




Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

Dylan Reingold, County Attorney  
William K. DeBaal, Deputy County Attorney  
Kate Pingolt Cotner, Assistant County Attorney

**MEMORANDUM**

**TO:** Board of County Commissioners  
**FROM:** Dylan Reingold, County Attorney   
**DATE:** January 25, 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 Martin County and CARE-FL have since withdrawn from the case.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.

At the direction of the County Attorney's Office, on January 14, 2019, outside counsel filed a notice of appeal in order to preserve the County's appellate rights. We anticipate the clerk of the D.C. Circuit Court of Appeals to issue an initial scheduling order shortly that will likely require the submission of several forms within 30 days of the date of the order. We then expect a couple weeks later that the clerk will issue a scheduling order which will contain the various due dates for the briefs and appendix. We may be given perhaps 6 weeks from the date of the scheduling order to file our brief and the appendix.

The County Attorney's Office believes that the County has meritorious claims on appeal relating to the illegality of the private activity bonds and the insufficient NEPA analysis performed by the Federal Railroad Administration. Outside counsel estimates that an appeal of the matter, which could last up to 18 months, will cost between \$350,000 and \$400,000. In order to provide a level of certainty, outside counsel has offered to cap the total costs of the appeal at \$400,000.

On November 20, 2018, the Board voted to allocate an additional \$1 million to fight the proposed project. The County Attorney's Office believes that this an appropriate use of those funds.

**FUNDING.**

Funds for this expenditure are available as a result of the November 20, 2018 additional \$1 million funding allocation in the General Fund/County Attorney/Legal Services/All Aboard Florida, Account # 00110214-033110-15023.

**RECOMMENDATION.**

The County Attorney's Office recommends that Indian River County Board of County Commissioners authorize the County Attorney's Office and outside counsel to proceed with the appeal with a cap on total costs at \$400,000.