

Via Federal Express
(overnight delivery)

May 10, 2016

Colonel Jason A. Kirk
Commander and District Engineer
Jacksonville District
U.S. Army Corps of Engineers
Cocoa Permits Section
400 High Point Drive, Suite 600
Cocoa, Florida 32926

Re: All Aboard Florida (“AAF”) – SAJ-2012-01564 (SP-AWP)

Dear Colonel Kirk:

This correspondence is transmitted to you on behalf of this firm’s client, Citizens Against Rail Expansion in Florida (“CARE FL”), for the purpose of providing comments pursuant to the Public Notice published on April 11, 2016 for permit application SAJ-2012-01564 (SP-AWP) (“Application”). CARE FL hereby adopts, and incorporates by reference, the comments submitted by Indian River County and Martin County, dated May 2, 2016 (and any supplemental comments submitted thereafter), regarding this Application.

A. Request for Public Hearing

CARE FL hereby formally requests a public hearing on this Application, pursuant to 33 C.F.R. § 327.4, to “consider the material matters at issue in the permit application.” 33 C.F.R. § 327.4(b). “Requests for a public hearing . . . shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.” *Id.* “In case of doubt, a public hearing *shall* be held.” 33 C.F.R. § 327.4(c) (emphasis added).

Given the scope and impact of the AAF Project across various counties and under the jurisdiction of numerous governmental agencies, and in light of the substantial issues raised in the extensive comments that have been submitted, CARE FL maintains that a public hearing is required for the Army Corps of Engineers (“ACOE”) to properly conduct its “public interest review.” 33 C.F.R. § 320.1(a)(1). CARE FL also adopts and incorporates by reference (1) Indian River County’s request for public hearing, dated April 21, 2016, and (2) Martin County’s request for public hearing, dated April 22, 2016.

B. The AAF Final Environmental Impact Statement is Incomplete

CARE FL, like Indian River County and Martin County, maintains that the Final Environmental Impact Statement (“FEIS”) for the AAF Project does not provide the legal basis required for the issuance of a proper Record of Decision by the ACOE or any other federal agency. In addition to the reasons cited in Indian River County’s Comments and Martin County’s Comments, CARE FL hereby adopts and incorporates by reference its Comments on the Federal Railroad Administration’s Final Environmental Impact Statement for the All Aboard Florida Intercity Passenger Rail Project, dated September 23, 2015 (attached hereto as **Exhibit “A”**).

C. Reservation of Right to Supplement Comments

CARE FL continues to evaluate the Application and, as such, reserves the right to amend and/or supplement its submission with additional comments and documentation.

D. Conclusion

For the reasons cited herein, attached, and incorporated by reference, CARE FL maintains that the Application is incomplete and does not properly address the required criteria that must be satisfied prior to the issuance of a Department of the Army permit pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403).

Thank you for your anticipated attention to this matter. Should you have any questions or wish to discuss this matter further do not hesitate to contact us.

Sincerely,



John K. Shubin
Deana D. Falce
Ian E. DeMello
Shubin & Bass, P.A.

and

Stephen M. Ryan
McDermott Will & Emery LLP
CARE FL Legal Counsel

Encl.

cc: Via Electronic Mail Only
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Exhibit “A”

**Comments of CARE FL on the Federal Railroad Administration's
Final Environmental Impact Statement
for the All Aboard Florida Intercity Passenger Rail Project**

September 23, 2015



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I. INTRODUCTION

Citizens Against Rail Expansion in Florida (“CARE FL”) respectfully submits these comments to the Federal Railroad Administration (“FRA” or “the Agency”) concerning the FRA’s August 2015 final environmental impact statement (“FEIS”) for the proposed All Aboard Florida (“AAF”) Orlando to Miami Intercity Passenger Rail Project (“the Project”). CARE FL is a coalition of South Florida and Treasure Coast community leaders, organizations, and residents devoted to protecting the safety, welfare, and way of life of the more than 10 million people living in and around the areas that will be impacted by the Project.

This ill-conceived Project will impose unacceptable adverse safety and welfare impacts on the communities, families and businesses of coastal Florida. AAF will run high-speed passenger trains through densely populated coastal communities, using the same right-of-way in which there will be a simultaneous sharp increase in the number of freight trains. It will also significantly increase the congestion that already substantially inconveniences the region’s recreational and commercial boaters. These topics are treated with little candor and are subject to completely inadequate analysis in the FEIS. The FEIS also fails to adequately compare the Project with reasonable alternatives that do not create equivalent safety, environmental, and economic impacts.

