

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

DELANEY REYNOLDS; LEVI D., by and through his natural guardian and mother Leigh-Ann Draheim; ISAAC A., by and through his natural guardian and mother, Janet Ray Augspurg; JOSE (“Andres”) P., by and through his natural guardian and mother, Valerie Jean Phillips; LUSHIA (“Luxha”) P., by and through her guardian and mother, Valerie Jean Phillips; OLIVER C., by and through his natural guardian and mother, Emily Chamblin; VALHOLLY F., by and through her natural guardian and mother, Rhonda Roff; and OSCAR PSYCHAS,

Plaintiffs,

v.

THE STATE OF FLORIDA; RICK SCOTT, in his official capacity as Governor of the State of Florida; the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; by and through NOAH VALENSTEIN, in his capacity as Secretary of the Florida Department of Environmental Protection; the FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES; by and through ADAM PUTNAM, in his capacity as Commissioner of the Florida Department of Agriculture and Consumer Services; the FLORIDA BOARD OF TRUSTEES OF INTERNAL IMPROVEMENT TRUST FUND; and the PUBLIC SERVICE COMMISSION,

Defendants,

---

CASE NO.:

***JURY TRIAL REQUESTED***

**COMPLAINT SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs are eight young Floridians, aged 19 and younger, who have been seriously injured because of Defendants’ deliberate indifference to their fundamental rights to a stable climate system in violation of Florida common law and the Florida Constitution. They bring this action on behalf of themselves because climate change and the fossil fuel-based energy system created and operated by the Defendants does not and cannot ensure that Plaintiffs will grow to

adulthood safely and enjoy the rights, benefits, and privileges of current generations of Floridians. Defendants' unconstitutional contributions to climate change and creation and operation of a fossil fuel-based energy system have caused widespread harm to the Plaintiffs and the natural resources in Florida. Because the Defendants know that Plaintiffs are living under climatic conditions that create an unreasonable risk of harm but have not responded reasonably to this urgent crisis, and instead have affirmatively acted to exacerbate the climate crisis, Plaintiffs seek declaratory relief and an injunction compelling Defendants to develop and implement a comprehensive plan to stabilize the climate system and protect the vital natural resources on which Plaintiffs now and in the future will depend.

### **INTRODUCTION**

1. Plaintiffs bring this case to enforce the Defendants' constitutional and common law public trust obligations to protect Plaintiffs' inalienable and fundamental rights secured by Florida common law and Article I, Sections 1, 2 and 9; Article II, Sections 5, 7(a), and 8; and Article X, Sections 11 and 16 of the Florida Constitution.

2. Plaintiffs are and will continue to be mutually and adversely impacted by excessive human-caused atmospheric carbon dioxide ("CO<sub>2</sub>") concentrations that now exceed 403 parts per million ("ppm"), as compared to the stable pre-industrial levels of 280 ppm. These unconstitutional conditions, which Defendants have created and exacerbated in part through their creation and operation of a fossil fuel-based energy system and affirmative actions and omissions that cause dangerous levels of greenhouse gas pollution, have caused substantial impairment to the vital natural resources on which Plaintiffs and both current and future generations of Floridians depend, in the exercise of their inherent rights.

3. Carbon dioxide and other greenhouse gas (collectively, “GHG”) pollution is causing dangerous increasing temperatures, rising seas and storm-surge flooding, increasing droughts and violent storms, ocean acidification, beach and farmland soil erosion, freshwater degradation, resource and species extinctions, increased pestilence with resultant diseases and other adverse health risks, and other adverse impacts (collectively, the “Climate Change Impacts”), all of which threaten the habitability of Florida and the safety and wellbeing of these Plaintiffs, other Floridians, and future generations.

4. All of Florida’s public trust resources, including without limitation, the atmosphere (air), submerged state sovereignty lands, lakes, rivers, beaches, water (both surface and subsurface), forests, and wild flora and fauna (individually, a “Public Trust Resource,” and collectively, “Public Trust Resources”), are essential for life, liberty, pursuit of happiness, and property, including human habitation and personal and economic health, safety, and wellbeing.

5. The Defendants, through their actions and inactions as public officials who create and manage Florida’s fossil fuel-based energy system and are responsible for responding to the threat of climate change, are materially causing and contributing to the increasing negative effect of Climate Change Impacts.

6. The Defendants have a common-law fiduciary and constitutional duty to take action on behalf of the Plaintiffs and the State of Florida to reduce and mitigate the adverse effects of Climate Change Impacts.

### **JURISDICTION AND VENUE**

7. This is an action brought by youth residents of Escambia County, Broward County, Brevard County, Alachua County, Hendry County, Monroe County, and Miami-Dade County, Florida, claiming violations of the Florida Constitution, Article II, Section 7(a); Article

X, Section 11; and Article X, Section 16, and of the common law including the principles of the Public Trust Doctrine.

8. This Court has subject matter jurisdiction pursuant to Article I, Section 21, and Article V, Sections 1, 5, and 20(c)(3) of the Florida Constitution.

9. This Court also has subject matter jurisdiction over this action pursuant to § 26.012, Fla. Stat., because Plaintiffs seek injunctive relief and equitable protection.

10. This Court has subject matter jurisdiction pursuant to §§ 26.012(2)(a), 86.011 and 86.101, Fla. Stat., because Plaintiffs seek declaratory relief and the rights and interest at issue are not quantifiable in monetary terms.

11. This Court has personal jurisdiction over all Defendants pursuant to § 48.193, Fla. Stat.

12. Venue is proper pursuant to § 47.011, Fla. Stat., because Defendants are state agents or state entities that maintain their principal headquarters within Leon County, Florida.

### **STATEMENT OF THE FACTS**

#### **PLAINTIFFS**

13. Plaintiff **Delaney Reynolds** is an 18-year-old U.S. citizen and a resident of Miami, Florida. Delaney is being harmed by climate change and ocean acidification and those impacts are only getting worse. Delaney lives in Miami, a mere 9-10 feet above sea level, and also has grown up in her family's home on No Name Key in the Florida Keys. She calls both Miami and No Name Key home. Her home in the Florida Keys is approximately 3 feet above sea level and is located on a canal that connects to the ocean. While hiking on No Name Key, Delaney has recently noticed rising seas and saltwater in places where it did not used to be. Without drastic steps to reduce GHG pollution, Delaney's home on No Name Key, and the

places where she recreates there, will be devastated by flooding, erosion and further inundated by rising seas. In Miami, climate change and sea level rise are impacting the aquifers and will cause irreparable damage to the groundwater well systems that Delaney relies on for drinking water without immediate action to reduce GHG pollution.

14. In Delaney's lifetime, sea levels have noticeably risen at places where she visits and recreates. For example, Matheson Hammock Beach, just one mile from her Miami home, is an area where Delaney likes to ride her bike but the trail she uses is increasingly flooded with salt water due to sea level rise. She is not able to use, access and enjoy the trail when it is flooded. Miami Beach, the Everglades, and other areas in South Florida that Delaney visits and plans to continue to visit, also have experienced increasingly common and disruptive floods and other impacts as a result of climate change, thus minimizing her ability to recreate there and enjoy such places.

15. Delaney loves fishing for snapper, grouper, lobsters, and other fish, which afford both recreation and food for Delaney and her family. However, Delaney's ability to fish is being negatively affected as marine species are impacted by ocean acidification and warming. Delaney also loves to swim and snorkel and see dolphins, sea turtles, sharks, barracudas, and other marine life in places like Biscayne Bay National Park. Florida's coral reefs already experience bleaching – almost every time Delaney goes swimming or snorkeling she sees coral bleaching in new areas – and without government action, she will not be able to see and enjoy all the marine life that she does now in the future.

16. When Hurricane Irma struck in the summer of 2017, Delaney lost power for 11 days and her college studies were significantly disrupted. Her home on No Name Key and the surrounding lower Keys region suffered tremendous damage as it is located where the northern

eyewall of Hurricane Irma hit Florida. Delaney was out of school for two weeks and is concerned about scientists' predictions that climate change is leading to more frequent, more powerful hurricanes in the future that will impact her ability to live in places that she loves such as Miami and No Name Key. Delaney consistently experiences anxiety, depressed thoughts, terror and high stress because she fully understands the gravity and urgency of climate change and ocean acidification and its impacts on her life.

17. Plaintiff **Levi D.**, by and through his natural guardian and mother Leigh-Ann Draheim, is a 10-year old Florida youth residing in Satellite Beach, Brevard County, Florida, whose personal and economic wellbeing is, and will continue to be, threatened with injury from the Climate Change Impacts. Levi lives on a southeastern Florida barrier island, much of which is less than 6 feet above sea level. Levi's home is 3 feet above sea level. His island already is facing impacts from sea level rise and increased inundation during storms. With just 3 feet of sea level rise, Levi's home will be in the sea, which is likely to happen between 2065-2083. Long before 3 feet of sea level rise, Levi and his family will be forced out of their home because of the increasing frequency and depth of flooding and infrastructure failure in their home and community from sunny day flood events (King Tides and heavy rainfalls) and storm surges from tropical storms and hurricanes.

18. During the summer of 2017, Levi was forced to evacuate his home due to Hurricane Irma. Due to flood and other damage from Hurricane Irma, Levi's school was shut down. Levi is now required to enroll in a new school. Levi has been told his school may reopen in a new location in the Spring, but it is unknown whether and when this will occur. The loss of his school community is devastating to Levi. During fall 2017 storms, Levi's home had at least

18 inches of flood water in the front yard. Levi was literally up to his knees in the flood water and had to put sandbags around the house to protect it from water damage.

19. The beaches on the island are Levi's backyard. During the summer months, he spends time at the beach regularly and, during the remainder of the year, beach visits and recreation are common. However, Sargassum seaweed invasion, with seaweed covering the beaches along the island, is now common due to climate change and higher water temperatures, as are many fish kills in the waters where Levi recreates. Levi's ability to access the beach and participate in beach activities have thus been reduced because the rotting seaweed smells like sulfur and the rotting fish create unsafe and unpleasant conditions. Levi's ability to swim in the Indian River Lagoon is often limited because of increasing flesh-eating bacteria and dead fish, also due to climate change and higher water temperatures. Levi and his family are able to routinely smell the dead fish in their community. Levi is now limited in where he can access and swim in the Atlantic Ocean, due to an increase in flesh-eating bacteria, Sargassum seaweed invasion and other Climate Change Impacts.

20. In the last two years, Levi's severe allergies have made it harder for him to spend time outdoors. Among the adverse effects of Climate Change Impacts are an increase in allergies and adverse psychological impacts.

21. Plaintiff **Isaac A.**, by and through his natural guardian and mother Janet Ray Auspurg, is an 11-year-old U.S. citizen and resident of Alachua, Florida, one of the Florida counties most severely impacted by inland flooding due to significantly high volumes of rain and river flooding. Isaac is psychologically harmed by the overwhelming fears caused by the Climate Change Impacts and at times he feels hopeless and extremely sad.

22. Isaac lives on 20 acres of forest and farmland, which his family has owned for over 18 years. The warmer, more humid weather associated with Climate Change Impacts is harming the animals that Isaac and his family raise and depend on. Hotter weather makes it harder to work on the farm and allow more parasites and diseases to spread, such as those that killed off all but one of Isaac's new baby goats born in 2015.

23. Isaac and his family enjoy and recreate on many of Florida's northeastern beaches and coastal ecosystems but their ability to enjoy and recreate in these areas is being negatively impacted by climate change and sea level rise. The Florida Keys and the ocean life around them are also very important to Isaac and his father. On a recent snorkeling trip to the Keys, Isaac and his father noticed that ocean acidification has drastically changed the coral reefs in the Keys over the years since his childhood. Seeing this takes a toll on Isaac and he worries that he may not be able to continue to see and experience coral reefs and certain fish species as he grows up due to ocean warming and acidification cause by CO<sub>2</sub> emissions. The increasing prevalence of toxic algal blooms off the coast of Florida due to climate change also limits Isaac's access and ability to swim and recreate in the ocean as they pose serious health threats to Isaac and others.

24. Isaac frequently visits the Blue Springs and Ginnie Springs a few miles from his home. Isaac has noticed significant decreases in the flow of the springs, which upon information and belief are due to climate change, which causes him stress and reduces his ability to access, use and enjoy the springs.

25. When Hurricane Irma struck Florida, there was a tremendous amount of flooding around Isaac's home. They lost power for about a day and did not have Internet service for over a week. Because of this, Isaac's school schedule was interrupted. Isaac's grandpa's property which he visits frequently, received so much water that it flooded about 8-9 acres of his

grandpa's property. The water came up to the first step of his grandpa's house and just below his backdoor.

26. Plaintiff **Jose (“Andres”) P.**, by and through his natural guardian and mother, Valerie Jean Phillips, is a 12-year-old U.S. citizen and a resident of Miami, Florida. Andres and his mother and older sister live in an apartment on the coast of Miami, about 4-5 feet above sea level. He and his family already are being impacted by flooding at their apartment building, with water flooding the sidewalks due to King Tide flooding caused by sea level rise. As a result of rising temperatures due to climate change, Andres' ability to spend time outside and participate in the activities he enjoys, like biking, playing soccer, basketball and football, has been diminished. Andres and his family enjoy swimming in the Oleta River, which flows from the Everglades into Biscayne Bay, but they have been going less often due to recent algae alerts and massive fish die-offs, which have been attributed to climate change.

27. Andres is likely to lose his access to clean and safe drinking water. As sea levels rise, salt water is contaminating freshwater aquifers used for his drinking water supply. After getting sick and developing red eyes from a mosquito bite, Andres is threatened by potential mosquito-transmitted diseases. He has never had reactions to mosquitos until recently and is anxious about the Zika outbreaks.

28. Andres was forced to evacuate his home when Hurricane Irma struck Florida. After numerous failed attempts to find local hotels, they drove for three days to stay with their nearest relatives in Chicago. Ultimately, Andres missed about a week and a half of school because it was closed for the hurricane. Since the hurricane, Andres has been unable to swim in the waters around his home because there have been many reports that raw sewage has been

discharged into the waters as a result of the hurricane. Andres is fearful about what the future holds and what his life and the planet will look like as he grows up.

29. Plaintiff **Lushia (“Luxha”) P.**, by and through her guardian and mother, Valerie Jean Phillips, is a 14-year-old U.S. citizen and a resident of Miami, Florida. Luxha and her family have already been negatively impacted by climate change and will continue to be affected by increasingly severe storms and sea level rise. Luxha and her mother and younger brother live in an apartment on the coast of Miami, about 4-5 ft. above sea level.

30. Luxha is scared and fearful of time running out before disaster strikes her and her community. Over the last few years, Luxha has lived through erratic weather patterns in Florida. She’s experienced sea levels rising, and long periods of both drought and excessive rain. Luxha is also starting to see trees in her city’s parks and on her school grounds become sickly.

