



NEWS RELEASE

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Indian River & Martin Counties, CARE FL File a Federal Lawsuit to Stop the U.S.DOT from Ignoring Safety, Maritime & Environmental Problems and Illegally Subsidizing All Aboard Florida/Brightline with Tax Exempt Bonds

TREASURE COAST, FL - Indian River County, Martin County and Citizens Against Rail Expansion in Florida (CARE FL) today filed a joint complaint in the U. S. District Court for the District of Columbia against the U.S. Department of Transportation (USDOT) 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 All Aboard Florida (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/FRA instead acted as the project's supporter, deferring to AAF's needs and wishes in violation of law. The Counties and CARE FL demonstrate how those actions are contrary to and violate the National Environmental Policy Act (NEPA).

"Throughout the NEPA process, Indian River County submitted comments to the FRA demanding that the agency take a hard look at the environmental impacts of the All Aboard Florida project," said Dylan Reingold, Indian River County Attorney.

"Unfortunately, after improperly waiting 28 months, the FRA issued a flawed and legally inadequate Record of Decision."

The new complaint demonstrates that the AAF rail project will significantly increase the number and speed of trains passing through nearly 350 at-grade road crossings along the Florida East Coast Rail corridor, 28 of which are located in Martin County and 31 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.

“Martin County feels strongly that the Federal Government rubber-stamped a high-speed train route through historic and environmentally sensitive areas of Martin County, ignoring viable alternative routes just to maximize profits,” said Sarah Woods, Martin County Attorney.

Even before All Aboard Florida’s Brightline began service on Phase 1 from Miami to West Palm Beach, in mid-January 2018, two pedestrians were killed. Subsequently, once service began a very few weeks ago, two more citizens have been hit and killed, and two injured – in all six separate encounters with the higher speed trains have occurred, garnering national attention. These tragic incidents are at slower speeds (below 80 miles an hour), while the speeds in the Counties will be 110 miles per hour. The accidents clearly demonstrate the urgent need for the United States and State of Florida to pay much greater attention to the need for safety measures that will be necessary to protect pedestrians and motorists impacted across Florida.

The Florida East Coast Railway, on which Brightline operates, is already one of the deadliest tracks in the United States. Between 2011 and 2017, data collected by the [U.S. Department of Transportation and the Federal Railroad Administration](#) shows that there have been a total of 103 deaths, over 350 miles of Florida East Coast Railway tracks. With the AAF/Brightline deaths, that number is now at least 107, and likely to continue to increase.

“While the death toll mounts day by day, the fundamental issue is how many more ‘encounters’ between AAF/Brightline trains and pedestrians, bicyclists and motorists will occur at the at-grade crossings?” questioned Steve Ryan, CARE Florida’s and Martin County’s attorney. “We don’t believe that these crossings in highly populated areas can be made safe for trains traveling at 110 miles per hour.”

The complaint also addresses USDOT’s decision to subsidize AAF with tax-exempt Private Activity Bonds (PABs). The Internal Revenue Code only permits the issuance of tax-exempt PABs to finance a project if it falls into approved specified categories. However, the AAF project does not qualify to be designated as a “high-speed intercity rail facility”, and the USDOT and FRA have unlawfully approved the PABs for AAF, claiming incorrectly that the project is a “qualified highway or surface freight transfer facility.” The project is clearly not qualified as a passenger railroad based on how Congress defined qualifying projects- and it is neither a highway nor a freight transfer facility, and the U.S. government should not try to pull the wool over the public’s eyes in order to justify providing subsidies inconsistent with the statute Congress carefully considered and passed.

Also described in the complaint are the multiple, significant environmental impacts the AAF project would have on the Treasure Coast region. For example, the St. Lucie Estuary and Indian River Lagoon, which support one of the most diverse assembly of flora and fauna communities, are two of the most productive and most threatened estuaries in the nation. The need to replace antiquated bridges, and the impact of grossly increased rail-bridge closures resulting from the AAF project, will have multiple adverse impacts on these rivers, the ecosystem and maritime commerce. The Project's construction, noise and vibration, among other things, would also harm protected wildlife species and their habitat in the region.

In addition to environmental and public safety concerns, the complaint also outlines the adverse financial impact the Counties and its taxpayers will have to bear to mitigate the safety impacts of a project built and operated by a private railway company. The Federal government is inexplicably ordering the Counties to pay the increased costs of maintenance and rehabilitation of the project in perpetuity. The counties will be forced to pay millions of dollars to support AAF's crony capitalism, already subsidized by the Federal and Florida state governments.

In 2015, Indian River County, Martin County and individual CARE FL plaintiffs successfully sued U.S. DOT in two different Complaints that were consolidated for decision. In August 2016, the U.S. District Court ruled that the PABs used by U.S. DOT and AAF would provide a taxpayer subsidy of \$600 million to AAF in the first 10 years and that the PABs constituted a 'major Federal action' and that NEPA applied to the project. The Court made clear this was the first such finding by any Court. Subsequently, AAF and USDOT decided to withdraw the \$1.75 billion in bonds to 'moot' the first case. Since AAF has now been 're-awarded' two tranches of PABs worth \$600 million and \$1.15 billion, it is obvious that withdrawal was just a tactic to delay the NEPA suit now being filed. USDOT took 28 months from the time the FEIS was filed in August 2015 to December 15, 2017, before issuing the ROD that enables the NEPA suit to proceed. These manipulations on behalf of AAF demonstrate the steps USDOT has taken to frustrate safety, health and environmental review.

As the Congress and public begins to review the President's infrastructure proposal, both are entitled to know USDOT will actually follow Congress's directions – and not attempt to turn the statue upside down to subsidize a non-qualifying passenger train project as it is trying to do here.

For more information please visit www.ircgov.com, www.martin.fl.us, and CARE FL's site at www.saveourfl.com.

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