CARE FL has focused its comments on one specific area in which it can provide special insights based on the direct adverse impacts that the Project will have on its members—the impact on maritime navigation. But the Project raises many other concerns that the Agency should also address. In particular, CARE FL adopts, and incorporates by reference, the comments submitted by the Board of County Commissioners of Martin County (“Martin County Comments”), and by the Board of County Commissioners of Indian River County, Florida (the “Indian River County Comments”). CARE FL also urges the Agency to carefully review all of the comments submitted as part of the public comment process, as a lack of transparency about the Project is one of CARE FL’s primary concerns and should also be a priority for the FRA.

II. BACKGROUND

A. CARE FL

CARE FL is a coalition of concerned community leaders, organizations and neighbors in South Florida and the Treasure Coast. CARE FL’s membership continues to grow and includes the following groups: Admiral’s Cove in Jupiter, FL; Loblolly in Hobe Sound, FL; Mariner Sands Country Club in Stuart, FL; Jonathan’s Landing in Jupiter, FL; Frenchman’s Creek in Palm Beach Gardens, FL; Frenchmen’s Reserve in Palm Beach Gardens, FL; Sailfish Pointe in Stuart, FL; the Residence Association of Jupiter Island in Jupiter Island, FL; and other concerned Treasure Coast residents. Protecting the safety, welfare and way of life for the families, businesses and retirees who live in and around our communities is CARE FL’s goal. Our group also cares about

transparency and is seeking open and honest discussions on the costs, benefits and risks of rail expansion in Florida.

CARE FL opposes the combined proposed passenger and freight rail expansion because we believe, based on facts and a commonsense understanding of the interaction of trains with waterways, causeways, drawbridges and other infrastructures that define day-to-day life in South Florida, that rail expansion in the corridor chosen by AAF will have a significant negative impact on our communities. When we refer to “our communities” we mean that expansively, as more than 10 million people live in and around the areas that will be affected by the proposed rail expansion.

B. AAF AND THE PROJECT

All Aboard Florida – Operations LLC is a subsidiary of New York hedge fund Fortress Investment Group. Although AAF is still seeking at least \$1.6 billion in financial support from the FRA’s Railroad Rehabilitation and Improvement Financing (“RRIF”) program, in 2014 it indicated that it intends to fund the Project through \$1.75 billion in Private Activity Bonds (“PABs”) that required approval by the Florida Development Finance Corporation (FDPC)—a quasi private/public commission, comprised of gubernatorial appointees in Florida.

On August 5, 2015—the day after the FEIS was issued—the FDPC, approved AAF’s application for \$1.75 billion in PABs. AAF officials and FDPC board members held numerous meetings and conversations before the vote—an opportunity for face-to-face conversation that was not afforded to AAF’s many opponents, including groups such as CARE FL. Documents obtained by a state public records request revealed that each of the Commissioners who voted for the project had one or more private meetings with AAF. Furthermore, the FDPC will receive \$1.8 million in fees based on its vote to approve AAF’s application for sale of the PABs, and it had already counted these fees in its budget before the vote was held on August 5.

To the best of CARE FL’s knowledge, AAF is pricing and moving toward selling the bonds, but has also not ruled out RRIF loan funding to pay for other portions of the Project.

III. NAVIGATION/MARITIME CONCERNS – THE FEIS CANNOT BE FINALIZED BECAUSE THE COAST GUARD HAS NOT AGREED

Set forth below are the comments of U.S. Coast Guard Captain Dana A. Goward (Ret)—who, as a member of the Senior Executive Service, served as the maritime navigation authority for the United States government—concerning the significant shortcomings in the FEIS’s discussion of the Project’s impacts on navigation and the maritime industry.

All Aboard Florida
Navigation/Maritime Comments of CARE FL Re:
Final Environmental Impact Statement
And Section 4(f) Determination¹

Introduction

All Aboard Florida (AAF) proposes to establish high speed passenger rail service between Orlando and Miami. Rather than establishing the service on a route further inland with new bridges higher above waterways that are less busy, AAF selected a coastal route controlled by its investment bank owner that is already forecast for dramatic growth in freight rail traffic. These tracks pass through numerous densely populated coastal communities and cross three important navigable waterways on antiquated bridges which the project proposes to “refurbish.” However when these antiquated bridges are in use they rest only 4 to 7 feet above the water, effectively shutting down navigation.

By law, bridges over navigable waters may not unreasonably obstruct navigation. Therefore, the proposed service cannot be permitted if the operation of 32 new passenger trains, together with the operation of 20 additional freight trains that are both longer and slower than existing freight trains, will cause bridge operations to unreasonably obstruct navigation.

