

Summary of Complaint - Audubon Naturalist Society Of The Central Atlantic States, Inc., et al. v. United States Department Of Transportation, et al.

Audubon Naturalist Society of the Central Atlantic States, Inc., Maryland Native Plant Society, and Roger Metcalf and Eve Burton filed suit today against the Federal Highway Administration (“FHWA”), the United States Department of Transportation (“USDOT”), and the United States Army Corps of Engineers (“ACOE”) in the Federal District Court for the District of Maryland to block the Intercounty Connector (“ICC”). As these Plaintiffs allege in their complaint, the ICC highway project in Montgomery and Prince George’s Counties would be a toll road costing billions to connect I-95 and I-270 while doing little or nothing to alleviate traffic congestion on existing roads, including the Capital Beltway, I-95, and I-270. Besides its enormous financial cost to Maryland taxpayers, the ICC would severely damage or destroy high quality natural resources, promote needless suburban sprawl, and ensure continued governmental inattention to truly significant transportation problems in suburban Maryland which continue to plague millions for lack of funding.

This suit seeks to enforce Defendants’ legal duties under the National Environmental Policy Act (“NEPA”), Section 4(f) of the Department of Transportation Act, the Administrative Procedure Act, Section 404 of the Clean Water Act (“CWA”), and those statutes’ implementing regulations. Unless and until the Defendants comply with those duties, Plaintiffs seek injunctive relief prohibiting Defendants and their state counterparts from condemning homes, breaking ground, or awarding contracts under the proposed ICC.

This suit raises claims that Defendants FHWA and USDOT...

- so narrowly defined the scope, purpose, and need of the project during the NEPA process that the outcome of the project was predetermined and anything other than the six-lane, east-west toll highway between two specified points was not considered.
- failed to consider reasonable alternatives, instead dismissing them without an intelligible explanation, based on outdated information, or on pretextual grounds. For example, despite assertions that no dismissed alternative would effectively reduce traffic by at least 10%, the Defendants’ own Environmental Impact Statement reveals that the ICC itself actually would increase traffic on many roadways.
- failed to consider all feasible and prudent alternatives to destroying or impairing the park lands and other resources, as the ICC project would do, in violation of USDOT Act § 4(f).
- failed to meet NEPA’s mandate to properly identify and assess the project’s reasonably anticipated environmental impacts. For example, Defendants failed to consistently or completely evaluate the impacts to water and air resources from the secondary development that Defendants’ own experts predicted would occur.
- violated federal regulations by failing to consider whether the project would turn its back on Maryland laws protecting rare, threatened, and endangered species and habitat.

- failed to fully consider constructive use impacts – such as increased noise – to park land and other resources along or in the vicinity of the proposed roadway.
- failed to consider adequate mitigation of the project’s expected environmental harms, as required by both NEPA and USDOT Act § 4(f). For example, Defendants propose mitigating the project’s destruction of mature forest wildlife habitat through the provision of presently unforested land and land located miles from the road and miles outside the project study area.

In addition, this suit raises claims that Defendant ACOE violated regulations implementing CWA § 404 in issuing a permit allowing Maryland agencies to fill in wetlands and other water bodies for the construction of the ICC. Plaintiffs allege that ACOE’s permit approval...

- failed to consider any reasonable alternatives to filling in the wetlands, aside from the two alternative highway alignments considered in the deficient Environmental Impact Statement (“EIS”);
- relied on the EIS’s legally inadequate analysis when approving the selected alternative as the least environmentally damaging alternative among the two highways considered; and
- relied on the EIS’s deficient environmental and other analyses when concluding that the anticipated public benefits of the ICC project outweigh the project’s anticipated damage to wetlands and other resources.