

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Indian River County, Indian River County
Emergency Services District, Old Vero Ice
Age Sites Committee, Inc.,

Plaintiffs,

vs.

Peter M. Rogoff, in his official capacity as the
Under Secretary of Transportation for Policy
of the United States Department of
Transportation; and the United States
Department of Transportation,

Defendants.

Civil Action No. 15-460

COMPLAINT

Plaintiffs Indian River County, Indian River County Emergency Services District and Old Vero Ice Age Sites Committee, Inc. (collectively, the “Plaintiffs”), for their Complaint for declaratory and injunctive relief against Peter M. Rogoff, in his official capacity as the Under Secretary of Transportation for Policy of the United States Department of Transportation (the “Under Secretary”), and the United States Department of Transportation (“DOT”), allege as follows:

NATURE OF THE PROCEEDING

1. This Complaint is brought under the Administrative Procedure Act (the “APA”) to challenge as arbitrary, capricious, an abuse of discretion and unlawful the determination made by the Under Secretary on December 22, 2014 to approve the allocation of \$1,750,000,000 in private activity bonds to finance the All Aboard Florida Project (the “Project”

or “All Aboard Florida”) under section 142(m)(2)(C) of the Internal Revenue Code (the “Project Approval,” annexed hereto as Exhibit A). The Project Approval was final agency action subject to review by this Court under the APA, 5 U.S.C. §§ 701-706.

2. The Project, if constructed and operated as proposed, would be a for-profit intercity passenger rail service between Orlando and Miami, sharing tracks with freight trains.

3. According to the application for private activity bond financing for the Project (annexed hereto as Exhibit B), the estimated construction cost of the Project is approximately \$1,700,000,000. Exh. B at 10.

4. The \$1,750,000,000 of private activity bonds approved by the Under Secretary and DOT (collectively, the “Defendants”) are the “linchpin” for financing the Project, and thus critical to its construction. *See* Exh. B (cover letter, page 1). Thus, the injuries to Plaintiffs resulting from the construction and operation of the Project are fairly traceable to the Project Approval, and the annulment of the Project Approval, as requested herein, would redress those injuries.

5. Section 142(m)(2)(C) directs the Secretary of Transportation (who has delegated his decision-making authority thereunder to the Under Secretary, *see* 49 C.F.R. § 1.25(l)) to allocate the nation-wide cap of \$15,000,000,000 in tax exempt private activity bonds among qualified projects “in such manner as the Secretary determines appropriate.” 26 U.S.C. § 142(m)(2)(C).

6. But nothing in Section 142(m) exempts the Secretary of Transportation, or his delegee, the Under Secretary, from compliance with the nation’s environmental and historic preservation laws. The Project Approval was plainly unlawful because as of the date of the Project Approval, neither the Defendants nor any other federal agency had completed the process

of evaluating the environmental and historic resource impacts of the Project, and considering reasonable alternatives to the Project and/or mitigation to avoid or minimize such impacts, as required by the National Environmental Policy Act (“NEPA”), Section 106 of the National Historic Preservation Act (“Section 106”), and Section 4(f) of the Department of Transportation Act (“Section 4(f)”).

7. The Project Approval occurred after publication of the Draft Environmental Impact Statement (“DEIS”) for the Project on September 19, 2014, but as of the Project Approval date, no Final Environmental Impact Statement (“FEIS”) or Record of Decision (“ROD”) had been issued for the Project under NEPA. Similarly, as of the Project Approval date, the required consultation had not occurred and the necessary findings had not been made under Section 106 or Section 4(f).

8. Moreover, on information and belief, even as of the date of the filing of this Complaint, neither the Defendants nor any other federal agency has issued an FEIS or ROD for the Project under NEPA or undertaken the consultation and made the findings required for the Project under Section 106 or Section 4(f).

9. Accordingly, the Project Approval should be declared not in accordance with law, arbitrary, capricious, and an abuse of discretion, and should be vacated and annulled as being in violation of NEPA, Section 106 and Section 4(f). Defendants should be enjoined from issuing any approval for private activity bonds for the Project unless and until all of the requirements of these statutes are satisfied.

JURISDICTION AND VENUE

10. Although styled as a “provisional” approval, the Project Approval is a final determination to approve the allocation of \$1,750,000,000 in private activity bonds to the Project under section 142(m)(2)(C) of the Internal Revenue Code, subject to compliance with certain specified provisions (conditions) set forth in the Project Approval letter.

11. If these specified conditions are satisfied, the Project Approval does not require any further action by the Defendants or any other federal agency prior to the issuance of the bonds.

12. On information and belief, the issuance of the bonds is imminent, to occur in April, May or June of 2015.

13. There is no adequate remedy at law that would otherwise redress the injuries to the Plaintiffs that would result from the Project Approval.

14. Accordingly, this action seeks to vacate and nullify the final action of an officer or agency of the United States and arises under the APA, which provides for judicial review of federal agency determinations such as those at issue here. The APA requires a reviewing court to hold unlawful and set aside any agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

15. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. This Court is authorized to issue the non-monetary relief sought herein pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and the APA, 5 U.S.C. §§ 702, 705, 706.

16. Venue is proper in this Court under 28 U.S.C. § 1391(e) because this is an action against both an officer of the United States who performs his official duties in this judicial district, and an agency of the United States located in this judicial district. Additionally, venue is proper because a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

THE PLAINTIFFS

17. Indian River County (the “County”) is a duly organized political subdivision in the State of Florida. The County has approximately 142,000 permanent residents. The Project’s construction would disrupt normal business and individual activities in the County, by requiring substantial construction to build new railroad tracks and bridges. Once in operation, the Project would cause at least 32 passenger trains, pulled by diesel locomotives, to pass through the County daily at speeds of over 100 miles per hour, resulting in traffic tie-ups near railroad crossings, safety concerns, noise, harm to County conservation areas, and damage to neighborhoods and historic resources in the County.

18. The Indian River County Emergency Services District (the “Emergency Services District” or “District”) is a dependent special district, formed by the County pursuant to the authority granted in § 125.01(5)(a), Florida Statutes, as documented in County Ordinance No. 90-25. The governing body of the Emergency Services District is the Board of County Commissioners of Indian River County, sitting as the Board of Commissioners of the Emergency Services District. The Emergency Services District has the power to sue and be sued. The boundaries of the Emergency Services District extend through the entirety of the County, excluding the Town of Indian River Shores (which is on a barrier island east of the mainland). The Emergency Services District provides fire, rescue, emergency medical services, and other emergency services to property and persons within the district boundaries noted above. The

Project, as proposed, would cause at least 32 passenger trains, pulled by diesel locomotives, to pass through the Emergency Services District daily at speeds of over 100 miles per hour, interfering with the District's operations and burdening the District with responding to accidents and potentially catastrophic releases of hazardous chemicals.

19. The Old Vero Ice Age Sites Committee, Inc. (the "OVIASC") is a Florida non-profit corporation and a registered section 501(c)(3) organization formed to identify, conserve, and appropriately excavate the notable ice age sites in Indian River County, Florida. Its office address is 935 Seagrape Lane, Vero Beach, FL 32963. The OVIASC is currently excavating the "Vero Man" site located along the Main Relief Canal (Van Valkenburg Creek), Vero Beach, Indian River County. The Vero Man site is included as #8IR09 in the Florida Master Site File ("FMSF"), Florida's official inventory of historical and cultural resources and has been determined to be eligible for the National Register of Historic Places by the Florida State Historic Preservation Office. The OVIASC likewise has plans to excavate the "Gifford Bones" site, located at the North Relief Canal (Houston Creek), and recorded as FMSF #8IR07 and #8IR08. The Vero Man site and the Gifford Bones site each lie in or adjacent to the railroad right-of-way, and Project work is planned to occur at and adversely affect each of these sites, significantly hampering and even preventing the work of the OVIASC.

THE DEFENDANTS

20. Peter M. Rogoff is DOT's Under Secretary of Transportation for Policy. He is being sued in his official capacity as Under Secretary. The Secretary of Transportation has delegated to the Under Secretary responsibility for approving private activity bonds under Section 142(m) of the Internal Revenue Code.

21. DOT is a Cabinet Department of the United States Government.

PLAINTIFFS' STANDING TO BRING THIS ACTION

22. By granting the Project Approval, the Defendants have provided substantial assistance to the Project, which will cause injury to Plaintiffs, as is acknowledged, though understated, in the DEIS, as discussed below. This injury can only be redressed by granting the relief the Plaintiffs request herein. As a result, Plaintiffs have standing to challenge the Project Approval.

Description of the Project

23. The Project would run in a 121 mile North-South corridor (the “North-South Corridor”) through the heart of Indian River County and its Emergency Services District, adjoining populated areas, conservation areas and sites of historical and archeological significance. The Project, as proposed, would degrade the quality of life in the County, harm the tourism that is vital to its economy and tax revenues, adversely affect socioeconomic conditions along the railroad tracks within the County, degrade the experience and ecological conditions at County-owned conservation areas, and result in many other environmental harms to the Plaintiffs discussed below.

24. The construction of the Project will include the addition of a second track throughout the entire 21-mile length of the railroad right-of-way in Indian River County. The construction will require the reconstruction, replacement or rehabilitation of four railroad bridges in the County. After construction, the Project would operate with 30 at-grade road crossings in the County.

25. The DEIS only hints at the massive scope of construction, noting that it will result in “impacts to freight rail transportation, regional highways and local vehicular traffic” and involve 1,695 construction-related jobs. Construction of the Project is anticipated to result in temporary road closures. The diesel-powered construction equipment will pollute the

air during the construction period, which is likely to take at least two years. Construction activity will also have noise and vibration impacts on the surrounding land uses.

Traffic Conditions at and near Grade Crossings

26. The DEIS estimates that, in the year it is completed, the Project would entail 16 round trips per day, resulting in 32 crossings per day at each of the 30 at-grade road crossings in the County, in order to carry 1 million projected annual passengers. The DEIS also estimates that within three years of operation, ridership is predicted to grow from 1 million annual passengers to at least 3.5 million annual passengers and as many as 5.1 million annual passengers. Accordingly, the 32 daily passenger train trips planned for the first year of operation may increase substantially over time, to accommodate additional passengers.

27. Each train will cause traffic delays at each at-grade crossing when the gate is closed on the road to allow the train to cross over the road. These delays will be significant at many crossings.

28. For example, at the railroad crossing at Oslo Road in Indian River County, an appendix to the DEIS includes a table indicating that in the first year of the Project's operation there would be a westbound queue of 1,299 feet every time a passenger train passes by during the evening peak hour. Since there are only approximately 350 feet on Oslo Road between the crossing and US Route 1 (the north-south highway that runs from Maine to Key West), the majority of vehicles will be backed up in queues onto or beyond US Route 1.

29. The same table appended to the DEIS indicates that by 2036, the eastbound queues predicted to form at the intersection of Oslo Road and US Route 1 each time a passenger train passes during the evening peak will extend more than 7,000 feet – well over a mile. By 2036, eastbound delays at the Oslo Road and US Route 1 intersection in Indian River

County are projected to exceed 656 seconds (*i.e.*, almost 11 minutes) with every train crossing during the evening rush hour. DEIS App. 3.3-C at 3-22.

30. The morning peak hour traffic backups may be worse, given that school and commuter traffic both occupy the roadways at that time.

31. These extraordinary queues and delays at the at-grade crossings in the County will not only degrade traffic flow on the streets that cross the tracks, but at numerous other roadways intersecting these streets in the vicinity of the crossings.

32. The delays at the 30 at-grade crossings in the County will cause traffic backups, threaten traffic safety, impede the ability of police, fire and emergency medical vehicles to respond to emergencies, harm economic conditions in affected business districts, adversely affect the neighborhoods near the grade-crossings, degrade socioeconomic conditions in these areas by blighting the affected areas, and cause negative localized impacts to air quality as numerous vehicles idle for extended periods of time, all of which would adversely affect the County and its Emergency Services District.

33. The adverse traffic conditions at grade crossings will directly interfere with the operations of the County. Indian River County owns and insures numerous vehicles used for County purposes. These include, for example, vehicles used by the County employees of the Indian River County Sheriff's Office, Environmental Planning and Code Enforcement Division, Traffic Engineering Division, and Parks Division.

34. Although the Sheriff of Indian River County is a separate constitutional officer under Article III, Section 1(d) of the Florida Constitution, the Board of County Commissioners of Indian River County is responsible for approving the budget and appropriating County funds to the Indian River County Sheriff's Office ("Sheriff's Office") pursuant to

Section 30.49, Florida Statutes. The Sheriff's Office has nearly 300 vehicles used for law enforcement, criminal investigation, and prisoner transport purposes. To carry out these responsibilities, the vehicles operated by the Sheriff's Office must regularly cross the railroad tracks and their operation would be impeded by the frequent queues at these crossings.

35. The increased traffic caused by the numerous daily train crossings will interfere with efficient law enforcement activity by the Sheriff's Office and may increase response times to calls for police assistance. Further, Sheriff's Office vehicles will spend additional time idling in traffic, thereby increasing fuel costs borne by the County.

36. The Indian River County Environmental Planning and Code Enforcement Division is charged with implementing the County's environmental policies and enforcing County codes and ordinances. As part of its duties, the employees of the Code Enforcement division travel around the County, including crossing the railroad tracks, using County-owned vehicles to inspect and issue code violation citations and to perform site inspections. The Traffic Engineering Division is responsible for traffic safety and operational efficiency of County roads. In carrying out these duties, Traffic Engineering Division employees drive County vehicles throughout Indian River County, including across the railroad tracks, to perform traffic counts and maintain and repair traffic signals, signs, and pavement markings. The Parks Division likewise has County-wide responsibility to maintain existing parks, buildings, and equipment. To perform these responsibilities, Parks Department employees regularly travel around the County in County vehicles to the various parks, necessarily crossing the railroad tracks. These are just three departments of many in Indian River County that use County-owned vehicles to traverse the County in the performance of their duties.