The Final Environmental Impact Statement (FEIS) prepared by the Federal Railroad Administration (FRA) purports to address the impact of the project on navigation. Unfortunately, the FEIS consistently failed to seek or use accurate data, and failed to make good faith estimates of the negative impacts of the AAF proposal on navigation and navigation-related economies and communities.²

Even so, the authors of the FEIS could not avoid including an admission on page S-11 that the proposed project will have a significant and negative impact (emphasis below added):

¹ CARE FL incorporates by reference its DEIS comments made on December 2, 2014. The comments in this navigation section have been written by and/or reviewed by U.S. Coast Guard Captain Dana A. Goward (Ret), who, as a member of the Senior Executive Service, served as the maritime navigation authority for the United States government.

² At some critical points in the process, AAF failed to consider navigation and maritime economic and community impacts at all. See US Coast Guard email dated 17 January 2014 at the end of this document.

“Under all Action Alternatives, the moveable bridges (St. Lucie River and the Loxahatchee River) would be closed more frequently to accommodate the increased number of trains. AAF has developed an operating plan that minimizes the number and duration of closures; however, the total daily closure time at each bridge and vessel wait times would increase substantially in comparison to the No-Action Alternative, particularly on peak-season weekends.”

“...the Project would also affect moveable bridge closure times and vessel wait times on the New River in Fort Lauderdale, similar to the St. Lucie and Loxahatchee Bridges.”

Table 5.1.3-4 on page 5-23 of the FEIS illustrates the increased bridge closure times—including average weekday closure times in 2016 with the Project of 9.8 hours for the St. Lucie River Bridge, 8.6 hours for the Loxahatchee River Bridge and 6.9 hours for the New River Bridge. This further demonstrates the fact that this reality cannot be ignored, despite the rosy assumptions contained throughout the FEIS with respect to the Project’s impact on maritime navigation:

Table 5.1.3-4 Moveable Bridge Closures						
Year	Number of Closures¹	Average Single Weekly Closure Time (minutes)	Average of Total Weekday Closure time (minutes)	Average of Total Weekday Closure time (hours)	Average of Total Weekend Closure Time (minutes)	Average of Total Weekend Closure Time (hours)
St Lucie River Bridge						
2013	10	21	241	4.0	165	2.7
2016 No-Action	18	20	397	6.6	213	3.6
2016 Project	42	15	588	9.8	458	7.6
Loxahatchee River Bridge (Jupiter Inlet)						
2013	10	19	214	3.6	156	2.6
2016 No-Action	16	20	351	5.8	216	3.6
2016 Project	42	12	515	8.6	434	7.2
New River Bridge						
2013	10	19	147	3.5	147	2.5
2016 No-Action	16	19	360	6.0	197	3.3
2016 Project	30	13	414	6.9	314	5.2

Source: AMEC. 2014a. *Navigation Discipline Report for the AAF Passenger Rail Project from Orlando to Miami, Florida*. July 2014.

While CARE FL does not necessarily agree that the data presented in this chart is accurate, it is clear even from this information that the three bridges will be closed 200

to 300% longer each day than they are today. The very negative impact of the project on navigation is clear.

The FEIS Cannot Be Finalized Because the Coast Guard Has Not Agreed

This is reflected in the fact that FRA has failed to obtain the required support for the project from the U.S. Coast Guard, the agency responsible for regulating operation of the bridges and for safeguarding the reasonable needs of navigation. In a letter dated December 3rd, 2014 the Coast Guard expressed ***no support*** for the Draft Environmental Impact Statement. To the contrary, it advised that the Navigation Discipline Report was inconclusive and would require independent evaluation by the Coast Guard. ***The service specifically stated that it had not made a determination that the project would meet the reasonable needs of navigation. Without this determination, the FEIS cannot be completed and the project cannot be permitted.***

To preserve the public interest and comply with the law, a corrected FEIS must be produced. It must include corrected analyses reflecting a much more accurate level of negative impact on navigation and the required determinations and actions by the Coast Guard. Only then will it truly be a “final” document and meet the requirements of the National Environmental Protection Act. Otherwise, the citizens of the Treasure Coast are put at risk. The FEIS and PAB may permit AAF to spend a massive amount of money to take the project forward, before the Coast Guard permitting process begins.

Background

Since at least 1894 Federal law has recognized the need for navigation on the water to have precedence over other modes of transportation.³ Bridges are permitted only so long as they do not unreasonably obstruct navigation. This is based upon good public policy and practical engineering:

- Waterways are the most efficient, safest, least expensive, and most ecologically sound way of moving goods.⁴ The law recognizes that it is in the public interest preserve the navigability of our nation’s waterways.
- Waterways are difficult, if not impossible, to re-route, especially compared to roads, railroads, pipelines, etc.

