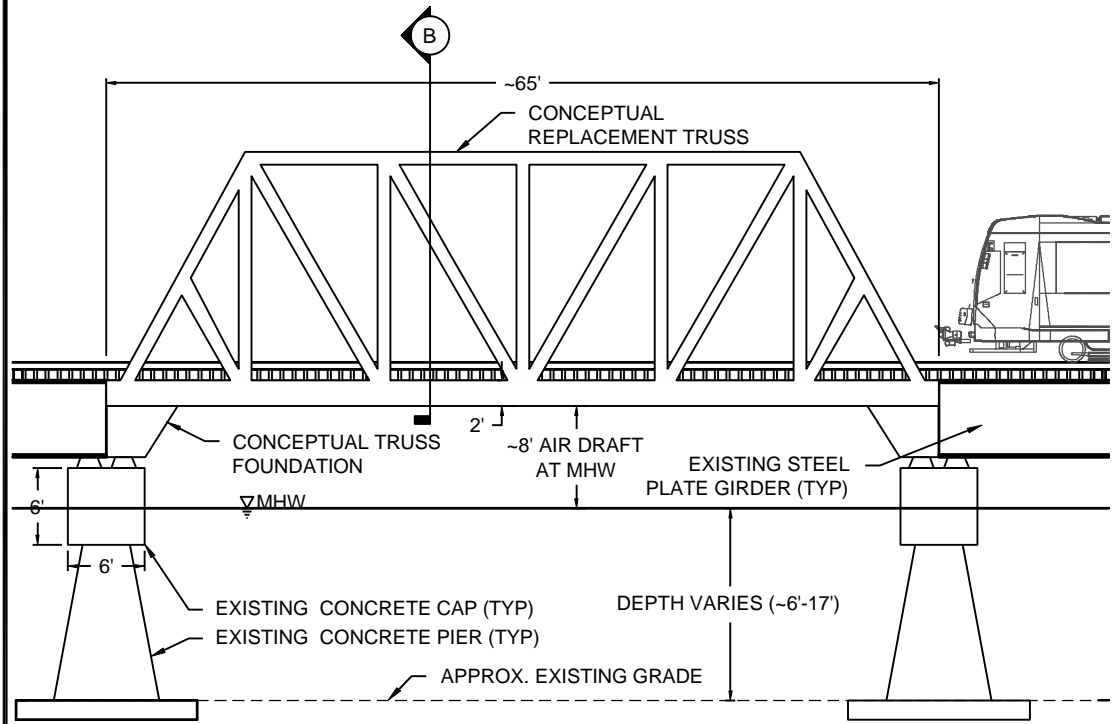
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**FIGURE 2**  
**EXISTING ELEVATION AND CROSS-SECTION**  
**CONCEPTUAL F.E.C. RAILROAD BRIDGE OPTIONS**  
**LOXAHATCHEE RIVER, FLORIDA**

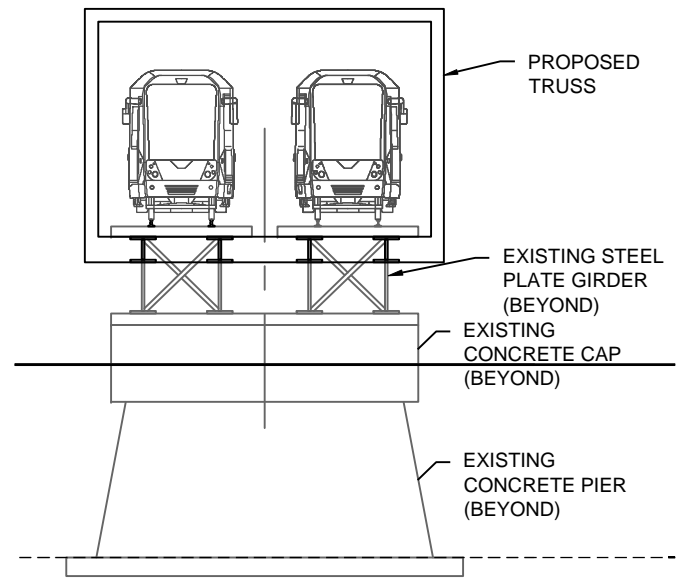
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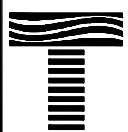
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**S2**  
**FIG 1** **OPTION 1 PROFILE**  
SCALE: 1" = 1'  
V-SCALE: 1" = 1'



