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PRIVATE ACTIVITY BONDS - FLORIDA

Indian River County, Florida v. United States Department of Transportation

United States Court of Appeals, District of Columbia Circuit - December 20, 2019 - F.3d - 2019 WL 6972874

County sued Department of Transportation (DOT), raising causes of action under Administrative Procedure Act (APA), including claim that DOT exceeded its statutory authority in allocating $1.15 billion in tax-exempt qualified private activity bonds (PABs) to finance second phase of intercity express passenger railway project and claim challenging adequacy of environmental impact statement (EIS) prepared by Federal Railway Administration (FRA) pursuant to requirements of National Environmental Policy Act (NEPA).

Following intervention by project's sponsor, as defendant-intervenor, the United States District Court for the District of Columbia granted defendants summary judgment. Appeal was taken.

The Court of Appeals held that:

- County's interests fell within zone of interests of PAB statute;
- DOT permissibly allocated PABs to railway project; and
- EIS for project complied with NEPA's requirements.

County's environmental and safety interests fell within zone of interests protected by statute governing tax-exempt private activity bonds (PABs) to finance qualified highway or surface freight transfer facilities, and thus, county stated cause of action for judicial review under Administrative Procedure Act (APA) for claim that Department of Transportation (DOT) exceeded statutory authority in allocating PABs to fund second phase of intercity passenger railway project; DOT's allocation of PABs implicated county's interests in effects of project cutting through county and in removing hazards posed by railway-highway crossings.

Second phase of intercity passenger railway project constituted "surface transportation project which receives Federal assistance," within meaning of statute governing authorizing Department of Transportation (DOT) to allocate tax-exempt private activity bonds (PABs) to finance qualified highway or surface freight transfer facilities, and thus, DOT permissibly determined that project qualified for allocation of PABs; DOT reasonably interpreted statute to mean that project received federal assistance if project benefited from such assistance in whole or in part, and railway project had used substantial federal funds to improve grade crossings all along rail corridor.

Federal Railway Administration's (FRA) environmental impact statement (EIS) took hard look at reasonably foreseeable impacts of second phase of intercity passenger railway project, as required to satisfy NEPA, where EIS examined project's impacts on land use, transportation, navigation, air quality, noise and vibration, farmland soils, hazardous material disposal, coastal zone management, climate change, water resources, wild and scenic rivers, wetlands, floodplains, wildlife habitat, threatened and endangered species, social and economic effects, public health and pedestrian

safety, parks, and historic properties, as well as cumulative impacts, and set forth mitigation measures to ameliorate negative impacts.

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