31. Luxha and her family have experienced flooding at their apartment building, with water spilling onto the sidewalks from the street due to Climate Change Impacts such as sea level rise and increased severity of storms. Because of the erratic weather and more extreme storms, Luxha is concerned that she might soon lose access to her home, her school, and clean and safe drinking water. Because of sea level rise, salt water is beginning to invade freshwater aquifers used for the city’s drinking water, which threatens Luxha’s drinking supply. Luxha and her family swim in the Oleta River, which flows from the Everglades into Biscayne Bay, but their ability to access and swim in this River has been limited after the water started causing Luxha to experience skin irritations and itching. The Oleta River area has had recent algae alerts and massive fish die-offs due in part to climate change and warmer water temperatures.

32. An increase in heat waves in recent times has caused Luxha to have a hard time spending time outside and participating in the activities she enjoys like biking, playing soccer, and swimming.

33. Luxha was forced to evacuate her home when Hurricane Irma struck Florida. Ultimately, Luxha missed about a week and a half of school because it was closed for the hurricane. After the hurricane, Luxha was unable to swim in the waters around her home because there were reports that raw sewage and other pollutants from land-based sources was discharged into the waters as a result of the hurricane and flooding.

34. Plaintiff **Oliver C.**, by and through his guardian and mother, Emily Chamblin, is a 14-year-old U.S. citizen and a resident of Pensacola, Florida. He and his family live on Bayou Grande, where he grew up swimming, kayaking, snorkeling and recreating. When he was younger, he used to be able to swim and recreate in the bayou year round, but now he is unable to do that because of Climate Change Impacts, such as increased runoff and stormwater runoff from unprecedented rain events. He frequently goes to Pensacola Beach and Johnson Beach to recreate with his family. He is not able to swim in the ocean as much as he used to because of the increase in jellyfish in the water that sting him. Populations of jellyfish are increasing along the Florida coast due to warmer water temperatures and other factors associated with climate change. Some of the jellyfish make their way into the bayou by his house and impede his ability to swim there as well. He also has seen a decline in the marine life, such as fish and dolphins, that he enjoys to observe in the bayou. In 2014, he experienced significant flooding, that caused his school to close down for 2-3 days. In recent years, flooding has become more common due to climate change and the increasing severity of storms.

35. Plaintiff **Valholly F. (“Peanut”)**, by and through her guardian and mother, Rhonda Roff, is a 15-year-old U.S. citizen, resident of Weston, Florida. Her father is a member of the Panther Clan of the Seminole Tribe of Florida. She grew up and continues to spend a significant amount of time on the Big Cypress Indian Reservation. Her tribal heritage is closely linked to nature and many in her tribal community believe that if the land dies, so will the tribe. With the increasing temperatures in Florida, Peanut finds it harder to go outside and engage in her normal activities, such as going to the beach and exploring nature on the reservation. On the reservation, she has witnessed many native plants struggling to survive and there are a lot less animals, such as frogs, toads and butterflies. She has noticed an increase in mosquitoes.

36. The Everglades ecosystem is an important part of Peanut’s cultural heritage. She grew up in the Everglades and has been surrounded by its ecosystem her entire life. She has witnessed the Climate Change Impacts that have happened in the Everglades which is negatively affecting many of her traditional cultural areas and practices.

37. Because her house in Weston is at sea level, Peanut and her family evacuated to their home on the Big Cypress Reservation during Hurricane Irma. Her neighborhood in Weston flooded and the lake adjacent to their home rose several inches into their backyard. She lost power for several days and missed an entire week of school because the school was closed due to significant flooding. She and her family also evacuated their home during Hurricane Irma and missed a lot of school during this time as well. Experiencing these hurricanes has been terrifying because she knows that Climate Change Impacts are getting more severe and will become life threatening if her state does not act to address climate change.

38. Plaintiff **Oscar Psychas** is a 20-year-old U.S. citizen whose family home is along the shore of Newnan’s Lake, a wild lake that is surrounded by cypress swamps a few miles

outside of Gainesville, Florida in Alachua County. Oscar spends much of his free time hiking, canoeing and camping throughout the state of Florida, particularly around his home on Newnan Lake. While in high school, Oscar founded and led his school's environmental club and took students on hiking and canoeing trips. Oscar's neighborhood, particularly his access road, is low-lying and vulnerable to flooding and storm damage. When Hurricane Irma struck Florida, his access road was flooded by two feet of water for one week, which completely cut off access to and from their home. During this time, his parents commuted to work by canoe. His home was without power for nine days and the surrounding environment was significantly damaged due to down trees. His dock was destroyed, eliminating Oscar's access to Lake Newnan, and it must be completely rebuilt. His ability to recreate in places he has traditionally visited has become limited because of Climate Change Impacts. Oscar has witnessed Climate Change Impacts in the wild places of Florida and he fears that he will not be able to share these experiences with his children.

39. The above-described health, recreational, scientific, cultural, inspirational, educational, aesthetic, property, and other interests of Delaney, Levi, Isaac, Andres, Luxha, Oliver, Peanut, Oscar, and other Floridians, are being, and will continue to be, adversely and irreparably injured by Defendants' failure to protect Public Trust Resources by establishing and enforcing adequate limitations on the levels of CO<sub>2</sub> and other GHG pollution consistent with Florida's responsibility to reduce the level of CO<sub>2</sub> concentrations in the atmosphere to safe levels in order to provide a livable future for Plaintiffs and all Floridians.

40. Florida's allowance of dangerous amounts of fossil fuel consumption and GHG pollution and its failure to sufficiently cap and annually reduce CO<sub>2</sub> emissions in the State is contributing to the harm to Levi's, Isaac's, Andres', Luxha's, Delaney's, Oliver's, Peanut's, and

Oscar's lives, liberties, and properties violating their inalienable rights as citizen beneficiaries of the Public Trust Doctrine under Article II, Section 7(a), Article X, Section 11, and Article X, Section 16, as well as under common law, and can only be redressed by a favorable order from the Court.

## **DEFENDANTS**

41. Defendant the **State of Florida** is the sovereign trustee over public natural resources within its domain, including air, water, the sea, shores of the sea, and fish and wildlife, and it must protect those Public Trust Resources from substantial impairment and alienation, for the benefit of present and future generations of Floridians. These resources must be managed and protected for the benefit of the public good and all future generations, not for the benefit of private individuals. The State of Florida must refrain from performing its trustee duties in a manner that results in the substantial impairment of Public Trust Resources, and it also has an obligation to affirmatively act to protect Public Trust Resources. In substantial part due to the State of Florida's affirmative actions that allow and promote fossil fuel development and use, as well as the State of Florida's failure to limit and phase out fossil fuels, the concentration of CO<sub>2</sub> and other GHGs in the atmosphere has risen to dangerous levels that constitute a breach of the State of Florida's fiduciary duties to protect the constitutional and common law rights of the Plaintiffs and the citizens of Florida.

42. Defendant **Rick Scott** is the Governor of the State of Florida and is sued in his official capacity. The Governor "shall take care that the laws be faithfully executed, commission all officers of the state and counties, and transact all necessary business with the officers of government." Art. IV, § 1, Fla. Const. The Governor must approve every bill before it becomes law and has the authority to veto legislation. Art. III, § 8, Fla. Const. The Governor may convene

the legislature for a special session to address specific legislative business. Art. III, § 3(c), Fla. Const. The Governor is required to make recommendations to the legislature every two years revising the State's long-range state planning document. Art. III, § 19(h), Fla. Const. The Governor is the chief administrative officer and supervises Florida's state agencies and appoints members to various agencies and other positions within the Executive branch. Art. IV, § 1, Fla. Const. The Governor is responsible for planning and budgeting for the State. Art. IV, § 1, Fla. Const. The Governor is responsible for preparing and updating the State's Comprehensive Plan and directing agencies to prepare and implement plans necessary to meet the goals of the State Comprehensive Plan. § 186.006, Fla. Stat. Among other things, this Plan is meant to protect the health, safety, and welfare of Florida's children; "assure a safe and healthful environment" by regulating activities that impact the State's air, water, and food; protect and improve surface and groundwater quality for drinking water and natural resource protection; protect marine fisheries, beaches, and coastal ecosystems; improve air quality to "safeguard human health and prevent damage to the natural environment;" reduce energy requirements and "reduce atmospheric carbon dioxide;" protect Florida's air, water, and land from resource extraction; and integrate "systemic planning capabilities . . . into all levels of government." The Governor sits on the Natural Gas Transmission Pipeline Siting Board, which approves permits for natural gas pipelines, as well as the Siting Board for power plants, transmission lines, and associated facilities and projects. Together with the Cabinet, the Governor issues siting certifications for power plants, transmission lines, and natural gas pipelines. Additionally, the Governor sits on the Defendant Board of Trustees of the Internal Improvement Trust Fund, which is vested and charged with the conservation and protection of all lands owned by the State. § 253.03, Fla. Stat.

43. Defendant the **Florida Department of Environmental Protection** (“FDEP”) is the state agency responsible for conserving and maintaining Florida’s natural resources and for enforcing many of the State’s environmental laws. As a trustee of Public Trust Resources, the FDEP has the “power and duty to control and prohibit pollution of air and water” and to “[a]dopt a comprehensive program for the prevention, control, and abatement of pollution of the air and waters of the state.” § 403.061, Fla. Stat. The FDEP permits and charges operation license fees to each major source of air pollution in Florida. The FDEP also permits minor sources of air pollutants. The permits for major and minor sources of air pollution specify emission limits and requirements for construction and operation. The FDEP also provides permits for the various stages of oil and gas development, including oil and gas exploration, drilling and operating of wells, and the plugging of wells, as well as natural gas storage facilities. The FDEP also coordinates interagency review and certification of the construction and operation of power plants, transmission lines, and pipelines. The FDEP’s affirmative acts permit the development, transportation, and combustion of fossil fuels that are resulting in dangerous levels of CO<sub>2</sub> and GHG pollution. The FDEP also has numerous natural resource and water management responsibilities defined by statute.

44. Defendant **Noah Valenstein** is the Secretary of the Florida Department of Environmental Protection and responsible for ensuring FDEP meets its constitutional and statutory obligations. He is sued in his official capacity as Secretary of the Florida Department of Environmental Protection.

45. Defendant the **Florida Department of Agriculture and Consumer Services** (“FDACS”) is charged with coordinating Florida’s energy policy and the State’s energy-related programs, including planning for the development of renewable energy resources and reducing

dependence on energy resources like oil and gas. § 377.703(1) & (2)(e)(2), Fla. Stat. The FDACS includes the Office of Energy, which is responsible for developing Florida's energy policy and for developing energy efficiency and renewable energy programs. The Office of Energy is also responsible for recommending energy policy and programs to the Legislature and Governor. The FDACS is responsible for collecting data on the extraction, production, importation, exportation, transportation, transmission, and sale of reserves of energy sources in the State and issuing reports based on that data. § 377.603, Fla. Stat. The FDACS is responsible for protecting and promoting the appropriate and efficient use of soil and water resources as well as protecting the state's farm, forests, and grazing lands, which are "among the most basic assets of the state and the conservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people and is in the public interest." § 582.02, Fla. Stat.

46. The FDACS includes the Florida Forest Service, which is responsible for managing over one million acres of state forest resources for present and future generations and promoting forest land stewardship, good forest management, and tree planting and care. § 589.04, Fla. Stat. The FDACS is responsible for overseeing and managing Florida's agricultural sector, including the state's agricultural practices, which has a significant impact on whether agriculture practices contribute to carbon sequestration or release carbon. Florida's forests and soils are critical for sequestering CO<sub>2</sub> and must be managed in order to maximize their carbon sequestration potential. Instead of using its authority to promote renewable energy policies, energy efficiency, and land management practices designed to maximize carbon sequestration, the FDACS continues to promote a fossil fuel based energy system and land management practices that are not adequately sequestering CO<sub>2</sub>.

47. Defendant **Adam Putnam** is the Commissioner of the Florida Department of Agriculture and Consumer Services and is responsible for ensuring FDACS meets its constitutional and statutory obligations. He is sued in his official capacity as Commissioner of the Florida Department of Agriculture and Consumer Services and as a member of the Florida Cabinet.

48. Defendant **Florida Board of Trustees of Internal Improvement Trust Fund** is comprised of Defendant Governor Scott and other members of the Florida Cabinet. The Board of Trustees is “vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of” state lands, and can take actions “necessary to the full protection and conservation of [state] lands.” § 253.04(1), Fla. Stat. “All lands held in the name of the board of trustees shall continue to be held in trust for the use and benefit of the people of the state pursuant to s. 7, Art. II, and s. 11, Art. X of the State Constitution.” § 253.001, Fla. Stat.

49. Defendant **Florida Public Service Commission** (“Commission”) is the state agency charged with regulating and supervising public utility rates and services in a manner that “promote[s] the convenience and welfare of the public.” § 366.05(1), Fla. Stat. The Commission has the authority to review standard offer contracts and to ensure that such contracts fulfill the energy policies of the state. The Commission has the authority and obligation to examine future electricity costs related to climate change and has the authority to adopt rules to administer and implement Florida’s renewable energy policy. § 366.92(5), Fla. Stat. The Commission reviews all Electric Utility 10-year Site Plans, the most recent versions of which project Florida energy generation and consumption through 2026. Under the Florida Energy Efficiency and Conservation Act, the Commission has the obligation to develop and adopt overall goals to

promote demand-side renewable energy systems and the conservation of energy and natural gas usage. § 366.81; § 366.82(2)-(3), Fla. Stat. The Commission also has the exclusive jurisdiction to determine the need for new electric power plants under the Electrical Power Plant Siting Act, § 403.501-518, Fla. Stat, and it regulates the electricity transmission system. § 366; 403.52-403.5365, Fla. Stat.

50. Florida is the home to approximately 20 million residents, third most of any state; Florida's GDP is nearly \$1 trillion annually; Florida has 1,350 miles of coastline, second only to Alaska. The Defendants' collective actions, policies, practices and customs that are causing dangerous amounts of GHG pollution in a state the size of Florida has a material adverse impact on the Public Trust Resources of the state.

51. GHG pollution is a function of a systemic problem caused by the climate and fossil fuel-based energy system, which the named Defendants perpetuate through their authorities, actions, and inactions. The infringement of the constitutional and common law rights of the Plaintiffs and the violations of the constitutional and common law Public Trust Doctrine cannot be remedied without systemic change. Continuation of the status quo system currently in place in Florida will irreversibly harm Plaintiffs and present and future generations of Floridians unless the Court acts as a constitutional check on the Defendants and affords a remedy to Plaintiffs and the residents of Florida.

