



May 2018 Update

An Update for Our Communities

Citizens Against Rail Expansion in Florida (CARE FL) has had an unprecedented two months of activity, working with our colleagues in Indian River County and Martin County as we continue to oppose the expansion of All Aboard Florida's (AAF's) Brightline passenger rail project into Phase II—the phase of the project that will run from West Palm Beach north to Orlando, resulting in trains speeding through our communities.

We last brought you an update on CARE FL's ongoing safety concerns, as deadly and dangerous incidents involving Brightline trains have continued to occur on the limited Phase I route south of our communities. These incidents demonstrate the significant public safety concerns CARE FL has regarding the many inherently dangerous at-grade crossings along the proposed route of the AAF project.

Congressional Update

For the past four years, part of CARE FL's work in opposition to the AAF project has included a modest level of federal advocacy efforts in Washington, DC, related to both safety and to the financing of AAF. We are pleased to report that these ongoing efforts recently took an important step forward, gaining the attention of an important Committee in the U.S. House of Representatives.

On April 19, the House Oversight and Government Reform Committee's Subcommittee on Government Operations held a hearing titled Examining Tax-Exempt Private Activity Bonds for All Aboard Florida's Brightline Passenger Rail System. Specifically, the hearing sought to examine the \$1.15 billion Private Activity Bond (PAB) allocation the U.S. Department of Transportation (DOT) granted to AAF in December 2017 for Phase II.

The Subcommittee on Government Operations oversees the operations of the federal government and is led by Chairman Mark Meadows (R-NC). Thanks to the work of Congressman Brian Mast (R-FL)—one of CARE FL's champions—Chairman Meadows learned of the unsupportable legal theory that DOT used to approve AAF's PAB allocation, along with other funding and safety concerns, and decided to use his Subcommittee's jurisdiction to seek answers.

Chairman Meadows chose to invite three witnesses from our communities to testify on various concerning aspects of the AAF project. CARE FL was represented by Steering Committee member and former American Airlines Chairman Bob Crandall, who focused his testimony on the legality issues surrounding AAF's PAB allocation from DOT. Indian River County was represented by County Attorney Dylan Reingold, who focused on the safety costs that AAF is attempting to foist on local communities. Martin County was represented by Chief Dan Wouters of the County's Fire Rescue Department, who

focused on the numerous public safety concerns. AAF's President and Chief Operating Officer Patrick Goddard and DOT's Deputy Assistant Secretary for Policy Grover Burtney also testified during the hearing.

Several of our champions in Tallahassee also made the trip to Washington, DC, to attend the hearing, including State Senator Debbie Mayfield (R-Melbourne), State Rep. Erin Grall (R-Vero Beach), and State Rep. MaryLynn Magar (R-Tequesta). CARE FL is grateful for their dedication and support.

During his opening statement, Goddard sought to dismiss the legitimate concerns of the local communities by referring to us as "a minority of narrow-minded residents of two counties on our corridor." He also referred to us as a "small group of obstructionists." Chairman Meadows, a southern gentleman, felt compelled to take issue with this confrontational name-calling, and advised Goddard to knock it off. We were grateful for the Chairman's intervention in keeping the hearing professional.

During the two-hour hearing, Chairman Meadows, Ranking Member Gerry Connolly (D-VA), Congressman Mast and Congressman Bill Posey (R-FL)—another one of CARE FL's champions—questioned the witnesses on DOT's legal theory for approving the PABs and how these tax-exempt instruments amount to a public subsidy.

The Committee examined DOT's theory that the AAF project—which everyone, even AAF, agrees does not qualify for PABs under the eligibility category for "high-speed intercity rail facilities"—is instead eligible under "qualified highway or surface freight transfer facilities". That category includes "any surface transportation project which receives Federal assistance under Title 23".

DOT's Burtney carefully articulated the Department's theory that just one dollar in Title 23 funds spent on surface transportation allows any project, even an entire passenger railroad, to be eligible for PABs—a theory that Chairman Meadows took serious issue with, noting that it was not Congress' intent.

In addition to the questionable nature of DOT's theory on AAF's eligibility for the PABs, there was also the question of whether any of the Title 23 dollars were ever spent on the AAF project itself. DOT's Burtney noted that the Department relied upon the information in AAF's PAB application to make its determination. That application stated that "the Project has received financial assistance under Title 23 of the U.S. Code"—the "Project" being AAF, not the corridor. AAF's application then goes on to state that "approximately \$9 million from Section 130 of U.S. Code Title 23 has been invested in the entire corridor to improve railway-highway grade crossings and prepare the corridor for growth in rail traffic."