³ Bridge Act of August 18, 1894, 33 U.S.C. 499, Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 401, 403, 406, 502, Bridge Act of 1906 33 U.S.C. 491, 494, 495, and subsequent.

⁴ <http://www.waterwaysfoundation.org/study/FinalReportTTI.pdf>

- Builders of roads, railroads, etc. have many options for crossing waterways. They may tunnel under or bridge over. Bridges may be at various heights and either be fixed or movable.

To determine whether the proposed project exacerbates or creates one or more unreasonable obstructions to navigation, and to produce a valid FEIS, FRA must accurately document and address a number of issues. Two of the most important are:

- The absolute impact of the project on navigation; and
- The impact that degrading navigation will have on economic activity & property values that are so closely linked to navigation in the water-oriented communities the proposed route passes through.

It fails in both regards.

Failures of the FEIS – Failure to Accurately Gauge the Impact on Navigation

Irrespective of the proposed AAF project, the FEIS (pg S-6) projects an increase of freight trains each day on the track it wishes to use “...from 10 to 14 (in 2013) to 20, along with an increase in the average train length to 8,150 feet.”

To this the AAF project proposes to initially add 32 additional passenger trains (in their parlance “16 round trips”) each day, and numerous and longer freight trains.

The FEIS asserts that bridge closures currently last for an average of 20 minutes. Simple calculations show that AAF plans could result in the waterways being closed to navigation no less than 52 times a day for a total of more than 17 hours, unless AAF demonstrates that multiple trains can cross on the same closure. Additionally, these closures would be more heavily concentrated in portions of the day corresponding with the greatest demand for waterway use.

This would unquestionably cause huge delays for maritime traffic, long and unsafe waiting lines of vessels trying to hold position in the waterway, generally discourage waterway use, and greatly degrade maritime and related industry economic activity and its benefits.

The FEIS (page S-11) acknowledges that adoption of the AAF proposal would cause the bridges to “... be closed more frequently...” and “...the total daily closure time at each bridge and vessel wait times would increase substantially...”

However, instead of relying upon the simple calculation shown above and then proving how it can be reduced, closure by closure, the FEIS uses a computer model to

estimate the magnitude of the adverse impacts on navigability and vessel traffic (it ignores other adverse impacts, as discussed later).

The analysis in the FEIS is based upon the entirely unrealistic assumption that the proposed system of 32 short fast passenger trains and 20 long slow freight trains each day, on 230 miles of track, over three bridges, through 8 counties and 10 cities in the most heavily and densely populated section of Florida will run with the precision of a Swiss watch.

Even then, the project is only able to get the results it wishes and minimize the negative impact calculated by using a series of unrealistic and unwarranted assumptions as the entering arguments for their computer model. Even small changes in these assumptions to make them more grounded in the practicalities of day to day operations and greatly change the output of the model reflecting much greater negative impacts.

These unrealistic and unwarranted assumptions include:

- **That adding 32 short, fast passenger trains to 20 long slow freight trains each day over the relatively short 230 mile route can be done without introducing any delays.** This would require twenty 1.6 mile-long freight trains traveling between 25 and 40 miles an hour to seamlessly interleave with 32 short passenger trains traveling at 60 to 77 miles an hour without stopping for each other or even slowing down. This will be especially challenging during daytime operations (7:00am to 10:00pm) when the 32 fast passenger trains will be trying to operate with a daily average of 12 miles of freight trains. See table.

Stark differences in speed, stopping distance, length, contents, frequency of stops, and overall method of operation cause significant safety concerns and regularly bring passenger and freight rail operations into conflict across the country. The failure of the FEIS to address either safety or operational impacts of so heavily mixing these two disparate operations is inexcusable.

The following table contains the correct data:

Projected Trains on Route 7:00 AM to 10:00 PM					
Number of Trains	Train Length	Assumed Avg Speed	Time to Transit 230 mile route	Avg No. Trains On Route at Same Time	Total Length of All Trains
14 Freight	8,150 ft	30 mph	7.5 hrs	7.5	12 miles
32 Passenger	200 ft	60 mph	3.8 hrs	8	.3 miles

- **That having a half mile single track choke point at the St. Lucie bridge will not impact the ability of the route to operate as a dual track system.** AAF's plans call for transforming the 230 mile route from what is now mostly a single track to dual track. This would allow trains to move in opposite directions at the same time, effectively doubling the capacity of the route. Two of the three antiquated rail bridges can be modified from single to dual track. Modifying the St. Lucie bridge, though, would be very expensive. Rather than bear the expense, the project and FEIS seek to assume the problem away in their "Swiss watch" computer model.

