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April 21, 2016

Andrew Phillips
Project Manager
U.S Army Corps of Engineers
400 High Point Drive, Suite 600
Cocoa, Florida 32926

RE: Request for a Public Hearing on U. S. Army Corps of Engineers Permit Application
No.: SAJ-2012-01564 (SP-AWP)

Dear Mr. Phillips,

On April 11, 2016, the U.S. Army Corps of Engineers (“ACOE”) issued a public notice concerning permit application number SAJ-2012-01564 (SP-AWP). Indian River County (“County”) would like to formally request a public hearing in accordance with 33 C.F.R. Part 327 with regard to the above-referenced permit application (the “Application”). The Application pertains to the construction of a proposed intercity passenger railroad between the Orlando International Airport and the City of West Palm Beach (the “Proposed Project”) by All Aboard Florida (“AAF”). The public notice states that any person may request a public hearing so long as it is in writing, within the designated comment period, and states the specific reasons for the request. Pursuant to 33 C.F.R. Section 327.4, a request for a public hearing should be granted by ACOE unless the district engineer determines that the issues raised in the request are insubstantial or there is otherwise no valid interest to be served by a hearing. “In case of doubt, a public hearing *shall* be held.” 33 C.F.R. Section 327.4(c).

In a letter dated April 19, 2016, the County requested an extension to the public comment period for the Application. In determining whether to grant that request, ACOE must consider whether a project is “routine or noncontroversial.” 33 C.F.R. Section 325.2(d)(2). The intense controversy surrounding the Proposed Project is readily apparent from the fact that over 15,400 written comments were submitted on the Draft Environmental Impact Statement (“DEIS”) prepared for the Proposed Project. Final EIS (“FEIS”) at S-5. Almost two-thirds of those comments expressed opposition to the Proposed Project and many of those comments directly addressed issues that ACOE must consider in its permit review, including wetlands, water bodies, and threatened and endangered species. FEIS at 1-17 to 1-18. Under such circumstances, it is clear that under the ACOE regulations the County’s previous request for an extension of the comment period should be granted.

In addition, a public hearing is necessary due to the substantial nature, complexity and importance of the issues raised by the underlying project and the Application. The last time the public was afforded an opportunity to present oral comments on the Proposed Project was in the fall of 2014 when the Federal Railroad Administration ("FRA") held a set of public meetings to discuss the DEIS. This was more than a year and a half ago. Since that time, a great deal of additional information has been disclosed and/or uncovered regarding the nature of AAF's Proposed Project and its impact on both the environment as well as on the general public. As such, it is important for the public to have the opportunity to orally present their views, opinions and information to ACOE concerning AAF's Proposed Project as it is currently presented. This information is also essential for ACOE to complete the required public interest test analysis.

It is important that ACOE understands that it cannot simply rely on the information contained in the deficient FEIS to support its public interest analysis or its Record of Decision ("ROD"). This is because the County maintains that the FEIS did not provide the legal basis required for the issuance of a proper ROD by FRA or any other federal agency. Some examples of the FEIS deficiencies include, but are not limited to: (1) the FEIS analysis of noise and vibration impacts did not follow FRA's own guidance and therefore the estimated impacts to wildlife may be inaccurate; (2) the FEIS discussion of mitigation measures for the Project's environmental impacts is grossly inadequate; in some cases it is non-existent; (3) the FEIS improperly disregarded all of the mitigation that may be necessary for the direct, indirect and cumulative impacts to more than 50 listed plant species that may occur in or near the project; and (4) the FEIS is silent about the mitigation measures that could, or should, be used to address: (i) habitat fragmentation and barriers; (ii) state and federal park encroachment, (iii) harms to other listed plant and wildlife species; and (iv) harms to preferred habitat (such as pasture for caracara nesting).

As the County pointed out in its letter seeking an extension to the comment period, it has not yet received a copy of the Application (as requested in the County's Freedom of Information Act request dated March 29, 2016). Since it cannot review the Application until it receives a copy, it has not been provided with the opportunity to determine whether additional substantial issues should be aired at a public hearing. Accordingly, the County reserves the right to raise such additional issues once the Application has been provided.

Thank you in advance for your consideration of the County's request. Please do not hesitate to contact me if you have any questions.

Sincerely,



Kate Pingolt Cotner
Assistant County Attorney