52. Defendants are collectively responsible for authorizing, promoting, and permitting fossil fuel production, consumption, transportation, and combustion in the State of Florida, as well as deforestation and soil degradation, and thus allowing CO<sub>2</sub> and GHG pollution to rise to dangerous levels and cause substantial harm to Plaintiffs. Defendants also have failed to use their authority take the requisite available steps to protect Florida's essential natural resources,

including the air and its waters, from dangerous levels of CO<sub>2</sub> and GHG pollution. The affirmative aggregate acts and omissions of Defendants, jointly and severally, have violated, and continue to violate Plaintiffs' inalienable rights protected by the Florida Constitution and by the common law.

### **ANTHROPOGENIC CLIMATE CHANGE**

53. There is an overwhelming scientific consensus that human-caused climate change is occurring and negatively affecting the state of Florida. The present rate of global heating is a result of anthropogenic GHG pollution, primarily CO<sub>2</sub> emissions, from the combustion of fossil fuels. This release of GHGs into the atmosphere, combined with deforestation and soil degradation, has disrupted Earth's energy balance, thereby changing Earth's climate.

54. In 2013, the atmospheric CO<sub>2</sub> concentration exceeded 400 ppm for the first time in recorded history, well above the pre-industrial concentration of 280 ppm. The average CO<sub>2</sub> concentration for 2016 was 403 ppm. The current CO<sub>2</sub> concentration is the highest it has been in the last three million years. The last time in the geologic record that atmospheric CO<sub>2</sub> was at present levels, the seas were 70-90 feet higher than they are today.

55. The concentration of other GHGs in the atmosphere also has increased. For example, methane concentrations have increased approximately 250 percent since the pre-industrial period.

56. GHGs in the atmosphere act like a blanket over Earth to trap some of the energy the Earth receives from the sun. Without this greenhouse effect, the average surface temperature of our planet would be 0°F (-18°C) instead of 59°F (15°C). Scientists have understood this basic mechanism of global warming since the late-nineteenth century. More GHGs in the atmosphere

means that more heat is being retained on Earth, with less heat radiating back out into space, causing a disruption in Earth's energy balance.

57. A substantial portion (around 20%) of every ton of CO<sub>2</sub> emitted by humans persists in the atmosphere for as long as a millennium or more, therefore the impacts associated with CO<sub>2</sub> emissions of today will be mostly borne by our children and future generations. The Earth will continue to warm in reaction to concentrations of CO<sub>2</sub> from past emissions, as well as future emissions. This has been well understood and accepted by government and the fossil fuel industry since at least the 1950s.

58. In 1955, an article sponsored by the United States Office of Naval Research, *The Carbon Dioxide Theory of Climate Change*, linked the release of CO<sub>2</sub> from human activities to temperature increases. A 1965 White House Report, *Restoring the Quality of Our Environment*, stated that CO<sub>2</sub> from the burning of fossil fuels “will modify the heat balance of the atmosphere to such an extent that marked changes in climate, not controllable through local or even national efforts, could occur.” The 1965 report linked rising CO<sub>2</sub> emissions to temperature increases, melting of the Antarctic ice cap, sea level rise and warming, and other impacts. The report stated that humans are “unwittingly conducting a vast geophysical experiment.”

59. For decades, the U.S. Government and the State of Florida have acknowledged that climate change is occurring from burning fossil fuels, that its adverse effects are underway and that a continuation of a fossil fuel-based energy system and failure to reduce GHG pollution would consign future generations to irreversible and catastrophic consequences. In 2014, the National Climate Assessment acknowledged that “the cumulative weight of the scientific evidence . . . confirms that climate change is affecting the American people now, and that choices we make will affect our future and that of future generations.”

60. A 1997 U.S. Environmental Protection Report, *Climate Change and Florida*, found that sea level rise due to climate change would cause large losses of mangroves in Florida, damage freshwater ecosystems, accelerate coastal erosion, exacerbate flooding, increase vulnerability to storm damage, threaten freshwater drinking supplies, and lead to the loss of land, structures, and wildlife habitat. The National Oceanic and Atmospheric Administration (“NOAA”) has recently reported that nuisance flooding is 300-900% more frequent than it was 50 years ago. A study released in 2018 has found that Florida is the “hot spot” for flooding and has assets valued at \$714 billion at risk of destruction.

61. The 2008 Energy and Climate Change Action Plan for the State of Florida acknowledged that Florida will see an increase in temperatures and sea levels as a result of climate change and that “[t]ropical storms and hurricanes are likely to become more intense, produce stronger peak winds, and produce increased rainfall over some areas due to warming sea surface temperatures.” The Plan also noted that if Florida acted to reduce GHG pollution, the effects of climate change could be “avoided, minimized, or mitigated” and that actions to reduce GHG pollution already are available.

62. Climate Change Impacts result from human-caused GHG pollution and deforestation and degradation of soils. Climate Change Impacts are already injuring and irreversibly destroying human and other natural systems, causing loss of life/health, and pressing species to extinction. Unless arrested by immediate science-based action, climate change will produce catastrophic and irreversible consequences for humanity and nature alike, as tipping points are reached and points of no return are crossed.

63. Well-documented and observable impacts from the changes in the climate system highlight that the current level of atmospheric CO<sub>2</sub> concentration, over 400 ppm, already has

taken Florida and the rest of Earth into a danger zone. Current CO<sub>2</sub> and GHG concentrations are resulting in the warming of land surfaces, the warming and acidifying of oceans, increased atmospheric moisture levels, rises in the global sea level, and changes in rainfall and atmospheric air circulation patterns that affect water and heat distribution, among other impacts.

64. One key observable change is the rapid increase in recorded global surface temperatures. As a result of increased atmospheric CO<sub>2</sub> and GHG pollution from human activities, based on fundamental scientific principles, the Earth has been warming as scientists have predicted. The increased concentrations of GHGs in our atmosphere have raised global surface temperature by about 1.8°F (1.06°C) from 1880 to 2015, which is above, probably well above, the maximum warming of the Holocene era, the period of relatively stable climate over the last 10,000 years over which human civilization developed. In the last 30 years, the acceleration of change has intensified as the Earth has been warming at a rate three times faster than that over the previous one hundred years. According to National Aeronautics and Space Administration (“NASA”), 2014 was the hottest year on record, until 2015 broke that record. 2016 exceeded both 2014 and 2015, marking the first time since modern recordkeeping began that three consecutive years were the hottest years on record.

65. The global-mean temperature is projected to warm by a total of 3.6-4.8°F/2-4.8°C over the next century, depending upon future emissions of GHGs.

66. As expected (and consistent with the temperature increases in land surfaces), ocean temperatures also have increased. Approximately 93.45% of the excess energy (heat) human pollution has forced on the planet has been absorbed by the oceans to 1000 meters or more in depth. Over half of this excess heat from human-induced climate change has transferred to the ocean since 1997. This has led to changes in the ability of the oceans to circulate heat

around the globe; which can have catastrophic implications for the global climate system. The average temperature of the global ocean has increased significantly despite its remarkable ability to absorb enormous amounts of heat before exhibiting any indication thereof.

67. The United States Environmental Protection Agency (“EPA”) has found that climate change already harms our health and welfare and will only worsen without immediate action. Human-caused fossil fuel extraction and burning and the resulting climate change already contribute to an increase in asthma, cancer, cardiovascular disease, stroke, heat-related morbidity and mortality, food-borne diseases, and neurological diseases and disorders. Climate change threatens the basic requirements for maintaining health like clean air and pure water, sufficient food, and adequate shelter. It also increases occurrence of infectious diseases, including those spread by mosquitos. Children are especially vulnerable to adverse health impacts due to climate change.

68. Mental health disorders are likely to be one of the most dangerous indirect health effects of climate change. The mental health effects can include elevated levels of anxiety, depression, PTSD, and a distressing sense of loss. The impacts of these mental health effects include chronic depression, increased incidences of suicide, substance abuse, and greater social disruptions like increased violence.

69. Climate change already is causing, and will continue to result in, more frequent, extreme, and costly weather events, such as floods and hurricanes. The annual number of major tropical storms and hurricanes has increased over the past 100 years in North America, coinciding with increasing temperatures in the Atlantic sea surface.

70. Scientific evidence demonstrates that non-linear sea level rise would submerge much of Florida and the eastern seaboard of the U.S., impacting millions of Americans and

trillions of dollars of property, unless there are immediate reductions in CO<sub>2</sub> and GHG pollution. Global mean sea level has risen about 8-9 inches since the industrial revolution and 3 inches of that rise has occurred since 1993. Even these relatively small increases have had substantial effect on low-lying areas.

71. Scientists have established that during certain periods of the geologic record rises in sea level have occurred very rapidly. This geologic evidence for rapid ice sheet disintegration, once destabilized, verifies that the numerous reinforcing, accelerating feedbacks scientists are observing for recent ice sheet melt on Greenland and Antarctica is occurring.

72. In 2017, the National Oceanic and Atmospheric Administration (“NOAA”) published the most recent United States Government sea level rise projections, once again confirming that sea level rise is a certain impact of climate change. NOAA’s projections, which included acceleration of ice melt from Greenland and Antarctica, included a range between 4.1-8 feet global mean sea level rise by 2100. However, for certain coastlines across the U.S., the high ranges could be 1-3.3 feet higher. NOAA’s 2017 projections are higher than the projections it made just five years ago in its 2012 assessment.

73. Under NOAA’s 2017 projected scenarios, there could be 2 feet of sea level rise by 2048, 4 feet by 2074, 6 feet by 2093, 8 feet by 2110, and 10 feet by 2125. A 2-3 foot rise of sea level will make nearly all of the barrier islands of the world uninhabitable, result in inundation of a major portion of the world’s deltas, and make low-lying coastal zones in Florida increasingly challenging communities in which to maintain infrastructure and welfare and to ensure protection of life and property during extreme rainfall events and hurricanes.

74. NOAA reports that even 3 feet of sea level rise would permanently inundate 2 million American's homes and communities and 6.6 feet of sea level rise would put 6 million U.S. homes underwater.

75. NOAA's projection of up to 8 feet of sea level rise by 2100 is representative of sea level projections typically made in the scientific literature based on current modeling, including the current rate of accelerated melting in the poles, but it does not address other plausible high-risk scenarios. The scientific consensus regarding the historic rapid pulses in sea level rise as ice sheets disintegrate is not incorporated in NOAA's 2017 model, or any of the modeling summarized by the Intergovernmental Panel on Climate Change.

76. The best scientific information available project a 15-40-foot rise in sea level by 2100 if current trends continue, with ever greater rises and acceleration in subsequent centuries until such time as levels of CO<sub>2</sub> in the atmosphere are dramatically reduced and steps are taken to cool the upper portion of the ocean.<sup>1</sup>

77. Climate change and ocean acidification are threatening the survival and wellbeing of plants, fish and wildlife, and Earth's biodiversity. As many as one in six species are threatened with extinction due to climate change. Many more species that do not face extinction will face changes in abundance, distributions, and species interactions that cause adverse impacts for ecosystems and humans.

78. Increased CO<sub>2</sub> emissions are having a severe negative impact on our oceans, in addition to our climate system. The oceans absorb around 25-30% of global CO<sub>2</sub> emissions, resulting in their acidification. Ocean acidity has been rising at a geologically unprecedented

---

<sup>1</sup> See, e.g., *Juliana, et al. v. United States*, No. 17-71692 (9<sup>th</sup> Circuit Court of Appeals) (Decl. of Dr. Harold R. Wanless in Support of Answer of Real Parties in Interest to Petition for Writ of Mandamus) (filed Aug. 28, 2017).

rate. Currently, acidity is rising at least 100 times faster than at any other period during the last 100,000 years, threatening marine life, including human food sources, and killing coral reefs.

79. The best available science shows long-term average global surface heating must not exceed 1°C for a long period of time this century if the Earth's natural systems are to remain intact.

80. According to the current climate science, to prevent long-term global heating greater than 1°C and a short-term peak of no more than 1.5°C, concentrations of atmospheric CO<sub>2</sub> must decline to 350 ppm or less by the end of this century.

81. Oceans have the same scientific standard of protection. Critically important ocean ecosystems, such as coral reefs, are substantially impaired and threatened with increasingly devastating impacts by present day CO<sub>2</sub> concentrations of approximately 403 ppm. According current science atmospheric CO<sub>2</sub> levels should be reduced to no more than 350 ppm in order to protect ocean ecosystems and coral reefs from dangerous acidification and warming.

82. If emissions peaked and reductions began in 2005, only a three and one-half percent (3.5%) per year reduction would have been necessary to reach 350 ppm by 2100, along with carbon sequestration of 100 gigatons of carbon ("GtC") through reforestation and soil sequestration. If emission reductions begin in 2018, the annual rate of reduction would need to be nine and two-tenth percent (9.2%), along with carbon sequestration of 100 GtC through reforestation and soil sequestration. For every additional year of delay, the annual rate of CO<sub>2</sub> and GHG emission reductions required to reach 350 ppm by 2100 increases, making it extremely important that GHG emission reductions begin immediately before the rate of annual GHG emission reductions becomes so large it is impracticable. These targets reflect the global average emission reductions required to remedy the current climate emergency without accounting for

the differentiated and equitable responsibilities of individual states and their historic contribution to carbon pollution.

83. Improved forestry and agricultural practices can provide the necessary net drawdown of atmospheric CO<sub>2</sub> naturally, without relying on unproven technologies to capture and sequester carbon. This carbon drawdown is achievable primarily via reforestation of degraded lands that are of little or no value for agricultural purposes, and by changing agricultural practices to increase the amount of carbon that is stored underground in healthy soils. These practices can return the atmosphere to safe levels of atmospheric CO<sub>2</sub> while reducing erosion and improving soil fertility and forest health.

84. Florida can achieve a zero-CO<sub>2</sub> economy within the next 30 to 50 years without acquiring carbon credits from other jurisdictions. In other words, the direct emissions of CO<sub>2</sub> from burning fossil fuels can be cost-effectively eliminated in Florida by substituting building, energy, and transportation technologies that are now available or reasonably foreseeable.

### **CLIMATE CHANGE IMPACTS IN FLORIDA**

85. The Plaintiffs already are experiencing the devastating impacts of climate change, and will continue to do so with increasing severity unless there are immediate, science-based, and systemic reductions in CO<sub>2</sub> emissions. Drought, extreme weather events, sea level rise, coastal flooding, and ocean acidification are happening right now in Florida and will worsen with time.

86. The science of attributing extreme weather events to climate change is developing rapidly and now is reliable to make significant, scientifically accurate probabilistic predictions about future weather events and the expected severity of weather-related natural disasters. Scientifically reliable research has been done and continues to advance establishing a causal

relationship between anthropogenic GHG pollution and certain extreme weather events, including those that have affected Florida.

87. Sea level rise, storm surges, and salt-water intrusion are among the biggest impacts being experienced in Florida.

88. Florida has more than 1,200 miles of coastline, 6,700 square miles of coastal waters, and 4,500 square miles of estuaries. Scientists predict that non-linear sea level rise could lead to several meters of sea level rise in the coming decades without immediate science-based reductions in GHG pollution.

