Town of St. Lucie Village
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March 7, 2016

VIA E-MAIL

Mr. Michael Johnsen
Supervisory Environmental Protection Specialist
Federal Railroad Administration
US Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
Mailstop 20, RPD-13

RE: Programmatic Agreement final draft comments – Compliance with Section 106, NHPA Federal Railroad Administration for - **All Aboard Florida Project**

Dear Mr. Johnsen, Signatories, and Consulting Parties:

As Town Attorney for the Town of St. Lucie Village, Florida, I am writing on behalf of the Town of St. Lucie Village Consulting Parties to provide our comments and concerns on the Programmatic Agreement (PA) final draft received via e-mail on Friday, February 26, 2016.

Please review, consider and address these concerns before the PA is signed.

While we support a programmatic approach, we believe that the factual basis for the proposed agreement remains insufficient, that the Independent Archaeological Monitor MUST be truly independent and have knowledge and experience in the archaeology of east central coastal Florida, and that the consulting parties should actually be informed, consulted and allowed meaningful input as the process proceeds.

So, the St. Lucie Village Consulting Parties support a Programmatic Agreement (PA) as defined by § 800.14(b) to guide and govern the AAF Project in following legal guidelines and compliance responsibilities established through NEPA and NHPA, and to resolve potential adverse effects of the AAF Project, but ask that you consider and address the following issues and concerns:

> *The PA final draft of 2/16/2016 continues to contain factual deficiencies and omissions, and as it is now written, it is an inadequate document which does not provide the proper framework for moving forward with the Section 106, NHPA process § 800.6 *Resolution of adverse effects.*

*The PA final draft clearly demonstrates that much more work remains to be done to build a factual foundation for moving forward on this project and this work must be done professionally and objectively, rather than relying on AAF's paid contractor or State Historic Preservation Office (SHPO) staff.

*Accurately documenting the historic resources, their correct geographic locations, and the potential adverse effect of the AAF project on the Town of St. Lucie Village is essential to the Section 106 process. St. Lucie Village includes an historic district geographic area (National Register ID 8900 2062) with a number of its 30+ contributing residential properties within the 150'APE (see attached addendum). This historic district was listed on the National Register of Historic Places in 1989. Late Malabar period Ais Indian middens and burial mounds, cultural and historical archaeological remains, and the site of Fort Capron, an essential U.S. Army post of the Third Seminole War (1850-1859) are also notable Village historical resources. The St. Lucie Village boundaries were settled in 1843 by Indian River Colony pioneers through the Armed Occupation Act of 1842, and this area has been continuously occupied since then. The Village was bisected by Flagler's railway in 1894 and at one time, as previously documented, the Village was the site of the "St. Lucie" railroad depot.

*As discussed more fully in the attached addendum, these consulting parties still maintain that the APE and the adverse effects of the project are not being properly analyzed.

* The Town of St. Lucie Village Consulting Parties respectfully request that only qualified professionals be hired for the AAF project who have knowledge of and experience in the many disciplines of the archaeological field such as Paleo, Malabar, ethno-archaeology, historical and cultural archaeology unique to east central coastal Florida.

*St. Lucie Village Consulting Parties expect to be fully informed by the Signatories, to be consulted in a timely manner, and to provide input on treatment of discoveries. Most importantly, we must be consulted about unanticipated adverse effects on the Town of St. Lucie Village's historic properties and resources, and development of mitigation measures.

To those of us who live in the Town of St. Lucie Village, our quality of life and the enjoyment and preservation of our historical resources are vital components of our everyday life. Our history must be protected and respected and the negative impacts of the AAF project must be mitigated to prevent unnecessary or preventable negative adverse effects and impacts.

Accordingly, we support a programmatic approach, and will continue to participate in evaluating, assessing and expediting the Programmatic Agreement reviews and components; but, we believe that the factual basis for the proposed agreement must be further developed and analyzed, that any Independent Archaeological Monitor must be independent and have the knowledge and experience necessary to understand and protect the archaeological resources in our community and that the consulting parties should actually be consulted in a meaningful way.

Sincerely,

Richard V. Neill, Jr.
Town Attorney

cc: William G. Thiess, Mayor
Diane C. Orme, Clerk
Village Board of Aldermen
All parties on the attached e-mail list

E-mail copies to:

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ADDENDUM TO COMMENTS OF THE TOWN OF ST. LUCIE VILLAGE CONSULTING PARTIES TO ALL ABOARD FLORIDA FINAL DRAFT PROGRAMMATIC AGREEMENT

Regarding Village historic resources within the APE:

*With reference to the St. Lucie Village Historic District geographical area listed on the National Register of Historic Places since 1989, (8SL76 and National Register ID 8900 2062), a number of the District's properties extend into the APE, including:

8SL241 579 Haynesworth House/2709 North Indian River Drive Frame Vernacular c.1905
8SL243 147 Peed House/2805 North Indian River Drive Frame Vernacular 1904
8SL245 149 Harrington House/2821 North Indian River Drive Frame Vernacular c.1922
8SL246 150 Terry House/2825 North Indian River Drive Frame Vernacular c.1922
8SL247 151 Hoskins House/2929 North Indian River Drive Frame Vernacular 1911
8SL252 156 Sinnott House/3305 North Indian River Drive
3015 North Indian River Drive [at of the site of Fort Capron (1850-1858) which is eligible for listing on the National Register (8SL41).

