



## **July 2016 Update**

Citizens Against Rail Expansion in Florida (CARE) continues to actively pursue all possible legal, political and public communication channels to stop the ill-conceived All Aboard Florida (AAF)/Brightline rail project that threatens the public safety and current way of life of communities throughout the Treasure Coast.

**Federal Lawsuit.** On June 30, there was a hearing in the U.S. District Court in Washington, D.C., on the federal lawsuit filed by Martin County and Indian River County—and including two individual CARE members—that is focused on violations of federal environmental law and the illegality of using private activity bonds (PABs) for AAF. The Counties’ attorneys successfully worked to bring several previously sealed files on AAF’s bond prospectus documents out from under the protective order AAF had sought, and this allowed the majority of the nearly four hour hearing to be open to the public.

The Counties’ attorneys offered strong arguments for why the motion to dismiss the case brought forth by AAF and the federal Department of Transportation (DOT) should not be granted, and were able to argue the merits of their case with respect to National Environmental Policy Act (NEPA) violations and the improper authorization of PAB authority under Title 23 of the U.S. Code, which covers highways.

Judge Cooper’s ruling is expected soon, but the Court is not on any deadline for making its decision. CARE will report more when the decision is released.

**RRIF Loan & Other AAF Government Subsidy Funding Plans.** The issue of AAF’s Railroad Rehabilitation and Improvement Financing (RRIF) loan application was raised during the June 30 court hearing.

DOT and AAF, as usual, tried to have it both ways, arguing in their brief filed in January that RRIF funding is possible, in order to show a source of funding other than the PABs. However, at the hearing they reversed this, claiming that AAF is not pursuing a RRIF loan “now” and hence the case should be dismissed on standing grounds as not a major federal action. This contradiction underlies AAF’s problems in this case.

A recent Freedom of Information Act (FOIA) request that CARE sent to DOT seemingly corroborates that AAF is not currently pursuing a RRIF loan. CARE sought all 2016 communications between the agency and AAF (and its affiliates) on the RRIF loan, and DOT

responded to CARE on June 15 noting that the agency had found no records responsive to CARE's request.

With respect to overall funding for the AAF project, CARE continues to monitor any and all developments closely. CARE notes that AAF has yet to sell its PABs after four different proposals were made to investors, and is evidently not actively pursuing a RRIF loan—two major sources of federal tax dollars that it previously touted as important components of the project. In addition, AAF has made only limited public descriptions of how it might fund construction of its proposed passenger rail project through our Treasure Coast communities.

While AAF is great at issuing press releases about building and construction activity on Phase 1 from West Palm Beach to Miami, it is important to note that those announcements have no bearing on the second phase of the project north of West Palm Beach to Orlando—the phase that would directly affect and disrupt our communities.

**Permitting and Rulemaking.** In coordination with the Counties, CARE continues to monitor and involve itself in the permitting and rulemaking actions of other federal and state agencies—including the U.S. Coast Guard, the U.S. Army Corps of Engineers (ACOE, or the Corps) and two Florida Water Management Districts—and is considering legal interventions and actions on these permitting issues. CARE is ramping up as agency actions move forward.

CARE has retained the Shubin & Bass law firm with respect to AAF's permit application before the South Florida Water Management District (SFWMD, or the District). On July 22, the SFWMD listed AAF's permit application as "complete" and a decision regarding the District's likely intent to issue a permit for AAF is forthcoming. Martin County did not agree with this completeness assessment.

August or September is the possible time frame for a decision from the District. Any entity that submitted a "point of entry" request to the SFWMD—CARE included—will be informed of this notice in writing. Once the notice is issued, CARE and/or the Counties will have 21 days within which to request an administrative hearing.

CARE is continuing to examine potential legal options with respect to the SFWMD permit and next steps. To the north, Indian River County is examining similar issues related to the St. Johns River Water Management District (SJRWMD), and CARE will report more on these efforts in a future update.

Developments have also occurred in the ACOE permitting process. It has recently come to light that the Federal Railroad Administration (FRA) has intentionally relinquished its previously-held role as the lead agency for "Section 106" review—that is, reviewing the AAF project's impacts on historical and archaeological sites pursuant to Section 106 of the National Historic Preservation Act (NHPA). In addition, the FRA is also no longer acting as the lead agency for NEPA purposes—a decision that was likely made in an effort to impact the District Court case discussed above.