89. A maximum land elevation in Florida of 400 feet (400') above sea level makes rising sea levels an extraordinary threat to Florida's land and residents. A mere one-meter (about 3 feet (3')) rise in sea levels, which is at the low end of projections under business-as-usual emissions scenarios, would result in a nine percent (9%) loss of Florida's landmass, impacting ten percent (10%) of the State's population, and a projected loss of 37,000 acres of cropland.

90. With two meters (about six feet (6')) of sea level rise, well within the range of conservative projections, experts project that six million Floridians would be displaced and 934,411 homes lost due to the impacts of sea level rise. Forty percent (40%) of the United States' population and housing units at risk from sea level rise are located in Florida. Florida will lose more homes and land than any other state in the United States if CO<sub>2</sub> and GHG emission levels continue as projected.

91. Florida's coastal lands will be most affected. Freshwater ecosystems will be compromised by saltwater intrusion and this loss will have a negative impact on fish spawning habitats and other animal populations. Florida's wetlands and estuaries will suffer irreversible catastrophic impacts.

92. Oyster reefs will continue to die-off due to upstream movement of optimal saline conditions.

93. With sea level rise, Florida's coastal ecosystems are changing due to the increase in dry-land loss due to submergence, erosion, wetland loss/change, flood damage, saltwater intrusion from surface to ground water, and higher water tables that impede drainage. With the loss of coastal wetlands and other coastal ecosystems that are not able to migrate inland due to coastal squeeze (when development or other impediments, such as roads or sea walls, are in the way), Florida is becoming even more susceptible to storm surges and inland flooding.

94. In preparing for Hurricane Irma that struck Florida in September 2017, Florida government officials ordered the evacuation of 7 million Floridians, 700,000 of which were mandatory. The damage from Hurricane Irma was extensive, producing approximately \$8,608,689,503 in insured losses claims, with that amount continuing to grow.<sup>2</sup>

95. The Florida Reef System is the only barrier reef located in the continental United States and it already is showing signs of climate change vulnerability in the form of mass bleaching events caused by stress due to increased ocean temperatures.

96. Experts project that even under the most optimistic scenarios, coral bleaching events will become more frequent and severe. Sea level rise and severe weather events can also endanger local reef survival through chronic stress.

97. Excess CO<sub>2</sub>-induced ocean acidification already is decreasing the concentration of calcium carbonate in seawater, limiting the rate at which corals and other marine animals build their skeletons, and further reducing coral cover in the Florida Reef System.

---

<sup>2</sup> Florida Office of Insurance Regulation, Hurricane Irma Claims Data, at <https://www.floir.com/Office/HurricaneSeason/HurricaneIrmaClaimsData.aspx> (updated as of April 6, 2018).

98. Three-fourths of Florida's residents live in shoreline and coastal areas. Losing these areas to sea-level rise will wreak havoc on Florida's economy and its ability to provide Floridians with essential human services. Coastal local governments depend on coastal land values for most of their property tax revenue.

99. A recent assessment found that within the next 12 years, property values in Florida will decline by \$15 billion. By 2050, Florida property value decline is forecasted to reach \$23 billion.

100. A record-breaking 105 million tourists visited Florida in 2015, generating \$89.10 billion in taxable sales. Six million tourists visited Florida's barrier islands, generating nearly \$10 billion in 2016 alone. Any changes in coastal areas or the disappearance of Florida's most popular beaches and coastal destinations will greatly diminish tourism revenues.

101. Annual economic costs of climate change inaction in Florida from loss of tourism revenue, increased hurricane damages, value of at-risk residential real estate, and increased cost of electricity generation are projected to total at least \$92 billion by 2050 and at least \$345 billion by 2100, constituting 2.8 percent and 5.0 percent of Florida's projected Gross State Product respectively.

102. Florida's agriculture, including citrus crops, likely will experience decreased yields and smaller fruit due to warmer temperatures from climate change.

103. Tropical storms and hurricanes will become increasingly common and destructive with climate change. Florida is especially vulnerable to hurricanes. Rising sea levels will result in hurricane storm surges and wave heights that are higher and increasingly destructive. These storms will result in flooding, coastal erosion, damage to property and infrastructure, contamination of freshwater supplies with salt water, and the loss of lives.

104. The World Bank has identified Tampa Bay as one of the 10 most at-risk areas on the globe due its vulnerability to flooding and damage when a major hurricane occurs. A recent study analyzing potential catastrophic storm damage has reported that the Tampa Bay region could lose up to \$175 billion if a storm the size of Hurricane Katrina were to reach land, which almost occurred with Hurricane Irma.

105. Warmer temperatures and droughts will adversely affect Florida's forests and may result in forests being reduced and replaced with grasslands. The warmer temperatures and droughts will also lead to lower rivers flows, lower lake levels, and reduced groundwater supplies.

106. Florida's citizens will be increasingly exposed to various human health threats associated with climate change. While senior citizens in Florida will be most adversely affected by heat wave and heat-related illnesses, all Floridians, including Plaintiffs, will be impacted by the warming. Marine-borne illnesses, shellfish poisoning, and harmful algae blooms are also expected to worsen in the coming years due to climate change. Climate change is also leading to the increased prevalence of mosquito-transmitted diseases in Florida, such as the Zika virus.

107. In September 2017, Hurricane Irma struck Florida as a Category 3 hurricane, making landfall on Cudjoe Key with maximum sustained winds of 130 mph. The storm caused catastrophic damage throughout Florida and the Caribbean, causing at least 124 deaths, including 80 in the United States.

108. A team of researchers from Florida International University used the Florida Public Hurricane Loss Model to estimate that Hurricane Irma caused \$19.4 billion in wind-related losses to Florida residents. This estimate does not include flood losses. Of that total, \$6.3 billion will be paid by insurance companies, leaving two-thirds of the losses to be borne by Florida homeowners.

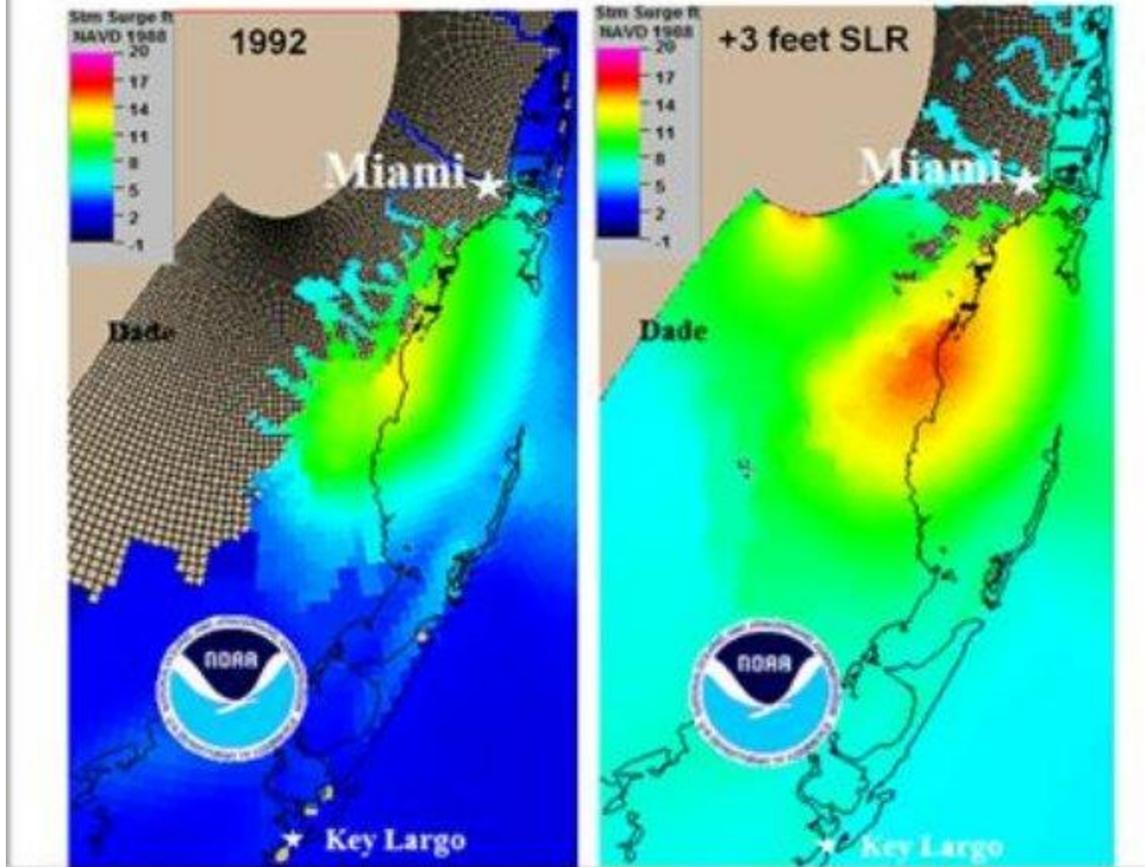
109. As of the date of this filing, 126,000 residents of Miami are considered to be most “at risk” to coastal flooding within FEMA’s 100-year coastal floodplain.

110. With sea level rise, Miami would lose almost one third of its houses and \$16 billion in housing would be underwater. Using conservative estimates of sea level rise, 32,874 homes in Miami (30% of the Miami housing stock) worth \$16 billion, are likely to be underwater if sea levels rise six feet. In the city of Miami Beach alone, 37,144 homes (78% of the housing stock) worth \$33 billion would be underwater if sea levels rose six feet.

111. South Florida’s sea level has risen about 30 cm (1 foot) since 1930. Between 1930 and 1990, the rate of sea level rise for Miami was just over 2.6 mm per year (above the global rate of 2.4 mm per year), and that rate has increased to about 3.4 mm per year because of ice melt. After 2006 the rate of sea level rise in Miami and the Southeast Atlantic increased dramatically to about 9 mm per year in the Miami area through 2015. The low-lying and heavily-populated coastline of south and southeastern Florida, including its barrier islands, makes it extremely vulnerable to the effects of climate change, particularly sea level rise, amplified by storm surges.

112. Hurricane storm surges will make low-lying south Florida an increasingly risky place to live. The maps below show the increased extent and depth of a category 5 Hurricane Andrew (1992) storm with a further three feet of sea level rise. Nearly the entire southern two-thirds of Miami-Dade county will be affected by a deep, powerful, violent lateral storm surge and the seaward barrier islands will be dangerously swept by a deep surge.

## Hurricane Andrew Storm Surge Simulations

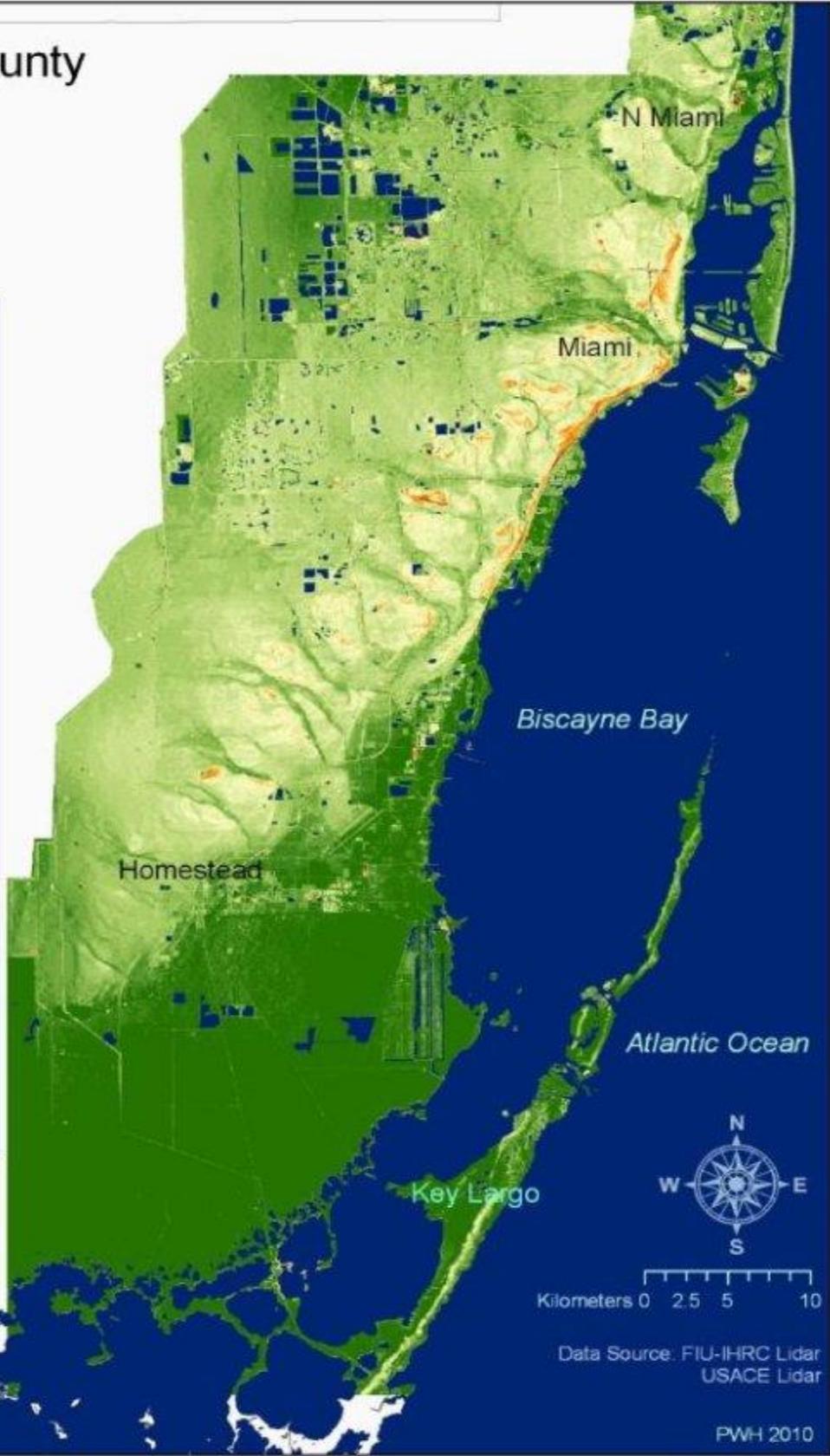


113. Miami is particularly at risk from the environmental impacts of sea level rise. Long-term adaptation to sea level rise in some areas of Florida under current rates of warming are not realistic. LiDAR high-resolution elevation mapping from a plane with ground-truthing illustrates the complete and irreversible loss of land and property that is projected if GHG emissions continue at present rates.