The two points above are sufficient to demonstrate that the methodology that starts by assuming such a complex system with two types of widely different trains and functions will operate perfectly is wildly unrealistic, if not ridiculous. It shows a deliberate disregard of real-world practicalities.

Into this flawed methodology, the FRA's FEIS introduces patently incorrect data and additional unwarranted assumptions. These include:

- **That the waterways are open to navigation whenever the bridges are not closing or closed.** In fact, only the most incautious mariner will transit beneath it when a bridge is in motion, either closing or opening. Cycle times are measured from the first moment the bridge begins to close to the first movement of the bridge to open.⁵ So, in addition to the measure bridge cycle time, the waterway is not available for use for an additional 90 seconds while the bridge is moving from closed to open. Additionally, in advance of the bridge beginning to close, most vessels will stop upon hearing the warning horn that signals the bridge is going to begin moving. After a bridge has reopened, there is also a short period when the waterway under the bridge is not used as vessels reposition and accelerate to transit the passage. These additional delays before and after can take at least 30 seconds each (one minute total). Thus there is an additional 2.5 minutes (90 seconds while the bridge is opening, and 30 seconds each before and after bridge movement) when the water beneath the bridge isn't or shouldn't be transited. To accurately assess the negative impact on navigation of a bridge closing, 2.5 minutes must be added to the nominal "closed" time for a bridge. The FEIS fails to incorporate these 12.5-13% negative factors into its calculations.

⁵ Loxahatchee River Railroad Bridge Boat Count Project, Project Summary, Taylor Engineering, 1015 Deerwood Park Blvd, Ste 300, Jacksonville, FL

Bridge	FEIS Avg Time Per Closure - Now	Addtl Reduction in Waterway Use	Total Time Waterway Not Available	Increased Neg Impact
St Lucie	20 min	2.5 min	22.5	12.5%
Loxahatchee	20 min	2.5 min	22.5	12.5%
New River	19 min	2.5 min	21.5	13%

- **That the AAF project will result in a 25% to 40% decrease in the average time each of the bridges will be closed per train crossing.** The FEIS claims that these dramatic improvements will be the result of (1) higher train speeds and (2) improvements to the bridge mechanisms.

Such dramatic reductions in average closure times due to train speed and mechanical upgrades are not possible for two reasons:

- a) Field measures have shown that a train is only on the bridge about 3.5 minutes (17.5% of the time) for an average 20 minute bridge closing⁶. Much of the rest of the time is devoted to making sure the bridge is safely closed before the train arrives, and ensuring the train is well clear before beginning the opening sequence.
- b) Each of the bridges weighs hundreds of tons and must be moved carefully and deliberately. Improving upon the current time of 60 to 90 seconds to reposition the bridge would be both very expensive and even if achieved would not add much to the time the waterways would be actually available for use.

Bridge	Present Avg Time Per Closure	FEIS Proj Avg Time Per Closure	FEIS Forecast Improvement	Likely Improvement
St Lucie	20 min	15 min	25%	0%
Loxahatchee	20 min	12 min	40%	0%
New River	19 min	13 min	32%	0%

- **That highly precise scheduling and operation will minimize the number of bridge closures by having two trains occupy the same bridge (going in opposite directions on parallel tracks) at exactly the same time** (i.e. the bridge will be closed the only the same number of minutes as if one train was passing). This assumption is modified slightly for the single track St. Lucie bridge with the two

⁶ Loxahatchee River Railroad Bridge Boat Count Project, Project Summary, Taylor Engineering, 1015 Deerwood Park Blvd, Ste 300, Jacksonville, FL

trains using the bridge one immediately after the other – all while reducing today’s average time the bridge is closed by more than 25%!⁷

While these coincidences may happen occasionally, the number of times per day planned by the FEIS and assumed by the model is wildly unrealistic (see table).

Bridge	FEIS - Freight Trains/day	FEIS – Added AAF Trains	Total # Trains	FEIS AAF Closures	FEIS “2 Trains At Once”
St Lucie	20	32	52	42	10
Loxahatchee	20	32	52	42	10
New River	20	32	52	30	22

It is unusual, even for the high tempo, dense, New York City transit system, to see two trains pass each other in opposite directions on a bridge. To assert that precision scheduling and operations, designed for the purpose of minimizing the impact on navigation, will cause it to happen 10 to 22 times a day, on each of these Florida bridges is far beyond credible.

Failures of the FEIS – Economic Activity and Property Values

It only takes one look at a satellite view of Florida to see that access to waterways is central to a great majority of its population. Businesses and homes are densely compacted around virtually every waterway within 50 miles of the coast. Other geographic areas, virtually identical except for the lack of a waterway, are much more sparsely settled.