These two developments increase the likelihood that ACOE will be forced to take on a more important role in the permitting and review process of the AAF project, serving as the lead federal agency for both Section 106 review and NEPA purposes. To this end, the Counties and CARE remain in communication with the Corps and continue to stress the numerous deficiencies in AAF's ACOE application, as well as in the AAF's similar analysis appearing in the Final Environmental Impact Statement (FEIS) that was released by the FRA nearly one year ago.

CARE expects to report more to its supporters on these two areas in the coming weeks.

**Public Relations Update.** CARE has continued to respond to media inquiries that have resulted in published stories about the public safety challenges and other impacts to the Treasure Coast and N. Palm Beach regions. Most recently CARE received a call from an Orlando TV station, WFTV, which featured an investigative report, with our input, on AAF's "secret" that it will be transporting dangerous liquefied natural gas on the tracks that run through our communities. We have provided you with a link in our In Case You Missed It section below. Also, CARE received a great response to its [candidate questionnaire](#) and the committee is in the process of grading the submissions. An overall scorecard will be released to the media to highlight champions for CARE's cause in the coming days. Additionally, CARE placed an opinion editorial, which pushed back against calls for us to throw in the towel, which was featured in multiple outlets including Sunshine State News, the TC Palm and the Palm Beach Post. Finally, John Payson, a longtime resident of Jupiter Island and supporter of CARE, penned a letter in support of our efforts that was also featured recently in the TC Palm.

**ICYMI.** In case you missed it, below we have included some good reads.

***The fight against All Aboard Florida is far from over by Brent Hanlon***

<http://m.palmbeachpost.com/news/news/opinion/point-of-view-the-fight-against-all-aboard-florida/nrtt6/>

***9 Investigates: Commuter train project has a secret by Chris Heath, WFTV***

<http://www.wftv.com/video?videoId=392904506&videoVersion=1.0>

***John Payson: Citizens Against Rail Expansion Florida has our trust and support***

<http://www.tcpalm.com/opinion/guest-columns/john-payson-citizens-against-rail-expansion-florida-has-our-trust-and-support-37fea426-440a-6886-e05-387471111.html>

***Investigative Reporter Lucas Daprile - TCPALM -Lack of government oversight regulations make private railroad crossings unsafe***

<http://www.tcpalm.com/news/shaping-our-future/all-aboard-florida/lack-of-government-oversight-regulations-make-private-railroad-crossings-unsafe-even-after-fatal-c-3-388275941.html>

***New York Times Reporter Brian Protesse - How Private Equity Found Power and Profit in State Capitols***

[http://www.nytimes.com/2016/07/15/business/dealbook/private-equity-influence-fortress-investment-group.html?ref=topics&\\_r=0](http://www.nytimes.com/2016/07/15/business/dealbook/private-equity-influence-fortress-investment-group.html?ref=topics&_r=0)

***Federal Railroad Administration July Media Releases:***

***July 29<sup>th</sup>*** - *The U.S. Department of Transportation's (DOT) Federal Railroad Administration (FRA) today issued a new final rule which requires passenger railroads to proactively identify potential safety hazards across their operations and work to reduce and mitigate them.*  
<https://www.fra.dot.gov/eLib/details/L18291>

***July 25<sup>th</sup>*** - *Federal Railroad Administrator Sarah E. Feinberg today called for greater action to prevent fatalities at the nation's more than 200,000 railroad crossings following several significant incidents in recent weeks that have killed parents and their children at railroad crossings.*  
[https://www.fra.dot.gov/eLib/details/L18284#p1\\_z5\\_gD\\_IPR\\_y2016\\_m7](https://www.fra.dot.gov/eLib/details/L18284#p1_z5_gD_IPR_y2016_m7)

**Interested in Helping?**

Winning this fight against AAF is up to CARE and the residents of the Treasure Coast communities who have the most to lose from this project. Please continue to stand with CARE and oppose AAF!

To get the latest or to sign up for our monthly updates, please visit our website [www.saveourfl.com](http://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 our updates with your family, neighbors and friends. There will be some very interesting developments we will report on in the near future. So keep looking for our updates or call to action.

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

Brent P. Hanlon  
Chairman, CARE FL