37. The smooth and effective operation of Indian River County depends on the ability of its employees, like those of the Code Enforcement, Traffic Engineering, and Parks Department, to move safely and efficiently throughout Indian River County. Lengthy traffic queues caused by Project construction and operation will inhibit Indian River County's ability to deliver necessary County services proficiently and economically. Further, the County will experience increased fuel costs as its vehicles spend additional time idling in traffic created by the Project.

38. The traffic queues and extraordinary delays caused by the 30 at-grade railroad crossings in Indian River County will also affect the operations of the Emergency Services District. The District provides fire rescue response, medical/trauma emergency response, and hazardous materials response, among other tasks, within its service area, which, as noted above, encompasses almost all of Indian River County.

39. The District has twelve fire/rescue stations from which its fire trucks and ambulances depart in response to emergency calls. Eight of these stations are located west of the railroad tracks; four are located east of the railroad tracks.

40. The District is the only first tier Advanced Life Support (ALS) service provider in its service area and, therefore, is the only provider who can respond to 911 calls for emergency medical services in Indian River County. ALS vehicles, like those of the District, are staffed with paramedics to provide emergency medical care.

41. It is critical for the District's ambulances to reach patients as rapidly as possible, and to transport them as quickly as possible to a hospital, where they can receive medical care from a physician.

42. The only two hospitals in the District's service area are located to the east of the railroad tracks: Sebastian River Medical Center, located on US Route 1 in Sebastian and Indian River Medical Center on 36th Street in Vero Beach. These two hospitals are the only locations to which the District may transport patients in distress in Indian River County. (If the emergency situation rises to the need for a certified trauma center, the District would transport a patient to the Holmes Regional Medical center in Melbourne, Florida, or Lawnwood Medical Center in Ft. Pierce, Florida.)

43. The majority of Indian River County's population resides to the west of the railroad tracks, and the majority of the emergency medical assistance calls received by the District are from locations to the west of the railroad tracks. Service to these locations requires the District's ambulances to cross the railroad tracks to transport patients to the two hospitals east of the tracks.

44. The Project, during both the construction and operation phases, will increase traffic congestion and delays at grade crossings throughout the District service area and will prevent all traffic flow when the crossings are closed to permit the train to pass by. As a result of the Project, it can be expected that the District would experience increased response times for emergency service calls and increased delivery times transporting patients to a hospital. Thus, the Project's adverse impacts on the traffic environment will harm the District's ability to deliver emergency care to County residents, workers and visitors.

Increased Risks of Catastrophic Accidents

45. NEPA encompasses risks to "public health or safety," including catastrophic risks whose "probability of occurrence is low." 40 C.F.R. §§ 1508.27, 1502.22(b)(4). The County and its Emergency Services District are concerned that once the

Project is operational, passenger and freight trains will share the same railway corridor, resulting in potentially catastrophic risks.

46. The private sponsor of the Project has acknowledged, in a Preliminary Offering Memorandum dated June 4, 2014 (the “Offering Memorandum”), that co-locating passenger and freight trains on the same tracks may result in “casualty and property risks as a result of shared use of the corridor with freight railroad operations.” Offering Memorandum at 25. This increased risk is of particular concern, because in the same document, the private sponsor states that “[t]he operation of any railroad carries with it an inherent risk of catastrophe, mechanical failure, collision and property loss” and that “[c]ollisions, derailments, leaks, explosions, environmental mishaps, or other accidents can cause serious bodily injury, death and extensive property damage, particularly when such accidents occur in heavily populated areas.” *Id.* at 24.

47. The use of shared railroad tracks between passenger and freight trains also poses the potential for collisions between passenger and freight trains to result in catastrophic releases of hazardous and toxic chemicals.

48. The Florida East Coast Railway (“FEC”), which operates a freight line and owns the railroad tracks that would be utilized by the Project for passenger trains, services numerous customers who handle hazardous materials.¹ The FEC has published a general tariff that sets forth its procedures for shipping “Poison Inhalation Hazardous” and “Toxic Inhalation Hazardous” chemicals.² Dozens of such chemicals are listed on the FEC tariff, including anhydrous ammonia, sulfuric acid and chlorine gas. The DEIS confirms that freight traffic

¹ See FEC web site (<https://www.fecrwy.com/customers/what-can-i-ship>, visited on March 27, 2015).

² See FEC web site (http://www.fecrwy.com/sites/default/files/fec_1000_section_5_tih_pih.pdf, visited on March 27, 2015).

travelling on the rail lines in this corridor transport hazardous materials, including ammonium nitrate, bleach, sulfur dioxide, liquid propane gas, and explosives. DEIS at 5-6 (Table 5.2.4-1).

49. The Project will increase the potentially catastrophic risks of shipping these chemicals through Indian River County.

50. An accident causing the release of a tanker car of such chemicals could cause a toxic plume posing a severe safety hazard in an area more than a mile from the accident site, threatening public safety. The testimony of Robert L. Sumwalt, Vice Chairman of the National Transportation Safety Board, before the U.S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines and Hazardous Materials, on January 30, 2007, illustrates these risks. In his testimony, Mr. Sumwalt discussed a catastrophic railroad accident that occurred in South Carolina on January 6, 2005, resulting in a chlorine vapor plume that killed nine people through chlorine gas inhalation. Approximately 554 people were taken to local hospitals as a result of respiratory difficulties, of which 75 were admitted for treatment. An estimated 5,400 residents within a 1-mile radius of the accident site were evacuated for several days.³

51. Such an accident could cause serious harm to the County and its Emergency Services District by burdening them with the requirement to provide emergency response services to hundreds of residents, directly harming their employees and causing devastating harm to a local community, requiring the County to provide medical, social and other services.

³ See <http://app.nts.gov/news/speeches/sumwalt/rls070130.html> (visited March 27, 2015).

Harm to County Conservation Areas

52. Indian River County owns and manages three dedicated nature conservation areas that abut the existing railroad right-of-way that would be utilized by the Project. They are: (i) the North Sebastian Conservation Area, an approximately 407-acre conservation area located in the northern part of the County and directly adjacent to the railroad right-of-way for about 0.85 miles, (ii) the Hallstrom Farmstead Conservation Area, a 93-acre property located in southern Indian River County, including a wetlands area, that is adjacent to the railroad right-of-way for about 0.45 miles, and (iii) the Harmony Oaks Conservation Area, a 90.7 acre conservation area also located in the southern portion of the County and which abuts the railroad right-of-way for about 0.045 miles. The North Sebastian, Hallstrom Farmstead and Harmony Oaks Conservation Areas are all open to the public for recreational purposes including, but not limited to, hiking and bird watching.

53. These conservation areas were all purchased, in part, with Florida Communities Trust Funds and environmental bond funds. The Florida Communities Trust was established by Florida statute to conserve “natural areas” in the state, which are linked to “quality of life, environmental quality, as well as the viability and vitality of urban areas.” Fla. Stat. § 380.502(1). To obtain funding from the Florida Communities Trust, the County was required to demonstrate that it would “restore areas” to be used for open space or to “enhance natural resources” that may have “suffered loss of natural and scenic values.” *Id.* at § 380.508(4).

54. The “primary purpose” of the County’s acquisition and maintenance of the North Sebastian Conservation Area was (and is) to “preserve and restore scrub and wetland habitats for the benefit of rare and endangered species.” *See* North Sebastian Conservation Area Annual Stewardship Report, July 11, 2005.

55. In particular, the North Sebastian Conservation Area is a key property for the preservation and protection of the Florida scrub-jay, a federally listed threatened avian species, as part of the Sebastian Area-Wide Florida Scrub-Jay Habitat Conservation Plan (the “Scrub-Jay Conservation Plan” or “HCP”), finalized March 2000. The Scrub-Jay Conservation Plan is a local government effort initiated and funded by Indian River County and the City of Sebastian, which serve as the lead agencies for its implementation. HCP at 1. The purpose of the Scrub-Jay Conservation Plan is to protect the broad range of native species characteristic of the Atlantic Coastal Ridge scrub ecosystem and to enhance the recovery potential of the local scrub jay population. *Id.* at 1, 4.

56. The goals of the Scrub-Jay Conservation Plan include reducing “extinction risk” and increasing “population persistence” for the local scrub-jay population, which is the fourth largest scrub-jay metapopulation in Florida. HCP at 75. Further, the Scrub-Jay Conservation Plan is designed to protect “biological integrity and species diversity” of the scrub ecosystem by returning the designated areas, including the North Sebastian Conservation Area, “to conditions representative of the historical landscape and thereby optimal for native species of conservation concern” *Id.*

57. The Project would harm protected wildlife species and their habitat, including “effects from construction, grading, vegetation management, and mortality associated with potential collisions with rail traffic” and “degradation of ecological function and loss of habitat.” DEIS at 5-111. Indirect effects caused by the Project “may include habitat fragmentation and associated edge effects, the loss of genetic diversity of rare plant and animal populations, increased competition for resources, and physical or psychological restrictions on

movements.” *Id.* at 5-118. In addition, “[n]oise and vibration associated with the active rail line may cause indirect effects if wildlife avoid habitat near the embankment.” *Id.*

58. Observations made during a survey included as part of the DEIS noted the presence of scrub-jay in the North Sebastian Conservation Area along the railroad tracks. DEIS Appendix 4.3.6-A, June 4, 2013 Scrub-Jay Survey at 4 and Figure 1a. Further, scrub-jays observed as part of this survey disappeared into the scrub when a train approached. *Id.* at 6.

59. As documented in the DEIS, the scrub-jay has experienced higher mortality and lower reproductive success in roadside territories. DEIS at 5-119. Accordingly, the construction of the Project, with its associated vehicular and construction traffic, as well as the pass-by of an additional 32 trains each day abutting the North Sebastian Conservation Area and other scrub-jay habitat is expected to harm the local scrub-jay population in direct conflict with the County’s management goals for the North Sebastian Conservation Area.

60. In addition to serving as a natural habitat area for the scrub-jay and other species, the North Sebastian Conservation Area includes walking and hiking trails, picnic pavilions, an equestrian corral, and shoreline fishing areas. These areas are used by County residents, as well as by the many tourists who visit Indian River County, to enjoy and experience its natural beauty, including bird watching.

61. Several of these trails lie in the portion of the North Sebastian Conservation Area that is near and adjacent to the railroad right-of-way, including “Reindeer Ridge,” “Roseland Trail” and “Osprey Hideaway.”

62. These trails, as well as the other trails and recreational facilities at the North Sebastian Conservation Area, are intended to permit visitors to observe scrub-jay and other native Florida plant and animal species in a quiet, natural setting.

63. Use of these trails, as well as the other natural areas adjacent to the railroad tracks, will be negatively affected by the noise, vibration, air emissions, and traffic generated by the Project's construction and operation. Further, to the extent animal species move away from the railroad tracks as a result of the train traffic, the trails in the area closest to the tracks will no longer offer the ability to observe these species.

64. In addition, the North Sebastian Conservation Area lies to the west of the tracks. Many of the hotels and other tourist rentals in Indian River County are to the east of the tracks, closer to the coast. Access to the North Sebastian Conservation Area thus necessitates crossing the tracks, typically by car, at the at-grade crossings that will be substantially impaired by increased rail operations caused by the Project.

65. Thus, the Project's environmental impacts will harm the County by frustrating its management objectives for its North Sebastian Conservation Area.

66. The Project's environmental impacts would also result in similar harms to the County at the Hallstrom Farmstead Conservation Area, which includes sand pine scrub, maritime hammock, scrubby flatwoods and bottomland forest, and is home to the scrub-jay and the federally listed endangered plant species Lakela's Mint. The Hallstrom Farmstead Conservation Area surrounds the historic Hallstrom Farmstead home, which is owned and maintained by the Indian River County Historical Society, an entity that provides, in coordination with the County, historic and environmental education tours of the Hallstrom Farmstead Conservation Area. The Project would also degrade the experience at the Harmony Oaks Conservation Area, which the County manages to protect natural communities, including wetlands, and which includes a canoe and fishing dock, pedestrian and bike trails and a parking area.

Harm to Historic Resources

67. The North-South Corridor is rich with historical and archeological resources that abut or are in close proximity to the Project. The Project would have adverse effects on numerous historic resources in Indian River County, including without limitation the St. Sebastian River Railroad Bridge; the Vero Man site; the Gifford Bones site; and the Old Town Sebastian Historic District East and Old Town Sebastian Historic District West.

68. The St. Sebastian River Railroad Bridge, constructed in 1926, spans the St. Sebastian River, which in this area forms the northern border of Indian River County. The southern half of this bridge is located in Indian River County. The Project would demolish this historic bridge, which is visible from the County's Roseland Community Center and Park, a County-owned park on the St. Sebastian River approximately 530' south of the historic bridge. The park contains a pier that allows visitors to take in the magnificent view of the St. Sebastian River and this historic railroad bridge. The Project's demolition of this visual resource will adversely affect the viewshed from the County's park, thereby harming the County.

69. The Vero Man site is located along the Main Relief Canal (Van Valkenburg Creek), where Project-related work would be performed to upgrade an existing railroad bridge, and to construct a second track. Archaeologists from Mercyhurst University in Erie, Pennsylvania have been excavating at this site in connection with the OVIASC over the past two years. Significant human, animal, and plant remains uncovered at this site provide evidence of the earliest humans in Florida (dated to ca. 14,000 and 13,000 years ago) as well as the environment within which these earliest humans operated. Although the traditional thinking was that the first humans arrived in North America over the Bering Strait Land Bridge about 12,000-13,000 years ago, it has been inferred from material from the Vero Man site and other

locations that this is not the case, and that instead humans first entered the New World perhaps as early as 20,000+ years ago following multiple routes of entry from Northeast Asia. The archaeological activities, research, and continued excavations at the Vero Man site are expected to uncover additional data that will help to identify more precisely when those early humans arrived, how they lived, and how they died. Based on these findings, the Vero Man site has been determined to be eligible for the National Register by the Florida State Historic Preservation Office.

70. The Vero Man site excavation conducted under the OVIASC is currently in its second season, and it is anticipated that perhaps another fifteen to twenty years of work remains. The Vero Man site excavation season runs from January-May each year, for six days each week and for up to ten hours each day. Excavation cannot be conducted during the hurricane season because the effects of a hurricane on an excavation site would result in extensive and irreversible harm to the site and related artifacts and remains.