# Miami-Dade County Topography

Meters	Feet
0 - 0.3	0 - 1
0.3 - 0.6	1 - 2
0.6 - 0.9	2 - 3
0.9 - 1.2	3 - 4
1.2 - 1.5	4 - 5
1.5 - 1.8	5 - 6
1.8 - 2.1	6 - 7
2.1 - 2.4	7 - 8
2.4 - 2.7	8 - 9
2.7 - 3.0	9 - 10
3.0 - 3.4	10 - 11
3.4 - 3.7	11 - 12
3.7 - 4.0	12 - 13
4.0 - 4.3	13 - 14
4.3 - 4.6	14 - 15
4.6 - 4.9	15 - 16
4.9 - 5.2	16 - 17
5.2 - 5.5	17 - 18
5.5 - 5.8	18 - 19
5.8 - 6.1	19 - 20
6.1+	20+
	Below MHW
	No Data

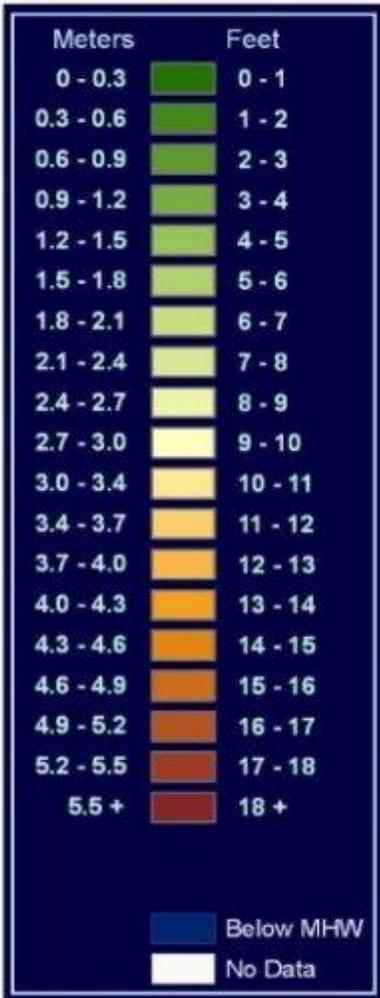
Datum = NAVD88



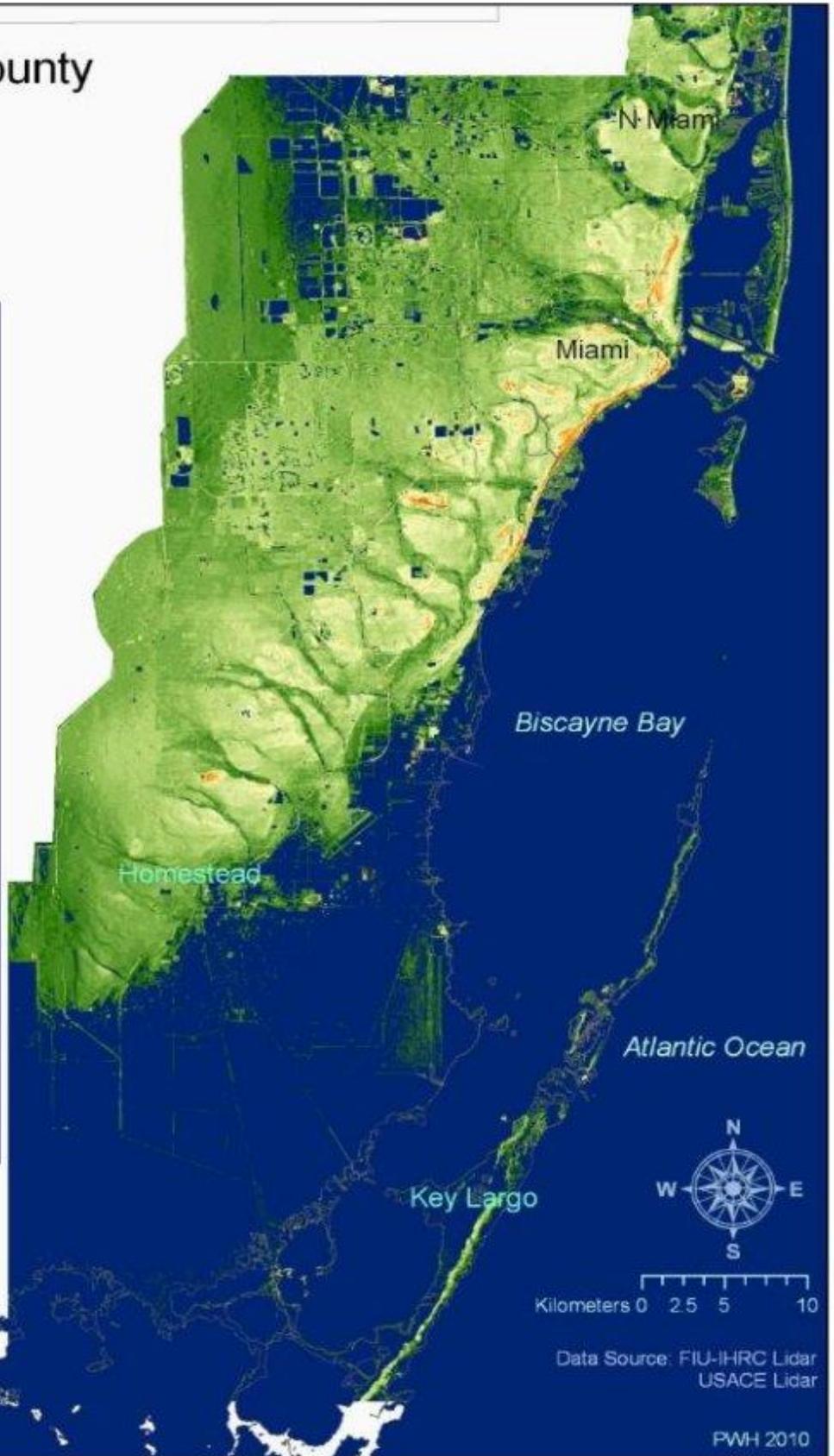
Data Source: FIU-IHRC Lidar  
USACE Lidar

PWH 2010

# Miami-Dade County Sea Level Rise 0.6m (2 ft)



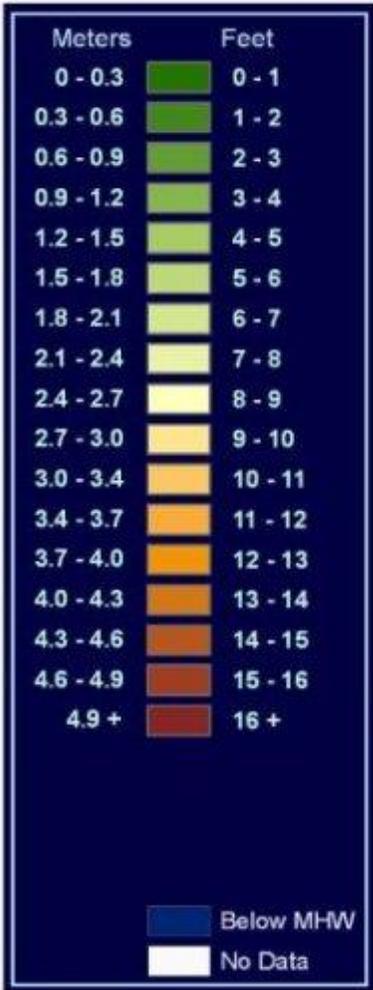
Datum = NAVD88



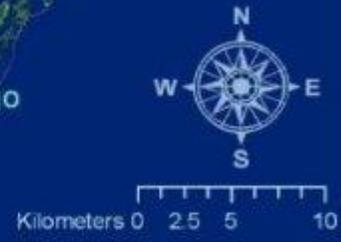
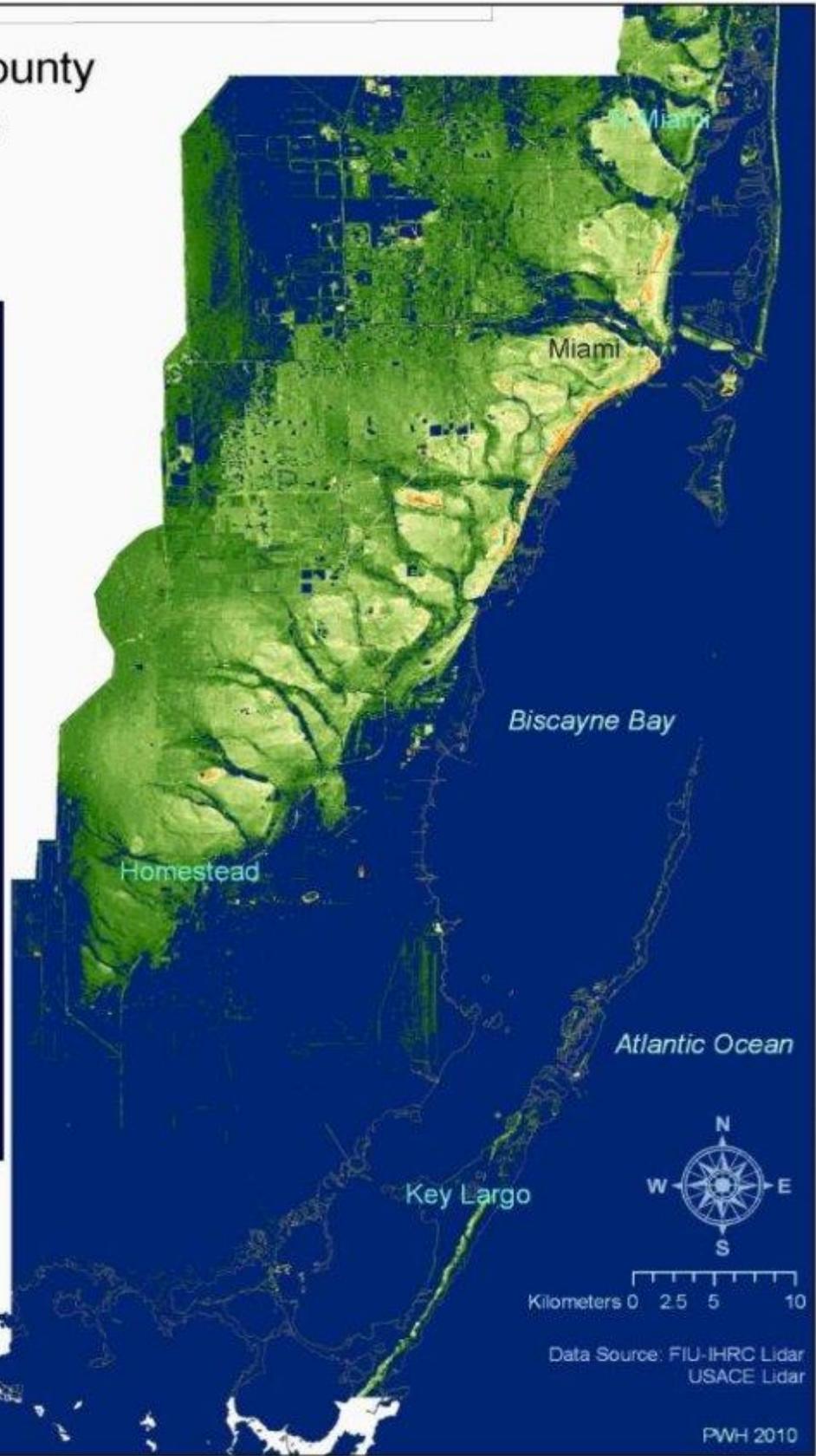
Data Source: FIU-IHRC Lidar  
USACE Lidar

PWH 2010

# Miami-Dade County Sea Level Rise 1.2m (4 ft)



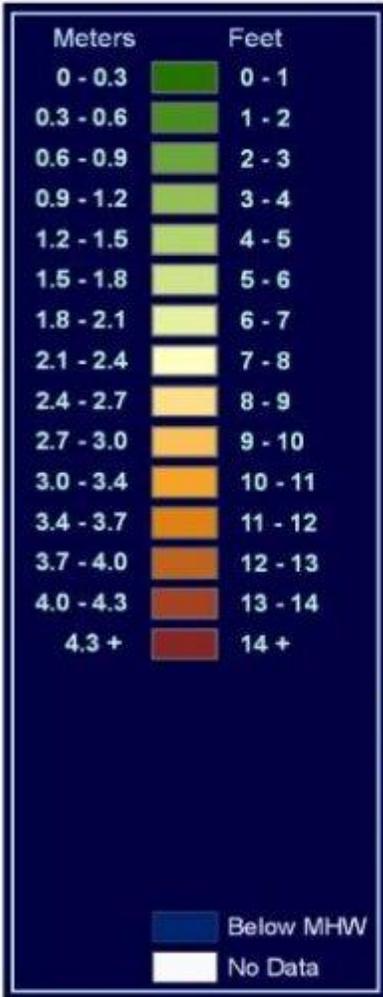
Datum = NAVD88



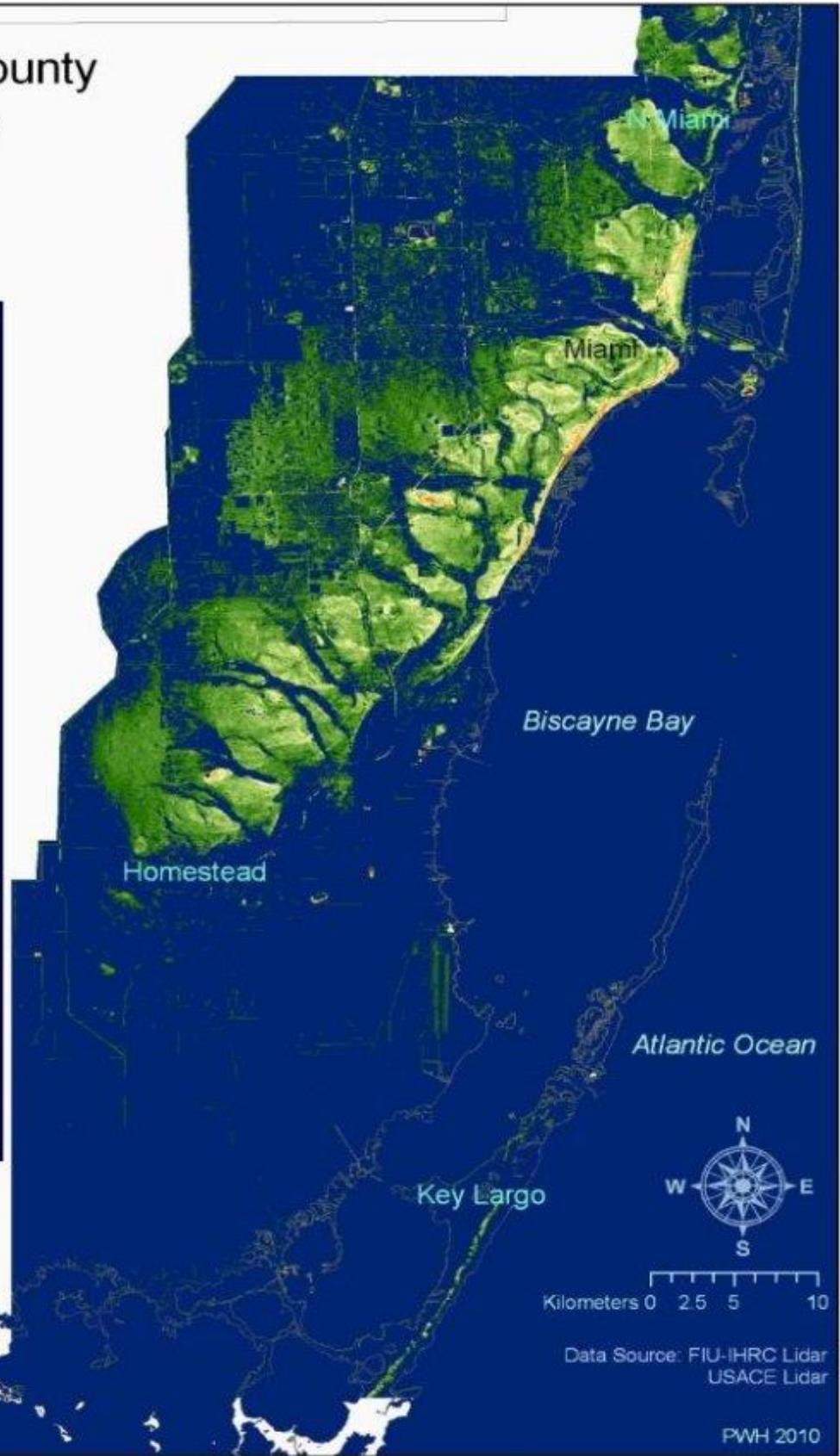
Data Source: FIU-IHRC Lidar  
USACE Lidar