When pressed by Congressman Mast about the important distinction between the AAF project and the corridor on which AAF would run, Burtney stated: "We are not aware of any funds going to an All Aboard Florida account, however the application which the Department of Transportation reviewed did indicate that funds were used by the Florida Department of Transportation from Title 23 on the corridor on which the All Aboard Florida trains run, enabling it to be eligible for assistance under Private Activity Bond statute." That corridor is owned by an entirely different company—Florida East Coast Railway (FECR)—that has granted AAF an easement to run its trains.

Moreover, despite years of public comments by AAF that it is a privately funded rail project, AAF's Goddard stated under oath that, "...there has been public funding granted to the corridor" after being pressed by Congressman Mast during the hearing. This is just the latest example of AAF trying to have it both ways. For years, AAF has stridently claimed to be a private entity that is not seeking public subsidies. Yet, when in the hot seat in front of a Congressional Committee, the company admits to public funding for the corridor as a way of justifying its eligibility for PABs (which are yet another form of public subsidy, given their tax-exempt nature).

The information brought to light during the Congressional hearing also sparked concerns from U.S. Senator Marco Rubio (R-FL), who sent a follow up letter to DOT Secretary Elaine Chao questioning the Department's interpretation of the PAB program guidelines.

CARE FL is pleased and relieved that the U.S. Congress is taking a serious look at AAF's PAB allocation. We hope to report more on these efforts in the weeks and months ahead.

Media Update

The Congressional hearing definitely received its fair share of coverage. Despite the House not being in session the day of the hearing, we were able to connect with and gain attention from Florida media who watched and reported on the debate. At the conclusion of the hearing, CARE FL also distributed a press release which highlighted comments made during the hearing and provided links to the written testimony that was submitted into the record. As we mentioned earlier, Mr. Bob Crandall represented CARE FL and his strong remarks pointed to flaws in the PAB process. [Read his remarks here.](#)

Following the Congressional hearing, media in the Treasure Coast region reached out to CARE FL to get reaction to AAF's formal response to questions posed by Chairman Meadows during the hearing. CARE FL also responded to media inquiries from the Palm Beach Post, which published an investigative piece about AAF ridership. We also worked with our hometown paper, The TC Palm, that has had extensive coverage on the issue, including Sunday features.

Additionally, we are in touch with several national reporters who, as a result of the hearing, have become interested in the issues surrounding the AAF project and the PABs. Those stories will likely be published in the coming weeks.

April was truly a busy month, with a lot of shares on Facebook and Twitter, especially retweets and shares by Congressman Mast who has been a champion on this issue. We also helped distribute to media a letter from Sen. Mayfield that she sent to Gov. Scott, urging him to direct the FDFC to suspend any action on the PABs while Congress reviews the matter. We also shared U.S. Senator Rubio's letter with members of the media who followed up with original content.

Looking ahead, as we enter election season, we are hoping to, once again, conduct and distribute our "Candidate Report Card." Stay tuned for additional information on this project.

Litigation Update

As you know, the two Counties and CARE FL on February 13 filed a joint complaint in the U. S. District Court for the District of Columbia against DOT and the Federal Railroad Administration (FRA). The complaint demonstrates that federal officials ignored or failed to consider the environmental, public safety, maritime and environmental impacts the AAF project will have on Treasure Coast communities, and how those actions are contrary to and violate the National Environmental Policy Act (NEPA). In addition, the complaint also addresses the issue of the legality of the \$1.15 billion PAB allocation based on the FECR corridor's past use of Title 23 dollars.

In late May, we expect that DOT will likely have to file the Administrative Record. After that, all proceedings and the briefing will then be set. CARE FL will keep its supporters apprised as new developments occur with respect to the timing of further actions in this litigation.

In Case You Missed It

[Click here](#) for all the news stories about All Aboard Florida/Brightline.

Interested in Helping?

We ask that you continue to stand with CARE FL in opposing AAF. The fight is not over – and winning it is up to us! To get the latest news or to sign up for our monthly updates, please visit our website <http://www.saveourfl.com/> or like/follow our [Facebook page](#). You can also follow us on [Twitter](#).

WE NEED YOUR HELP NOW MORE THAN EVER!

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. And 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