71. The Vero Man site lies in or adjacent to the railroad right of way, and Project work is planned to occur at and adversely affect this site. Project work is planned to occur at and adversely affect the Vero Man site. *See* Appendix 5.3.1-A to the DEIS. Important archeological finds at this site may be forever lost due to Project construction, since activities such as pile driving, movement of large construction vehicles, and earth moving or removal may remove or damage artifacts at the Vero Man site. Due to the great importance of the Vero Man site, excavation there is conducted using state-of-the-art data recovery and documentation protocols, including recording of the exact position of all encountered materials. Such precision is necessary to establish not only the chronological context of recovered materials, but also their relationships or associations. If construction activity directly disturbs the extant stratigraphy

(i.e., geological layering) of the site and/or damages artifacts or plant and animal materials, the ability to reconstruct the history of human activities at the Vero Man site will be significantly impaired, and the site will not be conserved or properly excavated, hampering OVIASC's operations and frustrating the achievement of its objectives.

72. Further, once the second track is installed near the Vero Man site, no longer can any excavation work be conducted close to or under that track. Consequently, if excavation cannot be performed in those additional areas, the artifacts there will remain undiscovered and potentially unrecoverable, hampering OVIASC's operations and frustrating the achievement of its objectives.

73. Vibration associated with the construction and operation of the Project is also a concern for the OVIASC. The focus of excavation at the Vero Man site is eight to twelve feet below the modern ground surface. As a result, the walls of the excavation are deep and easily disturbed by vibration. Additionally, the sediments at the site are dominated by sand which is far more easily disturbed by vibration than are many other forms of sediment. Accordingly, vibration will have a negative effect on the sediments and, therefore, the archaeology at the Vero Man site. This harms the OVIASC since harm to the archeology at the site directly contravenes the OVIASC's core functions and objectives.

74. The Gifford Bones site is located at the North Relief Canal/Houston Creek, and is a site where ground sloth, camel, mastodon, a stemmed flint projectile, and fossilized bones have been found. There is a significant risk that this site would be disturbed or destroyed by the Project's upgrade of the railroad bridge over the North Relief Canal, thereby directly affecting OVIASC's ability to excavate the archeological resources at this site.

75. The harms to these archeological resources would also harm the County, as the Vero Man site is a tourist attraction in the County, and the County's tax revenues are heavily dependent on the County's attractiveness as a tourist destination. The public is encouraged to visit the Vero Man site, where the OVIASC offers free tours of the excavation site to the public five days a week during the excavation season.

76. The Old Town Sebastian Historic District East and Old Town Sebastian Historic District West are comprised of nearly 30 contributing sites or buildings. The two districts are listed on the National Register of Historic Places and would be bisected by the Project. When a train traveling over 100 miles per hour blasts through this area 32 or more times per day, the resultant vibration affects surrounding receptors, including people and structures. DEIS at 4-42-44; 5-51. The DEIS acknowledges that "noise, vibration, and visual impacts may also affect historical resources." DEIS 4-122.

77. Other historic cultural attractions in Indian River County include the Vero Beach Train Station located in Vero Beach, immediately adjacent to the train tracks (within 57 feet), and the historic Hallstrom Farmstead, located on Old Dixie Highway, which runs parallel to the train tracks. The Vero Beach Train Station was constructed in 1903 and is listed on the National Register of Historic Places. It has been preserved for use as an office and education center for visitors to learn about the history and cultural heritage of Florida. The Hallstrom Farmstead is a historic pineapple plantation, originally established in 1909, listed on the National Register of Historic Places. The home is open to the public during the week, where a collection of artifacts, photographs, paper documents, furniture, and memorabilia are displayed.

78. The noise, vibrations and other Project-related harms to these historic resources will reduce their attractiveness as tourist destinations, causing fiscal and other harms to the County.

Harm to Socioeconomic Conditions

79. The DEIS indicates that the Project, while in operation, will have “severe, unmitigated impacts” to noise at 159 grade crossings if “locomotive-mounted horns” are used. DEIS at 5-29. Although the DEIS states that the project sponsor may install wayside horns at these grade crossings to be used in lieu of locomotive-mounted horns, which would purportedly “substantially reduce the noise footprint,” it nonetheless remains that horns will be sounded at each at-grade crossing, generating noise, an additional 32 times a day as a result of the Project in the first year of operation, with more frequent train traffic as passenger ridership increases over time.

80. In addition to the noise created by horns, whether locomotive-mounted or wayside, the trains themselves, traveling at speeds in excess of 100 miles per hour and pulled by diesel locomotives, generate intrusive noise levels.

81. The net result of the Project’s construction-associated and operation-associated noise, vibration, air pollution, and increased train and vehicular congestion at railroad crossings will cause adverse socioeconomic impacts to the surrounding communities. Property values in the immediate area adjacent to the railroad tracks are expected to decline due to the adverse effects of the Project, and the tourism industry essential to Indian River County will be harmed by the effects of traffic, noise, and harms to historic and archeological resources. Moreover, residential, businesses and County-owned properties adjacent to the Project will be adversely affected by air pollution related to both construction and train activity. At the same time, the purported benefits of the Project will not accrue to the County, which is not slated for

any train stops. All of these effects have the potential to result in blighted socioeconomic conditions along the spine of Indian River County, in the area adjoining the railroad tracks. Such environmental harms would create adverse socioeconomic conditions in the County and cause it fiscal and other harms through the loss of sales and property tax revenues, a decline in tourism and other economic activity in the County, and increased demands for County-provided social services.

82. Indian River County has a 1% county sales tax, over and above the Florida state sales tax of 6%, used to fund infrastructure in the County. This sales tax helps to take advantage of tourism spending and provides a significant source of revenue for the County.

83. The County also has a Tourist Development Tax of 4%, pursuant to Section 125.0104, Florida Statutes. This tax is applied to the rental or lease of any living quarters or accommodations in a hotel, motel, rooming house, trailer camp, condominium, apartment, multi-unit structure, mobile home, trailer, single-family home or any other sleeping accommodations that are rented for six months or less. This tax is applied over and above the total 7% sales tax in Indian River County (6% state sales tax and 1% County sales tax). The proceeds from this tax (less administration costs) are returned by the State to the County for the County's use for statutorily-outlined purposes, including to fund beach park facilities and beach improvement, maintenance, restoration, and erosion control.

84. Given the breadth of accommodation types to which the Tourist Development Tax applies and the length of time tourists typically stay in the County, the Tourist Development Tax applies to most tourists who choose to rent or lease overnight accommodations in Indian River County.

85. Access to and enjoyment of the abundant natural, historic, and cultural resources in the County will be harmed by the construction and operation of the Project. As traffic, noise, vibration, and local air quality are affected by the Project, tourists may choose to visit other coastal communities that do not have such issues. As a result, Indian River County may experience a decline in revenue received from its County sales tax and its Tourist Development Tax, which will harm the County's ability to maintain its operations and its numerous facilities and parks.

86. Indian River County collects real property tax from County property owners, based upon the assessed value of that real property – both the land and improvements. Real property tax is due to the County on an annual basis. The Project would reduce the County's overall property tax revenue because it will adversely affect the value of real property located adjacent to the railroad tracks.

87. As noted above, the Project, both in the construction and operation phases, will result in increased noise, vibration, and traffic for the surrounding areas, and may have a negative impact on local air quality. As a result, adjacent real property may become less desirable, and may decline in value. Further, as the real property becomes less desirable, it is less likely to be developed or redeveloped with improvements to structures. A decline in property value and a reduction in improvements to track-adjacent real property, in turn, will result in less property tax income to Indian River County.

* * * *

88. In addition to their substantial interest in preventing direct injury to each of them, Plaintiffs have a substantial interest in ensuring that Defendants' decision-making is in conformity with the requirements of law, and in having those requirements properly executed and Defendants' public duties enforced.

89. Defendants' failure to comply with federal law will result in irreparable harm to the environment, protected historic resources, each of the Plaintiffs and the residents and businesses who live and operate near the Project, and would deprive Plaintiffs of their legally cognizable interests under NEPA, Section 106 and Section 4(f).

90. The harms to the Plaintiffs result from the Project's impacts on the human environment, including historic resources. Accordingly, the Plaintiffs' interests in this action fall within the zone of interests protected by the laws sought to be enforced in this action.

THE CLAIMS FOR RELIEF – FACTUAL BACKGROUND

91. As the "lead agency" for the purposes of coordinating the environmental review of the Project, the Federal Railroad Administration (the "FRA"), on April 15, 2013, published a notice of its intent to prepare an Environmental Impact Statement ("EIS") for the Project under NEPA (the "Notice of Intent"). *See* 78 Fed. Reg. 22,363-64.

92. The Notice of Intent stated that the EIS would evaluate, among other things, the "potential environmental and related impacts" of the Project and a "No Action Alternative" to the Project. 78 Fed. Reg. at 22,363.

93. The Notice of Intent stated that the "purpose of the EIS will be to provide the FRA, reviewing and cooperating agencies, and the public with information to assess alternatives that will meet the Project's purpose and need; to evaluate the potential environmental impacts; and to identify potential avoidance/mitigation measures, associated with the proposed Project alternatives." *Id.*

94. The Notice of Intent further indicated that in addition to being prepared under NEPA, the EIS will address the requirements of other applicable statutes, regulations and executive orders, including Section 106 of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act. 78 Fed. Reg. at 22,363; *see also* 78 Fed. Reg. at 22,364 (further discussion of Section 106).

95. As noted above, on September 19, 2014, the FRA published the DEIS for the Project.

96. On September 26, 2014, a notice was published that the DEIS had been released, and that the public comment period on the DEIS would end on December 3, 2014. 79 Fed. Reg. 57,929, 57,930 (Sept. 26, 2014).

97. Numerous persons, including Indian River County, submitted extensive comments on the DEIS during the public comment period.

98. The next step in the NEPA process – after publication of the DEIS and the public comment period noted above – is the publication of an FEIS (or a Supplemental DEIS, to be followed by an FEIS). *See* 40 C.F.R. § 1502.9.

99. No FEIS has been prepared for the Project. Accordingly, this complaint does not challenge or seek to call into question the DEIS or FEIS, because they do not yet constitute final agency action ripe for challenge.

100. After publication of the FEIS, each federal agency that has discretionary decision-making with respect to the Project must prepare a Record of Decision (the “ROD”) *before* taking any action to approve, assist, permit or otherwise facilitate the Project. *See* 40 C.F.R. §§ 1500.1(b), 1505.2, 1506.1.

101. No ROD has been prepared for the Project.

102. As outlined in the Notice of Intent, it is anticipated that the FEIS and/or the ROD will address the findings required by Section 106 and Section 4(f).

103. On or before December 1, 2014, Indian River County submitted a written request that it be invited to join the consultation process required by Section 106.

104. Yet neither the Defendants nor any other federal agency has consulted with Indian River County under Section 106, or invited Indian River County to join the consultation process that Section 106 requires.

105. No findings under Section 106 or Section 4(f) have been issued for the Project.

106. While the statutory environmental and historical review processes under NEPA, Section 106 and Section 4(f) were pending, but not yet completed, as outlined above, the Under Secretary issued the Project Approval authorizing the issuance of \$1,750,000,000 in tax-exempt private activity bonds for the Project.

107. The conditions imposed upon the Project Approval acknowledge that the Under Secretary has the authority to impose conditions upon approving an application for the issuance of private activity bonds, including conditions relating to environmental matters.

108. For example, one of the conditions imposed by the Under Secretary is that the private sponsor of the Project “cause its subsidiaries to complete and implement the measures specifically set forth in the EIS and any supplemental EIS ... to avoid, minimize, or mitigate any adverse effects of the Project on the environment.” Exh. A at 2. In addition, although the Project Approval greenlights the marketing and sale of \$1,750,000,000 of tax-exempt private activity bonds, it requires that the bond proceeds not be used “until 45 days following the issuance of the Final Environmental Impact Statement.” *Id.*

109. The fundamental mandate of NEPA is that a federal agency consider potential environmental impacts, as well as alternatives and mitigation measures, *before* it takes action with respect to a proposal – a directive that a federal agency “look before it leaps.” In this case, the Under Secretary pursued the opposite approach. He leaped first, without having completed the statutorily mandated review of potential environmental impacts, alternatives and mitigation measures, and without making the findings required by NEPA. And he did so in violation of a specific prohibition in the NEPA regulations, discussed below, against moving forward with a project approval in the midst of the NEPA review process.

110. Likewise, the Under Secretary acted before completing the review processes or making the findings required under Section 106 and Section 4(f).

111. Accordingly, his action and the Project Approval were not in accordance with law, and were arbitrary, capricious, and an abuse of discretion.

FIRST CAUSE OF ACTION
(Violations of the APA by Violating NEPA and its Implementing Regulations)

112. Plaintiffs incorporate by reference each of the allegations of Paragraphs 1 through 111 of this Complaint as though set forth in full.

113. NEPA is “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a).

114. NEPA has two primary purposes: to ensure that a federal agency taking a major federal action takes a hard look at the environmental impacts of that action before deciding how to proceed, and to ensure that relevant information about the impacts of a proposed action and its alternatives is made available to members of the public, in order to provide the public with a meaningful opportunity for comment and participation in the federal decision-making process.

115. To effectuate these purposes, NEPA requires federal agencies undertaking, approving or assisting any major federal action to review the environmental impacts of the proposed action and to “study, develop, and describe appropriate alternatives to recommended courses of action.” 42 U.S.C. § 4332(2)(C), (E).

116. The Council on Environmental Quality (“CEQ”) has promulgated regulations that apply to all federal agencies conducting an environmental review under NEPA. 40 C.F.R. Part 1500.

117. The CEQ regulations provide that “NEPA procedures must ensure that environmental information is available to public officials and citizens *before decisions are made and before actions are taken.*” 40 C.F.R. § 1500.1(b) (emphasis added).

