




Office of
**INDIAN RIVER COUNTY
ATTORNEY**

Dylan Reingold, County Attorney
William K. DeBaal, Deputy County Attorney
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MEMORANDUM

TO: Board of County Commissioners

FROM: Dylan Reingold, County Attorney 

DATE: April 8, 2018

SUBJECT: All Aboard Florida Army Corps of Engineers Record of Decision

BACKGROUND.

On March 23, 2018, the United States Army Corps of Engineers (the "Corps") issued its Record of Decision ("ROD") with respect to the proposed All Aboard Florida project. The Corps prepared its own ROD for the Department of Army permit application to discharge fill material into waters of the United States for construction of Phase II of the All Aboard Florida project from West Palm Beach to Orlando. As part of its analysis, the Corps adopted the United States Department of Transportation Federal Railroad Administration's ("FRA") FEIS, issued in August 2015.

On December 19, 2017, the Indian River County Board of County Commissioners (the "Board") authorized the County Attorney's Office to file a lawsuit against the FRA in conjunction with issuance of the FRA ROD, which was issued on December 15, 2017. On February 13, 2018, Indian River County, Martin County and CARE-FL filed a lawsuit against the United States Department of Transportation and FRA, claiming the FRA ROD did not comply with the requirements of NEPA and that the private activity bonds authorized to be issued, were illegal. Since the Corps ROD relies on the FRA's ROD, the County Attorney's Office recommends that the Board authorize the County Attorney's Office to amend the existing complaint to include the Corps or if more advantageous, file a separate action against the Corps, raising similar allegations.

Although, both approaches could increase the costs of the pending litigation, the increase will be limited as the crux of the matter is still the deficiency of the FRA ROD.

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FUNDING.

The Board has previously authorized \$2.7 million for litigation related to All Aboard Florida. The funding for this litigation would come from the general fund.

RECOMMENDATION.

The County Attorney's Office recommends that the Chair allow for public comment on this matter and then have the Board vote to authorize the filing of either an amended complaint in the pending litigation to include the United States Army Corps of Engineers or a separate lawsuit against the United States Army Corps of Engineers based upon the deficient United States Department of Transportation Federal Railroad Administration Record of Decision.