**B** **OPTION 1 SECTION**  
SCALE: 1" = 1'  
V-SCALE: 1" = 1'



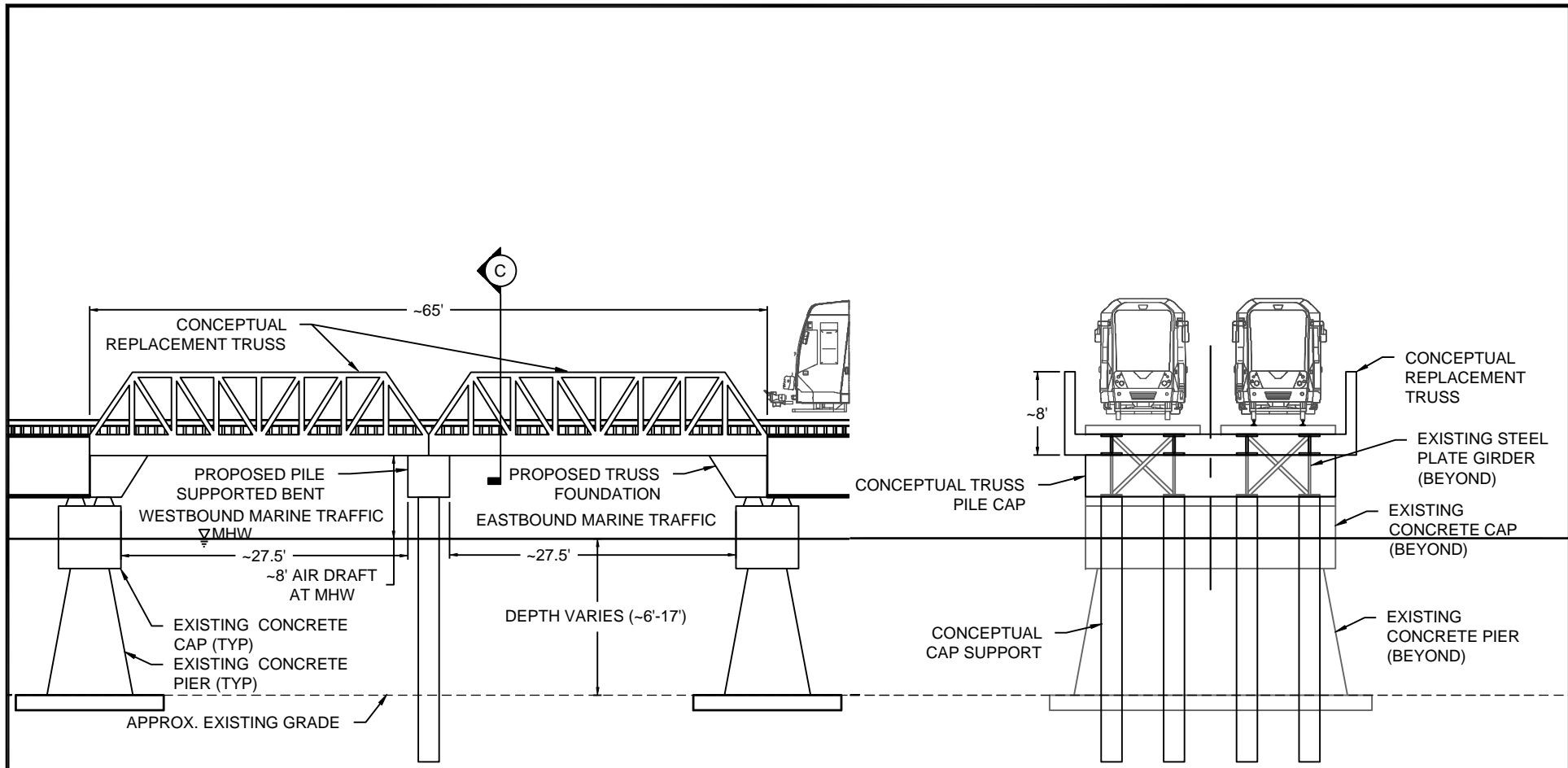
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**FIGURE 3**  
CONCEPTUAL OPTION 1 ELEVATION AND CROSS-SECTION  
CONCEPTUAL F.E.C. RAILROAD BRIDGE OPTIONS  
LOXAHATCHEE RIVER, FLORIDA

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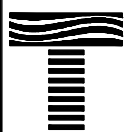
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**S3**  
**FIG 1** **OPTION 2 PROFILE**  
 SCALE: 1" = 15'  
 V-SCALE: 1" = 1'