(The above is just a partial list of contributing structures of the St. Lucie Village National Register listed historic district.)

Regarding the Recitals and Stipulations of this Programmatic Agreement final draft:

*The preamble introduction contains various flawed "whereas clauses" that are not based on facts. The most important, in moving forward in the Section 106 process, are the following incorrect statements:

> **WHEREAS**, FRA identified an Area of Potential Effects (APE) and SHPO concurred on March 28, 2013, and FRA identified historic properties within this APE as documented in Cultural Resources Assessment (CRAR) Reports dated September 2013 and May 2015, and SHPO concurred on November 20, 2013 (amended May 21 2015) that the properties identified in the CRAR Reports and in the All Aboard Florida – Orlando to Miami, Florida Intercity Passenger Rail Project – Phase II Determination of Effects Report, Tables 1 through 9 (Attachment 1 to this PA), are listed in and/or eligible for listing in the National Register of Historic Places (NRHP); and

According to NHPA Section 106 The APE is defined as ---"The APE is the geographic area(s) within which a project may directly or indirectly affect historic properties. The APE is defined before the identification of any historic properties. Therefore, to determine the APE, you do not need to know whether any historic properties exist in the area(s), but you should consider all **locations where the project may result in ground disturbances;**

visible or audible disturbances; or changes in public access, traffic patterns, or land use.

Under Section 110(k) of the NHPA, Federal agencies are prohibited from providing grants, licenses, or other assistance to applicants who intentionally significantly and adversely affect historic properties. This provision, known as the "anticipatory demolition" section, is designed to prevent applicants from destroying historic properties prior to seeking Federal assistance in an effort to avoid the Section 106 review process. NEH encourages all applicants to submit their grant applications early in the project's planning process to avoid any complications from this provision. However, if the project is already underway and you have questions about how Section 110(k) may affect your organization's eligibility for NEH grant funds, please contact the NEH FPO."

*This PA final draft also includes-

> **WHEREAS**, through consultation FRA has determined, and SHPO has concurred, that the Project will not have an adverse effect to the other National Register-listed or eligible properties in Attachment 1 either through demolition, alteration, change in the character of the property's setting, or the introduction of visible, atmospheric, or auditory elements (36 CFR 800.5(a)(2)(ii) through (v); and

Again, according to NHPA Section 106---An adverse effect occurs when a project may directly or indirectly diminish the integrity of an historic property by altering any of the characteristics that qualify that property for National Register inclusion. Specifically, if the project diminishes the integrity of a property's location, design, setting, materials, workmanship, feeling, and association, then there is an adverse effect. Examples of adverse effects include:

- Physical destruction or damage;
- Alteration inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties;
- Relocation of the property;
- Change in the character of the property's use or setting;
- Introduction of incompatible visual, atmospheric, or audible elements;
- Neglect and deterioration;

- Transfer, lease, or sale out of federal control without adequate preservation restrictions

http://www.neh.gov/grants/manage/frequently-asked-questions-about-section-106-the-national-historic-preservation-act

*The draft PA further includes:

> **WHEREAS**, through consultation, the SHPO has concurred on December 29, 2015 with FRA's determination that the ground-disturbing activities associated with construction, performed in accordance with the Archaeological Monitoring Plan in Stipulation V, should not have an adverse effect on archaeological sites; and

Town of St. Lucie Village Consulting Parties remain concerned that untested segments and the planned relocation of the buried fiber optic cable would create ground disturbing activities. It remains of significant concern to St. Lucie Village that the project will involve excavation (specifically for fiber optic cable) which is located outside the rail bed. Also, this relocation would create subsurface construction in a historic geographic area in which there are Malabar period Ais Indian burial mounds and shell middens showing the early Florida peoples' occupation of the area and including the site of Ft. Capron (8SL41). And, most of these historic resources and archaeological remains and artifacts still remain below the ground.

As indicated by Robert Carr, executive director of Archaeological and Historical Conservancy, Inc. in the CRAR assessment and analysis done for Indian River County, St. Lucie County and Martin County, the archeological assessment is truly not complete and it is impossible to assess the adverse impact to sites resulting from the project without completion.

Many cultural, historical and archaeological resources of the Town of St. Lucie Village were not identified, researched, surveyed, or acknowledged in the CRAR or its amendment in May 2015.

Fiber optic cable installation plans and other ground-disturbing activities revealed by AAF/FEC after the completion of the CRAR will likely have adverse effects to these known cultural and archaeological sites.