MARTIN COUNTY
BOARD OF COUNTY COMMISSIONERS
2401 S.E. MONTEREY ROAD • STUART, FL 34996

Telephone: (772) 288-5442
Fax: (772) 288-5439
Email: mdurham@martin.fl.us

April 7, 2015

Mr. Bill Spivey
Executive Director
Florida Development Finance Corporation
800 North Magnolia Avenue
Suite 1100
Orlando, Florida 32803
Email: bspivey@eflorida.com

Re: All Aboard Florida's Request to Issue $1.75 Billion in Private Activity Bonds

Dear Mr. Spivey:

I write regarding the recent appointments of Mr. Daniel Davis, Mr. Kevin Hale and Mr. Frank White to the Florida Development Finance Corporation (FDFC) Board, and the public meeting that is scheduled to occur on April 7, 2015. This letter represents the views of Martin County, Florida.

It is the County's understanding, based on the public notice issued on April 2, 2015, that the FDFC intends to consider a "Ratification Resolution of prior Board actions" at its April 7 meeting. It is also the County's understanding that this resolution is likely to include the ratification of the August 20, 2014, FDFC decision to enter into a memorandum of understanding with All Aboard Florida (AAF) to act as a conduit and issue $1.75 billion in private activity bonds (PABs) to support AAF's passenger rail project—an action that was later discovered to be invalid, due to the fact that the terms of the voting FDFC Board members at the time had expired. Martin County vigorously opposes such an action and believe it to be unwise and potentially unlawful at this time.

As a matter of procedure, the County believes it is inappropriate—and premature, given that the new FDFC Board Members were appointed on March 27, 2015—to take action on this item on April 7, 2015, based on the number of developments that have occurred since that original, improper, and likely unlawful FDFC vote on August 20, 2014. These developments include:

- **<u>The DEIS</u>.** In accordance with the National Environmental Policy Act (NEPA), the Federal Railroad Administration (FRA) issued a Draft Environmental Impact Statement (DEIS) on September 19, 2014. The FRA received over ten thousand (10,000) public comments in response to the

DEIS—many of which set forth serious concerns with the proposed AAF project, including the threats it poses to the health, welfare, safety and environment of the Treasure Coast. Please see attached the DEIS comments submitted by Martin County, Florida. **The County believes that the concerns set forth in the comments on the DEIS should be examined and considered by the newly appointed FDFC Board before it takes any action on whether or not to sell or assist in the sale of PABs to benefit AAF.**

- **The Friedman Report.** On February 18, 2015, CARE FL released an economic analysis of AAF by John Friedman, Ph.D. of Economics, a distinguished Brown University Professor and former National Economic Council Special Assistant at the White House. This 15-page report (attached) brings to light serious questions about the financial viability of AAF and was commissioned by CARE FL in response to the lack of publicly disclosed data on the economics of AAF. Dr. Friedman makes a series of striking conclusions, including the conclusion that under all optimistic assumptions, AAF will generate annual losses of more than $100 million and will be unable to service its debt burden. This report, therefore, contradicts Section 2; subsection F of FDFC's Resolution 14-16, which states the "Borrower appears to be financially responsible and fully capable and willing to make payments that will be required under FDFC policy and the proposed Agreements…" In addition, Dr. Friedman notes that the foregone tax revenue is an inefficient taxpayers subsidy of $37-$60 million for a private enterprise. **In light of the series of financially troubling conclusions in the Friedman report, the County believes that the newly appointed FDFC Board should carefully examine all of the facts and documents before it takes any action to issue PABs to benefit AAF.**

Indian River County Complaint. Most recently, on March 31, 2015, Indian River County filed a complaint (attached) in federal court challenging the United States Department of Transportation's (U.S. DOT) action to approve an allocation of $1.75 billion in private activity bonds to AAF, on the grounds that the approval was "plainly unlawful" because the conditions of the approval contradict the NEPA process. The County contends that this violates federal law. By allowing AAF to issue bonds to investors during this critical stage of the NEPA process, is the U.S. DOT—and FDFC as the conduit— unlawfully circumventing the NEPA process? In the event the County's lawsuit is successful, a critical pre-condition to the issuance of tax exempt bonds would likely be annulled. Given the effect that action would have on investors, it is premature to issue bonds that purport to be tax exempt in the face of this lawsuit. **The County believes that you should hold the issuance of the bonds in abeyance, pending resolution of the Indian River County lawsuit. The failure to do so could result in FDFC improperly characterizing the bonds it issues as tax exempt.**

Procedural Concerns. In addition, and upon information and belief, the County does not believe that proper notice was issued to inform the public of the FDFC's proceedings. As you know, as AAF pursued RRIF loan funding and the DEIS was issued, the project also sought an alternate funding source when it submitted an application to the U.S. DOT for a PAB allocation on August 15, 2014. Thereafter, on August 20, 2014, the FDFC held a hearing on and passed Resolution 14-16. Yet the actions of the FDFC Board were never fully disclosed to the public until October 7, 2014. Even members of Congress and local elected officials were clearly surprised that these actions had been taken without their knowledge. The actions of the former FDFC Board effectively occurred in secrecy and the public was totally left out of the process—unable to make its concerns heard.

Conclusion. Based on all of the above concerns, the County believes that the public meeting scheduled to take place on April 7, 2015, should not include a vote to ratify the decisions of the former FDFC Board concerning AAF and it request for $1.75 billion private activity bonds. The County believes this vote should be postponed until the newly appointed FDFC Board is able to independently evaluate and consider the full scope of the AAF project, its finances, its credibility and the wide range of public concerns with the proposed project.

In the event that you choose to move ahead with this AAF action prematurely, Martin County respectfully requests the opportunity to be heard during tomorrow's public meeting. The County requests no less than 30 minutes and preferably one hour to present its concerns to you. In addition, the County believes that this public meeting should be an in-person meeting, as this issue is too important to be properly considered over the phone.

Rubber stamping the actions of August 20, 2014, would irretrievably harm the reputation of the new FDFC Board Members to offer sound judgment, and would cause long-term harm to the overall reputation of the FDFC.

Sincerely,

Michael D. Durham
County Attorney, Martin County
2401 SE Monterey Road
Stuart, FL 34996
772.288.5925
mdurham@martin.fl.us

CC: Stephen M. Ryan, Martin County Legal Counsel
Email: SRyan@mwe.com