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Thursday, July 19, 2018

Contact: [Alia Faraj-Johnson](#)

[Kristen McDonald](#)

850-222-4100

Indian River & Martin Counties, CARE FL File Motion for Summary Judgment Asking Federal Court to Vacate and Annul AAF's PABs

TREASURE COAST, FL – Indian River County, Martin County, and Citizens Against Rail Expansion in Florida (CARE FL) [have filed a motion for summary judgment in the U.S. District Court for the District of Columbia](#) asking the Court to vacate and annul the United States Department of Transportation's (USDOT) approval of \$1.15 billion in private activity bonds (PABs). USDOT awarded this bond authority to All Aboard Florida (AAF)/Brightline to help finance Phase II of its high-speed rail project, which would run from West Palm Beach to Orlando.

In both the original complaint filed in February 2018 and yesterday's filing, CARE FL and the Counties demonstrate that federal officials ignored or failed to consider the environmental, public safety, maritime, and environmental impacts the AAF rail project will have on Treasure Coast communities. Instead of directly addressing those vital concerns and directing that they be appropriately resolved in the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD), USDOT/Federal Railroad Administration (FRA) instead acted as the project's supporter, deferring to AAF's needs and wishes in violation of law.

"Even more concerning is the manner in which USDOT relied on AAF to develop responses to concerns raised during the FEIS process—a job that rests in the hands of the regulatory officials, not the hands of the company whose project is being reviewed," said Dylan Reingold, Indian River County Attorney. "Instead of putting the well-being of the public first, USDOT bent over backwards to rubber stamp this project with little regard for its impact on the public."

In a prior ruling on a prior PAB allocation of \$1.75 billion in PABs to AAF, U.S. District Court Judge Christopher Cooper, who is again presiding over this lawsuit, stated the approval of PABs for the AAF project constituted a "major Federal action" subject to the National Environmental Policy Act (NEPA). The Counties and CARE FL believe this is a very important point, and yesterday's filing shows how the actions of the USDOT and FRA were contrary to and violate NEPA.

The filing highlights how the USDOT and FRA omitted from the FEIS even the most basic information on critical rail safety issues, including tables purporting to show that accidents occurring along the north-south FECR corridor have been “minimal.” In reality, the data shows that slower moving trains on the slower FECR tracks killed nearly 200 people in the ten years prior to issuance of the FEIS.

The filing also includes a [declaration by Martin County Fire Rescue Department Division Chief Dan Wouters](#). Chief Wouters, who recently testified before a congressional subcommittee that was examining the award of PABs to AAF, highlights the public safety concerns and multiple adverse effects the Project will have on first responders. He states that the “potential for injuries and fatalities is real, not hypothetical.”

The filing further underscores how the AAF rail project will significantly increase the number and speed of trains travelling non-stop through nearly 350 at-grade road crossings along the Florida East Coast Rail corridor, 27 of which are located in [Martin County](#) and 32 of which are located in [Indian River County](#). Those at-grade road crossings create what the FRA has euphemistically called in the FEIS, “opportunities for conflict between trains and vehicles or people.” Collisions and death are the result.

“Since the February 2018 court filing, we have seen an additional five deaths and multiple injuries involving Brightline trains. This is merely the tip of the iceberg. These statistics cannot be ignored,” said Brent Hanlon, Chair of CARE FL.

In his declaration, Chief Wouters also expresses concerns about the negative impact increased rail traffic will have on first responder response times, hindering their ability to respond to emergencies in a timely manner. He states, “Martin County Fire Rescue will be delayed in some instances in responding to these accidents because of the delays occurring when emergency vehicles cannot cross railroad tracks due to parked or idling trains, further increasing the likelihood that those with severe injuries or illness cannot receive timely treatment.”

Also described in the filing are the multiple, significant environmental impacts the AAF project would have on the Treasure Coast region, including:

- Negative impacts on the St. Lucie Estuary and Indian River Lagoon, which are among the most threatened estuaries in the nation;
- Negative impacts on antiquated rail bridges and aging structures;
- Multiple adverse impacts on the waterways, ecosystem and maritime commerce as a result of increased rail bridge closures; and
- Harm to protected wildlife species and their habitats as a result of construction noise and vibration.

In addition, the filing addresses the issue at the heart of the PAB subsidy to AAF—whether AAF was ever eligible to receive approval from USDOT—since the Brightline

project neither met the 150 mile per hour definition of high-speed rail, nor did it ever receive federal Title 23 dollars as required by law.

USDOT and AAF have maintained the theory that just one dollar in Title 23 funds spent on different surface transportation projects allows any project – even an entire passenger railroad – to be eligible for PABs. However, not one dollar in Title 23 funds was ever spent on the AAF Project itself.

As CARE FL and the Counties point out in the filing, it was the Florida East Coast Railway (FECR) – and not the AAF Project – that received funding under Title 23. The Florida Department of Transportation (FDOT) expended Title 23 funds on highway-rail crossings along the freight rail corridor on which AAF proposes to run, and these crossing improvements funded projects would benefit the freight rail corridor regardless of whether the AAF Project ever operates.

USDOT and AAF are expected to file Cross-Motions for Summary Judgment in August.

For more information please visit www.ircgov.com, www.martin.fl.us, and CARE FL's site at www.saveourfl.com. To review the legal filings online [click here](#).

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