Access to a waterway is not simply a benefit for hundreds of municipalities and millions of homes – it is the very reason they are there in the first place. The broad and significant adverse impact of degrading access to these waterways is, therefore, hard to overestimate.

Yet the FEIS ignores and/or minimizes the impact. It makes a series of false and contradictory assertions to justify its flawed methodology and unsupported conclusions that the impact is small or non-existent. As examples:

- **The False Assertion of no impact on property values** (FEIS section 5.4.3.3, page 5-154) *“With respect to waterfront property along the New River, Loxahatchee River or St. Lucie River, the Project would result in increased closings of the moveable bridges. However, the moveable bridges would remain in operation and these rivers would continue to be open to navigation as required by the Coast Guard. Properties along these rivers with docks would continue to have boat access both*

⁷ FEIS Table 5.1.3-4 Moveable Bridge Closures

upriver and downriver. Therefore, the Project is not expected to affect the value of these properties.”

This is contradicted by the following assertion (also false) made later on the very same page:

- **False Assertion that impact on property values can't be calculated** (FEIS section 5.4.3.3, page 5-154).
“As demonstrated, there is limited research on the relationship between trains and neighboring property values, and the research that does exist present inconsistent findings. As such, the potential for the Project to impact residential property values is inconclusive.”

Not only does this statement contradict the earlier one, it seems poor justification for failing to meet the requirement in an environmental impact statement to make a good faith effort to calculate the impact.

- **False Assertion that 32 additional trains each day would not have a negative impact on communities** (FEIS Section 5.4.3.3 Page 5-156).
“Given the minimum impact to noise and local traffic conditions, the additional 16 passenger rail round trips per day is not expected to result in an adverse impact within small downtowns along the N-S Corridor.”

Many of the crossings through towns and over waterways are at or near grade level and many of the communities are bisected by the rail line. To assert that disrupting economic and other activity 32 times per day will not have an adverse impact shows a callous disregard for the truth. Yet this false assertion is contradicted elsewhere in the document, such as in the following point.

- **Admission of potential long-term negative impact** (FEIS section 5.4.3.2, page 5-146) *“Potential long-term direct and adverse effects to local economic conditions would include the loss of municipal property tax revenue from the acquisition of privately owned properties, costs associated with grade crossing maintenance to be paid by the municipalities in which they are located, permanent displacement of existing businesses and associated revenues, and employment displacement. It also includes the potential loss of economic value within the maritime industries along the St. Lucie, Loxahatchee, and New Rivers.”*

Yet a good faith effort is not made to calculate these negative impacts. The following two points are examples.

- **Wrongful exclusion from analysis of negative impacts due to discouraged waterway users and reduced use of waterways** (FEIS section 5.4.3.1 page 5-146)
“This evaluation does not consider potential boater behavior, as there is no standard method for modeling the economic impacts associated with boater

choice (e.g., whether a boater chooses to use a particular waterway). For this reason, this evaluation does not address the Project’s economic impacts to yachting, water taxi activity, or individual events held along the affected waterways. There is no standard method for quantifying costs associated with boater time, recreational or otherwise. Therefore, the Project’s potential to result in this form of cost is acknowledged but not evaluated.”

As mentioned earlier, the waterways are the very reason these communities exist in their current form and size. Excluding negative impact on major industries and the degradation of communities’ “reason for being” from the analysis makes its results meaningless.

- **Use of incomplete, part-year data that produces lower impacts, when better data was available.** The FEIS model uses lower vessel traffic numbers, based upon partial surveys conducted in the winter, instead of updated, year-round data that show much higher numbers. For the St. Lucie and Loxahatchee bridges, this data was carefully collected and provided by Martin County and the Jupiter Inlet District, respectively. The FEIS rationale for not using the improved data is listed in section 5.4.3.1 (page 5-145):

“...these new data do not make the distinction between commercial and recreational vessels, an important data input for determining economic impact. For this reason, this evaluation of economic impacts maintains its use of the winter 2014 data.”

There may well be a difference in the impact of commercial and recreational vessels. However, they both have a significant impact, especially since recreational boating is one of the leading industries in south Florida. It is clear that that the FEIS chose not to use the larger vessel numbers because they would have resulted in calculation of larger negative impacts to traffic and economic activity.

Martin County Boat Count

Furthermore, the FRA did not take into account the good data that **does** exist. Martin County collected data on the number of vessels transiting the St. Lucie River at the FEC bascule bridge. That information was submitted to the FRA on July 28, 2015—before the release of the FEIS—and we are including that report here. The bottom line is that the new data indicated there is far more vessel traffic than projected in the DEIS. Thus, the expected increase in bridge closures is an even more serious problem, due to the larger number of vessels.