118. The CEQ regulations further provide that “[a]n environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.” *Id.* § 1502.1.

119. Under § 1502.2(g) of the CEQ regulations, the EIS is supposed to “serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.”

120. The requirement to prepare an EIS applies to “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C).

121. The terms “affecting” and “human environment” are broadly defined.

122. The CEQ regulations define “effects” or “impacts” to include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

123. The CEQ regulations state that the term “human environment” is to “be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment” and cross-references the above-quoted definition of “effects.” *Id.* § 1508.14.

124. The CEQ regulations further provide that in deciding whether a project “significantly” affects the human environment, the following types of issues must be taken into account: “effects in the locale” of the project, “short- and long-term effects,” “severity of the impact,” the “degree to which the proposed action affects public health or safety,” “[u]nique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas,” “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial,” “[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks,” “[t]he degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources,” “[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973,” and “[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 C.F.R. § 1508.27.

125. The term “major Federal actions” is also broadly defined and includes federal approval or assistance of privately sponsored projects. The CEQ regulations define the term as follows:

Major Federal action includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§1508.27)....

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies....

(b) Federal actions tend to fall within one of the following categories:

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

40 C.F.R. § 1508.18.

126. The Defendants' Project Approval and the All Aboard Florida Project are a Major Federal action that would have significant effects on the human environment.

127. The Project is subject to multiple federal approvals, and its private sponsor has asked for, and received, substantial federal assistance.

128. The Defendants' approval of the use of tax-exempt bonds, by which the federal government foregoes the collection of taxes on the interest paid to bondholders, allows the sale of the bonds at a lower interest rate and represents a significant federal subsidy and material financial assistance for the Project.

129. According to the private sponsor, the tax-exempt private activity bonds approved by Defendants are the "linchpin" for financing the Project. *See* Exh. B (cover letter, page 1).

130. The Defendants, as well as other federal agencies such as FRA, have already determined the Project to be a "major Federal action," as evidenced by the publication of the DEIS for the Project under NEPA and Defendants' imposition of a condition to the Project

Approval that the bond proceeds not be used until 45 days after publication of the FEIS for the Project.

131. A federal agency preparing an EIS must discuss in detail the environmental impacts of the proposed action and its alternatives, including issues related to “[u]rban quality, historic and cultural resources, and the design of the built environment.” 40 C.F.R. § 1502.16(g).

132. Essential to a federal agency’s obligations under NEPA is the duty to ensure that “high quality” environmental information is available to the public before decisions are made and before actions are taken. *Id.* § 1500.1(b).

133. Public involvement is crucial under NEPA. Federal agencies must “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures.” *Id.* § 1506.6(a); *see also id.* § 1500.2(d). Further, federal agencies must hold or sponsor public hearings or meetings whenever appropriate, including when there is “[s]ubstantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.” *Id.* § 1506.6(c)(i).

134. The CEQ regulations require that federal agencies “make every effort to disclose and discuss at appropriate points in the draft environmental impact statement all major points of view on the environmental impacts of the alternatives including the proposed action.” *Id.* § 1502.9(a). Federal agencies are required to discuss at appropriate points in the FEIS any responsible opposing view which was not adequately discussed in the draft statement and to indicate the agency’s response to the issues raised. *Id.* § 1502.9(b).

135. The CEQ regulations further require federal agencies to “[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or

minimize adverse impacts of these options upon the quality of the human environment.” *Id.* § 1500.2(e).

136. The regulations emphasize that the alternatives analysis of an EIS “is the heart of the environmental impact statement,” and the regulations therefore require agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives.” *Id.* § 1502.14.

137. Federal agencies must supplement a draft or final EIS if “(i) [t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1).

138. The CEQ regulations also contain a specific prohibition on “jumping the gun” once the NEPA process has begun. The prohibition states as follows:

(a) Until an agency issues a record of decision ... , no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

40 C.F.R. § 1506.1.

139. Defendants acted arbitrarily and capriciously and in violation of federal law by failing to comply with the requirements of NEPA, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, 40 C.F.R. § 1500 *et seq.*, by unlawfully issuing the Project Approval prior to the consideration of public comments on the DEIS, prior to the publication of the FEIS

and prior to issuance of a Record of Decision. As such, their actions are subject to review by this Court under the APA.

140. Defendants also acted arbitrarily and capriciously and in violation of federal law by failing to comply with the requirements of NEPA and its implementing regulation by “jumping the gun” on the Project Approval in violation of the gun-jumping regulation codified at 40 C.F.R. § 1506.1. As such, their actions are subject to review by this Court under the APA.

141. The actual sale of \$1,750,000,000 of private activity bonds, as authorized by Defendants in the Project Approval, would severely limit the choice of alternatives to the Project.

142. In addition, the Defendants also acted arbitrarily and capriciously and in violation of federal law by failing to comply with the requirements of NEPA and its implementing regulations by failing to take the action required by subsection (b) of the gun-jumping regulation (40 C.F.R. § 1506.1(b)) because, on information and belief, the Defendants have failed to notify the entity that applied for permission to issue the private activity bonds that the Defendants will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. To the contrary, the Project Approval issued by Defendants expressly allows the sale of the private activity bonds, thereby foreclosing alternatives, before the FEIS is published and a ROD is issued. As such, their actions are subject to review by this Court under the APA.

SECOND CAUSE OF ACTION
(Violations of the APA by Violating Section 106 of the NHPA
and its Implementing Regulations)

143. Plaintiffs incorporate by reference each of the allegations of Paragraphs 1 through 142 of this Complaint as though set forth in full.

144. Section 106 of the National Historic Preservation Act (the “NHPA”) requires that federal agencies “take into account the effect of the *undertaking* on any historic property.” 54 U.S.C. § 306108 (emphasis added).

145. The NHPA defines an “undertaking” as “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including— ... (2) those carried out with Federal financial assistance; [and] (3) those requiring a Federal permit, license, or approval....” 54 U.S.C. § 300320.

146. The Project Approval constitutes federal financial assistance or a federal permit, license or approval and is therefore an “undertaking” within the meaning of Section 106, implicating its requirements.

147. Federal agencies are required to consider the effects of the Project on historic properties in accordance with the NHPA regulations codified 36 C.F.R. Part 800, unless the agency substitutes the NEPA procedures for those required under the NHPA. *See* 36 C.F.R. § 800.8(c). Here, the Defendants complied with neither NEPA nor the NHPA regulations, and did not elect to substitute the NEPA procedures for those required under the NHPA.

148. The NHPA regulations state that “[a] representative of a *local government* with jurisdiction over an area in which the effects of an undertaking may occur *is entitled to participate [in the Section 106 process] as a consulting party.*” 36 C.F.R. § 800.2(c)(3) (emphasis added).

149. Accordingly, the regulations provide that the federal “agency *shall* invite any *local governments* ...” to join in the consultation. *Id.* § 800.3(f)(1) (emphasis added).

150. The term “local government” is defined in the regulations to include any “county.” 36 C.F.R. § 800.16(n). Accordingly, Indian River County is a “local government” that is entitled to participate in the Section 106 consultation.

151. Notwithstanding this clear and explicit requirement, the Defendants did not invite Indian River County to participate in the Section 106 consultation for the Project. Nor has any other federal agency invited Indian River County to join the consultation process that Section 106 requires.

152. Similarly, the Defendants have not invited the OVIASC to consult with respect to the Project’s effects on the archeological resources at the Vero Man and Gifford Bones sites.

153. The Defendants acted in an arbitrary and capricious manner, in an abuse of discretion, and contrary to law in excluding Indian River County from the consultation on the basis that the Project would not affect historic resources in the County. The Project would destroy or harm these resources, as discussed above.

154. Since the Defendants did not undertake a Section 106 process, and did not identify the County’s significant historical resources, they failed to assess whether project construction would affect the archeological sites in the County by disturbing *paleo* artifacts lying beneath the surface; whether vibration from increased freight and new passenger operations could damage those artifacts; and whether the lateral expansion of active rail operations would foreclose or hinder future artifact recovery efforts. Likewise, they failed to address ways to avoid, minimize or mitigate any adverse effects on these resources.

155. Since the Defendants did not undertake a Section 106 process, they failed to identify either of the Old Town Sebastian Historic Districts, or consider the effects of the

railroad corridor that bisects such historic districts, or account for the contextual effects (such as noise, vibration, safety and visual impacts) that increased rail traffic associated with the Project would have on them. Nor did it address the measures that could be implemented to address those effects.

156. Thus, the Defendants failed to consult with Indian River County as required by the Section 106 implementing regulations and did not make any findings under Section 106 or otherwise comply with the statute. The issuance of the Project Approval therefore violated Section 106 and its implementing regulations and was arbitrary, capricious, and an abuse of discretion, and not in compliance with applicable law.

THIRD CAUSE OF ACTION
(Violations of the APA by Violating Section 4(f))

157. Plaintiffs incorporate by reference each of the allegations of Paragraphs 1 through 156 of this Complaint as though set forth in full.

158. Section 4(f) of the Department of Transportation Act of 1966, codified at 49 U.S.C. § 303 and 23 U.S.C. § 138, requires that the Secretary of Transportation make a special effort to preserve (a) publicly owned parks, recreation and wildlife areas and (b) publicly or privately owned historic resources.

159. Specifically, Section 4(f) prohibits the Secretary of Transportation from “approv[ing] a transportation program or project . . . requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance” unless “there is no prudent and feasible alternative to using that land” and “the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” 49 U.S.C. § 303(c).

160. A “use” occurs when land is permanently incorporated into a transportation facility; when there is a temporary occupancy of land that is adverse in terms of the statute’s preservation purpose; or when there is a constructive use of a Section 4(f) property. *Cf.* 23 C.F.R. § 774.17 (23 C.F.R. Part 774 is the Section 4(f) regulation applicable to the Administrator of the Federal Highway Authority and to the Administrator of the Federal Transit Administration).

161. A temporary occupancy of a Section 4(f) property constitutes a use unless the scope of the work is minor; there are no anticipated permanent adverse physical impacts or interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis; and the land being used is fully restored. *Cf.* 23 C.F.R. § 774.13(d)(3) and (4).

162. A “constructive use” occurs when a transportation project does not incorporate land from a Section 4(f) property but is sufficiently close to the property that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired. *Cf.* 23 C.F.R. § 774.15(a). “Substantial impairment” occurs when the protected activities, features, or attributes of the property are substantially diminished. *Cf. id.*

163. A constructive use is based on the identification of the current activities, features, or attributes of the property which render it a Section 4(f) property and which may be impacted due to proximity of the project; an analysis of the net proximity impacts of the project on the Section 4(f) property; and consultation regarding the foregoing factors with the official(s) having jurisdiction over the Section 4(f) property. *Cf.* 23 C.F.R. § 774.15(d).

164. The Project will increase the utilization of existing railroad tracks and require the construction of parallel railroad tracks adjoining parks, conservation areas, recreation areas and historic sites in Indian River County and will “use” these resources within the meaning of Section 4(f).

165. The new tracks and increased train service would abut three conservation areas owned and operated by Indian River County, including the North Sebastian Conservation Area, the Hallstrom Farmstead and the Harmony Oaks Conservation Area. These areas have been reserved to protect wildlife and plants, and as a recreational resource for hikers. The construction activity and frequent high speed trains would constitute a “constructive use” of these protected Section 4(f) resources.

166. The Project would also construct a new railroad bridge in and thereby “use” the St. Sebastian River, which is a publicly owned resource. The St. Sebastian River is a recreation area used by boaters, fisherman and swimmers and is part of the Indian River – Malabar to Vero Beach Aquatic Preserve, and is therefore a protected Section 4(f) resource.

167. Section 4(f) does contain a statutory *de minimis* provision with respect to publicly owned parks, recreation areas and conservation areas, but this provision requires that the Secretary of DOT “make a finding of *de minimis* impact only if—(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and (B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.” 49 U.S.C. § 303(d)(3).

168. Here, however, neither the Secretary, nor the Defendants or any other federal agency has made such a *de minimis* finding with respect to the conservation and recreation areas in Indian River County, nor have they obtained the concurrence with any such finding of the County or other public officials who manage these areas.

169. The southern portion of the St. Sebastian River Railroad Bridge, constructed in 1926, is located in Indian River County. The Project's demolition of this historic bridge constitutes a "use" within the meaning of Section 4(f) and would harm the County by destroying a historic and visual resource and potential tourist destination.

170. The Vero Man site is located along the Main Relief Canal (Van Valkenburg Creek), where Project-related work would be performed to upgrade an existing railroad bridge, and to construct a second track. The Project would "use" this historic site within the meaning of Section 4(f).

171. The Gifford Bones site is located at the North Relief Canal/Houston Creek, and is a site where ground sloth, camel, mastodon, a stemmed flint projectile, and fossilized bones have been found. The Project would "use" this historic site within the meaning of Section 4(f).

172. The Old Town Sebastian Historic District East and Old Town Sebastian Historic District West are comprised of nearly 30 contributing sites or buildings. The two districts are listed on the National Register and would be bisected by the expanded breadth of tracks constructed by the Project. The noise and other adverse effects of the Project would constitute a constructive "use" of these and other historic resources discussed above.

173. Section 4(f) also contains a statutory *de minimis* provision with respect to historic resources, but this provision requires that the Secretary of DOT "make a finding of *de*

minimis impact only if—(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act ... that—(i) the transportation program or project will have no adverse effect on the historic site; or (ii) there will be no historic properties affected by the transportation program or project; (B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer ... ; and (C) the finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A).” 49 U.S.C. § 303(d)(2).

174. Here, however, neither the Secretary, nor the Defendants or any other federal agency has made such a *de minimis* finding with respect to the historic resources in Indian River County, nor have they complied with the Section 106 consultation process, as required for such a *de minimis* finding.

175. Notwithstanding the “use” of protected Section 4(f) resources, the Defendants failed to make any findings under Section 4(f) prior to the Project Approval and, on information and belief, have not made any Section 4(f) findings as of the date of the filing of this Complaint.