**C** **OPTION 2 SECTION**  
 SCALE: 1" = 15'  
 V-SCALE: 1" = 1'



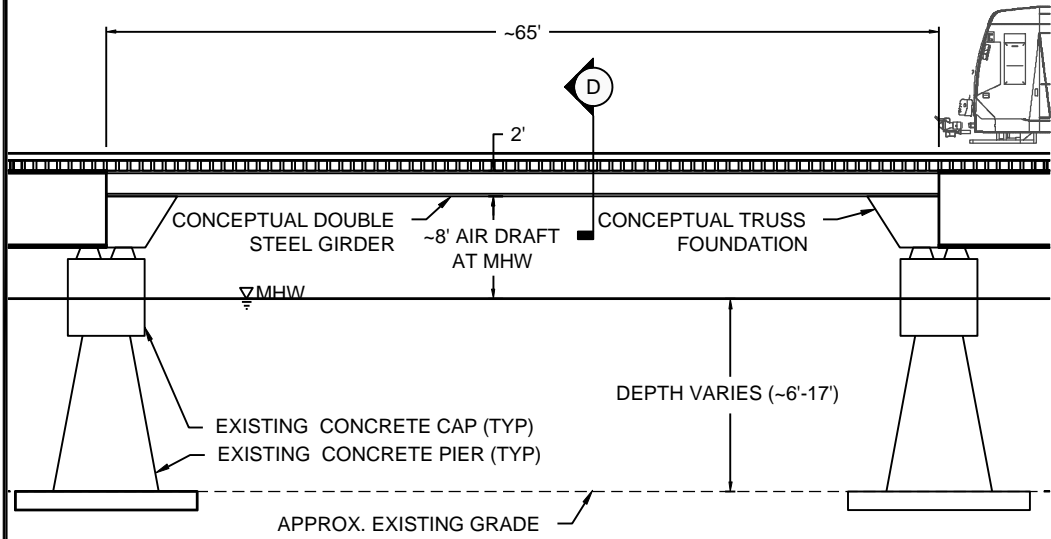
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**FIGURE 4**  
 CONCEPTUAL OPTION 2 ELEVATION AND CROSS-SECTION  
 CONCEPTUAL F.E.C. RAILROAD BRIDGE OPTIONS  
 LOXAHATCHEE RIVER, FLORIDA

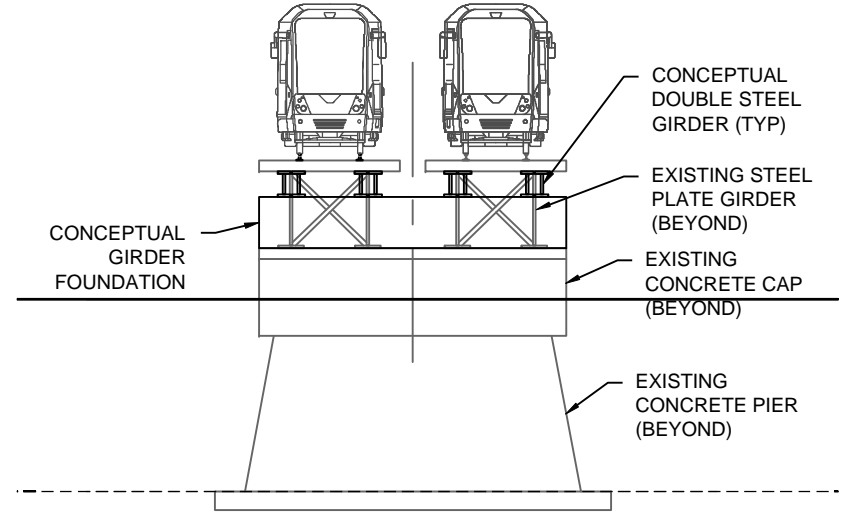
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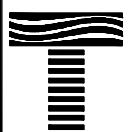
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**S4**  
**FIG 1** **OPTION 3 PROFILE**  
SCALE: 1" = 15'  
V-SCALE: 1" = 1'



**D** **OPTION 3 SECTION**  
SCALE: 1" = 15'  
V-SCALE: 1" = 1'



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FIGURE 5  
CONCEPTUAL OPTION 3 ELEVATION AND CROSS-SECTION  
CONCEPTUAL F.E.C. RAILROAD BRIDGE OPTIONS  
LOXAHATCHEE RIVER, FLORIDA

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Figure 6. Percentage of Vessels Passing vs Air Draft (ft)  
Loxahatchee River Railroad Bridge  
Vessel Traffic Study Data