PWH 2010

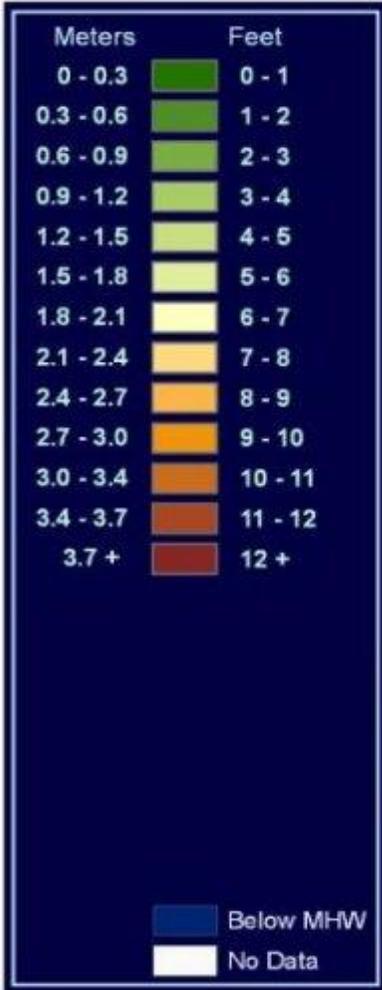
# Miami-Dade County Sea Level Rise 1.8m (6 ft)



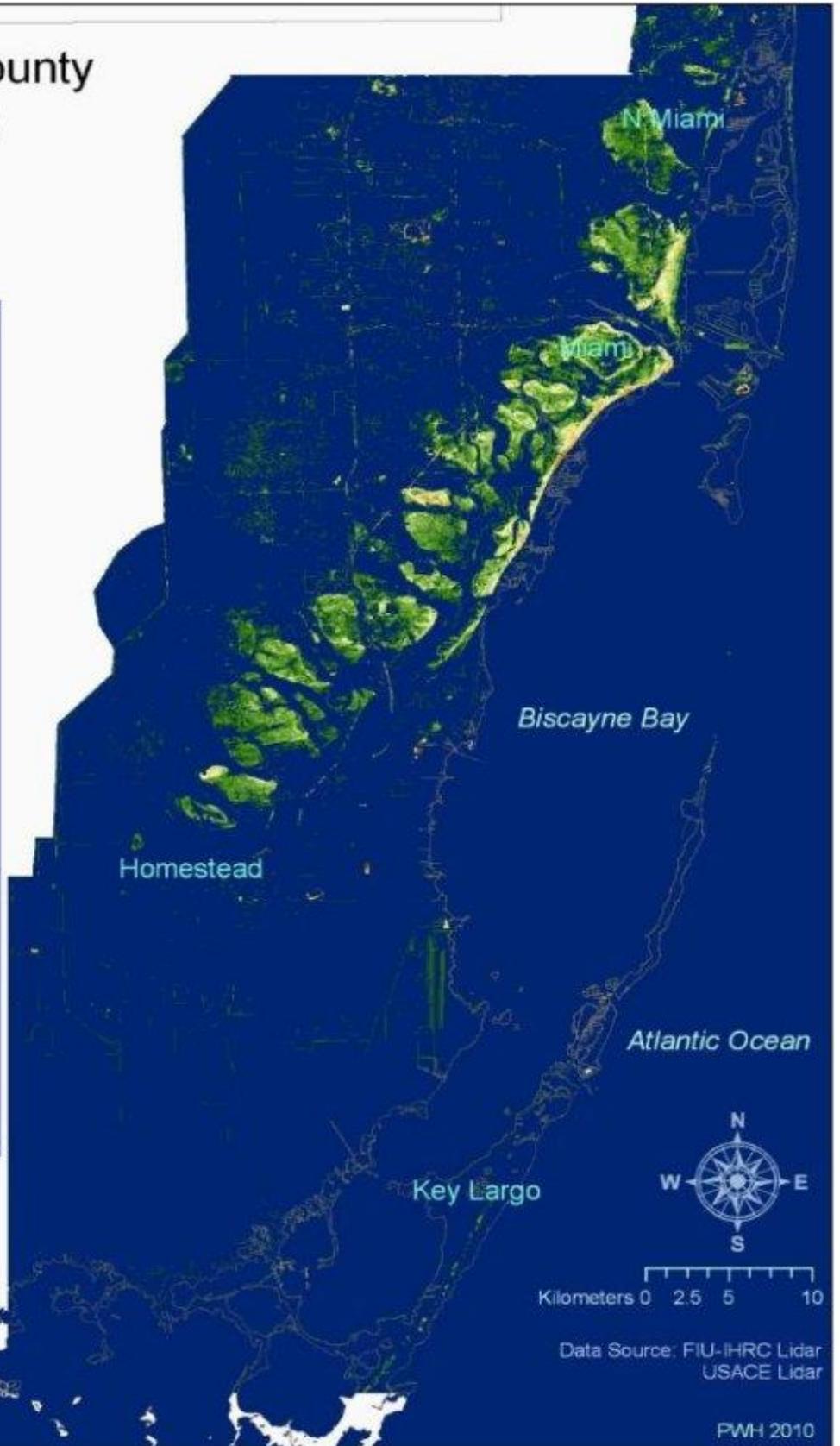
Datum = NAVD88



# Miami-Dade County Sea Level Rise 2.4m (8 ft)



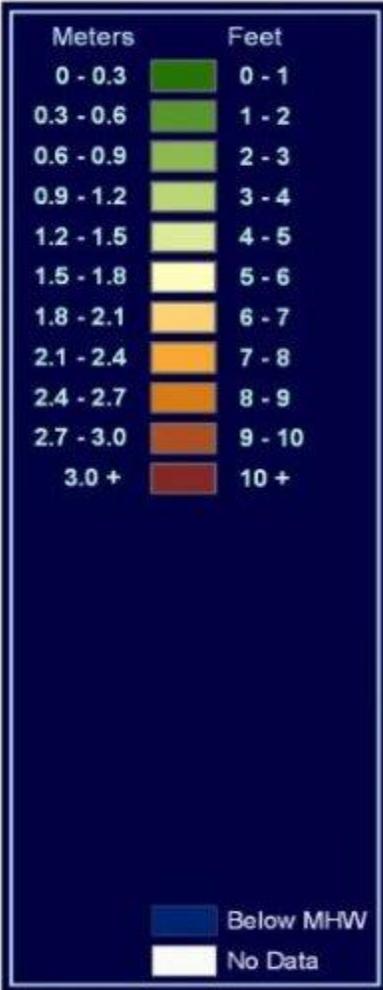
Datum = NAVD88



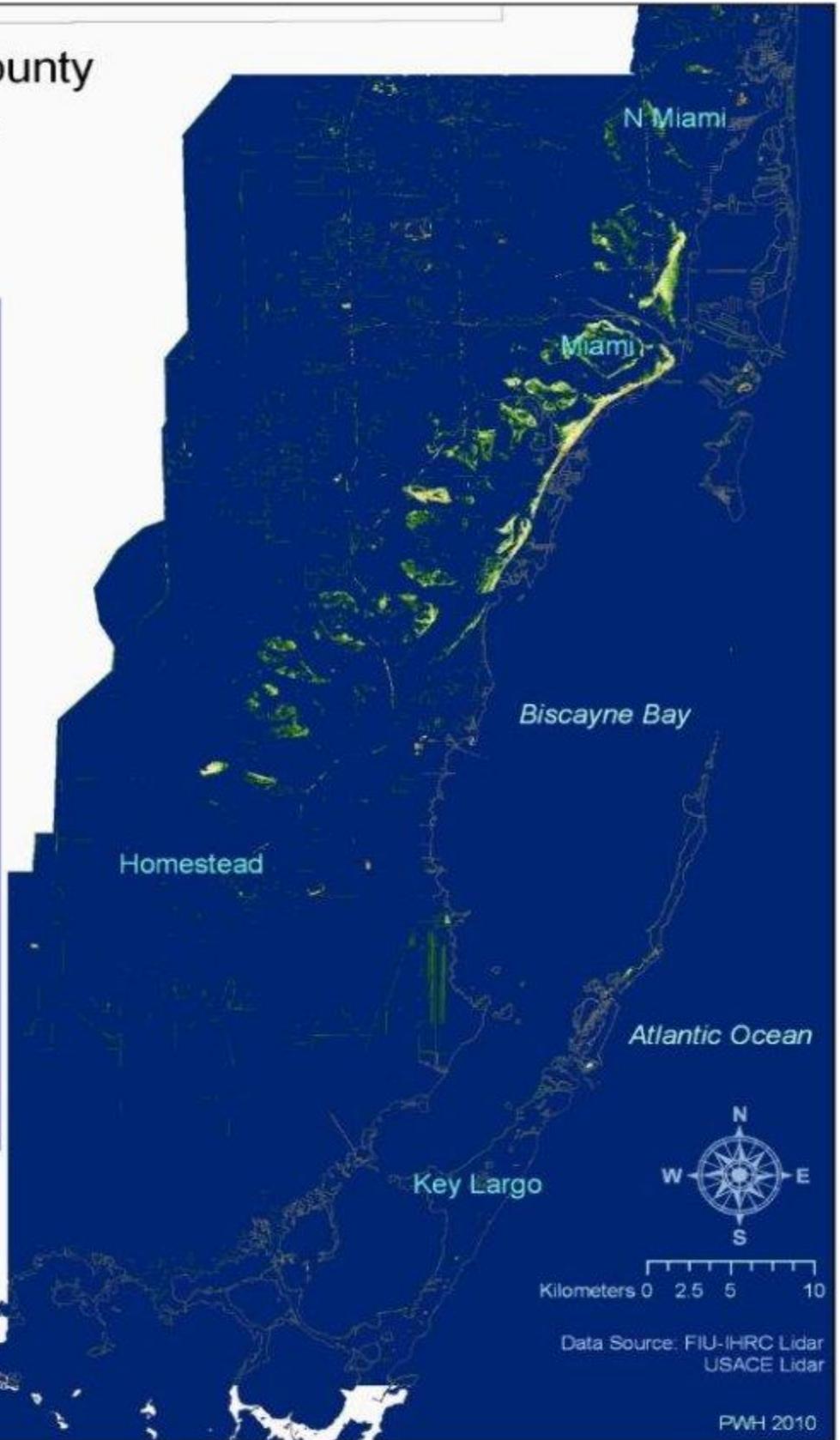
Data Source: FIU-IHRC Lidar  
USACE Lidar

PWH 2010

# Miami-Dade County Sea Level Rise 3.0m (10 ft)



Datum = NAVD88



114. The maps above are at only mean high tide and do not include storm surge inundation, which will be substantial, as illustrated with Hurricanes Andrew and Irma.

115. Sea level rise and the resulting salt water inundation already is contaminating fresh water supplies and compromising human infrastructure, including the material of buildings, roads, ports, storm water systems and treatment facilities, power plants and related energy infrastructure, airports, rail systems, and bridges. With even a two-foot rise in sea level, saltwater will intrude into Florida's southern and southeastern aquifers. For instance, saltwater intrusion already is affecting the Biscayne Aquifer, a sole source aquifer that provides drinking water to more than 3 million people in the region and to the neighboring Biscayne National Park. This will become a rapidly increasing problem, serving to diminish and then eliminate sources of drinking water. The economic costs from this damage will be billions of dollars per year.

116. Rising sea level will harm the viability of infrastructure like wastewater treatment facilities, nuclear power plants, roads, and landfills, which will become vulnerable to disruption or destruction by storms, leading in some cases to vast contamination of lands and waters as other pollutants are released. For example, with only 1.5-3 feet of further sea level rise, the Central Treatment Plant and the adjacent abandoned unlined dump of Virginia Key, Florida, will be all that is left of the ocean-facing sandy barrier island. These pollutant-filled facilities will be exposed to the full force of the ocean tides, waves and storm surges.

117. Rising sea levels, increased flooding, and more significant storm surges are resulting in the bleeding of non-acidifying pollutants and toxins, such as glues, adhesives, corrosive metals, chemicals, oils, lubricants, acids, hazardous materials, and bacteria from the public infrastructure and privately built structures on land. These pollutants and toxins are

degrading ocean health, causing the impairment of the marine resources of the State, and preventing the public from using, accessing and enjoying Public Trust Resources.

118. A recent study by the University of Miami showed that in the last decade, flooding in Miami Beach has increased by 400%. The City of Miami Beach has spent hundreds of millions of dollars to try to avert the flooding and resulting damage through the raising of roads, installation of pumps and construction of levees. Most recently, City of Miami voters passed a \$400 million Miami Forever bond measure to help protect the city against flooding and other climate impacts.

119. A sea level rise of two feet, combined with storm effects, will eliminate the habitability of most of Florida's barrier islands. Sea level rise and the concomitant coastal flooding have the potential to cause major disruption to Florida's water management systems due to saltwater intrusion. In some coastal cities, wastewater treatment facilities are located at such low elevations that flooding due to sea level rise or storm surges will result in the contamination of coastal ecosystems, municipal drinking water, local rivers, and lakes. This already is happening in the city of Hallandale Beach where the city had to cease using six of their eight drinking water wells. Fort Lauderdale, Pompano Beach, Hollywood, City of Miami, Miami Beach, and other Florida cities have experienced saltwater backing up storm water pipes, causing flooding of streets and neighborhoods.