176. Defendants’ actions as set forth above were arbitrary, capricious, and an abuse of discretion and not in compliance with law.

WHEREFORE, Plaintiffs pray that this Court grant relief, as follows:

A. Adjudge and declare that the Defendants have violated NEPA, Section 106, and Section 4(f) by issuing the Project Approval;

B. Vacate and nullify the Project Approval;

C. Issue a temporary restraining order, preliminary injunction and/or permanent injunction requiring Defendants to comply fully with the provisions of NEPA, Section 106 and Section 4(f) prior to considering any application for the allocation of private activity bonds for the Project;

D. Issue a temporary restraining order, preliminary injunction and/or permanent injunction requiring Defendants to take appropriate action to prevent the issuance of any private activity bonds for the Project until the adjudication of this lawsuit has been completed and the provisions of the aforementioned statutes have been followed;

E. Require the Defendants to invite Indian River County and the OVIASC to the consultation that Section 106 requires prior to considering any application for the issuance of private activity bonds;

F. Award Plaintiffs reasonable attorney's fees, expert witness fees, and other costs of participating in this action, pursuant to Section 305 of the National Historic Preservation Act, 54 U.S.C. § 307105, the Equal Access to Justice Act, 28 U.S.C. § 2412, and other applicable laws; and

G. Award such other and further relief as the Court deems just and proper.

Dated: March 31, 2015

BRYAN CAVE LLP

By: /s/ Daniel C. Schwartz
Daniel C. Schwartz (D.C. Bar No. 017749)
1155 F Street, N.W., Suite 500
Washington, D.C. 20004-1357
Telephone: 202-508-6025
Email: dcschwartz@bryancave.com

Philip E. Karmel
(*pro hac vice* motion to be filed)
BRYAN CAVE LLP
1290 Avenue of the Americas
New York, New York 10104-3300
Telephone: 212-541-2311
Email: pekarmel@bryancave.com

Attorneys for Plaintiffs



U.S. Department of
Transportation

Office of the Secretary
of Transportation

Under Secretary of Transportation 1200 New Jersey Avenue SE
Washington, DC 20590

December 22, 2014

PROVISIONAL BOND ALLOCATION APPROVAL LETTER

Michael Reininger
President and Chief Development Officer
AAF Holdings LLC
2855 Le Jeune Road
4th Floor
Coral Gables, FL 33134

Dear Mr. Reininger:

Thank you for your August 15, 2014 application for an allocation of private activity bond (PAB) authority for the All Aboard Florida project (the "Project").

The U.S. Department of Transportation (USDOT) has reviewed the application submitted by AAF Holdings LLC ("AAF") and applicable statutory and regulatory requirements, and I am pleased to inform you that USDOT is provisionally allocating up to \$1.75 billion of private activity bond authority to the Florida Development Finance Corporation, as requested in your application. The bonds are allocated for the Project described in the application with the conditions listed below.

First, a final bond counsel tax and validity opinion must be issued at the time of the closing of the bond issue in substantially the form provided with the application.

Second, the bonds must be issued by July 1, 2015. If the bonds have not been issued by that date, this provisional allocation automatically expires and the \$1.75 billion of PAB authority allocated for the Project will be available for reallocation to other eligible applicants. If this provisional allocation expires, you may resubmit an application and it will be reviewed without preference or priority being given as a result of its prior submission.

Third, any amount of unused bond allocation following an initial bond issuance will automatically return to USDOT's remaining aggregate amount of private activity bonds, and thus be available for other eligible applicants.

Fourth, the Federal Railroad Administration (FRA) is undertaking an environmental review of the Project under the National Environmental Policy Act (NEPA), in connection with All Aboard Florida - Operations LLC's ("Operations"), AAF's subsidiary, pending application

for a loan under the Railroad Rehabilitation and Improvement Financing (RRIF) program. FRA and Operations have entered into a Memorandum of Understanding (MOU) through which Operations has agreed, among other things, to retain a contractor to assist FRA in conducting the environmental review, to provide required environmental and related analyses, and to cover the cost of the environmental review. Regardless of whether Operations pursues the RRIF application following the receipt of this conditional PAB allocation, AAF agrees to cause Operations to fulfill the obligations described in the MOU to facilitate FRA's completion of the environmental review process.

Fifth, AAF or its subsidiary shall not use the bond proceeds until 45 days following the issuance of the Final Environmental Impact Statement (the "EIS"). Further, AAF or its subsidiary shall not use the bond proceeds on construction of a portion of the Project unless AAF or its subsidiaries have obtained any Federal, State, or local permits required by applicable law (subject to any preemption or exemption rights) for the construction of that portion of the Project.

Sixth, AAF agrees that if the bonds are issued for the development and construction of the Project, AAF shall cause its subsidiaries to complete and implement the measures specifically set forth in the EIS and any supplemental EIS (such as one needed to address changes in the scope of the Project) to avoid, minimize, or mitigate any adverse effects of the Project on the environment. AAF further agrees that service will not commence on a portion of the Project (such as the portion of the Project from Miami to West Palm Beach) until AAF certifies the completion or ongoing implementation, as applicable, of the measures with respect to such portion of the Project to USDOT in writing. USDOT will accept the certification in writing within 45 days of receipt or request additional information verifying compliance within that same timeframe.

Seventh, regardless of whether Operations obtains a RRIF loan, AAF agrees, by its execution of this letter, that if the bonds are issued for the development and construction of the Project, AAF shall cause Operations to fulfill the obligations described in that certain Commuter Railroad Service Agreement between Operations and South Florida Regional Transportation Authority (SFRTA) dated April 25, 2014.

Eighth, the private activity bond authority allocation granted to AAF is subject to the terms and conditions of this letter and applicable provisions of Federal law. In the event AAF fails to comply with these terms and conditions or applicable Federal law, USDOT reserves the right to pursue all available remedies, including the withdrawal of your private activity bond authority.

Lastly, this provisional allocation of PAB authority for the Project will have no impact on any future USDOT decision on an application for any USDOT credit assistance for this Project under USDOT credit programs, including any determination regarding project eligibility or project cost size and funding sources for any USDOT credit program. Any application for USDOT credit assistance for this Project will be evaluated under the governing statutes and regulations of that specific USDOT credit program.

The USDOT appreciates your interest in the private activity bond program and we look forward to the successful financing and delivery of your project. For additional information or questions, please contact Paul Baumer in the Office of Infrastructure Finance and Innovation at (202) 366-1092.

Sincerely yours,



Peter M. Rogoff

cc: Assistant Secretary for Budget & Programs, Office of the Secretary
General Counsel, Office of the Secretary
Administrator, Federal Highway Administration
Administrator, Federal Railroad Administration
Administrator, Federal Transit Administration

Accepted and Agreed to:

AAF Holdings LLC

By: _____
Michael Reininger
President and Chief Development Officer

12/22/14
Date



2855 Le Jeune Road | 4th Floor
Coral Gables, FL 33134
T: 305.520.2300 | allaboardflorida.com

August 15, 2014
Mr. Paul Baumer
Office of Infrastructure Finance and Innovation
Office of the Secretary
U.S. Department of Transportation
W84-229
1200 New Jersey Avenue S.E.
Washington, DC 20590

Dear Mr. Baumer,

All Aboard Florida is pleased to submit to the U.S. Department of Transportation the enclosed application for an allocation of \$1.75 billion in private activity bond volume. We will use the proceeds of these private activity bonds to finance construction of our intercity passenger rail service linking Miami and Orlando, with intermediate stops in Fort Lauderdale and West Palm Beach. This project is already well underway, and in 2016 we expect to commence operations as the only privately owned, operated and maintained passenger rail system in the United States.

All Aboard Florida will deliver significant, sustainable benefits across the State of Florida. Our passenger rail service will take three million cars off South and Central Florida's congested highways each year, saving time and fuel and reducing carbon emissions. Economically, our project will result in over \$6 billion in direct impact to Florida's economy over the next eight years, and will create over 10,000 jobs per year during rail and infrastructure construction. In addition, we are implementing environmental improvements along the length of our 235-mile corridor and improving grade crossings for a safer, more modernized and more efficient railroad.

The private activity bond financing described in the enclosed application is the linchpin for completing our project. As you may know, we have explored and pursued a number of financing alternatives in order to bring our project online as quickly as possible. In July 2014, we closed on \$405 million of debt financing for exactly that purpose; we then immediately commenced construction – funded with our own cash equity – on the project's Miami-to-West Palm Beach segment. This \$405 million of debt financing is currently escrowed under the terms of the indenture until a threshold of equity-funded construction spend is met.

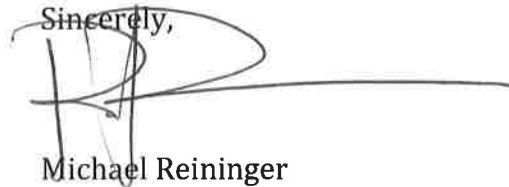
Although construction is well underway, completing the entirety of our Miami-to-Orlando service requires significant additional financing. We are applying for a \$1.75 billion private activity bond allocation to pursue this financing in the most expedient manner possible and with the highest degree of execution certainty. Proceeds from a \$1.75 billion private activity bond issuance would be deployed across the length of our passenger rail system, including the Miami-to-West Palm Beach segment. We believe this use of proceeds is a crucial factor in ensuring our project is financed and completed. Investors will be much more receptive to a simplified capital structure than they would to a West Palm Beach-to-Orlando financing, where our existing high-yield financing would remain in-place alongside the newly-issued debt. The latter creates significant



intercreditor and structural issues that we believe, after extensive discussions with our advisors, would materially and detrimentally affect a successful marketing of our private activity bonds. As such, to maximize certainty of funding for our project, we are pursuing a \$1.75 billion financing for the entire Miami-to-Orlando corridor. We believe the resulting simplified capitalization – which will include returning to noteholders all of the currently-escrowed \$405 million of high yield financing – is critical to a successful marketing of the private activity bonds necessary to complete our project.

We are thrilled with our progress so far, and we are fully committed to deploying the time, energy and resources necessary to complete this project, including investing over \$400 million in cash equity and over \$600 million in land and easements towards its construction. The private activity bonds described in the enclosed application will enable us to bring a safe, efficient, cost-effective and environmentally friendly transportation alternative to South and Central Florida. We look forward to launching this new era in Florida's rich rail history, and we are available at your convenience should you have any questions regarding our project.

Sincerely,

A handwritten signature in black ink, appearing to be 'MR', with a long horizontal line extending to the right.

Michael Reininger
President & Chief Development Officer
All Aboard Florida

Enclosure

**APPLICATION FOR ALLOCATION OF PRIVATE ACTIVITY
BOND VOLUME UNDER INTERNAL REVENUE CODE
SECTIONS 142(a)(15) AND 142(m)**

**ALL ABOARD FLORIDA
PROJECT**

SUBMITTED TO:

CREDIT COUNCIL

U.S. DEPARTMENT OF TRANSPORTATION

AUGUST 15, 2014



To Credit Council, United States Department of Transportation

From All Aboard Florida Holdings LLC

Date August 15, 2014

All Aboard Florida Holdings LLC ("AAF") is pleased to submit this application ("Application") for an allocation of \$1,750,000,000 in Private Activity Bond ("PAB") volume by the U.S. Department of Transportation (the "Department") pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Uses ("SAFETEA-LU"), for the All Aboard Florida Passenger Rail Project (the "Project").

1. Amount Requested: \$1,750,000,000

2. Proposed Date of Bond Issuance: December 2014

3. Date of Inducement by the Bond Issuer: The declaration of intent to issue bonds for the Project executed by the Executive Director of Florida Development Finance Corporation ("FDFC") pursuant to authority delegated by the FDFC Board is attached hereto as Appendix A-1. The declaration of intent demonstrates the intent of FDFC to issue tax-exempt private activity bonds for the Project. Issuance of the Bonds by FDFC will be contingent upon receipt of an allocation (a "license to issue") of a portion of the \$15 billion national limitation from the Secretary of Transportation under SAFETEA-LU and upon the successful completion of any necessary hearings and approvals required under the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). A draft inducement resolution expected to be adopted soon by FDFC is attached hereto as Appendix A-2. FDFC also is expected to adopt a final bond resolution(s) in late 2014 following satisfaction of all preconditions that are a legal prerequisite to the issuance of private activity bonds for the Project.

4. Draft Bond Counsel Opinion Letter: AAF anticipates that bond counsel will deliver a tax and validity opinion in customary form and in accordance with standards issued by the National Association of Bond Lawyers, at the time of the closing of the bond issue. A form of such opinion is attached hereto as Appendix B.

5. Financing team:

Project Sponsor: All Aboard Florida Holdings LLC or an affiliate

Issuer: Florida Development Finance Corporation

Borrower: AAF will be the ultimate borrower of the funds raised by the issuance of the PABs

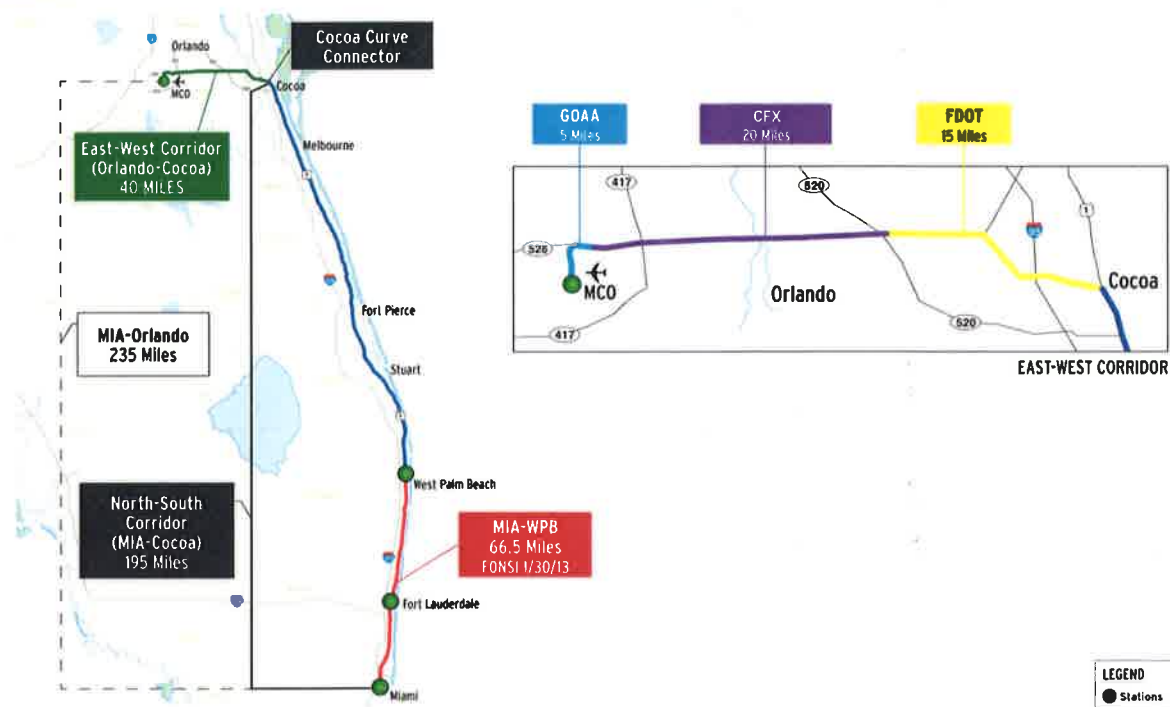
Underwriter: To be selected by Project Sponsor

Bond counsel: Greenberg Traurig, P.A.

