



2017 Year End Financing Update

New and intentionally confusing information has come to light over the past week with respect to All Aboard Florida (AAF) and the U.S. Department of Transportation (DOT), regarding financing for Phase II of the AAF passenger rail project (the phase that would run from West Palm Beach to Orlando, through our communities, without stopping).

The bottom line is that the events of the past week are leading to the moment that Citizens Against Rail Expansion in Florida (CARE FL) has been anticipating for years—the day we get to challenge the environmental and safety shortcomings of this ill-conceived passenger rail project under the National Environmental Policy Act (NEPA) in U.S. District Court (either in Washington, DC, or in Florida). We hope that Indian River County and Martin County—who both led previous legal challenges against AAF—will join us in this litigation. We will also need your support.

This update explains what we know, what we don't yet know, and what we hope to learn in the coming days and weeks. It also provides background information for those who want to refresh their memories with respect to AAF's previous federal financing efforts. We will report more to you in early 2018.

New Developments

Last week, on December 13, CARE FL and the two Counties learned that the Florida Development Finance Corporation (FDPC)—AAF's conduit issuer of Private Activity Bonds (PABs)—intended to hold a so called "emergency" meeting on December 18, on a \$1.15 billion PAB allocation for Phase II. That meeting was later cancelled, but AAF's request for it in the first place indicated an intention to move ahead with a new PAB allocation. DOT had never indicated it was approving the \$1.15 billion in bonds.

Two days later, on December 15, the Federal Railroad Administration (FRA) issued the long and intentionally delayed Record of Decision (ROD), more than 28 months after issuing the Final Environmental Impact Statement (FEIS), noting that AAF had recently renewed its application process for a federal Railroad Rehabilitation and Improvement Financing (RRIF) loan. This completes the NEPA review process, resulting in the ability of CARE FL—and hopefully the two Counties—to challenge the project in federal court on the grounds of its environmental and safety shortcomings.

However, neither DOT nor AAF has disclosed the precise program of DOT subsidy—is it PABs? Or is it a RRIF loan?—that AAF intends to obtain at the time of the ROD issuance. As noted above, the DOT website implies it is for the RRIF loan, but the scheduled-then-cancelled FDFC meeting indicates it is more likely to be PABs. Basically, DOT is hiding the ball from you the taxpayers and, to date, has refused to tell CARE FL’s Congressional champions which bucket of subsidy it would provide.

DOT has perpetuated an ambiguity that sows public confusion about the specific public financing program is extremely troubling for our communities and others who will be negatively impacted by the AAF project. As such, CARE FL and the Counties immediately wrote to DOT to whether the agency has authorized PABs or a RRIF loan to AAF.

Our Congressional champions—Reps. Brian Mast (R-FL-18) and Bill Posey (R-FL-08)—are similarly troubled by these recent events and the lack of clarity surrounding them, and are making similar inquiries on your behalf.

We hope DOT will voluntarily clear up this ambiguity, and this information will inform CARE FL’s immediate short-term legal strategy in the new year. We will bring you additional updates as developments occur.

Further Background Information

This section provides additional background on the details of AAF’s insatiable quest for public subsidies for Phase II that have led up to the developments of the past week.

In March 2013, AAF submitted an application to DOT for a RRIF loan, triggering the NEPA review process. That process included the September 2014 issuance of a Draft Environmental Impact Statement (DEIS) by the FRA.

On October 7, 2014, AAF made public that it was also pursuing another method of publicly subsidized funding—tax exempt PABs—and on December 22, 2014, the FRA issued a provisional approval letter for AAF to begin selling \$1.75 billion in PABs prior to the issuance of a FEIS.

In April 2015, Martin County, Indian River County and two individual CARE FL plaintiffs filed lawsuits challenging the lawfulness of the PABs.

On August 4, 2015, the FRA issued the FEIS, one day before the FDFC was scheduled to meet to approve the \$1.75 billion PAB allocation. That rubber stamp approval by the FDFC took place the next day, over objections from CARE FL, Martin County and Indian River County, among others. Over the next four months, AAF tried but failed four times to sell the PABs.

In August 2016, U.S. District Court Judge Cooper found that DOT’s PAB approval is subject to NEPA. Three months later, on November 28, 2016, DOT and AAF announced the withdrawal of the \$1.75 billion PAB allocation that was first granted by DOT in December 2014. DOT and

AAF also indicated that DOT has approved a \$600 million PAB allocation for Phase I only, and noted a possible future \$1.15 billion PAB allocation for Phase II at a later date.

In May 2017, Judge Cooper dismissed the federal case brought forth by the Counties and CARE FL, because DOT and AAF had withdrawn the \$1.75 billion PAB allocation that was being challenged. In his dismissal, Judge Cooper issued a warning to DOT should it issue another PAB allocation to the project without first complying with NEPA, stating “if DOT were to do so, Plaintiffs could readily call it to the carpet by renewing their lawsuits in this Court.”

The Counties and CARE FL also learned in the first half of 2017 that AAF may be applying for a new RRIF loan, though a Freedom of Information Act (FOIA) request to DOT revealed no complete (or draft) applications.

We need your support more than ever. Please encourage your commissioners to continue to stand alongside CARE FL and the other Counties in this important work. Now is the time to stay the course in our joint efforts related to the ill-conceived All Aboard Florida / Brightline project.

Interested in Helping?

Please continue to stand with CARE FL in opposing AAF. Winning this fight is up to us!

To get the latest or to sign up for our monthly updates, please visit our website www.saveourfl.com or you can like our [Facebook page](#). You can also follow us on [Twitter](#).

We would love to hear from you and if you care to make a contribution we've made it easy – just [click here](#).

Please continue to share these updates with your family, neighbors and friends. There will be additional developments to report on in the coming weeks, so please keep an eye out for our monthly updates and possible calls to action.

Thank you for your continued support. **Together We Can Make A Difference.**

Brent P. Hanlon
Chairman, CARE FL