120. The Florida Department of Health estimates that there are 2.3 million onsite sewage treatment and disposal systems that serve 31% of Florida residents and visitors. These systems discharge over 426 million gallons of treated effluent per day into the subsurface soil environment. For those areas on septic tank systems, sea level rise, increasingly frequent flooding and more substantial storm surges are inundating neighborhoods and roads with fecal

pollution. This pollution is degrading ocean health and impairing Florida's marine resources. Climate change is causing groundwater levels to increase, which can cause waste contained in septic systems to back up, resulting in sewage waste flooding homes and streets. The increase in groundwater levels also degrades the efficacy of the septic treatment system itself.

121. The Florida Everglades is home to some of the most important ecosystems in North America. This subtropical ecosystem and its National Park is a huge draw for tourists from all over the world and is of traditional cultural significance to the Miccosukee and Seminole Tribes of Florida. Because the Everglades are nearly flat and surrounded on three sides by rising seas, the ecosystem is being harmed due to sea level rise causing the salinization of the groundwater and the soil. This in turn negatively affects the diverse array of species that depend upon the unique Everglades ecosystem. An acceleration of sea level rise is expected to increase coastal erosion, which has the potential to cause the replacement of coastal wetlands with open water areas. Scientists have predicted that over  $48 \times 10^6$  megatons of C in the form of old grown mangroves and associated soils is at risk of being lost from the Everglades National Park.<sup>3</sup>

122. Due to record amounts of rainfall from Hurricane Irma and subsequent rain events, Florida's Fish and Wildlife Commissioner Ron Bergeron recently announced that the Everglades are experiencing a "catastrophic" condition, with high waters threatening habitat for white-tailed deer, raccoons, and many species of endangered turtles and snakes. The Francis S. Taylor Wildlife Management Area, which covers 1,125 square miles in western Miami-Dade and Broward counties, was shut down in mid-June 2017 due to the abnormally high water levels generated from high volume rain events throughout the remainder of the wet season and into the

---

<sup>3</sup> Jerath, M. et al., The Role of Economic, Policy, and Ecological Factors in Estimating the Value of Carbon Stocks in Everglades Mangrove Forests, South Florida, USA, *Environ. Sci. Pol.* 66, 160-169 (2016).

2017-2018 dry season. Some tree islands, which serve as important habitat for many species, were under water for so long that they may not survive.

123. The salinization of the groundwater and soil, resulting from the rising seas and increasing storms, threatens native plants and ecosystems found in abundance only in Florida, such as freshwater wetlands ecosystems. Additional ecosystems along the coast are also being impaired such as red mangrove forests. Due to sea level rise and saltwater intrusion, these estuarine ecosystems will suffer coastal squeeze and die off as they attempt to migrate inland and are met with development and coastal armoring measures like sea walls. Protecting Florida's mangrove forests is especially critical because mangrove forests play an important role in absorbing and sequestering CO<sub>2</sub>, in addition to their role in flood control, storm protection, and providing good water quality. Scientists have estimated the carbon storing value of mangroves in South Florida's Everglades to be between \$2 and \$3.4 billion.

#### **DEFENDANTS' UNCONSTITUTIONAL ACTIONS RELATED TO CLIMATE CHANGE**

124. Defendants' aggregate acts and omissions that cause dangerous levels of GHG pollution, including but not limited to the fossil fuel-based energy system created and managed by Defendants, violates the constitutional and common law rights of Plaintiffs in a number of ways. For example:

a. The State of Florida has declared energy policy a state function via state law. § 377.601, Fla. Stat. Defendant FDEP "is the agency of state government responsible for collecting and analyzing information concerning energy resources in this state; for coordinating the energy conservation programs of state agencies; and for coordinating the development, review, and implementation of the state's energy policy." § 20.255(7), Fla. Stat. Defendant Department of Agriculture and Consumer Services is the agency charged with reporting to the

Governor and Legislature with “recommendations for policies for improvement of the state’s response to energy supply and demand and its effect on the health, safety, and welfare of the residents of this state” and Defendant Commission sets and reviews renewable energy and energy efficiency/conservation requirements. §§ 366.82, 366.92 Fla. Stat. For such reasons, Florida energy policy is under the control and supervision of the Defendants and has been developed and implemented in a manner that violates the common law and constitutional rights of Plaintiffs. Only the Defendants have the power to implement a Climate Recovery Plan that protects the constitutional rights of the Plaintiffs.

b. Florida is a major contributor to fossil fuel combustion-based CO<sub>2</sub> emissions, emitting 227.04 million metric tons of CO<sub>2</sub> into the atmosphere in 2014, according to EPA data (not including the emissions associated with goods produced outside of Florida but consumed in the State). Florida’s electric power generation accounts for the largest portion of these emissions at 107.83 million metric tons (48% of Florida’s total emissions), followed closely by the transportation sector at 101.79 million metric tons (45% of Florida’s total emissions). If Florida were a country, it would rank as the 26th largest emitter of CO<sub>2</sub> emissions in the world.

c. Florida has not completed a full accounting of GHG emissions since 2008, when it was mandated by Executive Order 07-126. Therefore, Defendants do not know what amounts of non-CO<sub>2</sub> gases (like methane and refrigerants) are being emitted. Furthermore, the GHG inventory that Defendants rely on does not include consumption-based emissions (also referred to as embedded emissions), those emissions attributed to goods produced outside of Florida but consumed within Florida. If Florida’s GHG emission data did include embedded emissions, its total CO<sub>2</sub> and GHG emissions would be significantly higher and would more

accurately reflect the extent to which Defendants have caused and contributed to the Climate Change Impacts harming the Plaintiffs.

d. Florida is a major producer and consumer of electricity generated from fossil fuel combustion. According to the U.S. Energy Information Administration, Florida is ranked third in the nation in both total energy consumption and electric energy consumption, and second in electric energy production. Florida generates more electricity from petroleum than any other state in the nation. Florida generates the second highest amount of CO<sub>2</sub> emissions from electricity in the nation. Florida has declared that “fossil fuel combustion products are currently used in a variety of beneficial applications” and “fossil fuel combustion products promotes economic activity.” Ch. 2013-68 (Committee Substitute for Senate Bill No. 682) (2013) (enacting § 403.7047, Fla. Stat.).

e. Florida, “The Sunshine State,” obtains only a small portion of its electricity from renewable sources, accounting for only 3.1% of Florida’s overall generation capacity, well below the national average of 15%. Most of Florida’s electricity generation is natural gas-fired (61%) and coal-fired (23%), contributing greatly to atmospheric CO<sub>2</sub> and GHG emissions. Florida has no renewable portfolio standard or voluntary targets to increase the use of renewable energy, and provides no subsidies to facilitate renewable energy growth.

f. Florida ranks 3rd in the country in solar power potential, but 18th in the country in number of solar photovoltaic systems installed. Florida law requires energy to be sold only by utility companies, not third-parties, creating a significant barrier to solar power expansion and an obstacle to substantial reductions in GHG pollution. Other laws, policies, customs and practices in Florida restrict the installation of solar on multi-family dwellings.

g. The U.S. Energy Information Administration reports that only four other states have more gas-fired electricity generation under construction or planned compared to Florida. Defendant Florida Public Service Commission, has never rejected an application for a utility gas plant. Upon information and belief, the three largest planned gas plants in Florida (two under construction and one proposed rebuild) will generate a combined 9 million tons of CO<sub>2</sub> per year over their operating lives.

h. Defendants have also created and implemented a number of financial barriers that limit the cost competitiveness of renewable energy relative to energy produced by fossil fuels. Defendants have also created programs, such as the Natural Gas Rebate Program, that favor the use of fossil fuels over renewable forms of energy.

i. In 2008, the Florida Legislature passed the Florida Energy and Climate Change Protection Act, authorizing the FDEP to develop a market-based, electric utility GHG cap-and-trade program and to establish renewable energy portfolio standards. This was passed in conjunction with the adoption of a number of measures designed to address climate change. Defendants have failed to implement and/or rolled back nearly all of these measures.

j. According to the Florida Department of Transportation, vehicle miles traveled on Florida's public roads system increased by 4.3% from 2013 to 2014. Only 0.091% of registered vehicles in Florida are electric.

k. Since Governor Scott took office in 2011, the DEP has been significantly downsized due to budget cuts, dropping from approximately 3,500 employees to 2,900. Upon information and belief, this affects DEP's ability to carry out its mission to protect Public Trust Resources from Climate Change Impacts.

l. Defendant Governor Scott is required to prepare and update Florida's State Comprehensive Plan, which, among other things, is meant to protect marine fisheries, beaches, and coastal ecosystems; protect Florida's air, water, and land; and ensure a safe and healthful environment. The State Comprehensive Plan contains no goals, policies, or directives to reduce Florida's GHG pollution or to pursue other climate change mitigation and adaptation strategies to protect the constitutional rights of Plaintiffs. Defendants have ignored many of the goals and policies in the State Comprehensive Plan.

m. Defendants have not engaged in any systemic planning to address the Climate Change Impacts described above.

n. Defendants have allowed the substantial impairment of the Public Trust Resources of Florida from the bleeding of pollution and toxins from publicly funded and approved public infrastructure and from the privately built environment during flooding events and high tides that are becoming more frequent and substantial due to sea level rise and climate change.

o. Defendant Department of Agriculture and Consumer Services is required to submit an annual report to the Governor and Legislature "making recommendations for policies for improvement of the state's response to energy supply and demand and its effect on the health, safety, and welfare of the residents of the state" and "for energy efficiency and conservation programs for the state." Fla. Stat. 377.703(2)(f). In spite of this mandate, the reports contain no goals, policies, or recommendations to reduce Florida's GHG pollution or to pursue other climate change mitigation and adaptation strategies to protect the constitutional rights of Plaintiffs.<sup>4</sup>

---

<sup>4</sup> Florida Dep't of Ag. & Consumer Serv., 2016 Office of Energy Annual Report, *at*

p. In 2011, the Florida Legislature passed S.B. 2106, transferring the duties of the Florida Energy & Climate Commission to the Office of Energy within the Department of Agriculture and Consumer Services. In spite of its statutory authority and mandate to do so, Defendant Department of Agriculture and Consumer Services has not established an Energy and Climate Program for the State that is needed to stop the Climate Change Impacts, but has pursued and implemented policies that continue to promote Florida's use and dependence on fossil fuels. For example, upon information and belief, Defendant Department of Agriculture and Consumer Services has provided policy and program recommendations to the Governor and Legislature that facilitate Florida's dependence on fossil fuels. In spite of Defendant Department of Agriculture and Consumer Services statutory mandate to protect agriculture and reduce wildfires, it continues to pursue and implement policies that continue Florida's dependence upon fossil fuels and has developed no plans to promote agricultural carbon sequestration.

q. On June 6, 2011, Defendant FDEP denied a Petition for Rulemaking submitted by several youth petitioners and Kids v. Global Warming requesting that FDEP adopt a rule to reduce GHG pollution and establish an atmospheric CO<sub>2</sub> concentration target of no greater than 350 ppm. In its final order denying the petition, the FDEP stated it was under no statutory mandate to initiate a rulemaking and that under the present circumstances, initiating a rulemaking is inappropriate.

r. To date, the FDEP has failed to promulgate any rules regulating CO<sub>2</sub> emissions, and the FDEP is not pursuing any programs or projects to address climate change, thereby abdicating their control over Florida's Public Trust Resources to the detriment of the Plaintiffs. Instead, FDEP continues to issue permits, authorizations and waivers for the

---

[https://www.freshfromflorida.com/content/download/75674/2205501/2016\\_Office\\_of\\_Energy\\_Annual\\_Report.pdf](https://www.freshfromflorida.com/content/download/75674/2205501/2016_Office_of_Energy_Annual_Report.pdf).

construction and operation of numerous facilities that emit GHGs, including but not limited to natural gas pipelines, fossil fuel-based power plants, construction projects, and fossil-fuel infrastructure throughout the State of Florida. These facilities would not be able to operate and emit GHGs within the state of Florida without authorization from DEP.

s. Upon information and belief, in 2014, the Defendants reduced energy conservation goals by 90% and eliminated the state's solar rebate program.

t. In November 2017, Defendant Commission released its review of the 2017 Ten-Year Site Plans of Florida's Electric Utilities. This review does not mention climate change or the need to transition to renewable energy. In finding that the 10-Year Site Plans are "suitable for planning purposes," Defendant Commission endorsed an energy future for Florida that is neither in the public interest nor promotes the development of renewable energy resources. While Defendant Commission said the renewable outlook is "projected to increase," it found that "a majority of generation is projected to come from traditional sources, such as fossil-fueled steam and turbine generators, that have been added to Florida's electric grid over the last several decades. Due to forecasted increases in peak demand, further traditional resources are anticipated over the planning period." In fact, Defendant Commission approved an *increase* in the use of natural gas to meet Florida's energy consumption.<sup>5</sup>

u. According to experts, it is technologically feasible and cost effective for Florida to transition away from a predominantly fossil fuel-based energy system to a 100% renewable energy system by 2050, relying on wind, water, and solar energy. Florida's energy mix would rely heavily on solar, which would make up approximately eighty percent (80%) of

---

<sup>5</sup> Florida Public Service Comm'n, Review of the Ten-Year Site Plans of Florida's Electric Utilities (November 2017), *at* <http://www.psc.state.fl.us/Files/PDF/Utilities/Electricgas/TenYearSitePlans/2017/Review.pdf>.

Florida's energy mix. Transitioning to a renewable energy-based system in Florida would create over 300,000 40-year jobs (when a person is employed consecutively for 40 years), avoid thousands of pollution-related deaths a year, avoid over \$40 billion per year in illness and mortality costs, and reduce energy costs, saving Florida and its residents billions of dollars. Defendants have been deliberately indifferent to the existence of feasible approaches to transition Florida to a 100% renewable energy system.

### **CLAIMS FOR RELIEF**

#### **Count One: For Declaratory & Injunctive Relief** **Breach of Mandatory Fiduciary Duty to Protect Florida's Public Trust Resources**

125. Plaintiffs incorporate and re-allege all of the preceding allegations.

126. The State of Florida, in the Florida Constitution, has explicitly codified the common law Public Trust Doctrine, an ancient legal doctrine that predates the existence of Florida's Constitution that is designed to protect common natural resources that are essential to life, liberty, pursuit of happiness and property.

127. Article I, Section I of the Florida Constitution states:

All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.

128. Article II, Section 7(a) of the Florida Constitution states:

It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

129. Article X, Section 11 of the Florida Constitution states:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in

the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

130. Article X, Section 16 of the Florida Constitution states:

The marine resources of the State of Florida belong to all of the people of the state and should be conserved and managed for the benefit of the state, its people, and future generations.