Financial Advisor: To be selected by Project Sponsor

6. Borrower Information: To be formed by Project Sponsor**7. Project Description:**

7.1 Project Description: AAF, a wholly-owned subsidiary of Florida East Coast Industries, Inc. ("FECI"), one of Florida's oldest and largest transportation, infrastructure and commercial real estate companies, is restoring passenger rail service within the State of Florida, primarily within its existing and shared rail right-of-way along Florida's east coast (the "FEC Corridor"). AAF plans to connect Southeast and Central Florida with a privately owned and operated intercity passenger rail system with stations located in Orlando, West Palm Beach, Fort Lauderdale and Miami (the "System"), as illustrated in the table below. The AAF Passenger System from Miami to Orlando consists of 235 miles.

All Aboard Florida System Overview

The AAF System will offer significant benefits to Southeast and Central Florida. Central and South Florida highways are the most congested in the State and this congestion results in millions of hours of travel delay and excessive fuel consumption and pollutant emissions annually. AAF expects a high level of demand for its passenger rail service given the large number of travelers in Southeast and Central Florida and the region's difficult travel conditions. Travel by car in Southeast Florida represents one of the most challenging trips in the United States with severe and growing roadway congestion and increasing costs for fuel and tolls. According to the Texas Transportation Institute's 2012 Urban Mobility Report, which measures congestion on United States roadways, Southeast Florida ranks fifth in all urban areas in terms of total traffic delays and fourth in terms of excess fuel consumed. The Florida Department of Transportation has recently widened Interstate 95, the primary interstate highway in

South Florida, with the addition of new express toll lanes, but has no additional ability to expand the highway system due to the urbanization of the surrounding region. Currently, there is no express intercity passenger rail service linking Southeast and Central Florida as an alternative to travel by car or air. AAF believes these are attractive conditions for the introduction of a new intercity express passenger rail system as proposed by All Aboard Florida.

The System's planned service between Miami and Orlando will consist of approximately 16 round-trips leaving hourly in each direction, with planned stops at the two intermediate stations in Fort Lauderdale and West Palm Beach. The target travel time, including stops, is less than three hours. The System will operate with new diesel-electric locomotives and single-level coach trains.

AAF's passenger rail service will offer business, leisure and personal travelers safe, sustainable, fast, convenient, and comfortable travel within Southeast and Central Florida. Travelers will be able to reserve specific seats on trains and at times that fit their specific travel needs. Passengers will enjoy free hi-speed WiFi on board and other amenities at AAF's stations, such as business centers with print and copy services. AAF's passengers will be able to continue to travel car-free at their destinations; AAF's train stations will be conveniently located in city centers and near major travel destinations, and will offer multiple connections to other modes of transportation including local commuter rail and public ground transportation. Leisure travelers will have the option to purchase integrated travel packages for fast and easy connections to major travel destinations in Miami, Fort Lauderdale, West Palm Beach and Orlando.

AAF has obtained all necessary permits and licenses to begin construction on the Miami to West Palm Beach segment of the System (approx. 66.5 miles), and the first construction contract has been issued. AAF is in the process of obtaining the remaining necessary permits to complete the Project to Orlando (168.5 miles). Please see **Section 8** of this application for additional details.

7.2 Management Team: AAF's management team is comprised of seasoned executives with an average of over 35 years of experience in the development of complex projects, as well as a strong track record of successfully launching and growing major businesses, including those involving passenger rail transportation and other customer-centric and hospitality industries. AAF will manage all sales and marketing, IT, finance, legal, station operations, and human resources. For all other aspects of its business operations, AAF may contract with third parties, including its affiliate the Florida East Coast Railway ("FECR"), for the performance of those functions. Below is a list of key AAF personnel.

Michael Reininger - President & Chief Development Officer: Mr. Reininger is responsible for the Project's build environment, including the rail infrastructure, stations, and transit oriented real estate developments. The industry veteran brings nearly 30 years of business development, master planning and brand management expertise to All Aboard Florida. He has devised innovative business planning and marketing frameworks for globally recognized, groundbreaking ventures in the transportation and hospitality sectors. He has worked on projects ranging from integrated urban developments to resort hotels and destination travel programs.

Donald C. Robinson - President and Chief Operating Officer: Mr. Robinson is responsible for developing all the operational functions for the passenger rail project, including defining the overall customer

experience, procuring rolling stock and managing the partnership with a third-party operator. A longtime senior executive with The Walt Disney Company, Mr. Robinson brings more than 35 years of experience developing, managing and branding complex, multi-faceted hospitality and recreational projects across the world. He has worked on such notable projects as Disney World's Epcot Center and Grand Floridian Resort (Florida); Disneyland Hotel (California); Disneyland Paris (Euro Disney); and Hong Kong Disneyland. Mr. Robinson is a Board Member of the Denny's Corporation.

Eugene "Gene" Skoropowski - Senior Vice President of Passenger Rail Development: Mr. Skoropowski is responsible for developing the service plan (operations), selecting the rolling stock (train sets), projecting operating costs and revenues, coordinating selection of an experienced train operator, and planning a complete customer travel experience. The seasoned professional brings more than 40 years of railroad industry experience in both the private and public sectors. He has an extensive background building and managing successful passenger rail service projects in major metropolitan cities, including Boston, Philadelphia, Los Angeles, Paris, London and Amsterdam.

Vinay Mudholkar - Senior Vice President of Rail Infrastructure: Mr. Mudholkar is responsible for the delivery of All Aboard Florida's rail infrastructure program. He will oversee the design, engineering and construction of the rail system and station platforms, and manage the team of engineers and contractors who will complete the system improvements for the desired speeds.

Myles Tobin - General Counsel: Mr. Tobin is responsible for directing the project's legal affairs and providing counsel on all significant legal issues.

Julie Edwards - Chief Marketing Officer: Ms. Edwards is responsible for driving marketing strategy and program innovation toward the launch of All Aboard Florida. Ms. Edwards will also oversee the development and execution of All Aboard Florida's comprehensive marketing and communications plan and provide strategic leadership to achieve the project's marketing goals.

Scott Sanders - Executive Vice President of Development and Construction: Mr. Sanders is responsible for the overall design and construction of station infrastructure for the Miami, Fort Lauderdale and West Palm Beach stations, as well as All Aboard Florida's transit-oriented development program throughout South Florida.

Eric Claussen - Vice President of Design & Construction: Mr. Claussen is responsible for the entitlement, design and construction of the Miami, Fort Lauderdale and West Palm Beach stations. Mr. Claussen will also oversee the design and build-out of All Aboard Florida's station lobby and operations facilities at the Orlando International Airport, and lead the evaluation of transit-oriented development opportunities adjacent to the three South Florida stations.

In order to maintain progress with project milestones, AAF has supplemented the team with highly experienced professionals who have specific knowledge and expertise. The firms currently engaged on the Project are listed below.

CONSULTANT	SERVICES
AMEC ENVIRONMENT & INFRASTRUCTURE	Environmental permitting and engineering
BERGMAN AND ASSOCIATES	Bridge Design – North - South
BIO-TECH	Environmental assessment and permitting
DAWSON ASSOCIATES	Representation on permitting requirements
GANNET FLEMING	Civil and Track Design for East / West corridor (FDOT)
HNTB	Program and Construction Manager – Rail Infrastructure
JACOBS ENGINEERING	Civil and Track Design for East / West corridor (CFX & GOAA)
JANUS RESEARCH	Historic and archaeological resource consulting
KIMLEY HORN AND ASSOCIATES	Traffic and parking analyses and pedestrian circulation modeling
LOUIS BERGER GROUP	Investment grade ridership study
ROCKWELL GROUP	Brand development
STEER DAVIES GLEAVES	Peer review for ridership report
SKIDMORE, OWINGS AND MERRILL	Station Architect and Planner
TRANSYSTEMS	Civil Track Design, Northern most section
T. Y. LIN INTERNATIONAL	Vehicle Maintenance Facility
URS CORPORATION	Civil, Track, Bridges North South
WASHINGTON ECONOMIC GROUP	Economic analyses

As further needs are realized, the AAF team will engage professionals with the experience needed to provide the necessary services in a cost-effective and timely manner. AAF is committed to dedicating the resources necessary to maintain progress toward the goal of developing this important Project.

7.3 Organizational and Legal Structure

AAF will be operated as a subsidiary of FFECI. The FEC Corridor upon which the System will operate is owned by the FECR, an affiliate of AAF. FECR has granted to AAF a passenger easement under which AAF has the exclusive right to operate passenger rail service on the FEC Corridor. FECR and AAF are parties to a Joint Use and Operating Agreement that sets forth, among other things, their agreements in respect of maintenance, safety standards, dispatch and other operational matters.

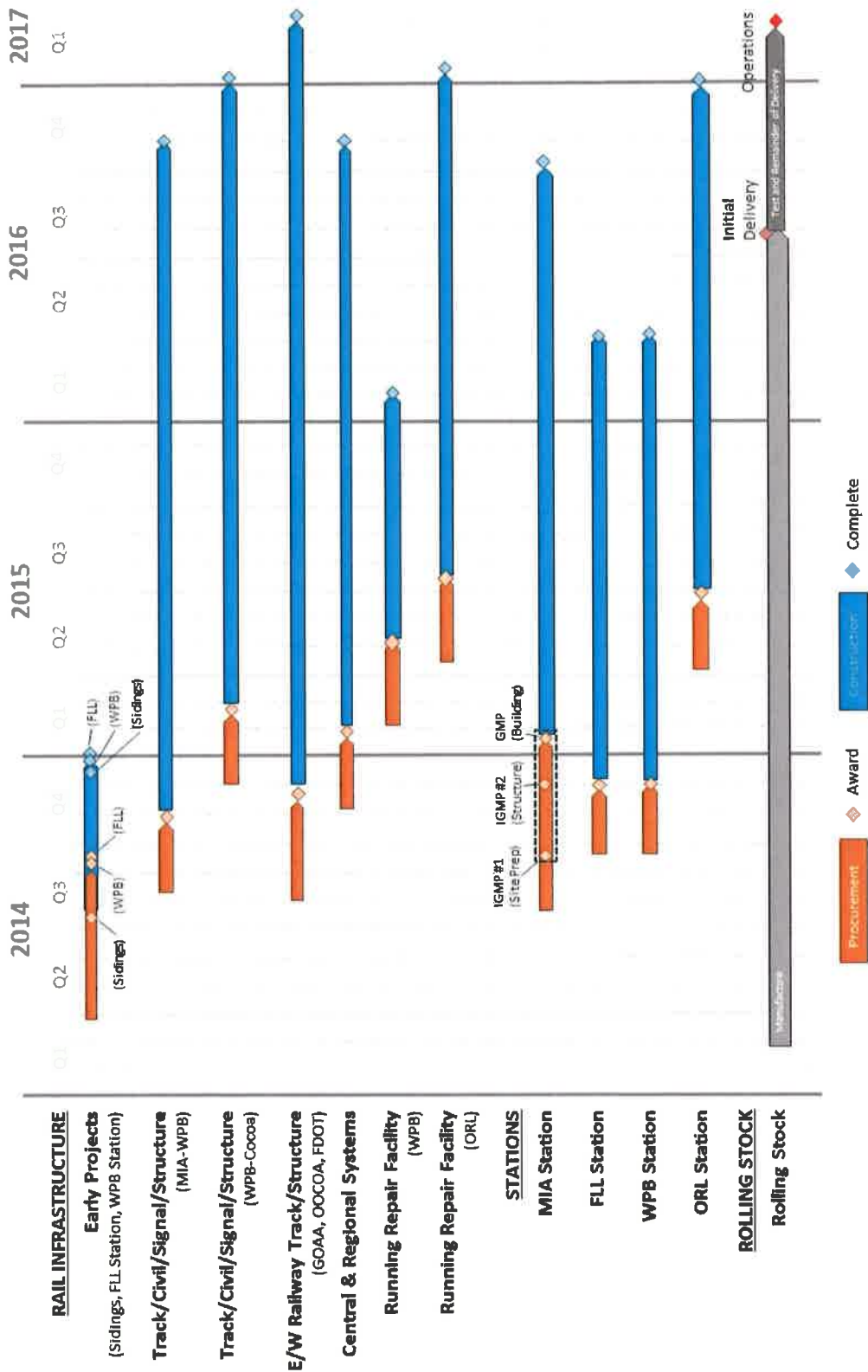
8. Project Schedule

Set forth below are timelines and charts illustrating the estimated start and completion dates for each major phase or milestone of project development, as well as the status of all necessary permits and environmental approvals:

All Aboard Florida Passenger Rail Project
Private Activity Bond Financing Program
U.S. DOT PAB Allocation Application