The DEIS utilized boat traffic data from a two week video assessment in January 2014 indicating that winter months are “peak boat traffic season.” But data collected by Taylor Engineering over the past year shows that April counts are 83 percent higher

than January counts. In fact, according to Taylor Engineering's data, the highest daily average to date was in April 2015, with an average of 280.9 boats per day. By comparison, the DEIS shows the average daily boat count during daylight hours to be 121 boats per day, and they included "casual observations at night" in that count.

Given this discrepancy, the FRA's data is misleading in terms of: 1) what the peak vessel traffic season is; 2) what the average daily boat count is in those peak months; and 3) what the average boat count is on weekends. Martin County's data indicates far more boat traffic than projected in the DEIS for AAF, further exacerbating concerns that maritime traffic will be adversely affected by the project.

The Way Forward – "Obtaining Rights of Way"

Selecting a route that crosses three movable bridges over busy waterways means that, to be successful, the project would need to meet the reasonable needs of navigation in three separate locations. Just as the project would need to obtain rights of way across three farms it did not own, so the project needs determinations by the Coast Guard before it can use the three bridges as it proposes.

In fact, for the project to proceed, the US Coast Guard must make six individual determinations and actions, each in favor of the project. If one of these determinations or actions does not support the project, the selected route will be not be viable and the project will fail. The Coast Guard must:

- Determine that, after implementation of the AAF proposal, the New River, Loxahatchee, and Port St. Lucie railroad bridges will not be unreasonable obstructions to navigation and therefore need to be rebuilt as part of the project (3 actions).
- Validate current or establish new operating regulations for the Port St. Lucie and Loxahatchee bridges (current or rebuilt) that accommodate successful implementation of AAF's business plan while not unreasonably obstructing navigation (2 actions).
- Establish operating regulations for the New River railroad bridge (current or rebuilt) that accommodate successful implementation of AAF's business plan while not unreasonably obstructing navigation (1 action).

The Coast Guard is examining these issues now. Its first effort is to establish operating regulations for the New River bridge. In a test it has proposed that the bridge be open to navigation for one hour of every two. This seems unrealistic as such a scheme could regularly delay navigation by more than an hour when the time for closing and opening

the bridge and dispersing vessels backed up in waiting lines is considered. If a 50/50 split between trains and navigation is to be made (which CARE FL does not necessarily agree meets “the reasonable need”), then 30 minutes of every 60 should be the standard. It is also important to note that reasonableness and operating regulations/schemes must be determined individually for each of the three bridges, and that the rulemaking process can be a long one.

Conclusion

Each of the errors and missteps in the FEIS outlined above are repeated many times in the document, and are the bases for multiple additional false assertions and conclusions. Outlining each and every instance where they impact in the more than 1,000 pages of FEIS and related material should be undertaken beginning with the issues pointed out here.

The errors outlined above are more than sufficient to demonstrate **that the FEIS was not a good faith effort**, but rather a document developed to support a pre-determined judgment in favor of the project.

The FEIS must be invalidated and the project put on hold. If the Coast Guard determines that the route is feasible, the FEIS must be re-done by a more objective and independent entity to accurately reflect the negative navigation-related impacts on communities and economies.

Finally, in addition to all the problems identified above, the FEIS fails to provide an adequate discussion of mitigation measures that should be implemented if the Project proceeds as planned. If the FECR route is used for the Project despite the problems identified above, it is imperative that the St. Lucie, Loxahatchee and New River bridges be replaced with higher bridges, with larger openings for vessel traffic, that do not create adverse noise, vibration or visual impacts on the surrounding communities.

IV. ADOPTION OF MARTIN COUNTY COMMENTS AND INDIAN RIVER COUNTY COMMENTS

As stated above, CARE FL adopts, and incorporates by reference, the Martin County Comments and the Indian River Comments. These comprehensive, well-considered comments focus on numerous expert reports that demonstrate a compelling theme: that the FEIS fails to address the myriad of public safety, navigation, environmental, quality of life, cultural resources and other concerns that were set forth in the DEIS comments of the Counties, CARE FL and other concerned citizens, as well as in subsequent communications with the FRA.

Specifically, the FEIS rejects as infeasible several alternative routes that are plainly feasible and that deserve a much more comprehensive and objective analysis than the cursory discussion provided in the FEIS. The FEIS also fails to take a “hard look” at the Project’s impacts, especially its impacts on (i) public safety, (ii) navigation and marine industry, (iii) quality of life, cultural resources and property values, and (iv) natural resources and the environment. Finally, the FEIS fails to provide an adequate discussion of mitigation measures and fails to include many mitigation measures that should be required for the Project.