131. The Public Trust Doctrine requires all sovereign governments as trustees to protect and preserve Public Trust Resources for the beneficiaries of the trust—all present and future generations within the government’s jurisdiction. The Public Trust is an attribute of sovereignty that cannot be surrendered or abrogated. Public Trust rights predate Florida’s Constitution and are secured, not created, by it.

132. Public Trust Resources include the atmosphere (air); waters of the state, including coastal, surface, and groundwater; state-owned lands, including forests, wetlands, estuaries, beaches, submerged lands and lands adjoining the seacoasts; and wild flora and fauna, including freshwater and marine resources.

133. The atmosphere is a Public Trust Resource critical to the welfare of Public Trust Resources specifically enumerated in Article X, Section 11 and Article X, Section 16 of the Florida Constitution: marine resources, submerged sovereignty lands, and beaches. The atmosphere and marine and freshwater resources of the State are inextricably ecologically linked through the hydrological cycle and through CO<sub>2</sub> uptake. The atmosphere is also critical to the welfare of all other Public Trust Resources; without an atmosphere free from substantial impairment, all other Public Trust Resources will inevitably also be substantially impaired.

134. Article II, Section 7(a) of the Florida Constitution specifically identifies the air, or atmosphere, and laws relating to the abatement of pollution therein, as necessary for the conservation and protection of natural resources. Article II, Section 7(a) thus explicitly

incorporates the atmosphere as a Public Trust Resource and imposes a mandatory duty on Defendants to abate GHGs, which are causing and contributing to the substantial impairment of the state's Public Trust Resources, as described herein. Defendants have breached that duty.

135. In expanding the public ownership and interest of state lands and other resources, the Florida legislature established that:

It is the policy of the state that the citizens of the state shall be assured public ownership of natural areas for purposes of maintaining this state's unique natural resources; protecting air, land, and water quality; promoting water resource development to meet the needs of natural systems and citizens of this state; promoting restoration activities on public lands; and providing lands for natural resource based recreation. In recognition of this policy, it is the intent of the Legislature to provide such public lands for the people residing in urban and metropolitan areas of the state, as well as those residing in less populated, rural areas. . . . Finally, it is the Legislature's intent that lands acquired through this program and any successor programs be managed in such a way as to protect or restore their natural resource values, and provide the greatest benefit, including public access, to the citizens of this state.

§ 259.032, Fla. Stat.

136. Defendants, as trustees, have a mandatory obligation to hold Public Trust Resources in trust for the benefit of all Floridians, including Plaintiffs and Florida's future generations, and to refrain from acting in a manner that results in waste or substantial impairment of Public Trust Resources. Defendants have breached that duty.

137. Defendants, as trustees, also have the affirmative, mandatory constitutional obligation to promulgate laws, rules, and regulations, and effectively enforce such laws, rules, and regulations relating to the abatement of air and water pollution in order to preserve, protect and prevent material and substantial impairment to public natural resources. Defendants have breached that duty.

138. Defendants, as trustees, have the mandatory duty of loyalty to administer and manage Public Trust Resources solely in the interest of trust beneficiaries—both present and future generations of citizens. Defendants have the duty of impartiality to not favor one beneficiary over another. Present and future generations are equally protected classes of beneficiaries of the Public Trust Doctrine, both under Florida’s Constitution and its common law. Thus, when carrying out its Public Trustee obligations, Defendant trustees must treat present and future generations equally and cannot be shortsighted. Defendants have breached that duty.

139. Defendants, as trustees, have the mandatory duty to exercise the appropriate skill, prudence, and caution in managing the Public Trust Resources. Defendants have breached that duty.

140. Defendants, as trustees, have the mandatory duty to ensure that the public, including Plaintiffs, have continued use and access to the Florida’s Public Trust Resources for the purposes of the trust, including but not limited to commerce, navigation, swimming, fishing, and conservation.

141. The State of Florida, as a sovereign landowner and proprietor, has the same or greater duty to protect, and prevent material impairment to, its land from harm as an ordinary landowners and proprietor. Through the above state laws, the state of Florida is also charged with a higher duty of care to protect and preserve Public Trust Resources held in trust for all of its citizens. Defendants have breached that duty.

142. Defendants have violated and continue to violate Article II, Section 7(a) and Article X, Sections 11 and 16 of the Florida Constitution and the Public Trust Doctrine by breaching its duties to protect Public Trust Resources from material impairment and waste; by favoring present temporary economic benefits of certain citizens or other entities, especially

corporations and self-interest, over all beneficiaries, including future generations; by failing to ensure Plaintiffs have continued use of and access to Florida's Public Trust Resources for the purposes of the trust; and by failing to exercise the appropriate skill, prudence, and caution in managing Florida's Public Trust Resources.

143. Defendants' systemic historic and ongoing affirmative aggregate actions continuing to authorize, promote, and permit fossil fuel extraction, transportation, and utilization violates their affirmative obligations to protect Florida's Public Trust Resources from substantial impairment and waste. Defendants have allowed private parties to treat the atmosphere as a dump for their CO<sub>2</sub> and GHG pollution. Defendants have failed to protect, and have abdicated control of, Florida's Public Trust Resources to the detriment of the present and future beneficiaries, including Plaintiffs.

144. Defendants' aggregate affirmative acts and failure to protect and maintain control of Florida's Public Trust Resources has interfered, and will continue to interfere, with Plaintiffs', as well as present and future generations of Floridians, access to and use of Public Trust Resources for their own survival, maintenance and enhancement of water resources, maintenance and enhancement of fish and wildlife resources, conservation, pollution abatement, ecological values, in-stream flows, commerce, navigation, fishing, and recreation.

145. Defendant's failure to uphold their Public Trust obligations threatens the health, safety, and wellbeing of Plaintiffs, as well as all present and future generations of Floridians.

146. The affirmative aggregate acts resulting in the waste and substantial impairment of Florida's air, water, and other Public Trust Resources has been and continues to be performed by Defendants and their agents or employees in their official capacities and is a contributing

cause of the Plaintiffs' ongoing deprivation of rights secured by the Florida Constitution and the Public Trust Doctrine.

147. The constitutional and common law deprivations described herein are the result of the official policies, customs and pervasive practices of the Defendants. Upon information and belief, Defendants have been and are aware of all of the deprivations complained of herein, and have condoned or been deliberately indifferent to such conduct.

148. The Plaintiffs therefore seek a declaration from this Court as a matter of law as to whether Defendants actions and omissions described herein violate the Public Trust Doctrine and the Florida Constitution and an order from this Court that Defendants' illegal conduct cease.

**Count Two: For Declaratory & Injunctive Relief**  
**Violation of Substantive Due Process**

149. Plaintiffs incorporate and re-allege all of the preceding allegations.

150. Among the inalienable rights protected by Article I, Sections 1, 2 and 9 of the Florida Constitution are the fundamental and inalienable rights to life, liberty, pursuit of happiness and property, which includes the fundamental right to a stable climate system capable of sustaining human life. A stable climate system means an atmosphere and oceans that are free from dangerous levels of anthropogenic CO<sub>2</sub> and GHGs.

151. Protecting Florida's vital natural systems, including the climate system, for present and future generations is fundamental to our ordered scheme of liberty and is deeply rooted in our history and tradition. Without Florida's vital natural resources, liberty, justice, pursuit of happiness, and property are in peril. Florida's mandatory obligation to protect vital natural resources is recognized in the State's Constitution and legislation.

152. Governmental interference with a fundamental right may be sustained only upon a showing that the governmental action is narrowly tailored to serve a compelling state interest.

153. Defendants' aggregate actions, failures to act, policies and customs perpetuating a fossil fuel-based energy system and authorizing dangerous levels of GHG pollution impinges on Plaintiffs' fundamental liberties by denying Plaintiffs' access to a stable climate system. For example, Defendants' unconstitutional actions harm Plaintiffs' dignity, including their capacity to provide for their basic human needs, safely raise families, practice their religious and spiritual beliefs, maintain their bodily integrity, and lead lives with access to clean air, water, shelter, and food.

154. Defendants have knowingly endangered Plaintiffs' health and welfare by creating and managing a fossil fuel-based energy system and by approving and promoting fossil fuel development, including exploration, extraction, production, transportation, importation, and combustion. After knowingly causing and contributing to this dangerous situation for Plaintiffs, Defendants have continued to enhance that danger by perpetuation of the fossil fuel-based energy system and allowing fossil fuel production, consumption, and combustion at dangerous levels.

155. The Defendants' conduct described herein has been and continues to be performed and authorized by Defendants and their agents or employees in their official capacities and is the proximate cause of the Plaintiffs' ongoing deprivation of rights secured by the Florida Constitution. Art. I, Sec. 1, 2 and 9.

156. The constitutional deprivations described herein are the proximate result of the official policies, customs and pervasive practices of Defendants. Upon information and belief, Defendants have been and are aware of all of the deprivations complained of herein, and have condoned or been deliberately indifferent to such conduct.

157. Defendants have an obligation to exercise their constitutional and statutory obligations in a manner that is consistent with the Florida Constitution, but they have failed to do so. Collectively and individually, Defendants have pursued and implemented policies, customs and practices that result in dangerous levels of GHG pollution and that fail to protect the Public Trust Resources of this state.

158. Despite the Defendants' constitutional obligations to protect Plaintiffs' rights to life, liberty, pursuit of happiness, and property, Defendants are authorizing, promoting, and permitting fossil fuel extraction, transportation, and utilization and are failing to limit and reduce CO<sub>2</sub> and GHG pollution.

159. Plaintiffs have no appropriate and adequate remedy other than to seek declaratory and injunctive relief in this Court. Plaintiffs lack administrative and non-equitable remedies to compel Defendants to fulfill their constitutional mandate pursuant to Article I, Sec. 1, 2 and 9.

### **REQUESTS FOR RELIEF**

WHEREFORE, Plaintiffs pray for declaratory and injunctive relief against Defendants, and request that the Court:

1. Declare that the Defendants have a mandatory, fiduciary duty under the Public Trust Doctrine to prevent substantial impairment to the state's Public Trust Resources;
2. Declare that the Plaintiffs have fundamental rights to life, liberty, pursuit of happiness and property, which includes a stable climate system capable of sustaining human life;
3. Declare that the climate change and fossil fuel-based energy system created and operated by the Defendants are in violation of the Public Trust Doctrine and Florida Constitution;

4. Order Defendants to fulfill their mandatory, fiduciary duty to protect the Public Trust Resources of the state from waste and substantial impairment caused by dangerous levels of GHGs pursuant to the common law, Article II, Section 7(a), Article X, Section 11, and Article X, Section 16 of the Florida Constitution;

5. Order Defendants to prepare a consumption-based inventory of Florida's CO<sub>2</sub> and GHG emissions;

6. Order Defendants to prepare and implement an enforceable comprehensive statewide remedial plan, including specific dates and benchmark targets, to phase out fossil fuel use and draw down excess atmospheric CO<sub>2</sub> through forest and soil protection so as to stabilize the climate system and protect the vital natural resources on which Plaintiffs now and in the future will depend;

7. Preliminarily and permanently enjoin Defendants from substantially impairing the natural resources and scenic beauty of the state of Florida in violation of the common law and Florida Constitution.

8. Retain jurisdiction over this action to monitor and enforce Defendants' compliance with the statewide remedial plan and all associated order of this Court;

9. Grant such other and further relief as the Court may deem just and proper; and

10. Award costs and attorneys' fees for the maintenance of this action.

**DEMAND FOR JURY TRIAL**

Plaintiffs request and demand trial by jury as to all facts and issues so triable by jury under Florida law.

DATED, this 16th day of April, 2018.

**JOHNSON POPE BOKOR RUPPEL & BURNS, LLP**

/s/ Guy M. Burns  
GUY M. BURNS, FBN 0160901  
401 East Jackson Street, Suite 3100  
Tampa, Florida 33602  
Ph: (813) 225-2500  
Fx: (813) 223-7118  
Email 1: GuyB@jpfirm.com  
Email 2: LauraH@jpfirm.com  
*Counsel for Plaintiffs*

**JOHNSON POPE BOKOR RUPPEL & BURNS, LLP**

/s/ F. Wallace Pope, Jr.  
F. WALLACE POPE, JR., FBN 124449  
911 Chestnut Street  
Clearwater, Florida 33756  
Ph: (727) 461-1818  
Fx: (727) 441-8167  
Email: WallyP@jpfirm.com  
*Counsel for Plaintiffs*

**D'ALEMBERTE & PALMER, P.A.,**

/s/ Talbot D'Alemberte  
TALBOT "SANDY" D'ALEMBERTE, FBN 17529  
Email: dalemberte@dalemberteandpalmer.com  
1117 Myers Park Dr.  
Tallahassee, FL 32301  
Ph: (850) 325-6292  
*Counsel for Plaintiffs*

**LAW OFFICE OF MITCHELL A. CHESTER, P.A.,**

/s/ Mitchell A. Chester

MITCHELL A. CHESTER, FBN 288136  
Email 1: mchesterlaw@gmail.com  
Email 2: mchester@mitchellchester.com  
7951 SW 6<sup>th</sup> Street, Suite 112  
Plantation, Florida 33324  
Ph: (954) 759-9960  
Fx: (954) 759-9930  
*Counsel for Plaintiffs*

**ERIN L. DEADY, P.A.**

/s/ Erin S. Deady

ERIN L. DEADY, FBN 0367310  
Email: Erin@deadylaw.com  
54 ½ SE 6<sup>th</sup> Avenue  
Delray Beach, FL 33483  
Ph: (954) 593-5102  
*Counsel for Plaintiffs*

**JANE WEST LAW, P.L.**

/s/ Jane West

JANE WEST, FBN 159417  
24 Cathedral Place, Ste 504  
St. Augustine, FL 32084  
(904) 471-0505  
Email 1: jane@janewestlaw.com  
Email 2: jessica@janewestlaw.com  
*Counsel for Plaintiffs*

**DEB SWIM, PLLC**

/s/ Deb Swim

DEB SWIM, FBN 336025  
Email: dswim.attorney@gmail.com  
1323 Diamond Street  
Tallahassee, FL 32301  
Ph: (850) 733-1004  
*Counsel for Plaintiffs*

**LEVIN, PAPANTONIO, THOMAS,  
MITCHELL, RAFFERTY &  
PROCTOR, PA**

/s/ Matthew D. Schultz

MATTHEW D. SCHULTZ, FBN 64032  
Email: mschultz@levinlaw.com  
316 South Baylen Street, Suite 600  
Pensacola, FL 32502  
Ph: (850) 435-7140  
*Counsel for Plaintiffs*

**LAW OFFICES OF ANDREA K. RODGERS**

*/s/ Andrea K. Rodgers*

ANDREA K. RODGERS, WSNB 38683 (*pro hac vice* pending)

Email: andrearodgers42@gmail.com

3026 NW Esplanade

Seattle, WA 98117

Ph: (206) 696-2851

*Counsel for Plaintiffs*