August
2014

All Aboard Florida Project Schedule



8.1 Permits and Environmental Approvals

Miami - Orlando			
Permit	Type of Permit / Concurrence	Status	Expected Issuance
SHPO / Section 106 / Miami to West Palm Beach under EA FONSI	Cultural Resources	Received	
South Florida Water Mgmt District - De Minimus Exemption	Environmental	Received	
Federal Railroad Administration - NEPA - Finding of No Significant Impact (FONSI)	Comprehensive (Human and Natural Environments)	Received	
Miami-Dade Regulatory & Economic Resources - Class I Permit	Environmental	Received	
Broward County Bridge License	Environmental	Received	
SHPO / Section 106 / Ft. Lauderdale Station Modification	Cultural Resources	Received	
South Florida Water Mgmt District - Right of Way Permits	Canal Flood Passage	Received	
South Florida Water Mgmt District ERP	Environmental	Received	
US Army Corp of Engineers - ERP / SEC 408 Bridge Permits	Hydrologic	Received	
US Army Corp of Engineers - 404 Permits	Environmental	In Progress	Q4 2014
US Coast Guard Bridge Permit	Bridge Replacement	In Progress	Q1 2015
FRA - NEPA - Record of Decision (in cooperation with FAA, USGC and USACE)	Comprehensive (Human and Natural Environments)	In Progress	Q4 2014
USACE - Individual Permit (include SEC 408 Bridge Permits and SEC 404 Environmental Permits)	Environmental	In Progress	Q1 2015
USCG Bridge Permit	Bridge Construction - Navigation / Environmental	In Progress	Q1 2015
USCG Bridge Permit	Bridge Construction - Environmental	In Progress	Q1 2015
FDEP ERP Permit (in cooperation with SFWMD and SJRWMD)	Environmental	In Progress	Q4 2014
SFWMD Right of Way Permits	Canal Flood Passage	In Progress	Q4 2014
SFWMD and SJRWMD De Minimus Permit Exemption	Environmental	Received	
SHPO / Section 106	Cultural Resources	In Progress	Q4 2014
Orange County - CAI Permit	Environmental	In Progress	Q4 2014

9. Financial Structure: AAF's finance plan presented with this Application is based on the best information available at the time regarding estimated capital costs, sources and uses of funds, funding terms, capital renewal and replacement costs, and revenue and operating expenses associated with the operations of a privately owned and operated express intercity passenger rail service between Miami and Orlando.

9.1 Sources and Uses of Funds for the Project:

Ex . 4

Ex . 4

Sources of Funds

(\$ in millions)

Ex . 4

Uses of Funds

Ex . 4

9.2 Total Estimated Construction Costs: The total construction related costs of the Project are approximately \$1.7 billion of which approximately \$80 million have been completed to date. The table below outlines the primary components of rail, infrastructure and station construction spend.

Project Construction Costs	
(\$ in millions)	
Ex. 4	

9.2 Cash Flow Pro Forma: Please refer to Appendix C attached hereto for projected cash flows for the Project.

10. Description of Title 23 / 49 funding: The Project has already received financial assistance under Title 23 of the U.S. Code. The planning process for All Aboard Florida started in December 2011. Since then, approximately \$9.3 million in funds from Section 130 of U.S. Code Title 23 has been invested in the corridor to improve railway-highway grade crossings and to prepare the corridor for growth in rail traffic, including the introduction of passenger service. Future investments from the Section 130 program are planned for future calendar years. The Florida Department of Transportation administers the Section 130 program on behalf of the State of Florida.

11. Project Readiness: As stated above, the System has already received full environmental permitting for Miami to West Palm Beach and AAF continues to pursue all remaining and required environmental approvals. Design is well underway for the full System (stations and rail infrastructure) and construction has commenced on the rail infrastructure portion of the Project. The station construction is on schedule to begin in late August/early September with the demolition of existing buildings currently situated on the Fort Lauderdale and West Palm Beach station sites.

Construction of the System will be completed through a series of procurement processes in accordance with a detailed procurement strategy developed by AAF and HNTB (AAF's Program and Construction Manager).

AAF has already commenced and advanced a majority of the design contracts with respect to rail infrastructure and stations. In addition, AAF has already entered into a construction contract for the rail infrastructure work and is working with multiple contractors for the station construction. The firms currently engaged in the Project are recognized industry-wide as leaders in their respective disciplines, and were selected through a competitive bid and interview process.

11.1 Project Management Plan: The development and implementation of a newly-conceived intercity passenger rail service is a large and complex undertaking. Success depends on diligent and proactive management of many individual facets of the overall program requirements, accomplished on a fully-integrated basis. AAF is managing the Project in two concurrent phases: Pre-Operational Planning and Design, Procurement and Construction.

Pre-Operation Planning: This phase began with assembling a team of highly qualified individuals with several years of relevant experience. The capacity and expertise of the internal management team has been supplemented through the engagement of professional consultants with specialized expertise, experience and depth of human resources. Additionally, select strategic partners are being integrated into the overall solution, including operator and rolling stock manufacturers. The operating partner, once selected, will provide a host of systems, procedures, personnel, management, and other capabilities for all operating and financial aspects of the enterprise. The combination of dedicated and experienced senior management, amplified by professional consultants and strategic partners, provides the management approach necessary for the success of the Project.

Upon inception of the idea, a fully integrated master project schedule was created to identify the specific processes and steps necessary for the implementation of each critical task of the Project. Operating standards and procedures, employee policies and training programs, safety, communications, reporting and compliance requirements are being developed to be able to execute the operational aspect of the inter passenger rail service. Simultaneously, the finance department has created detailed projections for financial performance (e.g., revenue and expenses), budgets and capital requirements, cash management and other financial engineering requirements have been developed and maintained to ensure pre-operational readiness. The marketing and public relations departments are crafting a brand identity communications strategy and awareness campaign. AAF has already held hundreds of meetings with residents, business and community leaders, elected officials and public agencies throughout the state and has found that both the public and private sectors are welcoming this transportation solution. Finally, AAF has conducted dialogue to determine and manage the requirements of local, state and federal entities relative to reporting and compliance with applicable regulations.

Design, Procurement and Construction: AAF has developed a comprehensive design and engineering process for necessary additions and improvements to the rail infrastructure system. A thorough analysis has been completed of the technical and operational requirements for all aspects of the railroad physical plan, including environmental, civil, track work signalization, bridges and structures, crossings and miscellaneous support facility requirements and other factors, such as the implications of requirements regarding Positive Train Control (PTC) systems. AAF has also developed a thorough strategy for procurement of the various components of the Project to facilitate timely implementation, optimize leverage of competitive forces and costs, validate capabilities and mitigate risk. Successful execution of the design and procurement processes ensures AAF's ability to effectively complete all construction requirements within the constraints of the project schedule. The entire Project will meet FRA's Buy America standards. In addition, the AAF train sets will be PRIIA-compliant and will be the first fully ADA-accessible train sets in the United States.

All Aboard Florida Passenger Rail Project
Private Activity Bond Financing Program
U.S. DOT PAB Allocation Application

August
2014

Under penalties of perjury, I declare that I have examined this document and, to the best of my knowledge and belief, the document contains all the relevant facts relating to the document, and such facts are true, correct, and complete.

Executed this 15 day of August, 2014

All Aboard Florida

By: 

Michael Reininger
President & Chief Development Officer

All Aboard Florida Passenger Rail Project
Private Activity Bond Financing Program
U.S. DOT PAB Allocation Application

August
2014

Appendix A-1

Executed Declaration of Intent

800 N. Magnolia Avenue
Suite 1100
Orlando, Florida 32803

Florida Development



Finance Corporation

T: 407.956.5600

F: 407.956.5599

eflorida.com

**Declaration of Intent
Pursuant to Treasury Regulation 1.150-2**

The undersigned Executive Director of the Florida Development Finance Corporation ("FDFC"), a public body corporate and politic established pursuant to Florida Statutes, Chapter 288, Part X, pursuant to the authority delegated by a resolution of the governing board of FDFC, does hereby declare as follows:

1. AAF Holdings LLC (the "Borrower") has submitted information to FDFC requesting that FDFC issue its bonds (the "Bonds") and lend the proceeds thereof to the Borrower or one or more affiliates of the Borrower in order to finance the development and construction of a privately owned and operated intercity passenger rail system with stations located in Orlando, West Palm Beach, Fort Lauderdale and Miami, Florida, as more fully described in the Borrower's Application for Allocation of Private Activity Bond Volume Under IRC §§ 142(a)(15) and 142(m), as submitted to the U.S. Department of Transportation on even date herewith (the "Project").
2. FDFC staff conducted a preliminary review of the Borrower's information and reported favorably to the undersigned.
3. Based upon preliminary staff review, and subject to final approval by the FDFC Board of Directors of the Project, the Borrower and the Bonds, FDFC reasonably expects to issue bonds in an amount of up to \$1,750,000,000.00 to finance the Project, and to reimburse the Borrower or one or more affiliates of the Borrower for capital expenditures on the Project and costs of issuance incurred prior to issuance of the Bonds to the extent permitted by law and approved by FDFC.

The foregoing declaration is made by FDFC solely for purposes of Treasury Regulation 1.150-2 and does not constitute a commitment to lend to the Borrower.

Dated this 14th day of August, 2014.

**FLORIDA DEVELOPMENT FINANCE
CORPORATION**

By _____

William Franklin Spivey, Jr.
Executive Director

Appendix A-2Form of Inducement Resolution

RESOLUTION 14-__

A RESOLUTION OF THE FLORIDA DEVELOPMENT FINANCE CORPORATION SUPPORTING A CERTAIN PROJECT AND AUTHORIZING STAFF TO PROCEED WITH AN APPLICATION RELATING TO THE REQUEST OF THE FLORIDA DEVELOPMENT FINANCE CORPORATION TO ISSUE ITS INDUSTRIAL DEVELOPMENT REVENUE BONDS (AAF HOLDINGS LLC PROJECT), SERIES 2014, IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$1,750,000,000; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE FLORIDA DEVELOPMENT FINANCE CORPORATION AS FOLLOWS:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution is adopted pursuant to the provisions of Chapter 288, Part X; and Chapter 159, Part II, Florida Statutes as amended (the "Act") and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby ascertained, determined and declared that:

A. The Florida Development Finance Corporation (the "Issuer") is a public body corporate and politic and a public instrumentality of the State of Florida created and validly existing under and pursuant to Chapter 288, Part X, Florida Statutes, as amended. As such, the Issuer is duly authorized and empowered by the Act to provide for the issuance of and to issue and sell its revenue bonds, for the purpose of financing or refinancing all or any part of the cost of any "project," including land, rights in land, buildings and other structures, machinery, equipment, appurtenances and facilities incidental thereto and other improvements necessary or convenient therefore, in order to promote economic development within the State of Florida (the "State"), increase and preserve opportunities for gainful employment and purchasing power, improve the prosperity and welfare of the State and its inhabitants, and otherwise contribute to the prosperity, health and welfare of the State, and the inhabitants thereof.

B. AAF Holdings LLC, and one or more of its affiliates, subsidiaries or related entities (collectively, the "Borrower") desires to take advantage of low rates of interest available through the issuance by the Issuer of its Industrial Development Revenue Bonds (AAF Holdings LLC Project), Series 2014, (the "Bonds") in the aggregate principal amount of not to exceed \$1,750,000,000.00 in one or more series. The Borrowers will use the proceeds of the Bonds to (i) finance or refinance the cost of (or reimburse themselves for prior expenditures for) acquisition, construction, renovation and equipping of a privately owned and operated intercity passenger rail system with stations located in Orlando, West Palm Beach, Fort Lauderdale and Miami, Florida,

as more fully described in the Borrower's Application for Allocation of Private Activity Bond Volume Under IRC §§ 142(a)(15) and 142(m), as submitted to the U.S. Department of Transportation on even date herewith and attached hereto as Exhibit "A", (ii) fund debt service reserves, if any; (iii) fund capitalized interest on the Bonds, if any; and (iv) pay costs associated with the issuance of the Bonds (collectively, the "Project").

C. The Borrower has requested that the Issuer indicate to the Borrower, by and through this resolution, that the Issuer is taking affirmative official action toward the issuance of the Bonds.

D. Each component of the Project constitutes a project within the meaning of the Act.

E. Each component of the Project shall be owned and/or operated by the Borrower.

F. Giving due regard to the application received from the Borrower regarding issuance of the Bonds, and other factors determinative of the financial success of the Project and the Borrower's capabilities, financial and otherwise, of fulfilling the Borrower's obligations consistent with the purpose of the Act, the Borrower appears to be financially responsible and fully capable and willing to make the payments that will be required under FDFC policy and the proposed Agreements (as hereinafter defined) in the amounts and at the times required thereby and its obligation to operate, repair and maintain the Project, and the Borrower is desirous of serving the purposes of the Act and is willing and capable of fully performing all other obligations and responsibilities imposed upon the Borrower by the provisions of the Agreements.

G. Adequate provision will be made under the terms of the proposed Agreements (as defined below) for the operation, repair and maintenance of the Project at the expense of the Borrower, and for the payment of the principal of and premium, if any, and interest on the Bonds.

H. The Bonds will be issued under one or more Indentures of Trust, Lease Agreements, Financing Agreements and/or Loan Agreements or similar documents to be entered into by and among the Issuer, the Borrower and a Trustee, Underwriter, and/or Bondholder (the "Agreements"). The Bonds will mature and have such other provisions as set forth in the Agreements. The Issuer will loan the proceeds of the Bonds to the Borrower, pursuant to the Agreements, which will require repayment thereof in installments sufficient to pay the principal of, premium (if any), interest on and other costs due pursuant to the Bonds when and as the same may become due.

