



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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

TO: Board of County Commissioners
FROM: Dylan Reingold, County Attorney
DATE: December 31, 2019
SUBJECT: *Indian River County et al., v. United States Department of Transportation, et al.*

BACKGROUND.

On March 17, 2015, the Indian River County Board of County Commissioners (the "Board") authorized the County Attorney's Office to file a complaint in federal court challenging the U.S. Department of Transportation's ("USDOT's") approval of the issuance of the \$1.75 billion of tax exempt private activity bonds for the All Aboard Florida project. On March 24, 2015, the Board authorized the County Attorney's Office to include the Emergency Services District as a plaintiff in the case. As the Board is aware, as a result of the decision in that case, the USDOT withdrew its private activity bond allocation for Phase II of the All Aboard Florida project.

On December 19, 2017, the Board authorized the County Attorney's Office to file a lawsuit against the USDOT in conjunction with issuance of the Record of Decision for Phase II of the All Aboard Florida project. On February 13, 2018, Martin County, Indian River County and CARE-FL filed a lawsuit in federal court challenging the validity of the private activity bonds and the National Environmental Policy Act ("NEPA") process for Phase II of the All Aboard Florida project. Martin County and CARE-FL have since withdrawn from the case. The court held an oral argument on the motions for summary judgment on November 27, 2018. On December 24, 2018, the court issued an opinion granting Defendants' Motion for Summary Judgment, granting Intervenor-Defendant's Motion for Summary Judgment, and denying Indian River County's Motion for Summary Judgment.

On February 5, 2019, the Board voted to file an appeal with the D.C. Circuit Court of Appeals. Oral arguments were held on September 24, 2019. Although the County had meritorious claims on appeal relating to the illegality of the private activity bonds and the insufficient NEPA analysis performed by the Federal Railroad Administration, on December 20, 2019, the D.C. Circuit Court of Appeals denied the appeal.

There are three options for seeking further review: (1) a petition for panel rehearing; (2) a petition for rehearing en banc; and (3) a petition for a writ of certiorari to bring the suit before the United States Supreme Court for review. It is outside counsel's opinion, which the County Attorney shares, that these petitions are not likely to be granted. Thus, outside counsel recommends, and the County Attorney concurs, that the County should not seek further review in this suit.

If the Board wishes to seek further review, here are the filing deadlines for any future action in this case:

1. Deadline for petition for panel rehearing or rehearing en banc is February 3.
2. Deadline for petition for a writ of certiorari for Supreme Court review is March 19.

On November 20, 2018, the Board voted to allocate an additional \$1 million to fight the proposed project. Currently, there is \$466,069.38 remaining in that account. If the Board chooses to file a petition, the funding for the petition would come from this account.

FUNDING.

Funds for a petition would be available from the General Fund/County Attorney/Legal Services/Virgin Trains, Account # 00110214-033110-15023.

RECOMMENDATION.

The County Attorney's Office recommends that Indian River County Board of County Commissioners not file a petition for further review.