V. CONCLUSION

The Project is poorly conceived and threatens unacceptable adverse impacts to the safety and welfare of Florida's citizens. The FRA’s FEIS for the Project fails to adequately address those issues. The FRA should, therefore, withdraw the FEIS and issue a supplemental DEIS for further public comment and review.

From: Evelyn.Smart@uscg.mil [mailto:Evelyn.Smart@uscg.mil]
Sent: Friday, January 17, 2014 1:45 PM
To: mary.hassell@dot.gov; Charlene.Stroehlen@amec.com; Gonzalez, Alex; Gonzalez, Jose
Cc: LStandley@VHB.com; john.winkle@dot.gov; Todd.McIntyre@dot.gov; Dragon, Barry CIV
Subject: FRA/AAF - EA/FONSI - WEST PALM BEACH TO MIAMI SPUR

Good afternoon all, I would like to refer back to our November 21, 2013 meeting where we had an opportunity to discuss the proposed DEIS for the AAF Passenger Rail Service between Orlando and Miami, Florida. In that meeting we also discussed the EA/FONSI that was approved by FRA and why the Coast Guard was not given the opportunity to review the NEPA document for the West Palm Beach to Miami phase of the AAF Passenger Rail Service. It was your understanding that since no Coast Guard Bridge Permits were required for that portion of the project, the Coast Guard had no involvement. However, I informed you that day that there were issues raised regarding the operation of the existing FECRR drawbridge crossing the New River at Fort Lauderdale, Florida, and issues regarding meeting the reasonable needs of the Marine Industries and the boating public that frequent the New River. (These issues were also mentioned by the Coast Guard (Michael Lieberum and our Captain of the Port/Section Miami - Waterways representatives) at other previous meetings/telephone conferences with FECI and AMEC. It was mentioned in that meeting that the EA/FONSI failed to address the impacts on navigation due to the proposed passenger rail service and future increase in freight rail service (PANAMAX) along the corridor.

The EA was completed on October 31, 2012 by URS (during the time of the development of the EA, the Coast Guard, Marine Industries and the boating public were not notified). Coordination with the Coast Guard, Marine Industries and the boating public regarding increased closure time of the existing drawbridge and possible drawbridge operation regulation changes and the socio-economic and cumulative impacts of increasing rail service on the corridor were not addressed in the EA/FONSI. FRA signed the FONSI on January 30, 2013 (coordination with the Coast Guard and the boating public began after the approval of the EA/FONSI.)

For the record, should the Coast Guard seek drawbridge operation regulation changes at the New River crossing, the NEPA document to be used for that federal action would be the EA. As stated in several meetings in 2013 with FECI, AMEC, FRA and the Coast Guard, the EA that was prepared for the West Palm Beach to Miami Spur did not address the above navigational issues therefore, it is an inadequate document and should be supplemented so that the Coast Guard may adopt the EA for our federal action (Drawbridge Operation Regulation change, (we would only adopt the bridge-related portions of the documentation and those impacts that are the result of the bridge).

If you have any questions feel free to call me.

EVELYN SMART
Environmental Protection Specialist

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Seventh District

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DEC 3 2014

Mr. John Winkle
Federal Railroad Administration
1200 New Jersey Ave SE, Room W38-311
Washington, DC 20590

Dear Mr. Winkle,

The Coast Guard Seventh District Bridge Branch completed its review of the September 2014 All Aboard Florida Draft Environmental Impact Statement (AAF DEIS).

The navigational conditions at the New, Loxahatchee, and St Lucie River bridge sites consist of strong currents, constrained channels, and a heavy volume of boats. Given the proposed AAF operating schedule, it is very likely that future regulatory action will be required for these bridges. Details of navigational impact are borne out of studies associated with that rulemaking. Because we have not entered into that rulemaking process for the AAF proposal, the Coast Guard has not made a reasonable needs of navigation determination.

With regard to navigation, the Coast Guard does not typically consider navigational impacts to be environmental impacts that must be studied under the National Environmental Policy Act. The Coast Guard does not adopt the conclusions and assertions encompassed in the Navigation Discipline Report (NDR) included with the AAF DEIS for the purposes of rulemaking that will likely occur in order to alter existing bridge schedules. In a general sense, we consider the NDR inconclusive but will consider it as supporting information for taking future Coast Guard actions. In the enclosed document we have included comments regarding the NDR and other navigational related statements in the AAF DEIS.

If you have any questions about this matter please contact Mr. Barry Dragon at 305-415-6743.

Sincerely,

A handwritten signature in black ink, appearing to read "W. R. REAMS".

W. R. REAMS
Captain, U. S. Coast Guard
Chief, Prevention Division

Enclosure: Coast Guard Comment Matrix to Sep 2014 AAF DEIS