I. Neither the Issuer, nor the State, nor any County or any other political subdivision of the State shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto, and all payments required on the Bonds shall be payable solely from the payments to be made by the Borrower under the Agreements. The Issuer shall never be required to (i) levy ad valorem taxes on any property within its area of operation to pay the principal of and premium, if any, and interest on the Bonds or to make any other payments

provided for under the Agreements, or (ii) pay the same from any funds of the Issuer other than those derived by the Issuer under the Agreements; and the Bonds shall not constitute a lien upon any property owned by or situated within a County and/or the area of operation of the Issuer except the Project and any other property that may be pledged as security therefor by the Borrower, in the manner provided in the Agreements. Neither the full faith and credit of the Issuer nor the full faith and credit or taxing power of the State, a County or any other political subdivision of the State is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The Bonds are limited special obligations of the Issuer. No member or officer of the Issuer will be subject to any personal liability by reason of the issuance of the Bonds.

J. The payments required to be made by the Borrower under the Agreements will be sufficient to pay all principal of and interest on and premium, if any, for the Bonds as the same shall become due, and to make all other payments required in connection with the Bonds.

K. The costs to be paid from the proceeds of the Bonds will be "costs" of a project within the meaning of the Act.

SECTION 3. AUTHORIZATION TO PROCEED. Based on the findings in Section 2 of this Resolution, each of the Chairman, Vice Chairman, President, Executive Director, Secretary and any Assistant Secretary of the Issuer is hereby authorized and directed, either alone or jointly, to execute and deliver such instruments, as shall be necessary or desirable to proceed under this Resolution, and to consummate any transactions up to but not including the authorization, issuance, sale or delivery of such Bonds without submission of an application to the Issuer for the issuance of the Bonds and the further approval of the Issuer of such application and the issuance of the Bonds.

SECTION 4. REPEALING CLAUSE. All resolutions or orders and parts thereof in conflict herewith, to the extent of such conflict, are hereby superseded and repealed.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

All Aboard Florida Passenger Rail Project
Private Activity Bond Financing Program
U.S. DOT PAB Allocation Application

August
2014

The Chairman then declared the resolution to be duly passed and adopted on this ____ day of August, 2014.

**FLORIDA DEVELOPMENT
FINANCE CORPORATION**

Chairman

Attest:

Secretary

EXHIBIT "A"

Project Description

[Please refer to the Application for Allocation of Private Activity Volume
Under Internal Revenue Code Sections 142(a)(15) and 142(m), dated August 15,2014.]

Appendix B

Form of Opinion of Bond Counsel

[GREENBERG TRAURIG LETTERHEAD]

December __, 2014

Florida Development Finance Corporation

[Trustee]

Orlando, Florida

[City, State]

Re: \$[] Florida Development Finance Corporation Surface Transportation
Facility Revenue Bonds (All Aboard Florida Passenger Rail Project), Series 2014

Ladies and Gentlemen:

We have acted as Bond Counsel to [AAF BORROWING ENTITY], a [jurisdiction][entity] (the “Borrower”) in connection with the issuance by Florida Development Finance Corporation (the “Issuer”) of its Surface Transportation Facility Revenue Bonds (All Aboard Florida Passenger Rail Project), Series 2014, in the aggregate principal amount of \$[] (the “Bonds”) pursuant to the provisions of the Florida Development Finance Corporation Act, Chapter 288, Part X, Florida Statutes (the “Act”) and other applicable provisions of law, and the Resolution adopted by the Issuer on [], 2014 (the “Resolution”), to accomplish the public purposes of the Act by providing funds to finance the costs of acquiring, constructing, improving and equipping a passenger rail system spanning approximately 235 miles from Miami to Orlando (collectively, the “Facilities”).

As Bond Counsel, we have reviewed a transcript of the proceedings for the issuance of the Bonds, including without limitation: (i) the Trust Indenture dated as of December 1, 2014 (the “Indenture”), between the Issuer and [], as trustee (the “Trustee”); (ii) the Loan Agreement between the Issuer and the Borrower dated as of December 1, 2014 (the “Loan Agreement”), whereby the Issuer will loan the proceeds of the Bonds to the Borrower in order to finance the costs of the Facilities, fund certain reserves, fund interest during construction and pay certain costs related to the issuance of the Bonds; (iii) the Promissory Note of the Borrower in the original principal amount of \$[], dated this date (the “Note”), payable to the Issuer in order to evidence the Borrower’s obligations to repay the loan evidenced by the Loan Agreement and assigned to the Trustee pursuant to the terms of the Indenture; and (iv) the form of Bond attached to the Indenture. We also have reviewed the Act, the requirements of Section 142(m) of the Internal Revenue Code of 1986, as amended (the “Code”), and such other matters of law, documents, instruments, proceedings and opinions as we have deemed

necessary to deliver this opinion. Any capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Indenture.

As to questions of fact material to our opinion, we have relied upon the representations of the Borrower and the Issuer contained in the Loan Agreement, the Indenture and the Tax Certificate (defined herein), as applicable, and in the certified proceedings and other certifications of officials furnished to us without undertaking to verify the same by independent investigation.

The Code contains various requirements pertaining to the exclusion of interest on bonds from the gross income of the holders thereof including numerous requirements pertaining to (a) use of the proceeds of the Bonds, (b) the maturity of, and security for, the Bonds, (c) the payment to the United States of certain amounts earned from investment of proceeds of the Bonds, (d) the procedure for issuance of the Bonds, and (e) filings with the Internal Revenue Service in respect of the Bonds. The exclusion from gross income of the interest on the Bonds depends upon and is subject to the accuracy of the certifications made by the Issuer and the Borrower with respect to the use of proceeds, investment of proceeds and rebate of earnings on the proceeds of the Bonds and present and continuing compliance with the requirements of the Code. Failure to comply with these requirements could cause interest on the Bonds to become required to be included in gross income as of the date hereof or as of some later date.

An officer of the Issuer responsible for issuing the Bonds and an authorized representative of the Borrower have executed a certificate stating the reasonable expectations of the Issuer and the Borrower on the date hereof as to future events that are material for purposes of Section 148 of the Code pertaining to arbitrage and certain other matters (the "Tax Certificate"). Therein, the Issuer and the Borrower have covenanted that they will not use the proceeds of the Bonds or any moneys derived, directly or indirectly, from the use or investment thereof in a manner which would cause the Bonds to be "arbitrage bonds" as that term is defined in Section 148(a) of the Code. The Issuer and the Borrower have certified that the Bonds meet the requirements of the Code on the date hereof, and they have covenanted that the requirements of the Code will be met as long as any of the Bonds are outstanding. Also, the Issuer will file with the Internal Revenue Service a report of the issuance of the Bonds as required by Section 149(e) of the Code as a condition of the exclusion from gross income of the interest on the Bonds.

Under the Loan Agreement and the Tax Certificate, the Issuer and the Borrower have covenanted that they will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds for federal income tax purposes.

Based upon the foregoing, we are of the opinion that:

1. The Issuer is a public body corporate and politic, organized under the laws of the State of Florida (the "State"). Pursuant to the Act, the Issuer is empowered to authorize the issuance of the Bonds in the manner contemplated by the Indenture and the Loan Agreement and to perform its obligations under the Indenture and the Loan Agreement.

2. The Bonds, the Indenture and the Loan Agreement are valid and binding obligations of the Issuer and are enforceable against the Issuer in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting

generally the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

3. Assuming the accuracy of the certifications of the Issuer and the Borrower and their continued compliance with their respective covenants in the Loan Agreement and with the requirements of the Code, interest on the Bonds is excludable from gross income for purposes of federal income taxation under existing laws as enacted and construed on the date hereof (except for interest on any Bonds while held by a substantial user of the Facilities or a related person as defined in Section 147(a) of the Code). Interest on the Bonds will be a preference item for purposes of determining individual and corporate federal alternative minimum tax.

4. The Bonds and the interest thereon are not subject to taxation under the laws of the State of Florida, except as to estate taxes and taxes under Chapter 220, Florida Statutes, on interest, income or profits on debt obligations owned by corporations as defined therein.

Except as expressly stated above, we express no opinion as to any federal or state tax consequences of the ownership of, receipt of interest on, or disposition of, the Bonds. In giving the opinions related to federal income tax exemption set forth above, we have assumed the accuracy of certain representations made by the Issuer and the Borrower, which we have not independently verified, and compliance by the Issuer and the Borrower with certain covenants, that must be satisfied subsequent to the issuance of the Bonds. We call your attention to the fact that interest on the Bonds may be subject to federal income taxation retroactively to the date hereof if such representations or assumptions are determined to have been inaccurate or if the Issuer or the Borrower fails to comply with such covenants. We have not undertaken to monitor compliance with such covenants or to advise any party as to changes in law or events that may take place after the date hereof that may affect the tax status of interest on the Bonds.

In rendering the foregoing opinions, we have assumed the accuracy and truthfulness of all public records and of all certifications, documents and other proceedings examined by us that have been executed or certified by public officials acting within the scope of their official capacities and have not verified the accuracy or truthfulness thereof. We have also assumed the genuineness of the signatures appearing upon such public records, certifications, documents and proceedings.

The Bonds, the premium, if any, and the interest thereon are limited obligations of the Issuer payable exclusively from the Trust Estate. The Bonds do not constitute a debt or a loan of credit or a pledge of the full faith and credit or taxing power of the Issuer, the State, or of any political subdivision of the State, within the meaning of any State constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the State. The Bonds shall not constitute, directly or indirectly, or contingently obligate or otherwise constitute a general obligation of or a charge against the general credit of the Issuer, but shall be limited obligations of the Issuer payable solely from the sources described herein, but not otherwise. The Issuer has no taxing power.

We have not been engaged nor have we undertaken to review or verify and therefore express no opinion as to the accuracy, adequacy, fairness or completeness of any official statement or other offering materials relating to the Bonds. In addition, we have not passed upon and therefore express no opinion as

All Aboard Florida Passenger Rail Project
Private Activity Bond Financing Program
U.S. DOT PAB Allocation Application

August
2014

to the compliance by the Issuer, the Borrower or any other party involved in this financing, or the necessity of such parties complying, with any federal or state registration requirements or security statutes, regulations or rulings with respect to the offer and sale of the Bonds or regarding the perfection or priority of the lien on the Trust Estate. Further, we express no opinion regarding tax consequences arising with respect to any payments received with respect to the Bonds other than as expressly set forth herein.

Our opinion represents our legal judgment based upon our review of the law and the facts that we deem relevant to render such opinion, and is not a guaranty of a result. This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur.

Very truly yours,

Appendix C

Projected Cash Flows for the Project

All Aboard Florida: Annual Cash Flow Forecast	
(\$ in millions)	
Ex. 4	

I. (a) PLAINTIFFS

DEFENDANTS

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

ATTORNEYS (IF KNOWN)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

- | | PTF | DFT | | PTF | DFT |
|---|-----|-----|---|-----|-----|
| Citizen of this State | ○ 1 | ○ 1 | Incorporated or Principal Place of Business in This State | ○ 4 | ○ 4 |
| Citizen of Another State | ○ 2 | ○ 2 | Incorporated and Principal Place of Business in Another State | ○ 5 | ○ 5 |
| Citizen or Subject of a Foreign Country | ○ 3 | ○ 3 | Foreign Nation | ○ 6 | ○ 6 |

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

- ☐ E. General Civil (Other) OR ☐ F. Pro Se General Civil

- | | | | |
|--|---|--|--|
| <u>Real Property</u>
210 Land Condemnation
220 Foreclosure
230 Rent, Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property | <u>Bankruptcy</u>
422 Appeal 27 USC 158
423 Withdrawal 28 USC 157

<u>Prisoner Petitions</u>
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Conditions
560 Civil Detainee – Conditions of Confinement

<u>Property Rights</u>
820 Copyrights
830 Patent
840 Trademark

<u>Federal Tax Suits</u>
870 Taxes (US plaintiff or defendant)
871 IRS-Third Party 26 USC 7609 | <u>Forfeiture/Penalty</u>
625 Drug Related Seizure of Property 21 USC 881
690 Other

<u>Other Statutes</u>
375 False Claims Act
400 State Reapportionment
430 Banks & Banking
450 Commerce/ICC Rates/etc.
460 Deportation
462 Naturalization Application
465 Other Immigration Actions
470 Racketeer Influenced & Corrupt Organization | 480 Consumer Credit
490 Cable/Satellite TV
850 Securities/Commodities/Exchange
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes
890 Other Statutory Actions (if not administrative agency review or Privacy Act) |
|--|---|--|--|

<input type="radio"/> G. Habeas Corpus/ 2255 530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act 895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Labor Railway Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	<input type="radio"/> M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholder's Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	<input type="radio"/> N. Three-Judge Court 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
☐ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multi-district Litigation
☐ 7 Appeal to District Judge from Mag. Judge

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$	JURY DEMAND:
			Check YES only if demanded in complaint YES NO

VIII. RELATED CASE(S) IF ANY	(See instruction)	YES NO	If yes, please complete related case form
-------------------------------------	-------------------	------------------------------------	---

DATE: _____	SIGNATURE OF ATTORNEY OF RECORD _____
--------------------	--

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Indian River County, Indian River County Emergency
Services District, Old Vero Ice Age Sites Committee,
Inc.

Plaintiff

v.

Civil Action No.

Peter M. Rogoff, in his official capacity as the Under Secretary of
Transportation for Policy of the United States Department of Transportation,
et al.

Defendant

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Indian River County, Indian River County Emergency
Services District, Old Vero Ice Age Sites Committee,
Inc.

Plaintiff

v.

Civil Action No.

Peter M. Rogoff, in his official capacity as the Under Secretary of
Transportation for Policy of the United States Department of Transportation,
et al.

Defendant

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Indian River County, Indian River County Emergency
Services District, Old Vero Ice Age Sites Committee,
Inc.

Plaintiff

v.

Civil Action No.

Peter M. Rogoff, in his official capacity as the Under Secretary of
Transportation for Policy of the United States Department of Transportation,
et al.

Defendant

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09; DC 03/10) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Indian River County, Indian River County Emergency
Services District, Old Vero Ice Age Sites Committee,
Inc.

Plaintiff

v.

Civil Action No.

Peter M. Rogoff, in his official capacity as the Under Secretary of
Transportation for Policy of the United States Department of Transportation,
et al.

Defendant

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: